

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 27th 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.

Mr. Vice-President (Dr. H. C. Mookherjee): I have just received a letter from our President informing me that he has improved greatly, but there has been a slight relapse, which has compelled him to take a few days' rest. He, however, hopes to be here by the beginning of next year and to conduct the proceedings of the House on and from the 3rd of January next. I am sure the House will allow me to convey to him the greetings of the Season and along with that to assure him that we shall do our best to make as much progress as possible, so as to lighten his work. Is that the wish of the House?

Honourable Members : Yes, yes.

DRAFT CONSTITUTION—(Contd.)

Article 47

Mr. Vice-President : We shall now resume our discussion and start with article 47. (Amendments Nos. 1102 and 1103 were not moved.)

Amendments Nos. 1104, 1105 and 1106 are of similar import; Amendment No. 1104 may be moved.

(Amendments Nos. 1104, 1105, 1106 and 1107 were not moved.)

Amendment No. 1108 is by Prof. K. T. Shah. I shall draw his attention to the last sentence of the new sub-clause, *i.e.*, sub-clause (d) proposed to be added by this amendment. He may please compare it with clause (1) of article 47. It is for him to decide.

Prof. K. T. Shah (Bihar : General): Clause (1) of article 47 gives some positive qualifications. What I propose to move is somewhat of a negative character, and therefore I thought that the two can go together.

Mr. Vice-President : All right.

Prof. K. T. Shah : Sir, May I move?

Shri T. T. Krishnamachari (Madras : General): May I point out that the latter part of this amendment is already barred. We have already accepted article 46 in an amended form, by which the President can be elected *ad infinitum*, any number of times. So the latter part of his amendment is barred and cannot be moved.

Mr. Vice-President : Have you heard what the honourable Member has said?

Prof. K. T. Shah : I have heard that, Sir. If I may again make a submission, that reaffirms the same thing. I do not see how it is finally passed.

Mr. Vice-President : I do not want to put any kind of stop to what you want to say, but it does seem to me that it is not needed. But I do not want to impose my will on you.

Prof. K. T. Shah : Sir, I quite realize that this new change in article 46 affects the latter portion and therefore, I will not move that portion. The other portion still remains and if you will permit me, I will move the other part.

Mr. Vice-President : Yes.

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

“That after sub-clause (c) of clause (1) of article 47, the following new sub-clause be added :

‘(d) and is not disqualified by reason of any conviction for treason, or any offence against the State, or any violation of the Constitution’;”

The amended clause would then read:

“No person shall be eligible for election as President unless he—

- (a) is a citizen of India;
- (b) has completed the age of thirty-five years;
- (c) is qualified for election as a member of the House of the People;
- (d) and is not disqualified by reason of any conviction of treason, or any offence against the State, or any violation of the Constitution.”

As I just now mentioned, these amendments that I would like to introduce put emphasis on the negative side, or disqualifications, as against the positive side of qualification referred to in clauses (a), (b) and (c). I submit, of course, to the judgement of the House in having deleted the restriction included in the original draft of article 46, namely that no one should hold office as President once again. I regret, of course, that that should have commended itself to the good sense of the House, for I fear that the possibility of holding in unlimited succession the office of the President is apt to lead to undesirable consequences, on which one need not now dilate. Sir, you remember that the foundation or rather the destruction of the Republic of Rome was inaugurated by the life consulship of Caesar, which afterwards ended in a hereditary empire. But, as I started by saying, now that the House has in its wisdom, found that it is undesirable to introduce this restriction, I will submit to the good sense of the House, and not insist on the latter part of my amendment.

Even so, the qualifications that I have introduced in my amendment need, I think, to be positively or specifically stated. It is no use saying that all this is understood; and that no one with common sense would like to have any one as President who has been guilty of treason, or who has violated the Constitution. Many things, Sir, are matters of common sense which, under unknown conditions of the future or party passions, and in the heat of the election fever, may be found to be so completely ignored or extenuated that all those disqualifications may be forgotten.

The inclusion, therefore, of this categorical disqualification is a safeguard for the free and honest working of the Constitution, which, I think, should be acceptable to this House.

The disqualification in regard to treason is particularly important, because now that precedents have taken place in such matters, even as trial of defeated enemies for the so-called war crimes, you might begin to feel that whatever you may have done in perfect good conscience may nevertheless be found to be a penalty of your defeat under the influence of party passions, and as such may be liable to charges or accusations against which, in the prevailing atmosphere, there may be no defence, or no possibility of effective safeguard.

