

SECTION FIVE
Clausewise Discussion
16th May 1949 to 16th June 1949

Draft Constitution

ARTICLE 67-A

***Mr. President:** ...We shall now proceed to the consideration of the Draft Constitution. The House dealt with articles up to 67. We shall now proceed further. The Steering Committee was of the opinion that we might adopt the articles dealing with election matters first. That is, I think, the wish of this House also. But I understand that it will not be possible to proceed with those articles today and we can take them up from tomorrow. Today we begin with article 68 and such articles only dealing with election matters as fall within today's discussion, and those that come later will be taken up tomorrow.

There is one article of which notice has been given by way of amendment, *i.e.*, 67-A. It will be taken up first.

NEW ARTICLE 67-A

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

“ That after article 67, the following new article be inserted :—

67-A. (1) The President may nominate persons not exceeding three in number to assist and advise the Houses of Parliament in connection with any particular Bill introduced or to be introduced in either House of Parliament.

(2) Every person so nominated in connection with any particular Bill shall, in relation to the said Bill, have the right to speak in, and otherwise to take part in the proceedings of either House and any joint sitting of the Houses of Parliament and any Committee of Parliament of which he may be named a member, but shall not, by virtue of such nomination, be entitled to vote nor shall he be entitled to speak in or otherwise to take part in the proceedings of either House or any joint sitting of the Houses or any Committee of Parliament in relation to any other matter.’ ”

Sir, the necessity for this article being inserted in the Constitution is this : The House will remember that the composition of the Upper Chamber was originally set out in paragraph 14 of the report of the Union Constitution Committee. In that paragraph it was stated that the Drafting Committee should adopt as its model the Irish system nominating fifteen members of the Upper Chamber out of a panel

* CAD, Official Report, Vol. VIII, 18th May 1949. pp. 82-83.

constituted by various interests such as science, literature, agriculture, engineering and so on. When the Drafting Committee took up this matter, Sir, B. N. Rau, who had in the meanwhile gone on tour, had a discussion with Mr. De Valera and the other members of the Irish Government as to how far this system which was in operation in Ireland had been a successful thing, and he was told that the panel system had completely failed with the result that the Drafting Committee decided to drop the provision suggested in paragraph 14 of the report of the Union Constitution Committee, and proposed a simple measure, *viz.*, to endow the President with the authority to nominate fifteen persons to the Upper Chamber representing special knowledge or practical experience in science, literature and social services. After the Drafting Committee had prepared this draft, the matter was again reconsidered by the Union Constitution Committee and at this session of the Union Constitution Committee, the Committee proposed that the total number of nominations which was originally restricted to fifteen should be divided into two classes, *viz.*, that there should be a set of people nominated as full members of the House and they should have special knowledge and practical experience in art, science, literature and social services and that three other persons should be nominated as experts to assist and advise Parliament in the matter of any particular measure that the Parliament may be considering at the moment.

The first part of the recommendation of the second session, if I may say so, of the Union Constitution Committee has already been incorporated in article 67 which has already been passed by the Assembly. It is to give effect to the second part of the recommendation of the Union Constitution Committee that this article is proposed to be introduced in the Constitution. Honourable Members will see that this article limits the functions of the members nominated thereunder. The functions are to assist and advise the Houses in a particular measure that may be before the House; in other words, the members who would be nominated under article 67-A, their term and their duration will be co-terminous with the proceedings with regard to a particular bill in relation to which they are nominated by the President to advise and assist the House.

From the second paragraph of article 67-A it will be noticed that they are only entitled to take part in the debate, whether the debate is taking place in the House as a whole or in a particular committee to which

they are nominated by the House as members thereof; but they are not entitled to vote at all, so that the addition of these three members will certainly not affect the voting strength of the House. I am sure that the House will accept this new provision contained in article 67-A. If I may point out to the House, the provision contained in article 67-A of nominating experts to the House is not at all a new suggestion. Those members of the House who are familiar with the provisions of the Government of India Act of 1919 know when it introduced a popular element in the House, it also contained a provision which empowered the Governors of the different provinces to appoint experts to deal in a particular manner when the House is considering such a measure. I think it is a useful provision and it would do a lot of good if such a provision was introduced in the Constitution.

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***Mr. President:** The suggestion is that this thing was not circulated before and Members wish to have time.

The Honourable Dr. B. R. Ambedkar : I have no objection if the House wants that the consideration of this matter be postponed.

Mr. President: We shall postpone it today and we shall take it up later.

ARTICLE 68

Mr. President: The motion is :

“That article 68 form part of the Constitution.”

We shall now take up the amendments to this article.

(Amendments Nos. 1453 and 1454 were not moved.)

Amendment No. 1455 stands in the name of Mr. Naziruddin Ahmad. I think that is a verbal amendment. Will you like to move it? With regard to these verbal amendments, I was going to make a suggestion to the Honourable Dr. Ambedkar. With regard to them, he might consider them in consultation with the Members who have given notice of such verbal amendments and such of them as would be accepted could be taken up at the time when the motion is placed before the House as having been accepted and we would save the time of the House in that way, but with regard to those which are not acceptable, of course, we shall have to consider what to do with them.

