

a watchman to act by their side. They think a solemn affirmation coming out of their conscience is quite enough of a sanction. If honourable Members have read the history of this matter which is embodied in the struggle between Mr. Bradlaugh and the House of Commons, they will realize that as early as 1880 or so, Mr. Bradlaugh insisted that he was a perfectly moral being, that his conscience was quite active, and that if he took the oath his conscience was enough of a sanction for him to keep him within the traces, so to say. After a long long struggle in the House of Commons, in which on one occasion Mr. Bradlaugh was almost beaten to death by the Sergeant-at-Arms for trying to sit in the House of Commons and taking part in its proceedings without taking the oath to which he raised objection. Mr. Gladstone ultimately had to yield and to provide an additional or alternative form which is called solemn affirmation. Therefore the issue that is involved in this amendment has nothing to do with the character of the State. Whether it is a secular or a religious State is a matter quite outside the bounds of the issue raised. The only question raised is whether we ought not to provide some kind of a sanction for the moral obligation we impose on the President. If the President thinks that God is a mentor and that unless he takes an oath in the name of God he will not be true to the duties he assumes, I think we ought to give him the liberty to swear in the name of God. If there is another person with whom God is not his mentor, we ought to give him the liberty to affirm and carry on the duties on the basis of that affirmation.

I therefore submit that the amendment is a good one and I am prepared to accept it.

Mr. Vice-President : You have nothing to say on the amendments moved by Mr. Karimuddin and Prof. Shah’?

The Honourable Dr. B. R. Ambedkar : No, Sir.

[Amendment moved by T. T. Krishnamachari as mentioned before was adopted.]

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Mr. Vice-President : The next amendment to be put to the vote is No. 1146. But this is identical with Mr. Mahavir Tyagi’s amendment and if Mr. Kamath agrees I shall put this one to the vote.

Shri H. V. Kamath : I have no objection to Mr. Tyagi’s amendment, as there is a mere verbal difference between his and mine.

Mr. Vice-President : Then I shall put Mr. Tyagi's amendment, which is an amendment to amendment No. 1146, to vote.

Shri H. V. Kamath : No, Sir. My amendment as amended by Mr. Tyagi should be put to the vote.

Mr. Vice-President : Yes, yes ; that is understood, I did not know that you were such a stickler for forms ; You break so many forms systematically !

The question is :

"That in article 49 for the words 'do solemnly affirm (or swear)', the following be substituted :—

'do swear in the name of God, "
solemnly affirm

The amendment was adopted.

Article 49, as amended, was adopted and added to the Constitution.

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***Mr. Vice-President:** Amendment Nos. 1166, 1167, 1168 and 1169 are of similar import. Amendment No. 1167 may be moved. It stands in the name of Dr. Ambedkar.

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

"That in sub-clause (b) of clause (2) of article 50, for the words 'supported by' the words 'passed by a majority of' be substituted."

Mr. Vice-President : Amendment No. 1166 standing in the names of Mr. Mohd. Tahir and Saiyid Jafar Imam.

Mr. Mohd. Tahir : I want to discuss it. My amendment is quite different from Dr. Ambedkar's. They are not the same.

Mr. Vice-President : It can be put to the vote. You can take part in the general discussion and make your point then. That will be much better, I think.

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†**Mr. Vice-President :** ...Amendment No. 1177 may be moved.

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

"That in clause (4) of article 50. for the words 'passed, supported by' the words 'passed by a majority of' be substituted."

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‡**The Honourable Dr. B. R. Ambedkar :** Mr. Vice-President, Sir, of the many amendments winch have been moved to this article, I can accept only two. One is No. 1158 moved by my Friend, Mr. Gupte

*CAD, Vol. VII, 28th December 1948. p. 1065.

†*Ibid* p. 1067.

