

[Shri R. K. Sidhwa]

postpone this matter indefinitely the outside world will be rather surprised. On the contrary, if we come to a satisfactory solution and a unanimous decision on this matter, the outside world will have really a very high opinion of this House. I feel, therefore, that the suggestion made by my honourable Friend Pandit Pant should certainly be accepted unanimously. I am rather surprised that of all persons Mr. Kamath should have come forward to speak in this manner. What Pandit Pant stated was really a very fine solution and I was expecting from this House that instead of creating any kind of dissension, if we really come to a unanimous decision, it will be really a record in the history of this Constitution. I therefore, very heartily and strongly support the motion moved by my honourable Friend, Pandit Pant.

The Honourable Dr. B. R. Ambedkar : I support the suggestion made by Pandit Govind Ballabh Pant.

Seth Govind Das (C. P. & Berar : General): Sir, I wholeheartedly support Pandit Pant's proposition. The House very well knows how clear I am for naming our country BHARAT, but at the same time, we must try to bring unanimity of every group in this House. Of course, if that is not possible, we can go our own ways; but up to the time there was any possibility of reaching a unanimous decision by any compromise, that effort must be made. Sir, I support this proposition, and I hope that by the efforts of our leaders, there will not be any division on fundamental points like this, and not only this proposition, but other propositions also, like that our national language, national script etc., we shall be able to carry unanimously. I, therefore, support the views just expressed by the Honourable Pandit Pant.

Shri H. V. Kamath : I only wanted to know for how long the amendments will be held over.

An Honourable Member : It may be a day, a week or a fortnight.

Mr. Vice-President : I hold that a discussion of these few clauses should be held over till sufficient time has been given for arriving at some sort of understanding. This will be to the best interests of the House and of the country at large.

Shri Lokanath Misra (Orissa : General): Sir, I have a submission to make. If it is your decision, Mr. Vice-President, Sir, that my amendment is not to be moved, or that it is to be held over, I have no objection. Of course, I agree that my amendment consists of two parts, changing the name of India, and some other things. I am very glad that this change of the name is being held over so that we may come to some unanimous decision which will be pleasant to all. But, I submit, I should be allowed to move the rest of the amendment. That is in no way similar to the amendment moved by Professor K. T. Shah. If I had really known that, I would have said what I have to say when he moved that amendment. I, therefore, request you kindly to allow me to move the rest of the amendment, without amending the name of India.

Mr. Vice-President : Apart from the language employed, I consider that what is said in your amendment is substantially the same as what was said in the amendment of Professor K. T. Shah. It has been discussed. It cannot be discussed again.

Shri Lokanath Misra : That is taking one by surprise.

Article 2

Mr. Vice-President : The next motion is:

That Article 2 stand as part of the Constitution.

Shri H. V. Kamath : Article 1 may be put to vote.

Mr. Vice-President : That Article has been postponed. It cannot be put to vote now till all the amendments are considered.

Mr. Naziruddin Ahmad : Amendment No. 131.

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

“That for Article 2 and Article 3, the following be substituted:

‘2. Parliament may by law—

- (a) admit into the Union new States;
- (b) sub-divide any State to form two or more States;
- (c) amalgamate any two or more of the following classes of territories to form a State, namely—
 - (i) States,
 - (ii) part or parts of any State,
 - (iii) newly acquired territory;
- (d) give a name to any State admitted under item (a) or created under items (b) and (c) of this Article;
- (e) alter the name of any State:

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless—

- (a) where the proposal contained in the Bill affects the boundaries or name of any State or States for the time being specified in Part I of the First Schedule, the views of the Legislative Assembly or in the case of a bi-cameral Legislature, of both Houses of the Legislature, of the State, or as the case maybe, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President; and
- (b) where the proposal affects the boundaries or name of any State or States for the time being specified in Part III of the First Schedule, the previous consent of the State, or as the case may be, of each of the States to the proposal has been ascertained’.”

