

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 13th December, 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

DRAFT CONSTITUTION—(*contd.*)

Article 43—*contd.*

Prof. K. T. Shah : (Bihar : General): Sir, I have moved.....

Shri T. T. Krishnamachari (Madras : General): Sir, on a point of order, may I know whether Prof. Shah can bring in again the scheme that he had outlined in one or two earlier amendments of his and which had all been negatived in this House? He is really persisting in one particular scheme in all his amendments and is the honourable Member in order in moving this amendment?

Prof. K. T. Shah: My reply to that point of order is clear. I had foreseen this objection and that is why I have worded my amendment in such a manner that this particular objection will not apply. The principle of complete separation of powers between the various organs of Government is rejected. But that does not preclude the President, even if these powers are not separated, from being elected by popular vote, whatever his powers. Unless it is intended that I shall not be allowed to move any amendment, I do not see how the objection can arise. I leave it to the Chair. I am entirely in your hands, Sir. I do not think that the honourable Member's arguments can apply at all. It was because of this that I have worded each of my amendments in such a way that risking the possibility.....

Mr. Vice-President (Dr. H. C. Mookherjee): Prof. Shah is in order.

Prof. K. T. Shah : Sir, I have moved already:

“That for article 43, the following be substituted:—

‘43. The President shall be elected by the adult citizens of India, voting by secret ballot, in each constituent part of the Union.’ ”

The original article provides for the election of the President by an electoral college consisting of the members of the Central Legislature as well as those of the Provincial or States legislatures. That I think is not sufficiently representative of the people's will; and as such I at least am persistent enough to insist upon the people's will being always held supreme.

I have felt it necessary, even apart from any other scheme, that at every point, wherever I can help it, the sovereign people shall come in, whether you like it or not, and that the people's will be asserted, whether you like it or not. It is therefore I suggest that every adult citizen shall have his share in electing the head of the State; and accordingly, instead of indirect election through the representatives of the legislatures which may be elected after two, three or four years interval, I would suggest that every time a presidential election takes place, that election shall be by the votes of the people themselves.

I will give you both positive or negative arguments for this amendment. I have been accustomed to this kind of suggestion that, either my amendment is not in proper time, or this is not the proper place for it, or the third dimensional argument,—“I oppose it.” These are the three—dimensional answers to my arguments. In reply I hold that this is the only time and the only place where I can bring forward this particular amendment; and as for opposition without reason I am of course sufficiently reasonable not to take notice of it.

[Prof. K. T. Shah]

The point I wanted to make is this. On a previous occasion it was suggested that the principle having been settled, it is brought up in another shape today, and so this amendment should not be taken up. I put it to you, Sir, and through you to the House, that even if one had put up this idea at the time that the general principles of the Constitution were considered, I would invite the House dispassionately to consider the point I am making now, namely that 14 or 15 months ago, when we decided upon what are called the leading principles, and nothing more than the leading principles, we were under a stress and strain, and were passing through difficult circumstances and were under influences, which, I venture to submit, deflected our judgment, unbalanced our outlook, and, therefore, we voted for and accepted ideas, which, in my opinion, were not then, and are not consistent with the idea of a true, real, working democracy, in every sphere of life. If you wish to go back on it I have nothing more to say. After 15 months we are now in a position to take a more sober, balanced, and impartial view of the situation. As such if we are true to our ideals, if we are true to the principles which we have proclaimed from the house-top, if we are true to the slogans on which we asked the old Imperialist regime to quit and yield place to the children of the soil, I put it to you, Sir, that there is nothing improper, there is nothing out of the way for me to put before the House this amendment. It is after all for the House to judge. I only want to submit to the House the considerations on which it can accept my point of view.

If the Draft before us is treated on the ground that it is something like the report of a Select Committee on a Bill coming before the House, I still say that at that stage any member would be entitled to have his say even on that ground. As I have read the rules, even at the stage of a Select Committee Report before the House, a Member can say that the entire report be sent back for reasons arising out of it, without questioning the principle of the Bill, and, in this case, of the Draft.

