Volume VII

4-11-1948
to
8-1-1949

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

REPRINTED BY LOK SABHA SECRETARIAT, NEW DELHI
SIXTH REPRINT 2014

Printed by JAINCO ART INDIA, New Delhi

CONTENTS

Volume VII—4th November 1948 to 8th January 1949

	Pages
Thursday, 4th November 1948	
Presentation of Credentials and signing the Register	1
Taking of the Pledge	1
Homage to the Father of the Nation	1
Condolence on the deaths of Quaid-E-Azam Mohammad Ali Jinnah, Shri D.P. Khaitan and Shri D.S. Gurung	1
Amendments to Constituent Assembly Rules 5-A and 5-B	2—12
Amendment to the Annexure to the Schedule	12—15
Addition of New Rule 38V	15—17
Programme of Business	17—31
Motion *re* Draft Constitution	31—47
Appendices—	
Appendix "A"	48—52
Appendix "B"	53—100
Appendix "C"	101—142
Appendix "D"	143—207
Friday, 5th November 1948—	
Taking the Pledge and Signing the Register	209
Motion *re* Draft Constitution—(*contd.*)	209—253
Saturday, 6th November 1948—	
Motion *re* Draft Constitution—(*contd.*)	255—283
Taking the Pledge and Signing the Register	284
Motion *re* Draft Constitution (*contd.*)	284—294
Monday, 8th November 1948—	
Taking the Pledge and Signing the Register	295
Motion *re* Draft Constitution—(*contd.*)	295—343
Tuesday, 9th November 1948—	
Draft Constitution—(*contd.*)	345—395
Monday, 15th November 1948—	
Taking the Pledge and Signing the Register	397
Draft Constitution—(*contd.*)	397—424
[Article 1 considered]	
Wednesday, 17th November 1948—	
Taking the Pledge and Signing the Register	425
Draft Constitution—(*contd.*)	425—452
[Article 1 postponed, articles 2 and 3 considered]	
Thursday, 18th November, 1948—	
Taking the Pledge and Signing the Register	453
Draft Constitution—(*contd.*)	453—472
[Articles 3 and 4 considered]	
Friday, 19th November 1948—	
Draft Constitution—(*contd.*)	473—500
[Articles 28 to 30-A considered]	
Monday, 22nd November 1948—	
Draft Constitution—(*contd.*)	501—527
[Articles 30-A, 31 and 31-A considered]	
Tuesday, 23rd November 1948—	
Draft Constitution—(*contd.*)	529—554
[Articles 32, 33, 34, 34-A, 35, 36, 37 and 38 considered]	
Wednesday, 24th November 1948—	
Condolence on the death of Shri Kanya Lal Manana	555
Draft Constitution—(*contd.*)	555—584
[Articles 38, Government of India Act, 1935 (Amendment Bill) and articles 38-A and 39 considered]	
Thursday, 25th November 1948—	
Draft Constitution—(*contd.*)	585—612
[Articles 39-A, 40, 40-A, and 8 considered]	
Friday, 26th November 1948—	
Statement *re* Eire Act	613—615
Addition of Sub-Rule to Rule 38	615—640
Draft Constitution—(*contd.*)	640—642
[Article 8 considered]	
Monday, 29th November 1948—	
Taking the Pledge and Signing the Register	643
Statement *re* Future Programme	643
Draft Constitution—(*contd.*)	643
[Article 8 considered]	
Taking the Pledge and Signing the Register	644
Statement *re* Time of Meetings	644
Draft Constitution—(*contd.*)	644—670
[Articles 8, 8-A, 9, 10, 11, 11-A, and 11-B considered]	

Pages

Tuesday, 30th November 1948—

Taking the Pledge and Signing the Regiser 671

Draft Constitution—(*contd.*) ..... 671—709

[New article 11-B, articles 10 and 12 considered]

Wednesday, 1st December 1948—

Draft Constitution—(*contd.*) ..... 711—747

[Articles 12 and 13 considered]

Thursday, 2nd December 1948—

Draft Constitution—(*contd.*) ..... 749—792

[Articles 13 and 14 considered]

Friday, 3rd December 1948—

Statement *re* Fire Act 793

Draft Constitution—(*contd.*) ..... 794—822

[Articles 14, 15, 15-A, 16, 17, 18 and New articles 19 to 22 considered]

Monday, 6th December 1948—

Draft Constitution—(*contd.*) ..... 823—857

[Articles 19, 14 and 15 considered]

Tuesday, 7th December 1948—

Draft Constitution—(*contd.*) ..... 859—894

[Article 20, New article 20-A, articles 21, 22, New article 22-A and article 23 considered]

Wednesday, 8th December 1948—

Taking the Pledge and Signing the Register 895

Draft Constitution—(*contd.*) ..... 895—927

[Article 23 considered]

Thursday, 9th December 1948—

Draft Constitution—(*contd.*) ..... 929—958

[New article 23-A and articles 25, 25-A, 26 and 27 considered]

Friday, 10th December 1948—

Draft Constitution—(*contd.*) ..... 959—989

[Article 27-A, New article 40-A, articles 41, 42 and 43 considered]

Monday, 13th December 1948—

Draft Constitution—(*contd.*) ..... 991—1024

[Articles 43, 15, 44, 45 and 46 considered]

Pages

Monday, 27th December 1948—

Draft Constitution—(*contd.*) ..... 1025—1062

[Article 47, New article 47-A, article 48, New article 48-A, and article 49 considered]

Tuesday, 28th December 1948—

Draft Constitution—(*contd.*) ..... 1063—1098

[Articles 50, 51, New article 51-A, articles 52, 53, 54 and 55 considered]

Wednesday, 29th December 1948—

Taking the Pledge and Signing the Register 1099

Draft Constitution—(*contd.*) ..... 1099—1127

[Articles 55, 56, 57, 58, 59 and 60 considered]

Thursday, 30th December 1948—

Draft Constitution—(*contd.*) ..... 1129—1165

[Articles 60, 61 and 62 considered]

Friday, 31st December 1948—

Draft Constitution—(*contd.*) ..... 1167—1194

[Articles 62 and 62-A considered]

Monday, 3rd January 1949—

Draft Constitution—(*contd.*) ..... 1195—1231

[Articles 66 and 67 considered]

Tuesday, 4th January 1949—

Draft Constitution—(*contd.*) ..... 1233—1265

[Article 67 considered]

Wednesday, 5th January 1949—

Letter from the President 1267

Government of India Act (amendment) Bill ..... 1267—1302

Thursday, 6th January 1949—

Draft Constitution—(*contd.*) ..... 1303—1337

Friday, 7th January 1949—

Draft Constitution—(*contd.*) ..... 1339—1354

[Articles 149, 63, 64 and 65 considered]

Saturday, 8th January 1949—

Motion *re* Preparation of Electoral Rolls ..... 1355—1387

Draft Constitution—(*contd.*) ..... 1387—1391

[Article 149 considered]

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 10*th 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.