Fearing this I desire to leave no room for any doubt at all on the subject. Let the Constitution itself from the start make this particular point clear, that any one convicted of treason must be disqualified for being elected President. To me it seems that there could be no objection to this amendment being accepted; and though perhaps this is in a milder form, I personally hold the sin of violating the Constitution equally serious, and certainly consider that also ought to be made a disqualification for any future candidature in regard to Presidentship.

The later clauses will show that you have provided very effective safeguards for convicting any one as regards violation of the Constitution. If under those safeguards, with due process of law and fair administration of justice, a party has been properly convicted of violating the Constitution in any serious particular, then I think that in itself ought to be a bar against the candidature of

any such party. On those grounds I think the drafter of the Constitution should accept this amendment, and that it ought to be included in the Draft in order that anybody who is guilty of treason, or who has been guilty of violating the Constitution, should be excluded.

I commend this to the acceptance of the House.

Mr. Vice-President : Amendment No. 1109, Verbal; disallowed. Amendments numbers 1110 to 1112 are of similar import. The first of these may be moved. It stands in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. Vice-President, Sir, I move:

“That in clause (2) of article 47, and in Explanation to clause 2, for the words ‘any office or position of emolument’, wherever they occur, the words ‘any office of profit’ be substituted.”

Sir, this amendment is merely intended to improve the language of the draft.

Mr. Vice-President : Amendment No. 1111. Should that be put to the vote?

Shri H. V. Kamath (C. P. & Berar : General) : Dr. Ambedkar has stolen a march over me; this does not arise.

Mr. Vice-President : Amendment No. 1112.

Shri Mihir Lal Chattopadhyay (West Bengal : General) : That is already covered, Sir.

(Amendment No. 1113 was not moved.)

Mr. Vice-President : Amendments numbers 1114, 1115 and 1116 are verbal and are disallowed.

Amendment No. 1117, Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

“That for sub-clause (a) of the Explanation to clause (2) of article 47, the following be substituted:—

‘(a) he is the Governor of any State for the time being specified in Part I of the First Schedule or is a Minister either for India or for any such State; or’ ”

The object of this amendment is to remove a disqualification that might arise on account of the fact that a Governor of a State or a Minister is holding an office of profit under the Crown. It is desirable that the Governor of a State as well as a Minister both at the Centre and in the States should be permitted to stand for election and the rule of office of profit under the Crown should not stand in their way.

(Amendment No. 1118 was not moved.)

Mr. Vice-President : Amendments numbers 1119 to 1122 are verbal and are disallowed.

(Amendment No. 1123 was not moved.)

Amendment No. 1124.

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

“That after clause (b) of the Explanation to clause (2) of article 47, the following be added:—

‘provided that any such Minister shall, before offering himself as candidate for such election, resign his office’.”

Sir, I am sure it could not have been intended by the draftsmen that a person in the position of a Minister should continue to be a Minister, and yet offer himself as a candidate. This is one of the items which to me appear to be a matter of commonsense and as such should be accepted; but, of course,

[Prof. K. T. Shah]

where an extraordinary sense prevails, commonsense may not get a chance. I would therefore, like to point out that there is a great danger in a Minister holding the Ministership, and yet offering himself as a candidate, and resorting to, or his workers and canvassers resorting to practices, which cannot but be condemned under any same system of constitutional Government. Accordingly, that ought to be prohibited by the fundamental constitution.

It is in order to guard against this danger that I would provide, in the Constitution itself, that any Minister, if he chooses to be a candidate for any such office, should first resign his post and offer himself like any other ordinary citizen, for this honour. Whatever he has gained by way of influence, whatever he has previously acquired by way of prestige, connection, etc., will still remain to him; they would not be lost to him. They may be an asset to him. But, let him not be at all liable to the suspicion that continuing in office, he is able to, even if he does not actually do so, utilise his office and position of influence in order to get elected or get more votes. That, I repeat, is a matter of serious import to the Constitutional freedom and good government of the country, and as such, this amendment should be accepted without any opposition. I commend it to the House.

Mr. Vice-President : There is an amendment to this amendment. It is number 27 in List I, fifth week, standing in the name of Pandit Thakurdas Bhargava.

(The amendment was not moved.)

Amendment No. 1125.

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

“That the following new clause (c) to the Explanation of clause (2) of article 47 be added:—

‘(c) Any person elected President shall, before he enters upon the functions and responsibilities of his office declare and divest himself of all his right, title, share, property and interest in any enterprise, business or trade which is in any way aided or supported by the Union Government; and all such right, title, share or interest of the President shall be bought up by the Government of India’.”

