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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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

CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 29*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.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following members took the pledge and signed the Register:—

1. Shrimati Annie Mascarene (Travancore).

2. Shri Sita Ram Jaju, [United State of Gwalior-Indore-Malwa (Madhya Bharat)].

DRAFT CONSTITUTION—*(Contd.)*

Article 55—*(Contd.)*

Mr. Vice-President (Dr. H. C. Mookherjee): We shall now resume discussion on article 55. Mr. Bharathi.

Shri L. Krishnaswami Bharathi (Madras : General): Mr. Vice-President, Sir, article 55 is under general discussion. The House might remember that yesterday Mr. Naziruddin Ahmad moved an amendment standing in his name under No. 1220. Though we cannot straightaway accept the amendment, I felt there was very great force in his contention. His amendment was to delete the words 'proportional representation' in article 55. As I understood him, he had no objection to the transferability of vote, but he took objection to the phraseology of that system. In fact, he said that there is no question of proportional representation when the candidate to be elected is only one. There is no idea of proportional representation in such a case of single-member constituency. That word means in the resultant election there must be some proportion; in proportion to the strength of the electors, you get seats there. And therefore he took objection to the words 'proportional representation'.

I happened to go through some literature on the subject and I found there is great force in what he said. The same difficulty was felt in England, and there was a Royal Commission to go into the question of all electoral systems. As a result, two bills were introduced in 1908 in the House of Commons by Mr. Robertson and they found that 'proportional representation' was not the proper word. The system is all right, *i.e.,* the transferability of voting, when there is a multiplicity of candidates; when the election to be made is only for one candidate, it is obvious that in order to get an absolute majority, we must have what is known as transferability. That is admitted. But in the case of single-member constituency they have hit upon the word—the proper word is what they call 'alternative vote'. I only take leave, Sir, to read an authority on the subject—Humphreys—in this connection. This is what the author says:—

"In recent years the phrase *'alternative vote'* has been employed in England, and was adopted by the Royal Commission on Electoral Systems *as a means of distinguishing* the use of the transferable vote in single member constituencies from its use in multi-member constituencies."

[Shri L. Krishnaswami Bharathi]

There is a difference made in multi-member constituencies, and the words 'proportional representation' have meaning and therefore though the transferability is maintained, in order to distinguish from the system of multi-member constituencies the single-member constituencies, they used the word 'alternative vote'. The memorandum of Mr. Robertson's Bill goes on to say—"The principle of the alternative vote is extremely simple. Its purpose and mechanism is set forth in the memorandum of Mr. Robertson's Bill, which is as follows:—

"The object is to ensure that in a Parliamentary election effect shall be given as far as possible to the wishes of the majority of electors voting. Under the present system when there are more than two candidates for one seat it is possible that the member elected may be chosen by a majority of the voters."

"The Bill proposed to allow electors to indicate on their ballot papers to what candidate they would wish their votes to be transferred if the candidate of their first choice is third or lower on the poll and no candidate has an absolute majority. It thus seeks to accomplish by one operation the effect of a second ballot."

I therefore, think that this word which has been in vogue not only in England but in the Australian States also ever since 1911 must be taken advantage of and incorporated in our constitution so as to distinguish the present case from the case of plural-members constituencies and to avoid the absurdity of having the word 'proportional representation'.

It may not be possible straightaway to accept this suggestion, but I would request Dr. Ambedkar and the Constitutional Adviser, Sir B. N. Rau to give consideration to this idea. There is no particular reason why, when an exact and precise word is there, which has been in use in England, we should not have it. After all, we have to make some rules or lay down some process to indicate what exactly is meant by this system. There are a number of systems even in the single transferable vote system— the Hare system and others. We may have to bring in a bill or some rule to indicate the difference. Objection may be raised that we are now familiar with the word— proportional representation. But, I submit that we are not familiar with it in the case of single member constituencies, and this is the first time that we are having a single member constituency. Therefore, it is but proper that we should think of the word— "alternative vote", as it was accepted by the Royal Commission or Electoral System.

Thank you, Sir.

Mr. Vice-President : Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. Vice-President, Sir, I regret that I cannot accept any of the amendments which have been moved, to this article. So far as the general debate is concerned, I think there are only two amendments which call for any reply. The first is the amendment moved by Mr. Tahir, No. 1215. Mr. Tahir's amendment proposes that the same system of election which has been prescribed for the President should be made applicable to the election of the Vice-President. Now, Sir, the difference which has been made in the Draft Constitution between the system of election to the Presidentship and the system of election for the Vice-Presidentship is based upon the functions which the two dignitaries are supposed to discharge. The President is the Head of the State and his powers extend both to the administration by the Centre as well as of the States. Consequently, it is necessary that in his election, not only Members of Parliament should play their part, but the Members of the State Legislatures should also have a voice. But when we come to the Vice-President, his normal functions are merely to preside over the Council of States. It is only on a rare occasion, and that too for a temporary

period, that he may be called upon to assume the duties of a President. That being so, it does not seem necessary that the Members of the State Legislatures should also be invited to take part in the election of the Vice-President. That is the justification why the Draft Constitution has made a distinction in the modes of election of these two dignitaries.

The second amendment which calls for a reply is the amendment moved by Mr. Naziruddin Ahmad, No. 1219. He has suggested that the word "assembled" should be dropped. Now, the reason why the word "assembled" has been introduced in this article is to avoid election being conducted by posting of ballot papers. We all know that the postal system, when used for the purpose of electioneering is liable to result in failure. Either the ballot papers posted may not reach the destination and may be lost in transit; or it is perfectly possible for a candidate to send round his agents in order to collect the ballot papers so that he may obtain possession of them, sign them himself and send them on without giving any opportunity to the elector himself to exercise his freedom in the matter of election. It is for this reason that it was decided that the election should take place when the two Houses assemble, so as to prevent the misuse of posting. Now, I do not think that the calling together of a meeting of the Members of Parliament for this purpose is going to introduce in practice a difficulty, or is going to introduce any inconvenience. After all, Members of Parliament would be meeting together for the purposes of legislation, and it would be perfectly possible to have the election during one of those sessions. I, therefore, submit that the original language is the more justifiable one, in view of the circumstances I have mentioned.

Now, Sir, with regard to Prof. K. T. Shah's amendment that the disqualifications with regard to the Vice-President should be specified in the Constitution itself, that is a matter which I have already dealt with when replying to a similar amendment moved by him with regard to the President, and I said that this is a matter which could be provided for by law made by Parliament.

With regard to the suggestion which has been made both by Mr. Bharathi and Mr. Naziruddin Ahmad about the use of the words "alternative vote", all I can say is this. If it is merely a matter of change of language, it might be possible for the Drafting Committee at a later stage, to consider this matter. But if— and I am not prepared to commit myself one way or the other— the alternative vote does involve some change of substance, then I am afraid it will not be possible for us to consider this matter at any stage at all.

Mr. Vice-President : I am now going to put the different amendments to vote, one by one.

The question is:

"That for clause (1) of article 55 the following be substituted:

'(1) The Vice-President shall be elected in the same manner as provided in article 43.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (1) of article 55, the words 'assembled at a joint meeting' be omitted, and the clause as so amended, be re-numbered as article 55."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1220, standing in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad (West Bengal : Muslim): Sir, in view of the assurance given that it will be considered by the Drafting Committee, I will not press this amendment.

Mr. Vice-President : Is there the necessary permission of the House not to put it to the vote?

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President : The question is:

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

The amendment was adopted.

Mr. Vice-President : The question is

"That in sub-clause (c) of clause (3) of article 55, after the words 'Council of State', the following be added:—

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

The amendment was negatived.

Mr. Vice-President : The question is:

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

The amendment was adopted.

Mr. Vice-President : The question is:

That for sub-clause (a) of the Explanation to clause (4) of article 55, the following be substituted:

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

The amendment was adopted.

Mr. Vice-President : The question is:

That article 55, as amended, stand part of the Constitution.

The motion was adopted.

Article 55, as amended, was added to the Constitution.

Article 56.

Mr. Vice-President : We now proceed to article 56.

The motion is:

That article 55 form part of the Constitution.

The first amendment is 1258. The first alternative is disallowed as being verbal. The second alternative may be moved.

(Second alternative of amendment No. 1258 was not moved.)

Prof. Shah—Amendment No. 1259.

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

That article 56 be numbered as clause (1) of the article and the following new clauses be added after that:

(2) The Vice-President shall have an official residence and there shall be paid to the Vice-President such emoluments and allowances, not exceeding those granted to the President, as may be determined by Parliament by law, and until provision in that behalf is made by Act of Parliament, the Vice- President shall be paid a monthly salary of Rs. 4,500.

(3) The emoluments and allowances of the Vice-President shall not be diminished during his term of office.

(4) Every Vice-President, on completion of his term of office and retirement shall be given such pension or allowance during the rest of his life as Parliament may by law determine, provided that, during the life time of any such Vice-President in retirement and pensioned, such pension or allowance shall not be diminished.' "

In presenting this motion to the House, I have to put forward three grounds which I hope will commend themselves to the House. The provision of an official residence for the Vice-President is no less important than that for the President. I hold it, Sir, that high officers of Government should not be obliged to rent their premises, and be in anyway obliged to the landlord by hiring accommodation from them. Not only is the great evil of Pugree system that is going on at the present time under the Rent control system in itself a source of great temptation, and so must be condemned, and kept out of access to such exalted dignitaries. The relationship of landlord and tenant, where under quite possibly such important officials may fall into a position of undue influence being exercised upon them, and their conduct in their office be affected thereby, is by itself a source of evil.