B. Pocker Sahib Bahadur (Madras : Muslim): Mr. Vice-President, Sir, may I have your permission to move that the House adjourn at one o'clock as to-day is Friday and the Muslim members have to attend their Jumma prayers?

Mr. Vice-President (Dr. H. C. Mookherjee): We shall adjourn at one o'clock. That much of consideration will be shown to our Muslim brethren and I am quite sure that the House agrees with me.

Honourable Members : Yes.

B. Pocker Sahib Bahadur : Thank you, Sir.

DRAFT CONSTITUTION—(*Contd.*)

Article 27-A

Mr. Vice-President : We shall consider Amendment No. 824 to article 27-A.

(The amendment was not moved.)

Mr. Vice-President : Amendment No. 825 also in the name of Dr. Raghuvira. He is not in the House.

(Amendment No. 825 was not moved.)

Mr. Vice-President : Now we come to Part V. On page 106 of the printed list of amendments, we have amendment No. 1032 on the new articles 41—44 in the name of Shri Gopal Narain.

Prof. K. T. Shah (Bihar : General): Sir, may I remind you that an amendment of mine was held over—amendment No. 1030—which involves a big principle. By agreement it was held over with article 40-A. That is on page 105.

Mr. Vice-President : Yes, amendment No. 1030, Prof. K.T. Shah.

New Article 40-A

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

"That after article 40, the following new article be inserted:

'40-A. There shall be complete separation of powers as between the principal organs of the State, *viz.,* the Legislative, the Executive, and the Judicial.' "

Sir, I regard this as the most important, the very basic requirement of what I would call a Liberal constitution. I am aware, Sir, that this Draft has been founded on the compromise between what are known as Presidential governments and Parliamentary governments. The Parliamentary government has a sort of link between the Executive, the Legislative and the Judiciary. The Presidential tries to keep no such link, and has complete separation of powers between the three principal organs of the State, each embodying the sovereignty of the people in the different aspects of a State's activities.

[Prof. K. T. Shah]

The ideal, however, and the reasons for that ideal, which have guided many modern States in basing their constitution upon a doctrine of complete separation have arisen from bitter past experience. In the constitutions like that of England centuries ago, the ultimate combination of all authority in the person of the King, had lead to many evils culminating in a Civil War, ending in the execution of one king, and a bloodless Revolution leading to the abdication or expulsion of another king. The arrangement which was evolved thereafter has been kept in conformity with the genius of the British people, not so much by a written Constitution, as by evolving constitutional conventions, supported by centuries of usage. And these have become even more sacred than the written word in a written constitution.

But I do not think this will be applicable to us in this country at this moment. I do not think that it would be easy to realise in new grounds, where new experiments of self-government are being tried on an imperial scale. As such I feel persuaded that when we start our own Constitution, when we make a beginning in this land, in the working of democracy, I think it would be best if we have complete separation of powers between the three principal organs of the State.

For one thing, Sir, if you maintain the complete independence of all the three, you will secure a measure of independence between the Judiciary, for example, and the Executive, or between the Judiciary and the Legislature. This, in my view, is of the highest importance in maintaining the liberty of the subject, the Civil Liberties and the rule of law. If there was contact between the Judiciary and the Legislature, for instance, if it was possible to interchange between the highest judicial officers and the membership of the legislature, then, I am afraid, the interpretation of the law will be guided much more by Party influence than by the intrinsic merits of each case. The Legislature in a democratic assembly is bound to be influenced by Party reasons rather than by reasons of principle.

I am not decrying Parties. Please do not misunderstand me. All I am saying is that after all, Parties are mundane, dealing with mundane things, and as such they are bound to attach much more importance to considerations of the moment, to merely transitory ideas, to importance of personalities, by which a Judiciary would not be affected. It is of the utmost importance that the Judiciary should be above suspicion, and, therefore, out of or above any contamination. I hope the word is not hard to anybody. It should be above contamination by political prejudices that are rife in all political parties.

If contact or connection is maintained between the Judiciary and the Executive organs of the State, there is also the possibility of undue influence, of misleading, of misdirecting and mis-influencing those who are appointed to interpret the Constitution, those who are appointed to be guardians of Civil Liberties, those who have to administer justice.

In the environment in which we are living, in the traditions under which our judicial system has been evolved, I am afraid justice is a very costly luxury. It is really not the easy privilege of the poor man. Though you have provided a number of appeals, though you have provided a hierarchy of powers, you have also evolved, side by side, a most costly, a most wasteful, a most extravagant system of legal advice and legal assistance by professional lawyers, which only those who have undergone protracted litigation know how costly it is, how confusing, and how almost prohibitive it is, to ordinary mortals.

But even so, even granting that justice must not be cheap and must be available to those who can pay for this luxury, let it not be tainted, I beg you, let it not be influenced by considerations other than the intrinsic merits of each case.

When the chapter dealing with the Judiciary comes up before the House I may have occasion to move other amendments to point out where and how our present system suffers. But we should have the ideal of absolute purity of justice; even though it should happen to be class justice, let us make it at least free from taint of ulterior motives. The administrators of justice are unconsciously or sub-consciously coloured by their own inherited or acquired class prejudice. That cannot be helped all at one. But leaving that aside, and leaving aside even such a matter as was discussed yesterday in the House—of having the right to move the Supreme Court—I would say that, so long as you have not merely the combination of the Judiciary and the Executive, but also the possibility of translation from a high judicial office to an equally high or sonorous executive office; so long would your Judiciary be open to suspicion, so long your administration of justice would suffer by personal privileges or personal ambitions, and so long, therefore, you will not be able to maintain your civil liberties to the degree and in the manner of purity that is highly desirable in a country like this.

I would, therefore, suggest, in the first place, that the Judiciary should in any case be completely separated, and should attach regard only to the written letter of the law, irrespective, let us say, of the debates in this House at the time the Constitution itself was passed, irrespective of Party or personal considerations, irrespective of any other motives that might otherwise affect human and mundane things.

The same logic, in a different form, applies also to the case of the Legislature and the Executive. The less contact, there is between them, the better for both, I venture to submit. The executive is in a position to corrupt the House; the executive is in a position to influence votes of the members, by the number of gifts or favours they have in their power to confer in the shape of offices, in the shape of Ministerships, in the shape of Ambassadorships, in the shape of Consulships, and any number of offices which the Executive has it in its power to bestow. We have come to a stage in political evolution when the old system called the "spoils system" is no longer upheld in any civilised country. But yet, in fact, it does happen that fifty, sixty, seventy, a hundred people may be open to be influenced by those who have it in their power to distribute even the highest offices of the State. In England, for instance, out of 615 Members of Parliament, something like 70 members are Cabinet Ministers or Parliamentary Secretaries, or other Ministers and so on. This on a minor scale—I hope the House will pardon me for saying so—we are trying to reproduce here, by creating Ministers and Ministers of State and Deputy Ministers, and I suppose Parliamentary Secretaries to come. These may be—and I am sure they are—all honourable people influenced entirely by the desire of offering their services and their talents to the service of the country. But still the fact remains that the influence of the Party system, the idea of favouring one's own people, those who agree with them and become their camp-followers, is a much more influential and important consideration, than the absolute and exclusive eye to the merits or the fitness or the appropriateness of an individual for an office.