*CAD, Vol. VIII, 18th May 1949, p. 84.

The Honourable Dr. B. R. Ambedkar : The Drafting Committee may be very glad to follow that procedure.

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

“That in the proviso to clause (2) of article 68, for the words ‘by the President’ the words ‘by Parliament by law’ be substituted.”

It is not necessary to offer any explanation for the amendment which I have moved. It will be seen that the clause as it stands vests the power of extending the life of Parliament in the President. It is felt that this is so much of an invasion of the ordinary constitutional provisions that such a matter should really be vested in Parliament and that Parliament should be required to make such a provision for extending the life of itself by law and not by any other measure such as a resolution or motion.

Mr. President : Amendment No. 1465 : that is covered by Dr. Ambedkar’s amendment. It is not necessary to take it up.

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†**The Honourable Dr. B. R. Ambedkar :** Mr. President, Sir, I do not think that anything has been said in the course of the debate on my amendment No. 1464, which calls for a reply. I think the amendment contains a very sound principle and I hope the House will accept it.

With regard to the amendment moved by my friend Prof. Shah, I think some of the difficulties which arise from it, have already been pointed out by my friend Mr. T.T. Krishnamachari. Election, after all, is not a simple matter. It involves a tremendous amount of cost and I think it would be unfair to impose both upon the Government and upon the people this enormous cost of too frequent elections for short periods. I quite sympathise with the point of view expressed by Prof. Shah, that it has been the experience throughout that whenever an election takes place immediately after a war, people sometimes become so unbalanced that the election cannot be said to represent the true mind of the people. But at the same time, I think it must be realised that war is not the only cause or circumstance which leads to the unhinging, so to say, of the minds of the people from their normal moorings. There are many other circumstances, many incidents which are not actually wars, but which may cause similar unbalancing of the mind of the people. It is no use, therefore, providing for one contingency and leaving the other contingencies untouched, by the amendment which Prof. Shah has moved. Therefore, it seems to me that on the whole it is much better to leave the situation as it is set out in the Draft Constitution.

*CAD, Vol. VIII, 18th May 1949, p. 85.

†*Ibid.*, p. 88.

Mr. President: Then I put the whole article as amended by Dr. Ambedkar's amendment.

The question is :

"That article 68, as amended, stand part of the Constitution."

The Motion was adopted. Article 68 as amended was added to the Constitution.

ARTICLE 68-A

***Mr. President:** Now I come to the new article sought to be put in article 68-A. Dr. Ambedkar.

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

" That the following new article be inserted after article 68 :—

' 68-A. A person shall not be qualified to be chosen to fill a seat in Parliament unless he—

(a) is a citizen of India;

(b) is, in the case of a seat in the Council of States, not less than thirty-five years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age, and

(c) possesses such other qualifications as may be prescribed in this behalf by or under any law made by Parliament.' "

Sir, the object of the article is to prescribe qualifications for a person who wants to be a candidate at an election. Generally, the rule is that a person who is a voter, merely by reason of the fact that he is a voter, becomes entitled to stand as a candidate for election. In this article, it is proposed that while being a voter is an essential qualification for being a candidate a voter who wishes to be a candidate must also satisfy some additional qualifications. These additional qualifications are laid down in this new article 68-A.

I think the House will agree that it is desirable that a candidate who actually wishes to serve in the Legislature should have some higher qualifications than merely being a voter. The functions that he is required to discharge in the House require experience, certain amount of knowledge and practical experience in the affairs of the world, and I think if these additional qualifications are accepted, we shall be able to secure the proper sort of candidates who would be able to serve the House better than a mere ordinary voter might do.

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†**Shri T. T. Krishnamachari:** ...Much has been made about this rather trifling point by saying that the amendment of Dr. Ambedkar is mischievous and iniquitous. I do hope that the House would realise that

*CAD, Vol. VIII, 18th May 1949, p. 89.

†*Ibid.*, p. 94.

these remarks really exaggerate the position and have really no bearing on the problem. I support the amendment of Dr. Ambedkar as amended by Shrimati Durgabai's amendment.

The Honourable Dr. B. R. Ambedkar: I am prepared to accept the amendment of Shrimati Durgabai. I cannot accept any other amendment.

Mr. President: Do you wish to reply ?

The Honourable Dr. B. R. Ambedkar: I do not think it is necessary for me to reply except to say that if I accept the amendment of Shrimati Durgabai, it would in certain respects be inconsistent with article 152 and 55, because in the case of the provincial Upper House we have fixed the limit at thirty-five and also for the Vice-President we have the age limit at thirty-five. It seems to me that even if this distinction remains, it would not matter very much. Further still it is open to the House, if the House so wishes, to prescribe a uniform age limit.

Mr. President: I will now put the amendment to vote

[Following amendment of Smt. Durgabai was adopted.]

"That in the new article 68-A proposed for insertion after article 68, in clause (b) for the word 'thirty-five' the word 'thirty' be substituted."

Article 68-A as amended was added to the Constitution.