Sir, in introducing this amendment, I should submit that many points are involved in this. The two Articles, Articles 2 and 3, are to a certain extent overlapping. In Article 3 there are certain redundancies, and there are one or two minor gaps. I shall deal with them just now. An analysis of Article 2 shows that Parliament may admit into the Union new States and establish new States. These are the two points in Article 2. In Article 3 power has been given to the Parliament to (a) form a new State by separation of territory from a State or by uniting two or more States or parts of States, (b) increase the area of any State, (c) diminish the area of any State, (d) alter the boundaries of any State, and (e) alter the name of any State. I submit, Sir, that the first element in Article 2, admitting into the Union a new State, is covered by the first part of Article 3. With regard to Article 3, the three elements of increasing the area of a State or diminishing the area of a State, or altering its boundaries, I submit, are redundant. If you sub-divide a State, you decrease the area. If you add to one State another or a part of a State, you necessarily increase the area, and a re-adjustment of territories involves necessarily alteration of boundaries. I beg to submit that the three elements of increasing the area or diminishing the area or altering the boundaries are so necessarily implied in the other part of the Article and it would be meaningless and practically useless to embody them in the Constitution, I submit, Sir, that if you have the power to divide one State into two or more parts, or unite two States or parts of States, these three elements are necessarily implied and therefore, they need not be repeated. This element of increasing the area, diminishing the area and altering the boundaries are consequences of the other powers given. These consequences need not be mentioned. They are necessarily involved in the process of division, addition and subtraction. So to that extent these three elements must go.

Then the condition of separation of territories from a State in Article 3 (a)—for this I think a better way would be, to say, we “sub-divide” any State and form into two or more States. I think this would be a better expression; and then the element of uniting two or more States, etc., a better expression

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would be “amalgamating any two or more States or parts of States”. Then there is no power given in the existing article of amalgamating newly acquired State. The powers of the Parliament in this respect are specifically given in my amendment but this is entirely absent in the Draft Constitution.

Kazi Syed Karimuddin (C. P. & Berar : Muslim): Mr. Vice-President, the Honourable Member Mr. Naziruddin has moved an amendment to Articles 2 and 3. Article 2 has been taken up for discussion now and not Article 3. So unless both are taken up for discussion, the amendment as it stands cannot be moved.

Mr. Vice-President (to Mr. Naziruddin): Please go on.

Kazi Syed Karimuddin: What is your ruling, Sir?

Mr. Vice-President : When I said he is to go on, the decision should be understood.

Mr. Naziruddin Ahmad : That is why I have attempted to incorporate into the amendment the following points:

- (a) admit into the Union new States,
- (b) sub-divide any State to form two or more States;
- (c) amalgamate any two or more of the following classes of territories to form a State, *viz.*,
 - (i) States,
 - (ii) Part or parts of any State,
 - (iii) newly acquired territory;
- (d) give a name to any State admitted under items (b) and (c) of this article;

and then again the power to alter name is already given. I submit that these embody the essential features, of clauses 2 and 3. It avoids repetition and it eliminates parts of articles which are redundant, *viz.*, which are necessarily implied. That disposes of the body of the proposed amendment. Then with regard to the present clause 3,

Shri H. V. Kamath: On a point of Order. How can he refer to Article 3 when it is not under discussion? Amendment to Article 3 cannot be taken up at this stage.

Mr. Naziruddin Ahmad: I submit that a ruling has already been given that the amendment is in order, *viz.*, that for Articles 2 and 3 the following article be substituted. This is certainly an amendment to Article 2 although it incorporates in the amendment also Article 3. So the Honourable the Vice-President has already ruled that the amendment is in order.

I submit that the phrase ‘increasing area’ or ‘diminishing area’ would not be very appropriate. You do not increase an area by addition or diminish it by means of subtraction. The words are mostly used in an intransitive sense. As an instance you can increase the area of a balloon by inflating and decrease it by deflating. Therefore I submit that these words are not appropriate. If these elements are to be retained, the words ‘enlarge’ and ‘reduce’ would be more appropriate. The increase of an area by addition or reduce it by subtraction is not in current use, but at any rate the other objection is that they are absolutely redundant. I therefore submit that the body of the proposed new Article 2 should be accepted.