It is the exigency of Parliamentary government, as it has been developed in the West and which we are copying, that the consideration most prominent in such appointments is how many votes can an individual bring if he is appointed to a given ministerial office rather than how much real service he would be able to render to the country. As such I for one unhesitatingly and unexceptionally condemn the system of Parliamentary Government, the system of a link between the Legislature and the Executive on which this Constitution is based.

I know that my voice almost appears as a voice in the wilderness. But I think it is my duty to place this on record that, after a close study of the working of Constitutions elsewhere, after a close study stretching over perhaps thirty-five years of the development of political institutions in this country, and their

[Prof. K. T. Shah]

influence on our public life, on our public morality, on even our private relations, I venture to suggest that this is not a very healthy example we are copying; and that the sooner we get rid of the combination of executive, judiciary and legislature in some supreme Cabinet, in some supreme authority, the better for us it would be.

Lastly, Sir, I come to the division between the Executive and the Legislature. It has worked for over a hundred and fifty years in America, quite satisfactorily, where the Legislature and the Executive are kept wholly apart. They had before them, much more than we have before us, the model of the English Constitution where the combination had already been achieved to a degree of perfection, that was looked upon even by such students as Burke or Fox as the basis of their Civil Liberties, of the liberalism of the English Constitution.

Nevertheless, under the influence and aegis of scholars and thinkers of the type of Jefferson, they did devise a constitution which kept completely apart the Legislature, the Executive and the Judiciary. For a hundred and sixty years that Constitution has worked without any serious difficulty. Even in the midst of wars, and even under internal civil war, they have been able to maintain their freedom and their liberal constitution. That would not have been the case, if they had started on the same lines, and worked their Party system in the same manner that the Whigs used for perhaps a century.

I could go on saying a great deal on this subject without once repeating myself. But I am aware that the patience of the Chair is not unlimited; and I know the temper of the House is not very sympathetic; and so having said my say in this matter, I would commend my proposition such as it is to the House.

Shri K. Hanumanthaiya (Mysore): Sir, I listened with great respect to Prof. Shah's argument about his amendment. I fear the new clause he has moved is completely out of tune with the constitutional structure which this House has proposed and the Drafting Committee has adumbrated. We in this House have given our approval to Parliamentary system of government, and what Prof. Shah sponsors in his amendment is, I might say, the Presidential executive. Of course, we can argue about the merits and demerits of both the systems, but we have come to accept the Parliamentary system to be suitable to this country and for very good reasons that system seems to be better adapted to conditions in India than Presidential executive. I think instead of having a conflicting trinity it is better to have a harmonious governmental structure. If we, as he says, completely separate the executive, judiciary and the legislature, conflicts are bound to arise between these three Departments of Government. In any country or in any Government, conflicts are suicidal to the peace and progress of the country. The first and foremost foundation on which a Government or society can work is peace to begin with and if there is separation—not separation but Prof. Shah wants complete separation—then conflicts are sure to arise between these three Departments of Government. Therefore, I say that in a Governmental structure it is necessary to have what is called "harmony" and not this three-fold conflict.

Then, it has become the fashion of the day with some people to decry the executive and make the judiciary look as if it is the paragon of all virtues. I would respectfully place this view before Prof. Shah and people of his way of thinking. Whereas judges no doubt are impartial and they have no sides to take, we must remember also that the executive governments in India or any where else in the world, have to work under very difficult circumstances. To carry on a government and to please people is not an easy matter. Many a time they work under difficult circumstances with danger to their lives. They will naturally incur displeasure. Some people are prone to take advantage of these conditions and displeasures to raise controversies and to decry the

executive. To continually decry the executive and the legislature and to exalt the judiciary is not doing service either to the judiciary or to the governmental structure. If I understand the term correctly, independence of the judiciary means that the executive or its officers should not interfere in the day to day administration of justice. That does not mean, as some people interpret it, that the judiciary must be the master of the executive or should be on a par with the executive government. Government in any country must govern. The powers of governing should vest with one set of people and it is unsafe for us to divide it into three equal parts and especially in the extreme degree that Prof. K. T. Shah contemplates. Even in America, though theoretically there is complete separation of powers between these three departments, we all know the party system of Government softens its rigours to a very great extent. In America there are two well organised parties and these parties determine what is to be done in their respective party meetings. At these meetings, conflicts which could have arisen between these three departments of Government, are softened, smoothened and ironed out so that the evils of this system are eliminated. Sometimes when one party has a majority in the Legislature and another in the executive, conflicts surely arise. In order to make the judiciary impartial it is unnecessary for us to exalt it to the position of the Government or the Legislature. It is wrong to argue that a few judges of the Supreme Court are better than four hundred Members of the Legislature, the duly chosen representatives of the people, or the accredited leaders of the nation. This is a topsy-turvy argument. The sooner we give up this psychology which is born of political controversies, the better. Therefore, I oppose the new clause. My main reason is that this House is wedded to a Parliamentary system of democracy and this new clause is out of place in such a constitutional structure.

Prof. Shibban Lal Saksena (United Provinces : General) : Sir, I agree with my friend, Mr. Hanumanthaiya that the clause as it stands here in the amendment will not be in its proper place in the Constitution. Yet I cannot help saying that I agree to a very great extent with the reasoning advanced by my learned friend, Prof. K. T. Shah. We have experimented with Parliamentary democracy for so many years. Now I personally feel that, though Dr. Ambedkar in his original address very clearly told us that we have to choose between the British system and the American system, and said that the American system gives more security and the British system more responsibility, yet we had decided here to choose more responsibility; if it were left to his choice he would have preferred the American system. I agree to a very great extent about the evils of the present Parliamentary system. We have seen Parliamentary parties in so many provinces like in Sind, in Bengal and in other places, where Ministers try to keep their parties by giving bribes to the people who have even four or five votes so that the majority party may remain in being. I feel that this system where in people have merely to keep the majority in power is being put to abuse. I know that in England they are working the system in a perfect manner. But they have a tradition of 700 years. They have developed their methods whereas we are just entering upon our democratic freedom and we cannot imitate it to perfection. It will have to wait until the whole national character changes and it is not possible that we can imitate England. Probably our slavery has led us to imitate the British system. If left to ourselves we would have copied the American system. In that system there is complete separation of the judicature from the legislature and the legislature from the executive. The legislature there can pass any laws which it thinks best for the country and the President has to obey them. Here the Leader of the majority party must have the House with him. The House will only pass those laws which the party thinks are necessary. The legislature cannot be independent of, but it has to be submissive to, the executive. In most places where the leaders are outstanding, the parties will say "ditto" to what they say and the real will of the majority will not be voiced. Therefore I think this

