

Article 55

Mr. Vice-President: The House will now take up for consideration article 55.

The first amendment to this article stands in the name of Shri Himmat Singh K. Maheshwari. As the Member is not in the House it is not moved.

Amendment Nos. 1215 of Mohd. Tahir and 1218 of Prof. Shah are of similar import. Prof. Shah may move his Amendment.

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

“That in clause (1) of article 55 for the words ‘by the members of both Houses of Parliament assembled at a joint meeting in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot’ the words ‘at the same time and in the same manner as the President’ be substituted.”

May I point out that, though it goes against myself this was in consonance with the method of election of the President as originally suggested by me in an amendment on adult franchise which this House has been pleased to reject? I wonder whether I would be quite in order to move it.

Mr. Vice-President: I would ask the honourable Member to use his discretion.

Prof. K. T. Shah: I am not fond of hearing my own voice. I only want to point out the discrepancy that is there.

Mr. Vice-President: I think then the honourable Member had better not move it. This need not, therefore, be put to vote.

Mr. Mohd. Tahir: I beg to move:

“That for clause (1) article 55, the following be substituted:

‘(1) The Vice-President shall be elected in the same manner as provided in article 43.’”

Article 43 lays down the manner in which the President is to be elected. I think, Sir, that so far as the election of the President and the Vice-President is concerned, there should not be any distinction as to the manner thereof. As for the position of the Vice-President, it is the same as that of the President. Of course there is the division of labour and division of work. They occupy more or less the same position and therefore there should be no distinction between them in the manner of their election.

My second point is that the President is to be elected by both Houses of Parliament as well as by the members of the Legislatures of the States. If we do not elect a Vice-President in the same manner, it means that we are going to deprive the Legislatures of the States of the right of electing him. Therefore it would be quite unfair to the members of the Legislatures of the States to deprive them of the power to elect the Vice-President. I have therefore suggested in this amendment that the Vice-President should also be elected in the same manner as the President.

(Amendment Nos. 1216 and 1217 were not moved.)

Mr. Naziruddin Ahmad: Mr. Vice-President, Sir, I beg to move :

“That in clause (1) of article 55 the words ‘assembled at a joint meeting’ be omitted and the clause as so amended, be renumbered as article 55.”

Sir, to my mind, the words which I want to delete create an anomaly. Sir, the provision is to this effect: “The Vice-President shall be elected by the members of both Houses of Parliament assembled at a joint meeting.” I submit that for the purpose of electing the Vice-President, the members of both Houses of Parliament must *vote* but they need not at all *assemble at a meeting*. They need not assemble and there need be no meeting. We are familiar with

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the system of election by members to various Committees. The members do not at all meet at a meeting. They are not required even to assemble formally in the House to be presided by the Speaker or the President or the Vice-President or the Deputy Speaker as the case may be. They are not even required or expected to assemble at the same time. There is no joint meeting or any meeting at all. There is no quorum required. They may come between the prescribed hours to the appointed place and the Returning Officer or the Polling Officer records their votes. Even if one member comes and votes, it is enough. No meeting implying the simultaneous presence of a certain number of members is necessary. Sir, the idea of any meeting or a joint meeting is absolutely inapplicable to a matter of votes. It is for this reason that I am asking the House to accept the deletion of the words "assembled at a joint meeting". If these words are deleted, the clause will read thus:

"The Vice-President shall be elected by the members of both Houses of Parliament by means of single transferable vote."

The members need not at all assemble at a meeting. That would involve a number of conditions and a set paraphernalia under the procedure rules which do not apply to a matter of voting. I submit that these words are unnecessary and are misleading and should be deleted. Then the second part of the amendment is to the effect that this may be regarded as an independent article. That is merely formal. The first part of the amendment, I submit, should be carefully considered.

Mr. Vice-President: Amendment No. 1220 standing in the names of Begum Aizaz Rasul and Mr. Naziruddin Ahmad. The Begum Sahiba is not here and so you can move it, Mr. Naziruddin Ahmad.

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

"That in clause (1) of article 55, the words 'in accordance with system of proportional representation' be deleted."

