

[The Honourable Dr. B. R. Ambedkar]

the Federal Law is vested in the President of the Union. The power to commute sentences for offences enacted by the State Legislatures is vested in the Governors of the State. In the case of sentences of death, whether it is inflicted under any law passed by Parliament or by the law of the States, the power is vested in both, the President as well as the State concerned. This is the scheme.

With regard to the amendment of my friend Mr. Tajamul Husain, his object is that the power to commute sentences of death permitted to the Governor should be taken away. Now, sub-clause (3) embodies in it the present practice which is in operation under which the power of commuting the death sentences is vested both in the Governor as well as in the President. The Drafting Committee has not seen any very strong arguments for taking away the power from the Governor. After all, the offence is committed in that particular locality. The Home Minister who would be advising the Governor on a mercy petition from an offender sentenced to death would be in a better position to advise the Governor having regard to his intimate knowledge of the circumstances of the case and the situation prevailing in that area. It was therefore felt desirable that no harm will be done if the power which the Governor now enjoys is left with him. There is, however, a safeguard provided. Supposing in the case of a sentence of death the mercy petition is rejected, it is always open, under the provisions of this article, for the offender to approach the President with another mercy petition and try his luck there. I do not think there is any great violation of any fundamental principle involved or any inconvenience that is likely to arise if the provisions in the draft article are retained as they are.

Mr. Vice-President : Now I will put the amendment of Mr. Tajamul Husain to vote. The question is:

“That clause (3) of article 59 be deleted.”

The amendment was negatived.

Mr. Vice-President : I shall now put article 59 to vote. The question is:

“That article 59 stand part of the Constitution.”

The motion was adopted.

Article 59 was added to the Constitution.

Article 60

Mr. Vice-President : The House will now take up for consideration article 60 of the Draft Constitution. Mr. Ahmad Ibrahim may move amendment No. 1289.

K. T. M. Ahmad Ibrahim Sahib Bahadur (Madras: Muslim) : I have given notice of an amendment to this amendment.

Mr. Vice-President : Yes, I received it just now. The honourable Member may move it.

K. T. M. Ahmad Ibrahim Sahib Bahadur : Sir, I move:

“That the proviso to clause (1) of article 60 be deleted.”

The object of my amendment is to preserve the executive powers of the States or Provinces at least in so far as the subjects which are included in the Concurrent List. It has been pointed out during the general discussion that the scheme of the Draft Constitution is to whittle down the powers of the States considerably and, though the plan is said to be a federal one, in actual fact it

is a unitary form of Government that is sought to be imposed on the country by the Draft Constitution. Members from all parties, irrespective of party affiliations, have condemned during the general discussion this aspect of the Draft Constitution. They have repeatedly show that this Draft Constitution is in spirit a unitary form of Government and not a federal one.

Now, Sir, even in the Lists of Subjects drawn up and attached to the Constitution, a very large number of subjects which are usually in the Provincial List have been transferred to the Concurrent List and the Union List, with the result that we find only a small number of subjects included in the Provincial List. Article 60 (1) (a) seeks to take away from the States the executive power even with regard to those few subjects which are included in the Concurrent List. This, Sir, will be depriving the States of a large portion of even the little executive power that will otherwise be left to them under this Draft Constitution. It may be said that this has to be done for the sake of common interest, for uniformity, for defence and or emergencies. But I would point out that there is no necessity at all to take away even this limited power from the

The Honourable Shri K. Santhanam : May I point out to the honourable Member that the deletion of the proviso to clause (1) will vest the entire executive power and Concurrent subjects at the Centre.

K. T. M. Ahmad Ibrahim Sahib Bahadur : I am coming to that.

The Honourable Shri K. Santhanam : May I point out to the honourable this proviso will be as stated by me.

K. T. M. Ahmad Ibrahim Sahib Bahadur : I am coming to that. I have given notice of another amendment to obviate that difficulty. It is to the effect that the word 'exclusive' be inserted in article 60 (1) (a) between the words 'Parliament has' and the word 'power'. The result of this will be that the executive power of the Union will be confined only to those subjects with respect to which it has exclusive power to make laws. I think this would remove the doubt expressed by my honourable Friend. The executive power under my amendment.....

The Honourable Shri K. Santhanam : Has the honourable Member the permission of the Chair to move this amendment?

K. T. M. Ahmad Ibrahim Sahib Bahadur : The Vice-President has been kind enough to permit me to move this amendment and in pursuance of that permission. I have moved the amendment.

Shri L. Krishnaswami Bharathi : How does it read now?

