

Our proposals in the Draft Constitution, in my judgment, are sufficient for the necessities of the case. We have provided that he shall be elected by the elected members of the Legislature of the States, who themselves are elected on adult suffrage. He is also to be elected by both Houses of Parliament. The Lower House of the Parliament is also elected directly by the people on adult suffrage. The Upper Chamber is elected by the Lower Houses of the States Legislatures, which are also elected on adult suffrage. Therefore, having regard to these provisions, I think Prof. K. T. Shah's amendment is quite out of place. I, therefore, oppose that amendment.

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

In all 5 amendments were negatived.

Following amendments were adopted :—

“That in clause (a) of article 43, for the words ‘the members’ the words ‘ the elected members ‘ be substituted.”

Amendment No. 1070 standing in the name of Dr. Ambedkar.

“That to article 43, the following explanation be added :—
“Explanation.—In this and the next succeeding article, the expression “the Legislature of a State” means, where the Legislature is bi-cameral, the Lower House of he Legislature.”

Article 43, as amended, was adopted and added to the Constitution.

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ARTICLE 15

***Mr. Vice-President :** With the permission of the House, I should like to revert to an article left over: that is article 15. I have before me the proceedings of the House from which it appears—that this was considered on the 6th December last—that general discussion had concluded and I had called upon Dr. Ambedkar to reply. At that time it was suggested that efforts should be made to arrive at some kind of understanding so that those who had submitted certain amendments might feel satisfied. I do not know the position now ; but we cannot wait any longer. Dr. Ambedkar, will you please make the position clear? If no understanding has been arrived at, I would ask you to reply.

*CAD, Vol. VII, 13th December 1948. pp. 999-101.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, I must confess that I am somewhat in a difficult position with regard to article 15 and the amendment moved by my Friend Pandit Bhargava for the deletion of the words “procedure according to law” and the substitution of the words “due process”.

It is quite clear to any one who has listened to the debate that has taken place last time that there are two sharp points of view. One point of view says that “due process of law” must be there in this article ; otherwise the article is a nugatory one. The other point of view is that the existing phraseology is quite sufficient for the purpose. Let me explain what exactly “due process” involves.

The question of “due process” raises, in my judgment, the question of the relationship between the legislature and the judiciary. In a federal constitution, it is always open to the judiciary to decide whether any particular law passed by the legislature is *ultra vires* or *intra vires* in reference to the powers of legislation which are granted by the Constitution to the particular legislature. If the law made by a particular legislature exceeds the authority of the power given to it by the Constitution, such law would be *ultra vires* and invalid. That is the normal tiling that happens in all federal constitutions. Every law in a federal constitution, whether made by the Parliament at the Centre or made by the legislature of a State, is always subject to examination by the judiciary from the point of view of the authority of the legislature making the law. The ‘due process’ clause, in my judgment, would give the judiciary the power to question the law made by the legislature on another ground. That ground would be whether that law is in keeping with certain fundamental principles relating to the rights of the individual. In other words, the judiciary would be endowed with the authority to question the law not merely on the ground whether it was in excess of the authority of the legislature, but also on the ground whether the law was good law, apart from the question of the powers of the legislature making the law. The law may be perfectly good and valid so far as the authority of the legislature is concerned. But, it may not be a good law, that is to say, it violates certain fundamental principles; and the judiciary would have that additional power of declaring the law invalid. The question which arises in considering this matter is this. We have no doubt given the judiciary the power to

examine the law made by different legislative bodies on the ground whether that law is in accordance with the powers given to it. The question now raised by the introduction of the phrase 'due process' is whether the judiciary should be given the additional power to question the laws made by the State on the ground that they violate certain fundamental principles.

