

Tuesday, 28th December, 1948

Volume VII

4-11-1948

to

8-1-1949



CONSTITUENT ASSEMBLY DEBATES OFFICIAL REPORT

REPRINTED BY LOK SABHA SECRETARIAT, NEW DELHI
SIXTH REPRINT 2014

Printed by JAINCO ART INDIA, New Delhi

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CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 28th December 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

DRAFT CONSTITUTION—(Contd.)

Article 50

Mr. Vice-President (Dr. H. C. Mookherjee) : We may resume discussion of the Draft Constitution. The motion before the House is :

“That article 50 form part of the Constitution.”

Shri Gopikrishna Vijayavargiya [United State of Gwalior-Indore-Malwa (Madhya Bharat)]: May we know up to what date the Assembly will continue if this can be ascertained, so that we may fix up our own programmes?

Mr. Vice-President : I shall be in a position to let the honourable Member have the information at a later date—by the end of this week or early next week.

(Amendment No. 1150 was not moved.)

Looking to the amendments I find that the first part of amendment No. 1151 and amendment No. 1152 are of similar import. Amendment No. 1152 which stands in the name of Mr. Karimuddin may be moved.

Kazi Syed Karimuddin (C. P. & Berar : Muslim): Mr. Vice-President, I move:

“That in clause (1) of article 50, after the words ‘for violation of the Constitution’ the words ‘treason, bribery or other high crimes and misdemeanours,’ be inserted.”

This does not require any detailed speech. Under article 50 it is mentioned that there can be an impeachment of the President in regard to the crime of violation of the Constitution. In the American Constitution the grounds I have mentioned in the amendment are also mentioned. In my opinion it is very necessary that for impeachment of the President all these grounds should be embodied under article 50.

Mr. Vice-President : Does Prof. K. T. Shah want the first part of his amendment No. 1151 to be put to vote?

Prof. K. T. Shah (Bihar : General): I want to move it.

Mr. Vice-President : It cannot be moved. But I can put it to vote.

Prof. K. T. Shah : All right.

Mr. Vice-President : Prof. Shah may move the second part of amendment No. 1151.

Prof. K.T. Shah : I beg to move:

“That in clause (1) of article 50, for the words ‘either House’ the words ‘the People’s House’ be substituted.”

Is this the part I am allowed to move, Sir?

Mr. Vice-President : Yes.

Prof. K. T. Shah : In bringing this amendment before the House, I am following the usual practice that if impeachment is to be made, it should be by the People's representatives and not by the other House, the Council of States. The Council of States would be composed of people not directly elected by the people. There may be some appointed elements in that House; and that Body may consist of representatives of units and interests rather than of the people themselves.

Now here are offences and the trial thereof, as against the Head of the State, which can, in my opinion, be only done by the House of the representatives of the people. After all, it is the people who are the sovereign in the scheme of the Constitution that this Draft presents, and that I have accepted. Under that scheme it should be the real sovereign, the people, who should and might, through their representatives, be empowered and entitled to try for such offences the Head of the State.

I think no further arguments are necessary from me to make it clear even to those who are fond of imitating others that this amendment only conforms to the existing practice in America and the West. This amendment, at any rate, cannot be opposed on that ground.

Mr. Vice-President : There are several amendments to this amendment. The first one is amendment No. 30 in List I of the Fifth Week. As the mover (Pandit Thakur Dass Bhargava) is absent, the amendment is not moved. The next two amendments, *viz.*, 31 and 32 also stand in his name. They are also not moved as the Member is absent.

(Amendment No. 1153 was not moved.)

Amendment Nos. 1154 and 1155 are disallowed as being merely verbal amendments.

Amendment Nos. 1156 and 1160 to 1165 are of similar import. Of these, amendment No. 1156 seems to be the most comprehensive one and may therefore be moved. It stands in the name of Shri Brajeshwar Prasad. The Member is absent and therefore the amendment is not moved.

The next comprehensive amendment is No. 1163 and may be moved. As the Member is absent it is not moved.

Then I allow Shri Shankarrao Deo to move amendment No. 1160.

Shri Shankarrao Deo (Bombay : General): Mr. Vice-President, I move the following amendment which stands in my name:—

“That in sub-clause (a) of clause (2) of article 50 for the words ‘thirty members’, the words ‘one-fourth of the total membership of the House’ be substituted.”

The necessity for this amendment is so obvious that I need not take the time of the House by adducing arguments in support of it. The impeachment charge is so grave that if it is proved, the President who is the head of public life and the dignity of the State will suffer. So, if anybody thinks of preferring this charge, he must do so realising the seriousness of the charge, and there must be a sufficient number of representatives coming forward to support that charge. In view of the seriousness of the step proposed, the number thirty is very small. So I suggest that at least one-fourth of the total number of members of the House should come forward to prefer such a serious charge against the President who represents the dignity of the State. I hope the House will accept this amendment.

Mr. Vice-President : Does the mover of amendment No. 1161 want it to be put to vote?

An Honourable Member : No, Sir.

Mr. Vice-President : Does Kazi Syed Karimuddin want his amendment (No. 1162) to be put to vote?

Kazi Syed Karimuddin : Yes, Sir.

Mr. Vice-President : Prof. Shibbanlal Saksena may move his amendment No. 1164.

As the Member is not in the House, the amendment is not moved.

Amendments Nos. 1157, 1158 and 1159 are of similar import. Shri Jaspat Roy Kapoor may move amendment No. 1157.

(The amendment was not moved.)

Amendment No. 1158 standing in the name of Shri B. M. Gupte may now be moved.

Shri B. M. Gupte (Bombay : General) : Mr. Vice-President, I beg to move :

“That in sub-clause (a) of clause (2) of article 50, for the words ‘after a notice’ the words ‘at least after 14 days notice’ be substituted.”

Sir, the provision as it stands today mentions the notice, but specifies no period for it. If we refer to articles 74, 77 and 158 which deal with the removal of the Deputy Chairman, Speaker, the Deputy Speaker of Parliament, and Speaker, Deputy Speaker of the State Legislature, we will find that everywhere 14 days’ notice is provided. There is no reason why the same period should not be laid down here. I have therefore suggested in my amendment that 14 days’ notice should be given. I hope the House will accept it.

Mr. Vice-President : Does the Member who has given notice of amendment No. 1159 (Mr. Mohd. Tahir) want that it should be put to vote?

Mr. Mohd. Tahir : (Bihar : Muslim) : Yes, Sir.

Mr. Vice-President : Amendments Nos. 1166, 1167, 1168 and 1169 are of similar import. Amendment No. 1167 may be moved. It stands in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, I move :

“That in sub-clause (b) of clause (2) of article 50, for the words ‘supported by’ the words ‘passed by a majority of’ be substituted.”

Mr. Vice-President : Amendment No. 1166 standing in the names of Mr. Mohd. Tahir and Saiyid Jafar Imam.

Mr. Mohd. Tahir : I want to discuss it. My amendment is quite different from Dr. Ambedkar’s. They are not the same.

Mr. Vice-President : It can be put to the vote. You can take part in the general discussion and make your point then. That will be much better. I think.

Amendment No. 1168 standing in the name of Mr. Naziruddin Ahmad. Do you want it to be put to vote?

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Yes, Sir.

Mr. Vice-President : It seems it is identical with Dr. Ambedkar’s amendment. Then, amendment No. 1169 standing in the name of Kazi Syed Karimuddin. Do you want it to be put to vote?

Kazi Syed Karimuddin : No, Sir.

Mr. Vice-President : The next in my list is amendment No. 1170 standing in the name of Kazi Syed Karimuddin.

Kazi Syed Karimuddin : Mr. Vice-President, I move:

“That the following new sub-clause be inserted after sub-clause (b) of clause (2) of article 50:

‘(c) the meeting shall be presided by the Chief Justice of the Supreme Court whose decision on the admissibility of evidence shall be final.’ ”

There is no mention in article 50 as to who would preside at the meetings or sittings for the impeachment of the President. Therefore I have made an attempt to add a sub-clause in which it is laid down that the meeting or sittings shall be presided over by the Chief Justice of the Supreme Court. I suppose that if this amendment is not accepted, then either the Speaker or the Vice-President will have to preside at such meetings. Obviously there is an objection to the Vice-President as he is likely to succeed if the President is removed. The Speaker also should not be allowed to preside at these meetings because generally he is elected from the majority party. When there is an impeachment of the President, political passions will be running so high that there is bound to be an imperceptible change in the Vice-President or the Speaker. There is no doubt that there are instances in India and in England when the Speaker and the Vice-President have maintained the noble traditions of the House, but it is necessary not only that there should be justice but it should appear that you are doing justice. At such a critical time when there is an impeachment of the highest man in the country, it is very necessary that the presiding officer must be the Chief Justice of the Supreme Court.

There is one more ground which is also very important and it is this that while impeaching the President, there would be several questions of law and fact and there will be also several questions about the admissibility of evidence. In a Parliamentary system of government, it is not very necessary that every one should be a lawyer or a judge, but surely when there will be so many mixed questions of law and facts and of the admissibility of evidence, it would be very difficult for a layman to decide such important questions. Impeachment can be based by a layman on wild rumours and hearsay evidence. To decide whether a particular piece of evidence is admissible or not, it is very necessary that a man having legal acumen and having experience of law should be the presiding officer at such meetings or sittings. Therefore my submission is that the Chief Justice of the Supreme Court who is generally detached from public life should be requested to preside at such meetings. In the American Constitution there is such a provision. We take only those provisions from other constitutions which suit us and reject others which do not suit us although they are very salutary. I make an appeal to Dr. Ambedkar to embody this amendment, particularly in view of the fact that when political passions are so high, it is very difficult for the Speaker or the Vice-President to keep up their balance.

Mr. Vice-President : Amendments Nos. 1171, 1173 and 1176 all stand in the name of Prof. Shah. I suggest that he may move them one after the other.

Prof. K. T. Shah : Am I to move only one of them?

Mr. Vice-President : You can move all the three.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

“That in clause (3) of article 50, for the words ‘either House’ the words ‘the People’s House’ be substituted and the words ‘or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation’ be deleted.”

For clarification I will read the clause as amended by this amendment. The clause would be:

“When a charge has been so preferred by the House of the People, the other House shall investigate the charge.”

Coming to the second amendment standing in my name, I move:

“That in clause (3) of article 50, after the word ‘investigated’ a full stop be inserted.”

Then, I move :

“That after clause (3) of article 50, the following new clause be added :

‘(3A) The President shall have the right to appear and to be represented at such investigation.’ ”

Sir, the first amendment is in consonance with an earlier amendment I moved, by which I sought to vest the power to investigate, the power to try, in the House of the People, and the Council of States, respectively; and not be left open to *either* House. The other House may investigate, and the President should have the right to be heard and be represented at such investigation. It is, of course, but the most rudimentary principle of jurisprudence that any man who is accused of any offence should have the right of being heard; and also of being defended by competent advisors or by competent counsel at such hearing or at such investigation. The right, therefore, of the President to be heard is given by this amendment specifically by an additional clause, and not made part of an earlier clause where other matters besides this are also included. The right of the sovereign people to charge the President, in my opinion, should be left untrammelled in this matter; and, similarly, the right of the President to be heard or to be represented by competent advisers should equally be explicitly stated, without linking up or coupling this one with the other, so that there may possibly be some doubt as regards procedure. My object, therefore, in putting forward this amendment is simply to bring in clarity of procedure and the removal of any possible doubt that hyper-ingenious lawyers might bring forward, or party passions might suggest. I therefore commend these amendments to the House, without taking any more time of the House.

Mr. Vice-President : The next three amendments which are grouped together are amendment Nos. 1172, 1174 and 1175.

(The Amendments were not moved.)

Amendment Nos. 1177, 1178 and 1179 are of similar import. Amendment No. 1177 may be moved.

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

“That in clause (4) of article 50, for the words ‘passed, supported by’ the words ‘passed by a majority of’ be substituted.”

Mr. Vice-President : Amendment No. 1178 stands in the name of Mr. Mohd. Tahir and Saiyid Jafar Imam.

