

**Mr. Vice-President :** The question is:

“That for clause (4) of article 63, the following clauses be substituted, namely:

- ‘(4) The Attorney-General shall retire from office upon the resignation of the Prime Minister, but he may continue in office until his successor is appointed or he is re-appointed.
- (5) The Attorney-General shall receive such remuneration as the President may determine.’”

The amendment was negatived.

**Mr. Vice-President :** The question is :

“That in clause (4) of article 63, for the words ‘as the President’ the words ‘as the Parliament by law’ be substituted.”

The amendment was negatived.

**Mr. Vice-President:** The question is:

“That article 63 stand part of the Constitution.”

The motion was adopted.

Article 63 was added to the Constitution.

#### Article 64

**Mr. Vice-President :** We now come to article 64. The motion before the House is:

“That article 64 form part of the Constitution.”

There are two amendments (1346 and 1348) standing in the name of Prof. K. T. Shah. He may move them one after the other.

**Prof. K. T. Shah :** Sir, I move:

“That in clause (1) of article 64, for the word ‘President’ the words ‘Government of India’ be substituted” and,

“That in clause (2) of article 64, for the word ‘President’, where it occurs for the first time, the words ‘Government of India’, for the word ‘President’, where it occurs for the second time, the words ‘Council of Ministers’, and for the word ‘President’ where it occurs for the third time the words ‘Government of India’ be substituted respectively, and the following proviso be added at the end of clause (2):—

‘Provided that nothing in this article shall invalidate any act or word of Government expressed in the name of a particular Department or Ministry’.”

The amended article would then read :

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

Orders and other instruments made and executed in the name of the Government of India shall be authenticated in such manner as may be specified in rules to be made by the Council of Ministers, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Government of India:

Provided that nothing in this article shall invalidate any act or word of Government expressed in the name of a particular Department or Ministry.”

While accepting that the President would be the head of the Government, I shall do not quite understand why all the Government business should be carried on and orders issued in the name of the President. Even if you are following the practice in England, according to this draft, the orders etc. of the Government in England are by “His Majesty’s Government”. It is surely not so in India—at least I hope it is not intended that the Government in India would hereafter be described as “the President’s Government”. The Government is the Government of India, and I do not see why the impersonal and collective form should be substituted by the personal and direct form of the

President. In my reading of the Constitution this offends against every principle that this Draft Constitution is otherwise based upon and I see no reason why decisions of the Government of India in their executive sphere should be expressed in the name of the President. By the express provision of this Constitution the President is outside the turmoil of parties, while the Government of India is definitely going to be a party Government or even a coalition Government which may have varying fortunes. If so there is every ground to suggest that the orders of Government be in the name of Government themselves collectively and not in the name of the President. It is for that reason that the first amendment has been suggested.

The second amendment is consequential. Rules which will regulate the framing and issue of orders will of course be made by the Council of Ministers. The President should, therefore, not intervene at all in this direction and the orders will be expressed in the name of the Government of India. If by any chance or for any special occasion any Department has to issue, let us say, a circular or an ordinance or some particular orders relating to the doings of that particular Department, and the order concerned is expressed in the name of that Department or Ministry, that should not be itself invalidate the order merely because it is not spoken of as in the name of the Government of India. To me this procedure seems to be not only more simple but more in accordance with the theory of the Constitution, and therefore I hope the House will accept it.

(Amendment No. 1347 was not moved.)

**Mr. Vice-President :** The article is now open for general discussion.

**Shri M. Ananthasayanam Ayyangar** (Madras : General) : Sir, Prof. K. T. Shah who has moved the amendments Nos. 1346 and 1348 has tabled his amendments in accordance with a different scheme which he envisaged; and in pursuance of that he has tabled amendments almost to every clause, or to the majority of the clauses, in this Constitution. He wanted a different kind of Government in this country, namely, the Presidential system is opposed to the Parliamentary system.

**Prof. K. T. Shah :** On a point of correction, this is keeping the President outside the Presidential system that I wanted. It is on their Draft that I wanted to make the amendment.

**Shri M. Ananthasayanam Ayyangar :** I am glad that for once my friend has tried to help the other party. My friend, Prof. Shah will find that we have already given our seal of approval to article 66, which says :

“There shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People.”

Therefore the President of the Union becomes an integral part of the Parliament of the Indian Union. In another section, the executive power is co-extensive with the powers of the Legislature. Thus at one stage he becomes a necessary element and at another stage he ceases to be in the turmoil of the day-to-day administration. Prof. Shah wanted by an amendment to article 66 to do away with the President and restrict it only to the two Houses—he wanted only one House. But the amendment was lost and the President has become a permanent fixture. So far as Parliament is concerned, I do not see any reason why the executive authority ought not to be exercised in his name.

Let us turn to article 42. It says:

“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.”

That was also passed by this House. In view of articles 42 and 66, where in the one of case the President is the executive authority and in the other the

[Shri M. Anathasayanam Ayyangar]

President, with the two Houses, constitutes Parliament, the President has been firmly fixed up in both the places. This Article, that is article 64, is only carrying out the substantive provisions of articles 42 and 66, by saying that “all executive action of the Government of India shall be expressed to be taken in the name of the President”.