There are two views on this point. One view is this: that the legislature may be trusted not to make any law which would abrogate the fundamental rights of man, so to say, the fundamental rights which apply to every individual, and consequently, there is no danger arising from the introduction of the phrase 'due process'. Another view is this: that it is not possible to trust the legislature; the legislature is likely to err, is likely to be led away by passion, by party prejudice, by party considerations, and the legislature may make a law which may abrogate what may be regarded as the fundamental principles which safeguard the individual rights of a citizen. We are therefore placed in two difficult positions. One is to give the judiciary the authority to sit in judgment over the will of the legislature and to question the law made by the legislature on the ground that it is not good law, in consonance with fundamental principles. Is that a desirable principle? The second position is that the legislature ought to be trusted not to make bad laws. It is very difficult to come to any definite conclusion. There are dangers on both sides. For myself I cannot altogether omit the possibility of a Legislature packed by party men making laws which may abrogate or violate what we regard as certain fundamental principles affecting the life and liberty of an individual. At the same time, I do not see how five or six gentlemen sitting in the Federal or Supreme Court examining laws made by the Legislature and by dint of their own individual conscience or their bias or their prejudices be trusted to determine which law is good and which law is bad. It is rather a case where a man has to sail between Charybdis and Scylla and I therefore would not say anything. I would leave it to the House to decide in any way it likes.

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

[In all five amendments were negatived and one was withdrawn. No amendment was adopted. Article 15 was adopted and added to the Constitution.]

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ARTICLE 44

***Mr. Vice-President :** We shall now take up article 44. The motion is : The article 44 form part of the Constitution. I am going to call over the amendments one by one.

Amendment No. 1075—Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar :

Sir, I move—

“That in sub-clause (c) of clause (2) of article 44, for the words “such member” the words “the elected members of both Houses of Parliament” be substituted.”

Before proceeding to give the reasons for the amendment I would like with your permission to go back for a minute to clause (2) of this article and explain the scheme as set out in sub-clauses (a) and (b) of that clause. Honourable Members will see that the President is to be elected by elected Members of the Lower House of each State Legislature and by elected Members of both Houses of Parliament—the two to form a single electoral college. Sub-clause (1) of article 44 says that as far as practicable there shall be uniformity in the scale of representation of the different States in the election of the President. It would have been possible to achieve this uniformity by the simple method of assigning each member of the electoral college one vote. But this is not possible because of the disparity between the members of the Legislature and their ratio to population that exists between the different classes of States. In the case of States in Part I of the First Schedule, article 149(3)fixes the scale of representation—one representative for every one lakh of population. In the case of States in Part III, no such scale is laid down. The scale may vary from State to State. In one State, it may be one representative for every 10,000 population. In another, it may be one for every 20,000. That being the position, the value of the votes cast in the election of the President by the members of the Slate Legislatures cannot be measured by the simple rule of assigning one vote one value. The problem, therefore, is how to bring about uniformity in the value of the votes cast by members who do not represent the same electoral unit. The formula adopted to obtain the value of a vote cast by an elected member of the Legislature of a State is to divide the population of that State by the total number of elected members of the Legislature of that State ; and to divide the

*CAD. Vol. VII. 13th December 1948, pp. 1001-03.

quotient so obtained by 1,000 and if the remainder is not less than 500 then add one to the dividend. This is what is stated in sub-clauses (b) and (c) of clause (2).

I now come to the amendment to sub-clause (c) which I have moved. With regard to the votes cast by members of Parliament, we are confronted by the same problem, namely, the disparity in the electoral units and consequent disparity in the value of the votes cast by them. This disparity also arises from the same causes. In the first place, the Council of States being elected by the State Legislature reflects the same disparity which exists between States in Part I and States in Part III. In the second place, there is the same disparity in the ratio of seats to population as between States in Part I and Part III in the election of members of Parliament.

There are two ways of achieving uniformity in the voting by members of Parliament. One is to divide the total number of votes capable of being cast by members of all the State Legislatures by the total number of members of all the State Legislatures and the quotient will be the number of votes which each member will be entitled to cast. The other method is to divide the total number of votes capable of being cast by members of the Legislatures of all the States by the total number of elected members of both Houses of Parliament. The first method is set out in sub-clause (c) as it stands. The second method is embodied in the amendment to sub-clause (c) which I have moved. The difference between the two methods lies in this. In the first method all members of the electoral college taking part in the election of the President are treated on the same footing in the matter of valuation of their votes. According to the second method the members of Parliament are given equal strength in the matter of voting as the members of the State Legislatures will have. It is felt that members of Parliament should have a better voice than what sub-clause (c) as it stands does. Hence the amendment.