With regard to the proviso, the only effect of the amendment would be that in the proviso (a) in part I there is a condition of representation in the Legislature. In No. 2 there is the question of the resolution. I submit Part 1 of proviso (a) should be deleted. A Resolution as mentioned in Part 2 of clause

(a) of the Proviso is better. So the only effect of the change of proviso is to eliminate Part 1 of Proviso (a). These are the essential changes proposed in this amendment, *viz.*, elimination of some of the points which seem to me to be redundant. There are one or two points which seem to have been overlooked. In proposing this amendment I do so with great respect. I do not in the least disparage the high quality of work which the Drafting Committee has done.

My next amendment which I shall move in this connection is as follows:—

“That in Article 2 the words ‘from time to time’ be deleted.”

The words ‘from time to time’ have caused some amount of trouble before. These words have been provided for in the General Clauses Act. Under that Act if any power or right is given, it is understood that unless the contrary is specifically indicated that the power or right may be exercised “from time to time as occasion arises”. It follows that if any power is given, unless the contrary is definitely stated, that power may be exercised from time to time. This expression appears again and again in the Draft Constitution. We have put specific provisions in the Draft Constitution itself in Article 303, Clause (2) which provided that in the interpretation of this Constitution, the provisions of the General Clauses Act shall apply. I shall read out this clause—

“Unless the context otherwise requires, the General Clauses Act, 1897 (X of 1897), shall apply for the interpretation of this Constitution.”

The Government of India Act was controlled in this respect by the U . K. Interpretation Act of 1889, and this clause (2) of Article 303 is similar to that provision in the Government of India Act. It, therefore, follows that in the interpretation of this Constitution, we should have regard to the General Clauses Act. And the General Clauses Act definitely provides for this thing, that the words “from time to time” need not be repeated again and again. If we say that the President can give a ruling on points of order, it implies that he can give the ruling as and when occasions arise, from time to time. So in practical life, and in daily drafting of Statutes, we find it as an invariable rule that this phrase is not repeated, here and there, and now and again. In this Constitution itself, the words “from time to time” do not appear everywhere. The House will see that in Article 2, line 1, the expression ‘from time to time’ appears. “Parliament may, from time to time...” do certain things. But coming to Article 3, we merely find “Parliament may, by law.....” and no ‘from time to time’ occurs there. There are numerous other places where the words ‘from time to time’ in a similar context do not appear. I submit that the drafting should be uniform. If in one place we introduce the phrase ‘from time to time’, and if we do not introduce it in another analogous place, the argument may be made that in one place the power may be exercised from time to time, and in the other place it may not be exercised from time to time. It is this reason that I say that there should be some uniformity in the matter of drafting. The words ‘from time to time’ must be excluded. But if they have to be introduced at all, they have got to be introduced in all other similar places.

With these few words, I submit my amendment for the consideration of the House. I merely wanted to raise these points for discussion, and if necessary for redrafting of the article, if the points are worthy of consideration.

Shri Ananthasayanam Ayyangar: Sir, I oppose these amendments. These are verbal matters and I would even appeal to you not to allow such amendments. I request you to put it to vote now.

The Honourable Dr. B. R. Ambedkar: I oppose the amendments.

Mr. Vice-President : I will put the amendments nos. 131 and 132 to vote. Dr. Ambedkar has spoken already and there cannot be any further discussion.

Kazi Syed Karimuddin: Sir, on a point of order. If this amendment is accepted, it will amend Article 3. Therefore, unless a ruling is given that Articles 2 and 3 should be discussed and taken into consideration in regard to this amendment, this cannot be put to vote now. If it is accepted, as I said, it will amend Article 3 also.

The question is:—

“That for Article 2 and Article 3, the following be substituted:

‘2. Parliament may by law—

- (a) admit into the Union new States;
- (b) sub-divide any State to form two or more States;
- (c) amalgamate any two or more of the following classes of territories to form a State, namely—
 - (i) States,
 - (ii) part or parts of any State,
 - (iii) newly acquired territory;
- (d) give a name to any State admitted under item (a) or created under items (b) and (c) of this Article;
- (e) alter the name of any State:

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless—

- (a) where the proposal contained in the Bill affects the boundaries or name of any State or States for the time being specified in Part I of the First Schedule, the views of the Legislative Assembly or in the case of a bi-cameral Legislature, of both Houses of the Legislature, of the State, or as the case may be, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President; and
- (b) where the proposal affects the boundaries or name of any State or States for the time being specified in Part III of the First Schedule, the previous consent of the State, or as the case may be, of each of the States to the proposal has been ascertained; and

That in article (2), the words “from time to time” be deleted’.”

