

[The Honourable Dr. B. R. Ambedkar]

or the Senate, if not for all the purposes of the legislature such as taking part in the voting, at least to sit there and to answer questions and to take part in the legal proceedings of debate and discussion of any particular measure that may be before the House. In view of that, it will be realised that the Americans themselves have begun to feel a great deal of doubt with regard to the advantage of a complete separation between the Executive and the Legislature. There is not the slightest doubt in my mind and in the minds of many students of political science, that the work of Parliament is so complicated, so vast that unless and until the Members of the Legislature receive direct guidance and initiative from the members of the Executive, sitting in Parliament, it would be very difficult for Members of Parliament to carry on the work of the Legislature. The functioning of the members of the Executive along with Members of Parliament in a debate on legislative measures has undoubtedly this advantage, that the Members of the Legislature can receive the necessary guidance on complicated matters and I personally therefore, do not think that there is any very great loss that is likely to occur if we do not adopt the American method of separating the executive from the Legislature.

With regard to the question of separating the Executive from the Judiciary, as I said, there is no difference of opinion and that proposition, in my judgment, does not depend at all on the question whether we have a presidential form of government or a Parliamentary form of government, because even under the Parliamentary form of Government the separation of the judiciary from the Executive is an accepted proposition, to which we ourselves are committed by the article that we have passed, and which is now forming part of the Directive Principles. I, therefore, think that it is not possible for me to accept this amendment.

Mr. Vice-President : I shall now put the amendment of Prof. K. T. Shah to vote.

Prof. K. T. Shah: Can I speak a few words in reply, Sir? This is a new article, and not an amendment.

Mr. Vice-President : Though it may be an article, it is an amendment to the Draft Constitution. This would create a very awkward situation. We have established a convention after a good deal of difficulty, and I am quite sure Prof. Shah would realize the difficulties of the Chair.

(Prof. Shah resumed his seat.)

Mr. Vice-President : Thank you. You are most reasonable and helpful.

The question is:—

“That after article 40, the following new article be inserted:

‘40-A. There shall be complete separation of powers as between the principal organs of the State, viz., the Legislative, the Executive, and the Judicial.’ ”

The motion was negatived.

Mr. Vice-President : So far as I remember, our work commences with amendment No. 1033. This is disallowed as a formal amendment.

Amendment No. 1034 is I think blocked in view of the fact that a new article—39-A—has been already accepted by the House.

Then we come to article 41.

Article 41

Mr. Vice-President : After going through the amendments one by one, I find that amendment Nos. 1037, 1038 and 1039 are mainly concerned with the name our Motherland would bear. I think they ought to be held over for

the present. That pertains to article 1, the consideration of which we have postponed for the time being.

The Honourable Shri K. Santhanam: I want to know whether it is your ruling that these amendments are not relevant to these articles. If you decide to keep them over, then we cannot pass that article.

Mr. Vice-President : You are a pundit in these technicalities. Could we not transfer them to article 1 by some device or other, so that we could pass this article?

The Honourable Shri K. Santhanam: If the name is changed in article 1, the consequential changes will be made. These amendments may be ruled out for the present and may be taken up when you take up article 1.

Shri H. V. Kamath (C. P. & Berar : General): I did not hear a word of what the honourable Member said.

Mr. Vice-President : Mr. Santhanam, please come to the mike and explain the position. Please do not get impatient, Mr. Kamath.

Shri H. V. Kamath : We are impatient to hear him, Sir.

The Honourable Shri K. Santhanam: When we take a decision regarding the names to be used, even if we take a decision either in the title or in article 1, the consequential changes will be made throughout the Constitution. Therefore, I do not see any necessity that we should take it up at every point. If you want to pass this article, then all these things will have to be treated as not relevant to this particular article. Otherwise, every such article will be held up and these amendments would be kept pending and so long as they are not disposed of, we cannot pass the article. Therefore, I suggest that all such amendments should be taken as not pertaining to any particular article, but pertaining to the general Constitution.

Mr. Vice-President : I think that for practical reasons, we should adopt the procedure suggested by Mr. Santhanam.