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ARTICLE 44 (*Could.*)

***The Honourable Dr. B. R. Ambedkar :** Mr. Vice-President, Sir, I accept the amendment No. 25 of List 1 to amendment No. 1083 moved by my friend Mr. Naziruddin Ahmad. The other amendments I am sorry, I cannot accept. Now, Sir in the course of the general debate, two

*CAD, Vol. VII. 13th December 1948. pp. 1016-18.

questions have been raised. One is on the amendment of Mr. Naziruddin Ahmad. It has been pointed out by various speakers that it would be very wrong to base any election on the last census viz., of 1941. I am sure there is a great deal of force in what has been said by the various speakers on this point. It is true that the 1941 census was in some areas, at any rate, a cooked census ; a census was cooked by the local Government that was in existence, in favour of certain communities and operated against certain other communities. But apart from that, it is equally true that on account of the partition of India there has been a great change in the population and its communal composition in certain provinces of India, for instance, in the East Punjab, Bombay, West Bengal and to some extent in U.P. also. In view of the fact that the Constitution provides for representation to various communities in accordance with their ratio of population to the general population, it is necessary that not only the total population of every particular province should be ascertained but that the proportion of the various communities to which we have guaranteed representation in accordance with their population should also be ascertained before the foundations of the Constitution are laid down in terms of election.

I have no doubt about it that the Government will pay attention to the various arguments that have been made in favour of having a true census of the people before the elections are undertaken. If I may say so, one of the reasons which persuaded me to accept the amendment of my friend Mr. Naziruddin Ahmad is that he used the word 'latest' in preference to the word 'last'. I thought that the word 'last' had a sort of a local colour in the sense that the last census may mean the periodical census which is taken every ten years ; and the 'latest'* census means the census taken before any operation of election is started.

Mr. Naziruddin Ahmad : I did not use those words. I said the last preceding census.

The Honourable Dr. B. R. Ambedkar : Anyhow, I did not pay much attention to what he said. But that certainly is my idea, that this clause shall not prevent the Government from having a new census before proceeding to have elections for the new legislature. I think that should satisfy most Members who have an apprehension on this point.

**Misprinted as 'last' in the debates.*

Shri Mahavir Tyagi : May I take it that you give an assurance that such a census will be taken ?

The Honourable Dr. B. R. Ambedkar : I cannot possibly give an assurance. But no government will overlook the vast changes that have taken place in the composition and the total population of the different provinces. We have guaranteed representation to a great population consisting of various minorities. There has been a great deal of debate, as Honourable Members know, over the question of weightage, and we know that weightage has been disallowed. If we now have the elections and allow them to take place and the seats to be assigned on the existing basis of population, when as a matter of fact, that basis has been lost by migrations, it might result in weightage to various communities, and no representation to certain communities. Obviously in order to avoid such a kind of thing and to see that no community has any weightage, undoubtedly, government will have to see that the census is a proper census.

Pandit Lakshmi Kanta Maitra : I want to know whether the Honourable Member means that no election under the new Constitution should be held unless this census was taken.

Honourable Dr. B. R. Ambedkar : Well, it seems to me only a natural conclusion, because the seats for the elections cannot be assigned unless the populations of the various communities are ascertained. Therefore, that seems to me the logical conclusion, and a new census will be inevitable.

The other question that was greatly agitated by Mr. Tyagi and by Begum Aizaz Rasul and certain other members related to the election of the President. Now, there are two ways of electing the President. One way is to elect him by what is called a bare majority of the House. If a man got 51 per cent, he would be elected. That is one way of electing the President and that is the simple and straightforward one. Now, with regard to that, it may just happen that the majority party would be in a position to elect the President without the minority party having any voice in the election of the President. Obviously no Member of the House would like the President to be elected by a bare majority or by a system of election in which the minorities had no part to play. That being so, the election of the President by a bare majority has to be eliminated, and we have to provide a system whereby the minorities

will have some voice in the election of the President. The only method of giving the minorities a voice in the election of the President is, so to say, to have separate electorates and to provide that the President must not only have a majority but he must have a substantial number of votes from each minority. But that again, seems to me, to be a proposition which we cannot accept having regard to what we have laid down in the Constitution, namely, that there shall be no separate electorates. The only other method, therefore, that remained was to have a system of election in which the minorities will have some hand and some play, and that is undoubtedly the system of proportional representation, which has been laid down in the Constitution.

Mr. Naziruddin Ahmad : There is to be transferability. How can there be proportional representation when there is only one man to be elected ?

The Honourable Dr. B. R. Ambedkar : I really cannot go into this question in detail. To do so I will have to open a class and lecture on the subject ; but I cannot undertake that task at this stage. However, it is well-known and everybody knows how the system works.