(Mr. Mohd. Tahir rose to speak.)

Do you want to put it to vote? You can say what you have to say in the general discussion. I shall give you an opportunity.

Mr. Mohd. Tahir : My amendment is of quite a different nature and it has to be discussed and moved.

Mr. Vice-President : You make a specific suggestion about ‘two-thirds’. All right: you may come to the mike.

Mr. Mohd. Tahir : Mr. Vice-President, Sir, I beg to move:

“That in clause (4) of article 50, for the words ‘not less than two-thirds of the total membership of the House’, the words ‘a majority of the members present and voting’ be substituted.”

Sir, I have moved this amendment because the provision, as it is, that is to say, requiring the votes as two-thirds, in my opinion seems to be against the spirit of democracy and it can bring in many difficulties and confusion.

[Mr. Mohd. Tahir]

I will submit before the House a very simple example. In case of the Chairman of a District Board, for instance, I think every Member of the House has got this experience. We have seen that a Chairman of a District Board for his misdeeds cannot be removed from the office unless two-thirds of the members vote against him with the result that, however dishonest he may be, it is impossible for the members to remove him from office, simply because a man in office however incompetent or dishonest he may be, at least he has got some power in his hand and by using that power, he manages that two-thirds of the members should not go against him and he keeps at least more than one-third of the members by his side, with the result that although the majority of the members are against his work in the District Board, we find that it is impossible for them to remove such a Chairman. It may be the same case with the President also, because the President will be in power and if there is solution to impeach him, then it would be very difficult for the members to remove such a President from the Office. I submit, Sir, that the most important thing that we are doing at present is the framing of this Constitution and we are deciding every article of our Constitution,—the most important thing—simply by majority of votes. Then, in the case of an officer against whom there is a resolution for impeachment—why should not such a resolution be decided by majority votes of the members present in the House? Therefore, Sir, in order to avoid all these difficulties, I have moved this amendment, and I hope this House will consider it deeply and decide that the amendment be accepted. With these words, I move.

(Amendment No. 1179 was not moved.)

Mr. Vice-President : The next three amendments standing in the name of Mr. Naziruddin Ahmad, Nos. 1180, 1181 and 1182 are disallowed.

Amendment No. 1183 may be moved. It stands in the name of Prof. K. T. Shah.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

“That in clause (4) of article 50, after the words ‘such resolution shall’ the words ‘be placed before the People’s House, and if adopted by the latter, shall’ be inserted.”

The clause as altered would read:—

“If as a result of the investigation a resolution is passed, supported by not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall be placed before the People’s House, and if adopted by the latter, shall have the effect of removing the President from his office as from the date on which the resolution is so passed.”

Sir, there is one safeguard added by my amendment, namely, that immediately the judgment is passed or the resolution is adopted by the other House, according to the scheme of this Constitution, the Resolution would automatically have the effect of removing the President. I do not think that that would be quite in consonance with our conception of fair justice being done to the accused and especially in the case of such highly exalted officers, or in the case of such offences as are likely to be the subject-matter of this investigation.

After all, the cases would be in all probability cases where politics would play a considerable part. They would not be pure questions of law or fact; but a good deal of opinion, a good deal of view-point, a good deal of the angle of approach would be involved. On that account, the judgment of one House by itself should not, I suggest, be made automatically effective, and the exalted officer be made to cease immediately thereafter to have any place in the scheme of things.

In the several amendments that I have the honour to place before this House, I have, of course, laid emphasis on the fact that the one House investigates and the other House tries; one House makes the accusation, and the other House determines the validity of that accusation. In that scheme of things, I think that it is important, it is but right and proper, that the President should be not only found guilty, and a resolution to that effect be passed by the House which tried him. But what is still more important is that the resolution should be further confirmed by the other House as well.

Mr. Tajamul Husain (Bihar : Muslim): Which has accused him?

Prof. K. T. Shah : Which has accused him. You would, therefore, have the same procedure in a slightly different form, of the two Houses agreeing in a measure, which is to be a measure of Parliament. Thus would this step become a measure of the whole legislature,—and, in the last analysis, a measure as desired by the sovereign people through their representatives.

I do not think that this safeguard will in any way offend against the requirements of fairness as well as the requirements of expediting such matters. It is not a dilatory procedure by any means. What is positive in its favour is that it will give, so to say, one more chance to political passions coming down, and the party concerned getting a fair verdict or at least a chance of vindication that may otherwise be denied.

I am particularly anxious that, since the trying procedure is vested, according at least to my scheme of things, in the Upper House, which is relatively a smaller body, and composed of the representatives of interests or the Units and which therefore is not directly representative of the people's will, a resolution of that House should not be taken to be operative immediately; and that there should be one more chance of the direct representatives of the People having their final say on the matter.

Whether you regard it in the shape of a kind of reprieve; whether you regard it as a kind of supreme pardon, or whatever way you like to look upon it,—I am afraid I cannot give a correct analogy or parallel—it is one more chance, in my opinion, for real justice being done, rather than suffer momentary exigency or political prejudices to prevail. Accordingly, I put it to the House that it would be erring,—if at all it is erring,—on the side of justice and fairplay, and as such it should be accepted.

(Amendment No. 1184 was not moved.)

Mr. Vice-President : Amendment No. 1185. Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Mr. Vice-President, Sir, I beg to move:

“That in clause (4) of article 50, for the words ‘date on which’, the words ‘time when’ be substituted.”

Sir, I submit this is a very important amendment. Upon the acceptance of this amendment, a deadlock would be avoided and I hope honourable Members will kindly hear what I have to say. Dr. Ambedkar is not hearing.

Mr. Tajamul Husain : The whole House is hearing.

Mr. Naziruddin Ahmad : The whole House is useless unless Dr. Ambedkar agrees. (*Interruption.*)

Mr. Vice-President : That is a reflection, I think, (*Interruption.*)

Mr. Tajamul Husain : We want to hear you. (*Interruption.*)

Shri H. V. Kamath (C.P. & Berar : General): Is that statement in order Sir?

Mr. Naziruddin Ahmad : I withdraw it. Sir, I move amendment No. 1185. I consider this amendment to be very important and I desire the House should

[Mr. Naziruddin Ahmad]

listen. This has reference to the impeachment of the President. It is provided that as soon as the appropriate House passes a resolution declaring that the charge against the President has been substantiated—I refer to clause (4) of article 50—it will have the effect of removing the President “as from the *date* on which the resolution is passed”. I submit, Sir, that this will lead to an impasse. By another article, article 54, clause (1), it is provided that as soon as the President is removed by a resolution, the Vice-President steps in from the ‘*date*’ on which the President is removed and, under article 54, clause (1), the Vice-President shall act “until the date on which” the new President enters upon his office. There is an amendment to that article also which is connected with this: that is amendment No. 1207. I submit, Sir, that the President, if he is removed, is removed with effect from the *time* when the resolution is passed and *not* from the *date*. I will ask the House to consider a situation. Supposing the appropriate House under clause (4) of article 50 passes a resolution, say, at one o’clock, then according to clause (4) the President is removed as from the *date* on which the resolution is passed. I ask what will happen to acts done by the President on that date before one o’clock? The President may have declared an emergency under the Constitution in the morning; he may have, in the morning, assented to Bills. He may have appointed a Judge of the Federal Court; he may have dismissed or appointed a Ministry in the morning before his removal. If we allow clause (4) to remain as it is the President is removed with effect from the *date* on which the resolution is passed, that is, with effect from the period after the previous mid-night. The date begins after the mid-night. I ask what will happen to acts done by the President during the fateful day before his removal? I submit, Sir, his dismissal or removal must have reference to the particular *time* when he is removed. Otherwise, the Vice-President will step in as soon as there is a vacancy. This clause says the vacancy has effect from the date of his removal, that is before his removal. The Vice-President says, “I am the President with effect from the early morning of the ‘date’ of his removal”. What will happen if the Vice-President acts retrospectively? He says, ‘I am the President in the place of the President’. The President says, ‘I was the President duly functioning before and up to the very moment of my removal’. I submit, Sir, that the words that he is removed with effect from the *date* on which the resolution is passed would be unhappy and would lead to absurd consequences. It will lead to a constitutional impasse and probably the Federal Court will have to decide it without any data. Commonsense says that the President should function till the *time*, that is the moment when he is dismissed, immediately after the resolution is carried. As soon as the resolution is carried, the President ceases to function. Up to that time his acts should be upheld and for that purpose the amendment is necessary. The text says that “He ceases to function with effect from the *date* on which he is removed” but the amendment says “that he would be removed with effect from the *point of time* the resolution is passed”. There is a similar amendment to article 54 saying that the Vice-President shall act as President until the *date* on which the new President is appointed. In fact that must also be linked up with the *point of time* at which the new President is elected. If we provided for a whole day instead of a particular point of time, it will lead to absurdities. I submit this should be carefully considered by the House and accepted. The legality of the President’s acts on the date of his removal but prior to the actual moment of his removal will be jeopardy.

Mr. Tajamul Husain : Sir, I rise on a point of order. While Mr. Naziruddin Ahmad was moving his amendment, he deliberately said that he was addressing Dr. Ambedkar who was busy otherwise and he was not addressing the House or you. Now the point is this that when a Member speaks he addresses the Chair or the House. He does not address a particular Member who is in charge

of the bill. Therefore, Sir, my point of order is this that you should hold that Mr. Naziruddin is guilty of contempt of the Chair and of the whole House and if that is your finding, a charge should be framed against him as under article 50 when the President is being impeached, he should be impeached by this House—as there is no other House which can try him and we are the supreme body and sovereign body—and we will make a charge against him and we will try him and you will preside over it. As the honourable Member said deliberately that he was not addressing the Chair or the House, he is guilty of contempt of the Chair and the whole House. I want a ruling, Sir.

Mr. Vice-President : The ruling will be given after proper consideration. I do not want to do anything in a passion.

Mr. Naziruddin Ahmad : I was not addressing any individual Member. I only insisted that the most important Member in the House should listen.

Mr. Vice-President : We shall pass on to the next amendment. No. 1186.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

“That at the end of clause (4) of article 50, the words ‘by both Houses of Parliament’ be added.”

And the clause would then read—I am omitting the first four lines because I have already read that—

“which resolution shall have the effect of removing the President from his office as from the date on which there solution is passed by both Houses of Parliament.”

and not only by one.

Sir, I regard *you* as the most important Member for the time being, and not the Chairman of the Drafting Committee; and I therefore address the House through you which I trust will listen sympathetically to the argument I am going to place before you, as I regard all other Members of this House to be equal *inter se*.

The point I have made is that the Resolution convicting the President on impeachment must be passed and adopted by not only one but by both Houses. It is in conformity with the general scheme of the amendments which I have suggested that one House should start the proceedings, the other should investigate and pronounce its judgment embodied in a Resolution; and that Resolution be finally confirmed by the other House.

Unless and until that is done, I have been maintaining that the cause of justice would suffer; and in the interest, therefore, of fairness and justice, this is a consequential amendment flowing from those which I have had the honour of placing before the House *viz.*, that the Resolution must be confirmed by both Houses, and that it should have effect only on the day that it is similarly confirmed by the other House which has not tried, the impeached President along with the House which tried and passed a Resolution of that kind.

Mr. Vice-President : Amendment No. 1187.

Kazi Syed Karimuddin : Mr. Vice-President, Sir, I move the amendment standing in my name—

“That the following be added at the end of clause (4) of article 50 :—

‘and it shall operate as a disqualification to hold and enjoy any office of honour trust or profit under the Indian Union.’ ”

Clause (4) in article 50 lays down that if investigation is successful and a resolution is passed the President shall be removed from his office, but this clause (4) does not lay down any disqualification. Therefore I have moved that after the impeachment is successful and after he is removed from his office, this should operate as a disqualification to hold and enjoy any office of

[Kazi Syed Karimuddin]

honour, trust or profit under the Indian Union. I hope the House will accept this amendment.

(Amendment Nos. 1188 and 1189 were not moved.)

Mr. Vice-President : The article is now open for general discussion.