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ARTICLE 69

***The Honourable Dr. B. R. Ambedkar:** Sir, I regret that I cannot accept any of the amendments which have been moved to this article. I do not think that any of the amendments except the one which I have chosen now for my reply calls for any comment. The amendments moved by Prof. Shah raise certain points. His first amendment (No. 1470) and his second amendment (No. 1479) refer more or less to the same subject and consequently I propose to take them together to dispose of the arguments that he has urged. In those two amendments Prof. Shah insists that the interval between any two sessions of the Parliament shall not exceed three months. That is the sum and substance of the two amendments.

I might also take along with these two amendments of Prof. Shah the amendment of Mr. Kamath (No. 1471) because it also raises the same question. It seems to me that neither Prof. Shah nor Mr. Kamath has understood the reasons why these clauses were originally introduced in

the Government of India Act, 1935. I think Prof. Shah and Mr. Kamath will realise that the political atmosphere at the time of the passing of the Act of 1935 was totally different from the atmosphere which prevails now. The atmosphere which was then prevalent in 1935 was for the executive to shun the legislature. In fact before that time the legislature was summoned primarily for the purpose of collecting revenue. It only met for the purpose of the budget and after the executive had succeeded in obtaining the sanction of the legislature for its financial proposals, both relating to taxation as well as to appropriation of revenue, the executive was not very keen to meet the legislature in order to permit the legislature either to question the day-to-day administration by exercising its right of interpellation or of moving legislation to remove social grievances. In fact, I myself have been very keenly observing the conduct of some of the provincial legislatures in India which function under the Act of 1935, and I know of one particular province (I do not wish to mention the name) where the legislature never met for more than 18 days in the whole year and that was for the purpose of the legislature's sanction to the proposals for collecting revenue.

Mr. Tajamul Husain : Who was responsible for that ?

The Honourable Dr. B. R. Ambedkar : As I was going to explain the same, mentality which prevailed in the past of the executive not wishing to meet the legislature and submitting itself and its administration to the scrutiny of the legislature was responsible for this kind of conduct.

Pandit Hirday Nath Kunzru : Which province was it ?

The Honourable Dr. B. R. Ambedkar : You better let that lie. I can tell my honourable Friend privately which province it was. It was felt that if such a thing happened as did happen before 1935, it would be a travesty of popular government. To summon the legislature merely for the purpose of getting the revenue and then to dismiss it summarily and thus deprive it of all the legitimate opportunities which the law had given it to improve the administration either by questions or by legislation was, as I said, a travesty of democracy. In order to prevent that sort of thing happening this clause was introduced in the Government of India Act, 1935. We thought and personally I also think that the atmosphere has completely changed and I do not think any executive would hereafter be capable of showing this kind of callous conduct towards the legislature. Hence we thought it might be desirable

as a measure of extra caution to continue the same clause in our present Constitution. My Friends Mr. Kamath and Prof. Shah feel that that is not sufficient. They want more frequent sessions. The clause as it stands does not prevent the legislature from being summoned more often than what has been provided for in the clause itself. In fact, my fear is, if I may say so, that the sessions of Parliament would be so frequent and so lengthy that the members of the legislature would probably themselves get tired of the sessions. The reason for this is that the Government is responsible to the people. It is not responsible merely for the purpose of carrying on a good administration : it is also responsible to the people for giving effect to such legislative measures as might be necessary for implementing their party programme.

Similarly there will be many private members who might also wish to pilot private legislation in order to give effect to either their fads or their petty fancies. Again, there may be a further reason which may compel the executive to summon the legislature more often. I think the question of getting through in time the taxation measures, demands for grants and supplementary grants is another very powerful factor which is going to play a great part in deciding this issue as to how many times the legislature is to be summoned.

Therefore my submission to the House is that what we have provided is sufficient by way of a minimum. So far as the maximum is concerned the matter is left open and for the reasons which I have mentioned there is no fear of any sort of the executive remaining content with performing the minimum obligation imposed upon them by this particular clause.

I come to the amendment of Prof. Shah (No. 1477). By this particular amendment Prof. Shall wants to omit the words “ either House ” from clause 67 (2) (a). I could not understand Ms argument. He seemed to convey the impression—he will correct me if I am wrong—that because the Upper Chamber is not subject to dissolution it is not necessary for the President to summon it for the transaction of business. It seems to me that there is a complete difference between the two situations. A House may not be required to be dissolved at any stated period such as the Lower House is required to be dissolved at the end of five years; but the summoning of that House for transacting business is a matter that still remains. The House is not going to sit here in Delhi every day for 24 hours and all the twelve months of the year. It will be called and

the members will appear when they are summoned. Therefore it seems to me that the power of summoning even the Upper House must be provided for as it is provided for in the case of the Lower Chamber.