Mr. Vice-President: These interruptions show that some Members are not aware of the true nature of proportional representations. You need not pay attention to these interruptions.

Maulana Hasrat Mohani: What are you going to do if there is only one candidate ?

The Honourable Dr. B. R. Ambedkar : If there is only one candidate, he will be elected unanimously (Laughter), and no question of majority or minority arises at all.

The other question asked by Mr. Tyagi was whether there was any procedure for eliminating candidates.

Shri Mahavir Tyagi : On a point of information, Sir.

The Honourable Dr. B. R. Ambedkar : No. I cannot yield. I am answering your point. Your point was whether there was a process of elimination. The point before me is that I want that the election of the President or the General representation involves elimination. Otherwise it has no meaning. The only thing that we have done is that instead of having several proportional representations, we have provided one single proportional representation, in which every candidate at the

bottom will be eliminated, until we reach one man who gets what is called a “quota”.

Shri Mahavir Tyagi: But in the Parliament the system of alternative votes is adopted.

The Honourable Dr. B. R. Ambedkar : Alternative is only another name for proportional.

Sir, I have nothing further to say on this point.

Shri Mahavir Tyagi : Sir, I want to know

Mr. Vice-President : Mr. Tyagi, my difficulty is I cannot compel the Chairman of the Drafting Committee to answer your questions. Neither can I compel him to clarify your doubts.

I am going to put these amendments, one by one to vote.

I put amendment No. 1075 to vote. (This was moved by Dr. Ambedkar).

[Following two amendments were adopted and two others were negatived.]

(1) That in sub-clause (c) of clause (2) of article 44, for the words “such member” the words “the elected members of both Houses of Parliament” be substituted.

Following amendment moved by Mr. Naziruddin Ahmad was accepted by Dr. Ambedkar.)

(2) That for the Explanation to article 44, the following Explanation be substituted :

“Explanation.—In this article, the expression ‘population’ means the population as ascertained at the last preceding census of which the relevant figures have been published.”

Article 44, as amended, was adopted and added to the Constitution.

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ARTICLE 45

***Shri T. T. Krishnamachari:** Sir, the Honourable Member’s amendment is substantially the same as the article, and deals only with the substantive part of the clause and not with the proviso. Is there any object in the Honourable Member moving his amendment ?

Mr. Mohd. Tahir : There is a difference in the meaning of the amendment and the article, and I shall explain how.

The Honourable Dr. B. R. Ambedkar : It is not an amendment at all : it is merely a transposition of the words. There is no difference at all.

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*CAD, Vol. VII, 13th December 1948, p. 1019.

***Mr. Vice-President :** Amendment No. 1086 is disallowed as it is a verbal amendment.

Amendments Nos. 1087 and 1088 are identical. Dr. Ambedkar may move No. 1087.

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

That in clause (a) of the proviso to article 45, for the word “resignation” the word “writing” be substituted.

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†**Mr. Vice-President :** As no Member has desired to speak on the general discussion of this article, I propose to ask Dr. Ambedkar to reply to the debate. I have received a slip requesting for an opportunity to speak just now. It has come too late.

The Honourable Dr. B. R. Ambedkar : Sir, the only amendment that I accept is No. 1090 as amended by Mr. Gupte’s amendment. The others, I am sorry, I cannot accept. There has been no point raised by any Member which requires any explanation.

Mr. Vice-President : I am going to put the amendments to vote.

[In all five amendments were negatived as they were not accepted by Dr. Ambedkar. Only two amendments as shown below were adopted.]

Mr. Vice-President : Now, the question is—

That in clause (a) of the proviso to article 45 for the word ‘resignation’ the word ‘writing’ be substituted.

[This amendment moved by Dr. Ambedkar was adopted.]

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Mr. Vice-President : Now I shall put amendment No. 1090 as modified by amendment No. 26(A) standing in the name of Shri B. M. Gupte to the vote of the House.

The question is :

That—

- (1) Article 45 be re-numbered as clause (1) of that article.
- (2) In clause (a) of the proviso to the said clause as so re-numbered for the words “Chairman of the Council of States and the Speaker of the House of the People” the word ‘Vice-President’ be substituted.
- (3) In the said article as re-numbered add the following clause :—
“(2) Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) of this article shall forthwith be communicated by him to the Speaker of the House of the People.”

