

## CONSTITUENT ASSEMBLY OF INDIA

*Monday, the 3rd January 1949.*

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 66

**Mr. Vice-President** (Dr. H. C. Mookherjee) : Before we begin the work of the House, I am sure that honourable Members will agree with me if I ask them to stand for a minute in silence to show our gratitude to the Source of all life, and the Source of all energy whom we all worship in our different ways, that at last there has been this cease-fire arrangement at Kashmir.

(The Assembly stood for a minute in silence.)

Thank you all.

We shall begin our work today by taking up article 66 which has to be passed before we can pass on to article 67.

The motion before the House is :

“That article 66 form part of the Constitution.”

Amendment No. 1353 to this article, standing in the name of Mr. Naziruddin Ahmad is disallowed as it is not substantive.

Nos. 1354, 1355 and 1358 are of similar import and No. 1355 may be moved. It stands in the name of Shri Brajeshwar Prasad.

(Amendments Nos. 1354 and 1355 were not moved.)

No. 1358 may be moved, standing in the names of Shri Lokanath Misra and Shri Mohan Lal Gautam.

**Shri Lokanath Misra** (Orissa : General) : Sir, I beg to move :

“That in article 66 the words ‘and two Houses to be known respectively as the Council of States’ be deleted.”

If this amendment is accepted, the article would read like this:—

“There shall be a Parliament for the Union which shall consist of the President and the House of the People.”

The effect will be that there will be no second Chamber to be called the Council of States.

Sir, I beg to submit that I am not against second Chambers on principle. But in the present temper of our people, and in view of the manner of the constitution of the second Chamber as has been envisaged in the Draft Constitution, I do not think there is any real need for the second Chamber, nor do I think that it will serve any useful purpose. Sir, so far as I have studied the Constitution and the constitutional precedents, it is now admitted almost on all hands that second Chambers are out of date. The only argument that is generally advanced in favour of such a chamber is that it will have a sobering effect on the decisions of the Lower House which is more representative of the people and that the people are now restive. I therefore submit that unless the manner of the Constitution of this second Chamber is changed and we are

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in a position to accept something which will be purely Indian based on Indian culture of deep, all-pervasive view and on Indian sentiment and temperament based and nurtured on our traditions which alone can have a sobering influence, the creation of an Upper House by itself will have no influence on the House of the People. But this is not to be and therefore I do not think there is a real need for the second Chamber. Its creation will only result in so much waste of public money and so much waste of time. I therefore submit that if the House is not prepared to change the Constitution of the second Chamber as proposed in the Draft Constitution, it will be much better for us to do away with the second Chamber altogether. I am glad that my own province of Orissa has already decided against a second Chamber and we are going to have only one Chamber. I do not think that without a second Chamber the country will be any the poorer for it, as now we stand.

**Mr. Vice-President :** Amendments Nos. 1356 and 1359 are of similar import. Begum Aizaz Rasul may move amendment No. 1356.

**Begum Aizaz Rasul** (United Provinces : Muslim) : Sir, I beg to move :

“That in article 66, for the words ‘There shall be a Parliament for the Union which’, the words ‘The Legislature of the Union shall be called the Indian National Congress and’ be substituted.”

The Article will then read:

“The Legislature of the Union shall be called the Indian National Congress and shall consist of a President and two Houses to be known respectively as the Council of States and the House of the People.”

Sir, my object in moving this amendment is that the word ‘Parliament’ may be substituted by a name which will convey to the people of India and to the world the name of the party that instituted the struggle for the freedom of the country. If the words ‘Indian National Congress’ are substituted for the word ‘Parliament’, the participation of the Congress in the national struggle will be permanently commemorated. This will also save the Congress from degenerating in course of time as all political parties are bound to do. It will liberate the Indian people from the glamour of the Congress and make it possible for them to exercise their vote democratically for otherwise the name of the Congress will unduly influence their emotions. This is more necessary because the Congress in the past was a movement rather than a party. It represented the Nation’s urge to freedom and attracted people to suffering and sacrifice. Today, with its transformation into a party, it may become a happy hunting ground for political adventurers and successful black-marketeers.

The word ‘Congress’ is not new. It is used for the American Parliament and if adopted for India will certainly convey to the world the ideals and principles for which the Indian National Congress stands for. I therefore think that it is in the fitness of things that in this Constitution of India, the words ‘National Congress’ should be substituted for the word ‘Parliament’. I hope that this suggestion of mine will receive the attention and sympathy it deserves. With these few words I move my amendment.

