Nature of the Union Executive: - Thus the powers of the President appear to be formidable indeed. But before arriving at any conclusion we should read the mind of the makers of Our Constitution. Sir B. N. Rau, the Constitutional Adviser, had also posed this very question: What should be the nature and type of the Union Executive? Should it be of the British type (parliamentary) or the American type (non-parliamentary) or the Swiss type (mixed) or any other type? In his note he remarked: "From the point of view of practical administration this is perhaps the most important question in the framing of the new constitution. There are, as indicated in the questionnaire, three main types of executives. In the British type, the executive is responsible to the Legislature and has to resign on loss of confidence of the Legislature. In the American type, the executive is not responsible to the Legislature; each derives its authority from the people direct and is not responsible to the other. In the Swiss type, the executive is elected by the Legislature for a term of four years (which is also the life of the Legislature) and no question of resignation during the term arises. In the Irish Free State Constitution of 1922, we find a fourth type: there was a Ministry of the British type plus certain additional ministers appointed rather on the Swiss plan - that is to say, they were nominated by the Dáil on the recommendation of a special Committee, they held office for the term of the Dáil, and were responsible only to the Dáil. The British type is the one with which we are most familiar in India and it features are well-known."\(^1\) In reply to this question Sardar K. M. Pannikar and Dr. S. P. Mukherjee also agreed that India needed a Parliamentary executive.\(^2\) The same opinion was expressed by Sir N. Gopalaswami Ayyangar and Sir Alladi Krishnaswami Ayyar in their Memorandum On The Principles of the Union Constitution.\(^3\)

1. B. N. Rau: op cit, pp. 22 - 23
2. Papers In The President's Secretariat: Statement showing the replies of Sardar K. M. Pannikar and Dr. S. P. Mukherjee, members of the Union Constitution Committee, to the Questionnaire issued to them.
3. Vide Papers In The President's Secretariat.
The next question posed by Sir B. N. Rau was: If Parliamentary, should there be any special provision to secure a stable executive? He provided the following note: "The following observations in the Simon-Attlee Report are worth notice. Although they relate to the provincial sphere they are general application: "We think that under the conditions which have developed in the Indian provinces, ministers are too much at the mercy of hostile combinations against them for good work to be done. Ministers need to feel that they are assured of a reasonable period within which their policy may mature and its results may be judged; at present some of them are so much occupied in maintaining their position by securing the temporary support of this or that group of critics or malcontents that it must be very difficult to carry on the main work of ministerial government at all."¹ Sardar K. M Pannikar did not favour the idea of any special provision to secure a stable executive.² Dr. S. P. Mookherjee simply recommended: "Ministers removable only on a specific motion of no-confidence passed by an absolute majority of members of the lower House. Salaries of Ministers to be fixed by statute and not to be altered to during term of office."³

The next question was: What should be the composition of the executive? What should be the maximum, if any, of the number of ministers? Sardar Pannikar was silent on this point. Dr. S. P. Mookherjee replied: "No Statutory limit as to number to be prescribed. Ministers to be members of the Legislature within, say, six months after appointment. Provision to be made for Deputy Ministers and Parliamentary Secretaries."⁴ It may be noted that there is no statutory maximum in U. K. and Canada. In Australia there is a statutory maximum of seven until Parliament otherwise provides. In South Africa there is a statutory maximum of 11. In Switzerland it is seven and in Ireland it is 7 to 15.

1. B. N. Rau: op cit, p. 24
2. Papers In The President's Secretariat: Statement showing the replies of Sardar K. M. Pannikar and Dr. S. P. Mookherjee.
3. Ibid
4. Ibid.
Should provision be made to secure representation of different communities on the executive? If so how? There is no such provision in U.S.A. and Canada. But in Canada, in considering the claims of various candidates for ministerial office the Premier has to take into account race, religion and geographical factors. Sardar Pannikar was silent on this issue. But Dr. Mookherjee replied: "Yes, by convention and not by statutory reservation."¹

How should joint responsibility or coordination be secured? In U. K. and the Dominion all ministers are jointly responsible to the Legislature by convention. They are chosen by the Prime Minister. The first mark of the Cabinet is united and indivisible responsibility. In Ireland the statutory provisions follow the British convention. Dr. Mookherjee also recommended that "the Statute should provide that the Ministers are jointly and severally responsible to the Lower House."²

How should the members of the executive be chosen? In U. K. and the Dominions the choice of the Prime Minister is made by the King, or the Governor-General, as the case may be, and the nature of the choice depends upon the state of parties in the Lower House. The Prime Minister chooses his colleagues in the Cabinet. Sardar Pannikar recommended that "the person commanding a stable majority in the Legislature to be the Prime Minister."³ But Dr. Mookherjee made specific provision for the election of the Prime Minister by the Lower House. Both of them agreed that the other ministers were to be appointed on the advice of the Prime Minister.⁴

What provisions should be made for the removal of the Executive?

In U. K. and the Dominions the Cabinet holds office so long as it has the confidence of the Lower House. It can be removed by a vote of no-confidence by the Lower House. Dr. S. P. Mookherjee also recommended that the Cabinet should be "removable on a specific vote of no-confidence passed by an absolute majority of the Lower House."⁵ Sardar Pannikar recommended "The President may dismiss the Cabinet

1. Papers In The President’s Secretariat: Statement showing the replies of Sardar K. M. Pannikar and Dr. S. P. Mookherjee.
2. Ibid
3. Papers In The President’s Secretariat: Statement showing the replies of Sardar K. M. Pannikar and Dr. S. P. Mookherjee
4. Ibid
5. Ibid
if in his opinion it has ceased to command the confidence of the legislature. The Cabinet liable to be removed if a vote of no-confidence is passed or an important measure of the Cabinet is disapproved."

What should be the nature of relations between the head of the Union and the executive?

In U. K. the King is merely a formal head. In all political matters he acts on the advice of the Cabinet. He has certain prerogative powers, namely, (1) the right to dissolve Parliament, (2) the right to refuse dissolution of Parliament and (3) the right to select the Prime Minister. These rights are circumscribed by many considerations and are very often of theoretical interest only. There are also certain personal prerogatives which he exercises on his own responsibility. Sardar Pannikar suggested, "the President to conform to the tradition, usages and customs of a constitutional Head of State." Dr. Mookherjee said "President to act by and with the advice of the Union Cabinet."

In the Memorandum on the Union Constitution prepared by Sir N. Gopalaswami Ayyangar and Sir Alladi Krishnaswami Ayyar it was recommended:

"1. The executive power of the Federation will, subject to the provisions of the Constitution, be exercised by, or on the authority of, a Council of Ministers to be called the Cabinet, which will be collectively responsible to the House of Representatives.

2. The Cabinet will consist of a Prime Minister who will be its head and such number of other Ministers of State as may be provided for by law or in the absence of any law as may be fixed by the President.

3. The President will appoint the Prime Minister from amongst the members of the Federal House of Representatives and, in doing so, will ordinarily invite the person who, in his judgment, is likely to command the largest following in the House to accept the office. The other Ministers of the Cabinet will be

1. Ibid
2. Ibid
3. Ibid
appointed by the President on the advice of the Prime Minister. In making appointments of Ministers, the President will have due regard to the representation of the different regional areas in the Union as well as of important minority communities.

4. The Prime Minister will keep the President generally informed on matters of domestic and foreign policy."¹

In his Memorandum on Union Constitution Sir B. N. Rau recommended:

"10. There shall be a Council of Ministers, with the Prime Minister at the head, to aid and advice the President in the exercise of his functions, except in so far as he is required by this constitution to act in his discretion.

(Note: Although under responsible government the head of the State acts for the most part on the advice of minister responsible to the Legislature, nevertheless there are certain matters in which he is entitled to exercise his own discretion: e.g. (in certain events) in the choice of a Prime Minister and in the dissolution of Parliament. In India, such matters as the appointment of judges, the protection of minorities and the suppression of widespread disorder may properly be added to the list. Of course, it may not be always possible for the President to use his 'discretionary' powers. Thus a Ministry may threaten to resign if in the exercise of 'discretionary' power, he overrules them; in that case, the President can do so only if he has the support of the Legislature and can get an alternative Ministry enjoying its confidence. Failing this, he can dissolve the Legislature and appeal to the electorate in an extreme case. Thus the 'discretionary' powers will at least give the President a chance of appealing to the Legislature and, in the last resort to the people.)