Then we come to amendment No. 1035. This deals not only with the future name of our motherland, but is also concerned with the salary of the President. So it is ruled out.

Prof. K. T. Shah : Sir, I beg to move:—

“That for article 41, the following be substituted:—

‘41. The Chief Executive and Head of the State in the Union of India shall be called the President of India.’ ”

I do not read the alternative, and I shall confine myself only to the main proposition.

In the title of the President, instead of the clause giving it barely as it stands, I should like that there be some indication of the status and power of the President. There shall be a President of India whose position and title should be made a little more clear and definite than it is at present. I therefore, describe him as “the Chief Executive and Head of the State”.

I take it that there is no dispute regarding the status and position of the President as the Head of the State. That is, in a way different from the Head of the Government, which may be the Prime Minister or the President himself, as I had conceived it. But whether or not there is a separate head of the Government, there must be, for formal, ceremonial and solemn occasions, a representative of the people collectively embodying the sovereignty of the whole people and of the State as a whole. As such, I think, it would be better if my amendment is substituted for the original article, and the President is also described as the Chief Executive and Head of the State in the Union of India, called the President of India. I do not think I need take the time of the House

[Prof. K. T. Shah]

by dilating upon this, because all that I can say would be a verbal expansion of the idea so briefly put forward in this amendment. Therefore, without taking further time, I commend it to the House.

Mr. Vice-President : You do not move the second part?

Prof. K. T. Shah : I do not move the second part.

Mr. Vice-President : Amendment No. 1037 has been ruled out for reasons already known to the House. Amendment No. 1038 has also been ruled out.

(Amendment No. 1039 was not moved.)

The article is now open for general discussion, although I do not think there is any need for it.

Shri Mahavir Tyagi: (United Provinces : General): Sir, I do not want to take up much of the time of the House; but since I have not taken any for the last week or more, I think I deserve taking a minute.

My only point is to emphasise the amendment tabled by Prof. K. T. Shah which points out a direction which is very important from the point of view of a discussion on the floor of this House. There is a lack in the constitution. He has rightly pointed out—I do not know whether this is the proper place to mention this idea—that we must define as to who is the representative of the people so far as sovereignty is concerned. He says: “the Head of the State in India represents the sovereignty of the people.” We have not yet decided the question of the residence of sovereignty. I had moved an amendment on this point and it was promised that it would be taken up for consideration when we discuss the Preamble to the Constitution. I am waiting for that opportunity. Sir. But, I feel that the Head of the State must also represent the sovereignty of the people. After all, how otherwise will the people express themselves? No Government in democratic countries can ever claim to be fully representative of the people as a whole. The Government here, although they represent the ambitions and aspirations of the people, and even though they are the most popular people in the country, it cannot be said that they are the representatives of the total population of India; they are not the representatives of the whole people because they have a party bias and a party manifesto on which they have been elected. The Government must as a rule represent the majority party in the country. A Government cannot therefore be the true spokesman of the whole people. There must be some unit, some authority, some person in whom paramountcy or sovereignty should be vested, in whom the prerogatives of the people should be vested. I therefore submit, Sir, that it would have been a good idea if we had laid down that the President was not only the Executive Head of the State but also a symbol of the sovereignty of the people.

Sir, I want to make a distinction between people and the State. The State has always the bias of administration. In the problem of the governed and the governor, whether it be democracy or any other cracy, the State governs and the people are governed. It is therefore necessary that in a democratic State full chance of expression should be given to the minorities or opposition. Because, when the minorities speak in a House of Legislature or in a Parliament, they speak purely with the bias of the people. In this House, as it is, if it were sitting as Legislative Assembly—we are now the Constituent Assembly—Dr. Ambedkar and his colleagues would always represent the bias of the administration. They know the difficulties of administration; but the people want their own bias to be expressed irrespective of what the administrative difficulties are. Such expressions and demands always come through the mouthpiece of the opposition, which has to be protected against the majority rule.

Mr. Vice-President : Will you kindly explain how the question of the President comes in here?