[Prof. Shibban Lal Saksena]

becomes more like a one-man Government than anything else. In America, people are free; they can pass laws even against the President. There have been cases where in spite of the laws passed by the legislature—the Congress—it has been set aside by the Supreme Court and the President has to see that any action of his is not against the fundamental laws of justice. The Supreme Court is far more powerful than anyone else. I, however, think that now we have gone too far to change the basis of our Constitution, because in the last two years we have passed everything in accordance with the British Constitution, and probably it is too late now in the day to change the whole system. But I do think that there is great force in what Prof. Shah has said and though this amendment is not in its proper place, still I do think that this House will remember that although we are all for a system which has been tried in England and is being worked out there in a satisfactory manner, still in our country we will have to be careful to develop traits which make that constitutional working possible. In England, they could throw out even Churchill in the new elections although he was the man who saved England and her freedom. Have we that sort of characteristic in our country where we can throw out anyone if we think he is not good enough? What is necessary for our country we must do, even though it may be against the will of the biggest person. Until then, we cannot work Parliamentary democracy. I therefore think that this amendment has given this House an opportunity to express its doubt as to whether we have done wisely in accepting the present system. But I think it is now too late in the day to change the whole system and also that this amendment has no place at this time. It should have really come as a change of the whole system. But still, I think that where the Supreme Court is concerned, I wish it were appointed by the majority in the legislature and not by one single person. Everywhere, its independence must be guaranteed and I have given amendments that the Supreme Court must be completely independent of the judicature and the legislature. It must be the one body which should decide what is guaranteed with respect to our liberty, etc. I hope this amendment will at least help us to see that the Supreme Court's independence is not in any way minimized. In regard to this I heard one of the most eminent authorities in the Assembly say "Today the High Courts are not independent; they are influenced by the political consequences of their actions".

I hope in future our Supreme Court will be free from these influences and that they will do what is necessary and observe the principles inherent in this Constitution.

Kazi Syed Karimuddin (C. P. and Berar : Muslim): Sir, I am entirely in agreement with the amendment of Prof. K. T. Shah. I know that the system approved by the Constituent Assembly is a Parliamentary system of government but even then I had urged the adoption of a non-Parliamentary system of government in India. We have seen since 1920, that the working of the Government of India Act and other Local Self-Government Acts based on the Parliamentary system of Government has demonstrated a miserable failure. In the Parliamentary system of government, it is as clear as daylight that the political opponents are practically crushed, neglected and ignored; we have no conventions and we have no discipline and it is very difficult for our people who are not trained in Parliamentary system of Government to put up with opposition in the country. What we have seen in India is this: that the Ministers are slaves of the legislature and they have to depend for their existence and for their continuance in office on the popular views of the people in the country. They cannot use their independent judgment; they cannot use their independent discretion; the result is that those who keep them in power influence the judgment and the discretion of the Ministers to the great detriment of those who are in opposition. In this country there are heterogeneous people, with different principles and with different programmes. We have seen in the

country, particularly in Noakhali, in Bihar and in the two Punjabs, arson, murders and looting. It has all happened because the Governments were based on Parliamentary system. The Ministers in both the Punjabs, in Noakhali and in Bihar did not take up a strong attitude partly because they cannot go against the popular frenzy of the people which was prevailing in Bihar, Noakhali and in the Punjab. Therefore, if you want perfect peace in the country, if you want tranquility in the country, if you want political parties or political opposition to thrive in the country, it is very necessary that there should be a non-Parliamentary system of government.

Now, it has been practically accepted on the floor of the House that the judiciary here, under the Parliamentary system of Government, can never be independent and, if it is not independent, the guaranteeing of the Fundamental Rights about personal liberty and property will be only fracical. Unless the judiciary is independent of the executive and the legislature, it is impossible to have protection under the Fundamental Rights and to have decisions which will be based on independent considerations.

My friend from Madras, while opposing this amendment gave three reasons. He said that it is impossible to create a harmonious structure in which political parties can work together in a non-Parliamentary system of Government. My submission is that under Parliamentary system, it is not a harmonious structure, but a structure in which political opponents are crushed. A harmonious structure is one in which all parties are allowed to work in a harmonious way in which the opposition is accommodated. Therefore, it cannot be said that in a Parliamentary system of Government, where there is no discipline or toleration, one can expect a harmonious structure.

Then, Sir, it was said that there would be a great conflict between the legislature, the executive and the judiciary, if there is a non-Parliamentary system of Government. My submission is that it will all be to the good if the judiciary is independent of the executive and disagrees with the excesses committed by the legislature. It would be a healthy sign in a democratic State. Then, it was said that the Ministers and the executive have to please the people. Well, that is exactly the reason why we want a non-Parliamentary system of Government. We want separation between the legislature, the executive and the judiciary only because in trying to please the people they commit such excesses that their opponents are killed, crushed, neglected and ignored. Therefore I say, the reasons advanced by my honourable Friend from Madras in favour of a Parliamentary system of Government go against him. We want a system of Government in which there is minimum pleasing of the supporters. It is wrong to say that the system of Government which exists in England alone is based on democracy. There are other systems such as the American system based on democracy. It cannot be said that the American model is not based on democracy. If you really want a stable and a strong government, if you really want communalism to die out, you must create an atmosphere in which popular frenzy will have no room and in which political opposition will be tolerated. We do not want vacillating governments and ministers who have to please their supporters for their continuance in office. Therefore I very strongly support the amendment moved by Prof. K. T. Shah.

The Honourable Shri K. Santhanam (Madras : General): Mr. Vice-President, there is no doubt that Prof. Shah has raised a question of great constitutional importance. Unfortunately, however, he is a little too late. This Assembly has already discussed the question and taken a decision in favour of Parliamentary system of Government and, on the basis of that decision, the entire Constitution has been drafted by the Drafting Committee. So, unless a revolutionary change of opinion has taken place among the majority of Members, Prof. Shah's position is hardly a practicable one at the present moment. Therefore I do not want to go in detail into this question of the Presidential

[The Honourable Shri K. Santhanam]

versus parliamentary executive. I may remark, Sir, that this so-called complete separation of legislative, executive and judicial powers is, even in the American Constitution, a myth to a considerable extent. Though the Supreme Court of the United States is said to be completely separate from the executive, we have seen how President after President has tried to manipulate the Supreme Court by appointing judges to suit his own views. Whenever there has been a conflict between the President and the Supreme Court, the President has had only to wait till some judge retired and then put in his own nominee in his place and get judgments in his own favour. Therefore, so long as the President is the ultimate appointing authority, the authority of the judiciary has to some extent to be dependent on the executive. But, so far as our Constitution is concerned, it lays down that our Supreme Court will be as independent of the executive and the legislature as the Supreme Court of the United States. To that extent Prof. Shah's desires have been fulfilled in the Constitution.

Prof. Shibban Lal Saksena : There the judges are appointed by the Congress and the Senate.

The Honourable Shri K. Santhanam : Where?

Prof. Shibban Lal Saksena : In the United States of America.

The Honourable Shri K. Santhanam: But it is the President who has to nominate them.

Prof. Shibban Lal Saksena : But he has to get the consent of the Senate.