Shri T. T. Krishnamachari (Madras: General): Sir, before throwing open this article for general discussion; there is one minor amendment necessary for the amendment moved by Shri Shankarrao Deo, *i.e.*, No. 1160, to make it read aright. As it is, the amendment speaks of substituting the words “one fourth of the total membership of the House.” But the correct wording should be “one-fourth of the total number of members”. In the event of the House accepting the amendment moved by Shri Shankarrao Deo, this minor amendment which I now suggest, is necessary, and if you think that amendment should be moved before throwing open the article for general discussion, it may be moved now.

Mr. Vice-President : Does the House allow this amendment to be moved in order to make the meaning clearer?

Honourable Members : Yes.

Mr. Vice-President : Then it may be formally moved by you, Mr. Krishnamachari.

Shri T. T. Krishnamachari : Sir, I move:

“That in the amendment No. 1160 moved by Shri Shankarrao Deo, the words ‘one-fourth of the total membership of the House’ be replaced by the words ‘one-fourth of the total number of members.’ ”

Mr. Vice-President : Now, Mr. Kamath can speak on the article in general.

Shri L. Krishnaswami Bharathi (Madras: General): In that case, Sir, sub-clause (b) of clause (2) of article 50 also requires a slight change. The sub-clause says—“unless such resolution has been supported by not less than two-thirds of the total membership of the House.” Therefore, the same case arises there also, and that sub-clause also should be suitably amended.

Mr. Vice-President : Mr. Kamath.

Shri H. V. Kamath (C.P. and Berar : General): Mr. Vice-President, Sir, this is an important article of tremendous import in that it provides for the arrangement, the impeachment and the removal from office, of the President of the Indian Union. In any ordinary trial, in any criminal trial, the presiding officer of the tribunal is one who is expected to be impartial, and a man of the completest integrity. I hope that we in India shall not have any occasion to invoke the aid of this article, and that all our Presidents will be thoroughly constitutional and of impeachable integrity. But Sir, we have got to make provisions against human frailty and that is why we have got to incorporate an article of this nature in our Constitution. But it is very necessary, absolutely essential that when you proceed to impeach the President of the Indian Republic for violation of the Constitution, I say it is absolutely necessary that the officer presiding over such an investigation must be a man who is above party politics, and a man of the completest integrity and impartiality. In this context, Sir, the amendment moved by Mr. Karimuddin acquires some importance. The article as it stands says that when a change has been so preferred—I am referring to clause (3) of the article,—when a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated. It is quite possible and probable that the other House may investigate the charge, or perhaps it may proceed to appoint another tribunal consisting of its own members and some others, to investigate the charge. But in either case, it is necessary that the Presiding officer of the House which is investigating the charge should not

preside over the impeachment proceedings. Suppose, for instance, the Upper House prefers the charge and the Lower House investigates it. Then, what is the position? The Lower House is presided over by the Speaker. Do we intend that the Speaker of the House of the People shall preside over the impeachment proceedings? The Speaker is almost always a party man, and the President is being impeached for some violation consequent upon a conflict that might have arisen between him and the party in power. Naturally, therefore, the Speaker who is a member of the party in power cannot be expected to be impartial and of the completest integrity in this particular affair. Suppose the charge is being investigated by the Upper House after it has been preferred by the Lower House. As the article stands, the Vice-President will preside over the proceedings. But, Sir, man is after all a frail creature. The Vice-President may have at the back of his mind the idea that if the President is impeached and removed from office, he will be able to step into his shoes. The Vice-President, therefore, will be, more or less, an interested man, because, if the impeachment succeeds and the President goes out of office, the Chairman of the Council of State will be able to step into his shoes and become the President. He may be interested in seeing that the impeachment succeeds. So in either case, whether the Lower House presides over the proceedings of impeachment or the Upper House, the presiding officer of that House cannot be expected to be impartial and absolutely above party politics, or above party passions, and of the completest rectitude, in those proceedings. Therefore, it is very necessary that the Chief Justice of India should preside over the investigation of the charge preferred against the President. He must have the last word not merely upon the conduct of the trial but also on all matters such as admissibility of evidence and cognate matters. Here, I will, with your permission, Sir, quote from "The Constitutional History of the United States" by A. C. Mac Laughlin.

"When President Andrew Johnson was being tried before the Senate—the Chief Justice presiding—a similar question about the admissibility of evidence arose, and the Senate decided that the Presiding Officer might rule on the admissibility of evidence, and the ruling should stand, unless there was a division, in which case, the question should be passed on by the Senate itself."

Here the President was being tried and the Chief Justice was presiding, and in the course of the trial, a question arose and it was ruled that the Chief Justice must have the power to decide about the admissibility of evidence. Here also, I think, the same procedure should be adopted, for the impeachment of the President of the Indian Republic, and the Presiding Officer of the investigation should be the Chief Justice of India, who is neither the Speaker of the House of the People nor the Chairman of the Council of States. I therefore, lend my support to the amendment moved by Mr. Karimuddin, to the effect that the Chief Justice of India should preside over the investigation in connection with the impeachment of the President.

Sir, Mr. K. T. Shah moved an amendment, I refer to amendment No. 1183. Of course, his whole scheme is that the charges should be preferred by the Lower House, that it must originate, that it must be initiated by the Lower House, and that it should be investigated by the Upper House. I do not subscribe to this particular proposition, that it should be initiated only by the Lower House; it may arise either in the Lower House or in the Upper House. But if it arises in either of the two Houses, the other House investigates it. I however support him in so far as amendment No. 1183 says that the House which investigates the charge and finds it to be sustained should not have the last word as regards the removal of the President. The resolution, or the charge, if found sustained by the other House, the House other than the House that preferred the charge, that resolution must go back to the House that preferred the charge, because the

[Shri H. V. Kamath]

President should be impeached, and removed, not by the vote of one House only, but by the vote of both Houses. Therefore, it is important that in the constitution we should provide definitely, unambiguously and unequivocally that the President, if he is to be removed at all from his high office, must be removed by the vote of both Houses and not of one House only. The arguments advanced by Prof. K.T. Shah are sound. In the course of the trial, many months may elapse and it may be that certain prejudices and party passions which dictated the preferment of the charge might subside and perhaps when it goes back to the other House, it may be—I do not say it will always be so—it may be that the charge which was preferred by that House may be found, on further reflection that it could not be justly and fully sustained. So, both amendments No. 1183 and No. 1186 moved by Prof. K. T. Shah are important in this respect because they have the effect of removing the President of India by a vote of both the Houses and not by the vote of a single House, namely, the House which investigated the charge preferred by the other House and found it sustained on evidence advanced before it. Therefore, I think, Sir, that these amendments must be incorporated in some form or other in our Constitution. Just as in a criminal trial the Police hold a preliminary enquiry and then the case comes before a Court of law where the presiding officer is above the prosecution and above the defence, similarly when the charge preferred by the other House is investigated the presiding officer must be the Chief Justice of India because he is neither the Speaker of the House of People nor the Chairman of the Council of States. That is as regards the first amendment moved by my Friend Mr. Karimuddin.

Secondly, as regards the two amendments moved by Prof. K. T. Shah to the effect that the President must be removed by the final vote of both the Houses and not by the vote of a single House only. This is also a very sound principle and must be embodied in the Constitution.

Then there is amendment No. 1187 of my Friend Mr. Karimuddin again, that the President, after he has been impeached and removed from office, must not be eligible for any office of profit or honour or trust in the Indian Union. It follows—I think it is a matter of integrity in public life, of the standards of public conduct which we proclaimed at Jaipur the other day—it follows that the President.....

My Friend Mr. Husain is smiling chuckling to himself. I do not know what his smile means, whether the Jaipur.....

Mr. Tajamul Husain : It does not follow.

Shri H. V. Kamath : I leave it to Mr. Husain to explain why it does not follow. I will say only this much, that the President has been removed for a gross violation of the Constitution by an impeachment and an adverse vote of both the Houses; do we contemplate, do we visualise that such a man, such a high dignitary, when he has been removed by Parliament from office should be eligible for an office of trust or honour in the Indian Union? No, a thousand times no. We shall keep such a man away from all office and all honour or trust so far as our country is concerned. I therefore lend my support to amendment No. 1187 as well.

Pandit Thakur Dass Bhargava (East Punjab: General): *[Mr. Vice-President, I do not agree with the wording of this article 50. In the first instance there is this defect in article 50 that only the President has been mentioned therein, though there would be many occasions when the Vice-President would act as President. For that there is no provision. In such cases, if there is any violation of the Constitution, the responsibility would clearly be that of the Vice-President, who would be held responsible for his actions. For this reason, the Vice-President should also have been in this article.

* [] Translation of Hindustani speech.

Another short-coming which I find in this article is that the words “Violation of the Constitution” have nowhere been defined. There can be “Violation of the Constitution” in various ways, *e.g.*, by not conforming to the instructions contained in Schedule Four; by not fulfilling the undertaking imposed by the Oath under Article 49, and in failing to carry out his other functions. Hence, these words “Violation of the Constitution” are vague and require clarification. The President will be the highest official of the Indian Union, and there is a possibility of his being unnecessarily harassed for his act on account of the presence of those vague words. This is a very undesirable position.

The third short-coming, which I find, is that in the fact of the vague wording, the condition of thirty members giving notice of such resolution is not a sufficient safeguard. I think a notice by one-fourth of the total membership should be necessary. This amendment is very necessary, and I support it. The additional safeguard that the Resolution should be passed by two-thirds of the total membership is also necessary.

The stage for investigation could be reached after these conditions have been satisfied, and the enquiry will then be conducted by the other House. Under article 50 (3), either the House would investigate the charge itself or appoint somebody else for the work. If the House undertakes the investigation itself, then there is no reason why the President of the House should not continue to act as President. The Speaker of the House of People—is most trustworthy person and he is above all party-politics. He can be fully trusted to act justly without fear or favour. The argument of Mr. Kamath that since the Chairman of the Council of States would also be the Vice-President and so he is not likely to act justly because by the removal of the President he gets a chance to act otherwise, is untenable. Firstly, he would not be the only judge and secondly he would not be so characterless as to cast away all fairness. In this connection, an important question that arises is that if after investigation the charge is substantiated, then the condition of fixing the two-third majority of members would make the right of impeachment quite illusory. To fetter justice by so many restrictions is not proper. There are sufficient and proper safeguards against frivolous accusations in sub-clauses (a) and (b). The result of the enquiry of the House being in support of the charge or the judgment of the Supreme Court or any higher court to that effect, will change the whole position. Under these circumstances there is no necessity of the condition that the Resolution should be confirmed by a two-thirds majority; rather, a bare majority should be enough. If as a result of investigation the charge is not proved, then the question of passing the resolution does not arise. If a two-thirds majority has the right to pass a resolution only in the event when it supports the charge, then it would be an insult to the House, which has investigated the charge, or to the Court appointed for the purpose. In the other case, there is no occasion or justification for passing a resolution. Of course, if the charge is proved the House should have the right to confirm the resolution by bare majority. The entire article 50 remains quite vague and unsatisfactory by not providing any definite machinery and method of investigation in 50 (3) and by not indicating the result as a definite outcome of the investigation in 50 (4). No doubt, this article would be rarely put to use, but, even then, whenever it would be used difficulties in its proper application will have to be faced. In its present form its correct interpretation would become impossible.

My submission is that if the amendments, to which I have alluded, are not incorporated, then many difficulties would crop up. Another minor point which I want to make is that in cases where the violation of the Constitution by the President is so expressly pronounced that both the Houses want to play the accusers, then the question will arise which House would be the accuser

[Pandit Thakur Dass Bhargava]

and which the investigating authority. Though it is not probable, there is no provision here for such a contingency. There should be some provision that in such and such cases the House of the People should be the accuser and the Council of States should be the investigating authority. With these words I support the article.

Shri Kuladhar Chaliha (Assam: General): Mr. Vice-President, Sir, while you have given a chance to the important, more important and the most important people, I am glad that you have now given a chance to the most unimportant side of the House.

