

Mr. President : This amendment follows upon the decision which has just been taken. The question is:

“That in clause (a) of article 27, the word and figures ‘article 16’ be omitted.”

The amendment was adopted.

Shri T. T. Krishnamachari : Mr. President, Sir, I move my amendment No. 417 which reads thus:

“That in the proviso to article 27, after the words ‘subject to the terms thereof’ the word ‘and to any adaptations and modifications that may be made therein under article 307 of this Constitution’ be inserted.”

Sir, this has become necessary because of the wording of article 307(2) which we have passed in which we have given power to the President to adapt and modify existing laws so as to fit them in with the provisions of the Constitution, as also the Fundamental Rights that we have passed.

Mr. President : There is no amendment to this. Does anyone wish to say anything about it?

Mr. Naziruddin Ahmad : There is no time for amendments at all.

Mr. President : Well, this has been there from the 15th inst.

Prof. Shibban Lal Saksena : No, we got it this morning.

Mr. Naziruddin Ahmad : At nine o’clock.

Mr. President : I think it is more or less a consequential amendment.

Mr. Naziruddin Ahmad : The effect of this amendment it is impossible to measure, unless one has the genius of Dr. Ambedkar.

Mr. President : I will put it to vote. The question is:

“That in the proviso to article 27, after the words ‘subject to the terms thereof’ the words ‘to any adaptations and modifications that may be made therein under article 307 of this Constitution’ be inserted.”

The amendment was adopted.

Article 42

Shri T. T. Krishnamachari : Mr. President, Sir, I beg to move:

“That in clause (1) of article 42, for the words ‘may be exercised by him’ the words ‘shall be exercised by him either directly or through officers subordinate to him’ be substituted.”

Sir, clause (1) of article 42, as amended, would read thus;

“The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution and the law.”

Sir, this has been found necessary, and it does not involve any serious variation. It is fairly.....

The Honourable Shri K. Santhanam : Sir, does it mean that a Bill passed by a Legislature could be signed by an officer subordinate to the President?

Shri T. T. Krishnamachari : The clause says, “in accordance with the Constitution and the law.” If the Constitution and the law permit that Bills could be authenticated by somebody else, appointed by the President, well, that will be possible.

The Honourable Shri K. Santhanam : The amendment permits such a thing. You are making the Constitution permitting the President to discharge his function through officers subordinate to him.

Mr. President : It relates to the executive powers and not the legislative powers. Signing of Bills, I suppose comes under legislative powers.

Shri T. T. Krishnamachari : Yes, this relates to executive powers. I am grateful to you, Sir.

The Honourable Shri K. Santhanam : If you want another instance, there is the question of the declaration of war. Can it be done by the Commander-in-Chief? Can this power be delegated? I do not think that in the absence of this amendment the executive head loses the power to do certain things through his officers. I do not think this is necessary. I do not think in any other Constitution a similar provision is to be found.

Mr. President : Mr. Kamath has given notice of an amendment to that effect.

Shri H. V. Kamath : I move:

“That in the proposed clause (1) of article 42 in amendment No. 418 of List XVIII, the words ‘either directly or through officers subordinate to him’ be deleted.”

I have no quarrel with the change of the word ‘may’ to ‘shall’. It is necessary and right. (An Honourable Member: What is the number of your amendment?) My amendment has no number, because I gave notice only this morning. I got List XVIII only last night and so could give notice of my amendment to it only this morning.

Sir, while this article was under discussion, it was made clear that the President would not exercise his executive power personally or directly, but certainly only in accordance with the Constitution. The President is only the symbol of executive authority. It does not mean that he will sit in Delhi and order the arrest of so and so and things like that. The Ministers or officers working with him or under him will exercise the executive power in accordance with the Constitution and the law. I fail to see why my honourable Friends Dr. Ambedkar and Shri T. T. Krishnamachari, with the acumen that they possess, still feel it necessary to bring in an amendment of this nature. This is redundant and I submit to the House that the words beginning with “either” and ending with “him” may be deleted, so that the article will read as follows:—

“The executive power of the union shall be vested in the President and shall be exercised by him in accordance with the Constitution and the law.”