‡*Ibid.*, pp. 1070-82.

providing of fourteen days' notice for the discussion of a motion to impeach the President. The second amendment which I am prepared to accept is amendment No. 1160 moved by my Friend Mr. Deo, as amended by Mr. T. T. Krishnamachari. I think the original provision in the Draft Constitution did not lay down sufficient number of members as a condition precedent for the initiation of the motion. I think the change provided by the amendment is for the better and I am therefore prepared to accept it.

Now, Sir, I come to the other amendments which I am sorry to say I have not been able to accept but which I think call for a reply. The amendments which call for a reply are the amendments moved by Prof. K.T. Shah Nos. 1151, 1171, 1173, 1176 and 1186. Sir, the amendments which have been moved by Prof. K. T. Shah refer to two questions. The first is the scheme of impeachment which has been laid down in the Draft Constitution and the second relates to the right of the President to appear and defend through a lawyer before the House which is investigating the charge against the President. So far as the second amendment of Prof. K. T. Shah is concerned, I do not see that there is any necessity for any such amendment at all; because Prof. Shah referred to the article—I think it is sub-clause (4) or (3),—it makes ample provision for permitting the President not only to appear before the investigating House, but also to be represented by any other person, namely, a lawyer. All that Prof. K. T. Shah has done is to separate this particular part of that clause and to put it as sub-clause (3) (a) in order to make it an independent proposition by itself. I do not think that there is any such necessity for the device that he has adopted.

Now, I come to the first part, namely, the drawbacks which he has shown in the scheme of impeachment provided in the Draft Constitution. Before I proceed to reply to his points, I think it is desirable that the House should have before it a clear picture of the provisions of the scheme embodied in the Draft Constitution. Any one who analyses this article will find that it embodies four, different propositions. Firstly, the motion for impeachment may be initiated in either House, either in the Council of States or in the House of the People. Secondly, such motion must have the support of a required number of members. Thirdly, the House which has passed the motion for investigation shall not be entitled to investigate the charge. And

fourthly, that the House which has investigated the charge, if it finds the President guilty must do so by a majority of two-thirds.

These are the four propositions which have been embodied in this particular article. Now Prof. Shah's proposition is that the Upper House should have nothing to do with the impeachment of the President and that the jurisdiction to impeach the President, to investigate and to come to its own conclusions must be solely vested in the House of the People. I have not been able to understand the reasons why Prof. K. T. Shah thinks that the Lower House is in a special way entitled to have this jurisdiction vested in it. After all the trial of the President or his impeachment is intended to see that the dignity, honour and the rectitude of the office is maintained by the person who is holding that particular office. Obviously, the honour, the dignity and the rectitude of that office is not merely a matter of concern to the Lower House, it is equally a matter of concern for the Upper House as well. I do not, therefore, understand why the Upper Chamber which, as I said, is equally interested in seeing that the President conducts himself in conformity with the provisions of the Constitution should be ousted from investigating or entertaining a charge of any breach of conduct on the part of the President in his integrity and it is equally concerned as the House of the People. Prof. K. T. Shah felt so sure about the correctness of his proposition that he said in the course of his argument that only those who have been slavishly copying the other constitutions would have the courage to oppose his amendments. I do not mind the dig which he has had at the Drafting Committee. As I said in my opening address, the Drafting Committee in the interests of this country has not been afraid of borrowing from other constitutions wherever they have felt that the other constitutions have contained some better provisions than we could ourselves devise. But I thought Prof. K. T. Shah forgot that if there was any person, so far as I am able to see, who has practised slavish imitation of the Constitution of the United States, I cannot point to any other individual except Prof. Shah. (*Laughter*). I thought his whole scheme which was just a substitute for the scheme of Government embodied in the Draft Constitution was bodily borrowed with commas and semi-colons from the United States Constitution, and when he was defeated on his main proposition, his worship of the United States Constitution has been so profound, so

deep, that he has been persisting in moving the other amendments which, as he himself knows, are only consequential and have no substance in themselves. I therefore do not mind the dig that he has had at the Drafting Committee,

