

ELECTION OF FUTURE PRESIDENT OF INDIAN UNION

Constituent Body's Decision

NEW DELHI, December 13.

THE Constituent Assembly today decided that the future President of India shall be elected by an electoral college consisting of: (1) the elected members of both the Houses of Parliament and (2) the elected members of the Legislatures of the provinces and States.

The Assembly rejected an amendment by Prof. K. T. Shah who pleaded that in order to make the will of the people supreme, the President should be elected by the adult citizens of India voting by secret ballot.

Declaring his inability to accept the suggestion, Dr. Ambedkar, Chairman of the Drafting Committee, explained that it would be impossible to provide an electoral machinery for an election in which at least 185 million people would have to participate.

According to the latest figures available, the total population of the Governors' provinces and the Chief Commissioners' provinces and of the Indian States was 370 million and odd. Assuming that under adult franchise half the total population would be entitled to take part in the election, the electorate would consist of 185 million.

When one looked at this figure, one would realise the impossibility of an election in which 185 million people would have to take part.

For the Presidential election, many candidates would be standing. They might like to suggest that non-official agencies might be asked to help in the election. But such non-official agencies would not be under the control of the State and might be open to corruption, bribery, manipulation and other undesirable things. Machinery would, therefore, have to be provided entirely by the State. It would, he contended, be impossible for the Government of India or for the Provincial State Governments to spare officials sufficient enough to manage such an election.

INDIRECT ELECTION

But, apart from these considerations, he contended that the method of indirect election provided for by the Drafting Committee was enough to meet the requirements. For, the Indian-President would not, unlike the American President, be the chief Executive.

If any functionary in India was to be compared to the American President, he would submit that that functionary must be the Prime Minister. He was sure the Prime Minister would be elected by the people on adult suffrage.

A brief debate preceded the adoption of the Article. Mr. Mohammad Tahir moved an amendment suggesting that in the case of the State legislatures, the nominated members should also be entitled to vote in the election of the President. After all, it had been provided that in the case of the Central Parliament, the nominated members of the Upper House would be entitled to vote. Mr. Tahir's amendment was rejected.

But Mr. Tajamul Hussain moved another amendment which proposed that, like in the case of the various State legislatures, even in the case of the Central Parliament, only the elected members should be entitled to participate in the Presidential election. Dr. Ambedkar accepted this amendment which was adopted by the House.

Mr. Hanumanthiah and Mr. Biswanath Das opposed Prof. Shah's amendment suggesting that the Presidential election should be held under adult suffrage. Mr. Hanumanthiah recalled that Prof. Shah wanted the President to be a non-party man. How could he be a non-party man if he was to be elected on adult suffrage, he asked Mr. Biswanath Das stated that if

they accepted Prof. Shah's amendment, they would have to change the whole structure of the constitution. Prof. Shah's amendment was negatived by the House.

The Article, as finally adopted by the House, reads: "The President shall be elected by the members of an electoral college consisting of (1) the elected members of both Houses of Parliament and (2) the elected members of the legislatures of the States. In this article the expression 'the legislature of a State' means where the legislature is bicameral 'the Lower House of the legislature'.

The Vice-President, Mr. H. C. Mukerjee, reminded the House that they had held over Article 15 relating to the protection of life and personal liberty and equality before law of the individual as members were not able to make up their mind on the question whether they should retain the phrase "except according to the procedure established by law" or to substitute it with Pandit Thakurdas Bhargava's amendment introducing the phrase "without due process of law". He said that the House could not wait any longer, and he proposed to take up the Article. He thereupon called Dr. Ambedkar to explain the position.

TWO POINTS OF VIEW

Dr. Ambedkar said that two sharp points of view were expressed, one maintaining that unless the phrase "due process of law" was introduced, the whole Article would be nugatory and the other arguing that the existing phraseology was quite sufficient for the purpose.

Explaining what exactly the phrase "due process of law" involved, Dr. Ambedkar said that it aroused the question of relationship between the legislature and the judiciary. In a federal constitution, it was always open to the judiciary to decide whether any particular law passed by the legislature was *ultra vires* or *intra vires*.

The phrase "due process of law", in his judgment, gave the judiciary an additional power to question laws made by the legislature on another ground. That ground would be whether that law was in keeping with certain fundamental principles relating to the rights of individuals. In other words, the judiciary would be endowed with the authority to question the laws not merely on the ground whether it was in excess of the authority of the legislature but also on the ground whether the law was not a good law, apart from the question of the powers of the legislature making the law.

The Law Minister pointed out that there were again two points of view on the question of this additional power to the judiciary. One was that the legislature might be trusted not to make any law which would abrogate the fundamental rights which applied to every individual and consequently there was no danger arising by the introduction of the phrase "due process of law". The second viewpoint was the legislature ought to be trusted not to make bad laws.

It was very difficult to come to any definite conclusions. There were dangers on both sides. He would, therefore, leave it to the House to decide in any way it liked.

The House rejected Pandit Bhargava's amendment and passed the Article.

"ALL PERSONS EQUAL BEFORE LAW"

House Accepts Article

The Article reads: "No person shall be deprived of his life or personal liberty except according to procedure established by law, nor shall any person be denied equality before the law or the equal protection of laws within the territory of India".