It is therefore a simple proposition which I trust no one would take exception to, *viz.,* that high Government officials, who have in their power executive or other influence to wield, should not be at the mercy or under the influence of any private individual who may seek his own advantage through that influence.

I am aware that the Vice-President is, under this Constitution, not given any position of executive power or patronage; and, as such, it is quite arguable that in his case, at any rate, the main ground on which I urge this will not be applicable. But on the other hand, I would submit that after all the Vice-President would be the second personage in the country in point of social status and importance. Even if he has no executive authority or political patronage to give, he is a personage and dignitary who should be safe guarded against all temptation. It is but right that he should be saved from any chance even of a possible misuse of his position to the disadvantage of public service, and to the advantage of some private individual having his ear, so to say.

The second point is in regard to the Vice-President's salary and allowances. This, under my amendment, may be provided for by Act of Parliament. It is not that it is to be provided either by a motion in Parliament where the motion may be carried by simple force of party majority; or that it is an *ad hoc* decision to be varied from time to time. I want this also to be fixed by law; and I want the law to be quite clear that during the tenure of the office of the Vice-President, the salary, allowances and emoluments, shall not be varied to his prejudice or diminished.

The terms I have used are some what different from being "varied to his prejudice". I simply suggest that they shall not be diminished in figures. This, again, is a proposition which ought not to be taken exception to. The Vice-President will be the President of the Council of States; and he would have other active duties or possible functions, and a social position of high eminence to maintain. He would be, however, ornamental, a whole-time officer. He should not be, therefore, allowed or permitted to engage in any private trade, business, industry, occupation or profession, whereby he may be obliged to neglect any part of his duties. It is, therefore, necessary that a reasonable salary or emoluments should be provided for him.

I add the limiting clause also that such salary, etc., should not exceed that of the President. It must, however, be sufficient to enable the Vice-President

[Prof. K. T. Shah]

to maintain his place with the dignity and status that we associate with such high offices.

Finally, I have asked that a pension, or retirement allowance, be given to the Vice-President, as I had proposed it should be given to the President as well. I urged on a former occasion that, in this country, these high offices should not be the exclusive monopoly of the rich, who may not need any allowance or any provision for them in retirement. They are in such a position because by other means they are able to make sufficient provision for themselves not to care for the pittance that may be allowed by the State by way of pension.

I hope our Government, under this Constitution, will not be charged with the accusation, which has been hurled against it that it is intended to be a Government of the Rich, for the Rich, by the Rich. Let it be, at least in theory, a Government under a Constitution which has provided equal opportunities for all, and which will, therefore, make it possible,— even if it is theoretically possible only,— for the poorest in the land to a spire to such offices and to do so without any risk of being further impoverished or burdened with debt.

I accordingly desire that a proper provision be made for such officers on their retirement, so that they may be free from temptation, from want, and from penury; so that they may end their days, after a life-time in the country's service, in peace and comfort, if not in luxury.

I do not, of course, desire that any "luxury" should be available to these personages, which is not available to the rest of the country. But I do not want, also, to conceal the view that, even if the holder of such office has held it only once for the full period, he should be given a retirement pension.

An argument was urged on a previous occasion, when a similar proposition was put forward to the House by me, that I had not been particularly careful as regards what would happen if the same person should once again hold a similar office, or any other office, and was as such in receipt of the salary etc., attached there to, I trust commonsense will enable those who object in this manner to perceive that, such pension would not be paid or payable, if there is concurrently any other office held. It is distinctly and exclusively a pension or allowance payable only on retirement, and while in retirement. I was, therefore, amazed to hear the argument put forward the other day that I had not mentioned whether the President, for example, if he retired and was in possession of a national pension, whether he would be allowed any other salary; or, if he was reelected, whether any such salary would be continued side by side with pension. I can only characterise such opposition as arising merely out of prejudice, and not out of any reasoned, rational perception of the point I have been urging. I am powerless to fight against such prejudice, and, therefore, trust to the good sense of the House, and commend my motion to the House as such.

Mr. Vice-President : There are two amendments standing in the name of Pandit Thakur Dass Bhargava. Is the honourable Member going to move them?

Pandit Thakur Dass Bhargava (East Punjab: General): I am not moving these two amendments.

Mr. Vice-President : Amendments 1260, 1261 and 1262 are verbal amendments and as such they are disallowed.

Amendment 1263 stands in the name of Prof. K. T. Shah. This may be moved.

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

"That in paragraph (b) of the proviso to article 56, after the words "be removed from his office for" the following be added:

> 'reason duly proved, or for any violation of the Constitution duly established, or for conviction for any offence constituting a disqualification for election to the office of a President, Vice-President or member of Parliament, or for physical or mental incapacity duly certified, or for bribery and corruption, duly proved.' "

This amendment also embodies very simple propositions, which however, need to be stated. I hold the view, Sir, that if you leave the Constitution,— and, at that, a written Constitution, unbacked by any conventions or precedents, without clear statements of such possibilities, then you open the door wide to great abuses of the clauses, or of the practices that may prevail in the actual working of the Constitution.

It is a different matter in a country, where, even though the Constitution is not a written document, there are well-established conventions or precedents, which guide the conduct of public men in office. In this country, we are, for ourselves and by ourselves, making a Constitution for the first time. In this country we are taking the responsibility of shaping public morality, and the canons of governance for the first time in our hands. At this time, with a written Constitution. I for one do not think it right, that we should leave such important matters merely to the so-called commonsense, the sense of propriety of the public at large or public opinion to regulate. I, for one, think it is necessary that, categorically, the Constitution must expressly state these matters.

The result would be that the holders of big offices may be removed from their offices for given reasons. All the items on which I desire that such office holders may be removed from their office, or may be declared unqualified, are those which occur not in one but in several Constitutions of leading nations, and several more of subordinate bodies like Municipalities even in this country.

That being so, I think no exception should be taken to this proposition namely, that anybody convicted of treason, or of an offence against the Constitution, or for violation of the Constitution or involving moral turpitude like bribery and corruption, should continue in his office, despite such a thing being urged and proved against him.

The question of bribery and corruption involving moral turpitude is a much more serious as well as a much more difficult proposition to establish. It is difficult, not only because those who take bribes take jolly good care that they are not easily caught. The evidence will not be quite easily obtainable, I would not, of course, say that, merely on suspicion of high officers taking bribes, they should be condemned. On the contrary, they must be properly placed before the duly constituted courts of justice. They must be duly tried. They must be fully heard in their defence; and every facility should be given to them to exculpate themselves from any such charge, if they have means of doing so. I am perfectly aware that those who enjoy high position, and who hold high offices, live in glass houses. Their every act, every utterance, every movement, is liable not only to public comment, but also to public misinterpretation.

I would accordingly not throw them to the wolves so summarily or unreservedly to say that on a mere charge or suspicion they should be condemned. But if, after proper trial under proper procedure, before a competent court of law, unsuspected of any partiality for, or any favour to, anybody, they are proved guilty of having taken bribes, or in any way of having been liable to undesirable influences, then it is but right and proper that they should be removed from their high office and prevented from further misgoverning the country.

[Prof. K. T. Shah]

The same argument applies to mental and physical incapacity. Sir, if we are indifferent, if we do not insist upon this, also, it is not that the individual holding such office may benefit; it is that those concerns, those departments, those interests which are placed in his charge may suffer. It is, therefore, purely in the interests of public service, in the interests of public morality and efficiency of the administration that I am suggesting the inclusion in the Constitution in express and unambiguous terms that those proved unfit, those suffering from mental or physical disability should be removed from their offices. This, I trust Sir, will not be taken exception to, and would be accepted, if not by the draftsman, at least by the general good sense of the House.

Mr. Vice-President : Amendment No. 1264 standing in the name of Mr. Kamath, and 1266 standing in the names of Mr. Tahir and Saiyid Jafar Imam, and 1269 standing in the name of Mr. Mahboob Ali Baig, are of similar import. Of these amendment No. 1264 seems the most comprehensible and Mr. Kamath may move it. Is the honourable Member moving it?

Shri H. V. Kamath (C. P. & Berar : General): Yes, Sir. But it has been my misfortune again that four separate amendments which I sent in have been lumped together as one amendment, and so I am labouring under a handicap. I wish to move only the third part of this amendment. There are four amendments lumped together in this one. I do not blame the office for that.....

Mr. Vice-President : Does the honourable Member propose to move the other three also?

Shri H. V. Kamath : Only the third one.

Sir, I move:

"That in clause (b) of the proviso to article 56, for the words 'agreed to by the House of the People', the words 'agreed to by a similar resolution of the House of the People' be substituted."

I wonder why the Drafting Committee preferred to be so delightfully vague as they have been in this part of the proviso. The draft on this article merely says that the resolution should be agreed to by the House of the People. It is admitted on all hands that brevity, clarity and precision should be the hallmarks of a sound Constitution. Nobody will however say that our Constitution is noted for its brevity. We take pride in the fact that our Constitution is the bulkiest in the world. Some are more proud of this fact than others. Yet, in parts of the Constitution, I find that the Drafting Committee have been seized by a strange affection for brevity, but unfortunately at the expense of clarity and precision. Here for instance they have not laid down what majority should be required for the resolution. Whether it should be unanimously agreed to, or whether it should be two-thirds majority or three-fourths majority or a simple majority has not been laid down in the proviso. I hope Dr. Ambedkar will pay some attention to this point and reply to it.