"11. There shall be a Council of State whose advice shall be available to the President in all matters in which he is required to act in his discretion.

(Note: This institution also has been borrowed from the Irish Constitution. It is a kind of Privy Council to aid and advice the President on matters of national im-

¹. Vide Papers In The President's Secretariat.
portance in the decision of which any party bias has to be avoided. The Council of State consists of the Prime Minister, the Deputy Prime Minister, the Chief Justice of the Union, the Speaker of the House of Representatives, the Chairman of the Senate, the Advocate General, every ex-President, every ex-Prime Minister, every ex-Chief Justice and a limited number of other persons to be appointed by the President in his absolute discretion. It is a non-party council of elder statesmen including judges. Such a council may be found useful in India in such matters as the protection of minorities, the supervision, direction and control of elections and appointment of judges of the Supreme Court and the High Courts.)

"12. The relation between the President and the Council of Ministers shall, as far as possible, be the same as between the King and his ministers in England."¹

Thus the Union Constitution Committee recommended

"10. There shall be a Council of Ministers with the Prime Minister at the head, to aid and advise the President in the exercise of his functions."²

Haji Abdul Sattar Haji Ishaq Sait moved that for clause 10 the following be substituted:

"10. There shall be a Council of Ministers elected by the National Assembly by a system of proportional representation by single transferable vote and the Council of Ministers shall be responsible to the National Assembly."³

Pt. Thakur Das Bhargava opposing this amendment said: "The question now is whether the democratic government should be of the Ministerial type or of the Presidential type as is the case in the U.S.A.... The principle to be followed in the Union Government should be that the Prime Minister should be the pivot of the whole administration. He should have the full powers, and the President would be merely a constitutional head; and he should be given no individual powers or discretion. Whatever the President will do should be on the advice of his ministers. This is

¹ B. N. Rau: op cit, pp. 70 - 71
² CAD IV, p. 745
³ CAD IV, p. 907.
a good principle and for this, the British model is regarded as an example by the whole world." He therefore moved "That the following be added at the end of clause 10: "The Prime Minister shall select the other Ministers and the whole ministry shall be responsible to the Legislature and act on the principal of joint responsibility in the discharge of the duties of the Ministry."\(^1\)

Kazi Syed Karimuddin moved that the following be added at the end of clause 10: "That the Executive of the Union shall be non-parliamentary, in the sense that it shall not be removable before the term of the Legislature and a member of the Cabinet or the Cabinets may be removed at any time on impeachment before a judicial tribunal on the ground of corruption or treason.

The Prime Minister shall be elected by the whole House by single transferable vote. Other Ministers in the cabinet shall be elected by single non-transferable vote." He thus pleaded for non-parliamentary executive.\(^2\)

Sir N. Gopalaswami Ayyangar moved that at the end of clause 10 the following be added:

"The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister. The Council shall be collectively responsible to the House of the People."\(^3\)

Mr. Tajamul Husain opposed the amendment of Karimuddin. If Ministers were to be elected by proportional representation by means of a single transferable vote, there would be no team work in the Ministry and there would be no stability. The idea of the executive irremovable before the term of Legislature is undemocratic. A vote of no-confidence is sufficient and there should be no judicial tribunal for the purpose.\(^4\) He supported the amendment of Ayyangar. Pt. Nehru referring to the issue of ministers being elected by proportional representation said, "I can think of nothing more conducive to creating a feeble ministry and a feeble government than this

---

1. Ibid, pp. 907 - 908
2. Ibid, pp. 908 - 909
3. Ibid, p. 911
business of electing them by proportional representation and I would therefore like the House to reject this amendment.\(^1\) He also opposed the executive of the American type. He accepted the amendment of Ayyangar. All amendments except that of Ayyangar were negatived and clause 10 as amended was adopted.\(^2\)

**Council of Ministers to aid and advise the President**

The Drafting Committee redrafted it as

"61 (1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions.

(2) The question whether any, and if so what, advice was tendered by ministers to the President shall not be inquired into in any court." Thus sub-clause (1) followed S. 9 of the Govt. of India Act 1935.

Mahboob Ali Baig Sahib Bahadur moved that the following be substituted for article 61 (1) and (2): -

"61 (a) There shall be a Council of Ministers to aid and advise the President in the exercise of his functions.

(b) The Council shall consist of fifteen members elected by the elected members of both the Houses of Parliament from among themselves in accordance with the system of proportional representation by means of a single transferable vote, and one of the ministers shall be elected as Prime Minister, in like manner." Explaining he said "the purpose of this amendment is firstly, to secure in the executive i.e. the Cabinet, proper representatives and secondly, to secure representative from all sections of the people......... According to me, parliamentary democracy is not democracy at all. Democracy, according to me, is not a rule by mere majority; but it is rule by deliberation, by methods of deliberation on any particular matter, by taking into consideration all sections, who make up the people in general..... can we not have democracy without parties and without any political parties?...... I can quote..... the instance of Switzerland. In that country you have not got what are called political parties being returned there. There, after members are elected

1. CAD IV, p. 915
2. Ibid, p. 921.
to the Parliament, they elect their own Ministers to the Cabinet...... when there are no political parties, the Cabinet that will be chosen will be non-political and the only aim before their mind will be the welfare of the country and they will cooperate with one another for that purpose."1 Opposing the amendment Sri Tyagi said "An election by single transferrable vote means that any man who has 30 votes at his command will come into the Cabinet which deals with the highest priority secrets of the State; ....Do you mean to suggest that as many parties as there are in the House should all come into the Cabinet, so that, they may never decide an issue or keep a secret?"2

Sri Raj Bahadur said, "I see within and behind the lines of this amendment a devise to introduce the evil of communalism and separation by the back-door method .... to say that the type of democracy that obtains in Switzerland would suit our requirements is not to state the whole truth at all. Nor would it be a sound proposition. We know that in Switzerland three distinct nationalities, German, French and Italian combined together in a confederacy. It was done in order to suit the exigencies of their own situation. I would submit that the type of democracy in Switzerland would not suit our requirements at all. We have had some taste of it in the days when the Muslim League Party, through the "good offices" of Lord Wavell entered into a sort of coalition with the Congress Party. What ensued thereupon is recent history."3

Mr. Tajamul Husain also opposed the amendment 4 Sri K Santhanam said, "I do not think it is right to suggest that Mr. Baig's amendment is based on any communal or other calculations. It is one of the recognized systems of Government. The Swiss system for instance, believes in an elected executive. It is something between the American executive and the Parliamentary executive. Therefore, though there is no presidential system, there is a sort of stable executive. In certain circumstances, that system may be advantageous. But for a country like India which is very big and which has very wide and diverse interests and the Parliament of which may consist of violently opposed elements, it cannot be a suitable system."5

Dr. Ambedkar replied "Mr. Mahboob

1. CAD VIII, pp. 1141 - 1143
2. CAD VIII, pp. 1150 - 1151
3. Ibid, p. 1152
4. Ibid, p. 1152
5. Ibid, p. 1156.
Ali Baig's amendment falls into two parts. The first part of his amendment seeks to fix the number of the Cabinet Ministers. According to him they should be fifteen. The second part of his proposition is that the Members of the Cabinet must not be appointed by the Prime Minister or the President on the advice of the Prime Minister but should be chosen by the House by proportional representation.