K. T. M. Ahmad Ibrahim Sahib Bahadur : It reads as follows:—

“Clause (1) (a) to the matters with respect to which Parliament has exclusive power to make laws.”

Therefore the executive power of the Union shall not extend to matters with respect to which it has no exclusive power to make laws, *i.e.*, matters included in the Concurrent List. Sir, under the present Government of India Act we do not have any such provision. In page 6 of the letter of the Chairman of the Drafting Committee to the Honourable President of the Constituent Assembly, in paragraph 7, he points out—

“Under the present Constitution, executive authority in respect of a Concurrent List subject vests in the province subject in certain matters to the power of the Centre to give directions.”

He says then—

“In the Draft Constitution the Committee has departed slightly from this plan.”

“I must point out, Sir, that it has not departed slightly from this plan but on the other hand the Drafting Committee has opened the floodgates to the Central

[K. T. M. Ahmad Ibrahim Sahib Bahadur]

Government to enable it to make as many inroads as possible into the powers of the provinces and states with respect to the Concurrent subjects, as the proviso reads:

“Provided that the executive power referred to in sub-clause (a) of this clause shall not, save as expressly provided in this Constitution or in any law made by Parliament.....”

Therefore not only has the Union Government executive power in respect of subjects included in the Concurrent List to the extent it is specifically conferred by this Constitution but Parliament may also from time to time make legislation conferring on the Union Government executive power in regard to subjects included in the Concurrent list, with the result that all the subjects may be removed from the Concurrent List and transferred to the Federal List in course of time. It is not fair, Sir, that provincial autonomy should be whittled down to such an extent. In actual practice it will come to that. I know, Sir, that to obviate this difficulty, my honourable Friend, Pandit Kunzru, has given notice of an amendment for the omission of the words “or in any law made by Parliament”. It will in away remove the difficulty but not the entire difficulty. That is why I am persisting in moving my amendment. Sir, under the present Government of India Act, even though the Central Government can give only directions to the provincial governments in regard to these subjects, in actual practice the provincial governments are not able to carry on their administration without any hindrance or impediment from the Central Government on account of this power to give directions. We have heard very often repeated by our Ministers that even though they do not see eye to eye with certain directions issued by the Central Government, they are helpless and cannot do what they consider best. Even with regard to the food policy they say they are able to do what they consider to be best in the interests of the province, as they have to obey the directions of the Central Government in this matter. Very often after their return to Madras from Delhi, our ministers point out that though they do not agree with the views of the Central Government, they have to carry out their directions because these directions have been issued under the law, even though they do not believe that the policy adumbrated by the Central Government in regard to the matter will be successful.

I hope, Sir, that the House will recognise the importance of this amendment. As I pointed out, already the powers of the provincial governments have been considerably taken away and if this clause also remains as it is, provincial autonomy will become almost a nullity. Even under the present provisions, powering Parliament to legislate for conferring executive power on the Union will be only glorified district boards and municipalities, and this clause empowering Parliament to legislate for conferring executive power on the Union Government with regard to any subjects included in the Concurrent list will be only another nail in the coffin of provincial autonomy.

Mr. Vice-President : Amendments Nos. 44 and 45 may be moved together.

Pandit Hirday Nath Kunzru (United Provinces: General) : Mr. Vice-President, I beg to move:

“That with reference to amendment No. 1289, in the proviso to clause (1) of article 60, the words ‘or in any law made by Parliament’ be deleted.”

and

“that with reference to amendment No. 1289, after clause (1) of article 60 the following clause be inserted :

- (1a) Any power of Parliament to make laws for a State with respect to any matter specified in entries 25 to 37 of the Concurrent List shall include power to make laws as respects a State conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties upon the Government of India or officers and authorities of the Government of India as respects that matter, notwithstanding that it is one with respect to which the Legislature of the State also has power to make laws.”

Sir, there are federations of all kinds. There are federations for instance of the United States of America, Canada and Australia, but in none of these federal Constitutions does the Central Government enjoy the right to issue executive directions to the provincial or State governments. In Canada, concurrent powers of legislation have been given both to the Dominion Government and the provincial governments in regard to two subjects, agriculture and immigration. In Australia, there are a large number of subjects in respect of which both the Commonwealth and the States can legislate. Yet in neither of these countries is the Central Government in a position to direct the State nor provincial government to exercise their authority in any particular way. Our Constitution, however, departs, from this principle. Under the Government of India Act, 1935, the Central Government have the right to issue instructions to provincial governments in respect of certain matters. Those matters are connected either with subjects that are exclusively within the jurisdiction of the Central Legislature or are contained in Part II of the Concurrent List. If the language of the proviso to article 60 is accepted, the Central Government will have the right to issue instructions to the Provincial Governments with regard to the manner in which they should exercise their executive authority in respect of all subjects in the Concurrent List. What we have to consider is whether circumstances have arisen that make it necessary or desirable that such a power should be conferred on the Central Government.