**Mr. Vice-President :** Now, in List I of the VI Week, amendment No. 1 standing in the name of Shri R. K. Sidhwa seeks to amend the amendment just moved. Mr. Sidhwa may move it. I see that Mr. Sidhwa is not in the House. The amendment is therefore not moved.

Prof. Shah’s amendment comes next. Before I ask Prof. Shah to move I would like to know from Mr. Lari whether he wants amendment No. 1359 to be put to vote. I see that Mr. Lari is not in the House. Prof. Shah may now move amendment No. 1357.

**Prof. K. T. Shah** (Bihar : General) : Mr. Vice-President, I beg to move:

“That in article 66, the words ‘The President and’ be deleted.”

The amended article would then read :

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

Sir, in presenting this amendment to the House I want to bring to its notice the fact that the clause as it stands is merely an imitation, and, in my opinion, an unnecessary imitation, of the British system where the king still forms an integral part of the entire Governmental machinery, the entire Constitution, and particularly of the Parliament. All the laws are made by “the King’s Most Excellent Majesty, with the advice and consent of the two Houses”. Justice is administered in the name of the king. The Post Office functions in the name of His Majesty. The army, the navy, all defence forces, all civil services are in the service of His Majesty.

That, however, is a state of affairs, which is not quite suited to, and should not be imitated in, this country’s Constitution. The King-in-Parliament is not only a traditional institution; but has some solid constitutional foundation to rest on, such as, for instance, the large margin of Prerogative powers which the king exercises. No doubt, he exercises those powers on the advice of His Ministers, but they still reside in the King only.

In the case of the President in India, on the other hand, it is I think, a very misleading analogy to make him the Indian counterpart of the King in England. The comparison is, therefore, very misleading to make the President an integral part of the Legislative organ of the Indian Union.

The President would not only not have the Prerogative authority in all respects that the King has; it is in my view, the basic idea of this Constitution, unless I have grievously misunderstood it, that the President would be only a figurehead, who will act everywhere and every time only with the advice of his Ministers and with the advice of his Ministers alone. By himself he will be nothing but the ornamental head of the State.

If this conception of the President’s place in our Constitution is correct, and I see nothing in the Constitution to contravene that view, then I submit that the inclusion of the President in article 66, making him an integral part of the Parliamentary machinery, is utterly out of place; and as such it should be avoided.

This Constitution, Sir, is not like the British Constitution growing up from age to age, from generation to generation, from century to century. It is a Constitution which has been made by the authority of the King making one concession after another, surrendering one prerogative after another foregoing one power after another or consenting to use it only on the advice of his Ministers. It is by the authority, and in the name of the people of India that the Parliament of India will function; and, as such, the President, even though the people’s chosen representative, need not be—and should not be,—associated with the legislature as an integral part thereof.

I think a blind imitation of this kind of the British convention or British constitutional practice, carried to this extent, will only land us in difficulty. For the theory on which the British Constitution is formed is utterly different from that on which ours is based. The British Constitution is very largely based on convention and tradition. Large portions of these conventions are still unwritten and uncertified, leaving an indefinite margin for adoption to circumstances. And those which have been written and codified are only the various legislative enactments of Parliament, which, however, themselves are founded only on accepted traditions, conventions or precedents.

In our case, on the other hand, we are writing this Constitution for the first time by our own efforts. As such for us to associate the President with our

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Parliament, in the same manner as the King is associated with the British Parliament is, I submit, utterly out of place.

I suggest, therefore, that these words should be deleted. Lest anybody should feel that this, again, arises out of my old idea and amendment about the separation of powers between the chief executive, the chief legislature, and the chief judiciary, let me assure you that that is no longer my submission now; and that that idea in no way affects this amendment now before the House. "The President" can very well be removed from this clause, without in any way infringing upon the doctrine of combined powers or collective responsibility on which this Draft Constitution is based. Accordingly I trust that this amendment will commend itself to the House.

(Amendments Nos. 1360, 1361, 1362, 1363 and 1364 were not moved.)