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

"With regard to the second amendment, namely, that the Ministers should not be appointed by the President on the advice of the Prime Minister, but should be chosen by proportional representation, I have not been able to understand exactly what is the underlying purpose he has in mind. So far I was able to follow his arguments, he said the method prescribed in the Draft Constitution was undemocratic. Well, I do not understand why it is undemocratic to permit a Prime Minister, who is chosen by the people, to appoint Ministers from a House which is also chosen on adult suffrage, or by people who are chosen on the basis of adult suffrage. I fail to understand why that system is undemocratic. But I suspect that the purpose underlying his amendment is to enable minorities to secure representation in the Cabinet. Now if that is so, I sympathise with the object he has in view, because I realize that a great deal of good administration, so to say, depends upon the fact as to in whose hand the administration vests. If it is controlled by a certain group, there is no doubt about it that the administration will function in the interests of the group represented
by that particular body of people in control of administration. Therefore, there is nothing wrong in proposing that the method of choosing the Cabinet should be such that it should permit members of the minority communities to be included in the Cabinet. I do not think that that aim is either unworthy or there is something in it to be ashamed of. But I would like to draw the attention of my friend, Mr. Mahboob Ali Baig, that his purpose would be achieved by an addition which the Drafting Committee proposes to make a schedule which is called Schedule 3-A. . . . One of the clauses in the proposed Instrument of Instructions will be this: 'In making appointment to his Council of Ministers, the President shall use his best endeavours to select his Ministers in the following manner, that is to say, to appoint a person who has been found by him to be most likely to command a stable majority in Parliament as the Prime Minister, and then to appoint on the advice of the Prime Minister those persons, including so far as practicable, members of the minority communities, who will best be in a position collectively to command the confidence of Parliament.'

"I think this Instrument of Instructions will serve the purpose, if that is the purpose which Mr. Mahboob Ali Baig has in his mind in moving his amendment. I do not think it is possible to make any statutory provision for the inclusion of members of particular communities in the Cabinet. That, I think, would not be possible, in view of the fact that our Constitution, as proposed, contains the principle of collective responsibility, and there is no use foisting upon the Prime Minister a colleague simply because he happens to be the member of a particular minority community, but who does not agree with the fundamentals of the policy which the Prime Minister and his party have committed themselves to."¹ The amendment was negatived.²

Mr. Mohd. Tahir pleaded that the President of India should not be tied down all round. At least this House should be generous enough to give him the freedom of using his discretionary powers. He therefore moved that the following be inserted at the end of clause (1):""'Except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

1. CAD VII, pp. 1156 - 1158
2. Ibid, p. 1161.
"2. If any question arises whether any matter is or is not a matter as respects which the President is by or under this Constitution required to act in his discretion, the decision of the President in his discretion, shall be final and the validity of anything done by the President shall not be called in question on the ground that he ought or ought not to have acted in his discretion." In introducing this amendment he submitted that "it is not a novel exception; if you will be pleased to look at article 143 of the Draft Constitution you will find that the same exception has been allowed in respect of the Governors and the Ministers of the State. When the Governors of the States have been given power to exercise certain powers in their discretion, I do not see any reason why this innocent power should not be granted to the President of India." Mr. Tajamul Husain opposing said "We do not want the President or the Governor to use his individual discretion at all..... If advice is tendered by the Cabinet, the President must accept that." Dr. B. R. Ambedkar replied "he wants to lay down that the President shall not be bound to accept the advice of the Ministers where he has discretionary functions to perform. It seems to me that Mr. Tahir has merely bodily copied section 50 of the Government of India Act before it was adopted. Now, the provision contained in Section 50 of the Government of India Act as it originally stood was perfectly legitimate, because under that Act the Governor was by law and statute invested with certain discretionary functions which are laid down in sections 11, 12, 19 and several other parts of the Constitution. Here, so far as the Governor General is concerned, he has no discretionary functions at all. Therefore, there is no case which can arise where the President would be called upon to discharge his functions without the advice of the Prime Minister or his cabinet. From that point of view the amendment is quite unnecessary. Mr. Tahir has failed to realize that all that the President will have under the new constitution will be certain prerogatives but not functions and there is a vast deal of difference between prerogatives and functions as such.

1. CAD VII, pp. 1145 - 1146
"Under a parliamentary system of Government, there are only two prerogatives which the King or the Head of the State may exercise. One is the appointment of the Prime Minister and the other is the dissolution of Parliament. With regard to the Prime Minister it is not possible to avoid vesting the discretion in the President. The only other way by which we could provide for the appointment of the Prime Minister without vesting the authority or the discretion in the President, is to require that it is the House which shall in the first instance choose its Leader, and then on the choice being made by a motion or a resolution, the President should proceed to appoint the Prime Minister.... The position of the Governor is exactly the same as the position of the President, and I think I need not overelaborate that at the present moment because we will consider the whole position when we deal with the State Legislatures and the Governors. Therefore, in regard to the Prime Minister, the other thing is to allow the House to select the Leader, but it seems that that is quite unnecessary. Supposing the Prime Minister made the choice of a wrong person either because he had not what is required, namely, a stable majority in the House, or because he was a persona non-grata with the House: the remedy lies with the House itself, because the moment the Prime Minister is appointed by the President, it would be possible for the House or any member of the House, or a party which is opposed to the appointment of that particular individual, to table a motion of no-confidence in him and get rid of him altogether if that is the wish of the House. Therefore, one way is as good as the other and it is therefore felt desirable to leave this matter in the discretion of the President.

"With regard to the dissolution of the House there again there is not any definite opposition so far as the British Constitutional lawyers are concerned. There is a view held that the President, or the King, must accept the advice of the Prime Minister for a dissolution if he finds that the House has become recalcitrant or that the House does not represent the wishes of the people. There is also the
other view that notwithstanding the advice of the Prime Minister and his Cabinet, the President if he thinks that the House has ceased to represent the wishes of the people, can so motion and of his own accord dissolve the House.

"I think these are purely prerogatives and they do not come within the administration of the country and as such no such provision as Mr. Tahir has suggested in his amendment is necessary to govern the exercise of the prerogatives."¹ The amendment was therefore negatived.²

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

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

1. CAD VII, pp. 1158 - 1159
2. Ibid, p. 1161.
"I want to tell my friend Prof. K. T. Shah that his amendment would be absolutely fatal to the other principle which we want to enact, namely, collective responsibility. All members of the House are very keen that the Cabinet should work on the basis of collective responsibility and all agree that that is a very sound principle. But I do not know how many members of the House realize what exactly is the machinery by which collective responsibility is enforced. Obviously, there cannot be a statutory remedy. Supposing a Minister differed from other Members of the Cabinet and gave expression to his views which were opposed to the views of the Cabinet, it would be hardly possible for the law to come in and to prosecute him for having committed a breach of what might be called collective responsibility. Obviously, there cannot be a legal sanction for collective responsibility. The only sanction through which collective responsibility can be enforced is through the Prime Minister. In my judgement collective responsibility is enforced by the enforcement of two principles. One principle is that no person shall be nominated to the Cabinet except on the advice of the Prime Minister. Secondly, no person shall be retained as a Member of the Cabinet if the Prime Minister says that he shall be dismissed. It is only when Members of the Cabinet both in the matter of their appointment as well as in the matter of their dismissal are placed under the Prime Minister, that it would be possible to realize an ideal of collective responsibility. I do not see any other means or any other way of giving effect to that principle.

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

"Now, Sir, with regard to the second proposition of my friend Prof. K. T. Shah that a Minister on appointment should seek a vote of confidence. I am sure that Prof. K. T. Shah will realize that there is no necessity for any such provision at all.....if the Prime Minister does happen to appoint a Minister who is not worthy of the post, it would be perfectly possible for the Legislature, to table a motion of no-confidence either in that particular Minister or in the whole Ministry and thereby get rid of the Prime Minister or of the Minister if the Prime Minister is not prepared to dismiss him on the call of the Legislature...

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

"His last proposition is that no person who is convicted may be appointed a Minister of the State. Well, so far as his intention is concerned, it is no doubt very laudable and I do not think any Member of this House would like to differ from him on that proposition. But the whole question is this: whether we should introduce all these qualifications and disqualifications in the Constitution itself. Is it not desirable, is it not sufficient that we should trust the Prime Minister, the Legislature and the public at large watching the actions of the Ministers and the actions of the Legislature to see that no such infamous thing is done by either of them? I think this is a case which may eminently be left to the good sense of the Prime Minister
and to the good sense of the Legislature with the general public holding a watching brief upon them. I therefore say that these amendments are unnecessary."¹ All the amendments of Prof. Shah were negatived.²

Article 61 was adopted.³

Other provisions as to ministers: - The Drafting Committee recommended: -

"62 (1) The Prime Minister shall be appointed by the President and the other ministers shall be appointed by the President on the advice of the Prime Minister.

(2) The Ministers shall hold office during the pleasure of the President.

(3) The Council shall be collectively responsible to the House of the People.

(4) Before a minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(5) A minister who, for any period of six consecutive months, is not a member of either House of Parliament shall at the expiration of that period cease to be a minister.