Then I take the two other amendments of Prof. Shah (Nos. 1473 and 1478). The amendments as they are worded are rather complicated. The gist of the amendments is this. Prof. Shah seems to think that the President may fail to summon the Parliament either in ordinary times in accordance with the article or that he may not even summon the legislature when there is an emergency. Therefore he says that the power to summon the Legislature where the President has failed to perform his duty must be vested either in the Speaker of the Lower House or in the Chairman or the Deputy Chairman of the Upper House. That is, if he have understood it correctly, the proposition of Prof. K. T. Shah. It seems to me that here again Prof. Shah has entirely misunderstood the whole position. First of all, I do not understand why the President should fail to perform an obligation which has been imposed upon him by law. If the Prime Minister proposes to the President that the Legislature be summoned and the President, for no reason, purely out of wantonness or cussedness, refuses to summon it, I think we have already got a very good remedy in our own Constitution to displace such a President. We have the right to impeach him, because such a refusal on the part of the President to perform obligations which have been imposed upon him would be undoubtedly violation of the Constitution. There is therefore ample remedy contained in that particular clause.

But, another difficulty arises if we are to accept the suggestion of Professor K.T. Shah. Suppose for instance the President for good reason does not summon the Legislature and the Speaker and the Chairman do summon the Legislature. What is going to happen? If the President does not summon the Legislature it means that the Executive Government has no business which it can place before the House for transaction. Because, that is the only ground on which the President, on the advice of the Prime Minister, may not call the Assembly in session. Now, the Speaker cannot provide business for the Assembly, nor can the Chairman provide it. The business has to be provided by the Executive, that is to say, by the Prime Minister who is going to advise the President to summon the Legislature. Therefore, merely to give the power to the Speaker or the Chairman to summon the Legislature without making

proper provisions for the placing of business to be transacted by such an Assembly called for in a session by the Speaker or the Chairman would to my mind be a futile operation and therefore no purpose will be served by accepting that amendment.

With regard to the last amendment No. 1482 moved by Prof. K. T. Shah, the purpose is that the President should not grant the dissolution of the House unless the Prime Minister has stated his reasons in writing for dissolution. Well, I do not know what difference there can be between a case where a Prime Minister goes and tells the President that he thinks that the house should be dissolved and a case where the Prime Minister writes a letter stating that the house should be dissolved. Professor K. T. Shah, in the course of his speech, has not stated what purpose is going to be served by this written document which he proposes to be obtained from the Prime Minister before dissolution is sanctioned. I am therefore unable to make any comment. If the object of Prof. K. T. Shah is that the Prime Minister should not arbitrarily ask for dissolution, I think that object would be served if the convention regarding dissolution was properly observed. So far as I have understood it, the King has a right to dissolve Parliament. He generally dissolves it on the advice of the Prime Minister, but at one time, certainly at the time, when Macaulay wrote English History where he has propounded this doctrine of the right of dissolution of Parliament, the position was this : it was agreed by all politicians that, according to the convention then understood; the King was not necessarily bound to accept the advice of the Prime Minister who wanted a dissolution of Parliament. The King could, if he wanted, ask the leader of the Opposition, if he was prepared to come and form a Government so that the Prime Minister who wanted to dissolve the house may be dismissed and the leader of the Opposition could take charge of the affairs of Government and carry on the work with the same Parliament without being dissolved. The King also had the right to find some other Member from the house if he was prepared to take the responsibility of carrying on the administration without the dissolution of the House. If the King failed either to induce the leader of the Opposition or any other Member of Parliament to accept responsibility for governing and carry on the administration, he was bound to dissolve the House. In the same way, the President of the Indian Union will test the feelings of the House whether the House agrees that

there should be dissolution or whether the House agrees that the affairs should be carried on with some other leader without dissolution. If he finds that the feeling was that there was no other alternative except dissolution, he would, as a Constitutional President, undoubtedly accept the advice of the Prime Minister to dissolve the House. Therefore it seems to me that the insistence upon having a document in writing stating the reasons why the Prime Minister wanted a dissolution of the House seems to be useless and not worth the paper on which it is written. There are other ways for the President to test the feeling of the House and to find out whether the Prime Minister was asking for dissolution of the House for *bona fide* reasons or for purely party purposes. I think we could trust the President to make a correct decision between the party leaders and the house as a whole. Therefore I do not think that this amendment should be accepted.

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

[All amendments were rejected. Article 69 was added to the Constitution.]

ARTICLE 71

***The Honourable Dr. B. R. Ambedkar :** Prof. K. T. Shah simply wants, in the terms in which he has used, stated explicitly; what in my judgment is implicit in the phrase ‘causes of its summons’. I think this phrase is wide enough to include everything that Prof. K. T. Shah wants and if I may say so, this phraseology, namely “shall address and inform Parliament of the causes of its summons” is a phrase which we find used in the British Parliament. If Prof. Shah were to refer to Campion’s book on the rules of the House of Commons, he will find that this phraseology is used there and after a long and great deal of search for a proper phraseology, we are fortunate enough in finding these words in Campion and I think it is a good phrase and ought to be retained since it covers all that Prof. K. T. Shah wants. Prof. K. T. Shah said that there ought to be a provision for the President also to send messages and to otherwise address the House. I thought that there was definite provision in article 70 which we just now passed, which enables the President to address both Houses of Parliament, also to send messages and the messages may be in relation to a particular Bill or may be any other proceedings before Parliament. I do not think that anything more is

* CAD., Vol. VIII 18th May 1949, p. 110

required than what is contained in article 70 so far as the independent right of the President addressing the House is concerned and that is amply provided for in article 70. I therefore think that there is no necessity for this amendment at all.

