

Article 42

Mr. Vice-President : The motion before the House is:

“That article 42 form part of the Constitution.”

Shri H.V. Kamath: On a point of order, this article 42 is out of place. The order should have been “The President and his election”—the articles relating to this matter should have come first, and “Powers of the President” should have come after the election of the President. My authority for this is the report of the Union Constitution Committee which the Assembly adopted last year. I should therefore think that this article 42 must be considered after article 43.

Mr. Vice-President : This matter can be mentioned when we come to the third reading of the Constitution.

Shri H. V. Kamath : But this should be noted by the Drafting Committee.

Mr. Vice-President : I see Dr. Ambedkar’s pencil moving rapidly.

Now, to take up the amendments: Nos. 1043 and 1049 are disallowed as being verbal. Amendment No. 1040 by Prof. K.T. Shah.

Prof. K. T. Shah : Mr. Vice-President, I beg to move—

“That for clause (1) of article 42, the following be substituted:

‘(1) 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’.”

or alternatively,

“(1) The executive authority, power and functions of Government shall be vested in the President and shall be exercised by him in accordance with the Constitution and the law with the advice and help of such ministers, officers or servants of the State as may be deemed necessary by him.”

Before explaining the difference that there is between two alternative forms of the same idea, I should like to point out, if I may, that the argument which has been urged by the Chairman of the Drafting Committee about the appropriate place of any amendment or alteration suggested in this House is a little out of place itself. The reason is that after all this is an order settled by the Drafting Committee, and we can only give amendments on the order as it is.

An argument was also urged that if—and I agree with it—we go on holding over amendments and articles, their mutual correlation may be forgotten or overlooked; and therefore, it would be safest perhaps, and in the best interests of a full discussion, that a definite order is established. We submit most cheerfully to the suggestion you gave, at the very outset of the debate on an article that some stated amendments would be taken up and in the stated order.

That is a perfectly reasonable and proper thing to do but when an amendment or article is placed before the House, and then suddenly a surprise is sprung upon Members that this is out of place or out of time, I think it is somewhat unfair. Let those who are responsible for drafting make up their mind in what order they will take Chapter by Chapter, and we can understand that and shall co-operate. The idea that we will, in the middle of discussions, switch over from one article to another or one section to another, makes it, I submit in all humility, a little difficult for those who are responsible for a number of amendments to keep track, and to marshal their own arguments. One comes prepared for a particular set of articles; and one is suddenly told that they are not to be taken up or that it is not their place and so on. However much one may carry one’s own argument in one’s head, one feels a little upset to be asked all of a sudden to make up one’s mind whether this thing is to be moved or not to be moved.

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Secondly, having moved, the argument or suggestion that this is not the proper place etc. and that a given amendment be taken after another article has been dealt with is, again I submit, a little difficult for members, because it might, so to say, pre-judge the main issue. If you hold it over and get to the later article....

Mr. Vice-President : Are you not moving my amendment, Prof. Shah?

Prof. K. T. Shah : I am placing my difficulty, because the same argument may be used here again that this is out of place. That is why I am replying to it. I am very much afraid having heard this line of reasoning—I do not say that the reasoning is false—I am only saying that it makes it difficult for us to put forward, in the only way in which we can put forward, the amendments, namely, according to the order prescribed or given in the book.

Having said this, I would like to point out quite frankly that naturally all my amendments hang together, and that they arise out of a certain view of the Constitution, out of a certain view of the distribution of powers, of finances etc. which may not be accepted; but which nevertheless is a possible, a known alternative way of doing it.

I have, therefore, brought forward this amendment. I trust it will be examined or dealt with on its merits, and not merely on the ground that it is out of place or it cannot now be discussed. I venture to submit that even if the basic principle is other than I thought would be acceptable to the House, even then, on a point like this, *viz.*, the powers and place of the President may be considered quite irrespective of the governing or basic principle; and if adopted, can be fitted in even in the scheme of the Constitution which you have accepted.

I would, therefore, suggest that the powers and functions of the President should have the place as if they are the powers and functions of the sovereign people being exercised by the Chief Executive of the State. He will be the Chief Executive, I take it, for the time that he is in office, just as the King of England is the Chief Executive, even though the powers are not so thoroughly separated in the British Constitution as they are in the American Constitution.

I, therefore, put forward this point No. 1 that it would be no answer to, to my amendment to say that it is not in harmony with the basic principle of this Constitution namely, that of the Parliamentary Government, and not of the Presidential kind and as such it need not be discussed. I submit that it can be very well fitted in even in the terminology I have used with the basic idea of the Constitution that you have accepted, even though I am free to admit my own conception was slightly different.