The Honourable Shri K. Santhanam: Yes; whether with the consent of the Senate or not, the appointing authority is the President. Therefore the President will give the choice only to his nominee and so, whether it is A, B, C, or D, he will nominate only those people who conform to his views, especially on the most important questions. But barring the appointing authority, so far as the independence of the judiciary, is concerned, we have provided for such independence in our Constitution as in any other Constitution. Therefore the real issue is regarding the merits of the Presidential and Parliamentary types of executive. Sir, two or three years ago I was myself strongly inclined towards the presidential type of executive for the Central Government of India, but after listening to the discussions and after further consideration, I am now convinced that it is not perhaps as desirable for the country as I once thought it was because, Sir, the future of this country is that of an economic State. If we are to be mainly a police State, certainly the separation of the executive and the legislature will be of great importance. If strength and stability are the only considerations or even the main considerations to be borne in mind in framing the Constitution of India, then I do think that there is a strong case for the presidential executive but today what is more important than stability or strength is quick economic progress. Even our stability, even our strength will be dependent upon the tempo in which the economic reconstruction of India can be proceeded with. I believe that Prof. K. T. Shah is very anxious that the Indian economy should be reconstructed on socialist lines as quickly as possible, but if there is presidential executive, I think his desires in this respect will be greatly checkmated. One of the defects of the presidential system is that the executive and the legislature may be at loggerheads very frequently. This has been the case in the United States, and when they are at loggerheads for a period of three or four years till either the legislature is renewed or the President is re-elected, the whole thing will be a deadlock. Sir, I do not think in this country we could afford to lose even a period of three or four years in such conflicts. All the advantages of the presidential executive in the form of a free hand for the President and stability for the executive will be lost even if a small period of conflict arises. Sir, we have to socialise many industries, establish new corporations, create new forms of credit, for all of

which the daily co-operation of the executive and the legislature is of the greatest importance. Unless this co-operation is forthcoming at least in the formative period of Indian freedom, then our progress which has already been delayed by the foreign rule will be further delayed and popular impatience at the delay of economic reconstruction will break all bounds and ordered democracy may become impossible. Therefore, Sir, as the Central Government is going to be vested with more powers than I had thought, as we are to be a little more unitary than federal, it is all the more essential that the executive and the Parliament at the Centre should form one integral whole and function as one unit. Unless they do so, the whole progress of the country will be delayed. If on the other hand we had trusted provincial autonomy to a far greater extent and left all constructive programmes and economic reconstruction to the units, then I would have been for responsible government in the provinces and presidential executive at the Centre, for then the Centre's business will be only to keep India safe and united and to allow the units to function in the economic sphere freely; but it has been considered desirable—and on very strong grounds—that the Central Government of India should have an active, continuous and formative part in the economic reconstruction of the whole country and for this purpose only a responsible Cabinet or the Parliamentary executive will suffice. Therefore I hope Prof. K. T. Shah will reconsider his views and withdraw his amendment. In any case, I oppose the amendment.

Mr. Vice-President : I am well aware that there are many more Members who want to speak and who are fully competent to deal with this subject, but I think that it has been discussed sufficiently. Therefore I shall call upon Dr. Ambedkar. I am sorry to disoblige honourable Members, but I think they will recognise the fact that we have to make a certain amount of progress daily.

Shri Lokanath Misra (Orissa: General): But many points have been left untouched.

Mr. Vice-President : Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General): Mr. Vice-President, Sir, this matter, as honourable Members will recall, was debated at great length when we discussed one of the articles in the Directive Principles which we have passed. It was at my instance that it was sought to incorporate in the Directive Principles an item relating to the separation of the executive and the judiciary. Originally the proposition contained a time limit of three years. Subsequently as a result of discussion and as a result of pointing out all the difficulties of giving effect to that principle, the House decided to delete the time limit and to put a sort of positive imposition upon the provincial governments to take steps to separate the executive from the judiciary. On that occasion, all this matter was gone into and I do not think that there is any necessity for me to repeat what I said there. There is no dispute whatsoever that the executive should be separated from the judiciary.

With regard to the separation of the executive from the legislature, it is true that such a separation does exist in the Constitution of the United States; but if my friend, Prof. Shah, had read some of the recent criticisms of that particular provision of the Constitution of the United States, he would have noticed that many Americans themselves were quite dissatisfied with the rigid separation embodied in the American Constitution between the executive and the legislature. One of the proposals which has been made by many students of the American Constitution is to obviate and to do away with the separation between the executive and the judiciary completely so as to bring the position in America on the same level with the position as it exists, for instance, in the U. K. In the U. K. there is no differentiation or separation between the executive and the legislature. It is advocated that a provision ought to be made in the Constitution of the United States whereby the members of the Executive shall be entitled to sit in the House of Representatives

[The Honourable Dr. B. R. Ambedkar]

or the Senate, if not for all the purposes of the legislature such as taking part in the voting, at least to sit there and to answer questions and to take part in the legal proceedings of debate and discussion of any particular measure that may be before the House. In view of that, it will be realised that the Americans themselves have begun to feel a great deal of doubt with regard to the advantage of a complete separation between the Executive and the Legislature. There is not the slightest doubt in my mind and in the minds of many students of political science, that the work of Parliament is so complicated, so vast that unless and until the Members of the Legislature receive direct guidance and initiative from the members of the Executive, sitting in Parliament, it would be very difficult for Members of Parliament to carry on the work of the Legislature. The functioning of the members of the Executive along with Members of Parliament in a debate on legislative measures has undoubtedly this advantage, that the Members of the Legislature can receive the necessary guidance on complicated matters and I personally therefore, do not think that there is any very great loss that is likely to occur if we do not adopt the American method of separating the executive from the Legislature.

With regard to the question of separating the Executive from the Judiciary, as I said, there is no difference of opinion and that proposition, in my judgment, does not depend at all on the question whether we have a presidential form of government or a Parliamentary form of government, because even under the Parliamentary form of Government the separation of the judiciary from the Executive is an accepted proposition, to which we ourselves are committed by the article that we have passed, and which is now forming part of the Directive Principles. I, therefore, think that it is not possible for me to accept this amendment.

Mr. Vice-President : I shall now put the amendment of Prof. K. T. Shah to vote.

Prof. K. T. Shah: Can I speak a few words in reply, Sir? This is a new article, and not an amendment.

Mr. Vice-President : Though it may be an article, it is an amendment to the Draft Constitution. This would create a very awkward situation. We have established a convention after a good deal of difficulty, and I am quite sure Prof. Shah would realize the difficulties of the Chair.

(Prof. Shah resumed his seat.)

Mr. Vice-President : Thank you. You are most reasonable and helpful.

The question is:—

"That after article 40, the following new article be inserted:

'40-A. There shall be complete separation of powers as between the principal organs of the State, *viz*., the Legislative, the Executive, and the Judicial.' "

The motion was negatived.

Mr. Vice-President : So far as I remember, our work commences with amendment No. 1033. This is disallowed as a formal amendment.

Amendment No. 1034 is I think blocked in view of the fact that a new article—39-A—has been already accepted by the House.

Then we come to article 41.