The trial of the President is a very important matter and requires careful consideration from the Members of this House. Mr. Karimuddin's amendment seems to be very sensible, very fair and impartial. When we try a man of distinguished position and dignity the trial should be presided over by such a person who would be detached from party passions and prejudices. And who could that person possibly be? The Chief Justice of the Federal Court can be the only person who will be the fit person. He will bring into the trial such impartial views as the Speaker will be unable to do. In trying our highest personage it is necessary that we should have a man presiding who will be absolutely free from any bias and who will be free from party prejudices. The Speaker, however high a person he might possibly be, will yet not be away from party leanings and party prejudices, as we find everywhere.

This is a very small amendment and it requires consideration not because it has come from a party, or from a person who does not belong to our party—if that is the consideration I think we will be doing an injustice to ourselves—but we should be fair to all who bring sensible amendments. I wish I could have followed Pandit Bhargava who spoke in high-flown Hindustani which is not understandable by us, but from what I partially followed it was hardly convincing. The Speaker will not be able to bring in proper discussion on the subject. Apart from that he may not be a great lawyer. He may be a very popular person, but he may not be the best person, and may be one backed by the majority. As such his ideas about the admissibility or inadmissibility of evidence will be a matter of great conjecture, and they may possibly be swayed by rumours and other things. And evidence may be let in which may cause prejudice to the great personage. I suggest that we should view this amendment dispassionately and allow the Chief Justice to preside over the trial of the President who will be the most distinguished man we will have in our country. As such I humbly suggest that you may consider the matter and think over the amendment of Mr. Karimuddin.

In the American constitution they have made provision for the Chief Justice to preside over such trial. In fact, in the trial of President Johnson, it was found that unless he had been there the President would have been dismissed. But he allowed such evidence that was proper and therefore the President just escaped from being chucked out and dismissed from office. Similarly in our country also we should try to be fair and just.

I think our party will consider this very wholesome and sensible amendment which has been so ably supported by Mr. Kamath.

Shri B. Das (Orissa : General) : Sir, I speak with much diffidence. We are trying to create a democratic President, but we are suspicious and the House is suspicious. The Members, after the recess, after returning from Jaipur, are very much subdued. They do not frankly and openly say what is in their mind. Yet, the few amendments that have been moved by those with whom I do not see eye to eye, and others stabled and not moved show that there is suspicion in the minds of Members.

Mr. Vice-President : Is it necessary for Mr. Das to refer to Jaipur? Members have again and again referred to it. I do not know what Jaipur has to do with the proceedings of this House.

Shri B. Das : I do not know why Members are subdued ! Article 47 to 50 are the most important articles regarding the President. Are we creating a democratic President or are we creating a Frankenstein? Under article 50, we are discussing at present about our suspiciousness of the President and are considering in what way he can be prosecuted for misdemeanours to the Constitution. That shows that we are not creating a democratic President. By means of the various amendments moved and not moved, many Members want to further restrict the hands of the President. Human minds have travelled far backwards and to the memory of Napoleon, a common man who was elected as President and became an autocratic Emperor. We have the recent memories of South American Presidents who suddenly became great autocrats and dictators in those so-called republics which abound in South America. Unfortunately, we have to see whether we are giving any dictatorial powers to our President. Though he may be guided by a democratic Cabinet, is it safe to entrust him with dictatorial powers? With all human weaknesses, will a democratic President remain democratic and not turn autocratic? Sir, the amendments that have not been moved indicate that we are human beings and have our suspicions about the democratic President turning autocratic. Many want that he should not be a baby of 35 years, but should be an elderly statesman. My own amendment No. 1185 I did not move, hoping that the President will prove to be a gentleman always. It is to this effect: No President should seek service under the Union Government or as the Governor of a State after he retires from the Presidentship of the Republic of India. Why should that human weakness manifest in our elderly statesmen? Why should he seek to become an Ambassador or a Governor? Sir, these things are agitating our minds. It is for the democratic President to prove that he is above all these allurements.

Sir, I have had experience of these suspicious conducts in the recent past, in the days of British Government; a Governor of Madras, after retirement, came here as the Governor-General of India and his wife looked at it as a means of getting fabulous presents and other gains. We have to consider whether the democratic President we are going to have under articles 41 to 51 will not later on turn out to be autocratic President and accept presents and other perquisites. Such presents are not small sums. The jewellery and other presents go up to lakhs and crores. We have to see that our future President, his wife, his daughters or his daughter-in-laws are not allowed to accept such presents. I wish that my esteemed Friend Dr. Ambedkar devises a provision which will make all presents received by a President or his family during the time he occupies the Gadi at Delhi accrue to the Nation and become State property. The benefit of such presents should not go to the President on his dependants.

Sir, if I sought permission to speak, I did so only to voice the feelings of many Members. We are all human beings. We are not Thakkar Bapa or Mahatma Gandhi or even you, Mr. Vice-President. My mind is suspicious. All my political career I have been suspicious of every Englishman and I have been suspicious of those who have been trained in the British traditions. Therefore I want to know what we are going to do to allay these suspicions. The speeches made on the floor of the House show that we are suspicious of our President. That being the case, why not we make matters clear? We cannot expect that because we may have a President well trained in the school of Mahatma Gandhi, others may not seek Governorships and the like. While considering the article under reference we have to bear in mind that we are giving autocratic powers to pass Ordinances and other dictatorial controls to the President and the Cabinet. Sir, these are my observations.

Mr. Tajamul Husain : *[Mr. Vice-President, my learned Friend Mr. Tahir has moved amendment No. 1178.....]

Mr. Vice-President : Our South Indian friends have repeatedly told me that they cannot follow highflown language. You are at liberty to speak in any language you like; but if you want to influence their votes you must speak in English. It is for you to decide.

Mr. Tajamul Husain : Because a friend of mine Pandit Bhargava spoke in beautiful Hindustani, I wanted to show to the House that I was also capable of speaking in my mother tongue as well as a person from Delhi, although I come from a long way off, Bihar.

Mr. Vice-President : He comes from East Punjab.

Mr. Tajamul Husain : Punjabi is not Hindustani. However, I shall speak in English, Sir.

Mr. Tahir has moved his amendment to this article. The article says that when the Parliament wants to censure the President of the Indian Republic it should at least pass a resolution to that effect by a majority of not less than two-thirds of the members present and voting. Mr. Tahir says: 'No, that is wrong. In a democracy it should not be done like that. It should be done by a simple majority of votes.' I have come here to oppose his amendment.

Now, if the President of the Indian Republic is to be turned out of office by a simple majority of one or by the casting vote of the person presiding at that time, then what would happen?

The President will be a mere tool in the hands of the majority party of the House. We do not want a President like that. We do not want a President who should flatter the majority party, no matter what party is in power, Congress, Socialist or Communist. We do not want the President to look to the majority party in the House. Once elected, let him become impartial absolutely and not look for favours at the hands of any party. Therefore, I support the draft article as it is. If the President is to be impeached, let him be impeached by a majority of two-thirds of the members present.

Now, Sir, I come to amendment No. 1183 moved by my Friend Prof. K. T. Shah. He wants that in clause (4) of article 50, after the words "such resolution shall" the words "be placed before the People's House and if adopted by the latter, shall" be inserted. Article 50 lays down the procedure for the impeachment of the President. There are two Houses, the Upper House and the Lower House, the Council of States and the House of the People. Now, Article 50 says that either of the two Houses may frame a charge against the President and when one House—suppose the Lower House—frames the charge, accuses or makes certain allegations against the President of the Republic, the other House, the Council of States shall enquire into it, which means that the other House will act as judges and the House which is accusing will be only the complainant or the prosecutor. In legal jurisprudence you will find that the person who accuses should not be the judge. That is why we have been fighting that the judiciary should be separated from the executive. As soon as time permits, that is going to be done. It suited the British Government to be the accuser as well as the judge, but now that we are having democracy, now that India has become independent, the accuser should not be the judge. Therefore I have come here to oppose the amendment moved by my Friend Prof. K. T. Shah.

The next amendment is 1185 moved by Mr. Naziruddin Ahmad. His is a simple amendment. He wants that the President shall cease to be President from the time when such a resolution has been passed, instead of the date on which the resolution is passed. This appears to be reasonable and simple. Suppose the meeting is held at 10'O clock in the morning and the motion of

* [] Translation of Hindustani speech.

censure is passed, the President according to the existing clause (4) will remain President till twelve in the night on that date. According to the amendment of Mr. Naziruddin Ahmad, the moment the Resolution is passed, the President automatically ceases to be President. I think this is reasonable and should be accepted.

Then I come to amendment No. 1186 moved by Prof. K. T. Shah that at the end of clause (4) the words “by both Houses of Parliament” be added. He wants that both the Houses of Parliament should try the President of the Republic when one of the Houses has accused him. I do not want to repeat my argument but what he wants is that both the accusers and the judges should sit together and deliver judgment on the case. As the accuser should not be the judge also, I oppose this amendment also.

Next comes amendment No. 1187 moved by my honourable Friend Kazi Syed Karimuddin. In this article, it is nowhere mentioned as to what is going to happen to the President of the Republic after he ceases to be the President on account of the censure motion passed against him. When the President is removed, he will be unfit to hold any office, but it must be mentioned in this Constitution also. I think the amendment of Mr. Karimuddin is very reasonable and I therefore support it. When a President is removed, it shall operate as a disqualification to hold and enjoy any office of honour, trust or profit under the Indian Union. Of course, that will be done but I want it to be in black and white.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, of the many amendments which have been moved to this article, I can accept only two. One is No. 1158 moved by my Friend, Mr. Gupte providing of fourteen day’s notice for the discussion of a motion to impeach the President. The second amendment which I am prepared to accept is amendment No. 1160 moved by my Friend Mr. Deo, as amended by Mr. T. T. Krishnamachari. I think the original provision in the Draft Constitution did not lay down sufficient number of members as a condition precedent for the initiation of the motion. I think the change provided by the amendment is for the better and I am therefore prepared to accept it.

Now, Sir, I come to the other amendments which I am sorry to say I have not been able to accept but which I think call for a reply. The amendments which call for a reply are the amendments moved by Prof. K. T. Shah, Nos. 1151, 1171, 1173, 1176 and 1186. Sir, the amendments which have been moved by Prof. K. T. Shah refer to two questions. The first is the scheme of impeachment which has been laid down in the Draft Constitution and the second relates to the right of the President to appear and defend through a lawyer before the House which is investigating the charge against the President. So far as the second amendment of Prof. K. T. Shah is concerned. I do not see that there is any necessity for any such amendment at all; because Prof. Shah referred to the article—I think it is sub-clause (4) or (3),—it makes ample provision for permitting the President not only to appear before the investigating House, but also to be represented by any other person, namely, a lawyer. All that Prof. K. T. Shah has done is to separate this particular part of that clause and to put it as sub-clause (3) (a) in order to make it an independent proposition by itself. I do not think that here is any such necessity for the device that he has adopted.

Now, I come to the first part, namely, the drawbacks which he has shown in the scheme of impeachment provided in the Draft Constitution. Before I proceed to reply to his points, I think it is desirable that the House should have before it a clear picture of the provisions of the scheme embodied in the Draft Constitution. Any one who analyses this article will find that it embodies four different propositions. Firstly, the motion for impeachment

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may be initiated in either House, either in the Council of States or in the House of the People. Secondly, such motion must have the support of a required number of members. Thirdly, the House which has passed the motion for investigation shall not be entitled to investigate the charge. And fourthly, that the House which has investigated the charge, if it finds the President guilty must do so by a majority of two-thirds.