To proceed, Sir, I would like the President's powers to be very clearly defined, and be exercisable in accordance with the Constitution. I take it there is no question on that. No one will say that the President is supra-Constitution. The President is a creature of the Constitution, and must work under the Constitution. No further words are, therefore, necessary to explain that emphasis which should be—in fact, it is there—in the main clause 2.

The next point is that it must be in accordance with the laws made thereunder. Now, in a variety of articles you have given power to Parliament to make laws. If the laws are made under the Constitution, which allow or explain or expand the powers given to the several organs of Government, then it is quite in order to suggest that they should be in accordance with the laws made thereunder.

Last comes advice,—the advice of the Ministers, officers and servants of the Union. I think that also is important to include in the position of the President as it is. Later on I have tried to elaborate this point in a subsequent amendment which I shall deal with when I come to it.

In this case, however, because I want that my suggestion should not be merely thrown overboard because it is inconsistent with the basic principle adopted in drafting this Constitution, I have tried to harmonise the Ministerial responsibility—I mean the doctrine of Ministerial responsibility—with also the position of the President as the head of the State and Chief Executive. I once more take the analogy of the King of England, who has to act on the advice of the Ministers. At least that is the constitutional position. Every Act begins: “let it be enacted by the King’s Most Excellent Majesty, with the advice of the Lords Spiritual and Temporal and the Commons”. Every action is the action of His Majesty in each particular matter as advised by the particular Minister. The whole doctrine that “the King can do no wrong” loses its import if the doctrine of ministerial advice and ministerial responsibility is not there. I have, therefore, laid it down, by this amendment, that the President must act in accordance with the Constitution and in accordance with the laws made therein and according to the advice of his ministers.

The addition of the “officers and servants of State” I have felt also necessary to be quite clearly expressed in the Constitution. The President should be entitled not merely to listen to all that the Minister alone says to him; he must have power to consult any other expert, or any other officer, or servant of the State in India who may give him his views. It was, of course, the custom of the regime preceding the present that the Secretaries, for example, of Departments had direct access to the head of the Government, along with or independent of the Member-in-charge of a Government Department. And though I am not keen on restoring that principle, or that system of the Secretaries being entitled to give independent and often conflicting or opposite advice to the head of the Government, as against their Minister-in-charge, I certainly think that it would do no harm to the working of the constitutional machinery if the President is entitled, as a matter of right, to send for any expert officer, and ask his advice, say, for example, the Attorney-General, the Advocate-General, should the President have a legal doubt with regard to his own position, *vis-a-vis* his own Ministers.

He should be entitled, I submit, as head of the State and finally responsible person, to know what the expert in the department thinks. Under the Parliamentary party system it will not be his veto, he would have no right to discard the advice of his Minister. The Minister’s advice will eventually prevail. But it will prevail only after the President has drawn attention, according to my conception, to the other aspects of the matter which the Minister has over looked, or ignored.

It has been said by a great constitutional writer, analysing the Constitution of England a century ago, that the functions of the King,—the permanent Executive in Britain,—is to warn, to advise and eventually to surrender. The President, in the way that I am conceiving the matter here, would have also the right to advise—not the advise from personal prejudice, but the advise from an informed expert opinion having been previously obtained, as a matter of right, to elucidate any point coming before him: and then telling his Minister concerned or the Ministry as a whole that this is the proper view. If you do not think it is proper, very well then, you are the finally responsible party and you can do as you think proper. But in the Constitution a right must be provided for the President to be able to obtain advice from the servants of the Crown.

I am not suggesting that he should be free to go outside the country for such advice. I am not suggesting that he should invite foreign experts to advise

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him. He should be entitled to seek advice from his Ministers in the first place: then from the officers and from the servants of the State. This I think is in perfect harmony even if you conceive and take this Constitution to be on the principle of Ministerial responsibility, and so perfectly proper to accept it. I, therefore, commend this motion to the House.

(Amendment No. 1041 was not moved.)

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

“That in clause (1) of article 42, after the words ‘and may’ the words ‘on behalf of the people of India’ be inserted.”

Now, Sir, if my amendment is accepted, the article will read as follows:

“The Executive power of the Union shall be vested in the President and may on behalf of the people of India be exercised by him in accordance with the Constitution and the law.”