The Honourable Shri K. Santhanam : May I point out to the honourable Member that it is only when Parliament makes a law and gives that power that it will extend in any State?

Pandit Hirday Nath Kunzru : I perfectly understand it. That is obvious. If Mr. Santhanam will bear with me for a while, he will find that I shall not omit to refer to this matter.

I do not see, Sir, that there is any reason why so large a power should be conferred on the Central Government. We have to be clear in our minds with regard to the character of the Constitution. While we may profit by the experience of other federal countries and need not slavishly copy their constitutions, it is necessary that the federal principle should be respected in its essential features. We should not go so far in our desire to give comprehensive powers to the Central Government to deal with emergencies as to make the Provincial Governments virtually subordinate to the Central Government. Whatever powers may be conferred on the Central Government if the federal principle is to be given effect to, the Provincial Governments should be coordinate with and not subordinate to the Central Government in the provincial sphere. If this principle is accepted by the House, I think that the proviso in the article under discussion would be found to be contrary to the relations that ought properly to subsist between the Central and the Provincial Governments. The proviso, as honourable Members know, runs as follows:

“Provided that the executive power referred to in sub-clause (a) of this clause shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.”

If this is accepted, it will be open to the Central Legislature to pass a law empowering the Central Government to issue directions to the Provincial Governments with regard to the manner in which the law should be executed. Under the Government of India Act, 1935, such a power was conferred on the Central Government, but it was more restricted. Sub-section (2) of section 126 of the Government of India Act, 1935 lays down that the executive authority of the Dominion shall also extend to the giving of directions to a Province as to the carrying into execution therein of any Act of the Dominion Legislature which relates to a matter specified in Part II of the Concurrent Legislative List and authorises the giving of such directions,” and no bill or

[Pandit Hirday Nath Kunzru]

amendment dealing with this matter be introduced without the previous sanction of the Governor-General. In the new order, it is quite obvious that the Governor-General, who will be the Constitutional Head of the State, cannot be entrusted with the power given to the Governor-General by this sub-section. But there seems to me to be no reason why the power conferred by sub-section (2) of section 126 of the Government of India Act, 1935 should be widened in the manner proposed in the proviso to article 60 of the Draft Constitution. It is true that the Central Government will not have the right to issue instructions to the Provincial Governments with regard to the execution of any law, unless the law itself provides that such instructions should be issued. But this is certainly no check on the power of the Central Legislature. The Central Legislature itself will be the judge of the propriety of conferring such a power on a Government that is responsible to it. What I am seeking to do by my amendment is to protect the Provincial Governments against any unnecessary encroachment on their powers by the Central legislature and Central Government.

Now, Sir, it may be pointed out to me that if the words "or in any law-made by Parliament" are deleted from the proviso, the Central Government will not enjoy even the limited power conferred on it by sub-section (2) of Section 126 of the Government of India Act, 1935. I think, Sir, that this can be provided for under article 234. I have accordingly given notice of an amendment to article 234 that would enable the Central Government to issue instructions to provincial Governments with regard to the execution of laws relating to items 25 to 37 of the Concurrent List if the central legislature by law authorises the Central Government to do so.

There is, however, one other matter to which it is necessary to draw the attention of the House. The second part of my amendment goes beyond anything contained in the Government of India Act, 1935. I may be asked how I am proposing an extension of the power of the central legislature and through it of the Central Government when the purpose of my amendment is to see that the executive authority of the provincial Governments is not unnecessarily restricted by orders issued to them by the Central Government under laws passed by Parliament. Honourable Members will remember that a few weeks ago, the Deputy Prime Minister introduced a Bill in this House the object of which was to amend the Government of India Act, 1935. It was stated in the Statement of Objects and Reasons attached to that Bill that experience had shown that uniform principles in the review of awards made by the Central and provincial industrial tribunals should be adopted under the overall control of the Central Government. It was therefore proposed in the Bill that the Central Government should, in addition to the right of issuing instructions to the provincial Governments in regard to the manner in which their authority should be exercised, also have the power to confer power on their own officers regarding the execution of laws dealing with any of the matters referred to in the Concurrent List. I should not like to go into the merits of that Bill; but we have to take into account the fact that in the present circumstances it is necessary so to widen the powers of the Central Government as to enable them to impose duties on their own officers in respect of certain matters if any law made by Parliament permits them to do so. The matters with which the Bill introduced by the Honourable Sardar Vallabhbhai Patel is concerned are industrial matters and a few other matters. Broadly speaking, these matters are covered by items 25 to 37 of the Concurrent List contained in the Draft Constitution. These matters are, but for two items, the same as those contained in Part II of the Concurrent List in the Government of India Act, 1935. It appears to be reasonable in the present circumstances when Labour is becoming conscious of its rights, when questions relating to it have to be settled on an all-India basis, that in all these questions that might involve the settlement of disputes between labour and the