I would like to draw the attention of the House to article 50 regarding the impeachment and removal from office of the President, which we passed yesterday. There we laid down that the majority of the House in either case is required for the removal on impeachment of the President. Here is a similar article regarding the removal of the Vice-President of the Indian Republic. But strangely enough it is not stated therein clearly whether the resolution passed by a majority of all the then members of the Council of States should be agreed to by the entire House of the People or passed by a bare majority. If this article and proviso are left as they are, it will certainly be difficult later on; difficulties will be encountered. Suppose for instance the resolution is

passed by a bare majority in the Council of States. As regards the House of the People, the article is silent on the point as to what majority is required for the passing of the resolution. It is essential in my judgment that the article must specify as to what majority is required for the resolution of the Council of States to be agreed to by the House of the People. Unless this is specified this might land us in trouble later on.

May I point out another defect in this proviso? Yesterday we passed article 50 regarding the removal of the President from office upon impeachment. There we deemed it sufficient that a Resolution of the House investigating the charge preferred by the other House should be adopted for the removal of the President from Office. But here, so far as the removal of the Vice-President is concerned, we lay down that the Resolution passed by the Council of States must be agreed to by the House of the People. Yesterday I pleaded in support of Prof. Shah's amendment to the effect that the President should be removed on a resolution or vote of both Houses of Parliament and not on the vote of a single House of Parliament. As regards the removal of the Vice-President, we lay down that the resolution for removal should be adopted by both Houses of Parliament, but for the President we think it sufficient if only one House adopts a resolution for removing him from office. This is a strange anomaly which signifies that we are attaching greater importance to the removal of the Vice-President than to the removal of the President from office.

By your leave, Sir, I will just say a word about the amendment just now moved by Prof. Shah. I am afraid my Friend has not read article 79 which provides for the emoluments, the salary and allowances of the Chairman of the Council of States who is in our Constitution the Vice-President of India. Had he read that article he would not have moved that part of his amendment No. 1259 which relates to this question.

Mr. Vice-President : To the next amendment there is an amendment standing in the name of Pandit Thakur Das Bhargava. He is not moving it I understand. The main amendment is also not moved.

Does Mr. Mohd. Tahir want his amendment No. 1266 to be put to vote?

Mr. Mohd. Tahir (Bihar : Muslim) : Sir, as Mr. Kamath has moved only a part of amendment No. 1264, I hope you will permit me to move my amendment.

Mr. Vice-President : That cannot be done. We have established a convention on those lines. I now want to know whether the honourable Member wants me to put it to vote or not?

Shri H. V. Kamath : He is right, Sir. As I did not move my entire amendment which consists of four parts his amendment may be allowed to be moved. I moved only the third part of my amendment. His amendment relates to another matter and therefore it is not blocked.

Mr. Mohd. Tahir : May I move all three amendments Nos. 1266, 1267 and 1268 together?

Mr. Vice-President : You may move No. 1266 only. No. 1267 will fall under another group as will be seen from the copy of the notice regarding grouping of amendments sent to honourable members.

Mr. Mohd. Tahir : I beg to move:

"That in clause (b) of the proviso to article 56, for the words 'all the then members of the Council' the words 'the members of the Council present and voting' be substituted."

Now, Sir, if my amendment is accepted the clause will read thus:

"The Vice-President may be removed from his office for incapacity or want of confidence by a resolution of the Council of States passed by a majority of the Members of the Council present and voting".

Now, Sir, in this connection I want to submit that the existing provision says "by a resolution of the Council of States passed by a majority of all the then members of the Council". I want to make a distinction between "all the then members of the Council" and "the members of the Council present and voting". Now, the provision "all the then members of the Council" also includes those members who, although they are members of the Council, may be absent from the Council, but the intention evidently is that the resolution should be moved and passed by those members who are present and voting Sir, Dr. Ambedkar is not attending to this.

Mr. Vice-President : Dr. Ambedkar, Mr. Tahir wants your attention.

Mr. Mohd. Tahir : I was saying that the provision "by a majority of all the then members of the Council" also includes those members who, although they are members of the Council, may not be present in the Council, while the intention evidently is that the resolution should be passed by a majority of the members who are present and voting. Therefore I submit that the wording "members of the Council present and voting" will be more suitable than the existing words "all the then members of the Council". With these words, I move.

Mahboob Ali Baig Sahib Bahadur (Madras : Muslim) : Mr. Vice-President, Sir, I move :

"That in clause (b) of the proviso of article 56, for the words "all the then members of the Council and agreed to by the House of the People", the following be substituted:

'not less than two-thirds of the total membership of the Council and agreed to by the House of the People by a majority of not less than two-thirds of its total membership.' "

Sir, the Constitution provides for the election of a Vice-President who discharges the functions of the President in the absence of the President for any reason whatever, for instance, if he is absent on account of illness or other causes. He also discharges the functions of the President when the office of the President falls vacant. Therefore the office is a sufficiently important one. That he is also asked to preside over the Council of States is only an incidental thing. He is the *ex officio* Chairman of the Council of States. Therefore, Sir, this office of Vice-President has been made sufficiently important. Now, the method of election to the Office has been made simpler, even though I would have wished that it were also made as elaborate as the election of the President, but we have accepted his election to be made by the members of both Houses. The occupant of such an important Office, who discharges the very important functions of the President and is entitled to all the powers and immunities of the President as is stated in clause (3) of article 54,—should he be dispensed with by a simple majority of the Council of States and to be agreed to by the House of the People in a light manner? That is the question to be considered. I submit that I am in agreement with those members who moved an amendment that his removal also should be done in a similar manner and in the same way by which the President is removed for incapacity, for treason and other things. I support those amendments which say that he should be treated in the same footing as the President in the matter of his removal from office, but if for any reason the Chairman of the Drafting Committee is not prepared to go to that length, it is but fair that the Vice-President should be removed from office for incapacity or for want of confidence by a double majority of

two-thirds. It may be said that if the Council of States has no confidence in the Vice-President, he should be removed by a simple majority because the words that are used are "for his incapacity or for want of confidence", but we are forgetting one thing. He is not only the person who presides over the Council of States but he is also the person who discharges the very important functions of the President. I agree that when the Council of States is not in favour of his continuance as its Chairman, no doubt there is some reason for saying that he should be removed, but we are forgetting, as I said, that he will be functioning as the President also during his absence for whatever reason and during a vacancy. This is a very important function and therefore, Sir, if the Chairman of the Drafting Committee is not agreeable to his removal on the same footing as the President is to be removed, at least he should be removed from office only by a double majority of two-thirds of both the Houses. Sir, I move.

Mr. Vice-President : Amendment No. 1265 is disallowed as being verbal.

Amendment No. 1268 is disallowed for a similar reason.

Then we come to the four amendments which have been grouped together in the papers circulated to honourable members—1267, 1270—1272. Of these 1270 is the most comprehensive and may be moved. It stands in the names of Shri Nand Kishore Das and Shri Biswanath Das.

(Amendment No. 1270 was not moved.)

Then amendment No. 1267 can be moved. Mr. Mohd. Tahir.

Mr. Mohd. Tahir: Mr. Vice-President, Sir, I beg to move :

"That in clause (b) of the proviso to article 56, for the words 'fourteen days notice' the words 'fourteen days notice in writing signed by not less than thirty members of the Council of States' be substituted."

I will be very short in this matter as we have already adopted in respect of the President that such resolutions should be submitted, signed by one-fourth of the total members of the House. Now, as regards the Vice-President, I do not understand why we should not adopt this provision also that a notice like this must be signed by at least 30 members of the Council of States and then only it can be admitted. I hope Dr. Ambedkar will give due consideration to this and will agree to adopt this amendment.

(Amendments Nos. 1271 and 1272 were not moved.)

Mr. Vice-President : Amendment No. 1273 stands in the name of Mr. Naziruddin Ahmad. This is verbal and is therefore disallowed.

Amendment No. 1274 can be moved.

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

"That in proviso (c) of article 56, after the word 'term', the words, 'or resignation or removal as the case may be' be inserted."

Proviso (c) provides that the Vice-President must continue in office notwithstanding the 'expiration of his term'. I want to make the passage read as follows: "the expiration of his term or resignation or removal as the case may be". The 'expiration of his term' usually means the usual efflux of time for which he holds the office. 'Resignation or removal' must also be included to make the passage complete. It was only to clarify this that I have suggested this amendment.

Mr. Vice-President : The article is now open for general discussion. Mr. Sidhwa and after him Mr. Tajamul Husain will speak. I give the two names together.

Shri R. K. Sidhwa (C. P. & Berar : General) : Mr. Vice-President, Sir, with regard to amendment No. 1259 moved by my honourable Friend, Prof. K. T. Shah, he states that an official residence should be provided for the Vice-President and that his emoluments and allowances should be fixed in the Constitution; and while suggesting that, he gave his reasons that if we do not fix the emoluments and if we do not give him a reasonable salary and also provide him with a house, it is likely that he would be tempted to many kinds of vices; he gave certain illustrations. Now, Sir, I shall deal with these matters.

As regards the Vice-President's post, as we all know, we have passed article 53, which states that the Vice-President shall be *ex-officio* Chairman of the Council of States, and as such his salary will certainly be fixed. The Chairman of the Council of States, who will be holding a very responsible post will certainly get a salary as is definitely stated in article 79. Article 79 states, Sir, that all the salaries of the President, Chairman of Council of States, the Speaker, the Deputy Speaker will be fixed. My honourable Friend, Prof. K. T. Shah feels that it should be laid down in the Constitution. I do not think, Sir, that in the Constitution we should lay down a salary for the post of Vice-President. The President's and the Governors' salaries have been fixed for certain reasons that we know very well, that their salaries should not be changed from time to time but it is only fair—the Vice-President is after all a subordinate to the President—his salary should be subject to the vote of the House.

Prof. K. T. Shah goes further and says that his salary should not exceed those granted to the President, as if he feels that the Vice-President is superior to the post of the President, and therefore we must fix a bigger salary than what the President is likely to get. From this point of view, it will be seen that while we all admit that the Chairman of the Council of States and the Vice-President should be given a salary—there is also provision to this effect—I do not agree with him and I hope the House will not agree with him that the salary should be laid down in the statute.