I regard this, Sir, as amongst the most cardinal amendments that I have had the honour to put before this House. This theme will recur from different angles as amendments to different articles hereafter. I would like to make it clear, however, that I have deliberately worded in the different cases the same idea in a different manner, not only because the verbal objection may apply that it has been already disposed of, but also because the angle of approach in the different articles is slightly different. Accordingly, whereas, one might be rejected, it does not necessarily become impossible for another to be accepted.

That, Sir, however, is a matter for you at the time when the other amendments come up for decision. But, I would like to say that the principle contained in this amendment is of the highest importance for an honourable and idealistic Government of the State.

Ideals, Sir, seem to be very much at a discount, except, of course, for declamation from public platforms. From the public platform we declare day in and day out the high ideals which we all profess to follow, and which we call upon our friends and admirers to follow, always thinking that they apply to the other fellows and not to ourselves, assuming that our conduct is beyond reproach. I feel, however, that even in a regime of saints entirely, it is by no means superfluous to offer a suggestion of this kind that, at any rate, the Head of the State should be, even more than Caesar’s wife, above any suspicion what-so ever.

If he has any holding, if he has any interest, if he has any property to which he could seek or obtain advantage by any act of his policy or his Government’s policy, which in the least he is in a position to influence, then, I submit to the

House, he would be liable as head of the State, and the entire Government would be liable, to suspicion and discredit, and it ought not to be permitted.

Sir, it must be within the knowledge of many Members of this House, who are at all interested in contemporary history of the world, that one of the matters that affected the otherwise heriocrally worshipped President of the German Reich, in the days before the Nazis came to power, was that President Hindenberg allowed himself to be persuaded to help in the so-called assistance to Eastern Prussian landlords which paved the way for his discredit, and which led, in my opinion at any rate, to the establishment of the Nazi power.

That I hope all will agree was an undesirable thing for Germany, and its consequences have already been realised. This, therefore, is a counsel of perfection, or at any rate, a caution which we will do well to adopt, and to implement in our Constitution.

That the President should be free from any entanglements, that the President should be free from any interest other than that of the State as a whole, that he should be open to no temptation except the desire to serve his country to the best of his ability, even in the ornamental post that he may be given in the Constitution, is of such supreme importance that I think we cannot be too strong, and too definite about removing from his path every possible, every imaginable, every conceivable temptation. Accordingly, here is a constructive, a positive requirement that, before the President enters upon the functions of his office, before he can be inducted in his office, he must make a clear declaration of all his title, right or interest in any property, industry or business in any of these thing he may have held as a private citizen before he became President. Further, he must divest himself of it, and Government should take over that right or buy it from him.

This means that notwithstanding this provision, the holder of the Presidential office is not punished, he is not penalised, he is not impoverished, by the mere acceptance of or election to the Presidency. In his position, there would be, financially speaking, no change, no reduction. Morally speaking, however, his stature would grow far more; if you at all consider moral values, if you at all have any ideal that the Head of your State shall be free from any temptation, that the Head of the State shall be free even from any suspicion, then I put it to you that you cannot possibly, in decency, reject this amendment of mine.

By this, I am calling upon you to be true to those ideals which you are proclaiming everyday *ad nauseam* and which nevertheless, many of you at least, are openly breaking everyday in their lives. That being so, I have no hesitation in asking the House that this proposition, for the reason that I have stated, should be accepted, on pain of our being regarded as only preaching ideals for the purposes of hum bugging others, enunciating maxims which you do not believe yourselves. I make no apology in putting forward this amendment, and I trust without dissent this amendment will be accepted.

Mr. Vice-President : We shall proceed to put the amendments to vote.

Shri H. V. Kamath : We want discussion, Sir.

Mr. Vice-President : If you insist on it, I am prepared to allow it.

Shri H. V. Kamath : Mr. Vice-President, by your leave I rise to lend my support to the amendment of Professor K. T. Shah, No. 1108, moved by him just a short while ago—the first part. The first part of No. 1108 lays down certain disqualifications for the office of the President of the Indian Republic. On the last day of the last Session before we adjourned for recess, when I moved amendment No. 1100 providing for laying down certain disqualifications for the office of President, *viz.*, that if he has been impeached for violation of the Constitution, that will act as a bar to his contesting an election for the Presidentship again, when I moved that amendment, Dr. Ambedkar told the House

[Shri H. V. Kamath]

that amendment was not in its proper place but should come up at a later stage, *i.e.*, in article 47 which lays down certain qualifications or disqualifications for the office of Presidentship. I am glad to find that my Friend and scholar Prof. Shah has brought in this particular provision for violation of the Constitution and consequent impeachment as a part of this amendment just moved by him. I realise that article 83 of the Constitution provides—article 83 reads—

“A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament

(e) or if he is so disqualified by or under any law made by Parliament.”