employers, there ought to be a power vested somewhere, in order that matters of importance may be dealt with in an uniform manner. I do not know when the Bill introduced by the Honourable Sardar Patel will be considered by the House. But, I have little doubt that the power asked for by him will be conferred on the Central Government by the House. If that is done, it is obvious that the Draft Constitution will have to be amended so that it may be brought into line with the Government of India Act, 1935. I have anticipated this necessity and have therefore brought forward an amendment authorising the Dominion Parliament to confer powers or impose duties on the Central Government or any of its officers in respect of entries 25 to 37 of the Concurrent List. It seems to me, Sir, that the amendment proposed by me meets the needs of the case. There is no reason whatsoever why the Central Government should be given the wide power that the passage of the proviso would confer on the Central Executive under laws passed by the Central Parliament.

I should like, Sir, to refer to one more matter before I resume my seat. Under the Government of India Act, 1935, the power of the Dominion legislature to pass laws authorising the Central Government to confer powers and impose duties on their own officers with respect to matters in regard to which provincial legislatures could make laws could be exercised only when a declaration of emergency had been issued declaring that the security of India was threatened by war. So far as I remember, Sir, in no other contingency was the Central Legislature allowed to authorise the Central Government, or to place the Central Officers in a position to deal with the execution of laws on matters included in the Concurrent List. In proposing therefore my second amendment, it will be seen that I have not copied the provisions of the Government of India Act, 1935. I have departed considerably from the provisions of that Act but I have done so in so far only as circumstances have proved that the departure is necessary. It is incumbent on my honourable Friend Dr. Ambedkar to show that the wide power that he has asked for is essential in the present circumstances if law and order are to be maintained in India or if its security is not to be threatened or if problems arising in the new circumstances are of such a character that the country will be able to deal with them only when the Provincial Governments have been made practically subordinate to the Central Government. As I do not feel that any such circumstances have arisen, I have proposed the amendments that I read out a little while ago. I hope, Sir, that they will receive the careful consideration of the House.

(Amendments Nos. 1290 and 1291 were not moved.)

Mr. Vice-President : Amendment No. 1292 is disallowed as a verbal amendment.

Mr. Naziruddin Ahmad: It is not merely verbal. It will change the sense. In fact, my amendment will set up a different authority altogether.

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

Amendment No. 1293 is disallowed as verbal.

The article is open for general discussion. Mr. Mohamed Ismail Sahib.

Mr. Mohamed Ismail Sahib (Madras : Muslim): Sir, I support the amendments moved by Mr. K. T. M. Ahmad Ibrahim, of the intention to move which I have also given notice. Sir, in the footnote under article 60 the Drafting Committee says—

“The Committee has inserted this proviso on the view that the executive power in respect of Concurrent List subjects should vest primarily in the State concerned except as otherwise provided in the Constitution or in any law made by Parliament.”

[Mohamed Ismail Sahib Bahadur]

The impression which this note creates in the minds of the readers is that some power or more power than is apparent in the article is being sought to be vested in the provinces but any such impression is removed by what the Chairman of the Drafting Committee says in para. 7 of his letter to the President of the Constituent Assembly. He speaks of the saving clause in the proviso and says—

“The effect of this saving clause is that it will be open to the Union Parliament under the new Constitution to confer executive power on Union authorities, or if necessary, to empower Union authorities to give directions as to how executive power shall be exercised by State authorities.”

That is being made clearer by the next sentence in which he says—

“In making this provision the Committee has kept in view the principle that executive authority should for the most part be co-extensive with legislative power.”