Thirdly, after all, the principles that you have accepted, as I have understood them, are the principles contained in the Objectives Resolution; and nothing that I am saying here involves going back upon that Resolution. The Objective principle assures us that ours is a democratic, secular, sovereign republic. That is in no way questioned by my amendment. For the rest they are matters of detail.

Having given you these three reasons against the objection that this is not the time nor the place. I would now pass on to say that, positively considered, the President, whether you make his term three, four or five years, will be, during that period, unless he is guilty of any offence for which he can be impeached and removed, the head, not only of the Government even under your scheme, but will also embody the sovereignty of the people, as Mr. Tyagi pointed out in this House the other day.

And as representing the sovereignty of the people, in their collective capacity, at home and abroad, he must be in a position to command the confidence of the people, be they majority or minority. And I at least hold the view that the President, once elected, ceases to be a party man even as the President of this House is. So I have only suggested that the President will be the President of the whole Indian Union, who will be equally respected, equally revered and obeyed by every citizen, no matter whether he voted for him or not at the time of the election.

Thinking in these terms I hold that we should arm the President with the authority to say that he represents the people. It is no use telling him that there may be conflict between the Prime Minister, or the majority party in

the House, and the President elected by the people. Such a conflict need not arise. The President will function only in an emergency; he will function, not ornamentally only, but in a representative capacity with the representatives of other countries. Accordingly this sort of argument would seem to be puerile namely, that you want the President to be a sort of mere gramophone of the Prime Minister. I do not want the President to be anything but the head of the State and representative of the people in their collective capacity and in their sovereignty. For this reason I hold that the President, not being a creature of party majorities in the Centre or the local legislatures but a real representative of the people, and one elected to function as the head of the State and as its representative, this fact is a conclusive argument.

In this view I may say that the possibilities of conflict between the Ministry and the head of the State, or other difficulties are, in my opinion, matters of detail, which, given good sense, given loyalty to the central theme of this constitution, given sincerity amongst you the makers of the Constitution, may be easily solved. I take the view that you will do very well to have the President elected by the adult vote, instead of by an indirect round about method. After all your Parliament is liable to be dissolved at any time. Though a maximum term of four or five years for the People's House, is provided, there is also provision for its dissolution at any time. The local Legislatures in the States may also be dissolved. The President on the other hand will be elected for a definite period. As such he will be outside the turmoil of party passion, will be outside the momentary ups and downs—the vicissitudes of Parliamentary fortunes; and will be much more likely to maintain balance, and to give a degree of stability to our Government which it may not have under party passions. Accordingly I commend this amendment and I trust it would be considered on its merits, and not on mere pettifogging points of order.

(Amendment Nos. 1054, 1061, 1067 were not moved.)

Mr. Vice-President : Amendment Nos. 1056, 1058, 1060 and 1068 are all of similar import, and can be taken together.

(Amendment Nos. 1058, 1056, and 1060 were not moved.)

Mr. Mohd. Tahir (Bihar: Muslim): Mr. Vice-President, Sir, I beg to move:

“That in clause (b) of article 43, the word ‘elected’ be deleted.”

In this article we are going to form the electoral college for the election of the President. It has been said that the President shall be elected by members of an electoral college consisting of (a) the members of both Houses of Parliament and (b) the elected members of the Legislatures of the States. I want that the word ‘elected’ in (b) should be deleted. My reasons for doing so are these. In the election of the President are we going to be more democratic or are we going to be guided by some sort of imperialistic ideas? If we delete the word ‘elected’ I assure the House that we will be more democratic in this respect, because members of either House—they are elected or nominated—but the members as such must have equal rights and privileges so far as the business of the Legislature is concerned. Therefore it appears to be very improper that there should be a distinction between members and members. Whether a member is elected or is nominated he must have equal rights and privileges so far as the voting for the President is concerned. In this way I think we will be more democratic in our action. Therefore I submit that the amendment which I have moved may be duly considered by the House as well as by the honourable Mover and accepted. With these words I move.