He is the chief executive authority. He is the first person and in case of dissolution of Parliament, who is the person to dissolve it? It is the President who is vested with the authority. During day-to-day administration, except in regard to legislative portions and legislative enactments, who is to sign in the absence of Ministers? If the Parliament is dissolved the Ministry also is dissolved. If an occasion arises like that, the President has to exercise the powers.

Let us address ourselves to another reason that has been given. My friend Prof. Shah wants that executive action should be taken in the name of the Government. The President means the President on the advice of the Ministers. He cannot act independently. Action is taken in his name though it is action of the Government as a whole, that is, consisting of the President and the Ministry. Thus it is impossible to get him out of the framework. The President is the chief executive authority and he is an important link in Parliament. It naturally follows that executive action should be taken in the name of the President.

I oppose both the amendments of Prof. Shah—Nos. 1346 and 1348—and request the House to pass article 64 as it stands.

**Shri Raj Bahadur** (United State of Matsya) : Mr. Vice-President, Sir, I come here to oppose the amendment that has been moved by Prof. K. T. Shah. From the various amendments that he has been moving from time to time, I am led to think that he is moving according to a set plan and that he wants the Presidential system of constitution instead of the Parliamentary system of democracy for the country. But, with all respect to his erudition and experience, I see that he has not been consistent even in that. When we discussed article 42, by which the entire executive power of the Union is vested in the President, he himself moved two amendments, Nos. 1040 and 1045 to that article and one of his amendment reads as follows:—

“The sovereign executive power and authority of the Union shall be vested in the President, *and shall be exercised by him* in accordance with the Constitution and in accordance with the laws made thereunder and in force for the time being.”

By implication it means obviously that all executive actions should be taken by and in the name of the President, which is exactly the import, meaning and the implication of article 64, under discussion. I, therefore, fail to see any reason for Prof. K. T. Shah to go now behind the terms of his own amendment, which he moved to article 42. What we mean clearly enough is that the entire executive power of the Union vests in the President and all governmental orders, and instruments shall be made in the name of the President. It is no anomaly and no inconsistency under any known democratic principles to get the orders issued in the name of the President and as such, I submit, there is no reason for the House to accept the amendment which has been moved by Prof. Shah.

**The Honourable Dr. B. R. Ambedkar** : Mr. Vice-President, Sir, I do not think any reply is called for.

**Mr. Vice-President** : The question is:

“That in clause (1) of article 64, for the word ‘President’ the words ‘as the Parliament by law’ be substituted.”

The amendment was negatived.

**Mr. Vice-President :** The question is:

“That in clause (2) of article 64, for the word ‘President’, where it occurs for the first time, the words ‘Government of India’, for the word ‘President’, where it occurs for the second time, the words ‘Council of Ministers’, and for the word ‘President’ where it occurs for the third time the words ‘Government of India’ be substituted respectively, and the following proviso be added at the end of clause (2):—

‘Provided that nothing in this article shall invalidate any act or word of Government expressed in the name of a particular Department or Ministry’.”

The amendment was negatived.

**Mr. Vice-President :** The question is:

“That article 64 stand part of the Constitution.”

The motion was adopted.

Article 64 was added to the Constitution.

### Article 65

**Mr. Vice-President :** Amendment No. 1349 has the effect of a negative vote, and is, therefore, disallowed.

Amendment No. 1350 stands in the name of Shri H. V. Kamath and may be moved.

**Shri H. V. Kamath (C.P. & Berar : General) :** Mr. Vice-President, I move. Sir,

“That in clause (a) of article 65, after the word ‘President’ a comma and the words ‘as soon as they are made,’ be inserted.”

This clause as it stands at present, reads as follows:—

“It shall be the duty of the Prime Minister—

to communicate to the President all decisions of the Council of Minister,.....”

If my amendment be accepted by the House, the clause, as amended, would read thus:—

“It shall be the duty of the Prime Minister—

to communicate to the President, as soon as they are made, all decisions of the Council of Ministers.”

The amendment is more or less formal, and only makes for clarity of the meaning of the clause. In my judgment, there is no need whatever for such a clause in the Constitution and I think that it may as well be incorporated in the Rules of Business of the Cabinet. But somehow or other, it has found its way in the Constitution and any amendment which seeks to eliminate it would be disallowed as it seeks to negative the motion. Personally I should have wished that the article as a whole were not there, because it is merely some of the Rules of Business of the Cabinet; and what they should do in this matter must be purely a routine affair and must have been embodied in the Rules of Business of the Council of Ministers. But as it has come before us, I would only move this amendment, with a view to obtaining greater clarity of this particular sub-clause(a), because decisions of the Council of Ministers, if they are not communicated as soon as they are made,—it may be, of course, that they will be communicated very soon after that—but to make it absolutely clear, we might as well provide for this, that all the decisions of the Cabinet must be communicated to the President as soon as they are made, so that if a contingency arises, as visualized in sub-clauses (b) and (c), the President may call for information and if the President so requires, any matter which has been considered by the Cabinet already, may be re-opened by them, as provided for in sub-clause (c) of this article. Delay perhaps may be dangerous in this matter as in so many others, and therefore with a view to eliminate any