Shri Mahavir Tyagi : I want to emphasise that it is an essential requirement of the Constitution that the sovereignty of the people must also be vested in some person or somebody other than the Government. I only want to press the argument that the Government, however popular it may be, cannot claim to be sovereign. It would have been a good idea if the President were made a symbol of the people's will so that he could command respect and devotion from all alike. He could then stand between the people and the Government. In that case he would have the capacity not only of being the Executive Head, but also of being the representative of the sovereignty of the people so that in him the minorities also could find their reflection and protection. Sovereignty lies in the people; but how will it express itself? It cannot be expressed by the Government, because the Government is not the total people. Sometimes, it may be majority of only fifty one per cent and it may also be possible that a forty-nine per cent minority may go unrepresented altogether. If the House agrees to vest the paramountcy and all prerogative and sovereignty in the people, then there must be some authority where from the sovereignty may flow and express itself.

The Honourable Shri K. Santhanam: On a point of information, Sir in this Constitution, Parliament is the repository of the sovereignty of the people. That is the scheme of all constitutions where we have the Parliamentary executive.

Shri Mahavir Tyagi: My friend has taken me aback; I cannot immediately reply to his argument. But, I feel that sovereignty will not be represented by the Parliament because the Parliament also included the Council of States. I must submit that the Council of States is not representative of the people because as envisaged here, the Council of States will be the representative only of the majority parties in the provinces. That House will not come through the single transferable vote system of proportional representation; it will be a House of the States and the members thereof must represent the various States which in turn are again the representatives of the majority party. In these circumstances, the members of the Upper House will be representatives of their Governments and not of the people. There are to be 250 members of the Council of States. They will always be biassed by the difficulties of Governments in the various States. They will come here to represent their Governmental difficulties and to poise their demands from the point of view of their Governments. I submit....

Shri T. T. Krishnamachari: (Madras: General): They will also be elected by the majority party.

Mr. Vice-President : Instead of being floored.....

Shri Mahavir Tyagi: I cannot be floored.

Mr. Vice-President : Instead of being floored....

Shri Mahavir Tyagi: I am in possession of the floor myself.

Mr. Vice-President : Instead of being floored, will it not be better if you reserve these observations to the proper time?

Shri Mahavir Tyagi: I am aware of your anxiety to finish the discussion early. Sir, my friend Mr. T. T. Krishnamachari says that as the members of the Council of States will also be elected by the elected representatives of the people, they will represent the people. I claim they will not. For instance I have been elected by the people in my province as an M.C.A. but if I am deputed to be on the Public Service Commission, certainly in the Commission I shall act purely as a member of the Commission; I will not use my capacity as a representative. Likewise, when you elect members to the Council of

[Shri Mahavir Tyagi]

States, they cannot use their representativeness of the people, they will represent their respective States. They are deputed to represent the Governments. I therefore submit that the Parliament will not be so ideal a representative of people's sovereignty, as the Parliament will always be run by the majority party. If those who are governed cannot express themselves direct, then let their mouth-piece—the President—speak for them and let him guard the interest of the minorities and also of the people as a whole. I submit, Sir, it is a question which warrants deep consideration. I therefore hope that the House will give due consideration to the suggestion made.

Shri H. V. Kamath : Mr. Vice-President, this article 41 shares the honour with article 1 as being the shortest article in the Constitution. This is a seven-word article and there need not be much discussion on this very short article. I do not therefore propose to dilate upon the doctrine of Sovereignty which has been adumbrated by my friend Professor Shah and further adverted to by my friend Mr. Tyagi. I want, Sir, by your leave, to draw the attention of the House to the manner in which this article as it was adopted by this Assembly last year in August 1947 has been sought to be modified in the Draft Constitution. I hope, Sir, Dr. Ambedkar is paying attention. I wish to draw his attention to the modification that has been made in the article after it was adopted last year by this Assembly. I do not know what reasons the wise men of the Drafting Committee had to make such an alteration in this article. I have got the Reports of Committees—First Series and Second Series—both agree so far as the wording of this article is concerned. The original draft presented by the Committee over which Pandit Jawaharlal Nehru presided and of which Committee, I think, Dr. Ambedkar too was a member, of the Union Constitution Committee,—that report was presented by Pandit Jawaharlal Nehru on the 4th July 1947 and considered by the Assembly and adopted partly by this Assembly sometime in August 1947. If Dr. Ambedkar turns to this Report as adopted by the Assembly, he will see that the article corresponding to article 41 reads as follows:—

“The Head of the Federation shall be the President (Rashtrapati).”