Article 41 which we have adopted just now gives us to understand that the President will be the head of the State. Now, Sir, a man can use his powers legally in two ways only: either in his personal capacity or on behalf of somebody else. Therefore, we have to see how the President has to exercise these powers—whether on his own behalf or on behalf of somebody else. In this connection I will draw the attention of the House to page 3 of the Government of India Act, 1935, where in we find that the Governor-General used to exercise the executive power on behalf of the then King Emperor of India: But now the ownership of this country has been transferred to none but the people of India alone. Therefore, it is necessary that all the powers that have to be exercised in this country have to be exercised on behalf of the people of India.

In this connection I will also point to article 49 of this Constitution wherein the oath has been prescribed for the President and it says that—

“I,.....do solemnly affirm that I will faithfully execute the office of President of India and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well being of the people of India.”

Now, Sir, if my amendment is not accepted, article 42(1) coupled with the form of oath, will surely mean that the personality of the President is somewhat above the people of India which it is absolutely not. I submit that because the ownership of the country vests only with the people of India, all the powers that have to be exercised by the President must be exercised on behalf of the people of India alone and on behalf of none else. Therefore I hope this amendment of mine will be accepted by the House.

(Amendment No. 1044 was not moved.)

Prof. K. T. Shah : Mr. Vice-President, I move:

“That for clause (2) of article 42, the following be substituted:

‘(2) Without prejudice to the generality of the foregoing provision and in accordance with this Constitution and the laws made thereunder for the time being in force, the President shall—

- (a) convene or dissolve the Legislature of the Union, and place before it any proposal for legislation or for sums of money needed for the good government and efficient administration of the country, or for its defence, or to provide for any sudden calamity in any part of the Union or any other emergency;
- (b) have the power to assent to the laws duly passed by the Union Legislature;
- (c) conduct and supervise any Referendum that may be decided upon to make to the Sovereign People in accordance with this Constitution;
- (d) have the power to declare war, and make peace;
- (e) be the supreme commander of all the armed forces of the Union;

- (f) appoint all other executive and judicial officers, including the ministers, representatives of the Union in foreign countries as ambassadors, ministers, consuls, trade commissioners and the like; as well as the commanding officers in armed forces of the Union;
- (g) do all acts, exercise all powers and discharge all authority necessary or incidental to the power and authority vested in him by and under this Constitution;
- (h) have power to refuse assent to any legislative proposal passed by both Houses of Parliament; or to recommend to Parliament that any legislative proposal passed by Parliament be reconsidered for reasons stated by the President, provided that any legislative proposal duly passed by Parliament, if refused assent by the President only once; and that the same proposal if passed in an identical form by Parliament in the next following sessions of that body, shall be deemed to have been duly passed and become an Act of the Legislature, notwithstanding that the President has refused or continues to refuse to assent thereto;
- (i) in every case in which the President refuses to assent to any legislative proposal duly passed by Parliament, the President shall record his reasons for refusing to assent and shall forward the reasons thus recorded to Parliament;
- (j) in any case where the President, having duly submitted to Parliament, or to the People's House thereof, a legislative proposal he deems necessary for the safety of the State, its integrity or defence or to safeguard the nation's interests in a national emergency, finds that Parliament is unwilling to consider or pass that proposal, may refer such a proposal to the people of the country; and if the proposal is approved, on such reference, by a majority of not less than two-thirds of the citizens voting, it shall forthwith become a law of the land. If on such reference the proposal is not approved by the requisite majority, it shall be deemed to have been negatived, and shall be treated as void and have no effect."

Sir, this is, I admit, a somewhat lengthy amendment intended to clear and make definite the powers of the President.

Before I come to the innovations or new ideas inserted in these powers as put forward by me, may I point out one item, which perhaps the draftsmen might consider favourably, namely that in the first clause of the article it has been stated that 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? I am not a practising lawyer, and, therefore, not be able to understand clearly the meaning of this 'may' in this connection. But, speaking only as a commonsense man, I feel that this 'may' is productive or likely to produce considerable mischief. If 'may' in an option to the President, and there is no obligation by law of the Constitution upon him to exercise the powers in accordance with the Constitution and the law thereunder, or in accordance with the advice of his Ministers, then I am afraid many powers—that is my reason for bringing in this amendment—may be exercised by him, which may not be against the written letter of the Constitution, but which in his judgment are necessary and, therefore, taking shelter under this expression 'may', he may do so.

For my part, however, I wish to leave no room for doubt; and, therefore, in a previous amendment I said 'shall' instead of 'may'. And, now, lest there be any further doubt or any margin or no-man's land, or any dubious position in which both may claim equal authority or equal powers, instead of the rather mild description which is given in article 42 (1), I have tried to explain and make clear all the 8 or 10 items, I have specifically enumerated them.