It is conceivable that the future Parliament of Free India will make certain provisions to this effect as to who will be qualified and who will be disqualified. But to my mind this is far too important a matter to be left to the decision of Parliament. This goes to the root of the matter, the disqualifications on the score of treason or on the score of offence against the State or on account of impeachment because of violation of the Constitution—it is possible that when we come to article 83 we might incorporate certain of these disqualifications or all of them as disqualifications for being a member of the House of Parliament but we must be clear on this point, as to whether we shall leave them to a future Parliament to decide or whether we will incorporate these things in the body of the Constitution. I therefore would request Dr. Ambedkar when he rises to reply to this debate, to tell us clearly whether he will leave it to the Parliament of future India or whether he will embody these disqualifications clearly and plainly—plain as a pike staff—without any equivocation in this article 83. That much Sir, for the amendment No. 1108 of Prof. Shah.

Coming to amendment 1125 just moved by him, I am inclined to think that the principle embodied in this amendment is a very sound one. I would certainly welcome the proposition that a person on being elected President of the Indian Union must at least declare to Parliament, or to the people and the nation, what interests, and what shares he holds in any enterprise, business or trade in the country. In the last Budget Session of the Legislative Assembly, if I remember aright, this Assembly adopted the Factory Act, and one of the clauses or sections in that Act was to the effect that even the medical officer of a factory, when he is appointed to his post, must declare to the board of directors or the management or the government, what interests, shares or other similar interests he holds in the factory or in any of the allied concerns of that particular undertaking. If we are going to enforce such a thing in the case of a mere petty officer in a factory, it stands to reason that the President of the Indian Union must declare to the nation and to Parliament what interests he holds in any business or trade or enterprise in the country. I recognise and I do admit that the President is not invested with considerable power. But nobody would deny the fact that the President has been invested with considerable influence, and that influence can be abused by a President if he is not of the proper or right type. We have just come from the Jaipur Session of the Congress—at least some of us—where only a few days ago, the Congress passed a resolution on the standards of public conduct. Are we, Sir, here, serious about implementing that resolution or not? In spite of the subsequent deletion at the instance of Pandit Nehru at the Jaipur Session, it applies to all Congressmen, from top to bottom. And if it applies to all Congressmen, certainly, the code of public conduct that we are going to lay down for Free India, should apply to all, Congressmen or non-Congressmen whenever they hold a post, high or low in the country. Certainly, Sir, the President's post, the President's position, is very important and if we are earnest about this resolution about public conduct. I would certainly plead before this House that the President of the Indian Union must publicly before entering his office, tell us, tell

Parliament, what interests and what shares he has in any business or other enterprise in the country, lest on any occasion, on any tempting occasion, he might abuse his position for the furtherance of any particular undertaking in which he is more interested.

Sir, I will not go so far as Prof. K. T. Shah and say that such rights or interests must be bought up by the Government of India. I would suggest that once he has declared what his interests and shares are, in any particular business or undertaking, then the matter must be left to the Parliament to decide in what way those rights or interests are to be dealt with, or administered or disposed of. If this much is admitted or conceded, that the President shall be obliged to declare and disclose his interests, then we can leave it to the Parliament of India to deal with this matter and decide how to dispose of or deal with the particular matter brought before it.

Mr. Vice-President : Dr. Ambedkar.

Shri Syamanandan Sahaya (Bihar: General): Sir, I have.....

Mr. Vice-President : I have called Dr. Ambedkar, I am sorry. But have you any amendment?

Shri Syamanandan Sahaya : No, I have no amendment, but...

Mr. Vice-President : If you had come to the front, you could have caught my eyes, because in that direction there is a bad glare.

Shri R. K. Sidhwa (C. P. & Berar: General): But, Sir, we have not had adequate discussion of this article. Only one member has spoken.

The Honourable Dr. B. R. Ambedkar : If they want further discussion, I have no objection.

Mr. Vice-President : Dr. Ambedkar has been good enough to say he does not mind if other Members also speak. Will Shri Syamanandan Sahaya please come to the mike?

Shri R. K. Sidhwa : Sir

Mr. Vice-President : Mr. Sidhwa will always have the last word. I shall give him the last word.

Shri Syamanandan Sahaya : Mr. Vice-President, Sir, I am here to support the amendment which has been moved by Prof. K. T. Shah.