These are the four propositions which have been embodied in this particular article. Now Prof. Shah's proposition is that the Upper House should have nothing to do with the impeachment of the President and that the jurisdiction to impeach the President, to investigate and to come to its own conclusions must be solely vested in the House of the People. I have not been able to understand the reasons why Prof. K. T. Shah thinks that the Lower House is in a special way entitled to have this jurisdiction vested in it. After all the trial of the President or his impeachment is intended to see that the dignity, honour and the rectitude of the office is maintained by the person who is holding that particular office. Obviously, the honour, the dignity and the rectitude of that office is not merely a matter of concern to the Lower House, it is equally a matter of concern for the Upper House as well. I do not, therefore, understand why the Upper chamber which, as I said, is equally interested in seeing that the President conducts himself in conformity with the provisions of the Constitution should be ousted from investigating or entertaining a charge of any breach of conduct on the part of the President in his integrity and it is equally concerned as the House of the People. Prof. K. T. Shah felt so sure about the correctness of his proposition that he said in the course of his argument that only those who have been slavishly copying the other constitutions would have the courage to oppose his amendments. I do not mind the dig which he has had at the Drafting Committee. As I said in my opening address, the Drafting Committee in the interests of this country has not been afraid of borrowing from other constitutions wherever they have felt that the other constitutions have contained some better provisions than we could ourselves devise. But I thought Prof. K. T. Shah forgot that if there was any person so far as I am able to see, who has practised slavish imitation of the Constitution of the United States, I cannot point to any other individual except Prof. Shah. (*Laughter*). I thought his whole scheme which was just a substitute for the scheme of Government embodied in the Draft Constitution was bodily borrowed with commas and semi-colons from the United States Constitution, and when he was defeated on his main proposition, his worship of the United States Constitution has been so profound, so deep, that he has been persisting in moving the other amendments which, as he himself knows, are only consequential and have no substance in themselves. I therefore do not mind the dig that he has had at the Drafting Committee.

The other proposition which Prof. K. T. Shah has sought to introduce in the Constitution is that there should be a concurrence of the other House. He has evidently decided to accept the main scheme embodied in the Draft Constitution. What he wants is that even if the one House which has investigated the offence has come to a conclusion, that conclusion ought not to have effect unless it has been adopted by the other House. I cannot understand why, for instance, the verdict of a jury—and this is no doubt a sort of jury, which will investigate and come to a conclusion—I do not understand why the verdict of one House, which it would have come to after investigation should be submitted to another jury. I have never known of any such principle or precedent at all. Secondly, I do not understand what is to be the effect if the other House does not adopt. Is the other House required to adopt only by bare majority or two-thirds majority? Supposing the other House does not adopt the conclusion which has been arrived at by one House, what is to be done? Obviously there will be

a tie. Prof. K. T. Shah provided, in my judgment, no remedy for the dissolution of that tie. For these reasons, I am unable to accept any of the amendments moved by Prof. K. T. Shah.

There is another amendment which I might deal with because it is analogous to the amendments moved by Prof. K.T. Shah, and that is amendment No. 1178 moved by my Friend, Mr. Mohd. Tahir. He says that it is unnecessary to provide for a two-thirds majority for a charge of being guilty of violation of the Constitution. He thinks that a bare majority is enough. Now, Sir, I think my Friend, Mr. Mohd. Tahir has not taken sufficient notice of the fact that a motion for impeachment is very different from a motion of no confidence. A motion of no confidence does not involve any shame or moral turpitude. A motion of no confidence merely means that the party does not accept or the House does not accept the policy of the Government. Beyond that no others censure is involved in a no confidence motion. But, an impeachment motion stands on a totally different footing. If a man is convicted on a motion for impeachment, it practically amounts to the ruination of his public career. That being the difference, I think it is desirable that such an important consequence should not be permitted to follow from the decision of a bare majority. It is because of this difference that the Drafting Committee provided that the verdict of guilty should be supported by a two-thirds majority.

Now, Sir, I come to the amendments of my honourable Friend, Kazi Syed Karimuddin. His first amendment which I propose to take for consideration is amendment No. 1152. By this amendment he wants to add treason, bribery and other high crimes and misdemeanours after the words, 'violation of the Constitution'. My own view is this. The phrase 'violation of the Constitution' is quite a large one and may well include treason, bribery and other high crimes or misdemeanours. Because treason, certainly, would be a violation of the Constitution. Bribery also will be a violation of the Constitution because it will be a violation of the oath by the President. With regard to crimes, the Members will see that we have made a different provision with regard to the trial of the President for any crimes or misdemeanours that he may have made. Therefore, in my view, the addition of these words, treason and bribery, are unnecessary. They are covered by the phrase "violation of the Constitution".

His other amendment is amendment No. 1170, whereby Mr. Karimuddin seeks to provide that when an investigation is being made into the charge of impeachment, the Chief Justice of India shall preside. I have no quarrel with his proposition that any investigation that may be undertaken by any House which happens to be in charge of the impeachment matter should have the investigation conducted in a judicial manner, having regard to all the provisions which are embodied in the Criminal Procedure Code and the Evidence Act. As I said, I have no quarrel with his objective; in fact, I share it. The only point is this: whether this is a matter which should be left for the two Houses to provide in the Rules of Procedure or whether it is desirable to place this matter right in the Constitution in a definite and express manner. My Friend Mr. Karimuddin will see that in sub-clause (3) it is provided that the House shall investigate, and therefore it is quite clear that both the Houses of Parliament in making the rules of procedure will have to embody in it a section dealing with the procedure relating to impeachment. Because, it may be, at one time the initiation may take place in the Upper Chamber and trial may take place in the Lower Chamber, and *vice versa*. So both the Houses will have to have a section dealing with this matter in the procedure of each House. That being so, there is nothing to prevent the legislature from setting out in that part of the procedure of the two Houses that wherever that investigation is made either the Chief Justice shall preside or some other judicial officer may preside, and therefore it seems to me that his object will be achieved if what I submit is carried out by the procedural part of the Rules of the two Houses. This provision is therefore quite unnecessary.

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I come to his third amendment, No. 1187. He wants that the Constitution should lay down the disqualifications which must necessarily arise out of a charge of guilt on impeachment. The language that he has borrowed I see is from the United States Constitution. My view with regard to this matter is this. So far as membership of the legislature is concerned, as I pointed out on an earlier occasion, the matter is covered by the provision contained in article 83 which lays down the disqualifications for membership of the legislature. As I then stated, it would be perfectly possible for Parliament in laying down additional disqualifications to introduce a clause saying that a person who has been impeached under the Constitution shall not be qualified to be a member of the legislature. Therefore, by virtue of article 83, it would be perfectly possible to exclude a President who has been impeached from membership of the legislature.

The only other matter that remains is the question of appointment to office. It seems to me that there are several considerations to be borne in mind. It is quite true that the provisions of the Draft Constitution leave this matter open. But, I think it would be perfectly possible for Parliament, when enacting a Civil Servants Act, as I have no doubt the future Parliament will be required to do, to lay down the qualifications for public service, their emoluments and all other provisions with regard to public service. Obviously, it would be open to Parliament to say that any person who has been impeached under the law of the Constitution shall not be a fit person to be appointed to any particular post, either an ambassadorial post, outside the Government, or inside the Government in any particular department. Therefore, that matter, I see, can also be covered by Parliamentary legislation.

Shri H. V. Kamath : Am I to understand that Dr. Ambedkar is personally in favour of this amendment?

The Honourable Dr. B. R. Ambedkar : Yes; I think there is nothing in this amendment except the fact that this was met by other ways.

Now, Sir, the other question is this: is it necessary to have these disqualifications laid down specifically and expressly in the Constitution? It seems to me that there is no necessity, for two reasons. One is that no person who has been shamed in this manner by a public trial and declared to be a public enemy would ever have the courage to offer himself as a candidate for any particular post. Therefore, that possibility, I think, is excluded by this consideration. The second is this: whether the people of this country would be so wanting in sense of public duty and public service to elect any such person, if he, as a matter of fact, stood. I think it would be too shameful an imputation to the people of this country to say that it is necessary to make an express provision of this sort in the Constitution because the people of this country are likely to elect persons who are criminals, who have committed breach of trust and who have failed the public in the performance of their public duties. I think these weaknesses are inherent in all societies and no good purpose will be served by advertising them by putting them in the Constitution. I therefore think that the amendments, however laudable they are, are not necessary to be embodied in the Constitution.

Mr. Vice-President : The amendments which have been moved will now be put to vote.

Amendment No. 1152 standing in the name of Kazi Syed Karimuddin. The question is :

“That in clause (1) of article 50, after the words ‘for violation of the Constitution’, the words ‘treason, bribery or other high crimes and misdemeanours’, be inserted.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 1151 standing in the name of Prof. K. T. Shah: First part.

The question is:

“That in clause (1) of article 50, after the words ‘is to be impeached for’ the words ‘treason or’ be added.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 1151 standing in the name of Prof. K. T. Shah: Second Part.

The question is:

“That in clause (1) of article 50, for the words ‘either House’ the words ‘the People’s House’ be substituted.”

The amendment was negatived.

Mr. Vice-President : I now put to vote amendment No. 1160 as modified by the amendment of Mr. T. T. Krishnamachari.

The question is:

“That in sub-clause (a) of clause (2) of article 50, for the words ‘thirty members’, the words ‘one-fourth of the total number of members’ be substituted.”

The amendment was adopted.

Mr. Vice-President : The question is:

“That in sub-clause (a) of clause (2) of article 50, for the words ‘thirty members’ the words ‘hundred members’ be substituted.”

The amendment was negatived.

Mr. Vice-President : The question is :

“That in sub-clause (a) of clause (2) of article 50, for the words ‘after a notice’ the words ‘after at least 14 days notice’ be substituted.”

The amendment was adopted.

Mr. Vice President : The question is :

“That in sub-clause (a) of clause (2) of article 50, for the words ‘moved after a’ the words, ‘moved after fourteen days’ be substituted.”

The amendment was negatived.

Mr. Vice-President : The question is :

“That in sub-clause (b) of clause (2) of article 50, for the words ‘supported by’ the words ‘passed by a majority of’ be substituted.”

The amendment was adopted.

Mr. Vice-President : The question is :

“That for sub-clause (b) of clause (2) of article 50, the following be substituted:—

‘(b) such resolution has been supported by a majority of the members present and voting’.”

The amendment was negatived.

Mr. Vice-President : I am not putting No. 1168 to vote because it is the same as 1167. It is already covered.

The question is:

“That the following new sub-clause be inserted after sub-clause (b) of clause (2) of article 50:

‘(c) the meeting shall be presided by the Chief Justice of the Supreme Court whose decision on the admissibility of evidence shall be final’.”

The amendment was negatived.

Mr. Vice-President : The question is:

“That in clause (3) of article 50, for the words ‘either House’ the words ‘the People’s House’ be substituted and the words ‘or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation’, be deleted.”

The amendment was negatived.

Mr. Vice-President : The question is:

“That in clause (3) of article 50, after the word ‘investigated’ a full stop be inserted.”

The amendment was negatived.

Mr. Vice-President : The question is:

“That after clause (3) of Article 50, the following new clause be added:—

‘(3A) The President shall have the right to appear and to be represented at such investigation.’ ”

The amendment was negatived.

Mr. Vice-President : The question is:

“That in clause (4) of article 50, for the words ‘passed supported by’ the words ‘passed by a majority of’ be substituted.”

The amendment was adopted.

Mr. Vice-President : The question is:

“That in clause (4) of article 50, for the words ‘not less than two-thirds of the total membership of the House’, the words ‘a majority of the members present and voting’ be substituted.”

The amendment was negatived.

Mr. Vice-President : The question is:

“That in clause (4) of article 50, after the words ‘such resolution shall’ the words ‘be placed before the People’s House, and if adopted by the latter, shall’ be inserted.”

The amendment was negatived.

Mr. Vice-President : The question is: Amendment No. 1185.

Mr. Naziruddin Ahmad : Sir, no reply has been given to my amendment by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I said I oppose it.

Mr. Vice-President : The question is:

“That in clause (4) of article 50, for the words ‘date on which’, the words ‘time when’ be substituted.”

The amendment was negatived.

Mr. Vice-President : The question is:

“That at the end of clause (4) of article 50, the words ‘by both Houses of Parliament’ be added.”

The amendment was negatived.

Mr. Vice-President : The question is:

“That the following be added at the end of clause (4) of article 50:—

‘and it shall operate as a disqualification to hold and enjoy any office of honour, trust or profit under the Indian Union.’ ”

The amendment was negatived.

Mr. Vice-President : The question is:

“That article 50, as amended, stand part of the Constitution.”

The motion was adopted.