(6) The salaries and allowances of ministers shall be such as Parliament may from time to time by law determine and, until Parliament so determines shall be as specified in the second Schedule.

Sub-clauses (1) and (2) resembled § 10 of the Government of India Act, 1935 and Art. 28(4) of the Irish Constitution.

The Ministry of Home Affairs suggested that specific provision should be included in the Constitution for Ministers of State and their salaries.

The Constitutional Adviser opined "If the Ministers of State are to be regarded as members of the Council of Ministers, no separate provision for them appear to be necessary. If, however, they are not to be treated as members of the Council of

1. CAD VII, pp. 1159 - 1160
2. Ibid, p. 1162
3. Ibid, p. 1162.2
Ministers, then it will be always competent for the President to appoint such Ministers
from amongst the members of the Union Parliament in the same way as persons will be
appointed to the post in connection with the affairs of the Union. The President may
also prescribe the duties and fix the salaries of such Ministers and no provision in the
Constitution itself appears to be necessary for the purpose. Nor does any special
 provision appear to be necessary for Deputy Ministers who are not also members of
the Council of Ministers.

"Since the Ministers of State and Deputy Ministers who are members of
Parliament will hold office of profit under the Government of India, it will, however,
be necessary for Parliament to make law declaring that the holders of such office
will not be disqualified for being a member of either of House of Parliament under
sub-clause (a) of clause (1) of art. 83.

"The Ministry of Home Affairs in its letter dated the 15th October 1948
to the Constituent Assembly Secretariat has also agreed to this view."

A large number of amendments were moved which might be classified into
three parts. The first part related to the term of a minister. On this point there
were two amendments, one by Mr. B. Pocker Sahib Bahadur and the other by Mr. Kazi
Syed Karimuddin. Mr. Pocker's amendment was that the Minister should continue in office
so long as he continued to enjoy the confidence of the House; irrespective of other
considerations. He might be a corrupt minister, he might be a bad minister, he might
be quite incompetent, but if he happened to enjoy the confidence of the House then no-
body shall be entitled to remove him from office.² According to Mr. Karimuddin the
position was just the reverse. He suggested that a member of the Cabinet should not
be removed except on impeachment by the House on the ground of corruption or treason
or contravention of laws of the country or deliberate adoption of policy detrimental
to the interests of the State. The procedure for such impeachment would be the same

1. Papers In The President's Secretariat: Suggestions from certain ministries of the
 Government of India, Provincial Legislatures etc. for amendment of the Draft
 Constitution of India.
2. CAD VII, p. 1168.
as provided in article 50. Accordingly even if a minister lost the confidence of the
House, so long as there was no impeachment of that minister on the grounds mentioned
above, it would not be open either to the Prime Minister or the President to remove
him from office. Thus Dr. Ambedkar observed "both these amendments are in a certain
sense are inconsistent, if not contradictory. My submission is that the provision
contained in sub-clause (2) of article 62 is a much better provision and cover for both
points. Article 62(2) states that the ministers shall hold office during the pleasure
of the President. That means that a minister will be liable to removal on two grounds.
One ground on which he would be liable to dismissal under the provisions contained in
clause (2) of article 62 would be that he has lost the confidence of the House, and
secondly, that his administration is not pure because the word used here is "pleasure."
It would be perfectly open under that particular clause of article 62 for the President
to call for the removal of a particular minister on the ground that he is guilty of
corruption or bribery or maladministration, although that particular minister probably
is a person who enjoyed the confidence of the House. I think honourable Members will
realize that the tenure of a minister must be subject not merely to one condition but
to two conditions and the two conditions are purity of administration and confidence
of the House. The article makes provision for both and therefore the amendments moved
by my honourable Friends Messrs. Pocker and Karimuddin are quite unnecessary." The
amendments were negatived.

The second part of amendments were relating to the qualifications of a
minister. Three amendments were moved. Mr. Mohd. Tahir proposed that no person should
be appointed a minister unless at the time of his appointment he was an elected member
of the House. Thus he did not accept the possibility of the cases covered in the
proviso namely that although a person not at the time of his appointment as member of
the House, he might nonetheless be appointed as a minister in the Cabinet subject to

1. Ibid, p. 1163
2. Ibid, pp. 1185 - 1186
3. Ibid, p. 1172.
the condition that within six months he should get himself elected to the House. Opposing the amendment Dr. Ambedkar said "I think it forgets to take into consideration certain important matters which cannot be overlooked. First is this -- it is perfectly possible to imagine that a person who is otherwise competent to hold the post of a Minister has been defeated in a constituency for some reason which, although it may be perfectly good, might have annoyed the constituency and he might have incurred the displeasure of that particular constituency. It is not a reason why a member so competent as that should be not permitted to be appointed a member of the Cabinet on the assumption that he shall be able to get himself elected either from the same constituency or from another constituency. After all the privilege that is permitted is a privilege that extends only for six months. It does not confer a right to that individual to sit in the House without being elected at all. My second submission is this, that the fact that a nominated Minister is a member of the Cabinet, does not either violate the principle of collective responsibility nor does it violate the principle of confidence, because if he is a member of the Cabinet, if he is prepared to accept the policy of the Cabinet, stands part of the Cabinet and resigns with the Cabinet, when he ceases to have the confidence of the House, his membership of the Cabinet does not in any way cause any inconvenience or breach of the fundamental principles on which parliamentary government is based. Therefore, this qualification, in my judgement, is quite unnecessary." The amendment was negatived.

The other amendment was of Prof. K. T. Shah who suggested that the Prime Minister should be appointed by the President from among the Party commanding a majority of votes in the People's House of Parliament. Opposing the amendment Dr. Ambedkar observed "It would be perfectly possible and natural, that in an election the Parliament may consist of various number of parties, none of which is in a majority. Now is this principle to be invoked and put into operation in a situation of this sort where there are three parties none of which has a majority? Therefore, in a contingency of that sort the qualification laid down by Prof. K. T. Shah makes govt.

1. CAD VII, p. 1186
2. Ibid, p. 1191
quite impossible.

"Secondly, assuming there is a majority party in the House, but there is an emergency and it is desired both on the part of the majority party as well as on the part of the minority party that party quarrels should stop during the period of the emergency, that there shall be no party govt., so that govt. may be able to meet an emergency - in that event, again, no such situation can be met except by a coalition govt. and if a coalition govt. takes the place, ex hypothesi, the members of a minority party must be entitled to become members of the Cabinet. Therefore, I submit that on both those grounds this amendment is not a practicable amendment."¹ The amendment was negatived.²

Prof. K. T. Shah had also suggested that a minister must be able to read or write and express in the English language and that within ten years he must be able to read or write or express in the National language.³ Sri Mahavir Tyagi opposed it vehemently. He said "I wonder, why should literacy be considered as the supreme advancement of men. Why should it be made as the sole criterion for entrusting the governance of a country to a person, and why Art, Industry, mechanics, Physique or Beauty be not chosen as a better criterion. Ranjit Singh was not literate. Shivaji was not literate. Akbar was not much of a literate. But all of them were administering their States very well...... Neither reading nor writing is necessary. What is necessary is initiative, honesty, personality, integrity, intelligence and sincerity. These are the qualifications that a man should have to become a Minister."⁴ Dr. Ambedkar, on the other hand, observed "I wonder whether there would be any Prime Minister or President who would think it desirable to appoint a person who does not know English, assuming that English remains the official language of the business of the Executive or of Parliament. I cannot conceive of such a thing. Supposing the official language was Hindi, Hindustani or Urdu, whatever it is - in that event, I again find it impossible to think that a Prime Minister would be so stupid as to appoint a Minister who did not understand the official language of the country or of the

¹. CAD VII, pp. 1186 - 1187  
². Ibid, p. 1189  
³. Ibid, p. 1178  
⁴. Ibid, p. 1184.
Administration, and while therefore it is no doubt a very desirable thing to bear in
mind that persons who would hold a portfolio in the Government should have proper
educational qualification, I think it is rather unnecessary to incorporate this principle
in the Constitution itself.\textsuperscript{1} It was negatived.\textsuperscript{2}