Now, Sir, coming to the residence, my honourable Friend, Prof. Shah, stated that in this rent control business, if we do not allow him a residence, it is likely that he might come in conflict and then he would be tempted to many kinds of vices. I do not accept such a proposition for this reason. Today we have a Speaker of this Constituent Assembly. He is not provided with any house and yet the Government have requisitioned a house for him. Similarly for the State Ministers, who do not get official residences and the Deputy Ministers. Still the Government have requisitioned houses for them for that purpose. I do not know what rent they are charged, but ordinarily, it is the custom that the Government officials are charged 10 per cent of their salaries. And, therefore, Sir, it is an exaggeration to say that if we do not provide an official residence, an officer will have to go to the Rent Controller [*sic*] and say: "If you give me this house, I will pay you so much." I do not think any Vice-President would ever condescend to do such a thing and it would be a sorry day if we have a Vice-President, who really would go to that length. From this point of view, Sir, I consider Prof. Shah's fears are uncalled for.

Prof. Shah laid great stress upon corruption. He said he wants to pay the Vice-President and all the officials and all our Ministers a reasonably high salary, so that they may not be tempted to any kind of corruption or bribe. If we accepted that argument and pay more salary to make a man honest, well, I think, Sir, that proposition looks to me as most absurd and ridiculous. An honest man is an honest man. An honest man, even if he draws a salary of Rs. 20, is honest. A dishonest man, if he draws a salary of Rs. 20,000, is dishonest, Sir. I know that some of the Executive Councillors in the past drawing a salary of Rs. 5,000 have been found to be corrupt. I know some of the Governors drawing a salary of Rs. 10,000 and I know that some of the

Viceroys drawing a salary of Rs. 20,000 have been known to be corrupt and many of my friends in this House and in this country know that there had been Viceroys drawing salaries of Rs. 20,000 who have been proved to be corrupt and have taken bribes and some of the Governors too. Sir, I would not like to mention their names; but I know the House will share the view with me. Therefore it is wrong to state,—it is a fallacy and I will never accept it—that you must pay a man more to make him honest. I know of men who draw Rs. 15 and Rs. 20 being honest although they could not make both ends meet in the maintenance of their families. If a man gets a smaller salary, he adjusts his household budget accordingly. If you merely want to pay a higher salary to make him honest, I will never accept that proposition. Wherever it has been tried, it has simply failed. Therefore, I am sorry I cannot accept the argument advanced by my honourable Friend Prof. K.T. Shah while moving his amendment, although in theory it looks laudable that you should give more salary to make a man honest. I have seen in my public life what has happened in the case of public servants drawing more salaries, and I know how corrupt they have been. With these words, Sir, I oppose very strongly the amendment moved by my honourable Friend Prof. K. T. Shah.

Mr. Tajamul Husain (Bihar : Muslim) : Mr. Vice-President, Sir, I will take up first the amendment moved by my honourable Friend Prof. K.T. Shah, that is, amendment No. 1259. His amendment says that there should be an official residence for the Vice-President of the Indian Republic, that there should be fixed by Parliament emoluments and allowances to the Vice-President, and till that is fixed, his pay should be Rs. 4,500 and that his pay should not be diminished during his term of office, and also that he should get a pension after retirement to maintain the dignity of the high office which he had held during the term of his office of five years. I have come to support this amendment. The Speaker just before me, my honourable Friend Mr. Sidhwa, said, what is the use of mentioning the salary of the Deputy President when it is mentioned in article 79 of the Constitution? I at once looked up article 79 and found that the salary of the Deputy President is not mentioned at all. The salary of the Chairman, the Deputy Chairman, Speaker and Deputy Speaker of the Upper Chamber and the Lower Chamber, the Council of States and the House of the People has been mentioned. Sir, these are two distinct things. He is the Vice-President as well as the Chairman of the Council of States. He is elected as Vice-President and by virtue of his office, *ex-officio* he becomes the Chairman of the Council of States. Now, Sir, what do we find in England? We have got the Lord Chancellor who is the Chairman of the House of Lords. At the same time, the Lord Chancellor holds office as the supreme head of the judiciary. He is supposed to be higher than the Lord Chief Justice of England. He gets a salary as the Chairman of the House of Lords £4,000 and as the highest Judge in the land, he gets a salary of £6,000, total, £10,000. When he retires from office, he gets a pension of £4,000. Now, Sir, in order to maintain the dignity of such a high office, these things should be allowed to him and what should be the salary of the Vice-President of the Indian Republic should be mentioned in the Constitution. That is the reason why I have come to support this amendment.

I take up next the amendment moved by my honourable Friend Prof. K.T. Shah. I again support this amendment. That amendment says as follows. I will just read from the article 56 with which we are dealing, only a few words: "(b) A Vice-President may be removed from his office for incapacity or want of confidence," and for no other reason, the amendment moved by my honourable Friend Prof. K.T. Shah mentions that apart from these two things, there must be something else and this is how he has worded his amendment. The clause as amended would read this way. "A Vice-President may be removed from his office for reason duly proved or for any violation of the Constitution duly established, or for conviction for any offence constituting a disqualification

[Mr. Tajamul Husain]

for election to the office of a President, Vice-President or member of Parliament, or for physical or mental incapacity duly certified, or for bribery and corruption duly proved." I think, Sir, no argument is needed for this simple matter. All these things are very important and they should be inserted in this Constitution in article 56 (b). Therefore, I support this amendment of Prof. K.T. Shah.

I next take up the amendment moved by my honourable Friend Mr. Kamath. I regret, Sir, I have to oppose it. I want your ruling, Sir, on this point. Here we find that my honourable friend Mr. Kamath has sent in five distinct and separate amendments in one amendment.

Shri H.V. Kamath : I am sorry that my honourable Friend Mr. Tajamul Husain did not follow what I said before I moved the amendment. I said that I had sent them as four separate amendments, but unfortunately they have appeared as one in the book of amendments, for no fault of mine. I moved only one of the four.

Mr. Vice-President : Mr. Kamath moved the third part of his amendment only. He did not move the other parts.

Mr. Tajamul Husain : Unfortunately, when Mr. Kamath was moving his amendment, I was not in the House. So I did not know what he actually moved. I want to know whether he moved only one amendment or all the amendments.

Mr. Vice-President : Only the third part.

Mr. Tajamul Husain : Only one amendment? Then, I have nothing to say against it. If he had moved all the amendments, I would have asked for your ruling. It may be the mistake of the office. I have nothing to do with that. Each amendment must be moved distinctly and separately.

Now, coming to amendment No. 1269 moved by my honourable Friend Mr. Mahboob Ali Baig, I oppose this amendment. He says that in clause (b) of the proviso of article 56 for the words "all the then members of the Council and agreed to by the House of the People", the following be substituted: "not less than two-thirds of the total membership of the Council" etc. He wants that when a censure motion is being brought against the Vice-President, there must be a majority of two-thirds. Yesterday, Sir, as regards the censure motion against the President, I said that the President must not be a mere tool in the hands of the majority party and there must be a two-thirds majority. Today I am saying that a bare majority is quite sufficient. My reason is different from what I said yesterday. My reason here is that he is only acting as the Speaker of the House. He is the Chairman of the Council of States and everywhere in the civilized world you will find and also in India you will find in the Parliament here and in all the Provincial Legislatures, the Speaker can be removed by a simple vote of majority. Therefore he must have the confidence of the majority of the people. Therefore I oppose. Otherwise he will become too autocratic. He must protect the whole House proved by a majority of a single vote. Therefore I oppose.

The next is No. 1274 by Mr. Naziruddin Ahmad who wants to add the words "or resignation or removal as the case may be in proviso (c) of article 56. The clause will then read—

"The Vice-President shall, notwithstanding the expiration of his term or resignation or removal as the case may be, continued to hold office until his successor enters upon his office."

I strongly oppose this. This clause (c) simply means that when his term has expired and another election is being held and his successor has not been found, he must continue in office till his successor is duly found and duly

installed in his place but when the Deputy President or the Chairman of the Council of States has been removed, removed for certain reasons like bribery etc., we do not want him to continue even for one minute. I would not like to sit in a house where the Presiding Officer has been found guilty of bribery. He must go at once. As regards resignation, he resigns as he becomes incapable or has been compelled to do so and we do not want him even then. I quite agree that when his term expires after five years, then he must remain till his successor is found but if he has been removed, he must get out at once. I therefore oppose strongly the amendment of Mr. Naziruddin Ahmad.

Pandit Thakur Dass Bhargava : Sir, the Vice-President as such will have two capacities—No. 1, while he is acting as President and No. 2, while acting as the President of the Council of States. Now in regard to his capacity as President, it is clear that if he violates the Constitution he would come under the purview of article 50 and will be impeachable and removable from his office as President. So far as the question of his removal is concerned in regard to article 56 as President of the Council of States, the provisions are exactly the same as are applicable to the Speaker of the House of People. Perusal of article 77 (c) would show that the language is almost the same for the Speaker of the House of People as for the Vice-President who will fill the office of President of the Council of States and I do not think that any change is necessary at all. My apology for taking the time of the House only consists in my anxiety to emphasise one point which struck me and that was that the Vice-President should lose his office as such *ipso facto* if he is successfully impeached under article 50. In regard to this I have been assured that the position is clear and it will be done in some other manner except by providing under article 56. I tabled an amendment which I have not moved because I have been assured that the rules will provide for it. When I speak on this point, it is only to bring it to the notice of the authorities that some provision should be made so that by virtue of successful impeachment under article 50 the Vice-President may be removed without any want of confidence being shown by a Resolution as provided under Clause (b). The mere fact that he has been successfully impeached is in my opinion, quite sufficient for his removal from the position of Vice-President and therefore this should be made clear. I only wanted to bring out this point and, get an assurance that the rules will provide for it.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I regret my inability to accept any of the amendments that have been moved to article 50. I should, however, like to meet some of the points that have been made by those who have moved the amendments. Sir, the first amendment was by Prof. Shah which laid down that provision should be made for pay and pension for the Vice-President. This is a matter which Prof. Shah has also raised in connection with the office of the President and I had stated my objection to making any such provision in the Constitution itself.