Article 50, as amended, was added to the Constitution.

Article 51

Mr. Vice-President : We come to article No. 51.

The motion is:

“That article 51 form part of the Constitution.”

We shall take the amendments one after another. Amendment Nos. 1190 and 1191 are of similar import and are to be considered together. No. 1190 may be moved.

(Amendment Nos. 1190 and 1191 were not moved.)

No. 1192 is disallowed.

No. 1193, first alternative, and Amendment No. 1194 are similar and are to be considered together and I can allow 1193 to be moved—first alternative. Mr. Tahir.

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

“That in clause (2) of article 51, for the words ‘six months’ and the words ‘full term of five years as provided in article 45 of this Constitution’ the words ‘three months’ and the words ‘remaining term of five years in which the vacancy so occurs’ be substituted respectively.”

Sir, regarding the period of six months and three months I would only submit that it is a matter of importance and it is better that the sooner it is decided the better it is and the period of six months is too long and therefore I have suggested that it should be decided in three months only.

Now I come to the second point. In such cases the office will remain only for the remaining term of five years in which the vacancy so occurs. Supposing the President is elected and after one year of his term the vacancy has occurred by his removal or resignation or anything otherwise, then in that case the new President who will be elected will hold the office for the remaining term of 5 years. In doing so, Sir, I want that the term of the Parliament and also the term of the office of the President should run parallel side by side so that after every five years when there is a new Parliament, there must also be a new President—a new air and new breath. If it be not so, then to my mind it appears that there would be some difficulties. Supposing the President is elected after two years when the vacancy occurs, then he will continue in office for another two years after the new Parliament is elected. Then there may occur two difficulties. Suppose the President belongs to a certain party and unfortunately in the next election that party does not come in with a majority. Then what will be the position of the President who is still continuing in office? Certainly, he will have to vacate the office on many grounds. Either he will resign from his office or the party which comes in with a majority will not consider him suitable to their own views, aims and objects.

Secondly, I would submit that if a President who is in office at the time of the elections continues in his office for some more years after the election, then it is but natural that the President, being in power, certainly will influence the elections for the new Parliament, and in my opinion, any influence exercised on the elections is against—it is hopelessly against—the spirit of democracy. Moreover, nobody can check it, because the President in power will naturally want to continue in power, and therefore, the party to which he

[Mr. Mohd. Tahir]

himself belongs, must come into power. Therefore he will exercise all his influence to see that such a party comes into power. Therefore, it is quite undesirable that the President should continue in office beyond a period, when Parliament comes to an end. Therefore, I submit that in all fairness, it would be desirable that the office, of the President and the term of life of the Parliament should run side by side, for equal periods of time. With these few words I submit my amendment to the House for its acceptance.

Mr. Vice-President : You can move the alternative amendment also.

Mr. Mohd. Tahir : Sir, the second alternative amendment runs as follows :

“That for article 51 the following be substituted :—

‘51. If the office of the President becomes vacant by reason of his death, resignation, removal or otherwise, the Vice-President shall act as President for the remaining term of office in which the vacancy so occurs.’ ”

In moving this amendment, Sir, I submit that when the question of election of President or the Vice-President comes before Parliament or before the country, it is but natural that the Parliament and the country as a whole, will think of selecting the best two men of the country to be the President and the Vice-President. The best two men are elected as President and Vice-President, and after that, if the vacancy arises in the office of the President, there is no reason why the third person should be elected for that office, and not the next best man who has already been elected as Vice-President and who has been in office, and who has had experience of the office in which he has been working for a certain period. Therefore, in all fairness, I am of the opinion that in case of vacancy of office of President, the Vice-President in office should automatically be in the President for the time that remains unexpired, and for which that office has fallen vacant.

With these few words, Sir, I submit my amendment to the House for its acceptance. I hope the House will consider these amendments seriously and accept them.

Mr. Vice-President : Amendment No. 1198, standing in the name of Prof. K. T. Shah.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

“That the following new clause be added after clause (2) of article 51:—

‘(3) During the interval between the date when a vacancy in the office of the President occurs, and the date when new election to that office is completed, and the name of the new President announced, the Vice-President, provided for in the next following article, shall hold the office of and act as President of the Union.’ ”

Sir, this is only a consequential amendment, trying to fill in the gap between the removal, resignation or death of one President and the election of his successor. Some arrangement must be made for the interim period, whether it is three months or six months or whatever period it may be, between the election of the new President and the demise or removal of his predecessor. This is at least one example in which, may I make a present of my non-imitation of the American Constitution. There, after all, the Vice-President automatically takes charge in such emergency and election is avoided. Here we have insisted upon not only election, but election not for the balance of the period remaining, but for the full term of the office. If the Honourable Chairman of the Drafting Committee will consider the spirit as well as the wording of my amendment, he will find that there are much fewer imitations in mine than in his,—the only difference being that he has imitated several more constitutions, while I have reserved my “worship”—as he called it—for only one.

This, however, does not affect the simple provision that some interim provision must be made, and so far as I can see, the Draft does not make any satisfactory arrangement for the interim period during which the office may remain vacant. My amendment only seeks to provide for a consequence and hence, I hope the House will accept it.

Mr. Vice-President : Amendment Nos. 1195, 1196 and 1197 are disallowed, being verbal ones. Dr. Ambedkar.

The Honourable Dr. B.R. Ambedkar : Sir, I am sorry I cannot accept the amendment moved by Prof. K. T. Shah. His amendment seems to be covered altogether by article 54 (1). I fail to find any difference between the amendment that he has moved and the provision contained in sub-clause (1) of article 54. I think if he considers this article, he will find that his amendment is unnecessary and superfluous.

With regard to the other amendment, the point of difference is that any one who is elected as a result of the resignation and so on, should only occupy the Chair of the Presidentship during the balance of the term, while the provision contained in the Constitution is to the effect that if a person is elected as a result of resignation, death and so on he should continue to be the President for the full term prescribed by the Constitution. I see no reason why the term of office of a person who has been elected to the office should not be the full term prescribed by the Constitution and why he should be limited only to the balance of the term. I therefore, see no justification for the amendment at all.

Mr. Vice-President : I shall put amendment No. 1193—first alternative—standing in the name of Mr. Mohd. Tahir to vote.

The question is:

“That in clause (2) of article 51, for the words ‘six months’ and the words ‘full term of five years as provided in article 45 of this Constitution’ the words ‘three months’ and the words ‘remaining term of five years in which the vacancy so occurs’ be substituted respectively.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 1194 standing in the name of Prof. K. T. Shah.

The question is:

“That in clause (2) of article 51, for the words ‘hold office for the full term of five years’ the words ‘hold office for the balance of term of five years’ be substituted.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 1193, second alternative, standing in the name of Mr. Mohd. Tahir.

The question is:

“That for article 51 the following be substituted:—

‘51. If the office of the President becomes vacant by reason of his death, resignation, removal or otherwise, the Vice-President shall act as President for the remaining term of office in which the vacancy so occurs.’ ”

The amendment was negatived.

Mr. Vice-President : The question is:

“That article 51 stand part of the Constitution.”

The motion was adopted.

Article 51 was added to the Constitution.

New Article 51-A

Mr. Vice-President : Now we come to amendment No. 1199 standing in the name of Prof. K. T. Shah.

Prof. K. T. Shah : Sir, am I allowed to move the second part of the amendment relating to pension?

Mr. Vice-President : The question of pension to the President was dealt with in a former amendment by you?

Prof. K. T. Shah : Yes, Sir, that is why I asked the question.

Mr. Vice-President : Then the second part may be left out.

Prof. K. T. Shah : Then I will not move this amendment.

Article 52

Mr. Vice-President : Then we come to article 52.

I find the amendment deals with a matter which is concerned with article 1 and I disallow it on the understanding that if any similar change is made in article 1 then the Drafting Committee itself will make the change in the course of the Third Reading. Are you willing to accept that, Mr. Kamath?

Shri H. V. Kamath : I will not move the amendment, Sir.

Mr. Vice-President : So, I can put article 52 to vote.

The question is :

“That article 52 stand part of the Constitution.”

That motion was adopted.

Article 52 was added to the Constitution.

Article 53

Mr. Vice-President : Then we come to article 53.

Amendment No. 1201 is being disallowed because it has the effect of a negative vote. Amendments Nos. 1202 and 1203 seem to be identical and I therefore allow amendment No. 1202 to be moved.

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

“That in article 53, for the words ‘or position of emolument’ the words ‘of profit’ be substituted.”

Mr. Vice-President : Then No. 1204 standing in the name of Mr. Mohd. Tahir.

Mr. Mohd. Tahir : I am not moving it, Sir.

Mr. Vice-President : Then amendment No. 1205 standing in the name of Dr. Ambedkar.

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

“That to the proviso to article 53, the following be added:—

‘and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 79 of this Constitution’.”

The provision is intended to prevent making a double profit.

Mr. Vice-President : There is one amendment sent in by Mr. Naziruddin Ahmad, No. 33. This is formal and is disallowed.

Now I am putting these amendments to vote. Has any Member anything to say on these amendments?

Shri H. V. Kamath : On a point of information, Sir, with reference to amendment No. 1205, will the Vice-President, when he acts as President, draw the salary and allowances of the President or those of the Vice-President only?

The Honourable Dr. B. R. Ambedkar: The salary of the President, salary of the office.

Mr. Vice-President: Then I am putting these amendments to vote. I shall put No. 1202 standing in the name of Dr. Ambedkar.

The question is:

“That in article 53, for the words ‘or position of emolument’ the words ‘of profit’ be substituted.”

The amendment was adopted.

Mr. Vice-President: Do you want me to put your amendment to vote, Mr. Naziruddin Ahmad, which is identical with the previous one?

Mr. Naziruddin Ahmad: No. Sir.

Mr. Vice-President: Then I shall put to vote amendment No. 1205.

The question is:

“That to the proviso to article 53, the following be added :—

‘and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 79 of this Constitution.’ ”

The amendment was adopted.

Mr. Vice-President: The question is:

“That article 53, as amended, stand part of the Constitution.”

The motion was adopted.

Article 53, as amended, was added to the constitution.

Article 54

Mr. Vice-President: Then we come to article 54.

The motion before the House is:

“That article 54 form part of the Constitution.”

There is amendment No. 1206 standing in the name of Mr. Mohd. Tahir.

Mr. Mohd. Tahir: I am not moving it, Sir.

Mr. Vice-President: Then No. 1207. As amendment No. 1185 has been disallowed.....

Mr. Naziruddin Ahmad: This is a different situation altogether, Sir. I shall show it in a minute.

Mr. Vice-President: All right.

Mr. Naziruddin Ahmad: Sir, I beg to move :

“That in clause (1) of article 54, for the words ‘date on which’, the words ‘time when’ be substituted.”

Sir, I shall be extremely short. These words occur in clause (1) of article 54. It says that the Vice-President shall act as the President during a vacancy ‘until the *date* on which’ a newly elected President enters upon his office. I shall ask the House to consider only one example. Suppose the Vice-President acts in a vacancy in the President’s office and a new President is elected and enters upon his office at noon on the 1st of January. By this clause it is laid down that the Vice-President shall act as President ‘until the date on which’ the new President enters upon his office. So he can act only up to the 31st of December, because he can act only, “until the *date* on which” the new President enters upon his office which is the 1st of January. From the midnight of the 31st December till the noon of the 1st January when the new President enters upon his office, there will be no one to preside over the functions of the Government of India. There will be no President; there will be no Vice-President. The amendment seeks to fill up this political vacuum.

Mr. Vice-President: Amendment Nos. 1208 and 1209 are merely verbal and are therefore disallowed.

[Mr. Vice-President]

Amendment Nos. 1211 and 1210 are of similar import but the former is more comprehensive and may be moved.

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

“That to clause (3) of article 54, the following be added :—

‘and be entitled to such privileges, emoluments, and allowances as may be determined by Parliament by law and until provision in that behalf is so made, such privileges, emoluments and allowances as are specified in the Second Schedule’.”

This merely makes good an omission in the Draft Constitution.

Mr. Vice-President: Amendment Nos. 1212 and 1213 have been blocked as article 49 has been adopted.