The other proposition which Prof. K. T. Shah has sought to introduce in the Constitution is that there should be a concurrence of the other House. He has evidently decided to accept the main scheme embodied in the Draft Constitution. What he wants is that even if the one House which has investigated the offence has come to a conclusion, that conclusion ought not to have effect unless it has been adopted by the other House. I cannot understand why, for instance, the verdict of a jury—and this is no doubt a sort of jury, which will investigate and come to a conclusion—I do not understand why the verdict of one House, which it would have come to after investigation should be submitted to another jury. I have never known of any such principle or precedent at all. Secondly, I do not understand what is to be the effect if the other House does not adopt. Is the other House required to adopt only by bare majority or two-thirds majority ? Supposing the other House does not adopt the conclusion which has been arrived at by one House, what is to be done ? Obviously there will be a tie. Prof. K. T. Shah provided in my judgment, no remedy for the dissolution of that tie. For these reasons, I am unable to accept any of the amendments moved by Prof. K. T. Shah.

There is another amendment which I might deal with because it is analogous to the amendments moved by Prof. K. T. Shah, and that is amendment No. 1178 moved by my Friend, Mr. Mohd. Tahir. He says that it is unnecessary to provide for a two-thirds majority for a charge of being guilty of violation of the Constitution. He thinks that a bare majority is enough. Now, Sir, I think my Friend, Mr. Mohd. Tahir has not taken sufficient notice of the fact that a motion for impeachment is very different from a motion of no confidence. A motion of no confidence does not involve any shame or moral turpitude. A motion of no confidence merely means that the party does not accept or the House does not accept the policy of the Government. Beyond that no other censure is involved in a no confidence motion. But, an impeachment motion stands on a totally different footing. If a man is convicted on a motion for impeachment, it practically amounts to the ruination

of his public career. That being the difference, I think it is desirable that such an important consequence should not be permitted to follow from the decision of a bare majority. It is because of this difference that the Drafting Committee provided that the verdict of guilty should be supported by a two-thirds majority.

Now, Sir, I come to the amendments of my honourable Friend. Kazi Syed Karimuddin. His first amendment which I propose to take for consideration is amendment No. 1152. By this amendment he wants to add treason, bribery and other high crimes and misdemeanours after the words, 'violation of the Constitution'. My own view is this. The phrase 'violation of the Constitution' is quite a large one and may well include treason, bribery and other high crimes or misdemeanours. Because treason, certainly, would be a violation of the Constitution. Bribery also will be a violation of the Constitution because it will be a violation of the oath by the President. With regard to crimes, the Members will see that we have made a different provision with regard to the trial of the President for any crimes or misdemeanours that he may have made. Therefore, in my view, the addition of these words, treason and bribery, are unnecessary. They are covered by the phrase "violation of the Constitution".

His other amendment is amendment No. 1170, whereby Mr. Karimuddin seeks to provide that when an investigation is being made into the charge of impeachment, the Chief Justice of India shall preside. I have no quarrel with his proposition that any investigation that may be undertaken by any House which happens to be in charge of the impeachment matter should have the investigation conducted in a judicial manner, having regard to all the provisions which are embodied in the Criminal Procedure Code and the Evidence Act. As I said, I have no quarrel with his objective ; in fact, I share it. The only point is this : whether this is a matter which should be left for the two Houses to provide in the Rules of Procedure or whether it is desirable to place this matter right in the Constitution in a definite and express manner. My friend Mr. Karimuddin will see that in sub-clause (3) it is provided that the House shall investigate, and therefore it is quite clear that both the Houses of Parliament in making the rules of procedure will have to embody in it a section dealing with the procedure relating to impeachment. Because, it may be, at one time the initiation may take

place in the Upper Chamber and trial may take place in the Lower Chamber, and *vice versa*. So, both the Houses will have to have a section dealing with this matter in the procedure of each House. That being so, there is nothing to prevent the legislature from setting out in that part of the procedure of the two Houses that wherever that investigation is made, either the Chief Justice shall preside or some other judicial officer may preside, and therefore it seems to me that his object will be achieved if what I submit is carried out by the procedural part of the Rules of the two Houses. This provision is therefore quite unnecessary.