The Honourable Shri K. Santhanam (Madras : General): May I point out that in Second Schedule express provision has been made?

The Honourable Dr. B. R. Ambedkar : Having explained my position with regard to that point, I shall not repeat what I have said then. Coming to sub-clause (b) of article 56, various points have been raised. First of all a point has been raised that the words 'bribery, corruption etc.' should be added. Personally I do not think that any such particular phrase is necessary. Want of confidence is a very large phrase and is big enough to include any ground such as corruption, bribery etc. Therefore that amendment, in my judgment, is not necessary. The second point that has been made is that the removal of the Vice-President should be governed by the same rules as the removal of the President *viz.,* that there should be a majority of two-thirds. Now, Sir, with regard to that point, I would like to draw the attention of the House that although the Constitution

[The Honourable Dr. B. R. Ambedkar]

speaks of Vice-President, he really is a Chairman of the Council of States. In other words, so far as his functions are concerned, he is merely an opposite number of the Speaker of the House of People. Consequently in making a comparison or comment upon the provisions contained in sub-clause (b) of article 56 those provisions should be compared with the articles dealing with the removal of the Speaker and they are contained in article 77 (c). If this article 56 (b) is compared with the article 77 (c), members will find that the position is exactly identical. The same rules which are made applicable to the removal of the Speaker are also made applicable to the removal of the Vice-President who, as I have stated, is really another name for the Chairman of the Council of States. Consequently, the requirement of two-thirds majority is unnecessary.

And then my friend Mr. Kamath has raised what I might call a somewhat ticklish question. He said that sub-clause (b) of this article speaks of a majority, while when the reference is made to the House of the People, no such phraseology is used. Now, the matter is quite simple. Whenever we have said that a certain resolution has to be passed, it is understood that it has to be passed by a majority of the House. It is only when a special majority is mentioned that a reference is made to a majority and not otherwise. Now, I quite agree that his argument is that although we do not mention or specify any particular majority with respect to the Council of States, we have still used the phraseology—passed by a majority. Why is this distinction made? Why is this distinction between the phraseology used in regard to the Council of States and in regard to the House of the People? Now, the difference has been made because of the word "then" occurring there. That word "then" is important. The word "then" means all members whose seats are not vacant. It does not mean members sitting or present and voting. It is because of this provision, that all members who are members of Parliament and whose seats are not vacant, that their votes also have to be counted, that we have said—passed by a majority of the then members.

Shri H. V. Kamath : Does it mean the total number of members of the Council of States?

The Honourable Dr. B. R. Ambedkar : Yes, the word 'then' is necessary.

Shri H. V. Kamath : On a point of clarification, Sir. Yesterday in article 50, we used the phraseology 'passed by a majority' in place of the two-thirds majority. Should we not do the same thing here, to make the meaning clearer?

The Honourable Dr. B. R. Ambedkar : I shall explain it presently. The reason is due to the fact that we have to use the word 'then' which is intended to distinguish the case of members present and voting, and members who are members of the House whose seats are not vacant, and voting.

Shri H. V. Kamath : Am I to understand that unless otherwise specified, when you say a resolution is passed or adopted, it means that it is by a simple majority?

The Honourable Dr. B. R. Ambedkar : Yes.

Now, coming to the point raised by my friend Mr. Tahir, amendment No. 1266. If I understood him correctly, what he says is that the resolution of no-confidence should require to be passed by two-thirds. This may be good or it may be bad. I cannot say. All I can say is that this provision is also on a par with the provision regarding the want of confidence in the Speaker. There also we do not require that it should be passed by two-thirds majority or two-thirds of the members of the House.

Then, coming to the amendment of my friend Mr. Naziruddin Ahmad, who wants that in clause (c) after the word "term" words such as resignation etc.

should be inserted. This amendment is absolutely unnecessary, because this article does not make any provision for filling casual vacancies. There is no necessity for making any provision for casual vacancies because under article 75, sub-clause (1) there is always the Deputy Chairman who is there to step in whenever there is any casual vacancy. Consequently such an amendment is unnecessary.

Sir, I hope that with this explanation, the House will accept the article as it stands.

Mr. Vice-President : I may now put the amendments, one by one to vote. The question is:

"That article 56 be numbered as clause (1) of the article and the following new clauses be added after that:

'(2) The Vice-President shall have an official residence and there shall be paid to the Vice-President such emoluments and allowances, not exceeding those granted to the President, as may be determined by Parliament by law, and until provision in that behalf is made by Act of Parliament, the Vice-President shall be paid a monthly salary of Rs. 4,500.

(3) The emoluments and allowances of the Vice-President shall not be diminished during his term of office.

(4) Every Vice-President, on completion of his term of office and retirement shall be given such pension or allowance during the rest of his life as Parliament may by law determine, provided that, during the life time of any such Vice-President, in retirement and pensioned, such pension or allowance shall not be diminished.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That in paragraph (b) of proviso to article 56, after the words "be removed from his office for" the following be added:

'reason duly proved, or for any violation of the Constitution duly established, or for conviction for any offence constituting a disqualification for election to the office of a President, Vice-President or member of Parliament, or for physical or mental incapacity duly certified, or for bribery and corruption, duly proved.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (b) of the proviso to article 56, for the words "agreed to by the House of the People" the words "agreed to by a similar resolution of the House of the People" be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (b) of the proviso to article 56, for the words 'all the then members of the Council' the words 'the members of the Council present and voting' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is :

"That in clause (b) of the proviso of article 56, for the words 'all the then members of the Council and agreed to by the House of the People', the following be substituted:

'not less than two-thirds of the total membership of the Council and agreed to by the House of the People by a majority of not less than two-thirds of its total membership.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (b) of the proviso to article 56, for the words 'fourteen days' notice' the words 'fourteen days' notice in writing signed by not less than thirty members of the Council of States' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in proviso (c) of article 56, after the word 'term', the words, 'or resignation on removal as the case may be' be inserted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That article 56 stand part of the Constitution."

The motion was adopted.

Article 56 was added to the Constitution.

Article 57

Mr. Vice-President : Now we come to article 57.

The motion before the House is that article 57 form part of the Constitution.

There are only two amendments tabled so far, Nos. 1275 and 1276. No. 1275 standing in the name of Mr. Naziruddin Ahmad is disallowed as it has the effect of a negative vote.

No. 1276 standing in the name of Prof. K. T. Shah may be moved.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move that in article 57 after the words "the functions of the President" the words "or Vice-President" be added.

The article as amended would then read as follows:—

"Parliament may make such provision as it thinks fit for the discharge of the functions of the President or Vice-President in any contingency not provided for in this Chapter."

Sir, I am at a loss to understand why while providing for "*any contingency*" the words Vice-President should have been omitted, in laying down provision for the discharge of the functions entrusted to the President. Such a contingency might quite possibly occur when the President, for one reason or other,—let us say, for having lost confidence of the House, or having been impeached successfully,—is unable to discharge his functions; and the Vice-President has gone insane. That is a contingency which is not utterly out of possibility; and as such I do not really see why this simple contingency has not been foreseen by the draftsmen. The draftsman has been quick enough in many cases, to propose amendments of his own to his own Draft, and to see to it that others support him also, when he finds that certain matters have been omitted in the first Draft, they subsequently occur to him in the amendments proposed by others, and, taking the hint from them, he tables his amendments, which, of course have the unanimous support of the House except one. But here I find a case in which I do not think the draftsman will be well advised to say that this amendment is unnecessary.

I have just now mentioned a particular contingency and said that when both these high officers may not be able to, or may not be permitted, under the Constitution, to perform or discharge their functions, in that contingency it is but necessary that some such provision be made.

As this is an article of the Constitution, I take it that the ordinary legislature would not be allowed to step in, and rectify the omission by making provision, should that contingency occur. You may say that there will be the Parliament, and Parliament will make the necessary provision for such a contingency. But if a provision is made expressly by the Constitution—and the Constitution has presumably deliberately left out the addition of the word "Vice-President"—then I put it to the House that it is an omission which, at this stage, we ought to

correct. I therefore, without further argument, suggest that this amendment at least ought to be accepted. It is utterly unoffensive, it does not reflect anything on the skill, ingenuity or foresight of the Draftsman, and as such I trust the Draftsman will agree to accept it.

Mr. Tajamul Husain : Mr. Vice-President, I wish to oppose the amendment just moved by my friend Prof. K. T. Shah. My reasons are two. No. 1 is this Article 57 says that "Parliament may make such provision as it thinks fit for the discharge of the functions of the President in any contingency not provided for in this Chapter". Now, my friend Prof. Shah wants the addition of the words "or Vice-President". Now, Parliament will have power, if his amendment is accepted, to make provision either for the President or for the Vice-President; it cannot make for both. Supposing it makes provision only for the Vice-President and not the President, then what happens? The word "or" is therefore absolutely wrong. Parliament may very well say, "we make provision for the Vice-President and no provision for the President to discharge his functions at all."