The amendments were negatived.

Mr. Vice-President : Amendment No. 133, I find is connected with the Preamble, and so it may be taken up later, this is not the appropriate place for it.

Amendment Nos. 134 and 135, are not moved.

Amendment No. 136 has been disposed of.

Amendment No. 137 is a verbal change and I rule it out of order.

Amendment No. 138 is not moved.

Then I put Article 2.

Shri H. V. Kamath: Sir, I wish to speak on Article 2.

Mr. Vice-President Sir, it appears to me that there is a little lacuna in this Article which my Honourable friend, the able jurist and constitutional lawyer that he is, will rectify, when it is finally drafted by the Committee. If we turn to the report of the Union Constitution Committee—I am reading from the reports of the Committee, Second Series, from July to August 1947, copy of which was supplied to each member last year—there Article 2 begins thus:—

“The Parliament of the Federation” of course, we have changed the word Federation into Union but here you import the word ‘Parliament’ suddenly in Article 2 without saying to which Parliament it refers. This is a lacuna, because there is nothing so far in the previous article regarding Parliament. So we must say here the “Parliament of the Union”. This lacuna, I hope, will be rectified.

The Honourable Dr. B. R. Ambedkar: We shall take note of what Mr. Kamath has said.

Mr. Vice-President : Then the question before the House is that Article 2 form part of the Constitution.

The motion was adopted.

Article 2, was added to the Constitution.

Article 3

Mr. Vice-President : Now we come to Article 3.

Amendment No. 139 is a negative amendment and is out of order.

Then we come to Amendment No. 140. Not moved.

The Honourable Shri K. Santhanam (Madras : General): Sir, I move:

“That in clause (a) of article 3, the following words be added at the end:

‘or by addition of other territories to States or parts of States’.”

I need not take up the time of the House. It only makes clause (a) logically perfect, because a new State can be formed by having a part of one of the acceding States and adding to it other territories which may be acquired by India.

Shri M. Ananthasayanam Ayyangar : I request the House to accept the amendment because by this addition alone will the article become complete.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, I am agreeable to the principle of the amendment moved by my friend Mr. Santhanam. The only point is that I like slightly to alter the language to read “or by uniting any territory to a part of any State”.

The Honourable Shri K. Santhanam : I am agreeable to the change.

Mr. Vice-President : the question is:

“That in clause (a) of article 3, the following words be added at the end:

‘for by uniting any territory to a part of any State’.”

The motion was adopted.

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

“That the following new proviso be added after clause (e) of article 3:

‘Provided that every proposal for legislation which increase or diminishes the area of an existing State, or alters its name or boundaries, shall originate in the Legislature of the State concerned or affected, in such form as the rules of procedure in the Legislature concerned consider appropriate’.”

Sir, here is a proposal to consult first the Legislature of the State, whose name or boundaries are proposed to be altered, or whose areas are proposed to be increased or diminished. We are all aware that the existing Units which make up this Federation are not equal *inter se* are not logical, are not happily constructed so as to minister to the development of the country or even of the areas themselves. It is necessary, and it will soon perhaps have to be implemented in some form or another, that these areas be reconstructed. That would mean that their boundaries, perhaps even their name, and their territories, may be altered, upwards or downwards. If that becomes necessary, then I submit the proper course would be to consult the people themselves who are affected, if not by a direct Referendum to the people affected, at least by a consultation of the Legislature, rather than that the change be imposed from above, as in my opinion the clause as it stands requires. The parties primarily affected are the people themselves of the areas whose boundaries or name is to be altered, or whose position has in any way to be reconstructed. And it is but a simple proposition—a mere matter of fundamental principle I submit—that you should in a democratic regime consult the peoples affected, and not merely lay it down from above. I recognize that the article as it stands provides that in any such event you should have either a representation from the representatives of the people in the Central Parliament to suggest such an alteration, or alternatively the President should have received some such