The third category of amendment was that there should be a declaration of
the interests, rights and properties belonging to a Minister before he actually assumes
office. It was moved by Prof. K. T. Shah\textsuperscript{3} and Sri H. V. Kamath\textsuperscript{4}. But Dr. Ambedkar
pointed out that only declaration of one's property at the outset was not enough. If
the provision was to be effective, there must be three more provisions, namely, a
declaration at the end of the quitting of the office; responsibility for explaining
as to how the assets have come to be so abnormal and lastly declaring that to be an
offence, followed up by a penalty or by a fine. So the amendments were not fool-proof
and knave-proof. In his judgment, there was a better sanction for the enforcement of
the purity of administration, and that was public opinion as mobilised and focused in
the Legislative Assembly.\textsuperscript{5} The amendment was therefore negatived.\textsuperscript{6}

The Drafting Committee considered that it would be desirable to append
to the Constitution an Instrument of Instructions for the President just as there is
one for the Governors. Therefore the Drafting Committee proposed "That after clause
(5) of article 62, the following new clause be inserted: -

"5 (a) In the choice of his Ministers, and the exercise of his other
functions under this Constitution, the President shall be generally guided by the
instructions set out in Schedule III-A, but the validity on anything done by the
President shall not be called in question on the ground that it was done otherwise
than in accordance with such instructions."\textsuperscript{7} It was moved by Dr. B. R. Ambedkar\textsuperscript{8}

But Mr. Naziruddin Ahmad moved for the deletion of the later part of the amendment
as it would nullify the earlier part, namely, the obligation in the Instrument of
Instructions\textsuperscript{9}. Replying Dr. Ambedkar said"There are two ways open. One way

\begin{itemize}
\item[1.] CAD VII, p. 1187
\item[2.] Ibid, p. 1192
\item[3.] Ibid, p. 1175
\item[4.] Ibid, p. 1176
\item[5.] Ibid, p. 1188
\item[6.] Ibid, p. 1191
\item[7.] Vide Papers In The President's Secretariat
\item[8.] CAD VII, p. 1167
\item[9.] Ibid
\end{itemize}
is to permit the court to enquire and to adjudicate upon the validity of the thing. The other is to leave the matter to the Legislature itself and to see whether by a censure motion or a motion of no confidence, it cannot compel the Ministry to give proper advice to the President and impeachment to see that the President follows that advice given by the Ministry. In my judgment, the latter is the better way of effecting our purpose and it would be unfair, inconvenient, if everything done in the House is subject to the jurisdiction of the court, so that any recalcitrant Member may run to the Supreme Court and by a writ of an injunction against the Speaker prevent him from carrying on the business of the House, unless that particular matter is decided either by the Supreme Court or the High Court as the case may be. It seems to me that that would be an intolerable interference in the work of the Assembly." The amendment was negatived. The entire provision, however, was ultimately deleted.

Sri S. Nayappa had suggested that the Ministers chosen from the Upper House should not exceed one-fifth of the total number of members of the Council of Ministers. The Constitutional Adviser did not find it desirable to include such a provision in the Constitution.

The article 62 as amended was adopted.

Attorney General

Article 63

In his Memorandum on Union Constitution Sri B. N. Rau had recommended:

"14. The President shall appoint a person, being one qualified to be appointed a judge of the Supreme Court, to be Advocate General for the Union, to give advice to the Union Government upon legal matters that may be referred to him."
The Union Constitution Committee also recommended the same.\footnote{1} Sir Alladi Krishnaswami Ayyar pointed out that there are three sets of duties. There are duties which are assigned to him by the President. There are other duties which are referred to him. There are statutory duties under various Act. To see that the provision is complete he moved that in clause 11 after the word 'referred' the words 'or assigned' be inserted. He further moved that the following be added at the end of clause 11, "by the President or are assigned to him under this Act or by any Federal law, to exercise the powers and discharge the duties vested in him under this Act or under any Federal Law and in the performance of his duties he shall have right of audience in all courts in the Union of India. The Advocate General shall hold office during the pleasure of the President and shall receive such remuneration as the President may determine."

It was adopted.\footnote{2}

The Drafting Committee substituted the term "Attorney General for India" for "Advocate General for India" partly to distinguish him from the Provincial Advocates General and partly to follow the terminology prevalent in other countries like the U. K. and the U. S. A. They recommended:

"63 (1) The President shall appoint a person, who is qualified to be appointed a judge of the Supreme Court, to be Attorney-General for India.

(2) It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) In the performance of his duties the Attorney-General shall have right of audience in all courts in the territory of India.

(4) The Attorney-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine."

\footnote{1}{CAD IV, p. 745}
\footnote{2}{CAD IV, pp. 921 - 922}
\footnote{3}{Ibid, p. 922.}
Mr. Naziruddin Ahmad pointed out that article 145 dealt with the Advocate-General who corresponded with the Attorney-General at the Centre. Clause (3) of Article 145 provided that "The Advocate General shall retire from office upon the resignation of the Chief Minister in the State, but he may continue in office until his successor is appointed or he is reappointed." He therefore pleaded that the provisions of these two articles, 63 and 145, should be similar as they dealt with two similar offices.¹ Prof. K. T. Shah suggested that the remuneration of the Attorney-General should be fixed by the Parliament and not by the President.² These amendments were negatived.³ Article 63 was adopted. It was on the line of S. 16 of the Govt. of India Act, 1935,

Conduct of Government Business

Article 64

In the Memorandum On The Principles of the Union Constitution prepared by Sir N. G. Ayyangar and Sir Alladi Krishnaswami Ayyar it was recommended "The President may make rules for regulating the disposal of govt. business, the procedure to be observed in its conduct, the authentication of orders and other instruments made and executed in the name of the Government and the transmission to himself of all such information as he may require."⁴ In his Memorandum On Union Constitution Sir B. N. Rau recommended, "5 (1) The executive action of the Union Government shall be expressed to be taken in the name of the President.

(2) The President shall make rules of business of providing, amongst other things, for the allocation of duties among his ministers."⁵

The Union Constitution Committee recommended "12. All executive action of the Federal Government shall be expressed to be taken in the name of the President."⁶ It was adopted.⁷

1. CAD VII, p. 1348
2. Ibid, p. 1349
3. Ibid, p. 1350
4. Vide Papers In The President's Secretariat: Chapter IV, para. 5 of the Memorandum.
5. B. N. Rau: op cit, p. 71
6. CAD IV, p. 745
The Constitutional Adviser redrafted it as:

"58 (1) All executive action of the Federal Govt. shall be expressed to be taken in the name of the President.

(2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President."\(^1\) It was adopted by the Drafting Committee as Article 64. In clause (1) the Federal Govt. was changed to "Govt. of India."

Prof. K. T. Shah observed: "I still do not quite understand why all the Government business should be carried on and orders issued in the name of the President. Even if you are following the practice in England, according to this draft, the orders etc. of the Govt. in England are by "His Majesty's Government." It is surely not so in India - at least I hope it is not intended that the Government in India would hereafter be described as "the President's Government." The Govt. is the Govt. of India and I do not see why the impersonal and collective form should be substituted by the personal and direct form of the President. In my reading of the Constitution this offends against every principle that this Draft Constitution is otherwise based upon and I see no reason why decisions of the Government of India in their executive sphere should be expressed in the name of the President. By the express provision of this Constitution the President is outside the turmoil of parties, while the Government of India is definitely going to be a party Government or even a Coalition Government which may have varying fortunes. If so, there is every ground to suggest that the orders of Government be in the name of Government themselves collectively and not in the name of the President." He therefore proposed that in clause (1) of article 64, for the word 'President' the words "Government of India" be substituted and in clause (2) of article 64, for the word 'President', where it occurs for the first time, the

---

1. Papers In The President's Secretariat: Draft Constitution of India, dated 22nd September 1947.
words "Government of India", for the word 'President', where it occurs for the second
time, the words "Council of Ministers" and for the word "President" where it occurs
for the third time the words "Government of India" be substituted respectively, and
the following proviso be added at the end of clause (2):

"Provided that nothing in this article shall invalidate any act or word
of Government expressed in the name of a particular Department or Ministry."