[The only amendment of Prof. K. T. Shah was negatived. Article 71 was added to the constitution.]

ARTICLE 72

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***The Honourable Dr. B. R. Ambedkar :** Sir, I do not think Professor Shah has really understood the underlying purpose of article 72. In order that the matter may be quite clear. I might begin by stating some simple fundamental propositions. Every House is an autonomus House that is to say, that he will not allow anybody who is not a member of that House either to participate in its proceedings or to vote at the conclusion of the proceedings. The only persons who are entitled to lake part in the proceedings and to vote are the persons who are members of that House. Now, we have got an anomalous situation and it is this. We have got two Houses so far as the Centre is concerned, the Upper House and the Lower House. It is quite possible that a person who is appointed a Minister is a member of the Lower House. If he is in charge of a particular Bill, and the Bill by the constitution requires the sanction of both the Houses, obviously, the Bill has not only to be piloted in the Lower House, but it has also to be piloted in the Upper House. Consequently, if a person in charge of the Bill is a member of the Lower House, he would not ordinarily be in a position to appear in the Upper House and to pilot the Bill unless some special provision was made. It is to enable a person who is a member of the Lower House and who happens to be the Minister in charge of a Bill, to enable him to enter the Upper House, to address it, to take part in its proceedings that article 72 is being anacted. Article 72 is really an exception to the general rule that no person can take part in the proceedings of a House unless that person is a Member of that House. It is essential that the Minister who happens to be a member of the Upper House must have the right to go to the Lower House and address it in order to get the measure through. Similarly if he is a member of the Lower House, he must have the liberty to appear in the Upper House, address it and get the measure through.

* CAD. Vol. VIII, 18th May 1949, pp. 113-14

It is for this sort of thing that article 72 is being enacted. The same applies to the Attorney-General. The Attorney-General may be a member of the Lower House. He may have to go to the Upper House but being a member of the Lower House he may not have the legal right to appear in the Upper House. Consequently the provision has been made. Similarly if he is a member of the Upper House he may not be having a legal right to enter the Lower House and address it. It is therefore for this purpose that this is enacted. We have limited this right to take part in the proceedings only. We do not thereby give the right to vote to any Minister who is taking part in the proceedings of the other House. Because we do not think that voting power is necessary to enable him to carry out the proceedings with regard to any particular Bill. I thought my friend also said that the word 'Minister' ought to be omitted, and the word 'elected person' ought to be introduced ; but that again would create difficulty because we have stated in some part of our Constitution that it should be open for a person who is not an elected member of the House to be appointed a Minister for a certain period. In order to enable even such a person it is necessary to introduce the word 'Minister' and not 'person'. That is the reason why the word 'Minister' is so essential in this context. I oppose the amendment.

[Amendment of Prof. K. T. Shah was negatived and Article 72 was added to the Constitution.]

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ARTICLE 73

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***The Honourable Dr. B. R. Ambedkar** (Bombay : General): Mr. President,. Sir, I cannot help saying that the amendment moved by Mr. Naziruddin Ahmad is a thoroughly absurd one and is based upon an utter misconception of what the clause deals with. He does not seem to understand that there is a distinction between re-election of a person to the same office and a new election. What we are dealing with in article 73 is not re-election, but a new election. A new election is the result of a vacancy in the office by reason of the circumstances mentioned in article 74. By reason of article 74 the same person has ceased to be a member of the House and obviously, that person having ceased to be

*CAD, Vol. VIII, 19th May 1949, p. 119.

a member of the House, you cannot say that they may elect 'a member' which may mean the same person who previously held office. Consequently in order to meet this contingency, the proper wording is 'another member' because that member has become disqualified under article 74. Therefore the wording of article 73 is perfectly in order. I may state here that if a member ceases to be a member by efflux of time, he can be re-elected, because he is 'another member'.

[Amendment of Mr. Naziruddin Ahmed was rejected. Article 73 was added to the Constitution.]

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NEW ARTICLE 75-A

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***The Honourable Dr. B. R. Ambedkar :** Mr. President, Sir, no such difficulty as has been pointed out by Mr. Kamath is likely to arise, and there is, I submit, no lacuna whatsoever. The position will be this ; If the Chairman is being tried, so to say—I am using the popular phrase— then, although he is present, the Deputy Chairman shall preside. If the Deputy Chairman is being tried, the Chairman will preside; and when the Deputy Chairman is being tried, if the Chairman is not present to preside, then what the new clause says is that clause (2) of article 75 will apply. Clause (2) of article 75 says that “ During the absence of the Chairman or the Deputy Chairman from any sitting of the Council of States, such person as may be determined by the rules of procedure of the Council, or if no such person is present, such other person as may be determined by the Council, shall act as Chairman.” Therefore that difficulty is met by the application of clause (2) of article 75 to the case dealt with by this new article 75-A.