The second objection is, supposing the word "or" is removed and "and" had been there, or Prof. Shah had meant "and", then I beg to submit that the Vice-President has no functions to perform at all as Vice-President; so, what provision for the discharge of his functions can anybody make or the Parliament make? He functions only as the Chairman of the Council of States. We are not dealing with him here as Chairman of the Council of States. So I oppose the amendment, because he has no functions or duty to perform.

The Honourable Dr. B. R. Ambedkar: I am afraid Prof. K.T. Shah has not considered the matter as fully as he ought to have before moving his amendment. The omission of the Vice-President from article 57 is a very deliberate one, because as my friend Mr. Tajamul Husain has just now pointed out, his main functions, which are those of the Chairman of the Council of States, have been amply provided for by article 75 (1) where there is a Deputy Chairman who will function in his absence. It is therefore unnecessary to introduce any such amendment in article 57.

My friend Prof. Shah said that I was really borrowing very liberally from the amendments of other friends whenever I found that the Draft was in some way defective. I think Prof. K. T. Shah, if I may say so, has indirectly paid me a compliment because, as Emerson has said, "A genius is the most indebted man" and I am certainly most indebted to my friends.

Mr. Vice-President : I am now putting the amendments to vote.

The question is:

"That in article 57, after the words 'the functions of President' the words 'or Vice-President' be added."

The amendment was negatived.

Mr. Vice-President : There are no other amendments.

The question is:

"That in article 57, stand part of the Constitution."

The motion was adopted.

Article 57 was added to the Constitution.

Article 58

Mr. Vice-President : We now pass on to the next article No. 58.

The motion is:

"That article 58 form part of the Constitution."

[Mr. Vice-President]

We have a number of amendments, of which only No. 1281 will be allowed. The other amendments are verbal and are therefore disallowed.

(Amendment No. 1281 was not moved.)

Mr. Vice-President : I shall put this article to vote.

The question is:

"That article 58 stand part of the Constitution."

The motion was adopted.

Article 58 was added to the Constitution.

Article 59

Mr. Vice-President : The motion is:

"That article 59 stand part of the Constitution."

We have a number of amendments. No. 1282 is disallowed as it has the effect of a negative vote. 1282-A may be moved.

(1282-A was not moved.)

Amendments Nos. 1283 and 1284. There are a number of amendments to them also, but they are disallowed as being verbal. No. 1285 may be moved.

(Amendment No. 1285 was not moved.)

Amendment No. 1286.

Mr. Tajamul Husain : Mr. Vice-President, Sir, I beg to move:

"That clause (3) of article 59 be deleted."

Sir, in my opinion, the President only should have power to suspend, remit or commute a sentence of death. He is the supreme Head of the State. It follows therefore that he should have the supreme powers also. I am of opinion that rulers of States or Provincial Government should not be vested with this supreme power. The President of the Federation should be the supreme authority in respect of offences committed against Federal Subjects. I say that there must not be divided loyalty on this subject. When the States came into the Federation they accepted the operation of the Federal Laws in their States and they accepted to that extent that the Federal Government was supreme and the President of the Federation as representing the Federal Government can alone be the authority who can grant pardons. In the U.S.A. the President grants pardon in all the States. These are matters of the most vital importance to the existence of the Centre and therefore the power of pardon could not be given to anybody except the Head of the Federal Government, that is the President or the Indian Union or the Indian Republic. If the ruler of a State exercised powers of pardon in respect of offences relating to those subjects which they themselves had conceded to the Federation it would amount to taking away with one hand what they had given with the other. In regard to the subjects conceded by the State to the Union the State ceases to be sovereign to that extent. The Federal Law is binding upon every citizen and there is a direct relation between the citizen and the Federal Government. When there is a breach of the federal law the representative of the Federation must have the inherent power of pardon. Therefore I think where the question of pardon is involved the more serious the offence the higher should be the authority to grant the pardon. I have already pointed out about America. In England too the pardon is granted only by the King on the advice of his Home Minister, but pardon is granted only by the representative of the State. In those days when there was no

talk of partition of this country they were thinking of a weak Centre with three or four subjects like Communications, Defence, Foreign Affairs, etc., and the provinces were to enjoy complete autonomy. Now that the country has been partitioned we people who are the citizens of this country have decided once for all that the Centre will not be weak but a strong one, that we would have the strongest possible Centre. If this is our aim the head of the Central Government must have this power. With these words, Sir, I move my amendment and I hope it will have the support of the whole House, including my honourable Friend Dr. Ambedkar and also you, Sir.

Mr. Vice-President : Amendment No. 1287 is disallowed as being formal.

(Amendment No. 1288 was not moved.)

Shri R. K. Sidhwa : Sir, my honourable Friend Mr. Tajamul Husain has proposed to delete clause (3) of article 59 and his argument was that he wanted to keep the authority of the President supreme. Nobody denies that. If the honourable Member would see article 59 (1) it says:

"The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence....."

Similarly powers are vested in the Governors and they can also suspend, remit or commute a sentence of death. In my opinion it is very healthy they should continue to vest this power which existed under the old regime in the Governors of the provinces, for this reason that the Governor of a province is better informed of a particular case of pardon which is referred to him. As far as the President is concerned when the question goes to him, he has to refer the matter first to the Governor and if the Governor has not exercised his right properly the President goes into the whole matter and exercises his right. In the matter of commuting a sentence of death it is only fair that the powers should also be with the Governor and the supreme power should remain with the President. The Governor is a popular governor and is responsible in a sense to the legislature, as he is the nominee of the Premier or the Prime Minister. If he acts wrongly, as my friend fears, then the legislature is there to keep a vigilant watch over him. Therefore I do feel that the present position which is retained in the Draft Constitution is very desirable and we should retain those powers.

As far as rulers are concerned I am not very clear. But I do feel that in the constitution that will be framed by the various constituent assemblies of the States they will see that the ruler is made responsible to the legislature and he will also be like the head of provinces a mere figurehead of the State. From that point of view I would support even the power being vested in the ruler, although I make a qualification to my statement that at present I do not know what the position of the ruler is. If the ruler is autocratic and not responsible to the legislature certainly I would not like to give him that power. But assuming as I do that the rulers of the States are going to be made responsible to the legislatures I support the article as moved by Dr. Ambedkar. The commuting of a sentence of death is a very important power and we do not want straightaway that the matter should go to the President. Let the Governor, who knows his province very well and can consult his Premier, exercise the function. The President is for the whole of India. Even if the matter goes to him he has to consult first the Governor and the Governor has to consult his Premier. From that point of view I oppose the amendment of Mr. Tajamul Husain.

Mr. Vice-President : Does Dr. Ambedkar wish to say anything on this amendment moved by Mr. Tajamul Husain?

The Honourable Dr. B. R. Ambedkar : Yes: Sir: It might be desirable that I explain in a few words in its general outline the scheme embodied in article 59. It is this: the power of commutation of sentence for offences enacted by

[The Honourable Dr. B. R. Ambedkar]

the Federal Law is vested in the President of the Union. The power to commute sentences for offences enacted by the State Legislatures is vested in the Governors of the State. In the case of sentences of death, whether it is inflicted under any law passed by Parliament or by the law of the States, the power is vested in both, the President as well as the State concerned. This is the scheme.

With regard to the amendment of my friend Mr. Tajamul Husain, his object is that the power to commute sentences of death permitted to the Governor should be taken away. Now, sub-clause (3) embodies in it the present practice which is in operation under which the power of commuting the death sentences is vested both in the Governor as well as in the President. The Drafting Committee has not seen any very strong arguments for taking away the power from the Governor. After all, the offence is committed in that particular locality. The Home Minister who would be advising the Governor on a mercy petition from an offender sentenced to death would be in a better position to advise the Governor having regard to his intimate knowledge of the circumstances of the case and the situation prevailing in that area. It was therefore felt desirable that no harm will be done if the power which the Governor now enjoys is left with him. There is, however, a safeguard provided. Supposing in the case of a sentence of death the mercy petition is rejected, it is always open, under the provisions of this article, for the offender to approach the President with another mercy petition and try his luck there. I do not think there is any great violation of any fundamental principle involved or any inconvenience that is likely to arise if the provisions in the draft article are retained as they are.

Mr. Vice-President : Now I will put the amendment of Mr. Tajamul Husain to vote. The question is:

"That clause (3) of article 59 be deleted."

The amendment was negatived.

Mr. Vice-President : I shall now put article 59 to vote. The question is:

"That article 59 stand part of the Constitution."

The motion was adopted.

Article 59 was added to the Constitution.

Article 60

Mr. Vice-President : The House will now take up for consideration article 60 of the Draft Constitution. Mr. Ahmad Ibrahim may move amendment No. 1289.

K. T. M. Ahmad Ibrahim Sahib Bahadur (Madras: Muslim) : I have given notice of an amendment to this amendment.

Mr. Vice-President : Yes, I received it just now. The honourable Member may move it.

K. T. M. Ahmad Ibrahim Sahib Bahadur : Sir, I move:

"That the proviso to clause (1) of article 60 be deleted."

The object of my amendment is to preserve the executive powers of the States or Provinces at least in so far as the subjects which are included in the Concurrent List. It has been pointed out during the general discussion that the scheme of the Draft Constitution is to whittle down the powers of the States considerably and, though the plan is said to be a federal one, in actual fact it

is a unitary form of Government that is sought to be imposed on the country by the Draft Constitution. Members from all parties, irrespective of party affiliations, have condemned during the general discussion this aspect of the Draft Constitution. They have repeatedly show that this Draft Constitution is in spirit a unitary form of Government and not a federal one.