Mr. Tajamul Husain (Bihar : Muslim): Mr. Vice-President, Sir, I beg to move:

“That in clause (a) of article 43, for the words ‘the members’ the words ‘the elected members’ be substituted.”

I shall read article 43. It says: “The President shall be elected by the members of an electoral college consisting of (a) the members of both Houses of Parliament, and (b) the elected members of the Legislatures of the States”. Clause (a) says that the President shall be elected by the members of both the Houses of Parliament. The Upper House has got nominated members while the lower House, the House of the People, has got only elected members. So the President, it appears from this article, will be elected both by elected members and by nominated members of Parliament. And clause (b) says that the President will be elected by the elected members of the Provincial Legislatures. I cannot understand why only the *elected* members of the Provincial Legislature are to elect him while both elected and nominated members of the Central Legislature are to elect him. This seems to me to be anomalous. Article 44 tells us how the members are to vote. There is no provision either in this article or anywhere in the Constitution as to how nominated members are to vote. There are provisions only for elected members. Therefore I think that there is some drafting mistake. That is the reason why I have moved this amendment that the word ‘elected’ be added in clause (a) of article 43, so that both the elected members of the Central Legislature and the elected members of the Provincial Legislatures will elect the President. There will be no nominated members voting, and there is no provision as to how a nominated member is to vote. My amendment is very simple. I have not much to say. I have no doubt the House will accept it and also that the Honourable Dr. Ambedkar will accept the amendment.

Mr. Vice-President : I am not putting amendment No. 1063 standing in the name of Dr. Ambedkar and others to vote, because it is identical with 1064 which has just been moved.

Do you accept it, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Yes, Sir.

Mr. Vice-President : Then I will not put it to vote.

An amendment to amendment No. 1064 standing in the name of Shri Gokulbhai Daulatram Bhatt was not moved as the honourable Member is not in the House.

I disallow, as merely verbal, amendment Nos. 1065 and 1066.

Shri S. Nagappa (Madras : General): I do not move amendment No. 1069, Sir.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, I move:

“That to article 43, the following explanation be added:—

‘Explanation.—In this and the next succeeding article, the expression “the Legislature of a State” means, where the Legislature is bi-cameral, the Lower House of the legislature.’ ”

It is desirable that this amendment should be made, because there may be two legislatures in a State and consequently if this amendment is not made it will be open also to the Members of the Upper Chamber to participate in the election of the President. That is not our intention. We desire that only Members who are elected by popular vote shall be entitled to take part in the election of the President. Hence this amendment.

Mr. Vice-President : Mr. Mohd. Tahir may now move his amendment No. 23 to this amendment.

Mr. Mohd Tahir: I beg to move:

“That in amendment No. 1070 of the List of Amendments, in the proposed explanation, for the words ‘the Lower House of the Legislature’, the words ‘the Legislative Assembly of the State’ be substituted”.

Now, Sir, with due respect to my friend Dr. Ambedkar I am moving this amendment. In my opinion, the term ‘Lower House of the Legislature’ has got no existence of its own. Because, we have defined ‘the Legislatures’ of the States not only in this draft Constitution, but also it will be found in the Government of India Act. There the Legislatures of the State have been defined either as the Legislative Council or the Legislative Assembly. We have given a particular definition for the Houses in the States, namely one, called Legislative Council and the other the Legislative Assembly, in article 148 of the draft Constitution. Therefore my humble submission is that wherever we have to use a term regarding either of these Houses, we must use only the term which has been defined in our Constitution and no other.

Sir, we will now consider how the term ‘Lower House’ originated. I believe it originated from the fact that till now the Members of the Legislative Assembly are being elected by the common people, the general masses of the country paying 6 annas or 12 annas as chowkidari tax and so on, whereas the members of the Legislative Council are being elected by people having higher qualifications. From this difference the feeling naturally arose in the minds of the people that the Legislative Assembly is the Lower House and the Legislative Council the Upper House. This distinction I submit should not continue in our minds after achieving the independence of India. Therefore to my mind it does not appear to be fair to call the Legislative Assembly the Lower House. In no respect can the Assembly be said to be the Lower House. In respect of the number of members, the Assembly is greater than the Council. Also, the Legislative Assembly has got more powers than the Legislative Council of the States. In conclusion I submit that I base my arguments on the first point, namely that when we have given a particular definition as regards the Chambers of the States, it is in all fairness desirable that we should use only that expression namely, the Legislative Council and the Legislative Assembly and no other.