That is sufficient for our purpose.

Mr. Naziruddin Ahmad : I submit that this amendment is not only hasty, but absolutely purposeless also. It has been introduced without enough consideration. I will draw the attention of the House to article 130(1) where the executive power of the State is vested in the Governor and may be exercised by him in accordance with the Constitution and the law. While we make a change here in article 42 we forget to make the same change in article 130 (1).

Mr. President : There is an amendment to that effect lower down the Order Paper.

Mr. Naziruddin Ahmad : All right, Sir. It should be obvious that the executive power of the Union, when it vests in the President, may be exercised by him in accordance with the Constitution. This obviously means that he may exercise that power in accordance with the Constitution, *i.e.*, with the help of agents. In fact there are a large number of departments of the Governments for the purpose such as the Courts, the Police, the Jails and so on. Is it to be supposed that unless we make it clear that the President shall exercise his powers through agents he has to act on his own initiative and personally? It is absurd to suppose so. This attempt to clarify things is grossly exaggerating the idea of going into details. I submit that when we vest the power in the Government or the President, we allow his executive to work in his name. It shows that the President and the Governors are merely legal entities and ornamental figureheads. Everything is done in the

name of the President. This is the purport of article 42(1) that the executive power may be exercised by the President in accordance, with the Constitution. That is the obvious significance. Then what is the object of changing the word ‘may’ into shall? The use of the word ‘may’ is very apt.

Shri H. V. Kamath: I think the word ‘shall’ refers to the constitutional exercise of that power.

Mr. Naziruddin Ahmad : The word ‘may’ is enough for the purpose. The exercise of this power is optional, and if it is exercised it must be in accordance with the Constitution. The President may not exercise it at all; and if he exercises it he shall do so in accordance with the Constitution. The word ‘may’ is enough for the purpose. It is difficult on the spur of the moment to see the weakness of this last-minute amendment. I ask, when is the Drafting Committee to finish its labours in order to give us some amount of rest and contentment? We want to go home as early as possible. But the Drafting Committee will not let us do so. As I have repeatedly submitted, they should make tip their minds and give to the House a complete picture of their drafts and not come here every day with fresh amendments of this sort. It is extremely tiresome and irksome for Members to work under these conditions.

Mr. President : I was going to call upon Shri Alladi Krishnaswami Ayyar to explain the position. But before doing so, I want to put him one question which strikes me also. It is said, ‘through officers subordinate to him’. Does it mean that it is contemplated that the President will have officers in the provinces on behalf of the Union, or does it mean that there will be only provincial officers who will act as subordinates to the President? Is it contemplated, as in America, to have two separate sets of officers, one belonging to the Union and the other belonging to the provinces?

Shri Alladi Krishnaswami Ayyar : In regard to purely federal subjects you can have purely federal official agency; but in regard to concurrent subjects you can utilise the provincial agencies. If the Federal Government is not satisfied with the provincial agencies, the Constitution provides that the Federal Government may have its own agency in regard to concurrent subjects. It is only in regard to provincial subjects that the entire provincial agency is entrusted with the task. There you use the officers subordinate to you, though they may not be directly subordinate. There is power of intervention even when the provincial agency is utilised. Inasmuch as it is for the enforcement of the Federal subjects, he will have the right to utilise the provincial agency.

I want to say something later about the general point raised.

Shri Brajeshwar Prasad : Mr. President, Sir, I rise to oppose the amendment which has been moved by my Friend, Mr. T. T. Krishnamachari. I hold the opinion that the amendment is not merely thoughtless as my Friend, Mr. Naziruddin Ahmad characterised it, but it is dangerous. The executive power of the President must vest in his hands and in his hands alone, because he has to perform under the Constitution certain functions; he has to use certain powers. I do not think unlike my Friend, Mr. Naziruddin Ahmad, that the President is merely an ornamental head. Had he been so, I would have no difficulty in accepting the amendment moved by Mr. T. T. Krishnamachari, but my reading of the Constitution is that the President has very large powers. I therefore hold the opinion, Sir, that it is dangerous, it is risky—it is in my opinion not merely thoughtless—to empower the President to delegate his powers under the Constitution into the hands of executive officers.