I come to his third amendment, No. 1187. He wants that the Constitution should lay down the disqualifications which must necessarily arise out of a charge of guilt on impeachment. The language that he has borrowed I see is from the United States Constitution. My view with regard to this matter is this. So far as membership of the legislature is concerned, as I pointed out on an earlier occasion, the matter is covered by the provision contained in article 83 which lays down the disqualifications for membership of the legislature. As I then stated, it would be perfectly possible for Parliament in laying down additional disqualifications to introduce a clause saying that a person who has been impeached under the Constitution shall not be qualified to be a member of the legislature. Therefore, by virtue of article 83, it would be perfectly possible to exclude a President who has been impeached from membership of the legislature.

The only other matter that remains is the question of appointment to office. It seems to me that there are several considerations to be borne in mind. It is quite true that the provisions of the Draft Constitution leave this matter open. But, I think it would be perfectly possible for Parliament, when enacting, a Civil Servants Act, as I have no doubt the future Parliament will be required to do, to lay down the qualifications for public service, their emoluments and all other provisions with regard to public service. Obviously, it would be open to Parliament to say that any person who has been impeached under the law of the Constitution shall not be a fit person to be appointed to any particular post, either an ambassadorial post, outside the Government, or inside the Government in any particular department. Therefore, that matter, I see, can also be covered by parliamentary legislation.

Shri H. V. Kamath : Am I to understand that Dr. Ambedkar is

The Honourable Dr. B. R. Ambedkar: Yes ; I think there is nothing in this amendment except the fact that this was met by other ways.

Now, Sir, the other question is this : is it necessary to have these disqualifications laid down specifically and expressly in the Constitution ? It seems to me that there is no necessity, for two reasons. One is that no person who has been shamed in this manner by a public trial and declared to be a public enemy would ever have the courage to offer himself as a candidate for any particular post. Therefore, that possibility, I think, is excluded by this consideration. The second is this : whether the people of this country would be so wanting in sense of public duty and public service to elect any such person, if he, as a matter of fact, stood. I think it would be too shameful an imputation to the people of this country to say that it is necessary to make an express provision of this sort in the Constitution because the people of this country are likely to elect persons who are criminals, who have committed breach of trust and who have failed the public in the performance of their public duties. I think these weaknesses are inherent in all societies and no good purpose will be served by advertising them by putting them in the Constitution. I therefore think that the amendments, however laudable they are, are not necessary to be embodied in the Constitution.

Mr. Vice-President: The amendments which have been moved will now be put to vote.

[Following amendments were accepted by Dr. Ambedkar and adopted by the House.]

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***Mr. Vice-President :** I now put to vote amendment No. 1160 as modified by the amendment of Mr. T. T. Krishnamachari. The question is :

“That is sub-clause (a) of clause (2) of article 50. for the words ‘thirty members’. the words ‘one-fourth of the total number of members’ be substituted.”

The amendment was adopted.

Mr. Vice-President : The question is :

“That in sub-clause (a) of clause (2) of article 50. for the words ‘after a notice’ the words ‘after at least 14 days notice’ be substituted.”

The amendment was adopted.

* CAD, Vol. VIII, 28th December 1948, p. 1083.

Mr. Vice-President : The question is :

“That in sub-clause (b) of clause (2) of article 50, for the words ‘supported by’ the words ‘passed by a majority of’ be substituted.”

The amendment was adopted.

[In all 15 amendments were negatived. One of them was discussed as under.]

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***Mr. Vice-President :** The question is : Amendment No. 1185.

Mr. Naziruddin Ahmad : Sir, no reply has been given to my amendment by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I said I oppose it.

Mr. Vice-President : The question is :

“That in clause (4) of article 50. for the words ‘date on which’ the words ‘time when’ be substituted.”