A good many of them are, of course, beyond question, such as the right to convene or dissolve Parliament. These will, of course, be done on the advice of the Ministers. So also the right to declare war or peace. This is merely a titular power, and it is also to be exercised on the advice of the Ministers. Next we have the right to assent to legislation passed by Parliament. I need not, I think, take the time of the House in explaining those conventionally adopted articles. The necessity for stating them, since you are stating them very briefly, or if I may say so, compendiously and clearly, is there, and it would be better to define and put them in full.

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I come next to the question of the right to refuse assent. It may seem as if it was an innovation of my own. I do not think it is an innovation, because, technically at any rate, in the model on which this Constitution is based or appeals to be made, *viz.* that of the United Kingdom, the King's veto is not abolished, as the veto of the House of Lords for instance is modified. There, there are a number of conventions which have for centuries past guided the ministers and the people in dealing with any exercise of royal authority whether by prerogative or otherwise which does not infringe the spirit, if not the letter of the Constitution as well.

Here, however, we are making a new Constitution, and we are starting upon a new democratic career on a very large national scale. After all, you must remember that the United Kingdom compared to India is perhaps not one-tenth or one-twelfth in size; and, in point of the population, it is perhaps one-sixth or one-fifth in strength of numbers. Therefore, what may have suited that country and its ways may not suit us. At any rate, they have a long history of precedents and conventions behind them. We have to make those precedents and conventions. I therefore submit it would be as well for us not to leave any room for doubt, and make precise and explicit the powers that we are vesting in the President.

The right to give assent carries with it the right to refuse assent, unless you positively state that the President will not be able to refuse assent. In my amendment I have, however, laid down the conditions under which the right to refuse assent may be safeguarded. The right to refuse assent is given only once. In spite of the refusal, if Parliament proceeds with the legislation in identical form, whether or not the President agrees, it will become law. The privilege of the President, according to my amendment, only lies in his stating the reasons for refusing his assent. Being popularly elected, as I conceive it, he is bound, in his sense of true responsibility to the people, to lay before their representatives the reasons which have actuated him in refusing assent. I do not think there is anything revolutionary in making such a suggestion.

The second innovation is in regard to reference to the people, or Referendum. Now, this Constitution does not provide for reference to the people, notwithstanding the fact that we talk again and again of the people's sovereignty, of the people being the ultimate sovereign of this country. Our regard for reference to the people, or consultation with the people, is expressed if at all only in a quinquennial election, a general election to Parliament. In a general election, however, so many issues are mixed up; so many cross-currents take place; so many moves and counter-moves happen that the consultation with the people, or the verdict of the people on such variety of issues is only nominal, if I may say so without any disrespect.

If you seriously, if you sincerely, if you really desire that the people shall be sovereign, if you want that the people be consulted in any emergency when your two organs of power, *viz.*, the Legislature and the Executive, are unable to agree, then the test will lie in your readiness to consult the people. It may be that the emergency may be so momentous that you cannot dissolve Parliament. It may be that the state of emergency may be such that the President cannot retire, and will not tender his resignation. Or it may be only a matter involving such strong difference of opinion that neither is prepared to yield. At that moment it is but right that the view of the people should be ascertained on the specific single issue worded so as to admit of a categorical answer, 'Yes' or 'No'.

Surely the test of this Constitution enshrining the sovereignty of the people is not merely the lip-loyalty that seems to be very common in this

Draft. The argument could be urged, and was urged by those who were against people's sovereignty in fact and in name, that the people are not ready; or that they are not educated enough to give any decisive opinion on such complicated issues of foreign or local policy. I trust that in this House, we shall not hear such an argument. Backward as we may be—only ten or twelve percent of us may be literate—whatever may be our deficiency or handicaps, I take it that we are all sincere, true in our belief that ultimately the people are sovereign. Where there is collective wisdom, there is after all real salvation. *Vox populi vox Dei*—The voice of the people is the voice of God.

That, I take it, is not merely a figure of speech, is not merely a maximum used to hypnotise children, but is intended for serious legislators to take into account and act up to it. I invite you, therefore, with all the earnestness I command to consider this matter seriously. If you think that you will take counsel together, on this amendment before giving a positive decision, here at least I am agreeable to hold over this amendment. But I beg of you with all the earnestness at my command that, if you are sincere in your desire to make the people truly sovereign, if you want them to be trained in the art of working democracy, if you desire that they shall be the final arbiters on all issues, then for goodness' sake, do not treat this with your Party label of opposition, right or wrong.