Sri M. Ananthasayanan Ayyangar replied "In view of article 42 and 66, where in the one case
the President is the executive authority and in the other the President, with the two
Houses, constitutes Parliament, the President has been firmly fixed up in both the
places. This article, that is article 64, is only carrying out the substantive
provisions of article 42 and 66, by saying that "all executive action of the Govt. of
India shall be expressed to be taken in the name of the President"...... If the
Parliament is dissolved the Ministry also is dissolved. If an occasion arises like that,
the President has to exercise the powers.

"Let us address ourselves to another reason that has been given. My
friend Prof. Shah wants that executive action should be taken in the name of the
Government. The President means the President on the advice of the Ministers. He
cannot act independently. Action is taken in his name though it is action of the
Government as a whole, that is consisting of the President and the Ministry. Thus it
is impossible to get him out of the framework. The President is the Chief Executive
authority and he is an important link in Parliament. It naturally follows that
executive action should be taken in the name of the President." The amendment was
therefore negatived and the House accepted article 64.

Duty of the Prime Minister: - The Drafting Committee recommended:

"65. It shall be the duty of the Prime Minister -

(a) to communicate to the President all decisions of the Council of
Ministers relating to the administration of the affairs of the Union and proposals
for legislation;

1. CAD VII, p. 1350
2. CAD VII, pp. 1351 - 1352
3. Ibid, p. 1353
(b) to furnish such information relating to the administration of the affairs of the Union and proposals for Legislation as the President may call for; and

(c) if the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a minister but which has not been considered by the Council."

The House accepted it.

Evaluation: Thus, on the whole, the framers of the Indian Constitution adopted a unique executive in India. There is a President elected indirectly by the people. The Supreme command of the Defense Forces of India is vested in him. He has power to grant pardons, reprieves, respites or remissions of punishment. He appoints the Prime Minister and the ministers hold office during his pleasure. All executive action of the Government of India is taken in his name. Orders and other instruments made and executed in the name of the President are to be authenticated in such manner as may be specified in rules to be made by the President. The President has to preserve, protect, defend the Constitution and the law and he has to devote himself to the service and well-being of the people of India. Moreover, the President can nominate twelve members to the Council of States, send messages to Parliament, convene, prorogue and dissolve the Parliament; send back to Parliament any bill for reconsideration. Above all the President may promulgate Ordinances and proclaim an Emergency. These enormous powers of the President have led political thinkers to believe that the President is a "constitutional autocrat" and he is "perhaps the most powerful in the world, excepting probably that of Russia whose real working is different from what it is on paper."¹

These powers of the President really look formidable, but here also the real working is different from what it is on paper. "There is no doubt that the President would be the greatest despot of the world if he could really exercise these powers. Actually, however, he, as the Head of Parliamentary State will have to act in every matter on the

advice of the Council of Ministers which is to aid and advise the President in the exercise of his functions.¹

The whole confusion is about this article 74(1) that "there shall be a Council of Ministers to aid and advise the President." The word 'shall' emphasizes that there must always be a Council of Ministers, but whether their advise would always be binding on the President is the crux of the whole problem. It has coloured the imagination of many political thinkers in the country and they proudly point out that even Dr. Rajendra Prasad was not satisfied with the language used in article 74 (1).² No doubt the following exchange of words between the President and Dr. Ambedkar is illuminating:³

"Mr. President: There is another amendment which has been moved by Sardar Hukum Singh in which he says that the President may promulgate ordinances after consultation with his Council of Ministers.

The Honourable Dr. B. R. Ambedkar: I am very grateful to you for reminding me about this. The point is that that amendment is unnecessary, because the President could not act and will not act on the advice of the Ministers.

Mr. President: Where is the provision in the Draft Constitution which binds the President to act in accordance with the advice of the Ministers?

The Honourable Dr. B. R. Ambedkar: I am sure that there is a provision and the provision is that there shall be a Council of Ministers to aid and advise the President in the exercise of his functions.

Mr. President: Since we are having this written Constitution, we must have that clearly put somewhere.

The Honourable Dr. B. R. Ambedkar: Though I cannot point it out just now, I am sure there is a provision. I think there is provision that the President will be bound to accept the advice of the Ministers. In fact, he cannot act without the advice of his Ministers.

Some Honourable Members: Article 61(1)

1. Dr. M. P. Sharma: The Government of the Indian Republic, p. 118
2. K. V. Rau: op cit, p. 65
Mr. President: It only lays down the duty of the Ministers, but it does not lay down the duty of the President to act in accordance with the advice given by the Ministers. It does not lay down that the President is bound to accept the advice. Is there any other provision in the Constitution? We would not be able even to impeach him, because he will not be acting in violation of the Constitution if there is no provision.

The Honourable Dr. B. R. Ambedkar: May I draw your attention to article 61, which deals with the exercise of the President's functions. He cannot exercise any of his functions, unless he has got the advice, 'in the exercise of his functions.' It is not merely to 'aid and advise.' "In the exercise of his functions" those are the most important words.

Mr. President: I have my doubts if this word could bind the President. It only lays down that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. It does not say that the President will be bound to accept that advice.

The Honourable Dr. B. R. Ambedkar: If he does not accept the advice of the existing ministry, he shall have to find some other body of ministers to advise him. He will never be able to act independently of ministers.

Mr. President: Is there any real difficulty in providing some where that the President will be bound by the advice of the ministers?

The Honourable Dr. B. R. Ambedkar: We are doing that. If I may say so, there is a provision in the Instrument of Instructions.

Mr. President: I have considered that also.

The Honourable Dr. B. R. Ambedkar: Paragraph 3 reads: In all matters within the scope of the executive power of the Union, the President shall, in the exercise of the powers conferred upon him, be guided by the advice of his ministers. We propose to make some amendment to that.

Mr. President: You want to change that. As it is, it lays down that the President will be guided by the ministers in the exercise of executive powers of the Union and not in its legislative power.
The Honourable Dr. B. R. Ambedkar: Article 61 follows almost literally various other constitutions and the Presidents have always understood that that language means that they must accept the advice. If there is any difficulty, it will certainly be remedied by suitable amendment.\(^1\)

But the Instrument of Instructions as proposed by Dr. Ambedkar was ultimately abandoned and the misunderstanding apparently due to it has led an eminent writer to conclude:

"1. That the President is endowed with powers; and that he is not bound to act necessarily on the 'aid and advice' of the Ministers.

2. But he should have always a "Council of Ministers"; and they are responsible to the Parliament i.e. they are the servants of the House, but not of the President; and

3. Thus executive action is divided between the President and the Council of Ministers, but not concentrated."\(^2\) Accordingly the writer points out that the President is not bound to act on the advice of the Council of Ministers in giving his assent to a bill, in the promulgation of ordinances and in the proclamation of Emergencies and thus he unhesitatingly concludes: "and a comparison of this type with the American, English or French types is not only meaningless but even misleading... A nearer comparison would be with the present Constitution of the U.S.S.R. or the English Constitution when the Privy Council was a living body, say before Victoria or, better, before Queen Anne.... or with the Executive in the 1935 Act."\(^3\) The writer therefore charges the framers of the Indian Constitution to have brought back the Governor-General executive powers "through the backdoor"\(^4\).

By no stretch of imagination our Parliament can be compared with the Privy Council before the reign of Queen Anne. Nor can there be any comparison of our President with the Governor General's executive power as envisaged in the

1. CAD VIII, pp. 215 - 216
2. K. V. Rao: op cit, pp. 77 - 78
3. Ibid, p. 78
Government of India Act 1935. S. 9 (1) of the Government of India Act provides:
"There shall be a Council of Ministers, not exceeding ten in number, to aid and advise
the Governor-General in the exercise of his functions except in so far as he is by or
under this Act required to exercise his functions or any of them in his discretion.
Provided that nothing in this sub-section shall be construed as preventing the Governor-
General from exercising his individual judgment in any case whereby or under this
Act he is required so to do." Further S. 17 (5) of the Government of India Act, 1935,
provided "The Governor-General shall act in his discretion after consultation with his
Ministers." Thus the Governor-General was free to take a decision of his own and
exception was expressly created to the rule of ministerial advice. Even in the present
Constitution Article 163 (1) expressly states that the Governor may act in his dis-
cretion in cases he is required to so act as laid down in the Constitution. Such a
provision is not laid down in article 74.