Now, Sir, even in the Lists of Subjects drawn up and attached to the Constitution, a very large number of subjects which are usually in the Provincial List have been transferred to the Concurrent List and the Union List, with the result that we find only a small number of subjects included in the Provincial List. Article 60 (1) (a) seeks to take away from the States the executive power even with regard to those few subjects which are included in the Concurrent List. This, Sir, will be depriving the States of a large portion of even the little executive power that will otherwise be left to them under this Draft Constitution. It may be said that this has to be done for the sake of common interest, for uniformity, for defence and or emergencies. But I would point out that there is no necessity at all to take away even this limited power from the .....

The Honourable Shri K. Santhanam : May I point out to the honourable Member that the deletion of the proviso to clause (1) will vest the entire executive power and Concurrent subjects at the Centre.

K. T. M. Ahmad Ibrahim Sahib Bahadur : I am coming to that.

The Honourable Shri K. Santhanam : May I point out to the honourable this proviso will be as stated by me.

K. T. M. Ahmad Ibrahim Sahib Bahadur : I am coming to that. I have given notice of another amendment to obviate that difficulty. It is to the effect that the word 'exclusive' be inserted in article 60 (1) (a) between the words 'Parliament has' and the word 'power'. The result of this will be that the executive power of the Union will be confined only to those subjects with respect to which it has exclusive power to make laws. I think this would remove the doubt expressed by my honourable Friend. The executive power under my amendment.....

The Honourable Shri K. Santhanam : Has the honourable Member the permission of the Chair to move this amendment?

K. T. M. Ahmad Ibrahim Sahib Bahadur : The Vice-President has been kind enough to permit me to move this amendment and in pursuance of that permission. I have moved the amendment.

Shri L. Krishnaswami Bharathi : How does it read now?

K. T. M. Ahmad Ibrahim Sahib Bahadur : It reads as follows:—

"Clause (1) (a) to the matters with respect to which Parliament has exclusive power to make laws."

Therefore the executive power of the Union shall not extend to matters with respect to which it has no exclusive power to make laws, *i.e.,* matters included in the Concurrent List. Sir, under the present Government of India Act we do not have any such provision. In page 6 of the letter of the Chairman of the Drafting Committee to the Honourable President of the Constituent Assembly, in paragraph 7, he points out—

"Under the present Constitution, executive authority in respect of a Concurrent List subject vests in the province subject in certain matters to the power of the Centre to give directions."

He says then—

"In the Draft Constitution the Committee has departed slightly from this plan."

"I must point out, Sir, that it has not departed slightly from this plan but on the other hand the Drafting Committee has opened the floodgates to the Central

[K. T. M. Ahmad Ibrahim Sahib Bahadur]

Government to enable it to make as many inroads as possible into the powers of the provinces and states with respect to the Concurrent subjects, as the proviso reads:

"Provided that the executive power referred to in sub-clause (a) of this clause shall not, save as expressly provided in this Constitution or in any law made by Parliament....."

Therefore not only has the Union Government executive power in respect of subjects included in the Concurrent List to the extent it is specifically conferred by this Constitution but Parliament may also from time to time make legislation conferring on the Union Government executive power in regard to subjects included in the Concurrent list, with the result that all the subjects may be removed from the Concurrent List and transferred to the Federal List in course of time. It is not fair, Sir, that provincial autonomy should be whittled down to such an extent. In actual practice it will come to that. I know, Sir, that to obviate this difficulty, my honourable Friend, Pandit Kunzru, has given notice of an amendment for the omission of the words "or in any law made by Parliament". It will in away remove the difficulty but not the entire difficulty. That is why I am persisting in moving my amendment. Sir, under the present Government of India Act, even though the Central Government can give only directions to the provincial governments in regard to these subjects, in actual practice the provincial governments are not able to carry on their administration without any hindrance or impediment from the Central Government on account of this power to give directions. We have heard very often repeated by our Ministers that even though they do not see eye to eye with certain directions issued by the Central Government, they are helpless and cannot do what they consider best. Even with regard to the food policy they say they are able to do what they consider to be best in the interests of the province, as they have to obey the directions of the Central Government in this matter. Very often after their return to Madras from Delhi, our ministers point out that though they do not agree with the views of the Central Government, they have to carry out their directions because these directions have been issued under the law, even though they do not believe that the policy adumbrated by the Central Government in regard to the matter will be successful.

I hope, Sir, that the House will recognise the importance of this amendment. As I pointed out, already the powers of the provincial governments have been considerably taken away and if this clause also remains as it is, provincial autonomy will become almost a nullity. Even under the present provisions, powering Parliament to legislate for conferring executive power on the Union will be only glorified district boards and municipalities, and this clause empowering Parliament to legislate for conferring executive power on the Union Government with regard to any subjects included in the Concurrent list will be only another nail in the coffin of provincial autonomy.

Mr. Vice-President : Amendments Nos. 44 and 45 may be moved together.

Pandit Hirday Nath Kunzru (United Provinces: General) : Mr. Vice-President, I beg to move:

"That with reference to amendment No. 1289, in the proviso to clause (1) of article 60, the words 'or in any law made by Parliament' be deleted."

and

"that with reference to amendment No. 1289, after clause (1) of article 60 the following clause be inserted :

(1a) Any power of Parliament to make laws for a State with respect to any matter specified in entries 25 to 37 of the Concurrent List shall include power to make laws as respects a State conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties upon the Government of India or officers and authorities of the Government of India as respects that matter, notwithstanding that it is one with respect to which the Legislature of the State also has power to make laws."

Sir, there are federations of all kinds. There are federations for instance of the United States of America, Canada and Australia, but in none of these federal Constitutions does the Central Government enjoy the right to issue executive directions to the provincial or State governments. In Canada, concurrent powers of legislation have been given both to the Dominion Government and the provincial governments in regard to two subjects, agriculture and immigration. In Australia, there are a large number of subjects in respect of which both the Commonwealth and the States can legislate. Yet in neither of these countries is the Central Government in a position to direct the State nor provincial government to exercise their authority in any particular way. Our Constitution, however, departs, from this principle. Under the Government of India Act, 1935, the Central Government have the right to issue instructions to provincial governments in respect of certain matters. Those matters are connected either with subjects that are exclusively within the jurisdiction of the Central Legislature or are contained in Part II of the Concurrent List. If the language of the proviso to article 60 is accepted, the Central Government will have the right to issue instructions to the Provincial Governments with regard to the manner in which they should exercise their executive authority in respect of all subjects in the Concurrent List. What we have to consider is whether circumstances have arisen that make it necessary or desirable that such a power should be conferred on the Central Government.

The Honourable Shri K. Santhanam : May I point out to the honourable Member that it is only when Parliament makes a law and gives that power that it will extend in any State?

Pandit Hirday Nath Kunzru : I perfectly understand it. That is obvious. If Mr. Santhanam will bear with me for a while, he will find that I shall not omit to refer to this matter.

I do not see, Sir, that there is any reason why so large a power should be conferred on the Central Government. We have to be clear in our minds with regard to the character of the Constitution. While we may profit by the experience of other federal countries and need not slavishly copy their constitutions, it is necessary that the federal principle should be respected in its essential features. We should not go so far in our desire to give comprehensive powers to the Central Government to deal with emergencies as to make the Provincial Governments virtually subordinate to the Central Government. Whatever powers may be conferred on the Central Government if the federal principle is to be given effect to, the Provincial Governments should be coordinate with and not subordinate to the Central Government in the provincial sphere. If this principle is accepted by the House, I think that the proviso in the article under discussion would be found to be contrary to the relations that ought properly to subsist between the Central and the Provincial Governments. The proviso, as honourable Members know, runs as follows:

> "Provided that the executive power referred to in sub-clause (a) of this clause shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws."

If this is accepted, it will be open to the Central Legislature to pass a law empowering the Central Government to issue directions to the Provincial Governments with regard to the manner in which the law should be executed. Under the Government of India Act, 1935, such a power was conferred on the Central Government, but it was more restricted. Sub-section (2) of section 126 of the Government of India Act, 1935 lays down that the executive authority of the Dominion shall also extend to the giving of directions to a Province as to the carrying into execution therein of any Act of the Dominion Legislature which relates to a matter specified in Part II of the Concurrent Legislative List and authorises the giving of such directions," and no bill or

[Pandit Hirday Nath Kunzru]

amendment dealing with this matter be introduced without the previous sanction of the Governor-General. In the new order, it is quite obvious that the Governor-General, who will be the Constitutional Head of the State, cannot be entrusted with the power given to the Governor-General by this sub-section. But there seems to me to be no reason why the power conferred by sub-section (2) of section 126 of the Government of India Act, 1935 should be widened in the manner proposed in the proviso to article 60 of the Draft Constitution. It is true that the Central Government will not have the right to issue instructions to the Provincial Governments with regard to the execution of any law, unless the law itself provides that such instructions should be issued. But this is certainly no check on the power of the Central Legislature. The Central Legislature itself will be the judge of the propriety of conferring such a power on a Government that is responsible to it. What I am seeking to do by my amendment is to protect the Provincial Governments against any unnecessary encroachment on their powers by the Central legislature and Central Government.

Now, Sir, it may be pointed out to me that if the words "or in any law-made by Parliament" are deleted from the proviso, the Central Government will not enjoy even the limited power conferred on it by sub-section (2) of Section 126 of the Government of India Act, 1935. I think, Sir, that this can be provided for under article 234. I have accordingly given notice of an amendment to article 234 that would enable the Central Government to issue instructions to provincial Governments with regard to the execution of laws relating to items 25 to 37 of the Concurrent List if the central legislature by law authorises the Central Government to do so.