Sir, the matter has been much mooted in the House as to whether there can be proportional representation when there is only one seat to be filled. There may be many candidates for one seat and so the votes may be transferable. By transferability you elect the most popular man. I will give an illustration. If there are one hundred voters and there are ten seats to be filled up, then ten members representing one group can elect one member and that one member elected by the ten electors represents one-tenth of the electors and that is proportional representation in the body elected. Sir, I want to draw the attention of Dr. Ambedkar to this point. In fact I find that he often misses my points and forgets to reply. I am particularly anxious to draw his attention to this point and it is this. If there are one hundred voters and ten seats, then ten voters forming a group can elect one and that one elected by the said ten voters represents one-tenth of the seats by proportional representation. He represents one-tenth of the voters. Proportional representation applies to a plurality of seats. There can be no proportional representation where only one person is to be elected. He cannot split up his person and represent separately a one-tenth and nine-tenths fractions of electors. As for instance, if you, Sir, are elected by this House, then you do not by any means proportionately represent different groups of the electors. There cannot be any proportional representation in the case of one man seat.

With regard to the transfer of votes, that is a proposition which is really acceptable. If at the first counting of votes the first man gets less than half the votes polled, then at the second counting the vote's transferred are again appropriately allocated, the first man at the first calculation may not be the first man in the second or subsequent calculations. By means of the device of the

transferability of votes, the person or persons having the largest support gets or get elected. Even in cases of single seats, it is desirable to have transferable votes but there is no proportional representation, *i.e.* one man elected can not proportionally represent different groups of electors. Proportional representation according to this system is inevitable in case of a plurality of seats. But in the case of a one seat or one man election, he does not represent any section proportionately at all. Proportional representation is not applicable to a one man vacancy. I think, Sir, there has been a considerable amount of confusion about this proportional representation. I want to draw a distinction between election by proportional representation and transferability of votes. They must not be mixed up together and I think there is a risk of votes. They must not be mixed up together and I think there is a risk of these two independent categories being muddled together as part of each other.

(Amendment Nos. 1221 and 1222 were not moved.)

Mr. Vice-President : Amendment No. 1223 is disallowed as being merely verbal.

Amendment No. 1224 Dr. Ambedkar.

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

“That in clause (2) of article 55, for the words ‘either of Parliament or’ the words ‘of either House of Parliament or of a House’ for the words ‘member of Parliament or’ the words ‘member of either House of Parliament or of a House’, and for the words ‘in Parliament or such Legislature, as the case may be’ the words in that House’ be substituted respectively.”

This is only to improve the language. There is no point of substance in it.

(Amendment Nos. 1225, 1226 and 1227 were not moved.)

Mr. Vice-President : Amendment Nos. 1228 and 1229 are of similar import.

(Amendment Nos. 1228, 1229 and 1230 were not moved.)

Amendment No. 1231 standing in the name of Prof. K. T. Shah may be moved.

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

“That in sub-clause (c) of clause (3) of article 55, after the words ‘Council of States’ the following be added:—

‘and is not disqualified by reason of any conviction for treason, or any offence against the safety, security or integrity of the State, or any violation of the Constitution, or has been elected and served more than once as President or Vice-President of the Union’.”

Even if the last words are not quite proper after the decision of the House on article No. 46, I trust the preceding disqualifications that I have suggested would be acceptable to the House.

Sir, there is a school of thought which seems to consider *infra dig* for this Constitution to provide specifically the disqualifications that may attach to candidates for certain offices. I am afraid, I cannot share this view, particularly as these are political offices, in which disqualifications like those enumerated above may become merely a matter of opinions and unless they are laid down positively in the Constitution, people may be found, not only having the courage which Dr. Ambedkar was pleased to doubt, but even having the effrontery, to stand as candidates after having been suspected or charged with violation of Constitution duly proved or even of treason. Treason can be even without violation of the Constitution. May I say, treason will not be called treason if it succeeds, for the very good reason that nobody would dare call it treason then. In that way of looking at it, I feel it necessary that a specific provision be made laying down disqualification on the three or four grounds that I have mentioned.