The Honourable Dr. B. R. Ambedkar : Which amendment of Prof. Shah?

Shri Syamanandan Sahaya : Amendment No. 1124 which reads like this:

‘provided that any such Minister shall, before offering himself as candidate for such election, resign his office’.

Sir, it is not always that I have the good fortune to agree with Prof. K. T. Shah but I do feel that in this particular amendment which he has proposed, he has raised a very vital point, and I do think that in a matter like this, even through there may have been different decision elsewhere, this House must remain firm because Prof. K. T. Shah, in his amendment, desires to lay down a principle which has been accepted all over the world (Cries of No, No.) Yes, Yes. Everybody has the right to place his information and his knowledge. Even in the present Congress Committees, a person who desires to stand as President of the Provincial or District Congress Committee has to resign his seat, not merely as a Minister, but even as a member of the Legislative Assembly.

Pandit Balkrishna Sharma (United Provinces: General) : No, No. You do not know. Do not go on generalising like that.

Shri Syamanandan Sahaya : I come from a Province where this rule obtains; this is a very good rule. If other provinces are not following it, they are doing it to their own disaster.

Mr. Vice-President : You need not reply to these interruptions.

Shri Syamanandan Sahaya : I shall accept your advice, Sir. It is a very good advice.

Now, the position is, that the place which the President will occupy in our Constitution is a very high and important one, indeed, and it would be very unwise and unsafe if a person who is already a Minister, working as such, stands for election as President. Even though such a person may not himself desire it, the fact remains that a Minister in power is likely together more support, directly and indirectly, than another person. It is therefore only fair and reasonable that the election of a President must be carried on in such a manner that no individual person may have any additional advantage over his opponents.

Considering the position that obtains in this country at present, it is hoped that there may not be much difficulty among the persons who happen to occupy this high position. They also have a high standard of morality and I have no doubt that they will themselves resign before they stand for Presidentship. But we are laying down in this Constitution a rule by which, if a Minister desires or chooses to stand as a candidate for election, he can do so and contest the whole of the election, occupying all the time the position of a Minister. That, Sir, in my opinion, would not be the right course to adopt, and considering the difficulties that one can foresee, it would only be proper that it should be laid down that no person who occupies the position of a Minister should stand as a candidate as long as he occupies that position. He should first be asked to resign and then he can stand and contest the presidentship like anybody else.

Before I close I would like the House to visualize a situation that will arise when a Minister is a candidate for election as a President. It will be like this. Who is the candidate? A Minister. Who are the voters? Members of the different Assemblies. Who are the Polling officers? Servants of the Government, some of them may be under the Ministry concerned. How does this look? Even assuming that there will be everything fair, I ask: Does it look fair to frame a constitution which not only sanctions but encourages such a situation?

Shri Algu Rai Shastri (United Provinces : General) : *[Mr. Vice-President, Sir, I rise to oppose the amendments moved by Prof. K. T. Shah, more specially his last one, No.1125 on the list. I may repeat what has been said several times previously and it is that the type of constitution Prof. K. T. Shah has in view can either be accepted in its entirety or cannot be accepted at all. At times such amendments as the present one, are moved by Prof. K. T. Shah which seek to make some changes in the constitution or in the basic concept on which it is founded. If a single amendment of Prof. Shah is accepted in any part of the Constitution, the entire structure of the constitution would be changed. His idea in moving this amendment is that our President—the President of our Republic—should be a person who has no private financial interests of his own at all. He wants that the President of our Republic should have no financial interest at all but at the same time in course of his speech he has said that if the President has any shares in any property the same should be purchased by the Government so that he may not become a pauper. The dread of private property seems to have influenced him in making this proposal even though he does not seem to desire the abolition of private property itself. He does not propose to expropriate the person, who is to be elected President, of his entire property. It is thus plain that he does

* [] Translation of Hindustani speech.