The amendment was adopted.

Article 45, as amended, was adopted and added to the Constitution.

*CAD, Vol. VII, 13th December 1948. pp. 1019-20.

† *Ibid.*, p. 1022.

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ARTICLE 46

***The Honourable Dr. B. R. Ambedkar :** Mr. Vice-President, Sir, I am prepared to accept the amendment of Mr. Sharma, i.e., No. 1098, for the deletion of the words “once, but only once”.

With regard to Mr. Kamath’s amendment, I think the proper time when this matter could be discussed will be when the issue as to the qualifications of the person standing for Presidentship is raised.

To Mr. Tyagi I may say that in view of the deletion of the words “once, but only once”, his fears about the Vice-President are groundless.

Mr. Vice-President : I shall now put the amendments one by one to the vote. Amendment No. 1098. The question is :

“That in article 46 the words ‘one, hut only once’ be deleted.”

The amendment was adopted.

Mr. Vice-President : Then amendment No. 1100.

Shri H. V. Kamath : In view of Dr. Ambedkar’s statement, I do not want to press it.

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

Mr. Vice-President: Then Mr. Tyagi’s amendment. It does not arise after Dr. Ambedkar’s speech, but some *pandit* of technicalities *might* say that I did not put it to the vote. So I want to know if Mr. Tyagi withdraws it or not.

Shri Mahavir Tyagi : Sir, I withdraw it.

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

Mr. Vice-President : The question is :

That article 46, as amended, form part of the Constitution.

The motion was adopted.

Article 46, as amended, was added to the Constitution.

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ARTICLE 47

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

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

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

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

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

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

Mr. Vice-President : Amendment No. 1112.

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

(Amendment No. 1113 was not moved.)

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

Amendment No. 1117, Dr. Ambedkar.

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

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

“(a) he is the Governor of any State for the time being specified in Part I of the First Scheduled or is a minister either for India or for any such State ; or”

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

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***Mr. Vice-President:** Dr. Ambedkar.

Shri Syamanadan Sahaya (Bihar: General): Sir, I have

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

Shri Syamanadan Sahaya : No, I have no amendment, but

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

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

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

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

Shri R. K. Sidhwa: Sir

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

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

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

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

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

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

*CAD, Vol. VII, 27th December 1948, p. 1031.

† *Ibid.*, pp. 1034-37.

Prof. K. T. Shah's amendment requires that if a person is holding the office of a Minister and wishes to contest an election, the first condition must be that he shall resign his office as a Minister. In other words, ministership by itself would be a disqualification for election. It seems to me that Prof. K. T. Shah has not devoted sufficient attention to his amendment. In the first place, if a Minister resigns then this amendment is unnecessary. The second point which I think Prof. Shah has not considered and which seems to me to be very crucial is this. Supposing we accept his amendment that a Minister shall resign before he stands as a candidate for Presidentship, it is quite clear that between the period of the dissolution of the old Parliament and the time when the new Parliament assembles there can be no Ministers at all in charge of the administration. And the question that we have to consider is this. What is to happen to the administration during the period which is involved between the dissolution of the old Parliament and the assembly of the new Parliament? Are we to hand over the administration to the bureaucrats or the heads of the administrative departments to carry on until the new Parliament is elected? Or is there to be some kind of expedient whereby we are to go about and find a set of temporary Ministers who would take charge of Government during this short period of two or three months and thus forego the opportunity of contesting elections and becoming Ministers themselves in a new Parliament for the full period of their term? It seems to me that the amendment of Prof. K. T. Shah, if accepted, would create complete administrative chaos in the Government of the country and therefore I submit.....*

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

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

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

Prof. K. T. Shah referred to the fact that the Ministers generally monkeyed with the election or may manipulate or exercise their influence over the administration. That of course, to some extent, is probably true. But in order to eliminate the influence which Ministers

*Dots in the original debates indicate interruption.

exercise or might exercise on the elections the draft Constitution has provided under certain articles (articles 289 to 292) for a special machinery to be in charge of what are called Election Commissions both in the centre as well as in the Provinces, which would take charge of the elections to Parliament as well as to the State legislatures. They are to have complete superintendence, control and management of elections, so that whatever possibility that there exists of Ministers exercising their influence over elections has been sought to be eliminated and consequently the fear which Prof. K. T. Shah entertains has really no place at all. I am therefore, for these reasons, unable to accept his amendment.

