

Article 81

Mr. President : Then we come to the next article, article 81.

The motion is :

“That article 81 form part of the Constitution.”

There is an amendment of which notice was given by Mr. Tahir and Mr. Jafar Imam. But they are not here and so it is not moved. Then there is amendment No. 1550, standing in the name of Mr. Kamath.

Shri H.V. Kamath : That does not arise now, in view of article 68-A adopted yesterday; and so I do not move it, Sir.

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

“That in article 81, for the words ‘President, or some person appointed in that behalf by him’ the words ‘Speaker of the House of Representatives or Chairman of the Council of States, or some person appointed in that behalf by the Speaker or the Chairman of the Council of States’ be substituted.”

The amended article would then read that :

“Every member of either House of Parliament shall, before taking his seat, make and subscribe before the Speaker of the House of Representatives or Chairman of the Council of States, or some person appointed in that behalf by the Speaker or the Chairman of the Council of States, a declaration according to the form set out for the purpose in the Third Schedule.”

Sir, my purpose in submitting this amendment is to keep out the President of the Republic from taking part in what I regard to be a purely internal concern of the House. The President of the Republic should have no concern with such matters. I think it is a very simple matter relating to the internal autonomy of the House and as such ought to find no objection.

Sir, I commend the motion to the House.

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

“That in article 81, for the words ‘a declaration’, the words ‘an affirmation or oath’ be substituted.”

Mr. President : All the amendments have been moved. They are open to discussion now. Does anyone wish to speak?

Mr. Tajamul Husain : Mr. President, Sir, I rise to oppose the amendment No. 1551 moved by my honourable Friend, Prof. K. T. Shah. At present the procedure is this. When the House is elected, one from amongst the Members of the House is appointed by the Governor-General to preside at their meetings and then the election of the Speaker and the Deputy Speaker takes place. Now, Sir, article 81 says that the affirmation or oath should be taken before the President or some person appointed in that behalf by him. The amendment is that it should not be taken before the President, but should be taken before the Speaker of the House of People or Chairman of the Council of States, or some person appointed by the Speaker or Chairman.

Now, Sir, I think, this has no meaning. I think the practice as it stands now is more reasonable than what is proposed in this amendment because before the oath there is no Speaker. With these words, Sir, I oppose the amendment moved by Professor Shah.

Shri H. V. Kamath : Mr. President, Sir, I have come here just to seek a little clarification from my honourable Friend, Dr. Ambedkar, in regard to his amendment No. 1554 which he has just now moved and which seeks to substitute for the words “a declaration”, the words “an affirmation or oath”. May I, Sir, invite your attention to the fact that the House has already adopted article 49 which provides for an affirmation or oath by the

President or person acting as or discharging the functions of the President before entering office. The affirmation or oath provided therein was amended to the effect that the President or person acting as or discharging the functions of the President, should before he enters upon his office take the oath or affirmation in the following form :—

“I, A, B, in the name of God, do swear”, or “I, A, B, do solemnly affirm”...

May I have an assurance from my honourable Friend Dr. Ambedkar as well as from the House that the affirmation or oath referred to in article 81 will be on the same lines as provided for in the amended article 49 of the Constitution?

Mr. President : I take it that it is obvious that the Schedule will have to be amended so as to fit in with the wordings of this clause.

There is a notice of an amendment to the Schedule also to bring it into conformity with the article. There is one difficulty which has struck me. Under article 81 every member of either House of Parliament has to affirm or take the oath before the President or some person appointed by him in that behalf. That will happen on the very first sitting of the Parliament when the members will take the oath or make the affirmation. Supposing a member joins in the middle of the session after a bye-election. Will he be able to take the oath or make the affirmation before the Speaker or the Deputy Speaker as the case may be?

The Honourable Dr. B. R. Ambedkar : Sir, I am sorry to say that I cannot accept the amendment moved by my Friend Professor Shah. I think Prof. Shah has really misunderstood the sequence of events, if I may say so, in the life of a candidate who has been elected until the time that he becomes a member of the House. If Prof. Shah were to refer to article 81 and also note the heading “Disqualifications of Members” the first thing he will realise is that merely because a candidate has been elected to Parliament, does not entitle him to become a member of Parliament. There are certain, what I may call, ceremonies that have to be gone through before a duly elected candidate can be said to have become a Member of Parliament. One such thing which he has to undergo is the taking of the oath. He must first take the oath before he can take his seat in the House. Unless and until he takes the oath he is not a member and so long as he is not a member he is not entitled to take a seat in the House. That is the provision. Unless candidates take their oath and take their seats they do not become members and they do not become entitled to elect the Speaker. That is the sequence of events,—election, taking of the oath, becoming a member and then becoming entitled to the election of the Speaker. Therefore the election of the Speaker must be preceded by the taking of the oath.

Having regard to this sequence of events it would be impossible to say that the oath shall be taken before the Speaker, because the Speaker is not there and the Speaker cannot be elected until the elected candidates become members. Therefore the authority to administer the oath must necessarily be vested in some person other than the Speaker. That being the position the question is in whom this power to administer the oath shall be vested. Obviously it can be vested only in the President or in some other person to whom the President may transfer his authority in this behalf. In accordance with this sequence of events the only course to adopt is to vest the authority to administer the oath either in the President or in some other person appointed in that behalf by him. It cannot be done by vesting the authority in the Speaker, because the Speaker does not exist at all then.