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

Shri K. Hanumanthaiya (Mysore): Mr. Vice-President, we listened with great respect to the arguments of Prof. Shah. He wants the President to be elected by adult citizens. To begin with, there is a technical difficulty. If the President is to be elected by adult citizens, every citizen gets the right to vote. Under the electoral system, the voters’ list is prepared according to some rules and certain people who are lunatics, who are convicted people and who have lost their sannads are not entitled to vote. But in this term ‘adult citizen’ is included even citizens who are not entitled to vote at the general elections. That means that for the Presidential election those disqualified at the general election can vote, if the wording found in the amendment of Prof. Shah is adopted.

Secondly, Sir, the Constitution which is before the House has adopted the Parliamentary system of government. A Parliamentary system presupposes responsible government. The government is carried on not directly by the people but by the duly elected representatives of the people and inconsonance with that principle, the framers of this Constitution have wisely made the presidential election an indirect election, not a direct election as Prof. K. T. Shah envisages.

Thirdly, Prof. Shah wants that the President should be a non-party man. If the procedure that Professor Shah envisages is adopted, he will

[Shri K. Hanumanthaiya]

certainly become a party candidate. The presidential candidate who has to carry on an election campaign from one corner of the country to another will certainly be put up by some party or another and that election campaign will naturally generate party feelings and the man who is elected to the presidential office through this means will never be able to forget his party affiliations and he will not serve the purpose that Prof. Shah has in view. On the other hand, Sir, if he is elected by the members of the legislatures and the Parliament, he is more likely to be a non-party man, just as the Speaker of the Assembly or the Parliament is likely to be. Therefore, the purpose that Professor has in view that the President should be a non-party man will be better served by his being elected by the legislature and not directly by the people.

Then, Sir, Prof. Shah wants the President to be a real sovereign. That is not the intention of the framers of this Constitution. In this Constitution, the President is given the position of reigning and not ruling. The President here is more or less analogous to the King of England in the United Kingdom. If we give the President real power and make him the real executive head, the whole structure as envisaged by the Drafting Committee changes its character. This amendment does not fit into the picture of this Draft Constitution and should therefore be rejected.

Shri Biswanath Das (Orissa: General): Sir, my honourable Friend Prof. K. T. Shah, has raised a very important issue, *viz.*, to introduce the system now in vogue in the United States of America. Sir, today in democratic countries, two different systems are working, one is the system now in vogue in the U.S.A. and the other is the Cabinet system of responsible government. We appointed a Committee, the Union Committee. This Committee, after due deliberation, weighing the *pros and cons*, all the advantages and difficulties of the working of the constitutions in various countries, have devised a system of responsibilities which is known as the system of Cabinet responsibility. Sir, the report of that Committee was adopted by the honourable Members of this House. It was up to Prof. Shah to have moved and taken a decision on this issue at that time. The Drafting Committee have only given shape to the decisions of the honourable Members of this House. It is, I am afraid, too late in the day to change the structure of our Constitution. A change in the system naturally means a change in a great many articles of this Constitution. Practically it disturbs the very basis of this Constitution. I would therefore appeal to my honourable Friend not to press his amendment. Sir, in justification of his plea, he has appealed to us to think of a President who would be a non-party man. I would plead with him that he has undertaken an impossible task. Sir, party system is the very basis of democracy. How on earth could you find a President who is a non-party man? Even the President of the United States is not a non-party man. Those who have seriously followed the working of the American Constitution and especially the last Presidential election must have come to the conclusion that it is the party system that is functioning in America. If Professor Shah thinks of a non-party President, he will have to think of something other than democracy. Sir, Turkey had a sort of non-party government but it has given it up in preference to a party system of government and elections have been introduced. You have to think of a totalitarian state if you think of a non-party President. It is impossible in the very nature of things. Therefore his plea that the President is and ought to be a non-party man does not at all appeal to me.

