

[Mr. Vice-President]

We have a number of amendments, of which only No. 1281 will be allowed. The other amendments are verbal and are therefore disallowed.

(Amendment No. 1281 was not moved.)

Mr. Vice-President : I shall put this article to vote.

The question is:

“That article 58 stand part of the Constitution.”

The motion was adopted.

Article 58 was added to the Constitution.

Article 59

Mr. Vice-President : The motion is:

“That article 59 stand part of the Constitution.”

We have a number of amendments. No. 1282 is disallowed as it has the effect of a negative vote. 1282-A may be moved.

(1282-A was not moved.)

Amendments Nos. 1283 and 1284. There are a number of amendments to them also, but they are disallowed as being verbal. No. 1285 may be moved.

(Amendment No. 1285 was not moved.)

Amendment No. 1286.

Mr. Tajamul Husain : Mr. Vice-President, Sir, I beg to move:

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

Sir, in my opinion, the President only should have power to suspend, remit or commute a sentence of death. He is the supreme Head of the State. It follows therefore that he should have the supreme powers also. I am of opinion that rulers of States or Provincial Government should not be vested with this supreme power. The President of the Federation should be the supreme authority in respect of offences committed against Federal Subjects. I say that there must not be divided loyalty on this subject. When the States came into the Federation they accepted the operation of the Federal Laws in their States and they accepted to that extent that the Federal Government was supreme and the President of the Federation as representing the Federal Government can alone be the authority who can grant pardons. In the U.S.A. the President grants pardon in all the States. These are matters of the most vital importance to the existence of the Centre and therefore the power of pardon could not be given to anybody except the Head of the Federal Government, that is the President or the Indian Union or the Indian Republic. If the ruler of a State exercised powers of pardon in respect of offences relating to those subjects which they themselves had conceded to the Federation it would amount to taking away with one hand what they had given with the other. In regard to the subjects conceded by the State to the Union the State ceases to be sovereign to that extent. The Federal Law is binding upon every citizen and there is a direct relation between the citizen and the Federal Government. When there is a breach of the federal law the representative of the Federation must have the inherent power of pardon. Therefore I think where the question of pardon is involved the more serious the offence the higher should be the authority to grant the pardon. I have already pointed out about America. In England too the pardon is granted only by the King on the advice of his Home Minister, but pardon is granted only by the representative of the State. In those days when there was no

talk of partition of this country they were thinking of a weak Centre with three or four subjects like Communications, Defence, Foreign Affairs, etc., and the provinces were to enjoy complete autonomy. Now that the country has been partitioned we people who are the citizens of this country have decided once for all that the Centre will not be weak but a strong one, that we would have the strongest possible Centre. If this is our aim the head of the Central Government must have this power. With these words, Sir, I move my amendment and I hope it will have the support of the whole House, including my honourable Friend Dr. Ambedkar and also you, Sir.

Mr. Vice-President : Amendment No. 1287 is disallowed as being formal.

(Amendment No. 1288 was not moved.)

Shri R. K. Sidhwa : Sir, my honourable Friend Mr. Tajamul Husain has proposed to delete clause (3) of article 59 and his argument was that he wanted to keep the authority of the President supreme. Nobody denies that. If the honourable Member would see article 59 (1) it says:

“The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence.....”

Similarly powers are vested in the Governors and they can also suspend, remit or commute a sentence of death. In my opinion it is very healthy they should continue to vest this power which existed under the old regime in the Governors of the provinces, for this reason that the Governor of a province is better informed of a particular case of pardon which is referred to him. As far as the President is concerned when the question goes to him, he has to refer the matter first to the Governor and if the Governor has not exercised his right properly the President goes into the whole matter and exercises his right. In the matter of commuting a sentence of death it is only fair that the powers should also be with the Governor and the supreme power should remain with the President. The Governor is a popular governor and is responsible in a sense to the legislature, as he is the nominee of the Premier or the Prime Minister. If he acts wrongly, as my friend fears, then the legislature is there to keep a vigilant watch over him. Therefore I do feel that the present position which is retained in the Draft Constitution is very desirable and we should retain those powers.

As far as rulers are concerned I am not very clear. But I do feel that in the constitution that will be framed by the various constituent assemblies of the States they will see that the ruler is made responsible to the legislature and he will also be like the head of provinces a mere figurehead of the State. From that point of view I would support even the power being vested in the ruler, although I make a qualification to my statement that at present I do not know what the position of the ruler is. If the ruler is autocratic and not responsible to the legislature certainly I would not like to give him that power. But assuming as I do that the rulers of the States are going to be made responsible to the legislatures I support the article as moved by Dr. Ambedkar. The commuting of a sentence of death is a very important power and we do not want straightaway that the matter should go to the President. Let the Governor, who knows his province very well and can consult his Premier, exercise the function. The President is for the whole of India. Even if the matter goes to him he has to consult first the Governor and the Governor has to consult his Premier. From that point of view I oppose the amendment of Mr. Tajamul Husain.

Mr. Vice-President : Does Dr. Ambedkar wish to say anything on this amendment moved by Mr. Tajamul Husain?

The Honourable Dr. B. R. Ambedkar : Yes: Sir: It might be desirable that I explain in a few words in its general outline the scheme embodied in article 59. It is this: the power of commutation of sentence for offences enacted by

[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