Mr. President: The question is :

(Motion by Mr. T. T. Krishnamachari)

“That after article 75, the following new article be inserted :—

“75-A. At any sitting of the Council of States, while any resolution for the removal of the Vice-President from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of the last preceding article shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman or, as the case may be, the Deputy Chairman, is absent.’ ”

The motion was adopted.

Article 75-A was added to the Constitution.

* CAD. Vol. VIII. 19th May 1949. p. 121.

ARTICLE 76

***Mr. President :** The motion is :

“That article 76 stand part of the constitution.”

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Mr. Naziruddin Ahmad : I do not wish to formally move this amendment, but I want to make a few remarks. A similar amendment of mine was very kindly characterised by Dr. Ambedkar as absurd. I submit. Sir, my amendment was not absurd....

The Honourable Dr. B. R. Ambedkar : We have already dealt with that amendment, and a similar amendment was moved by my Honourable Friend to article 73.

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ARTICLE 77

†**The Honourable Dr. B. R. Ambedkar :** Sir, I am sorry I cannot accept the amendment moved by my honourable friend, Mr. Kamath. The existing article is based upon a very simple principle and it is this, that a person normally tenders his resignation to another person who has appointed him. Now the Speaker and the Deputy Speaker are persons who are appointed or chosen or elected by the House. Consequently these two people, if they want to resign, must tender their resignations to the House which is the appointing authority. Of course, the House being a collective body of people a resignation could not be addressed to each member of the House separately. Consequently, the provision is made that the resignation should be addressed either to the Speaker or to the Deputy Speaker, because it is they who represent the House. Really speaking, in theory, the resignation is to the House because it is the House which has appointed them. The President is not the person who has appointed them. Consequently, it would be very incongruous to require the Deputy Speaker or the speaker to tender their resignations to the President, who has nothing to do with House and who should have nothing to do with the House in order that the house may be independent of the executive authority exercised either through the President or through the Government of the day.

Shri H. V. Kamath : On a point of information, may I know from Dr. Ambedkar what is the procedure prevailing in the case of the Speaker of the Central Legislative Assembly today ?

* CAD. Vol. VIII, 19th May 1949, p. 121

† *Ibid*, p. 123

The Honourable Dr. B. R. Ambedkar : The position today is so different. Does he ask about the present position or the position that he wants to create ? Under the Government of India Act the Assembly and the Speaker are the creatures of the Governor-General. Consequently, the Speaker is required to address his resignation to the Governor-General. We do not want that situation to be perpetuated. We want to give the President as complete and as independent position of the executive as we possibly can.

Shri H. V. Kamath : Even under the Government of India Act, is not the Speaker elected by the Assembly ?

The Honourable Dr. B. R. Ambedkar : That is wrong. He is no doubt elected; but his election is required to be approved by the Governor General.

Shri H. V. Kamath : I beg leave to withdraw the amendment, Sir.
The amendment was, by the leave of the Assembly, withdrawn.

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NEW ARTICLE 79-A

***Mr. President :** There is article 79-A given notice of by Dr. Ambedkar and Shri Ghanshayam Singh Gupta.

The Honourable Dr. B. R. Ambedkar : I would like this to stand over.

Mr. President : Article 79-A stands over.

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ARTICLE 80

†Mr. President : I remember that; it is not necessary to repeat that. We take it that that amendment is not moved. We may go to article 80. The motion is :

“The article 80 form part of the Constitution.”

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

“That in clause (1) of article 80, for the words ‘Save as provided in this Constitution’ the words ‘Save as otherwise provided in this Constitution’ be substituted. ”

Sir, this is just a slip and it has to be corrected.

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Shri T. T. Krishnamachari : May I point out that the House has already adopted 68-A which is exactly the same as the amendment now sought to be moved by Mr. Kamath ?

The Honourable Dr. B. R. Ambedkar : Yesterday we adopted 68-A which covers the same point.

* CAD, Vol. VIII, 19th May 1949, p. 126.

Mr. President : He is dealing with 1538 and first part of 1541.

Shri T. T. Krishnamachari : I am sorry.

The Honourable Shri K. Santhanam : I suggest Mr. Kamath may move them separately. We may want to support one and oppose the other.

Shri H. V. Kamath : 1538 and 1541 go together; otherwise the picture will not be complete. If my amendments are accepted, the article would read thus—

“ Save as otherwise provided in this constitution, all questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting :

Provided that the Chairman or Speaker, etc.”

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***The Honourable Dr. B. R. Ambedkar :** Sir, I am sorry I cannot accept the amendment of Mr. Kamath.

Shri H. V. Kamath : Which of my amendments ? I moved three amendments, separately.

The Honourable Dr. B. R. Ambedkar : The one which he moved just now. I find in the book, one consolidated amendment. He might have spoken on different parts of it. But the amendment as it stands is a single one.