not stand for the abolition of private property. His only objective is that any person, after being elected President, should sell away all his financial interests or they may be acquired by the Government, and that such a person should make a specific declaration that he has no financial interest anywhere. It appears to me that these two ideas are contradictory to each other. On the one hand the institution of private property would remain when we allow him to own the monied wealth he receives on sale of his property and such an ownership is permitted by Prof. Shah because he apprehends that otherwise such a person will become a pauper. On the other hand he seems in my opinion, to have in view Plato's idealistic and Utopian communism under which rulers shall have no property, no financial interest and no money of their own and there would be a common kitchen and the rules would be leading an ideal life like saints and hermits having no personal financial interests. We can very well lay down in the Constitution that a person who owns a property or has any shares in any enterprise shall not be eligible for Presidentship. The object behind the amendment moved by Professor K. T. Shah is that after a person is elected President he should hold no share in any property but he can hold the same before being elected. In my opinion Professor Shah should aim at the abolition of individual ownership of property and nationalisation of the same so that no individual may possess any property. But we have already accepted and given a place to individual ownership of property in the articles we have passed earlier. Now at this stage it does not appear necessary to me to pass a provision enjoining upon a person to make a particular declaration and relinquish all his financial interests in order that he may honestly discharge the duties of his office. Of course, I do visualise a society in which the individual ownership of property is gradually abolished and commodity be brought under social ownership. I would prefer such a society. We can not accept the ideal of Plato's or such a communism which reduces our life to a mere hotel life. Such a society cannot be stable. It is possible to establish such a society in small communes. But it is difficult to run even a small municipal board on these lines. I have seen that the financial questions bedevils the working of even small bodies. Even in the 'Maths' of Sadhus disputes arise for succession to the Gadi. We must keep the reality in view and from the point of view of reality the proposed restriction is unnecessary. I, therefore, oppose the amendment moved by Mr. Shah.

The other amendment moved by Mr. Shah, which lays down that if any minister seeks election as President, he should resign from the ministerial office before doing so, cannot be accepted. It is evident that a minister who seek selection as President would not be in a position to secure votes of this vast population either by purchase or by undue influence exercised under the powers he possesses as minister. The people or the prospective voters in the Presidential election cannot be beguiled or coerced to sell their votes. This amendment too seems unnecessary and therefore in my opinion it ought to be rejected and the original article as standing in the Draft Constitution should be accepted.]

(Interruption)

Mr. Vice-President : It is not proper for experienced Parliamentarians to heckle a speaker in that way.

Mr. Tajamul Husain (Bihar : Muslim) : Mr. Vice-President, I am, and in fact the whole House is, very grateful to you and also particularly, I would say, to the Honourable Dr. Ambedkar, for allowing us to speak. We know your powers. You can stop us at any time you like. But I would always request you to allow us even at this stage to speak as we are for the first and the last time drawing up a constitution for the whole of India. You will pardon me for using the word "gagging" officially. But do not gag us. Let us speak. The Constitution is not going to be framed within a year as the

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Government of India are expecting. They are mistaken. It does not matter if it finishes in two or three years, but give us time to speak.

Coming to the amendment I wish to point out that, as far as I understand it, the amendment of my honourable Friend, Prof. K. T. Shah implies that a person who wishes to stand for the presidentship of the Indian Republic should resign his seat if he happens to be a Minister, or resign his seat if he happens to be a Member of the Legislature. An honourable Member from my province of Bihar has just spoken and he has stated that the law in his province is that a Member of a Legislature who wishes to become the President of the Provincial Congress Committee has to resign his office. There was vehement opposition to this. I entirely agree with the opposition that is not the law. We find here that the last President of the Congress, Mr. Kripalani, was also a Member of this House and a Member of the Dominion Parliament. Here we find that the Honourable the Speaker of the U.P. is a member of this House. This is not the kind of thing in Bihar. Since the Congress started its activities under the guidance of Mahatma Gandhi, Dr. Rajendra Prasad, the President of this House, was the President of the Provincial Congress Committee for a number of years. It is unfortunate that he had to leave our Province and come over to Delhi. When he came to Delhi and left Bihar somebody who was not a member of the legislature was elected as President and he died. Then we elected a member of the Provincial Assembly and he had to resign his seat in the Assembly. We wanted him to resign and he resigned. Afterwards another member of the provincial assembly was elected and he also had to resign his seat in the Assembly. So we in Bihar have this convention, though not as a law or rule, that a member of the legislature when he wants to become President, before he seeks election he must resign. It is a very good and healthy convention. After all the first President of the Indian Republic will be the first gentleman of this land and equal to any monarch in the world. We want that before he becomes President he should cease to have any connection with any legislature. Before his election as President a Minister, whether at the Centre or in the Provinces, must cease to be a minister: he must come in as a simple man, a non-member of any legislature, stand for election and get elected. That is what people want. This is a very simple amendment and it should be accepted by the House and by Dr. Ambedkar. That is all I have to submit to the House and I thank you, Sir, for permitting me to speak.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, I regret that I am unable to accept any of the amendments which have been moved by my honourable Friend, Prof. K. T. Shah. There are three amendments which have been moved by Prof. K. T. Shah. One of them relates to the Minister as a candidate for the Presidency and the other two amendments relate to the President. I propose to divide my observations in reply to his speeches on the three amendments into two parts. In the first part I propose to devote myself to his amendment relating to the Minister.