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

**Shri M. Ananthasayanam Ayyangar** (Madras : General): I am sorry, Sir, that I have to oppose all the amendments that have been moved. The amendments relate to three aspects. Number one and the most important of them seeks to restrict the scope of this article to the House of the People alone. That is, the mover of this amendment does not want an Upper House. Sir, it is common knowledge that in this country so far as we are concerned, there is so much enthusiasm and if for no other reason, we must find opportunity for various people to take part in politics. Therefore it is necessary that we should have another House where the genius of the people may have full play. The second reason is that whatever hasty legislation is passed by the lower House may be checkmated by the go-slow movement of the Upper House. The third reason is that the Upper House is a permanent body, while the Lower House is not. These are some of the reasons why, constituted as we are at present, it is necessary that in the interests of the progress of this country we should have a second House.

Then, Sir, so far as the name is concerned, there has been a suggestion that has been moved by my honourable Friend, Begum Aizaz Rasul and there is a similar amendment also standing in the name of Mr. Lari. Both of them want the name of the Parliament to be changed into the Indian National Congress. I appreciate their motives. It is the Congress which fought for the freedom of this country and therefore these friends who sympathise with the Congress, though they are not participants in this organisation, recommend that the name of this organisation should be associated with the name of the Parliament of the Union. However, laudable this may be, if it is accepted, it would lead to the accusation that a one-party government has been established in this country. The very same friends might say, "Look at what is happening. The Congress, the fighting organisation, has established a one-party rule in the country. It has even lent its name to the Parliament of the Union". If this suggestion is accepted, it may even prove to be the death-knell of the Congress, for it would no longer be able to function as a political party, to fight its way against the various reactionary political parties which are still raising their heads, mostly based on community and religion. Therefore, Sir, this is not at all acceptable.

Then, as regards the amendment moved by my honourable Friend, Prof. K. T. Shah, that the word 'President' should be removed and ought not to be associated in any shape or form with the administration of the country. I would ask him to refer to article 42 which has already been passed and where it is laid down that the executive power of the Union shall be vested in the President of the Republic to be exercised by him in accordance with the Constitution and the law. The President has been made a very important functionary in the whole scheme of things, and in the Constitution he is the chief executive

authority. Executive power is co-extensive with legislative power. Therefore it is not mere copying of the United Kingdom practice, but independently also we have to come to the same conclusion. Therefore it is necessary that the word 'President' should be retained. Otherwise, there will be a lacuna.

I submit, Sir, for the consideration of the House that the article as it stands may be accepted and that all the amendments should be rejected.

**The Honourable Dr. B. R. Ambedkar** (Bombay : General): I do not accept any of the amendments nor do I think that any reply is called for.

**Mr. Vice-President** : I shall now put the amendments one by one to vote. Amendment No. 1358. The question is:

"That in article 66, the words 'and two Houses to be known respectively as the Council of States' be deleted."

The amendment was negatived.

**Mr. Vice-President** : Amendment No. 1356. The question is:

"That in article 66 for the words 'There shall be a Parliament for the Union which' the words 'The Legislature of the Union shall be called the Indian National Congress and' be substituted."

The amendment was negatived.

**Mr. Vice-President** : Amendment No. 1357. The question is:

"That in article 66, the words 'The President and' be deleted."

The amendment was negatived.

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

"That article 66 stand part of the Constitution."

The motion was adopted.

Article 66 was added to the Constitution.

### Article 67

**Mr. Vice-President** : We next come to article 67. The motion is:

"That article 67 form part of the Constitution."

**Shri L. Krishnaswami Bharathi** (Madras : General): Mr. Vice-President, I have an humble suggestion to make in the matter of producer when we deal with this article. You will be pleased to see that this article relates to the composition of the Houses of Parliament, the two Houses, namely, the Council of States and the House of the People. It contains nine clauses, and I would suggest that in the interest of clarity of discussion, this article may be split up into three parts: one relating to the composition of the Council of States—clauses (1) to (4); clauses (5) to (7) relate to the composition of the House of the People: clauses (8) and (9) are consequential, relating to both the Houses, regarding the census and the effect on the enumeration of the census.

I talked this matter over with Dr. Ambedkar and he himself said that he had marked it like that in his book, and that he proposed to make certain changes of transposition during the third reading. It may not be therefore quite possible straight way to split it at present, but I would request you to have all the amendments to the Council of States, clauses (1) to (4), taken together and discussions may be concentrated regarding them first, and the article may be kept open for amendments. After the discussion is over, you may put the whole clause together. All this I suggest in the interest of clarity so that when honourable Members deal with the Council of States they may confine their discussion on it and