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The violation of the Constitution or conviction for treason are items, which in regard to political offences, or in regard to political offices, cannot be merely taken for granted; we cannot, therefore, assume in safety that even if no one would have the courage, or even if nobody has the effrontery, to disregard its disqualifications clearly attaching to an individual was conceded, the electorate would have the common-sense, the decency not to return them. I for one am not so enamoured of any electorate so narrow as is provided in the Draft Constitution to trust that, by party influences, by party prejudices, it may not be possible to disregard such disqualification if the Constitution is silent on the subject. Accordingly, Sir, I commend this motion to the House.

Mr. Vice-President : The next two amendment Nos. 1232 and 1233 are disallowed as being verbal.

Amendment Nos. 1234 standing in the name of Dr. Ambedkar, 1235 and 1239 standing in the name of Mr. Naziruddin Ahmad are of similar import and I am, therefore asking Dr. Ambedkar to move his amendment, which seems to me the most comprehensive one.

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

“That in clause (4) of article 55, for the words ‘or position of emolument’ wherever they occur the words ‘of profit’ be substituted.”

Mr. Vice-President : Amendment No. 1235 stands in the name of Mr. Naziruddin Ahmad. Does he want me to put this to the vote?

Mr. Naziruddin Ahmad : No, Sir, the previous amendment will cover it.

Mr. Vice-President : What about amendment No. 1239?

Mr. Naziruddin Ahmad : The same consideration would apply.

(Amendment No. 1236 was not moved.)

Mr. Vice-President : Amendment Nos. 1237 and 1238 are verbal and are, therefore, disallowed.

Amendment No. 1240 stands in the name of Dr. B. R. Ambedkar. He may move it.

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

“That for sub-clause (a) of the Explanation to clause (4) of article 55, 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, of.’ ”

This matter has already been debated last time.

(Amendment No. 1241 was not moved.)

Mr. Vice-President : Amendment Nos. 1242, 1243 and 1244 are disallowed as being merely verbal amendments.

Amendment No. 1245 stands in the name of Prof. K. T. Shah. I think there is no use in moving this amendment.

Prof. K. T. Shah : All right, Sir.

Mr. Vice-President : Amendment Nos. 1246, 1247 and 1248 are disallowed as being verbal.

Mr. Naziruddin Ahmad : They are not ‘merely’ verbal; they are verbal, no doubt.

Mr. Vice-President: I am afraid, I do not agree with you.

(Amendment Nos. 1249 and 1250 were not moved.)

Mr. Vice-President : Amendment No. 1251 standing in the name of Prof. K. T. Shah, that also is blocked. Amendment Nos. 1252, 1253, 1254 and 1255—I am afraid they are also verbal and I, therefore disallow them.

Mr. Naziruddin Ahmad : Amendment No. 1255 is not verbal.

Mr. Vice-President : If it is not verbal, then it is formal.

Mr. Naziruddin Ahmad : So long as it is rejected, it does not matter how it is rejected.

(Amendment Nos. 1256 and 1257 were not moved.)

Mr. Vice-President : That brings us to the end of the amendments. The article is now open for general discussion.

Mr. Tajamul Husain : We have got ten minutes more and I shall finish before that. Mr. Vice-President, Sir, I take up first amendment No. 1215 moved by my honourable Friend Mohd. Tahir. His amendment seeks to say that the Vice-President shall be elected in the same manner as provided in article 43. Article 43 provides for the election of the President. How is he elected ? He is elected by the elected members of both the Houses of Parliament and by the elected member of both Houses of legislature in the States where there are two Houses. According to article 55 with which we are dealing, he is to be elected not in this manner, but by both the Houses of Parliament, at a joint meeting of the Parliament, the Central Legislature. I oppose this amendment because there is a difference between the President and the Vice-President. The Vice-President has to preside at the meetings of the Council of States. The President of the Republic has nothing to do with presiding at meetings of the legislature. The Vice-President has nothing to do, till he becomes the President in case of vacancy on account of death etc., with the provincial or State legislature. Therefore, article 35, as framed in the Constitution is correct, in my opinion.