Shri H. V. Kamath : Sir, I sent them separately, and I spoke on them separately. With your leave, Sir, I may point them out firstly, adding “ of either House ” after the words “ at any silting ” Secondly deletion of the words “ other than the Chairman or Speaker or person acting as such ”. Thirdly inserting the words “ provided that ” at the commencement of the second para. I would like to know which of these three the Honourable Member is accepting, whether he is rejecting all the three or two or one.

The Honourble Dr. B. R. Ambedkar : I am referring to the Honourable Member’s amendment No. 1538, which so far as the official document is concerned, appears to be a single amendment.

Shri H. V. Kamath : Sir, I asked your leave, to move them separately.

Mr. President : Mr. Kamath has moved these three things. But they can be separately taken also. As amended, the article would read like this :

“Save as otherwise provided in this Constitution, all questions at any sitting of either House or joint sitting of the Houses shall be”

* CAD Vol. VIII 19th May 1949, pp. 128-29.

The Honourable Dr. B. R. Ambedkar : I find I can accept No. 87 in the consolidated list of amendments. It serves my purpose, and therefore I accept it.

[Article 80 as amended was added to the Constitution.]

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ARTICLE 81

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

“ That in article 81 for the words ‘a declaration’ , the words ‘an affirmation or oath’ be substituted.”

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Shri H. V. Kamath : Mr. President, Sir, I have come here just to seek a little clarification from my honourable Friend, Dr. Ambedkar, in regard to his amendment No. 1554 which he has just now moved and which seeks to substitute for the words “ a declaration ”, the words “ an affirmation or oath ”. May I, Sir, invite your attention to the fact that the House has already adopted article 49 which provides for an affirmation or oath by the President or person acting as or discharging the functions of the President before entering office. The affirmation or oath provided therein was amended to the effect that the President or person acting as or discharging the functions of the President, should, before he enters upon his office take the oath or affirmation in the following form :—

“ I, A, B, in the name of God, do swear ”, or “ I, A, B, do solemnly affirm”.....

May I have an assurance from my honourable Friend Dr. Ambedkar as well as from the House that the affirmation or oath referred to in article 81 will be on the same lines as provided for in the amended article 49 of the Constitution ?

Mr. President : I take it that it is obvious that the Schedule will have to be amended so as to fit in with the wordings of this clause....

The Hononurable Dr. B. R. Ambedkar : Sir, I am sorry to say that I cannot accept the amendment moved by my friend Professor Shah. I think Prof. Shah has really misunderstood the sequence of events, if I may say so, in the life of a candidate who has been elected until the time that he becomes a member of the House. If Prof. Shah were to refer to article 81 and also note the heading “Disqualifications of

* CAD, Vol. VIII, 19th May 1949, pp. 130-32.

Members” the first thing he will realise is that merely because a candidate has been elected to Parliament, does not entitle him to become a member of Parliament. There are certain, what I may call, ceremonies that have to be gone through before a duly elected candidate can be said to have become a Member of Parliament. One such thing which he has to undergo is the taking of the oath. He must first take the oath before he can take his seat in the House. Unless and until he takes the oath he is not a member and so long as he is not a member he is not entitled to take a seat in the House. That is the provision. Unless candidates take their oath and take their seats they do not become members and they do not become entitled to elect the Speaker. That is the sequence of events,— election, taking of the oath, becoming a member and then becoming entitled to the election of the Speaker. Therefore the election of the Speaker must be preceded by the taking of the oath.

Having regard to this sequence of events it would be impossible to say that the oath shall be taken before the Speaker, because the Speaker is not there and the Speaker cannot be elected until the elected candidates become members. Therefore the authority to administer the oath must necessarily be vested in some person other than the Speaker. That being the position the question is, in whom this power to administer the oath shall be vested. Obviously, it can be vested only in the President or in some other person to whom the President may transfer his authority in this behalf. In accordance with this sequence of events the only course to adopt is to vest the authority to administer the oath either in the President or in some other person appointed in that behalf by him. It cannot be done by vesting the authority in the Speaker, because the Speaker does not exist at all then.

Now I come to the point raised by our President. What happens to a newly elected member in a bye-election with regard to the taking of the oath? Has he to go to the President or can he take the oath before the Speaker? The answer to that question is that the President will, after the Speaker has been elected, confer upon him by order the authority to administer the oath on his behalf, so that when a newly elected candidate appears in Parliament for the purpose of taking the oath, it will be administered to him by the Speaker as the person authorised by the President. Consequently, in the case of a newly elected person, it would not be necessary for him to go before the President or some other presiding authority appointed by the President.

That is the sequence of events and it would be seen that article 81 is so framed as to fit in with this sequence. Even today, if I may say so, the same procedure is followed. The President (or the Governor-General) appoints somebody when the House meets for the first time to preside over it. Every member then takes the oath or makes the affirmation before the presiding authority. After the oath is taken the presiding authority proceeds to conduct the election of the Speaker and when the election of the Speaker is completed, the person chosen as the presiding officer retires and the Speaker continues to occupy the place of the presiding officer with the authority of the President to administer the oath to any member who comes thereafter. Therefore, as I said, the original Draft is in keeping with the sequence of events and the provision which is usually made for the President to confer his authority on the Speaker will prevent the newly elected person from having to go to the President to take the oath.