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

Shri H. V. Kamath : On a point of clarification, Mr. Vice-President, if matters like 'unsound mind' and 'undischarged insolvent' are found important enough to be embodied in the article itself, what is the point

in leaving this more vital and fundamental thing to Parliament and not giving it a place in the Constitution itself?

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

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

is either the Prime Minister or the Ministers of State and such a provision ought to have been imposed upon them during their tenure and not on the President.

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

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

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

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

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

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

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

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

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

[Following two amendments were adopted ; three amendments were negatived.]

Mr. Vice-President: The question is :

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

Mr. Vice-President: The question is :

That for sub-clause (a) of Explanation to clause (2) of article 47, the following he 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’.”

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

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ARTICLE 47-A

***Mr. Tajamul Hussain :** Now. Sir, in my opinion, this is a fair amendment but I am afraid that this amendment will not be accepted by the Honourable Dr. Ambedkar. Professor Shah comes forward with beautiful amendments but they are all lost because the honourable Member in charge of the Draft Constitution is not in favour of them. Therefore, with your permission, I want to move a verbal amendment to this.

Mr. Vice-President: I cannot allow you to do that. In that case other people would also come forward with verbal amendments. You may make a suggestion for the acceptance of Dr. Ambedkar.

Mr. Tajamul Hussain : My suggestion is this : Mr. Shah’s amendment does not say that when a person is elected President he should declare and divest himself of all his personal property. He only says that he should divest himself of his rights, shares or interests in any concern aided or supported by government and that such rights, etc. should be taken over and held in trust for him by the Government of India. I say that as it would come to the Government of India, I thought that Dr. Ambedkar would accept it. If, Dr. Ambedkar as the Law Minister of the Government of India is not going to accept it, then instead of the ‘Government of India’, let it go to the President’s wife and children. That is a very simple matter

I support the amendment and I move my oral amendment.

Mr. Vice-President : There is no amendment to be moved.

The Honourable Dr. B.R. Ambedkar : Sir, I have nothing to say.

[Amendment of Prof. K. T. Shah was put to vote but was negatived by the House.]

ARTICLE 48

***Mr. Vice-President :** On going through the amendments one by one. I find that amendments Nos. 1127, 1128 and 1130 are of similar import. Amendment No. 1130 seems to be the most comprehensive and may be moved.

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

“That in clause (1) of article 48 :—

‘(a) for the words ‘either of Parliament or’ the words ‘of either House of Parliament or of a House’ be substituted ;

(b) for the words ‘member of Parliament or’ the words ‘member of either House of Parliament or of a House’ be substituted ;

(c) for the words ‘in Parliament of such Legislature, as the case may be,’ the words ‘in that House’ be substituted.”

There was some defect in the original language and we have tried to improve it.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Mr. Vice-President, we have already decided by accepting certain rules that amendments which are intended to beautify the language of an article will not be allowed. Improving the language is not now one of the objectives of an amendment. Before the amendment was moved, it looked like an imposing amendment, but Dr. Ambedkar has clearly admitted that it was intended merely to improve the language of the article. In that view, although it has been moved, it need not be put to the vote.

Mr. Vice-President : Certain powers have been given to the Chair and the Chair is going to exercise them in the way which seems best.

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

“That in clause (2) of article 48, for the words ‘or position of emolument’ the words ‘of profit’ be substituted.”

Sir, this amendment is just for the sake of uniformity.

Mr. Vice-President : Amendment No. 1134. Do you want me to put this to the vote ?

Shri H. V. Kamath : I have been forestalled by Dr. Ambedkar; But I would like to move amendment No. 1135.

Mr. Vice-President : We have now only come up to amendment No. 1134. Amendment No. 1135. You can move it.

*CAD, Vol. VII. 27th December 1948, p. 1040.

†*Ibid* p. 1042.

Shri H. V. Kamath : I move, Sir,

“That in clause (3) of article 4X, the words the President shall have an official residence and ‘he deleted.’”

That is to say, the clause will read thus, if the amendment is accepted.

“There shall be paid to the President such emoluments and allowances, etc. etc.....”

In moving this amendment, Sir, I seek a little light from Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Which amendment ?