Moreover, before making any inference from the exchange of words between
Dr. Rajendra Prasad and Dr. B. R. Ambedkar, let us read the mind of the President
in the light of the following letters that he wrote to the Constitutional Adviser,
Sir B. N. Rau. In the first letter, written as early as 8th August 1948 he wrote:
"I have been considering various provisions of the Draft Constitution and have felt
intrigued by one question which has now arisen in a concrete form and which may arise
when the new Constitution comes into force, as there is no substantial difference
between the existing Act and the Draft Constitution. The question is with regard
to the assent to be given by the Governor or the President to a Bill which has been
passed by the Provincial Legislature. Is the assent to be given by the Governor or
the President, as the case may be in accordance with the advice of his Ministry, or
has he any discretion to act on his own and against the advice of his Ministry? The
relevant sections are sections 75 and 76 of the Government of India Act and articles
175 and 176 of the Draft Constitution. When the Governor and the President have to
act as the Constitutional heads, it follows that they are bound to accept the
advice of the ministers and assent to a Bill which has been passed at the instance of th:
Ministry follows as a matter of course, because the Ministry which has got the Bill passed cannot advise against assent being given. And this will be so even if the Bill is challenged on the ground that it is ultra vires of the State or Provincial Legislature. If the Ministry in the Centre belongs to the same party as that in the State, it is also not likely to advice the President to withhold his assent. Therefore this provision regarding assent becomes, in effect, meaningless if the Governor or the President has to act as Constitutional head in accordance with the advice of the Ministers. If on the other hand there is any discretion in the Governor or the President, the Draft does not indicate it. In England the King's assent is almost a matter of course, but there the Parliament is supreme and sovereign and there are no limitations on its powers so that no question of any legislation being ultra vires arises. That will not be the position in India, where the powers of the State and Union Legislatures are defined and limited and even apart from the fundamental rights guaranteed the three lists limit the powers of the Legislatures. Will it be open then to a Governor or the President to withhold assent if a Bill which has been passed by the Legislature is challenged as being ultravires and he is asked to withhold assent on that ground.\textsuperscript{1}

He addressed another letter to the Constitutional Adviser wherein he pointed out:

\textsuperscript{(1)} Comparing articles 61 and 62 with articles 143 and 144 it appears that in States minister advice the Governor in the exercise of his functions except in so far as the Governor is required to act in his discretion. There is no mention of any power to be exercised by the President in his discretion. Does it mean that President is in all cases bound to act according to the advice of his ministers? That cannot be the case as President is authorized to act in his discretion under article 285 (1). (2) Why is the distinction made regarding the Prime Minister of India and Chief Minister of a State? The President has to appoint other ministers on the advice of the Prime Minister but not so a Governor under 143 and 144(6) under which

\textsuperscript{1} Papers In The President's Secretariat: Letter from Dr. Rajendra Prasad to Sir Narasimha Rau dated, 8th August 1948.
the appointment is made by the Governor in his discretion. (3) Under §1(3) collective responsibility is enjoined upon ministers of India. There is no corresponding provision in case of Provincial Ministers in 133 or 144. (4) There is no mention that the President of the Union is bound to act in accordance with the advice of his ministers except when he acts in his discretion under the law. Such provision is made about State Governors under Fourth Schedule (3). 1 It was, therefore, under these circumstances that Dr. Rajendra Prasad was not satisfied with the language used in article 74(1). But the discretionary power was taken away from article 285(1) of the Draft Constitution. Even suitable changes were made in article 143 and 144 and Governor was to appoint other ministers on the advice of the Chief Minister. Collective responsibility was also provided in the Provincial Ministry and clause (3) of the Fourth Schedule was abandoned. Thus article 74(1) as finally enacted gives no discretionary power to the President whereas article 153 empowers the Governor to act in his discretion in certain matters. Hence all the misgivings of the President was done away with and no longer the President expressed his dissatisfaction with the language used in article 74(1). Rather, we find the President completely satisfied with the interpretation given by Sri T. T. Krishnamachari that "the President is a Constitutional head even though we have not put it in so many words within the Constitution about which you rightly asked some time back." 2 And when some members demanded that Dr. Ambedkar should further clarify the position, Dr. Rajendra Prasad ruled it out as he did not think that any reply was further called for. 3 In this connection the following debate that ensued on a motion to delete clause (5a) of article 62 may be quoted:

Sri H. V. Kamath: Sir, you might remember that some months ago you raised the important point whether the President would always be bound to accept the advice of his Council of Ministers. Our Constitution is silent on that point. It only says that there shall be a Council of Ministers to aid and advise the President. Dr. Ambedkar at that time undertook to insert some provision somewhere in the Constitution in

1. Vide Papers In The President's Secretariat
2. CAD IX, p. 124
3. Ibid, p. 126
order to make this point clear. That is my recollection.... Nowhere in the Draft Constitution has this point been clarified. I hope Dr. Ambedkar will do so, and not leave it vague as at present.

The Honourable Dr. B. R. Ambedkar: Sir, I wish I had notice of this, so that I could give the necessary quotations. But I can make a general statement. The point whether there is anything contained in the Constitution which would compel the President to accept the advice of the Ministry is really a very small one as compared with the general question. I propose to say something about the general question.

Every Constitution, so far as it relates to what we call parliamentary democracy, requires three different organs of the State, the executive, the judiciary, and the legislature. I have not anywhere found in any Constitution a provision saying that the executive shall obey the Legislature, nor have I found anywhere in any Constitution a provision that the executive shall obey the judiciary. Nowhere is such a provision to be found. That is because it is generally understood that the provisions of the Constitution are binding upon the different organs of the State. Consequently, it is to be presumed that those who work the Constitution, those who compose the Legislature and those who compose the executive and the judiciary know their functions, their limitations and their duties. It is therefore to be expected that if the executive is honest in working the Constitution, then the executive is bound to obey the Legislature without any kind of compulsory obligation laid down in the Constitution.

Similarly, if the executive is honest in working the Constitution, it must act in accordance with the judicial decisions given by the Supreme Court. Therefore my submission is that this is a matter of one organ of the State acting within its own limitations and obeying the supremacy of the other organs of the State. In so far as the Constitution gives a supremacy to that is a matter of Constitutional obligation which is implicit in the Constitution itself.

No Constitutional Government can function in any country unless any particular constitutional authority remembers the fact the its authority is limited
by the Constitution and that if there is any authority created by the Constitution which has to decide between that particular authority and any other authority, then the decision of that authority shall be binding upon any other organ. That is the sanction which this Constitution gives in order to see that the President shall follow the advice of his Ministers, that the executive shall not exceed in its executive authority the law made by Parliament and that the executive shall not give its own interpretation of the law which is in conflict with the interpretation of the judicial organ created by the Constitution.

Sri Alladi Krishnaswami Ayyar: Sir, I did not want to interpose in the debate, but I find that the point raised as to the necessity of a provision is entirely without substance. We have provided in article 61(3) that the Council of Ministers shall be collectively responsible to the House of the People. If a President stands in the way of the Council of Ministers discharging that responsibility to the House he will be guilty of violation of the Constitution and he will be even liable to impeachment. Therefore it is merely a euphemistic way of saying that the President shall be guided by the advice of his Ministers in the exercise of his functions. This Council of Ministers will be collectively responsible to the House of the People, and the House of the People must meet all situations in regard to the budget, in regard to legislation in regard to every matter connected with the administration of the country. Therefore, if the Council of Ministers is to discharge their responsibility, it will be the duty of the President to see that the Constitution is obeyed and therefore article 61 along with clause (3) of article 62 make quite clear all the incidence of responsible government. Otherwise we will have a detailed list of all the incidence of responsibility; that the Prime Minister is responsible when dissolution of the Parliament is to be effected, what exactly the advice or the occasions when the advice tendered by the Council should be followed by the President, etc. Some such attempt was made in Ireland on account of the distrust of the Crown in those days. In the earlier Irish
Constitution, some provisions were inserted stating in detail what are the incidence of responsibility. Now, if you just look at Canada, or Australia, or any other Constitution in which responsible government obtains or some semblance of responsible Government obtains, there are no detailed provisions. The German pandits who framed the German Constitution attempted some kind of definition but that resulted in failure as we know as soon as a conflict between the powers of the President and of the Ministry arose, and that led to the collapse of the German Reich. Therefore under those circumstances, I venture to submit that there is absolutely no necessity for setting out in detail what are the functions and the incidence of responsible government in an article of the Constitution.