Prof. K. T. Shah's amendment requires that if a person is holding the office of a Minister and wishes to contest an election, the first condition must be that he shall resign his office as a Minister. In other words, ministership by itself would be a disqualification for election. It seems to me that Prof. K. T. Shah has not devoted sufficient attention to his amendment. In the first place, if a Minister resigns then this amendment is unnecessary. The second point which I think Prof. Shah has not considered and which seems to me to be very crucial is this. Supposing we accept his amendment that a Minister shall resign before he stands as a candidate for Presidentship, it is quite clear that between the period of the dissolution of the old Parliament and the time

when the new Parliament assembles there can be no Ministers at all in charge of the administration. And the question that we have to consider is this. What is to happen to the administration during the period which is involved between the dissolution of the old Parliament and the assembly of the new Parliament? Are we to hand over the administration to the bureaucrats or the heads of the administrative departments to carry on until the new Parliament is elected? Or is there to be some kind of expedient whereby we are to go about and find a set of temporary Ministers who would take charge of Government during this short period of two or three months and thus forego the opportunity of contesting elections and becoming Ministers themselves in a new Parliament for the full period of their term? It seems to me that the amendment of Prof. K. T. Shah, if accepted, would create complete administrative chaos in the Government of the country and therefore I submit.....

Shri L. Krishnaswami Bharathi (Madras : General) : It does not refer to all Ministers: it only refers to one minister.

Shri Mahavir Tyagi (United Provinces : General) : And to deputy Minister also.

The Honourable Dr. B. R. Ambedkar : Supposing every Minister wants to contest the election and therefore every Minister will have to resign.

Prof. K. T. Shah referred to the fact that the Ministers generally monkeyed with the election or may manipulate or exercise their influence over the administration. That of course, to some extent, is probably true. But in order to eliminate the influence which Ministers exercise or might exercise on the elections the Draft Constitution has provided under certain articles (articles 289 to 292) for a special machinery to be in charge of what are called Election Commissions both in the Centre as well as in the Provinces, which would take charge of the elections to Parliament as well as to the State legislatures. They are to have complete superintendence, control and management of elections, so that whatever possibility that there exists of Ministers exercising their influence over elections has been sought to be eliminated and consequently the fear which Prof. K. T. Shah entertains has really no place at all. I am therefore, for these reasons, unable to accept his amendment.

Coming to his amendments which deal with the President, his first amendment No. 1108 sets out certain disqualifications such as conviction for treason, any offence against the State or any violation of the Constitution, etc. The reason why, for instance, we have not specifically mentioned in this particular article under discussion these disqualifications, will be obvious if the Members recall that we have made other provisions which would have the same object which Prof. Shah has in his mind. In this connection I would like to draw the attention of the House to sub-clause (c) of article 48 which requires that "the President shall be a person who shall be qualified for election to Parliament". Now the qualification for election to Parliament are laid down in article 83. Sub-clause (e) of article 83 leaves it to the Parliament to add any disqualifications which Parliament may think it necessary or desirable to add. It is therefore possible that the Parliament when it exercises the powers which are given to it under sub-clause (e) of article 83 may think it desirable to include in the list of disqualifications (it is empowered to add to those already enumerated under article 83) some of the propositions which Prof. K. T. Shah has enunciated in his amendment. I therefore submit that, although this particular clause does not refer to the disqualifications mentioned by Professor Shah, it is quite possible and open to Parliament to add them by any law that it may make in sub-clause (e) of 83.

Shri H. V. Kamath : On a point of clarification. Mr. Vice-President, if matters like 'unsound mind' and 'undischarged insolvent' are found important enough to be embodied in the article itself, what is the point in leaving this more vital and fundamental thing to Parliament and not giving it a place in the Constitution itself?

The Honourable Dr. B. R. Ambedkar : I do not know. It is a mere matter of logic. It is perfectly possible to say that every disqualification should be laid down here. It is perfectly possible to say that some essential things may be laid down here and the others left to the Parliament. I cannot see any inconsistency in that at all.