I have not conceived my role in this House as a cussed opposition, to oppose things on every ground and on any ground. I take myself to be a friendly critic, always ready to offer constructive views with such brains or such ability as I have. It may be that they do not appeal to you for one reason or another. But here is a case in which I venture to submit that, if you really believe in the sovereignty of the people, if you honestly believe that the people are the true masters of our destiny, you cannot shirk this amendment. Do not decline it on merely technical grounds of its being not in proper time or place or out of place and such other camouflage. Let me also point out that I have not omitted to put in certain conditions and safeguards, so that if and when you consult the sovereign people you will not merely have a chance decision, but the considered opinion of a real majority of our voters. In that case, even if the decision is wrong, we shall all be in the same boat. It is far better to sink with our fellows than swim with our masters.

(Amendment Nos. 1046 and 1047 were not moved.)

Mr. Vice-President : Amendment No. 1048 standing in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : I beg to move:

“That for sub-clause (a) of clause (3) of article 42, the following be substituted:

‘(a) be deemed to authorise or empower the President to exercise any power or perform any function which by any existing law is exercisable or performable by the Government of any State or by any other authority; or’ ”

Sir, I beg to submit that this amendment will have an effect quite contrary to some of the amendments which have been moved by Prof. K. T. Shah. It purports to limit the power of the President in this way that, if any power is specifically exercisable by any State or any local authority, the President will not be empowered to exercise those powers. In fact, I want to make the President a perfectly constitutional President. It has been pointed out that Parliamentary legislation in the United Kingdom is in the form that “Be it enacted by the King's Most Excellent Majesty on the advice of the Lords Spiritual and Temporal and the Commons in this Parliament assembled” etc. Sir, I beg to submit that this does not give the King any power. The British are an extremely conservative people. They carry on with old forms. Although the King's power is practically entirely extinct, the old form is kept up. To introduce this form here would be to give the President plenary powers to

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override the Executive and to a large extent flout the decisions of the Legislature. Therefore, I think that the powers of the President should be limited to those of a strictly Constitutional President. The amendment seeks to debar the President from exercising any powers exercisable by the Provinces or the local or other authorities. The present amendment should be considered from this point of view. I do not wish to dilate on the merits and demerits of the proposition any further. This is a view point, which, I submit, should be considered by the House.

(Amendment No. 1050 was not moved.)

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

Shri R. K. Sidhwa (C.P. & Berar : General) : Mr. Vice-President, Sir, I closely followed the amendment moved by my honourable Friend, Prof. K. T. Shah, and also listened to his speech with rapt attention. I give credit for his tenacity for bringing in his view-point by various ways in this House, and to see that they are implemented by changing the very fundamentals of this Constitution from time to time. In this amendment that he has proposed, Sir, it will be seen that many of the clauses refer to the fundamental changes, and some of them, of course, could be provided in the rules and regulations to be made after the Constitution comes into force. But that apart, Sir, I will presently show to this House how some of the suggestions that he has made in this amendment may be commendable for acceptance if a different type of Constitution were to be framed, but the fact is that we have taken a decision on a democratic Parliamentary system of Government and if his proposal is accepted, it cannot fit in or suit the provisions we have provided in the Constitution.

For instance, in his amendment, Prof. Shah says: The President shall place before the Legislature of the Union 'any proposal for legislation or for sums of money needed for the good government and efficient administration of the country. He wants that the President should be empowered with those powers. I want to know, Sir, how it would fit in with an Executive responsible to the Legislature, if the power of spending of money is vested in the President. It is the very negation of the very fundamental principle that we have accepted after a long discussion of five days in the opening session of this Constituent Assembly.

Then he says; "or for its defence, or to provide for any sudden calamity in any part of the Union or any other emergency;". Our Constitution has provided power to the President for emergency purposes, but may I know, Sir, in a responsible Legislature does Prof. Shah want the powers to declare war or peace to be entrusted absolutely to the President? Even in a responsible Parliamentary Government that will be certainly most objectionable. If a war has to be declared, the President will certainly have the power; he is the supreme head of Defence under our Constitution, but the House has to be taken into confidence. The Government has to consider this point. Suppose this clause is passed, and some autocrat President comes into existence and says: "I want to declare a war in view of some exigencies arising here or around our country". Would this be called a responsible Government? Absolutely not, Sir.

Then in clause (h) of his amendment he says that when both Houses of Parliament pass the bills, they go to the President. That is understandable. Again they come before the 'House and then with a certain majority he wants those bills to be passed. There may not be a very serious objection to that, but I find Sir, if his clause (i) is accepted, there would be a deadlock always between the President's action and the Parliament and if all these clauses are

finalised, it will come to nothing else, but a chaos between the Government and the President and who would like, Sir, the President being entrusted with the powers of the Executive? Certainly we do not want them.