Shri H. V. Kamath: Sir, with regard to amendment No. 1211 moved by the Honourable Dr. Ambedkar I would like to say something. He said a short while ago that the Vice-President will have the same emoluments and allowances as the President while acting as such, whereas under this amendment he will “be entitled to such privileges, emoluments, and allowances as may be determined by Parliament by law and until provision in that behalf is so made, such privileges, emoluments and allowances as are specified in the Second Schedule”. If the Vice-President acts as President why make a distinction like this that until Parliament enacts in that behalf he will get emoluments and allowances according to the Second Schedule. When he acts as President he must get the emoluments of the President all the time and I should like to know why this difference is made.

Pandit Thakur Dass Bhargava: Sir, article 54 (3) says :

“The Vice-President shall, during, and in respect of, the period while he is so acting as, or discharging the functions of the President, have all the powers and immunities of the President.”

The amendment which has been moved by Dr. Ambedkar speaks of privileges, emoluments and allowances but there is no reference to the duties and liabilities of the Vice-President when he is acting as President. If the Vice-President violates the constitution there is no provision that he should be impeached or dealt with in any manner.

When we proceed further to article 56 we find that by a resolution of both House he can be made to vacate his office. But in regard to the violation of the Constitution and in regard to the failure of discharge of his duties there is no provision. When he is acting as President he should be liable to the same liabilities and duties as the President. Therefore I would have liked that the words “duties and liabilities” were inserted after the words “powers and immunities” which would have met the exigencies of the circumstances. I have given an amendment to this effect but since it has not been circulated I do not propose to move it formally but I would like Dr. Ambedkar to consider the proposition of the addition of the words “duties and liabilities” after the words “powers and immunities”, which will make the section complete and make up the obvious lacuna.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, I find that in the amendments that have been moved there are really three points which have been raised. One point which has been raised by my friend Mr. Naziruddin Ahmad relates to time. We all know by now how very meticulous my friend Mr. Naziruddin Ahmad is and he wants to have the Constitution specifically state the time when a President frees himself from office and another person takes over that office. I do not know whether so much meticulousness is necessary in this Constitution. However, what I find difficult to accept in the amendment which he has moved is that he has not particularised what is system of timing which he has in mind. Is it the Greenwich time, the Standard time, the Bombay or Calcutta time?

Mr. Naziruddin Ahmad: I mean the actual time of appointment.

Dr. B. R. Ambedkar: What is the time may be very different. Unless he prescribes the system I do not think that the introduction of the word time introduces any greater clarity or definiteness at all.

Secondly, so far as this particular clause is concerned I find that his amendment is quite unnecessary, because if he will read sub-clause (1) of article 54 he will see that it is stated "to fill such vacancy enters upon his office". Surely the entering upon office will be at sometime in the day—it may be midnight or it may be 12 o'clock in the day. Therefore time is specified so to say by implication and this amendment is there for quite unnecessary.....

Mr. Naziruddin Ahmad: The clause provides that the Vice-President shall act until the 'date' on which the new President enters upon his office and not the time when he does so.

The Honourable Dr. B. R. Ambedkar: Surely it will be sometime on some day on which he will enter the office. He may probably consult an astrologer to find out what is the auspicious moment. However, the amendment is quite unnecessary.

My Friend Mr. Kamath said that in replying to the debate on the previous article I stated or rather in moving my amendment I stated that the Vice-President when acting as the President shall have the same emoluments as the President. He found some difficulty in reconciling that statement with the amendment which I have moved, which gives the Parliament the power to fix the salary of the Vice-President when acting as the President. If my Friend Mr. Kamath were to turn to page 161 of the Draft Constitution he will find that there is a schedule fixing the salary of the President and paragraph 5 of that schedule definitely provides for the salary of the President. Surely when a person is acting as the President, no matter at what early stage in life he has climbed to that post, he will be entitled to get that salary according to this Constitution. But it was felt that it might be necessary to leave the matter to Parliament to fix a different scale of salary for a person who is assuming the office of the President expressly for a very short duration. Parliament may not like to give him the same salary, because the tenure of his office is certainly not of the same duration as that of the President himself. Consequently, if Parliament makes no provision, then he gets the salary of the President. But Parliament may make provision to give him a different salary. It is for that purpose the amendment has been moved.

Shri H. V. Kamath: Sir, may I invite the attention of my honourable Friend Dr. Ambedkar to article 48 clause (4) which lays down that the emoluments and allowances of the President shall not be diminished during his term of office? Am I to understand that you make a distinction between the Vice-President acting as President and the President?

The Honourable Dr. B. R. Ambedkar: Yes, certainly.

Shri H. V. Kamath: Sir, just now when I raised objection to an amendment to the last article, Dr. Ambedkar said that the Vice-President shall draw the salary and allowances of the President while acting as President.

The Honourable Dr. B. R. Ambedkar: Unless Parliament otherwise provides, the Vice-President gets the salary of the President when he acts for him. There is no reason why Parliament should not be given authority to fix the scales of pay of a President who may be therefor a short duration.

Pandit Bhargava raised another point and that was to the effect that there was no provision for the impeachment of the Vice-President when acting as President. Obviously when a Vice-President becomes the President, all the duties and obligations which are imposed upon the President fall upon him without making any express mention of the fact at all. If during his tenure of

[The Honourable Dr. B. R. Ambedkar]

office as President the Vice-President commits any of the offences or acts which expose the President to the risk of being impeached, he will not have any kind of immunity by reason of the fact that he is either a Vice-President or is acting as President *pro tempore*. There is therefore no necessity for making any provision for it.

Mr. Naziruddin Ahmad: Mr. Vice-President, may I ask.....

The Honourable Dr. B. R. Ambedkar: I do not submit myself to any cross examination at this stage.

Mr. Vice-President: Mr. Naziruddin Ahmad may go back to his seat.

Mr. Naziruddin Ahmad: I want to draw the attention of the Honourable Dr. Ambedkar to an oversight.

Mr. Vice-President: He refuses to listen to it. What can I do? I cannot compel him to listen.

Mr. Naziruddin Ahmad: No one can compel him. The point is that in clause (3) of article 54.....

Mr. Vice-President: I am going to put the amendment to vote. Dr. Ambedkar has said that he will not give any reply.

Mr. Naziruddin Ahmad: I hope he will reconsider the matter.

Mr. Vice-President: I have not called upon Mr. Naziruddin Ahmad to speak.

Mr. Naziruddin Ahmad: Sir. I want only to draw the attention of the House to a point which might influence the votes.

Mr. Vice-President: Why not do so at the third reading stage? I am going to put the amendment to vote.

Mr. Naziruddin Ahmad: But, Sir, this is a matter of great importance.

Mr. Vice-President: You think so. May I ask you respectfully to go back to your seat?

Mr. Naziruddin Ahmad: I shall comply with your request.

Mr. Vice-President: I shall now put amendment No. 1205 standing in the name of Mr. Naziruddin Ahmad to vote.

The question is:

“That in clause (1) of article 54, for the words ‘date on which’, the words ‘time when’ be substituted.”

The amendment was negatived.

Mr. Vice-President: The question is:

“That to clause (3) of article 54, the following be added:—

‘and be entitled to such privileges, emoluments, and allowances as may be determined by Parliament by law and until provision in that behalf is so made, such privileges, emoluments and allowances as are specified in the Second Schedule’.”

The amendment was adopted.

Mr. Vice-President: The question is:

“That in clause (3) of article 54, after the words ‘have all the powers’, the words ‘and privileges, emoluments’ be added.”

The amendment was negatived.

Mr. Vice-President: The question is:

“That article 54, as amended, stand part of the Constitution.”

The motion was adopted.

Article 54, as amended, was added to the Constitution.

Article 55

Mr. Vice-President: The House will now take up for consideration article 55.

The first amendment to this article stands in the name of Shri Himmat Singh K. Maheshwari. As the Member is not in the House it is not moved.

Amendment Nos. 1215 of Mohd. Tahir and 1218 of Prof. Shah are of similar import. Prof. Shah may move his Amendment.

Prof. K. T. Shah: Mr. Vice-President, I beg to move:

“That in clause (1) of article 55 for the words ‘by the members of both Houses of Parliament assembled at a joint meeting in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot’ the words ‘at the same time and in the same manner as the President’ be substituted.”

May I point out that, though it goes against myself this was in consonance with the method of election of the President as originally suggested by me in an amendment on adult franchise which this House has been pleased to reject? I wonder whether I would be quite in order to move it.

Mr. Vice-President: I would ask the honourable Member to use his discretion.

Prof. K. T. Shah: I am not fond of hearing my own voice. I only want to point out the discrepancy that is there.

Mr. Vice-President: I think then the honourable Member had better not move it. This need not, therefore, be put to vote.

Mr. Mohd. Tahir: I beg to move:

“That for clause (1) article 55, the following be substituted:

‘(1) The Vice-President shall be elected in the same manner as provided in article 43.’”

Article 43 lays down the manner in which the President is to be elected. I think, Sir, that so far as the election of the President and the Vice-President is concerned, there should not be any distinction as to the manner thereof. As for the position of the Vice-President, it is the same as that of the President. Of course there is the division of labour and division of work. They occupy more or less the same position and therefore there should be no distinction between them in the manner of their election.

My second point is that the President is to be elected by both Houses of Parliament as well as by the members of the Legislatures of the States. If we do not elect a Vice-President in the same manner, it means that we are going to deprive the Legislatures of the States of the right of electing him. Therefore it would be quite unfair to the members of the Legislatures of the States to deprive them of the power to elect the Vice-President. I have therefore suggested in this amendment that the Vice-President should also be elected in the same manner as the President.

(Amendment Nos. 1216 and 1217 were not moved.)

Mr. Naziruddin Ahmad: Mr. Vice-President, Sir, I beg to move :

“That in clause (1) of article 55 the words ‘assembled at a joint meeting’ be omitted and the clause as so amended, be renumbered as article 55.”

Sir, to my mind, the words which I want to delete create an anomaly. Sir, the provision is to this effect: “The Vice-President shall be elected by the members of both Houses of Parliament assembled at a joint meeting.” I submit that for the purpose of electing the Vice-President, the members of both Houses of Parliament must *vote* but they need not at all *assemble at a meeting*. They need not assemble and there need be no meeting. We are familiar with

[Mr. Naziruddin Ahmad]

the system of election by members to various Committees. The members do not at all meet at a meeting. They are not required even to assemble formally in the House to be presided by the Speaker or the President or the Vice-President or the Deputy Speaker as the case may be. They are not even required or expected to assemble at the same time. There is no joint meeting or any meeting at all. There is no quorum required. They may come between the prescribed hours to the appointed place and the Returning Officer or the Polling Officer records their votes. Even if one member comes and votes, it is enough. No meeting implying the simultaneous presence of a certain number of members is necessary. Sir, the idea of any meeting or a joint meeting is absolutely inapplicable to a matter of votes. It is for this reason that I am asking the House to accept the deletion of the words "assembled at a joint meeting". If these words are deleted, the clause will read thus:

"The Vice-President shall be elected by the members of both Houses of Parliament by means of single transferable vote."

The members need not at all assemble at a meeting. That would involve a number of conditions and a set paraphernalia under the procedure rules which do not apply to a matter of voting. I submit that these words are unnecessary and are misleading and should be deleted. Then the second part of the amendment is to the effect that this may be regarded as an independent article. That is merely formal. The first part of the amendment, I submit, should be carefully considered.

Mr. Vice-President: Amendment No. 1220 standing in the names of Begum Aizaz Rasul and Mr. Naziruddin Ahmad. The Begum Sahiba is not here and so you can move it, Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: Sir, I beg to move:

"That in clause (1) of article 55, the words 'in accordance with system of proportional representation' be deleted."