Article 41

Mr. Vice-President : After going through the amendments one by one, I find that amendment Nos. 1037, 1038 and 1039 are mainly concerned with the name our Motherland would bear. I think they ought to be held over for

the present. That pertains to article 1, the consideration of which we have postponed for the time being.

The Honourable Shri K. Santhanam: I want to know whether it is your ruling that these amendments are not relevant to these articles. If you decide to keep them over, then we cannot pass that article.

Mr. Vice-President : You are a pundit in these technicalities. Could we not transfer them to article 1 by some device or other, so that we could pass this article?

The Honourable Shri K. Santhanam: If the name is changed in article 1, the consequential changes will be made. These amendments may be ruled out for the present and may be taken up when you take up article 1.

Shri H. V. Kamath (C. P. & Berar : General): I did not hear a word of what the honourable Member said.

Mr. Vice-President : Mr. Santhanam, please come to the mike and explain the position. Please do not get impatient, Mr. Kamath.

Shri H. V. Kamath : We are impatient to hear him, Sir.

The Honourable Shri K. Santhanam: When we take a decision regarding the names to be used, even if we take a decision either in the title or in article 1, the consequential changes will be made throughout the Constitution. Therefore, I do not see any necessity that we should take it up at every point. If you want to pass this article, then all these things will have to be treated as not relevant to this particular article. Otherwise, every such article will be held up and these amendments would be kept pending and so long as they are not disposed of, we cannot pass the article. Therefore, I suggest that all such amendments should be taken as not pertaining to any particular article, but pertaining to the general Constitution.

Mr. Vice-President : I think that for practical reasons, we should adopt the procedure suggested by Mr. Santhanam.

Then we come to amendment No. 1035. This deals not only with the future name of our motherland, but is also concerned with the salary of the President. So it is ruled out.

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

"That for article 41, the following be substituted:—

'41. The Chief Executive and Head of the State in the Union of India shall be called the President of India.' "

I do not read the alternative, and I shall confine myself only to the main proposition.

In the title of the President, instead of the clause giving it barely as it stands, I should like that there be some indication of the status and power of the President. There shall be a President of India whose position and title should be made a little more clear and definite than it is at present. I therefore, describe him as "the Chief Executive and Head of the State".

I take it that there is no dispute regarding the status and position of the President as the Head of the State. That is, in a way different from the Head of the Government, which may be the Prime Minister or the President himself, as I had conceived it. But whether or not there is a separate head of the Government, there must be, for formal, ceremonial and solemn occasions, a representative of the people collectively embodying the sovereignty of the whole people and of the State as a whole. As such, I think, it would be better if my amendment is substituted for the original article, and the President is also described as the Chief Executive and Head of the State in the Union of India, called the President of India. I do not think I need take the time of the House

[Prof. K. T. Shah]

by dilating upon this, because all that I can say would be a verbal expansion of the idea so briefly put forward in this amendment. Therefore, without taking further time, I commend it to the House.

Mr. Vice-President : You do not move the second part?

Prof. K. T. Shah : I do not move the second part.

Mr. Vice-President : Amendment No. 1037 has been ruled out for reasons already known to the House. Amendment No. 1038 has also been ruled out.

(Amendment No. 1039 was not moved.)

The article is now open for general discussion, although I do not think there is any need for it.

Shri Mahavir Tyagi: (United Provinces : General): Sir, I do not want to take up much of the time of the House; but since I have not taken any for the last week or more, I think I deserve taking a minute.

My only point is to emphasise the amendment tabled by Prof. K. T. Shah which points out a direction which is very important from the point of view of a discussion on the floor of this House. There is a lack in the constitution. He has rightly pointed out—I do not know whether this is the proper place to mention this idea—that we must define as to who is the representative of the people so far as sovereignty is concerned. He says: "the Head of the State in India represents the sovereignty of the people." We have not yet decided the question of the residence of sovereignty. I had moved an amendment on this point and it was promised that it would be taken up for consideration when we discuss the Preamble to the Constitution. I am waiting for that opportunity. Sir. But, I feel that the Head of the State must also represent the sovereignty of the people. After all, how otherwise will the people express themselves? No Government in democratic countries can ever claim to be fully representative of the people as a whole. The Government here, although they represent the ambitions and aspirations of the people, and even though they are the most popular people in the country, it cannot be said that they are the representatives of the total population of India; they are not the representatives of the whole people because they have a party bias and a party manifesto on which they have been elected. The Government must as a rule represent the majority party in the country. A Government cannot therefore be the true spokesman of the whole people. There must be some unit, some authority, some person in whom paramountcy or sovereignty should be vested, in whom the prerogatives of the people should be vested. I therefore submit, Sir, that it would have been a good idea if we had laid down that the President was not only the Executive Head of the State but also a symbol of the sovereignty of the people.

Sir, I want to make a distinction between people and the State. The State has always the bias of administration. In the problem of the governed and the governor, whether it be democracy or any other cracy, the State governs and the people are governed. It is therefore necessary that in a democratic State full chance of expression should be given to the minorities or opposition. Because, when the minorities speak in a House of Legislature or in a Parliament, they speak purely with the bias of the people. In this House, as it is, if it were sitting as Legislative Assembly—we are now the Constituent Assembly—Dr. Ambedkar and his colleagues would always represent the bias of the administration. They know the difficulties of administration; but the people want their own bias to be expressed irrespective of what the administrative difficulties are. Such expressions and demands always come through the mouthpiece of the opposition, which has to be protected against the majority rule.

Mr. Vice-President : Will you kindly explain how the question of the President comes in here?

Shri Mahavir Tyagi : I want to emphasise that it is an essential requirement of the Constitution that the sovereignty of the people must also be vested in some person or somebody other than the Government. I only want to press the argument that the Government, however popular it may be, cannot claim to be sovereign. It would have been a good idea if the President were made a symbol of the people's will so that he could command respect and devotion from all alike. He could then stand between the people and the Government. In that case he would have the capacity not only of being the Executive Head, but also of being the representative of the sovereignty of the people so that in him the minorities also could find their reflection and protection. Sovereignty lies in the people; but how will it express itself? It cannot be expressed by the Government, because the Government is not the total people. Sometimes, it may be majority of only fifty one per cent and it may also be possible that a forty-nine per cent minority may go unrepresented altogether. If the House agrees to vest the paramountcy and all prerogative and sovereignty in the people, then there must be some authority where from the sovereignty may flow and express itself.

The Honourable Shri K. Santhanam: On a point of information, Sir in this Constitution, Parliament is the repository of the sovereignty of the people. That is the scheme of all constitutions where we have the Parliamentary executive.

Shri Mahavir Tyagi: My friend has taken me aback; I cannot immediately reply to his argument. But, I feel that sovereignty will not be represented by the Parliament because the Parliament also included the Council of States. I must submit that the Council of States is not representative of the people because as envisaged here, the Council of States will be the representative only of the majority parties in the provinces. That House will not come through the single transferable vote system of proportional representation; it will be a House of the States and the members thereof must represent the various States which in turn are again the representatives of the majority party. In these circumstances, the members of the Upper House will be representatives of their Governments and not of the people. There are to be 250 members of the Council of States. They will always be biassed by the difficulties of Governments in the various States. They will come here to represent their Governmental difficulties and to poise their demands from the point of view of their Governments. I submit.....