There is, however, one other matter to which it is necessary to draw the attention of the House. The second part of my amendment goes beyond anything contained in the Government of India Act, 1935. I may be asked how I am proposing an extension of the power of the central legislature and through it of the Central Government when the purpose of my amendment is to see that the executive authority of the provincial Governments is not unnecessarily restricted by orders issued to them by the Central Government under laws passed by Parliament. Honourable Members will remember that a few weeks ago, the Deputy Prime Minister introduced a Bill in this House the object of which was to amend the Government of India Act, 1935. It was stated in the Statement of Objects and Reasons attached to that Bill that experience had shown that uniform principles in the review of awards made by the Central and provincial industrial tribunals should be adopted under the overall control of the Central Government. It was therefore proposed in the Bill that the Central Government should, in addition to the right of issuing instructions to the provincial Governments in regard to the manner in which their authority should be exercised, also have the power to confer power on their own officers regarding the execution of laws dealing with any of the matters referred to in the Concurrent List. I should not like to go into the merits of that Bill; but we have to take into account the fact that in the present circumstances it is necessary so to widen the powers of the Central Government as to enable them to impose duties on their own officers in respect of certain matters if any law made by Parliament permits them to do so. The matters with which the Bill introduced by the Honourable Sardar Vallabhbhai Patel is concerned are industrial matters and a few other matters. Broadly speaking, these matters are covered by items 25 to 37 of the Concurrent List contained in the Draft Constitution. These matters are, but for two items, the same as those contained in Part II of the Concurrent List in the Government of India Act, 1935. It appears to be reasonable in the present circumstances when Labour is becoming conscious of its rights, when questions relating to it have to be settled on an all-India basis, that in all these questions that might involve the settlement of disputes between labour and the

employers, there ought to be a power vested somewhere, in order that matters of importance may be dealt with in an uniform manner. I do not know when the Bill introduced by the Honourable Sardar Patel will be considered by the House. But, I have little doubt that the power asked for by him will be conferred on the Central Government by the House. If that is done, it is obvious that the Draft Constitution will have to be amended so that it may be brought into line with the Government of India Act, 1935. I have anticipated this necessity and have therefore brought forward an amendment authorising the Dominion Parliament to confer powers or impose duties on the Central Government or any of its officers in respect of entries 25 to 37 of the Concurrent List. It seems to me, Sir, that the amendment proposed by me meets the needs of the case. There is no reason whatsoever why the Central Government should be given the wide power that the passage of the proviso would confer on the Central Executive under laws passed by the Central Parliament.

I should like, Sir, to refer to one more matter before I resume my seat. Under the Government of India Act, 1935, the power of the Dominion legislature to pass laws authorising the Central Government to confer powers and impose duties on their own officers with respect to matters in regard to which provincial legislatures could make laws could be exercised only when a declaration of emergency had been issued declaring that the security of India was threatened by war. So far as I remember, Sir, in no other contingency was the Central Legislature allowed to authorise the Central Government, or to place the Central Officers in a position to deal with the execution of laws on matters included in the Concurrent List. In proposing therefore my second amendment, it will be seen that I have not copied the provisions of the Government of India Act, 1935. I have departed considerably from the provisions of that Act but I have done so in so far only as circumstances have proved that the departure is necessary. It is incumbent on my honourable Friend Dr. Ambedkar to show that the wide power that he has asked for is essential in the present circumstances if law and order are to be maintained in India or if its security is not to be threatened or if problems arising in the new circumstances are of such a character that the country will be able to deal with them only when the Provincial Governments have been made practically subordinate to the Central Government. As I do not feel that any such circumstances have arisen, I have proposed the amendments that I read out a little while ago. I hope, Sir, that they will receive the careful consideration of the House.

(Amendments Nos. 1290 and 1291 were not moved.)

Mr. Vice-President : Amendment No. 1292 is disallowed as a verbal amendment.

Mr. Naziruddin Ahmad: It is not merely verbal. It will change the sense. In fact, my amendment will set up a different authority altogether.

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

Amendment No. 1293 is disallowed as verbal.

The article is open for general discussion. Mr. Mohamed Ismail Sahib.

Mr. Mohamed Ismail Sahib (Madras : Muslim): Sir, I support the amendments moved by Mr. K. T. M. Ahmad Ibrahim, of the intention to move which I have also given notice. Sir, in the footnote under article 60 the Drafting Committee says—

"The Committee has inserted this proviso on the view that the executive power in respect of Concurrent List subjects should vest primarily in the State concerned except as otherwise provided in the Constitution or in any law made by Parliament."

[Mohamed Ismail Sahib Bahadur]

The impression which this note creates in the minds of the readers is that some power or more power than is apparent in the article is being sought to be vested in the provinces but any such impression is removed by what the Chairman of the Drafting Committee says in para. 7 of his letter to the President of the Constituent Assembly. He speaks of the saving clause in the proviso and says—

"The effect of this saving clause is that it will be open to the Union Parliament under the new Constitution to confer executive power on Union authorities, or if necessary, to empower Union authorities to give directions as to how executive power shall be exercised by State authorities."

That is being made clearer by the next sentence in which he says—

"In making this provision the Committee has kept in view the principle that executive authority should for the most part be co-extensive with legislative power."

Wherever the Centre has been endowed with legislative power, it is being sought to endow it with executive power as well. Our amendments seek to correct this position and say that the Centre might have legislative power on the subjects included in the concurrent list but at least the executive power ought to be left in the hands of the units—the provinces. Sir, I have to make a few remarks in connection with the scheme of this Constitution. It is said that the American Constitution has been based on a suspicion of the Central authorities that the people in power in the Centre would seek to encroach, whenever there is an opportunity, on the powers of the States, *i.e.* the component parts or units and also of the individuals. It was contended not only at that time when that Constitution was made but also subsequently and even at the present time that such a conception of a Constitution is well based on facts, because it is admitted that when people come to power, more often than not the power corrupts them. Therefore too much of power should not be invested or placed in the hands of the executive and the supreme authority. But so far as our draft Constitution goes, the contrary seems to be the method which has been adopted. It has been based on the suspicion of individuals and the component units. The idea seems to be that the individuals will always be scheming and conspiring to set the authority at nought and the units would always be on the look-out for doing something wrong. Therefore, Sir, though the scheme of things as adumbrated in the Draft Constitution is alleged to be on a federal basis, it is really over-weighting the Centre with too much power. That is not salutary at least under the circumstances obtaining in our country. That is not good to the country as a whole. Ours is a country of vast distances and a huge population. Therefore it is not conducive to efficiency to over-concentrate power in the Centre. Units must be left with adequate powers in their hands. It must not be the basis of this Constitution that patriotism and anxiety for the welfare of the people are the sole monopoly of the Centre. It must be admitted that the Provinces and individuals also are as patriotic as anybody else. Therefore, their rights and powers must not be sought to be encroached upon. The basis of this Constitution seems to be suspicion, in the first place of the individuals and then in the second place of the units. Sir, where the individuals are concerned, it has not even been conceded that individuals have got an irreducible amount of right to personal freedom. The personal freedom that has been conceded under article 15 is beset with serious, and not only a serious, but fatal modifications so much so these modifications have eaten up and swallowed up the right of personal freedom. It does not recognise that an individual has got any irreducible right which cannot be taken away by any law. And so far as the Provinces or Units are concerned, the same spirit seems to prevail. By various provisions, the powers of the Provinces are sought to be taken away; and in the interest of efficient government and good government, I think that spirit ought not to prevail; and the powers of the units must not be encroached upon.

These amendments of ours, while providing for the maintenance of the legislative powers of the Centre where the appropriate subjects are concerned, want to restrict the executive field of the Centre. Therefore, I think, they are very reasonable amendments which the House should support. I also know that if only Members are given the right to vote as they please, and if they are given the freedom of vote on this particular question at least, I know Sir, many Members will vote for these amendments. I know personally, Sir, there are many Members who feel with me in the matter of these amendments.

Mr. Vice-President : May I suggest that these remarks are not called for here?

Mohamed Ismail Sahib Bahadur : Sir, I am speaking, with your permission, of what I know to be the feeling of many of my colleagues here on this very important matter. In these amendments is involved the efficiency of the government and therefore the welfare of the whole country and of the people. These amendments seek to eliminate any friction or any conflict that may arise in the future between the Centre and the Provinces. If time and again the Centre seeks to encroach upon the rights and powers of the units, then, there is sure to be conflict and friction and these amendments only seek to remove any such conflict. And I wanted to make it clear that I am not alone in this feeling of mine, that I am not alone in this opinion, but that there are many others irrespective of party affiliations. Therefore, I would very much like that the colleagues of mine in this House be given freedom of vote to vote as they please. In that case, the Chairman of the Drafting Committee will know whether there is real support among the Members of this House for the idea contained in these amendments. If the Chairman of the Drafting Committee does not find it in his mind to accept these amendments, may I appeal to him, atleast to accept the amendment to our amendment moved by Pandit Kunzru which seeks to remove the words "or in any law made by Parliament". That at least would mean something. That would go to some extent to alleviate the conditions which I have got in mind and which I have been trying to express here. It will to a certain extent restrict the encroachment upon the powers of the Provinces. Therefore, I would appeal to the House and to the Chairman of the Drafting Committee to consider at least the much milder amendment which seeks to eliminate the words "or in any law made by Parliament".

Mr. Vice-President : I have just received information about the sudden death of Sir Akbar Hydari, Governor of Assam. He was not a member of this House, but we all know the excellent work he has done for our country and we also know that we are indebted not only to him but also to his father. The offices of the Government of India are already closed. It is true that His Excellency was not a member of this House, but still I think we ought to adjourn as atribute to him and as a mark of respect to his memory.

The House stands adjourned till 10 A.M. tomorrow.

The Constituent Assembly then adjourned till Ten of the clock on Thursday, the 30th December 1948.