As regards the type of Government, Sir, some of the provisions of the American type of Government may be good, but let me tell you, Sir, I have pondered over this matter as to what type of Government should be suitable to our country and I have come to the conclusion that the British Parliamentary procedure, which is really democratic, barring Soviet system of Government, is really suited to our country. Secondly, what is wrong, I ask, in the Constitutional democracy? Similarly as we are running elections on a party system, it is run on a party system in England. Prof. Shibban Lal stated "Mr. Churchill was thrown out by the electorate although he was considered to be the best man during war-time." Perfectly right. Mr. Churchill stood in the election through a party and he was considered as the best man during war and he was not accepted by the majority for peace time. Similarly it may happen in our country. We have the party system, elections, etc. I therefore contend, Sir, that the amendments which my honourable Friend Prof. Shah has given notice of may be good; he deserves credit for his trying to convert the Members of this House to his point of view. I do not dispute his sincere belief, but I must say that the House has considered that a particular type of Government is really desirable and I think, Sir, these amendments cannot fit in and would not fit in the Constitution. I do feel that some of them may be good, but the House has taken a decision on the type of Government and I therefore oppose the amendment proposed by Prof. K. T. Shah.

Shri Jagat Narain Lal (Bihar : General) : Mr. Vice-President, Sir, I would have liked very much to vote for the amendment moved by Prof. K. T. Shah, but I feel that it runs counter to the view which we have held, so far as introduction of democracy in our country is concerned. It seems clear that Prof. Shah sticks to the view that the President of the Indian Union should wield the same powers and authority as the President of the American Republic. If that is his intention, as I take it to be, I think we would all agree that we do not share that view. So far as our Constitution goes, the powers which we propose to vest in the President are the powers more or less on the lines of the Irish Republic. There are several models with regard to this. One is the latest, the power wielded by the President of the Irish Republic. So far as Great Britain is concerned, we all know that the King is a constitutional head and there is no such thing as President and he has certain powers, privileges and other conventions. The power wielded by the French President are more or less nominal. He is more of a titular head. Under the Weimar Constitution, the Chairman-President used to wield great powers, but we see that even the Chairman-President of the Reich, even he, in declaring war had to take the approval of the ministers and the Reich itself. Even in making treaties and alliances, he had to take their approval. But Prof. Shah makes a more drastic proposal. He says that even wars and treaties he can make. He does not say that in so many words, but he wants to leave it to the Constitution rather than to convention. If he makes wars or treaties, he may consult; he will, as a matter of course, consult. But he does not want to provide for that in the Constitution. Therefore, Sir, I feel it is not possible to agree with Prof. K. T. Shah. There is a fundamental difference in the view that he takes of the powers which are to be given to the President of the Indian Union. I feel he wants it to be on the American model, whereas we feel that the powers which we want to vest in the President are not to be on that model, but, I take it, more or less on the model of the powers vested in the President of the Irish Republic.

Sir, I do not want to prolong the debate; I have finished.

Shri K. M. Munshi (Bombay : General) : Mr. Vice-President, Sir, the previous speakers have already drawn attention to the fact that the amendments moved by my honourable Friend Prof. Shah not only to this article, but to the subsequent articles, create a fundamental change in the whole structure of the Constitution that this House has envisaged for the last year and a quarter. At the earlier stage of the Union Constitution Committee, it was decided, I think possibly with one or two dissident voices, that our Central Government should be based on the English model and that the American model or rather the model of the United States of America was to be rejected for two valid reasons. The two issues that have been before the House and the several Committees were these: what would make for the strongest executive consistently with a democratic constitutional structure, and the second issue is which is the form of executive which is suited to the conditions of this country. I fail to see how from any of these points of view, the amendments of my honourable Friend can find favour with this House.

Already reference has been made to an amendment moved by my honourable Friend and lost in this House about the separation of powers. It must not be forgotten that the American Constitution was made long ago, in the 18th Century. The makers were then guided by Montaigne's interpretation of the British Constitution that there was separation of powers in England. They thought that they were translating Montaigne's analysis into a constitutional structure. The powers that were given to the President in the Constitution of America were based on what is now held on all accounts to be a misreading of the British Constitution in the 18th Century.