The amendment was negatived.

[Article 50, as amended was adopted and added to the Constitution.]

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ARTICLE 51

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†Mr. Vice-President : Amendments Nos. 1195, 1196 and 1197 are disallowed, being verbal ones. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I am sorry I cannot accept the amendment moved by Prof. K. T. Shah. His amendment seems to be covered altogether by article 54 (1). I fail to find any difference between the amendment that he has moved and the provision contained in sub-clause (1) of article 54. I think if he considers this article, he will find that his amendment is unnecessary and superfluous.

With regard to the other amendment, the point of difference is that any one who is elected as a result of the resignation and so on, should only occupy the Chair of the Presidentship during the balance of the term, while the provision contained in the Constitution is to the effect that if a person is elected as a result of resignation, death and so on, he should continue to be the President for the full term perscribed by the Constitution. I see no reason why the term of office of a person who has been elected to the office should not be the full term prescribed by the Constitution and why he should be limited only to the balance of the term. I therefore, see no justification for the amendment at all.

[All the three amendments were negatived. Article 51 was adopted to the Constitution. The motion was adopted. Article 51 was added to the Constitution.]

*CAD, Vol. VII, 28th December 1948, p. 1084.

†*Ibid.*, p. 1087.

ARTICLE 52

[Article 52 was adopted without discussion and added to the Constitution.]

ARTICLE 53

***Mr. Vice-President :** Then we come to article 53. Amendment No. 1201 is being disallowed because it has the effect of a negative vote. Amendments Nos. 1202 and 1203 seem to be identical and I therefore allow amendment No. 1202 to be moved.

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

“That in article 53 for the words ‘or position of emolument’ the words ‘of profit’ be substituted.”

Mr. Vice-President : Then No. 1204 standing in the name of Mr. Mohd. Tahir.

Mr. Mohd. Tahir : I am not moving it, Sir.

Mr. Vice-President : Then amendment No. 1205 standing in the name of Dr. Ambedkar.

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

“That to the proviso to article 53, the following be added : —

‘and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 79 of this Constitution.’”

The provision is intended to prevent making a double profit.

Mr. Vice-President : There is one amendment sent in by Mr. Naziruddin Ahmad, No. 33. This is formal and is disallowed.

Now I am putting these amendments to vote. Has any Member anything to say on these amendments ?

Shri H. V. Kamath : On a point of information, Sir, with reference to amendment No. 1205, will the Vice-President, when he acts as President, draw the salary and allowances of the President or those of the Vice-President only ?

The Honourable Dr. B. R. Ambedkar : The salary of the President. salary of the office.

Mr. Vice-President : Then I am putting these amendments to vote. I shall put No. 1202 standing in the name of Dr. Ambedkar.

The question is :

“That in article 53, for the words ‘or position of emolument’ the words ‘of profit’ be substituted.”

The amendment was adopted.

Mr. Vice-President : Do you want me to put your amendment to vote, Mr. Naziruddin Ahmad, which is identical with the previous one ?

Mr. Naziruddin Ahmad : No, Sir.

Vice-President : Then I shall put to vote amendment No. 1205.

The question is :

“That to the proviso to article 53. the following be added :—

‘and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 79 of this Constitution’.”

The amendment was adopted.

Article 53, as amended, was adopted and added to the constitution.

ARTICLE 54

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

“That in clause (1) of article 54. for the words ‘date on which’, the words ‘time when’ be substituted.”

(Speech of N.A.)

Mr. Vice-President : ...Amendments Nos. 1211 and 1210 are of similar import but the former is more comprehensive and may be moved.

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

“That to clause (3) of article 54. the following be added:—

‘and be entitled to such privileges, emoluments and allowances as may be determined by Parliament by law and until provision in that behalf is so made, such privileges, emoluments and allowances as are specified in the Second Schedule’.”

This merely makes good an omission in the Draft Constitution.