Sir, the whole question turns upon one issue, *viz.*, who is going to be responsible to the people of the country with regard to the administration.

A President coming through the direct vote of the people as such has an independent existence outside the sphere of the Parliament. It so happens that sometimes, as honourable Members may have seen conflicts do arise between the Parliament and the President, and it makes a smooth working of the machinery difficult. Sometimes important programmes may be upset because of these differences. Even the Parliamentary system has its own difficulties. The Parliamentary system is in vogue in very many countries. In France, difficulty was experienced with the cabinet system of government with the result that in their new constitution some modification has been made with the result that they hope that hereafter the Parliamentary executive in France will be more stable than before. Therefore it is for my honourable Friend Prof. Shah to devise ways by which this Parliamentary system of government, the Cabinet system of government will function well and properly with stability. I would appeal to him that a change in the important structure of our Constitution is not possible at this stage. We have at long and the country is waiting for a Constitution. I would appeal to him and also to the other honourable Members of this House to see that we speed up the discussion of the Constitution and pass it as early as possible. The Union Committee have given due attention to this question, and I would appeal therefore that the article may be accepted and the amendment may be rejected.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, of the amendments that have been moved, I can only accept 1064 and I very much regret that I cannot accept the other amendments.

Now, Sir, turning to the general debate on this article, the most important amendment is the amendment of Prof. K. T. Shah, which proposes that the President should be elected directly by adult suffrage. This matter, in my judgment, requires to be considered from three points of view. First of all, it must be considered from the point of view of the size of the electorate. Let me give the House some figures of the total electorate that would be involved in the election of the President, if we accepted Prof. K. T. Shah's suggestion.

So far as the figures are available, the total population of the Governors' provinces and the Commissioners' provinces is about 228,163,637. The total population of the States comes to 88,808,434, making altogether a total of nearly 317 millions for the territory of India. Assuming that on adult franchise, the population that would be entitled to take part in the election of the President would be about 50 per cent. of the total population, the electorate will consist of 158.5 millions. Let me give the figures of the electorate that is involved in the election of the American President. The total electorate in America, as I understand—I speak subject to correction—is about 75 millions. I think if honourable Members will bear in mind the figure which I have given; namely, 158.5 millions, they would realize the impossibility of an election in which 158.5 millions of people would have to take part. The size of the electorate, therefore, in my judgment forbids our adopting adult suffrage in the matter of the election of the President.

The second question which has to be borne in mind in dealing with this question of adult suffrage is the administrative machinery. Is it possible for this country to provide the staff that would be necessary to be placed at the different polling stations to enable the 158.5 millions to come to the polls and to record the voting? I am sure about it that not many candidates would be standing for election and they would not like non-official agencies to be employed, for the simple reason, that the non-official agency would not be under the control of the State and may be open to corruption, to bribery, to manipulations and to other undesirable influences. The machinery, therefore, will have to be entirely supplied from the Governmental administrative machinery. Is it possible either for the Government of India or for the State