Shri T. T. Krishnamachari: (Madras: General): They will also be elected by the majority party.

Mr. Vice-President : Instead of being floored.....

Shri Mahavir Tyagi: I cannot be floored.

Mr. Vice-President : Instead of being floored.....

Shri Mahavir Tyagi: I am in possession of the floor myself.

Mr. Vice-President : Instead of being floored, will it not be better if you reserve these observations to the proper time?

Shri Mahavir Tyagi: I am aware of your anxiety to finish the discussion early. Sir, my friend Mr. T. T. Krishnamachari says that as the members of the Council of States will also be elected by the elected representatives of the people, they will represent the people. I claim they will not. For instance I have been elected by the people in my province as an M.C.A. but if I am deputed to be on the Public Service Commission, certainly in the Commission I shall act purely as a member of the Commission; I will not use my capacity as a representative. Likewise, when you elect members to the Council of

[Shri Mahavir Tyagi]

States, they cannot use their representativeship of the people, they will represent their respective States. They are deputed to represent the Governments. I therefore submit that the Parliament will not be so ideal a representative of people's sovereignty, as the Parliament will always be run by the majority party. If those who are governed cannot express themselves direct, then let their mouth-piece—the President—speak for them and let him guard the interest of the minorities and also of the people as a whole. I submit, Sir, it is a question which warrants deep consideration. I therefore hope that the House will give due consideration to the suggestion made.

Shri H. V. Kamath : Mr. Vice-President, this article 41 shares the honour with article 1 as being the shortest article in the Constitution. This is a seven-word article and there need not be much discussion on this very short article. I do not therefore propose to dilate upon the doctrine of Sovereignty which has been adumbrated by my friend Professor Shah and further adverted to by my friend Mr. Tyagi. I want, Sir, by your leave, to draw the attention of the House to the manner in which this article as it was adopted by this Assembly last year in August 1947 has been sought to be modified in the Draft Constitution. I hope, Sir, Dr. Ambedkar is paying attention. I wish to draw his attention to the modification that has been made in the article after it was adopted last year by this Assembly. I do not know what reasons the wise men of the Drafting Committee had to make such an alteration in this article. I have got the Reports of Committees—First Series and Second Series—both agree so far as the wording of this article is concerned. The original draft presented by the Committee over which Pandit Jawaharlal Nehru presided and of which Committee, I think, Dr. Ambedkar too was a member, of the Union Constitution Committee,—that report was presented by Pandit Jawaharlal Nehru on the 4th July 1947 and considered by the Assembly and adopted partly by this Assembly sometime in August 1947. If Dr. Ambedkar turns to this Report as adopted by the Assembly, he will see that the article corresponding to article 41 reads as follows:—

"The Head of the Federation shall be the President (Rashtrapati)."

Now in the draft the article has been modified to read as follows:—

"There shall be a President of India." On the Committee which presented this report to the Assembly last year, not merely Dr. Ambedkar but along with him some of the wise men of the Drafting Committee—the majority of the wise men—were on the Committee. I think only Mr. Madhava Rao and Mr. Khaitan were not on the Union Constitution Committee. The others were all present in the Committee and they have not appended a minute or a note of dissent to the Report of the Constitution Committee presented by the Committee to the Assembly. I want to know from Dr. Ambedkar why this word 'Rashtrapati' has been deleted from the article which appears in the Draft Constitution today. Is it because, Sir, that we have now developed—latterly developed, cultivated a dislike—a new-fangled dislike of some Indian or Hindi words and try to avoid them as far as possible in the English draft of the Constitution? I have not in mind the word 'Pradesh'; but certainly we have adopted words like 'beggar' and 'panchayat'. I wonder how many Britishers, how many Anglo-Americans know the words 'beggar' and 'panchayat'—except those Britishers who have served in India. I therefore want to know the reason which actuated Dr. Ambedkar and the wise men of the Drafting Committee to delete this word 'Rashtrapati' from this article as it has been presented to the Assembly. Is the reason this, that title or that name or designation, that appellation should be reserved exclusively for the Congress President. President of the Congress Organization which functions today, and perhaps will function even after this new Constitution has come into force? The argument may be advanced that the word 'Rashtrapati' is not

much in vogue, has not been in vogue in India for many years. I do not know whether Dr. Ambedkar has been very familiar or acquainted with this title or word 'Rashtrapati' during the last twenty-five years. During the last two generations, however, the word 'Rashtrapati' has gained common currency, has been in vogue to describe the person who is the Head of the Congress Organization, meaning the Head of the Nation. Or is it because that the wise men of the Drafting Committee when they shook themselves free of certain shackles—because when they were members of the Constitution Committee, Pandit Nehru was there who had been Rashtrapati himself but when they shook themselves free from the shackles of other members like Nehru, they get together as seven members of the Drafting Committee, did they think that this word 'Rashtrapati' is not very pleasant or well-sounding or is it because in their heart of hearts they did not have really much regard for this word apart from the person who used to be the Rashtrapati in former times?

Mr. Vice-President : You need not give the reasons for Dr. Ambedkar's action.

Shri H. V. Kamath: I just wanted to put forward the reasons that might have actuated Dr. Ambedkar and put forward my own point of view. So I would like to know from Dr. Ambedkar, in view of the article as passed by the Assembly last year unanimously, why he and his colleagues of the Drafting Committee have sought to delete this word 'Rashtrapati' from the article as it appears in the Draft Constitution.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, before I take up the points raised by Prof. K. T. Shah in moving his amendment, I would like to dispose of what I might say, a minor criticism which was made by Mr. Kamath. Mr. Kamath took the Drafting Committee to task for having without any warrant altered the language of the report made by the committee dealing with the Union Constitution. If I understood him correctly, he accused the Drafting Committee for having dropped the word "Rashtrapati" which is included in the brackets after the word President, in paragraph 1 of that committee's report. Now, Sir, this action of the Drafting Committee has nothing to do with any kind of prejudice against the word "Rashtrapati" or against using any Hindi term in the Constitution. The reason why we omitted it is this. We were told that simultaneously with the Drafting Committee, the President of the Constituent Assembly had appointed another committee, or rather two committees, to draft the constitution in Hindi as well as in Hindustani. We, therefore, felt that since there was to be a Draft of the Constitution in Hindi and another in Hindustani, it might be as well that we should leave this word "Rashtrapati" to be adopted by the members of those committees, as the word "Rashtrapati" was not an English term and we were drafting the Constitution in English. Now my friend asked me whether I was not aware of the fact that this term "Rashtrapati" has been in current use for a number of years in the Congress parlance. I know it is quite true and I have read it in many places that this word "Rashtrapati" is used, there is no doubt about it. But whether it has become a technical term, I am not quite sure. Therefore before rising to reply, I just thought of consulting the two Draft Constitutions, one prepared in Hindi and the other prepared in Hindustani. Now, I should like to draw the attention of my friend Mr. Kamath to the language that has been used by these two committees. I am reading from the draft in Hindustani, and it says:—

"HIND KA EK PRESIDENT HOGA....."