As already pointed out by my honourable Friend Dr. Ambedkar, even in America, they have found it impossible to maintain the principle of separation of powers. We know that the Constitution in America is not working as well as the British Constitution, for the simple reason that the Chief Executive in the country is separated from the legislature. The strongest Government and the most elastic Executive have been found to be in England and that is because the executive powers vest in the Cabinet supported by a majority in the Lower House which has financial powers under the Constitution. As a result, it is the rule of the majority in the legislature; for it supports its leaders in the Cabinet: which advises the Head of the State, namely, the King or the President. The King or the President is thus placed above party. He is made really the symbol of the impartial dignity of the Constitution. The Government in England in consequence is found strong and elastic under all circumstances. The power of the Cabinet in England today is no whit less than the powers enjoyed by the President of the United States of America. By reason of the fact that the Prime Minister and the whole Cabinet are members of the legislature, the conflict between the authority wielding the executive power and the legislature is reduced to minimum; really there is none at all; because, at every moment of time, the Cabinet subsists only provided it carries with it the support of the majority in the Parliament. It is that character of the British Constitution that has enabled the British Government to tide over the many difficulties which it has had to face during the last 150 years. Therefore, between the two Executives, one on the American model and the other on the British model, there can be no question of preference. The British model has been approved by every one including leading American constitutional experts as really better fitted for modern conditions.

Apart from that, the second issue which the House has to consider is, what is the best form suited to Indian conditions. We must not forget a very important fact that during the last 100 years, the Indian public life has largely drawn upon the traditions of the British Constitutional law. Most of us, and during the last several generations before us, public men in India, have looked up to the British model as the best. For the last thirty or forty years, some

kind of responsibility has been introduced in the governance of this country. Our Constitutional traditions have become Parliamentary and we have now all our provinces functioning more or less on the British model. As a matter of fact, today, the Dominion Government of India is functioning as a full-fledged Parliamentary Government. After this experience why should we go back upon the tradition that has been built for over 100 years, and try a novel experiment which was, as I said, framed 150 years ago and which has been found wanting even in America? I, therefore, submit that from this point of view that the whole scheme put forward by the various amendments of Prof. Shah has not been accepted by the House so far, has not yielded the best possible result else where and is against the tradition which has been built up in India. Therefore, I submit, Sir, that the amendment should be rejected.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. Vice-President, Sir, Prof. Shah's amendment, if it meets with the acceptance of the House, would mean that the House, for the reasons which Prof. Shah has assigned, is going back upon the decision reached by various Committees of this House as well as by the Constituent Assembly after considerable deliberation on previous occasions.

Apart from this question that it will involve going back upon the decision solemnly reached, there are weighty reasons why what may be called the Cabinet type of Government should be preferred in this country to what is generally known as the Presidential type of Government. In the first place the idea is to take the various units and provinces and the States into the Federation. There is at present no idea of effacing the Rulers from the various States. What are we going to do in the case of the States if you are going to have what is called the Presidential system at the Centre? Does it mean that in the States the Rulers will again be invested with real executive power and the legislatures be confined purely to their legislative functions? It will be against the marked tendency of the times. It will create insuperable difficulties in the Indian States. That is one point which may be considered.

The second thing is that so far as the provinces in India are concerned, we have been accustomed to something like the Cabinet form of Government for some years. We have got into that frame-work. Before that, Dyarchy was in force for some time. And we have been working responsible Government for some time in the different units in India. In dealing with the American Presidential system it must be remembered that the Presidential system is in vogue not merely in the Centre but in the different States in America. There is complete separation between the Legislature and the Executive, not merely in the Centre but also in the different States. It is also necessary to take into account the historic conditions under which the Presidential system was started and worked in America. The distrust of George III, the conditions under which the rebellion was started, the perpetual feud between the Parliament and the Executive and the earlier history of the Petition and the Bill of Rights, they all account to a very large extent for the Presidential system in America, apart from the theories inculcated by Montesquieu and other leaders of political thought as to the necessity of separation of functions between the Legislature and the Executive. Then there are obvious difficulties in the way of working the Presidential system. Unless there is some kind of close union between the legislature and the Executive, it is sure to result in a spoil system. Who is to sanction the budget? Who is to sanction particular policies? The Parliament may take one line of action and the Executive may take another line of action. An infant democracy cannot afford, under modern conditions, to take the risk of a perpetual cleavage, feud or conflict or threatened conflict between the Legislature and the Executive. The object of the present constitutional structure is to prevent a conflict between the Legislature and the Executive and to promote harmony between the different

[Shri Alladi Krishnaswami Ayyar]

parts of the Governmental system. That is the main object of a Constitution. These then, are the reasons which influenced this Assembly as well as the various Committees in adopting the Cabinet system of Government in preference to the Presidential type. It is unnecessary to grow eloquent over the Cabinet system. In the terms in which Bagehot has put it, it is a hyphen between the Legislature and the Executive. In our country under modern conditions it is necessary that there should be a close union between the legislature and the Executive in the early stages of the democratic working of the machinery. It is for these reasons that the Union Constitution Committee and this Assembly have all adopted what may be called, the Cabinet System of Government. The Presidential system has worked splendidly in America due to historic reasons. The President no doubt certainly commands very great respect but it is not merely due to the Presidential system but also to the way in which America has built up her riches. These are the reasons for which I would support the Constitution as it is and oppose the amendment of Prof. Shah.