Pandit Thakur Das Bhargava : Mr. President Sir, with reference to this amendment, I am not satisfied whether this amendment is necessary. As a matter of fact, when we speak of the exercise of the powers of the President under article 42 and the use of the words “may be exercised by him,” we understand that these

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powers are being exercised by the President in an almost impersonal manner. So far as the executive power of the Union is concerned, it is exercised by the President or by the Governor or by the Prime Minister or by many other officials. It is not that the President must exercise it in a personal manner. There are certain rules and regulations by virtue of which many officials have to exercise the executive power of the Union. If these words are there, it would give rise to the argument that the powers should either be personally exercised by him or by officers subordinate to him. When these officers so exercise these powers in many cases the President does not even know that these powers are being exercised in his name. Therefore, my submission is that the words "by him" do mean that either the President himself could exercise them or he could delegate those powers.

The second question may arise that the powers delegated by him can be exercised only by people to whom they are delegated because of a certain maxim that delegated powers cannot be delegated further. It would raise many other difficulties if we regard that the exercise by him of these powers is either personal or it is only through officers subordinate to him. Therefore my submission is that the words as they stand are quite sufficient and do not give rise to any sort of ambiguity. Moreover, Sir, I do not agree that the use of the word "shall" is necessary. In a particular context this word "may" does mean "shall".

So far as the question raised by Mr. Kamath is concerned that the powers shall be exercised in accordance with the Constitution and the law, the word "may" does not relate in any manner to the words "in accordance with the Constitution and the law". My submission is that the words that we have passed already are enough and they answer all the purposes they are intended to answer and no change need be made.

Prof. Shibban Lal Saksena : Sir, the question is, if this amendment is not, made, what harm would accrue? If I see it from that point of view, I think that this amendment is not only redundant, but it is positively injurious. In fact, nobody thought so far that this article 42 was incomplete. It says that the executive power of the Union shall be vested in the President and may be exercised by him in accordance with the Constitution and the law. Now the amendment says that that power shall be exercised by him either directly or through officers subordinate to him. Is it necessary? Does not the Constitution and the law say that the President shall use officers provided for him for carrying out his purpose. In fact, the clause says "in accordance with the Constitution and the law". As the Constitution and the law prescribe how the President shall exercise his powers either himself or through officers, I think these words are absolutely unnecessary. I do not think any amendment is necessary.

The Honourable Shri N. Gopalaswami Ayyangar (Madras: General): Sir, I feel some difficulty in appreciating the objection which has been raised to this particular amendment. Article 42 says that the executive power of the Union shall be vested in the President. We all know or lots of powers which are vested in the President but actually he does not exercise those powers. He simply exercise them at the dictation of other people who are responsible to the legislature. That is point number One which I should like the House to appreciate.

The Second thing is that the Constitution itself contemplates that executive action, which is really the exercise of executive power, cannot as a matter of fact be done by the President directly. Look at article 64(1). It says:

"All executive action of the Government of India shall be expressed to be taken in the name of the President."

So, the actualities of the case require that in innumerable matters the Constitution or the law vests the power in the President, but the actual exercise of it is to be left to other people who are held to be responsible to him. No doubt, he takes the responsibility for action taken by these officers. It is impossible as a matter of practical administration for the President to exercise all the powers that are vested in him by the Constitution. Take, for instance, even the powers which relate to the exercise of his functions in relation to legislation. On a number of matters, for instance, the power of summoning the Assembly, dissolving the Assembly and so on, he takes action, but the exercise of that power is on the advice of his constitutional advisers. And in the ordinary course he cannot really exercise all the powers that are vested in him. What is the objection to his asking officers subordinate to him, who owe responsibility to him, to exercise such powers? As it is absolutely unnecessary for him even to look at them before those orders issue, we ought to give him the latitude to select such officers in whom he can have confidence and who may be trusted to exercise this power.