Now coming to the last amendment of Professor Shah, No. 1125, I think a careful perusal of the language he has used is very essential. What the Professor wants is that every person who has to be a President shall, before assuming office, divest himself of his interest, rights, title, etc. in any business or concern which is being sponsored by Government or carried on by Government either itself or through any agency, and secondly that the Government should buy that interest from the President. In regard to this, the first thing that strikes me is that this is one of the most novel propositions that I have ever seen. I do not remember that there is any Constitution anywhere in the world which lays down any such condition. I should have thought that if any such condition was necessary it is in the Constitution of the United States where the President has got an opportunity of exercising administrative control, and administrative discretion and therefore the greatest opportunity of personal aggrandisement exists there. And yet, the Constitution of the United States is absolutely silent about any such condition at all. Professor Shah no doubt has tabled his amendment because he looks upon it as a merely consequential amendment to the original proposition which he had enunciated in the form of his amendment, namely, that the President should have the same position as that of the President of the United States. But our Constitution has completely departed from the position which has been assigned to the President of the United States. As I have stated over and over again, our President is merely a nominal figurehead. He has no discretion; he has no powers of administration at all. Therefore, so far as our President is concerned, this provision is absolutely unnecessary. If at all it is necessary it should be with regard to the Prime Ministers and the other Ministers of State, because it is they who are in complete control of the administration of the State. If any person under the Government of India has any opportunity of aggrandising himself, it is either the Prime Minister or the Ministers of State and such a provision ought to have been imposed upon them during their tenure and not on the President.

The third question that arises—I think it is a very concrete question—is this. Supposing we laid down any such condition; is it possible in the circumstances in which we are living, to obtain any candidate who would offer himself for the Presidentship and subject himself to the conditions which have been laid down by Professor Shah? I doubt very much whether even Professor Shah would offer himself to be President of the Indian Union if these conditions are laid down.

Prof. K. T. Shah : It is not my custom to interrupt speakers at all. But may I give him this categorical assurance that as far as I myself am concerned, he can rest assured that there will be complete fulfilment of these conditions. (*Laughter*).

The Honourable Dr. B. R. Ambedkar : I am glad. But this country could not carry on under the assumption that Professor Shah would be the only candidate who would offer himself for Presidentship. (*Laughter*) Safety lies in multiplicity of candidates. Therefore we have to consider whether, from a practical point of view, we should have a sufficient number of candidates offering themselves for this particular post. And I have not the least doubt about it that, notwithstanding the very virtuous character of this amendment we should practically be suspending this particular provision from the Constitution if we accept this amendment.

For these reasons I do not accept any of the amendments.

Shri H. V. Kamath : Is Dr. Ambedkar opposed even to the disclosure of the candidate's interest or share? Is he opposed even to a declaration like that?

The Honourable Dr. B. R. Ambedkar : But that is not the amendment.

Shri H. V. Kamath : That is part of the amendment.

The Honourable Dr. B. R. Ambedkar : But that is not the amendment.

Mr. Vice-President : I will now put the amendments to vote one by one.

The question is:

"That after sub-clause (c) of clause (1) of article 47, the following new sub-clause be added:

'(d) and is not disqualified by reason of any conviction for treason, or any offence against the State, or any violation of the Constitution'."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (2) of article 47, and in Explanation to clause 2, for the words 'any office or position of emolument', wherever they occur, the words 'any office of profit' be substituted."

The amendment was adopted.

Mr. Vice-President : The question is:

"That for sub-clause (a) of the Explanation to clause (2) of article 47, the following be substituted:

'(a) he is the Governor of any State for the time being specified in Part I of the First Schedule or is a minister either for India or for any such State; or'."

The amendment was adopted.

Mr. Vice-President : The question is:

"That after clause (b) of the Explanation to clause (2) of article 47, the following be added:

'provided that any such Minister shall, before offering himself as candidate for such election, resign his office'."

The amendment was negatived.

Mr. Vice-President : The question is:

"That the following new clause (c) to the Explanation of clause (2) of article 47 be added:

'(c) Any person elected President shall, before he enters upon the functions and responsibilities of his office declare and divest himself of all his right, title, share, property and interest in any enterprise, business or trade which is in any way aided or supported by the Union Government; and all such right, title, share or interest of the President shall be brought up by the Government of India'."

The amendment was negatived.

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

"That article 47, as amended, stand part of the Constitution."

The motion was adopted.

Article 47, as amended, was added to the Constitution.

New Article 47-A

Mr. Vice-President : Amendment No. 1126 is almost the same, though not quite the same, as amendment No. 1125. Professor Shah may move it.

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

"That after article 47, the following new article be inserted:

'47-A. Any person elected President shall, before he enters upon the functions and responsibilities of his office declare and divest himself of all his right, title, share, property and interest in any enterprise, business or trade, which is in any way aided or supported by the Union Government; and shall make over all such right, title, share, or interest to Government of India, to be held, during his term of office, in trust for him'."