[The Honourable Dr. B. R. Ambedkar]

Now I come to the point raised by our President. What happens to a newly elected member in a bye-election with regard to the taking of the oath? Has he to go to the President or can he take the oath before the Speaker? The answer to that question is that the President will, after the Speaker has been elected, confer upon him by order the authority to administer the oath on his behalf, so that when a newly elected candidate appears in Parliament for the purpose of taking the oath, it will be administered to him by the Speaker as the person authorised by the President. Consequently in the case of a newly elected person it would not be necessary for him to go before the President or some other presiding authority appointed by the President.

That is the sequence of events and it would be seen that article 81 is so framed as to fit in with this sequence. Even today, if I may say so, the same procedure is followed. The President (or the Governor-General) appoints somebody when the House meets for the first time to preside over it. Every member then takes the oath or makes the affirmation before the presiding authority. After the oath is taken the presiding authority proceeds to conduct the election of the Speaker and when the election of the Speaker is completed, the person chosen as the presiding officer retires and the Speaker continues to occupy the place of the presiding officer with the authority of the President to administer the oath to any member who comes thereafter. Therefore, as I said, the original Draft is in keeping with the sequence of events and the provision which is usually made for the President to confer his authority on the Speaker will prevent the newly elected person from having to go to the President to take the oath.

Mr. President : Should it be necessary for the Speaker to derive his authority to administer the oath from the President?

The Honourable Dr. B. R. Ambedkar : I submit constitutionally it is, because the administration of the oath is an incident in the constitution of the House, over which the Speaker has no authority.....

Mr. President : I am not thinking of that stage. I am thinking of a subsequent stage after the Speaker has been elected.

The Honourable Dr. B. R. Ambedkar : I think there is nothing wrong or derogatory, for the simple reason that the constitution of the House, its making up, the legal form of the House is a matter which is outside the purview of the Speaker. The Speaker is in charge of the affairs of the Parliament when the Parliament is constituted and the Parliament is not constituted unless the oath is taken by the members. Therefore the taking up of the oath is really a part and parcel of constituting the House in accordance with the provision and so far as that is concerned I think that authority does not belong to the Speaker and need not belong to the Speaker.

Mr. President : Supposing at a subsequent meeting of the House the Speaker happens to be absent and a new member comes on a day when the Deputy Speaker or some other person is in the Chair.

The Honourable Dr. B. R. Ambedkar : The authority given to the Speaker becomes vested not only in the Speaker but also in the Deputy Speaker, in the Panel of Chairmen or any other person occupying the Chair for the time being.

Mr. President : The Speaker will have to depend upon the delegation of authority.

The Honourable Dr. B. R. Ambedkar : We have to depend upon the goodwill of all the functionaries created by the Constitution.

Maulana Hasrat Mohani : Unless and until all the members take the oath I should like to know how the Speaker can delegate his authority to any other person :

Mr. President : I will now put the amendments one by one to vote. The question is—

“That in article 81, for the words ‘President, or some person appointed in that behalf by him’ the words ‘Speaker of the House of Representatives or Chairman of the Council of States, or some person appointed in that behalf by the Speaker or the Chairman of the Council of State’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That in article 81, for the words ‘a declaration’, the words ‘an affirmation or oath’ be substituted.”

The amendment was adopted.

Mr. President : The question is :

“That article 81, as amended, stand part of the Constitution.”

The motion was adopted.

Article 81, as amended, was added to Constitution.

Article 82

Mr. President : The motion is :

“That article 82 form part of the Constitution.”

(Amendment No. 1555 was not moved.)

Mr. President : I suggest that 1556 and 1557 are covered by 1558. If it is moved and if Prof. Shah is not satisfied, he can move Amendment No. 1556.

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

“That after clause (1) of article 82, the following new clause be inserted :—

‘1.(a) No person shall be a member both of Parliament and of the Legislature of a State for the time being specified in Part I or Part III of the First Schedule, and if a person is chosen a member both of Parliament and of the Legislature of such a State, then at the expiration of such period as may be specified in rules made by the President that person’s seat in Parliament shall become vacant unless he has previously resigned his seat in the Legislature of the State.’”

Sir, it requires no comment. It is the ordinary rule.

Mr. President : I think that covers amendments Nos. 1556 and 1557. Mr. Naziruddin Ahmad may move his amendment No. 1559 if he thinks that it is not of a drafting nature.

Mr. Naziruddin Ahmad : Sir, I move :

“That in sub-clause (a) of clause (2) of article 82, for the words ‘becomes subject to any disqualifications mentioned in’, the words ‘is disqualified under’ be substituted.”

Article 82(2) says :

“If a member of either House of Parliament—(a) becomes subject to any of the disqualifications mentioned in clause (1) of the next succeeding article;”

For these, I would substitute the words ‘is disqualified under clause (1) of the next succeeding article’. The next succeeding article is to this effect that