Now in the draft the article has been modified to read as follows:—

“There shall be a President of India.” On the Committee which presented this report to the Assembly last year, not merely Dr. Ambedkar but along with him some of the wise men of the Drafting Committee—the majority of the wise men—were on the Committee. I think only Mr. Madhava Rao and Mr. Khaitan were not on the Union Constitution Committee. The others were all present in the Committee and they have not appended a minute or a note of dissent to the Report of the Constitution Committee presented by the Committee to the Assembly. I want to know from Dr. Ambedkar why this word ‘Rashtrapati’ has been deleted from the article which appears in the Draft Constitution today. Is it because, Sir, that we have now developed—latterly developed, cultivated a dislike—a new-fangled dislike of some Indian or Hindi words and try to avoid them as far as possible in the English draft of the Constitution? I have not in mind the word ‘Pradesh’; but certainly we have adopted words like ‘beggar’ and ‘panchayat’. I wonder how many Britishers, how many Anglo-Americans know the words ‘beggar’ and ‘panchayat’—except those Britishers who have served in India. I therefore want to know the reason which actuated Dr. Ambedkar and the wise men of the Drafting Committee to delete this word ‘Rashtrapati’ from this article as it has been presented to the Assembly. Is the reason this, that title or that name or designation, that appellation should be reserved exclusively for the Congress President. President of the Congress Organization which functions today, and perhaps will function even after this new Constitution has come into force? The argument may be advanced that the word ‘Rashtrapati’ is not

much in vogue, has not been in vogue in India for many years. I do not know whether Dr. Ambedkar has been very familiar or acquainted with this title or word 'Rashtrapati' during the last twenty-five years. During the last two generations, however, the word 'Rashtrapati' has gained common currency, has been in vogue to describe the person who is the Head of the Congress Organization, meaning the Head of the Nation. Or is it because that the wise men of the Drafting Committee when they shook themselves free of certain shackles—because when they were members of the Constitution Committee, Pandit Nehru was there who had been Rashtrapati himself but when they shook themselves free from the shackles of other members like Nehru, they get together as seven members of the Drafting Committee, did they think that this word 'Rashtrapati' is not very pleasant or well-sounding or is it because in their heart of hearts they did not have really much regard for this word apart from the person who used to be the Rashtrapati in former times?

Mr. Vice-President : You need not give the reasons for Dr. Ambedkar's action.

Shri H. V. Kamath: I just wanted to put forward the reasons that might have actuated Dr. Ambedkar and put forward my own point of view. So I would like to know from Dr. Ambedkar, in view of the article as passed by the Assembly last year unanimously, why he and his colleagues of the Drafting Committee have sought to delete this word 'Rashtrapati' from the article as it appears in the Draft Constitution.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, before I take up the points raised by Prof. K. T. Shah in moving his amendment, I would like to dispose of what I might say, a minor criticism which was made by Mr. Kamath. Mr. Kamath took the Drafting Committee to task for having without any warrant altered the language of the report made by the committee dealing with the Union Constitution. If I understood him correctly, he accused the Drafting Committee for having dropped the word "Rashtrapati" which is included in the brackets after the word President, in paragraph 1 of that committee's report. Now, Sir, this action of the Drafting Committee has nothing to do with any kind of prejudice against the word "Rashtrapati" or against using any Hindi term in the Constitution. The reason why we omitted it is this. We were told that simultaneously with the Drafting Committee, the President of the Constituent Assembly had appointed another committee, or rather two committees, to draft the constitution in Hindi as well as in Hindustani. We, therefore, felt that since there was to be a Draft of the Constitution in Hindi and another in Hindustani, it might be as well that we should leave this word "Rashtrapati" to be adopted by the members of those committees, as the word "Rashtrapati" was not an English term and we were drafting the Constitution in English. Now my friend asked me whether I was not aware of the fact that this term "Rashtrapati" has been in current use for a number of years in the Congress parlance. I know it is quite true and I have read it in many places that this word "Rashtrapati" is used, there is no doubt about it. But whether it has become a technical term, I am not quite sure. Therefore before rising to reply, I just thought of consulting the two Draft Constitutions, one prepared in Hindi and the other prepared in Hindustani. Now, I should like to draw the attention of my friend Mr. Kamath to the language that has been used by these two committees. I am reading from the draft in Hindustani, and it says:—