The House took up consideration of the Article which laid down the manner of the President's election.

The Article provided that there should be, as far as practicable, uniformity in the scale of representation of the different States at the election, which should be held in accordance with the system of "proportional representation by means of the single transferable vote". It further provided that every elected member of the legislature of a State shall have as many votes as there were multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of elected members of the legislatures. The expression "population," the Article explained, meant "the population as ascertained at the last preceding census."

Mr. Mahavir Tyagi moved an amendment to the effect that the election of the President shall be held by secret ballot and in accordance with the system of "Majority preferential voting by the single alternative vote".

BEGUM RASUL'S MOVE

Begum Aizaz Rasul moved for the deletion of the words "in accordance with the system of proportional representation". When only one person was to be elected, there was no need for the system of proportional representation, she said.

Mr. Naziruddin Ahmed moved an amendment seeking that the explanatory clause in the Article should read: "In this Article, the expression 'population' means the population as ascertained at the last preceding census of which the relevant figures have been published". It was possible, he said, that a new census was held before the election of the President, but its figures were not published. In that case difficulty might arise as to the interpretation of the words "last preceding census".

ELECTION OF PRESIDENT

During the general discussion, Prof. K. T. Shah said the system of proportional representation was a dangerous system. Election under this system would not necessarily mean that the President represented the majority of the people.

Mr. A. V. Thakur suggested that a special census might be taken in some of the provinces where there had been serious changes in population in order to give them proper representation in elections.

The House cheered Mr. Rohini Kumar Chowdhury, who for the first time spoke in Hindustani in the House. He supported Mr. Thakur, and said that Assam would not get fair representation in elections if a new census was not taken.

Mr. Lakshmikanth Maitra said the 1941 census was misleading in view of the large-scale exchange of population. He, therefore, suggested that if a new All-India census could not be held before the elections, then an ad hoc census might be taken in the provinces of West Bengal, East Punjab, Delhi and Bombay.

Maulana Hazrat Mohani said that election should be held even if there was only one candidate for the office of the President.

Prof. Shibbanlal Saksena said that the first elections might be held on the basis of the number of the members of different communities registered as voters.

Mr. R. K. Sidhwa opposed Mr. Naziruddin Ahmed's amendment. He proposed the "elimination system" for the election of the President. Under the system complete voting might be held every time the candidate with the least number of votes was eliminated.

Mr. H. V. Kamath said that a new

census was necessary before the next elections.

Replying to the debate, Dr. Ambedkar said it was true that the 1941 census was in some areas, at any rate, a cooked one—cooked by the local Governments in favour of certain communities. Apart from that, it was equally true that on account of the partition of India there had been a great change in the strength of the population and its communal composition in certain provinces, such as East Punjab, Bombay, West Bengal and to some extent in the United Provinces.

In view of the fact that the Constitution provided for the representation of various communities in accordance with the ratio of the population of the general population, it was not only necessary that the total population of particular provinces should be ascertained, but that the proportion of various communities should also be ascertained before the foundation of the Constitution was laid down. He had no doubt that the Government would pay attention to the various arguments in favour of a new census of the people before the elections were undertaken.

METHODS OF ELECTION

Dr. Ambedkar said that there were two methods of election of the President. One was election by a bare majority of the House. No one would like an election of the President by a system in which the minority would have no voice. The second method by which the minority could have a voice was election through separate electorates by providing that the President must not only have a majority but must have a sufficient number of votes from each minority. That could not be accepted, because the House had decided not to have separate electorates.

The Law Minister argued that the only system that could give a voice to the minority was, therefore, the system of proportional representation.

Replying to a question whether there was any procedure for elimination in the system of election by proportional representation, Dr. Ambedkar replied in the affirmative.

The House accepted Mr. Naziruddin Ahmed's amendment and adopted the Article as amended. Other amendments were rejected.

TERM OF OFFICE

The Assembly also passed an Article stating that the President shall hold office for a term of five years from the date on which he assumes his office. In the proviso to this Article, Dr. Ambedkar accepted Mr. B. M. Gupta's amendment that when the President resigned his office, he should communicate it to the Vice-President who would communicate it to the Speaker of the House of Representatives.

Another amendment by Mr. Mohammad Tahir that the President should communicate his resignation to the members of Parliament was rejected.

Mr. Naziruddin Ahmed's amendment to substitute the word "National Congress" for the words "House of the People" was also defeated.

RESIGNATION OF PRESIDENT

The Article as finally adopted reads: "The President shall hold office for a term of five years from the date on which he enters upon his office, provided that (1) the President may, by writing under his hand addressed to the Vice-President of India, resign his office and the fact of such resignation shall be communicated by the Vice-President to the Speaker of the House of the People, (2) the President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in Article 50 of this Constitution and (3) the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office".

The House also passed the next Article, with an amendment by Mr. Krishna Chandra Sharma which makes it possible for a person who has been President once to seek re-election. The Article as adopted reads: "A person who holds or who has held office as President shall be eligible for re-election to that office". The original draft restricted a person's right to re-election to only once.

Two amendments to this Article, moved by Mr. H. V. Kamath and Mr. Mahabir Tyagi, were withdrawn.

The House adjourned till 10 a.m. on December 27.—A.P.I.