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The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, I find that in the amendments that have been moved there are really three points which have been raised. One point which has been raised by my friend Mr. Naziruddin Ahmad relates to time. We all know by now how very meticulous my friend Mr. Naziruddin Ahmad is and he wants to have the Constitution specifically state the time when a President frees himself from office and another persons takes over that office. I do not know whether so much meticulousness is necessary in this Constitution. However, what I find difficult to accept in the amendment which he has moved is that he has not particularised what is system of timing which he has in mind. Is it the Greenwich time, the Standard time, the Bombay or Calcutta time?.....†

*CAD, Vol. VII, 28th December 1948, pp. 1089-92.

†Dots in the original debates indicate interruption.

Mr. Naziruddin Ahmad : I mean the actual time of appointment.

The Honourable Dr. B. R. Ambedkar : What is the time may be very different. Unless he prescribes the system I do not think that the introduction of the word 'time' introduces any greater clarity or definiteness at all.

Secondly, so far as this particular clause is concerned I find that his amendment is quite unnecessary, because if he will read sub-clause(1) of article 54 he will see that it is stated "to fill such vacancy enters upon his office". Surely the entering upon office will he at sometime in the day—it may be midnight or it may be 12 o'clock in the day therefore time is specified so to say by implication and this amendment is therefore quite unnecessary.....*

Mr. Naziruddin Ahmad : The clause provides that the Vice-President shall act until the 'date' on which the new President enters upon his office and not the time when he does so.

The Honourable Dr. B. R. Ambedkar : Surely it will be sometime on some day on which he will enter the office. He may probably consult an astrologer to find out what is the auspicious moment. However, the amendment is quite unnecessary.

My friend Mr. Kamath said that in replying to the debate on the previous article I stated or rather in moving my amendment I stated that the Vice-President when acting as the President shall have the same emoluments as the President. He found some difficulty in reconciling that statement with the amendment which I have moved, which gives the Parliament the power to fix the salary of the Vice-President when acting as the President. If my Friend Mr. Kamath were to turn to page 161 of the Draft Constitution he will find that there is a schedule fixing the salary of the President and paragraph 5 of that schedule definitely provides for the salary of the President. Surely when a person is acting as the President, no matter at what early stage in life he has climbed to that post, he will be entitled to get that salary according to this Constitution. But it was felt that it might be necessary to leave the matter to Parliament to fix a different scale of salary for a person who is assuming the office of the President expressly for a very short duration. Parliament may not like to give him the same salary, because the tenure of his office is certainly not of the same duration as that of the President himself. Consequently, if Parliament makes no

*Dots in the original debates indicate interruptions.

provision, then he gets the salary of the President. But Parliament may make provision to give him a different salary. It is for that purpose the amendment has been moved.

Shri H. V. Kamath : Sir, may I invite the attention of my Honourable Friend Dr. Ambedkar to article 48 clause (4) which lays down that the emoluments and allowances of the President shall not be diminished during his term of office ? Am I to understand that you make a distinction between the Vice-President acting as President and the President ?

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

Shri H. V. Kamath : Sir, Just now when I raised objection to an amendment to the last article. Dr. Ambedkar said that the Vice-President shall draw the salary and allowances of the President while acting as President.

The Honourable Dr. B. R. Ambedkar : Unless Parliament otherwise provides, the Vice-Presidents gets the salary of the President when he acts for him. There is no reason why Parliament should not be given authority to fix the scales of pay of a President who may be there for a short duration.

Pandit Bhargava raised another point and that was to the effect that there was no provision for the impeachment of the Vice-President when acting as President. Obviously, when a Vice-President becomes the President, all the duties and obligations which are imposed upon the President fall upon him without making any express mention of the fact at all. If during his tenure of office as President, the Vice-President commits any of the offences or acts which expose the President to the risk of being impeached, he will not have any kind of immunity by reason of the fact that he is either a Vice-President or is acting as President, *pro tempore*. There is therefore no necessity for making any provision for it.

Mr. Naziruddin Ahmad : Mr. Vice-President, may I ask.....