The word "Rashtrapati" is not used there.

Then, taking the draft prepared by the Hindi Committee, in article 41 there, the word used is प्रधान (PRADHAN). There is no "Rashtrapati" there either.

Shri H. V. Kamath: But, Sir, the point I raised was that the article as adopted by this House had word "Rashtrapati" incorporated in it. The reports of the Hindi or Hindustani Committees are not before the House, and all that I wanted was that this word should find a place in the Draft Constitution now being considered here.

The Honourable Dr. B. R. Ambedkar : And I am just now informed that in the Urdu Draft, the word used is "Sardar". *(Laughter).*

Now, Sir, I come to the question which has been raised substantially by the amendment of Prof. K. T. Shah. His amendment, if I understood him correctly, is fundamentally different from the whole scheme as has been adopted in this Draft Constitution. Prof. K. T. Shah uses the word "Chief Executive and the Head of the State". I have no doubt about it that what he means by the introduction of these words is to introduce the American presidential form of executive and not the Parliamentary form of executive which is contained in this Draft Constitution. If my friend Prof. Shah were to turn to the report of the Union Constitution Committee, he will see that the Drafting Committee has followed the proposals set out in the report of that Committee. The report of that Committee says that while the President is to be the head of the executive, he is to be guided by a Council of Ministers whose advice shall be binding upon him in all actions that he is supposed to take under the power given to him by the Constitution. He is not to be the absolute supreme head, uncontrolled by the advice of anybody, and that is the Parliamentary form of government in the United States. Undoubtedly, there are various Secretaries of State in charge of the various departments of the administration of the United States, and they carry on the administration, and I have no doubt about it, that they can also and do as a matter of fact, tender advice to the President with regard to matters arising under their administration. All the same, in theory, the President is not bound to accept the advice of the Secretaries of State. That is why the United States President is described as the Chief Head of the Executive. We have not adopted that system. We have adopted the Parliamentary system, and therefore my submission at this stage is that this matter which has been raised by Prof. K. T. Shah cannot really be disposed of unless we first dispose of article 61 of the Draft Constitution which makes it obligatory upon the President to act upon the advice of the Council of Ministers. Do we want to say it or not, that the President shall be bound by the advice of his Ministers? That is the whole question. If we decide that the President shall not be bound by the advice of the Council of Ministers, then, of course, it would be possible for this House to accept the amendment of Prof. K. T. Shah. But my submission is that at this stage, the matter is absolutely premature. If we accept the deletion of article 61 then I agree that we would be in a position to make such consequential changes as to bring it into line with the suggestion of Prof. Shah. But at this moment, I am quite certain that it is premature and should not be considered.

Mr. Vice-President : I am now going to put the amendment to vote, amendment No. 1036, first part, standing in the name of Prof. K. T. Shah. The question is:

"That for article 41, the following be substituted:—

'The Chief Executive and Head of the State in the Union of India shall be called the President of India.' "

The motion was negatived.

Mr. Vice-President : The article will now be put.

The question is:

"That article 41 stand part of the Constitution".

The motion was adopted.

Article 41 was added to the Constitution.

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.

[Prof. K. T. Shah]

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

[Prof. K. T. Shah]

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.

[Prof. K. T. Shah]

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, not withstanding 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

[Mr. Naziruddin Ahmad]

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 Montesco 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, feudor 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 Krishnaswamy 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 negatived, and shall be treated as void and have no effect."

The motion was negatived.

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 negatived.

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.

Shri Damodar Swarup Seth (United Provinces : General) : Sir, I beg to move:

"That for articles 43 and 44 the following be substituted:

'The President shall be elected by means of the single transferable vote by an electoral college composed of the members of Parliament and an equal number of persons elected by the Legislatures of the States on population basis under the system of single transferable vote.' "

Sir, article 43 provides, for the election of the President of the Union of India, an electoral college composed of the members of both Houses of Parliament and elected members of the Legislatures of the States, while article 44 lays down the details of the procedure to be adopted in the elections of the representatives of the States. Now, so far as the system of proportional representation by means of the single transferable vote is concerned, I hope every honourable Member of the House will welcome it. But so far as the inclusion of members of the Council of States and the members of the Legislative Councils of the States is concerned, I am opposed to their inclusion in the election of the President. Not only that, Sir, I am opposed to the very existence of these Houses under the new Constitution. Now, Sir, bicameral legislation is no more regarded as an essential feature of the Federal polity or of a sound democratic Constitution. At best it is a conservative device to delay progress. Sir, Prof. Laski has very rightly remarked that the safeguards required for the protection of the unit of a federation do not need the armour of a second chamber. All the requisite protection to the units of a federation is secured by the terms of the original distribution of powers embodied in the Constitution, and the right to judicial review by the courts. In all federal States, Sir, the party system operates alike in both the chambers of the legislatures, and the members of the second chamber are also elected on party system. Not only that, they work and vote also under the guidance of the party in much the same way as members of their respective parties in the Lower House. The relative strength of the national parties in the two Houses is no doubt different, but this difference in the number of members of the two Houses only promotes confusion and deadlock. Neither is it wise to entrust the protection of regional and national interests to two different chambers of federal legislature; nor have second chamber justified their existence by protecting the regional and national interests. The members of both the chambers have reacted to national and regional interests in much the same way. The principle of representation of constituent units as political entities through nomination by the local executive, or election by the legislature of the units is also not accepted by modern thinkers as valid. While most of the members of the Council of State are to be elected by indirect election, some are also to be nominated. The system of nomination, Sir, is undemocratic, while that of indirect election, in the words of Prof. Laski, "is the worst system which maximises corruption." Now, Sir, as for the details of the procedure of election given in article 44, and in the foot-note to that article, I submit that it is not only complex, but very complicated, and do not ensure uniformity in the scale of representation of the State. My amendment, on the other hand, Sir, suggests a system which is very simple and can be operated without much difficulty, and does, at the same time, ensure uniformity, as desired, in the scale of representation of the State. I therefore, hope that the House would have no hesitation in accepting this amendment of mine.

(Amendment No. 1052 was not moved.)

Mr. Vice-President : There are two or three amendments of the same type and I want to know which of them is going to be pressed. They are amendment Nos. 1053, 1055, 1057, 1059 and 1062.

(Amendment Nos. 1055, 1059 and 1062 were not moved.)

Mr. Vice-President : So we have two amendments of the same type, Nos. 1053 and 1057. I can allow No. 1053 standing in the name of Prof. K. T. Shah to be moved.

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

"That for article 43 the following be substituted:—

'43. The President shall be elected by the adult citizens of India, voting by secret ballot, in each constituent part of the Union.' "

Mr. Vice-President : You can continue your speech on Monday.

The House stands adjourned to 10 A. M. on Monday.

The Constituent Assembly then adjourned till Ten of the Clock on Monday, the 13th December 1948.