Shri H. V. Kamath : Amendment No. 1135. My purpose in moving this amendment before the House is to request Dr. Ambedkar to throw a little light upon the necessity for incorporating such an insignificant, such a minor detail in our Constitution....

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***The Honourable Dr. B. R. Ambedkar :** Mr. Vice-President, Sir, I regret I cannot accept the amendments which have been moved. Professor Shah’s amendment No. 1138 seems to be somewhat superfluous. It provides that the President shall be given Secretariat assistance. There is no doubt about it that it will be done whether there is any provision in the Constitution or not.

With regard to his second amendment No. 1140 prescribing that a pension be given to the President on his retirement, I find that while I am agreeable to the sentiment that he has expressed that persons who serve the public by becoming members of Parliament undergo a great deal of personal sacrifice and that it is desirable that they should not be left unprovided for towards the end of their lives, it seems rather difficult to accept this particular amendment also. According to him, every person who becomes President and serves his term of office, which is 5 years, shall, at the end of 5 years, be entitled to a pension. The second difficulty is that according to his amendment his pension shall not be altered during his life-time. Now supposing for instance one person who has been a President and has filled his full terms of years and has obtained a pension under the amendment of Professor Shah, suppose that he is again elected to be the President, what is the position ? The position is that he continues to get his salary as the President in addition to that he will also be entitled to his pension.

*CAD, Vol. VII, 27th December 1948, pp. 1044-46.

We would not be in a position even to reduce the pension in order to bring it down to his salary. Therefore, in the form in which the amendment is moved, I do not think that it is a practical proposition for anyone to accept. But there is no doubt about the general view that he has expressed, that after a certain period of service in Parliament, Members, including the President, ought to be entitled to some sort of pension, and I think it is a laudable idea which has been given effect to in the British Parliament, and I have no doubt about it that our future Parliament will bear this fact in mind.

Then with regard to the question raised by Professor Kamath about residential.....*

Shri H. V. Kamath : Sir, I am not Professor Kamath.

The Honourable Dr. B. R. Ambedkar : But he is quite entitled to be called Professor because he speaks so often. (*Laughter.*)

Shri H. V. Kamath : God forbid I should ever become a professor, (*Laughter.*)

The Honourable Dr. B. R. Ambedkar : Well, my friend Mr. Kamath asked me to explain why we have included this provision here, with regard to the official residence of the President, and he also twitted me on the fact that I was burdening the Constitution by mentioning it and other small minutiae. It might be though that this is a small matter and might not have been included in the Constitution. But the question I would like to ask Mr. Kamath is this. Does he or does he not intend that the President should have an official residence and that Parliament should make provision for it? And is there very much of a wrong if the proposition was stated in the Constitution itself? If the intention is that.....

Shri H. V. Kamath : Sir, may I know whether the Prime Minister will or will not have an official residence 7

The Honourable Dr. B. R. Ambedkar : Yes, this is merely a matter of logic. I want to know if he does or does not support the proposition that the President should have an official residence. If he accepts that proposition, then it *seems* to me a matter of small import whether a provision is made in the Constitution itself or whether the matter is left for the future Parliament to decide. The reason why we have introduced this matter in the Constitution is that in the Government

*Dots in the original debates indicate interruption.

of India Act, in the several Orders in Council which have been issued by the Secretary of State under the authority conferred upon him by the Second Schedule of the Government of India Act, official residences, both for the Governor-General and the Governors have been laid down ; and we have merely followed the existing practice in incorporating this particular provision in the Constitution ; and I do not think we have done any very great violence either to good taste or done something which we do not intend to do.

Shri H. V. Kamath : On a point of clarification, Sir, may I know whether this particular clause of article 48 will stand in the way of the President being provided with more than one official residence ? It speaks of the President having “an official residence. “

The Honourable Dr. B. R. Ambedkar : Not at all. There may be two official residences.

Then, with regard to the amendment of Mr. Sarwate, No. 28,1 would like to say that this matter may have to be considered when we deal with the Constitution of the States which will accede to the Indian Union. Today the situation is so fluid that it is very difficult to make any provision of the sort which has been suggested by Mr. Sarwate.

Mr. Vice-President: The amendments will now be put to vote, one by one. Amendment No. 1130, standing in the name of Dr. Ambedkar.

[All amendments of Dr. Ambedkar as shown were accepted. Amendments standing in the name of Mr. Sarwate, Mr. Naziruddin Ahmed, Mr. Kamath and Prof. K. T. Shah were negatived. Article 48, as amended, was adopted and added to the Constitution.]