The Honourable Dr. B. R. Ambedkar : I do not submit myself to any cross examination at this stage.

Mr. Vice-President : Mr. Naziruddin Ahmad may go back to his seat.

Mr. Naziruddin Ahmad : I want to draw the attention of the Honourable Dr. Ambedkar to an oversight.

Mr. Vice-President : He refuses to listen to it. What can I do ? I cannot compel him to listen.

Mr. Naziruddin Ahmad : No one can compel him. The point is that in clause (3) of article 54.....

Mr. Vice-President : I am going to put the amendment to vote. Dr. Ambedkar has said that he will not give any reply.

Mr. Naziruddin Ahmad : I hope he will reconsider the matter.

Mr. vice-President: I have not called upon Mr. Naziruddin Ahmad to speak.

Mr. Naziruddin Ahmad : Sir, I want only to draw the attention of the House to a point which might influence the votes.

Mr. Vice-President : Why not do so at the third reading stage ? I am going to put the amendment to vote.

Mr. Naziruddin Ahmad : But, Sir, this is a matter of great importance.

Mr. Vice-President : You think so. May I ask you respectfully to go back to your seat ?

Mr. Naziruddin Ahmad : I shall comply with your request.

Mr. Vice-President: I shall now put amendment No. 1205 standing in the name of Mr. Naziruddin Ahmad to vote.

The amendment was negatived.

[Amendment by Dr. Ambedkar as mentioned earlier was adopted.]

Article 54, as amended, was adopted and added to the constitution.

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ARTICLE 55

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***Mr. Vice-President :** ... Amendment No. 1224 Dr. Ambedkar.

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

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

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

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

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

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

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

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

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

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

Mr. Naziruddin Ahmad : The same consideration would apply.

(Amendment No. 1236 was not moved.)

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

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

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

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

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

This matter has already been debated last time.

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†**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. Bhurathi 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.

[All the amendments except those moved by Dr. B. R. Ambedkar were negatived. Or. Ambedkar's amendments are mentioned earlier.]

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

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ARTICLE 56

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***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 ?

*CAD, Vol. VII, 29th December 1948, pp. 1113-15.

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 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 tilling 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.

[All the amendments were negatived. Article 56 was adopted and added to the Constitution.]

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ARTICLE 57

***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 article 57, stand part of the Constitution."

The motion was adopted.

Article 57 was added to the Constitution.

[Article 58 was added to the Constitution without any amendment.]

ARTICLE 59

***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 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.”

Article 59 was adopted and added to the Constitution.

ARTICLE 60

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***The Honourable Dr. B. R. Ambedkar (Bombay : General) :**
 Mr. Vice-President, Sir, I am sorry that I cannot accept either of the two amendments which have been moved to this proviso, but I shall state to the House very briefly the reasons why I am not in a position to accept these amendments. Before I do so, I think it is desirable that the House should know what exactly is the difference between the position as stated in the proviso and the two amendments which are moved to that proviso. Taking the proviso as it stands it lays down two propositions. The first proposition is that generally the authority to execute laws which relate to what is called the Concurrent field, whether the law is passed by the Central Legislature or whether it is passed by the Provincial or State Legislature, shall ordinarily apply to the Province or the State. That is the first proposition which this proviso lays down. The second proposition which the proviso lays down is that if in any particular case Parliament thinks that in passing a law which relates to the Concurrent field, the execution ought to be retained by the Central Government, Parliament shall have the power to do so. Therefore, the position is this ; that in all cases, ordinarily, the executive authority so far as the Concurrent List is concerned will rest with the units, the Provinces as well as the States. It is only in exceptional cases that the Centre may prescribe that the execution of a Concurrent law shall be with the Centre. The amendments which have been moved are different in their connotation. The first amendment is that the Centre should have nothing to do with regard to the administration of a law which relates to matters placed in the Concurrent field. The second amendment which has been moved by my Honourable Friend, Pandit Kunzru, although it does not permit the Centre to take upon itself the execution of a law passed in the Concurrent field, is prepared to permit the Centre issue directions, with regard to matters falling within Items

25 and 37, to the Provincial Governments. That is the difference between the two amendments.