Mr. President : Should it be necessary for the speaker to derive his authority to administer the oath from the President ?

The Honourable Dr. B. R. Ambedkar : I submit constitutionally, it is, because the administration of the oath is an incident in the constitution of the House, over which the Speaker has no authority.....

Mr. President: I am not thinking of that stage. I am thinking of a subsequent stage after the Speaker has been elected.

The Honourable Dr. B. R. Ambedkar : I think there is nothing wrong or derogatory, for the simple reason that the constitution of the House, its making up, the legal form of the House is a matter which is outside the purview of the Speaker. The Speaker is in charge of the affairs of the Parliament when the Parliament is constituted and the Parliament is not constituted unless the oath is taken by the members. Therefore the taking up of the oath is really a part and parcel of constituting the House in accordance with the provision and so far as that is concerned I think that authority does not belong to the Speaker and need not belong to the Speaker.

Mr. President: Supposing at a subsequent meeting of the House the Speaker happens to be absent and a new member comes on a day when the Deputy Speaker or some other person is in the Chair.

The Honourable Dr. B. R. Ambedkar : The authority given to the Speaker becomes vested not only in the Speaker but also in the Deputy Speaker, in the Panel of Chairmen or any other person occupying the Chair for the time being.

Mr. President: The Speaker will have to depend upon the delegation of authority.

The Honourable Dr. B. R. Ambedkar : We have to depend upon the goodwill of all the functionaries created by the Constitution.

[Amendment of Dr. Ambedkar as shown above was adopted. Article 81 was added to the Constitution]

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ARTICLE 82

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

“That after clause (1) of article 82, the following new clause be inserted :—

‘ 1. (a) No person shall be a member both of Parliament and of the Legislature of a State for the time being specified in Part I or Part III of the First Schedule, and if a person is chosen a member both of Parliament and of the Legislature of such a State, then at the expiration of such period as may be specified in rules made by the President that person’s seat in Parliament shall become vacant unless he has previously resigned his seat in the Legislature of the State .’

Sir, it requires no comment. It is the ordinary rule.

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†The Honourable Dr. B. R. Ambedkar : I do not accept any of the amendments of Mr. Naziruddin Ahmad or of Mr. Kamath either.

Mr. President : I shall now put the amendments to vote one after another.

[Amendment of Dr. Ambedkar alone as given above was accepted. Article 82, as amended, was added to the Constitution.]

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ARTICLE 83

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

“ That for sub-clause (d) of clause (1) of article 83, the following be substituted :

‘(d) If he has ceased to be a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State and.’ ”

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#Mr. President : There is one point which I would like the Drafting Committee to consider in this case. If we refer to clause (2) of this article, there is no mention of Chairman or Vice-Chairman, Speaker or Deputy Speaker of the House of People. They also hold positions of profit. They are also paid officers.

* CAD, Vol. VIII, 19th May 1949, p. 133

† *Ibid.*, p. 136.

‡ *Ibid.*, p. 138.

Ibid., p. 141.

The Honourable Dr. B. R. Ambedkar : Not under the Government. So they do not come under this.

Mr. President : That is all right.

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***Mr. President :** Does anyone else want to speak ? Has Dr. Ambedkar to say anything ?

The Honourable Dr. B. R. Ambedkar : I do not accept any of the amendments, except amendment No. 1587, standing in the name of the Honourable Shri G. S. Gupta.

(Amendment of Dr. Ambedkar was adopted)

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†**Mr. President :** Then there is the amendment of Mr. Kamath, No. 1585. But that does not arise now after accepting Dr. Ambedkar's amendment.

There is then Mr. Gupta's amendment No. 1587, that the word "and" should be deleted. Or has it to be substituted by "or" ?

The Honourable Dr. B. R. Ambedkar : It is the same thing; either deleted "and" or substitute 'or' for 'and'

Mr. President : The question is :

"That the word 'and' occurring at the end of sub-clause (d) of clause (1) of article 83 be deleted."

The amendment was adopted.

Article 83, as amended, was added to the Constitution.

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ARTICLE 85

‡**Mr. President :** We have had a very interesting discussion on something which is not the subject-matter of any amendment. There is no amendment moved to alter or modify the particular clause on which Pandit Maitra has spoken. There is no amendment on that point at all.

Now, I will take votes. Does Dr. Ambedkar wish to say anything ?

The Honourable Dr. B. R. Ambdkar : No, unless Mr. Kamath wants me to say something in reply to him. Mr. Alladi and others have already given the reply, and I will also be saying mostly the same thing, probably in a different way.

Mr. President : Then No. 1627, Shri Jaspat Roy Kapoor's amendment. I understand Dr. Ambedkar is willing to accept it.

The question is :

"That in clause (4) of article 85, after the words 'a House of Parliament' the words 'or any committee thereof' be inserted."

The amendment was adopted.

[Article 85 was added to the constitution.]

* CAD, Vol. VIII, 19th May 1949, P. 142.

† *Ibid*, p. 143.

‡ *Ibid*, pp. 155-56.