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ARTICLE 49

***Mr. Vice-President :** We now come to article 49.

Shri T. T. Krishnamachari : Mr. Vice-President, Sir, I move :

“That in article 49 after the words ‘Chief Justice of India’ the words ‘or, in his absence the senior-most Judge of the Supreme Court available’ he inserted.”

Sir, this is only making a provision in case the Chief Justice of India is not present, some other Judge should do his function, and it is but proper that the senior-most judge of the Supreme Court should do this function. Sir, I trust the House will accept the amendment because it needs no further explanation.

*CAD, Vol. VII, 27th December 1948, p. 1047.

Mr. Vice-President : Dr. Ambedkar, do you accept that amendment ?

The Honourable Dr. B. R. Ambedkar : Yes, I do.

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***Mr. Vice-President :** Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, I am prepared to accept the amendment moved by Mr. T. T. Krishnamachari, that is No. 1144, and also amendment No. 1146 by Mr. Kaniath, as amended by Mr. Tyagi's amendment.

With regard to the first amendment, that moved by Mr. T. T. Krishnamachari, not much argument is necessary. His amendments is certainly better than the amendment that stood in my name.

With regard to the second amendment, No. 1146, in view of the fact that I am prepared to accept it in the form amended by Mr. Tyagi, I do not think I am called upon to enter into the merits of the question. But perhaps, it might be as well that I should say a few words as to why the Drafting Committee itself did not introduce in its original draft, the words "in the name of God." Sir, I do not think that this matter was considered fully by the Drafting Committee and therefore I cannot advance any adequate reason why they did not originally put in those words.

So far as I am concerned, I feel that this was a matter which required some consideration. If the House will permit me, I would express my own views on the matter. The way I felt about it is this. The word "God" so far as my reading goes, has a different significance in different religions. Christians and Muslims believe in God not merely as a concept, but as a force which governs the world and which governs, therefore, the moral and spiritual actions of those who believe in God. So far as Hindu theology was concerned, according to my reading—and I may be wholly wrong, I do not pretend to be a student of the subject—I felt that the word "Eswara" or to use a bigger word, "Parameswara" is merely a summation of an idea, of a concept. As I said, to use the language of integral calculus, you put sums together and find out something which is common, and you call that "S" which is merely a summation. There is nothing concrete behind it. If in Hindu

*CAD, Vol. VII, 27th December 1948, pp. 1060-62.

theology there is anything concrete, it is “Brahma”, “Vishnu”, “Mahesh”, “Siva”, “Sakti”. There are things which are accepted by Hindus as forces which govern the world. It seems to me, that it would have been very difficult for the Drafting Committee to have proceeded upon this basis and to have introduced phraseology which would have required several underlinings—God, below that Siva, below that Vishnu, below that Brahma, below that Sakti and so on and so on. It is because of this embarrassment that we left the situation blank, as you will find in the Drafting Committee.

Shri A. V. Thakkar [United State of Kathiawar (Saurashtra)] : But there is one above all.

The Honourable Dr. B. R. Ambedkar : I am, however, quite happy that this amendment has been introduced. Now, some Members have raised objections to the amendment. They are afraid that the introduction of the word God in the Constitution is going to alter the nature of what has been proclaimed to be a secular State. In my judgment, the introduction of the word God does not raise that question at all. The reason why the word God is introduced is a very simple one. The Constitution lays down certain obligations upon the President. Those obligations are obviously divisible into two categories, obligations for which there is legal sanction and legal punishment provided, and there are obligations for which there are no legal rules provided, nor any punishment is provided. Consequently, in every constitution this question always arises. What is to be the sanction of such duties, such obligations, as have been imposed upon a particular functionary for which it is not possible by law to provide a criminal sanction, a penalty ? It is obvious that unless and until we decide or we believe that these moral duties for which there is no criminal or legal sanction are not mere pious platitudes, we must provide some kind of sanction. To some people God is a sanction. They think if they take a vow in the name of God, God being the governing force of the Universe, as well as of their individual lives, that oath in the name of God provides the sanction which is necessary for the fulfilment of obligations which are purely moral and for which there is no sanction provided.

There are people who believe that their conscience is enough of a sanction. They do not need God, an external force, as a sentinel or