The next amendment is amendment No. 1219 moved by my honourable Friend Mr. Naziruddin Ahmad. His amendment is that in clause (1) of article 55, the words “assembled at a joint meeting” be omitted. He does not want that the Vice-President should be elected at a joint meeting of the two Houses. He does not say by which House he is to be elected. Therefore, it has no sense and it should be rejected.

Next, I come to amendment No. 1220 again by Mr. Naziruddin Ahmad and Begum Aizaz Rasul, which says that in clause (1) of article 55, the words “in accordance with the system of proportional representation” be deleted. We are dealing entirely with the system of proportional representation in the election of the President. Supposing there are more than one candidate, say, three or four candidates. That is the safest method, and by the process of elimination you know exactly the votes secured by each according to the system of proportional representation by means of single transferable vote, I presume. That is the best system in a country like this. Therefore, I oppose that amendment also.

Next, I come to the amendment moved by the Honourable Member in charge of this Draft Constitution, the Honourable Dr. Ambedkar. That is amendment No. 1224. I have the honour to oppose this also. My submission is this. When the Honourable Dr. Ambedkar was speaking, I was busy; otherwise, I would have risen on a point of order. My point of order is this and it could be raised even now. A member cannot move many things in one motion. There must be one specific resolution or motion. He has brought in three or four things. If you read this, you will have to rule it out of order. It is hopelessly illegal. I do not know how he could have moved four things in one amendment. He says that in clause (2) of article 55 for the words “either of Parliament or” the words “of either House of Parliament or of a House”, for the words “member of Parliament or” the words “member of either

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House of Parliament or of a House” and for the words “in Parliament or such legislature, as the case may be” the words “in that House” be substituted. These are four separate amendments. I may accept one and reject the other. Therefore, I think you should rule it out of order; that would be a very good thing.

Mr. Vice-President : Unfortunately, it cannot be done now. Your advice comes rather too late.

Mr. Tajamul Husain : On a point of order, I am sure Dr. Ambedkar will agree it is never too late.

The Honourable Dr. B. R. Ambedkar : The Office could have done it.

Mr. Tajamul Husain : I hope he will agree if I say that a point of law could be raised at any time. At any time, you can say it is out of order.

Mr. Vice-President : Probably he took advantage of my ignorance of procedure.

Mr. Tajamul Husain : Because of my mistake, I do not see any reason why a wrong thing should go in. It all depends on your ruling.

Next I come to amendment No. 1231 moved by my honourable Friend Prof. K. T. Shah. He says that in sub-clause (c) of clause (3) of article 55, after the words “Council of States” the following be added: “and is not disqualified by reason of any conviction for treason, or any offence against the safety, security or integrity of the State or any violation of the Constitution or has been elected and served more than once as President or Vice-President of the Union.” I think this is hopelessly wrong. I cannot understand why this amendment has been allowed. You will find article 83 which deals with the disqualifications of the members. Article 83 says that a person shall be disqualified for being chosen as, and for being a member of either House of Parliament if he holds any office of profit under the Government of India or the Government of any State, if he is of unsound mind and stands so declared by a competent court, if he is an undischarged insolvent, if he is under any acknowledgment of allegiance or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power, and if he is so disqualified by or under any law made by Parliament. Everything comes there; all these things are mentioned in article 83. Therefore, according to article 83, he cannot be a member and is not entitled to be a member of the Council of States. According to article 55, sub-clause (3), he has to be qualified for election as a member of the Council of States. Therefore to add this in clause (3) has no sense, is meaningless. I am sure Dr. Ambedkar will never accept it and the House will not accept it.

I have divided the amendment into two parts; I have already dealt with the first part. The second part of the amendment says, “or has been elected and served more than once as President or Vice-President of the Union”. Supposing he has served as Vice-President or President for one term, why prevent him from becoming Vice-President again if he happens to be a very qualified man and the people want him and the legislature wants him? I had sent in an amendment to the effect that President could be elected more than once, but as I was not in the House I could not move it; but it was accepted by the House that the President could be elected more than once. Therefore, why prevent the Vice-President from being elected more than once?

Sir, it is exactly 1.30 now and I have finished.

Mr. Vice-President : The House stands adjourned to ten of the clock tomorrow.

The Assembly then adjourned till Ten of the Clock on Wednesday, the 29th December 1948.