Prof. Shibban Lal Saksena: ..... Now that we are providing even for small details in the Constitution, I do feel that these fundamental things, that the President shall be bound to call the leader of the majority to form the Cabinet, and that he will be bound to accept the advice of the Cabinet, should be incorporated in some instrument of instructions or in some articles of the Constitution.

Mr. President: I think we have discussed this matter enough. Mr. Krishnamachari, do you want to say anything?

Sri T. T. Krishnamachari: No, Sir, Dr. Ambedkar has replied.

Sri H. V. Kamath: What is your own reaction to the debate, Sir? The issue was originally raised by you.

Mr. President: It is not a question of my reaction. It is for the House to decide.

Mr. Naziruddin Ahmad: Permission may be given to reopen the matter.

The Honourable Sri K. Santhanam: This is purely consequential.

Mr. President: I have to put this amendment to the vote. That is all my reaction.¹

Thus these exchange of words are not only illuminating but conclusive to the controversy raised. The President was completely satisfied with the language used in article 74(1) and he did not allow to reopen the matter.

¹ CAD X, pp. 268 - 271.
Now the question may again be asked that "nothing would have been lost and their prestige would not have been lowered in any way if a specific provision were enacted in the Constitution that the President in the exercise of his functions shall be guided by the advice of his Council of Ministers."¹ A reply may be found in the letter of the President to the Constitutional Adviser wherein he has suggested that the President may withhold assent to a bill which is ultravires to the Constitution inspite of the advice of the Council of Ministers not to do so. Sir B. N. Rau, however, is of opinion that "if the President, in a particular case where his own views differ from those of his ministers, ultimately accepts their advice in deference to a well-understood convention, then even if the act should result in a breach of some "fundamental right" or "directive principle" enunciated in the Constitution, the responsibility will be that of the ministers and not of the President." (B. N. Rau: op cit, p. 380). But it is worth considering the provision of article III wherein the President is empowered to return the Bill passed by the Houses for reconsideration. It definitely indicates that the President may not accept the advise of the Ministry at the first instance and compel it and the Parliament to reconsider it, though ultimately he has to accept it. There are also occasions when the President cannot and should not act on the advice of the Council of Ministers. When there is no party with an absolute majority in the House of the People, and a coalition Ministry suffers a defeat very soon after the general election by the withdrawal of the support of a section of the House, and the remedy of dissolution is also not readily available, the President may legitimately exercise his discretion in the selection of the new Prime Minister. A defeated Ministry has no right to advise the President as to the selection of its successor.² The President may also refuse to give his assent to a Bill by which a fascist Government tries to subvert the Constitution. He may dismiss the Ministry and dissolve the House of the People. He may refuse to act on the advice of the

Council of Ministers when they are "pursuing a policy which subverted the democratic basis of the Constitution, by unnecessary or indefinite prolongations of the life of the Parliament, by gerrymandering of the Constituencies in the interest of one party or by fundamental modification of the electoral system to the same end." 1

Sri K. Santhanam had also pointed out that "there are certain marginal cases in which the President may not accept the advice of the Ministers. When a Ministry wants dissolution it will be open to the President to say that he will install another Ministry which has the confidence of the majority and continue to run the administration. There are some marginal cases where he may have in the interests of responsible government itself to over-ride the advice of his responsible Ministers." (CAD X, pp. 269 - 270)

Thus had the President been bound to act on the advice of the Council of Ministers like the Weimar Constitution of 1919. Dr. B. N. Sharma would have been right in his apprehension of the rise of a Hitler in India.2

But article 78 does not afford the President an endless opportunity, in season and out of season to meddle with the work of the Council of Ministers as the Council might pose a problem by a mere threat of resignation.

Thus the President is not a magnificent cypher. He has a very useful function to perform behind the scene. All decisions of the Council of Ministers are communicated to him and he can call for any information relating to the administration of the Union according to provisions of article 78. Thus he can bring his experience and wisdom and impartial and dispassionate advice upon the Council of Ministers in formulating their decisions. The President, therefore, like the British monarch, has "the right to be consulted, the right to encourage and the right to warn."3

If the Constitutional machinery is to work out smoothly and if the President according to his oath is to "preserve, protect and defend the Constitution and the law" and

1. Sir Ivor Jennings: Cabinet Government, pp. 296, 307
2. The President of the Indian Republic By Dr. B. N. Sharma: I. J. Psc; vol. XI, No. 4.
to devote himself "to the service and well-being of the people of India", a wise
President needs no other powers in normal circumstances. A wise President may always
remember that he can never "acquire that glamour and influence which belong to the
British King because the mystic aura of royalty, the hereditary position, the
headship of society and the symbolism of imperial unity will be lacking in his case."¹
Moreover he may not compete with the Prime Minister for power as he is not directly
elected by the people. He may realize that sovereignty resides in the people of
India and the Prime Minister alone is the symbol of that popular sovereignty. Thus
Dr. Rajendra Prasad was correct in his assessment: "We have to reconcile the position
of an elected President with an elected legislature, and in doing so, we have adopted
more or less the position of the British monarch for the President.... his position
is that of a Constitutional President.... Then we come to the Ministers. They are,
of course, responsible to the Legislature and tender advice to the President who is
bound to act according to that advice. Although there are no specific provisions, so
far as I know, in the Constitution itself making it binding on the advice of his
Ministers will be established in this country also and the President, not so much on
account of the written word in the Constitution, but as a result of this very healthy
convention, will become a Constitutional President in all matters."²

And constitutional practices ought to be and are built up by conventions
and all of them cannot be stated expressly in the Constitution. For example, there is
no provision in the Constitution that the President shall appoint as the Prime Minister
the leader of the majority party in the House of the People; there is also no provision
that a Council of Ministers shall resign when it ceases to enjoy the confidence of
the House of the People; nor is there any provision that the House of the People should
be dissolved when it ceases to represent the will of the people. There is also no
provision that a minister who has failed in his duty should resign. These and similar

¹ Dr. M. P. Sharma: op cit, p. 120.
² CAD X, p. 988.
matters are to be regulated by conventions only.

Thus the thesis of Dr. K. V. Rao that the President may be a dictator is purely due to his apprehension that "India minus Nehru would have been what Pakistan had become without Jinnah." But in spite of his contradictory statements here and there he has correctly summarized the mind of the Makers: "In India we are introducing democracy for the first time. It requires so many conditions for its success; but a country cannot wait till the conditions are fulfilled and conventions grow up. Whatever it might be, the country should have a strong and unified executive leadership, otherwise it would be rudderless in a crisis as it happened in France, specially during the War (1939 - 45). So the system should be left elastic. If a strong party system would develop and people are constitutionally minded a parliamentary system would prevail; otherwise the President would step in and see that the country does not suffer. That is why they were very particular, as Nehru said, not to want a French President."  

Thus Dr. Rajendra Prasad rightly concluded: "We have to consider the salient features of the Constitution. The first question which arises and which has been mooted is as to the category to which this Constitution belongs. Personally I do not attach any importance to the label which may be attached to it...... It makes no difference so long as the Constitution serves our purpose. We are not bound to have a constitution which completely and fully falls in line with known categories of constitutions in the world. We have to take certain facts of history in our own country and the Constitution has not to an inconsiderable extent been influenced by such realities of facts of history."  

Therefore our Constitution is unique in the sense that we have established both stability and responsibility and have appointed the President and the Prime Minister as the two watch-dogs of our liberty and democracy. The impeachment of the President if not impotent is difficult indeed. And that is rightly so because

1. K. V. Rao: op cit, p. VIII
2. K. V. Rao: op cit, p. 73
3. CAD X, p. 987
4. K. V. Rao: op cit, p. 57
"It is impossible to conceive of a Parliamentary Government without their being at its head someone whose tenure of office goes beyond the fickleness of a Parliament or a Congress."¹ But constant vigilence is the price of liberty and "if things go wrong under the new Constitution, the reason will not be that we had a bad Constitution. What we will have to say is, that Man was vile."²

¹. W. B. Munro: The Governments of Europe, 3rd Ed., p. 70
². CAD VII, p. 44: Speech of Dr. B. R. Ambedkar.