“HIND KA EK PRESIDENT HOGA.....”

The word "Rashtrapati" is not used there.

Then, taking the draft prepared by the Hindi Committee, in article 41 there, the word used is प्रधान (PRADHAN). There is no "Rashtrapati" there either.

Shri H. V. Kamath: But, Sir, the point I raised was that the article as adopted by this House had word “Rashtrapati” incorporated in it. The reports of the Hindi or Hindustani Committees are not before the House, and all that I wanted was that this word should find a place in the Draft Constitution now being considered here.

The Honourable Dr. B. R. Ambedkar : And I am just now informed that in the Urdu Draft, the word used is “Sardar”. (*Laughter*).

Now, Sir, I come to the question which has been raised substantially by the amendment of Prof. K. T. Shah. His amendment, if I understood him correctly, is fundamentally different from the whole scheme as has been adopted in this Draft Constitution. Prof. K. T. Shah uses the word “Chief Executive and the Head of the State”. I have no doubt about it that what he means by the introduction of these words is to introduce the American presidential form of executive and not the Parliamentary form of executive which is contained in this Draft Constitution. If my friend Prof. Shah were to turn to the report of the Union Constitution Committee, he will see that the Drafting Committee has followed the proposals set out in the report of that Committee. The report of that Committee says that while the President is to be the head of the executive, he is to be guided by a Council of Ministers whose advice shall be binding upon him in all actions that he is supposed to take under the power given to him by the Constitution. He is not to be the absolute supreme head, uncontrolled by the advice of anybody, and that is the Parliamentary form of government in the United States. Undoubtedly, there are various Secretaries of State in charge of the various departments of the administration of the United States, and they carry on the administration, and I have no doubt about it, that they can also and do as a matter of fact, tender advice to the President with regard to matters arising under their administration. All the same, in theory, the President is not bound to accept the advice of the Secretaries of State. That is why the United States President is described as the Chief Head of the Executive. We have not adopted that system. We have adopted the Parliamentary system, and therefore my submission at this stage is that this matter which has been raised by Prof. K. T. Shah cannot really be disposed of unless we first dispose of article 61 of the Draft Constitution which makes it obligatory upon the President to act upon the advice of the Council of Ministers. Do we want to say it or not, that the President shall be bound by the advice of his Ministers? That is the whole question. If we decide that the President shall not be bound by the advice of the Council of Ministers, then, of course, it would be possible for this House to accept the amendment of Prof. K. T. Shah. But my submission is that at this stage, the matter is absolutely premature. If we accept the deletion of article 61 then I agree that we would be in a position to make such consequential changes as to bring it into line with the suggestion of Prof. Shah. But at this moment, I am quite certain that it is premature and should not be considered.

Mr. Vice-President : I am now going to put the amendment to vote, amendment No. 1036, first part, standing in the name of Prof. K. T. Shah. The question is:

“That for article 41, the following be substituted:—

‘The Chief Executive and Head of the State in the Union of India shall be called the President of India.’ ”

The motion was negatived.

Mr. Vice-President : The article will now be put.

The question is:

“That article 41 stand part of the Constitution”.

The motion was adopted.

Article 41 was added to the Constitution.