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Governments to spare officials sufficient enough to manage the election in which 158.5 millions would be taking part? That again seems to me to be a complete impossibility. But apart from these two considerations, one important consideration which weighed with the Drafting Committee, and also with the Union Committee, in deciding to rule out adult suffrage, was the position of the President in the Constitution. If the President was in the same position as the President of the United States, who is vested with all the executive authority of the United States, I could have understood the argument in favour of direct election, because of the principle that wherever a person is endowed with the same enormity of powers as the President of the United States, it is only natural that the choice of such a person should be made directly by the people. But what is the position of the President of the Indian Union? He is, if Prof. K. T. Shah were to examine the other provisions of the Constitution, only a figurehead. He is not in the same position as the President of the United States. If any functionary under our Indian Constitution is to be compared with the United States President, he is the Prime Minister, and not the President of the Union. So far as the Prime Minister is concerned, it is undoubtedly provided in the Constitution that he shall be elected on adult suffrage by the people. Now, having regard to the fact, to which I have referred, that the President has really no powers to execute, the last argument which one could advance in favour of the proposition that the President should be elected by adult suffrage seems to me to fall to the ground. I, therefore submit that, having regard to the size of the electorate, the paucity of administrative machinery necessary to manage elections on such a vast scale and that the President does not possess any of the executive or administrative powers which the President of the United States possesses, I submit that it is unnecessary to go into the question of adult suffrage and to provide for the election of the President on that basis.

Our proposals in the Draft Constitution, in my judgment, are sufficient for the necessities of the case. We have provided that he shall be elected by the elected members of the Legislature of the States, who themselves are elected on adult suffrage. He is also to be elected by both Houses of Parliament. The lower House of the Parliament is also elected directly by the people on adult suffrage. The Upper Chamber is elected by the Lower Houses of the States Legislatures, which are also elected on adult suffrage. Therefore, having regard to these provisions, I think Prof. K. T. Shah's amendment is quite out of place. I, therefore, oppose that amendment.

Mr. Vice-President : I shall now put the amendments to vote, one by one. Amendment No. 1051 standing in the name of Damodar Swarup Seth.

The question is:

“That for articles 43 and 44 the following be substituted:—

“The President shall be elected by means of the single transferable vote by an electoral college composed of the members of Parliament and an equal number of persons elected by the legislatures of the States on population basis under the system of single transferable vote.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 1053 standing in the name of Professor K. T. Shah.

The question is:

“That for article 43, the following be substituted:—

‘43. The President shall be elected by the adult citizens of India, voting by secret ballot, in each constituent part of the Union.’ ”

The amendment was negatived.

Mr. Vice-President : Amendment No. 1057 standing in the name of Mr. Karimuddin. The question is:

“That for article 43, the following be substituted:—

“43. The President shall be elected on the basis of adult suffrage.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 1068 standing in the name of Mr. Mohammed Tahir. The question is:

“That in clause (b) of article 43, the word “elected” be deleted.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 1064 standing in the name of Mr. Tajamul Husain. The question is:

“That in clause (a) of article 43, for the words “the members” the words “the elected members” be substituted.”

The amendment was adopted.

Mr. Vice-President : Amendment No. 1070 standing in the name of Dr. Ambedkar. The question is:

“That to article 43 the following explanation be added:—

“Explanation.—In this and the next succeeding article, the expression “the legislature of a State” means, where the legislature is bicameral, the Lower House of the legislature.”

The amendment was adopted.

Mr. Vice-President : Amendment No. 23 of List I (Fourth Week) standing in the name of Mr. Mohammed Tahir. The question is:

“That in amendment No. 1070 of the list of amendments in the proposed explanation, for the words “the Lower House of the Legislature” the words “the Legislative Assembly of the State” be substituted.”

The amendment was negatived.

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

“That article 43, as amended stand part of the Constitution.”

The motion was adopted.

Article 43, as amended was added to the Constitution.

Article 15

Mr. Vice-President : With the permission of the House, I should like to revert to an article left over: that is article 15. I have before me the proceedings of the House from which it appears—this was considered on the 6th December last—that general discussion had concluded and I had called upon Dr. Ambedkar to reply. At that time it was suggested that efforts should be made to arrive at some kind of understanding so that those who had submitted certain amendments might feel satisfied. I do not know the position now; but we cannot wait any longer. Dr. Ambedkar, will you please make the position clear? If no understanding has been arrived at, I would ask you to reply.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, I must confess that I am somewhat in a difficult position with regard to article 15 and the amendment moved by my Friend Pandit Bhargava for the deletion of the words “procedure according to law” and the substitution of the words “due process”.

It is quite clear to any one who has listened to the debate that has taken place last time that there are two sharp points of view. One point of view