The Honourable Dr. B. R. Ambedkar : I am sorry I cannot accept any of the amendments that have been moved. So far as the general discussion of the clause is concerned, I do not think I can usefully add anything to what my friends Mr. Munshi and Shri Alladi Krishnaswami Ayyar have said.

Mr. Vice-President : I am putting the amendments one by one to vote. First part of No. 1040. The question is:

“That for clause (1) of article 42, the following be substituted:

‘(1) 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.’ ”

The motion was negatived.

Mr. Vice-President : I put the second part of No. 1040.

The question is:

“That for clause (1) of article 42, the following be substituted:

‘(1) The executive authority, power and functions of Government shall be vested in the President, and shall be exercised by him in accordance with the Constitution and the law with the advice and help of such ministers, officers or servants of the State as may be deemed necessary for him.’ ”

The motion was negatived.

Mr. Vice-President : I put Amendment No. 1042 to vote.

The question is:

“That in clause (1) of article 42, after the words ‘and may’ the words ‘on behalf of the people of India’ be inserted.”

The motion was negatived.

Mr. Vice-President : I put amendment No. 1045.

The question is:

“That for clause (2) of article 42, the following be substituted:

‘(2) Without prejudice to the generality of the foregoing provision and in accordance with this Constitution and the laws made thereunder for the time being in force, the President shall—

- (a) convene or dissolve the Legislature of the Union, and place before it any proposal for legislation or for sums of money needed for the good government and

efficient administration of the country, or for its defence, or to provide for any sudden calamity in any part of the Union or any other emergency;

- (b) have the power to assent to the laws duly passed by the Union Legislature;
- (c) conduct and supervise any Referendum that may be decided upon to make to the Sovereign People in accordance with this Constitution;
- (d) have the power to declare war, and make peace;
- (e) be the supreme commander of all the armed forces of the Union;
- (f) appoint all other executive and judicial officers, including the ministers, representatives of the Union in foreign countries as ambassadors, ministers, consuls, trade commissioners and the like; as well as the commanding officers in the armed forces of the Union;
- (g) do all acts, exercise all powers and discharge all authority necessary or incidental to the power and authority vested in him by and under this Constitution;
- (h) have power to refuse assent to any legislative proposal passed by both Houses of Parliament; or to recommend to Parliament that any legislative proposal passed by Parliament be reconsidered for reasons stated by the President, provided that any legislative proposal duly passed by Parliament, if refused assent by the President only once; and that the same proposal if passed in an identical form by Parliament in the next following sessions of that body, shall be deemed to have been duly passed and become an Act of the Legislature, notwithstanding that the President has refused or continues to refuse to assent thereto;
- (i) in every case in which the President refuses to assent to any legislative proposal duly passed by Parliament, the President shall record his reasons for refusing to assent and shall forward the reasons thus recorded to Parliament;
- (j) in any case where the President, having duly submitted to Parliament, or to the People's House thereof, a legislative proposal he deems necessary for the safety of the State, its integrity or defence or to safeguard the nation's interests in a national emergency, finds that Parliament is unwilling to consider or pass that proposal, may refer such a proposal to the people of the country; and if the proposal is approved, on such reference, by a majority of not less than two-thirds of the citizens voting, it shall forthwith become a law of the land. If on such reference the proposal is not approved by the requisite majority, it shall be deemed to have been negated, and shall be treated as void and have no effect."

The motion was negated.

Mr. Vice-President : I now put No. 1048 to vote.

The question is:

"That for sub-clause (a) of clause (3) of article 42, the following be substituted:

'(a) be deemed to authorise or empower the President to exercise any power or perform any function which by any existing law is exercisable or performable by the Government of any State or by any other authority; or' "

The motion was negated.

Mr. Vice-President : Now the question is:

"That article 42 stand part of the Constitution."

The motion was adopted.

Article 42 was added to the Constitution.

Article 43

Mr. Vice-President : We have some 12 minutes more and I propose to go on to the next article.

The motion is:

"That article 43 form part of the Constitution."

Amendment No. 1051—Shri Damodar Swarup Seth.