I have no doubt noticed the objection: what is he to do in regard to giving assent to Bills when passed by the Legislature? True, ordinarily we expect the President to sign those Bills in token of his assent to express his assent on them. Naturally in a case of that sort he would not ordinarily ask other officers to sign for him, but assuming that circumstances arise in which he is unable to append his signature to an assent of that sort, it may be necessary for him to ask that somebody else should sign the assent in his name. I do not see anything which is legally improper, or even from a constitutional point of view improper, for somebody to sign even an assent to a Bill passed by the Legislature if the President is unable to do so or thinks in particular circumstances other people might sign in his name. I think that in order to obviate difficulties which would actually arise, the addition of these words is very necessary.

Shri H. V. Kamath: Is not the purpose that my Friend Mr. Gopalaswami Ayyangar has in view sufficiently met by the phrase “in accordance with the Constitution and the law?” Whatever is delegated to other persons or agents will be done by the President in accordance with the Constitution and the Law.

The Honourable Shri N. Gopalaswami Ayyangar : In that case we shall have to go to Parliament for a law in every case he wants to authorise an officer to do so. But if Parliament can authorise it, why not the Constitution do so?

Shri Alladi Krishnaswami Ayyar : Sir, some of the points I wanted to urge have been anticipated by my Friend Mr. Gopalaswami Ayyangar. There is nothing novel in trying to bring the present provision in line with Section 7 of the Government of India Act, 1935. Though Mr. Naziruddin Ahmad, in the plenitude of his literary wisdom, has chastised the Drafting Committee as being careless, I would invite his attention to the language used by the Parliamentary draftsmen in Section 7 of the Government of India Act. I am reading the Section:—

“Subject to the provisions of this Act, the executive authority of the Federation shall be exercised on behalf of His Majesty by the Governor either directly or through officers sub-ordinate to him.....”

Therefore, there is nothing novel or fantastic in making an express provision to the effect that the executive authority can be exercised through official agencies.

So far as the general executive power is concerned, it is vested in the

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President. So far as the responsibility for carrying on the executive administration is concerned it is vested in the Ministers. So far as the question of utilisation of official agencies is concerned, it is implicit in the very foundation of the Constitution. I should think that even under a provision as it stands without the amendment, it would be perfectly competent for the President to institute any official agency, though the ultimate responsibility for the acts of any official agency, would be that of the President advised by his Cabinet. As a matter of fact, when the original article was drafted it was on the lines of article 12 of the Irish Constitution. That article runs thus:—

“There shall be a President..... who shall exercise and perform the powers and functions conferred on the President by this Constitution and by law.”

Shri H. V. Kamath : That is an argument against your view.

Shri Alladi Krishnaswami Ayyar : The present amendment says that the President may exercise the power either directly or through officers subordinate to him.

Shri H. V. Kamath: I have got a copy of the Irish Constitution with me here. Officers are not at all mentioned there.

Shri Alladi Krishnaswami Ayyar : If only you have the courtesy to listen to me you would not have raised the objection. I pointed out that even without an express provision like that it would be competent for the President to have or to institute any official agency, and there are Constitutions in which express provision is not made, and I referred to article 12 of the Irish Constitution which to some extent will support Mr. Kamath's point of view. There are some counsel who, even when the opposite side makes a concession in favour of one's contention, would oppose the opposite side. That seems to be the attitude of my friend Mr. Kamath. What I pointed out was that it is merely a question of drafting and making the provision clear. The Parliamentary draftsmen in Section 7 of the Government of India Act made express reference to officials. In the Irish Constitution there is no reference to officials. Even without a reference to officials it would be perfectly competent for the President to utilise official agency for the purposes of carrying on executive function, though ultimately the responsibility will rest upon the President and the executive in regard to the discharge of any function vested in the executive whether under any statute or whether under the general principles of the Constitution in regard to the functions of the executive.