Wherever the Centre has been endowed with legislative power, it is being sought to endow it with executive power as well. Our amendments seek to correct this position and say that the Centre might have legislative power on the subjects included in the concurrent list but at least the executive power ought to be left in the hands of the units—the provinces. Sir, I have to make a few remarks in connection with the scheme of this Constitution. It is said that the American Constitution has been based on a suspicion of the Central authorities that the people in power in the Centre would seek to encroach, whenever there is an opportunity, on the powers of the States, *i.e.* the component parts or units and also of the individuals. It was contended not only at that time when that Constitution was made but also subsequently and even at the present time that such a conception of a Constitution is well based on facts, because it is admitted that when people come to power, more often than not the power corrupts them. Therefore too much of power should not be invested or placed in the hands of the executive and the supreme authority. But so far as our draft Constitution goes, the contrary seems to be the method which has been adopted. It has been based on the suspicion of individuals and the component units. The idea seems to be that the individuals will always be scheming and conspiring to set the authority at naught and the units would always be on the look-out for doing something wrong. Therefore, Sir, though the scheme of things as adumbrated in the Draft Constitution is alleged to be on a federal basis, it is really over-weighting the Centre with too much power. That is not salutary at least under the circumstances obtaining in our country. That is not good to the country as a whole. Ours is a country of vast distances and a huge population. Therefore it is not conducive to efficiency to over-concentrate power in the Centre. Units must be left with adequate powers in their hands. It must not be the basis of this Constitution that patriotism and anxiety for the welfare of the people are the sole monopoly of the Centre. It must be admitted that the Provinces and individuals also are as patriotic as anybody else. Therefore, their rights and powers must not be sought to be encroached upon. The basis of this Constitution seems to be suspicion, in the first place of the individuals and then in the second place of the units. Sir, where the individuals are concerned, it has not even been conceded that individuals have got an irreducible amount of right to personal freedom. The personal freedom that has been conceded under article 15 is beset with serious, and not only a serious, but fatal modifications so much so these modifications have eaten up and swallowed up the right of personal freedom. It does not recognise that an individual has got any irreducible right which cannot be taken away by any law. And so far as the Provinces or Units are concerned, the same spirit seems to prevail. By various provisions, the powers of the Provinces are sought to be taken away; and in the interest of efficient government and good government, I think that spirit ought not to prevail; and the powers of the units must not be encroached upon.

These amendments of ours, while providing for the maintenance of the legislative powers of the Centre where the appropriate subjects are concerned, want to restrict the executive field of the Centre. Therefore, I think, they are very reasonable amendments which the House should support. I also know that if only Members are given the right to vote as they please, and if they are given the freedom of vote on this particular question at least, I know Sir, many Members will vote for these amendments. I know personally, Sir, there are many Members who feel with me in the matter of these amendments.

Mr. Vice-President : May I suggest that these remarks are not called for here?

Mohamed Ismail Sahib Bahadur : Sir, I am speaking, with your permission, of what I know to be the feeling of many of my colleagues here on this very important matter. In these amendments is involved the efficiency of the government and therefore the welfare of the whole country and of the people. These amendments seek to eliminate any friction or any conflict that may arise in the future between the Centre and the Provinces. If time and again the Centre seeks to encroach upon the rights and powers of the units, then, there is sure to be conflict and friction and these amendments only seek to remove any such conflict. And I wanted to make it clear that I am not alone in this feeling of mine, that I am not alone in this opinion, but that there are many others irrespective of party affiliations. Therefore, I would very much like that the colleagues of mine in this House be given freedom of vote to vote as they please. In that case, the Chairman of the Drafting Committee will know whether there is real support among the Members of this House for the idea contained in these amendments. If the Chairman of the Drafting Committee does not find it in his mind to accept these amendments, may I appeal to him, atleast to accept the amendment to our amendment moved by Pandit Kunzru which seeks to remove the words "or in any law made by Parliament". That at least would mean something. That would go to some extent to alleviate the conditions which I have got in mind and which I have been trying to express here. It will to a certain extent restrict the encroachment upon the powers of the Provinces. Therefore, I would appeal to the House and to the Chairman of the Drafting Committee to consider at least the much milder amendment which seeks to eliminate the words "or in any law made by Parliament".

Mr. Vice-President : I have just received information about the sudden death of Sir Akbar Hydari, Governor of Assam. He was not a member of this House, but we all know the excellent work he has done for our country and we also know that we are indebted not only to him but also to his father. The offices of the Government of India are already closed. It is true that His Excellency was not a member of this House, but still I think we ought to adjourn as attribute to him and as a mark of respect to his memory.

The House stands adjourned till 10 A.M. tomorrow.

The Constituent Assembly then adjourned till Ten of the clock on Thursday, the 30th December 1948.