Sir, the matter has been much mooted in the House as to whether there can be proportional representation when there is only one seat to be filled. There may be many candidates for one seat and so the votes may be transferable. By transferability you elect the most popular man. I will give an illustration. If there are one hundred voters and there are ten seats to be filled up, then ten members representing one group can elect one member and that one member elected by the ten electors represents one-tenth of the electors and that is proportional representation in the body elected. Sir, I want to draw the attention of Dr. Ambedkar to this point. In fact I find that he often misses my points and forgets to reply. I am particularly anxious to draw his attention to this point and it is this. If there are one hundred voters and ten seats, then ten voters forming a group can elect one and that one elected by the said ten voters represents one-tenth of the seats by proportional representation. He represents one-tenth of the voters. Proportional representation applies to a plurality of seats. There can be no proportional representation where only one person is to be elected. He cannot split up his person and represent separately a one-tenth and nine-tenths fractions of electors. As for instance, if you, Sir, are elected by this House, then you do not by any means proportionately represent different groups of the electors. There cannot be any proportional representation in the case of one man seat.

With regard to the transfer of votes, that is a proposition which is really acceptable. If at the first counting of votes the first man gets less than half the votes polled, then at the second counting the vote's transferred are again appropriately allocated, the first man at the first calculation may not be the first man in the second or subsequent calculations. By means of the device of the

transferability of votes, the person or persons having the largest support gets or get elected. Even in cases of single seats, it is desirable to have transferable votes but there is no proportional representation, *i.e.* one man elected can not proportionally represent different groups of electors. Proportional representation according to this system is inevitable in case of a plurality of seats. But in the case of a one seat or one man election, he does not represent any section proportionately at all. Proportional representation is not applicable to a one man vacancy. I think, Sir, there has been a considerable amount of confusion about this proportional representation. I want to draw a distinction between election by proportional representation and transferability of votes. They must not be mixed up together and I think there is a risk of votes. They must not be mixed up together and I think there is a risk of these two independent categories being muddled together as part of each other.

(Amendment Nos. 1221 and 1222 were not moved.)

Mr. Vice-President : Amendment No. 1223 is disallowed as being merely verbal.

Amendment No. 1224 Dr. Ambedkar.

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

“That in clause (2) of article 55, for the words ‘either of Parliament or’ the words ‘of either House of Parliament or of a House’ for the words ‘member of Parliament or’ the words ‘member of either House of Parliament or of a House’, and for the words ‘in Parliament or such Legislature, as the case may be’ the words in that House’ be substituted respectively.”

This is only to improve the language. There is no point of substance in it.

(Amendment Nos. 1225, 1226 and 1227 were not moved.)

Mr. Vice-President : Amendment Nos. 1228 and 1229 are of similar import.

(Amendment Nos. 1228, 1229 and 1230 were not moved.)

Amendment No. 1231 standing in the name of Prof. K. T. Shah may be moved.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

“That in sub-clause (c) of clause (3) of article 55, after the words ‘Council of States’ the following be added:—

‘and is not disqualified by reason of any conviction for treason, or any offence against the safety, security or integrity of the State, or any violation of the Constitution, or has been elected and served more than once as President or Vice-President of the Union’.”

Even if the last words are not quite proper after the decision of the House on article No. 46, I trust the preceding disqualifications that I have suggested would be acceptable to the House.

Sir, there is a school of thought which seems to consider *infra dig* for this Constitution to provide specifically the disqualifications that may attach to candidates for certain offices. I am afraid, I cannot share this view, particularly as these are political offices, in which disqualifications like those enumerated above may become merely a matter of opinions and unless they are laid down positively in the Constitution, people may be found, not only having the courage which Dr. Ambedkar was pleased to doubt, but even having the effrontery, to stand as candidates after having been suspected or charged with violation of Constitution duly proved or even of treason. Treason can be even without violation of the Constitution. May I say, treason will not be called treason if it succeeds, for the very good reason that nobody would dare call it treason then. In that way of looking at it, I feel it necessary that a specific provision be made laying down disqualification on the three or four grounds that I have mentioned.

[Prof. K. T. Shah]

The violation of the Constitution or conviction for treason are items, which in regard to political offences, or in regard to political offices, cannot be merely taken for granted; we cannot, therefore, assume in safety that even if no one would have the courage, or even if nobody has the effrontery, to disregard its disqualifications clearly attaching to an individual was conceded, the electorate would have the common-sense, the decency not to return them. I for one am not so enamoured of any electorate so narrow as is provided in the Draft Constitution to trust that, by party influences, by party prejudices, it may not be possible to disregard such disqualification if the Constitution is silent on the subject. Accordingly, Sir, I commend this motion to the House.

Mr. Vice-President : The next two amendment Nos. 1232 and 1233 are disallowed as being verbal.

Amendment Nos. 1234 standing in the name of Dr. Ambedkar, 1235 and 1239 standing in the name of Mr. Naziruddin Ahmad are of similar import and I am, therefore asking Dr. Ambedkar to move his amendment, which seems to me the most comprehensive one.

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

“That in clause (4) of article 55, for the words ‘or position of emolument’ wherever they occur the words ‘of profit’ be substituted.”

Mr. Vice-President : Amendment No. 1235 stands in the name of Mr. Naziruddin Ahmad. Does he want me to put this to the vote?

Mr. Naziruddin Ahmad : No, Sir, the previous amendment will cover it.

Mr. Vice-President : What about amendment No. 1239?

Mr. Naziruddin Ahmad : The same consideration would apply.

(Amendment No. 1236 was not moved.)

Mr. Vice-President : Amendment Nos. 1237 and 1238 are verbal and are, therefore, disallowed.

Amendment No. 1240 stands in the name of Dr. B. R. Ambedkar. He may move it.

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

“That for sub-clause (a) of the Explanation to clause (4) of article 55, the following be substituted:—

‘(a) he is the Governor of any State for the time being specified in Part I of the First Schedule or is a minister either for India or for any such State, of.’ ”

This matter has already been debated last time.

(Amendment No. 1241 was not moved.)

Mr. Vice-President : Amendment Nos. 1242, 1243 and 1244 are disallowed as being merely verbal amendments.

Amendment No. 1245 stands in the name of Prof. K. T. Shah. I think there is no use in moving this amendment.

Prof. K. T. Shah : All right, Sir.

Mr. Vice-President : Amendment Nos. 1246, 1247 and 1248 are disallowed as being verbal.

Mr. Naziruddin Ahmad : They are not ‘merely’ verbal; they are verbal, no doubt.

Mr. Vice-President: I am afraid, I do not agree with you.

(Amendment Nos. 1249 and 1250 were not moved.)

Mr. Vice-President : Amendment No. 1251 standing in the name of Prof. K. T. Shah, that also is blocked. Amendment Nos. 1252, 1253, 1254 and 1255—I am afraid they are also verbal and I, therefore disallow them.

Mr. Naziruddin Ahmad : Amendment No. 1255 is not verbal.

Mr. Vice-President : If it is not verbal, then it is formal.

Mr. Naziruddin Ahmad : So long as it is rejected, it does not matter how it is rejected.

(Amendment Nos. 1256 and 1257 were not moved.)

Mr. Vice-President : That brings us to the end of the amendments. The article is now open for general discussion.

Mr. Tajamul Husain : We have got ten minutes more and I shall finish before that. Mr. Vice-President, Sir, I take up first amendment No. 1215 moved by my honourable Friend Mohd. Tahir. His amendment seeks to say that the Vice-President shall be elected in the same manner as provided in article 43. Article 43 provides for the election of the President. How is he elected ? He is elected by the elected members of both the Houses of Parliament and by the elected member of both Houses of legislature in the States where there are two Houses. According to article 55 with which we are dealing, he is to be elected not in this manner, but by both the Houses of Parliament, at a joint meeting of the Parliament, the Central Legislature. I oppose this amendment because there is a difference between the President and the Vice-President. The Vice-President has to preside at the meetings of the Council of States. The President of the Republic has nothing to do with presiding at meetings of the legislature. The Vice-President has nothing to do, till he becomes the President in case of vacancy on account of death etc., with the provincial or State legislature. Therefore, article 35, as framed in the Constitution is correct, in my opinion.

The next amendment is amendment No. 1219 moved by my honourable Friend Mr. Naziruddin Ahmad. His amendment is that in clause (1) of article 55, the words “assembled at a joint meeting” be omitted. He does not want that the Vice-President should be elected at a joint meeting of the two Houses. He does not say by which House he is to be elected. Therefore, it has no sense and it should be rejected.

Next, I come to amendment No. 1220 again by Mr. Naziruddin Ahmad and Begum Aizaz Rasul, which says that in clause (1) of article 55, the words “in accordance with the system of proportional representation” be deleted. We are dealing entirely with the system of proportional representation in the election of the President. Supposing there are more than one candidate, say, three or four candidates. That is the safest method, and by the process of elimination you know exactly the votes secured by each according to the system of proportional representation by means of single transferable vote, I presume. That is the best system in a country like this. Therefore, I oppose that amendment also.

Next, I come to the amendment moved by the Honourable Member in charge of this Draft Constitution, the Honourable Dr. Ambedkar. That is amendment No. 1224. I have the honour to oppose this also. My submission is this. When the Honourable Dr. Ambedkar was speaking, I was busy; otherwise, I would have risen on a point of order. My point of order is this and it could be raised even now. A member cannot move many things in one motion. There must be one specific resolution or motion. He has brought in three or four things. If you read this, you will have to rule it out of order. It is hopelessly illegal. I do not know how he could have moved four things in one amendment. He says that in clause (2) of article 55 for the words “either of Parliament or” the words “of either House of Parliament or of a House”, for the words “member of Parliament or” the words “member of either

[Mr. Tajamul Husain]

House of Parliament or of a House” and for the words “in Parliament or such legislature, as the case may be” the words “in that House” be substituted. These are four separate amendments. I may accept one and reject the other. Therefore, I think you should rule it out of order; that would be a very good thing.

Mr. Vice-President : Unfortunately, it cannot be done now. Your advice comes rather too late.

Mr. Tajamul Husain : On a point of order, I am sure Dr. Ambedkar will agree it is never too late.

The Honourable Dr. B. R. Ambedkar : The Office could have done it.

Mr. Tajamul Husain : I hope he will agree if I say that a point of law could be raised at any time. At any time, you can say it is out of order.

Mr. Vice-President : Probably he took advantage of my ignorance of procedure.

Mr. Tajamul Husain : Because of my mistake, I do not see any reason why a wrong thing should go in. It all depends on your ruling.

Next I come to amendment No. 1231 moved by my honourable Friend Prof. K. T. Shah. He says that in sub-clause (c) of clause (3) of article 55, after the words “Council of States” the following be added: “and is not disqualified by reason of any conviction for treason, or any offence against the safety, security or integrity of the State or any violation of the Constitution or has been elected and served more than once as President or Vice-President of the Union.” I think this is hopelessly wrong. I cannot understand why this amendment has been allowed. You will find article 83 which deals with the disqualifications of the members. Article 83 says that a person shall be disqualified for being chosen as, and for being a member of either House of Parliament if he holds any office of profit under the Government of India or the Government of any State, if he is of unsound mind and stands so declared by a competent court, if he is an undischarged insolvent, if he is under any acknowledgment of allegiance or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power, and if he is so disqualified by or under any law made by Parliament. Everything comes there; all these things are mentioned in article 83. Therefore, according to article 83, he cannot be a member and is not entitled to be a member of the Council of States. According to article 55, sub-clause (3), he has to be qualified for election as a member of the Council of States. Therefore to add this in clause (3) has no sense, is meaningless. I am sure Dr. Ambedkar will never accept it and the House will not accept it.

I have divided the amendment into two parts; I have already dealt with the first part. The second part of the amendment says, “or has been elected and served more than once as President or Vice-President of the Union”. Supposing he has served as Vice-President or President for one term, why prevent him from becoming Vice-President again if he happens to be a very qualified man and the people want him and the legislature wants him? I had sent in an amendment to the effect that President could be elected more than once, but as I was not in the House I could not move it; but it was accepted by the House that the President could be elected more than once. Therefore, why prevent the Vice-President from being elected more than once?

Sir, it is exactly 1.30 now and I have finished.

Mr. Vice-President : The House stands adjourned to ten of the clock tomorrow.

The Assembly then adjourned till Ten of the Clock on Wednesday, the 29th December 1948.