Therefore, I submit, Sir, that in making quite clear what is implicit, there is nothing wrong. “Official” is the word used there, whatever objection you may have in regard to the Government of India Act of 1935, generally, there can be no objection to adopting this wording here. I would also go further and urge the necessity for such a provision from a constitutional point of view. The question as to the exact extent to which the President can delegate his function has been debated in America. If, for example a power is vested in the President, questions might arise as to whether it is possible at all to delegate his authority or whether in every case issue should come up before the President. We are told that in fact nearly 2,000 signatures have to be obtained from the President almost every day so far as the presidential system is concerned. That has been pointed out recently in a book published in regard to the American Constitution as to the necessity of Presidential signature in regard to very many Acts of which he may know nothing.

Therefore, we have to divorce these two questions: the question of the, ultimate responsibility and the question of the particular agency which may be employed in the working of any governmental institution or any structure. Therefore a statute might provide that a particular agency may carry out orders.

Even there it does not mean that the Government of the country is not responsible for the proper functioning of the statutory agency. The agency may be a statutory agency or it may be an administrative agency. In all these cases there is nothing to prevent the executive from employing any particular official agency; by putting in the word "officers" all the theory of delegation which has loomed large in the American Constitution will be set at rest.

It is possible that having regard to the fact that our system is founded mainly on British ideas, even without such a provision an official agency might be employed. In the other Dominion Constitutions, a general provision is incorporated to the effect that the power is vested in the Queen. The Australian and the Canadian Constitutions say so. It is merely the employment of a particular language and I see absolutely no objection to that: The average layman need not go into the question as to the American law or Constitution or to the provisions of Dominion Constitutions. To make it clear to the laymen in this country that an official agency can be employed, this provision is a salutary one.

Shri H. V. Kamath: On a point of clarification, Sir, may I ask my Friend Mr. Alladi Krishnaswami whether any other Constitution in the world makes such a reference to subordinate officers of the executive head of the State in this context.

Mr. President : He read out a Section from the Government of India Act.

Shri H. V. Kamath: The Government of India Act is no Constitution of a free State.

Shri Alladi Krishnaswami Ayyar : This question has nothing to do with freedom.

Shri H. V. Kamath: It is a stupid provision.

Mr. President : I will put this to vote. Mr. Kamath's amendment is really a negative of this.

Shri H. V. Kamath : No, Sir.

Mr. President : Very well, I will put yours to vote first. The question is :

"That in amendment No. 418, in the proposed clause 1 of article 42, the words either directly or through officers subordinate to him be deleted."

The amendment was negatived.

Mr. President : Then I will put the proposition moved by Mr. Krishnamachari. The question is:

That in clause (1) of article 42, for the words 'may be exercised by him' the words 'shall be exercised by him either directly or through officers subordinate to him be substituted.'

The amendment was adopted

Mr. President : I think it is one o'clock now and we shall adjourn. I desire to point out to Members that we shall take up the other, articles, of which notice is given in today's agenda at 4.30 this afternoon.

Pandit Hirday Nath Kunzru : When we agreed to a session being held today it was, I think, understood that the session would be held only in the morning. I do not think anybody was prepared for an afternoon session. I should earnestly request you, therefore, to hold another session tomorrow morning. We have engagements this afternoon which were made because in the normal course the Assembly does not meet in the afternoons.

Mr. President : I did not understand, at any rate, that we would not sit in the afternoon today. It was left open and it is for us to decide now whether we shall sit in the afternoon or not. In view of the fact that many Members are anxious to complete the Second Reading stage and many of them are anxious to go away on account of Dipawali, I think we should sit in the afternoon today. If we do not sit this afternoon, it may be that we may not be able to finish even tomorrow.

The Honourable Shri N. Gopalaswami Ayyangar : As a matter of fact sir, we and several others have accepted invitations to a party at the Government House at 5 P.M. today. If we start at 4.30, I do not think we can do any business.

The Honourable Dr. B. R. Ambedkar : In that case we may meet at 4.

Mr. President : This House has the first claim upon its Members. I therefore fix 4.30 this evening. The House stands adjourned till 4.30 p.m.

The Assembly then adjourned for Lunch till Half-past Four of the Clock.