

[Shri Rohini Kumar Chaudhuri]

think till we settle this policy regarding nomination, the claims of each province will be certainly satisfied.

Shri T. T. Krishnamachari : Sir, the question be now put.

Mr. President : The question is :

“That the question be now put.”

The motion was adopted.

Mr. President : I shall put the amendment to vote.

The question is :

“That the following be added at the end of article 129 :—

‘and of whom there shall be at least one from each of the States of Part I of the First Schedule.’ ”

The amendment was negatived.

Mr. President : The question is :

“That article 129 stand part of the Constitution.”

The motion was adopted.

Article 129 was added to the Constitution.

Article 130

Mr. President : Amendment No. 2000 is of a drafting nature.

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

“That in clause (1) of article 130, for the word ‘may’ the word ‘shall’ be substituted.”

The amended article would read thus :

“The Executive power of the State shall be vested in the Governor and shall be exercised by him accordance with the Constitution and the law.”

There is a considerable force in the substitution suggested by me in this amendment. The Constitution should make it imperative upon the Governor to use his powers in accordance with the Constitution and the law, that is to say, on the advice of his Ministers, as provided for in the subsequent clauses and in other parts of the Constitution. The Governor has a considerable number of powers, not necessarily those for which Ministers are responsible to the legislature, but other powers as well to be exercised in his discretion, so it is said. I suggest that, under the new system that we are inaugurating, in the democratic regime that we are establishing under this Constitution, it is but right and proper that the Executive head of a State shall use his powers in accordance with the law and the Constitution, that is to say, on the advice of his Ministers where such powers or actions in accordance with those powers are likely to involve any item of ministerial responsibility. It is not merely a verbal change I have suggested; it is an important change in principle and I hope it will command itself to the House.

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

“That in clause (1) of article 130, after the word ‘may’ the words ‘on behalf of the people of the State’ be inserted.”

Sir, if the amendment is accepted, the article would run thus :

“The executive power of the State shall be vested in the Governor and may on behalf of the people of the State be exercised by him in accordance with the Constitution and the law.”

The intention of moving this amendment is quite obvious and simple. I want that the Governor while exercising his powers in the province, must do so on behalf of somebody and that somebody is nobody but the people of the province. Therefore, I think it is necessary that this should be mentioned in the Constitution that the Governor ought to exercise the power on behalf of the people of the State.

With these words, I move.

(Amendment No. 2003 was not moved.)

Mr. President : Amendment No. 2004; is it not of a drafting nature?

Mr. Naziruddin Ahmed (West Bengal : Muslim) : No, Sir.

Mr. President : If you consider it to be substantial, you may move it.

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

“That in sub-clause (a) of clause (2) of article 130, for the words ‘transfer’ to the Governor any functions conferred by any thing existing law on the words ‘authorise or empower the Governor to exercise any power of perform any functions which by any existing law are exercisable or performable by’ be substituted.”

Sir, the existing context says,

“Nothing in this article shall—

(a) be deemed to transfer to the Governor any functions conferred by any existing law or any other authority;”

My objection is to the expression “*transfer to the Governor any functions*”. I submit that functions really adhere to certain offices and functions are never transferred. All that you can do is to empower certain other persons to exercise certain functions of powers attached to a particular office. ‘Function’ as has been defined in Murray’s Oxford English Dictionary is “a kind of action proper to a person.....being the holder of any office”. I think functions really are a part of the powers exercisable by a person in office. I have therefore attempted to suggest that nothing in this article shall authorise or empower a Governor to *exercise any power or perform any functions* which by any existing law are exercisable or performable by other authorities. The words “transfer of functions” would be improper. I cannot say that the amendment is not at all of a drafting nature; it partakes of an amendment of a drafting nature. But I think the word ‘transfer’ is not suitable with reference to ‘functions’ and that is why I have thought it fit to draw the attention of the House to this.

(Amendment No. 2005 was not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, this article is an exact reproduction of article 42 which deals with the executive power of the Union. There is no change made at all. Word for word this article is a reproduction of article 42. I find from the book of amendments that exactly similar amendments were tabled to article 42 and they were debated at great length. I do not think I can usefully add anything to what I said in the course of the debate on article 42 and the amendments thereon. Therefore, I submit that I am not prepared to accept any of the amendments that have been moved here.

Mr. Naziruddin Ahmed : Sir, article 42 is in another context.

Mr. President : The question is :

“That in clause (1) of article 130, for the word ‘may’ the word ‘shall’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That in clause (1) of article 130, after the word ‘may’ the words ‘on behalf of the people of the State’ be inserted.”

The amendment was negatived.

Mr. President : The question is :

“That in sub-clause (a) of clause (2) of article 130, for the word ‘transfer’ to the Governor any functions conferred by any existing law on’ the words ‘authorise or empower the Governor to exercise any power or perform any function which by any existing law are exercisable or performable by’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That article 130 stand part of the Constitution.”

The amendment was negatived.

Article 130 was added to the Constitution.

Article 131

Mr. President : As regard this honourable Members will see that there are two alternatives suggested by the Drafting Committee. The amendments are relating to either the one or the other alternative. So I think the best way is to take an amendment in favour of one of the alternatives and if that is accepted, then all the other amendments relating to the other alternative drop automatically. We take 2006 and if this is carried, then we go to the second.

The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar : General) : Sir, I suggest this. The amendments of course may be taken. But first we might form our opinion as to whether we want the first or second alternative so that if we want the first alternative, then the amendments to that alternative only will be considered and the other alternative will go away.

Mr. President : That is exactly what I suggested but it was felt that the best course will be to take the amendments.

The Honourable Shri Ghanshyam Singh Gupta : Supposing we take the other alternative and then the amendments, the first alternative will not be taken at all.

Mr. President : If 2006 is carried, all the amendments to the other alternative will drop.

Shri L. Krishnaswami Bharathi (Madras : General) : There is a third alternative.

Mr. President : That can come in as an amendment to one of the alternatives.

Shri Brajeshwar Prasad : Sir, I refer to 2015 stands in my name.