The first amendment really goes much beyond the present position as set out in the Government of India Act, 1935. As Honourable Members know, even under the present Government of India Act, 1935, it is permissible for the Central Government at least to issue directions to the Provinces, setting out the method and manner in which a particular law may be carried out. The first amendment I say even takes away that power which the present Government of India Act, 1935, gives to the Centre. The amendment of my Honourable Friend, Pandit Kunzru wishes to restore the position back to what it now found in the Government of India Act, 1935.

Pandit Hirday Nath Kunzru : I go a little beyond that. The second part of my amendment goes beyond any power which the Government of India now enjoy under the Government of India Act, 1935.

The Honourable Dr. B. R. Ambedkar : Well, that may be so. That I said is the position as I understand it. Now, Sir, I will deal with the major amendment which wants to go back to a position where the Centre will not even have the power to issue directions, and for that purpose, it is necessary for me to go into the history of this particular matter. It must have been noticed—and I say it merely, as a matter of fact and without any kind of insinuation in it at all,—that a large number of members who have spoken in favour of the first amendment are mostly Muslims. One of them, my Friend Mr. Pocker, thought that it was a sacred duty of every Member of this House to oppose the proviso. I have no idea.....*

B. Pocker Sahib Bahadur : I have not said that. Sir. I only said that it is the duty of every Member to act according to his conscience.

The Honourable Dr. B. R. Ambedkar: By which I mean, I suppose that every Member who has conscience must oppose the proviso. It cannot mean anything else. (*Laughter.*)

B. Pocker Sahib Bahadur : Certainly not.

The Honourable Dr. B. R. Ambedkar : Now, Sir. this peculiar phenomenon of Muslim members being concerned in this particular proviso, as I said, has a history behind it, and I am sorry to say that my Honourable Friend, Pandit Kunzru forgot altogether that history ; I have no doubt about it that he is familiar with that history as I am myself.

*Dots in the original debates indicate interruption.

This matter goes back to the Round Table Conference which was held in 1930. Everyone who is familiar with what happened in the Round Table Conference, which was held in 1930 will remember that the two major parties who were represented in that Conference, namely the Muslim League and the Indian National Congress, found themselves at loggerheads on many points of constitutional importance.

One of the points on which they found themselves at loggerheads was the question of provincial autonomy. Of course, it was realised that there could not be complete provincial autonomy in a Constitution which intended to preserve the unity of India, both in the matter of legislation and administration. But the Muslim League took up such an adamant attitude on this point that the Secretary of State had to make certain concessions in order to reconcile the Muslim League to the acceptance of some sort of responsible Government at the Centre. One of the things which the then Secretary of State did was to introduce this clause which is contained in Section 126 of the Government of India Act which stated that the authority of the Central Government, so far as legislation in the concurrent field was concerned, was to be strictly limited to the issue of directions and it should not extend to the actual administration of the matter itself. The argument was that there would have been no objection on the part of the Muslim League to have the Centre administer a particular law in the concurrent field if the Central Government was not likely to be dominated by the Hindus. That was so expressly stated, I remember, during the debates in the Round Table Conference. It is because the Muslim League Governments which came into existence in the provinces where the Muslims formed a majority, such as for instances in the North-West Frontier Province, the Punjab, Bengal and to some extent Assam, did not want it in the field which they thought exclusively belonged to them by reason of their majority, that the Secretary of State held to make this concession. I have no doubt about it that this was a concession. It was not an acceptance of the principle that the Centre should have no authority to administer a law passed in the concurrent field. My submission therefore is that the position stated in Section 126 of the Government of India Act, 1935, is not to be justified on principle ; it is justified because it was a concession made to the Muslims. Therefore, it is not proper to rely upon Section 126 in drawing any