

Monday, 13th December, 1948

Volume VII

4-11-1948

to

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**CONSTITUENT ASSEMBLY
DEBATES
OFFICIAL REPORT**

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CONSTITUENT ASSEMBLY OF INDIA

Monday, the 13th December, 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

DRAFT CONSTITUTION—(contd.)

Article 43—contd.

Prof. K. T. Shah : (Bihar : General): Sir, I have moved.....

Shri T. T. Krishnamachari (Madras : General): Sir, on a point of order, may I know whether Prof. Shah can bring in again the scheme that he had outlined in one or two earlier amendments of his and which had all been negatived in this House? He is really persisting in one particular scheme in all his amendments and is the honourable Member in order in moving this amendment?

Prof. K. T. Shah: My reply to that point of order is clear. I had foreseen this objection and that is why I have worded my amendment in such a manner that this particular objection will not apply. The principle of complete separation of powers between the various organs of Government is rejected. But that does not preclude the President, even if these powers are not separated, from being elected by popular vote, whatever his powers. Unless it is intended that I shall not be allowed to move any amendment, I do not see how the objection can arise. I leave it to the Chair. I am entirely in your hands, Sir. I do not think that the honourable Member's arguments can apply at all. It was because of this that I have worded each of my amendments in such a way that risking the possibility.....

Mr. Vice-President (Dr. H. C. Mookherjee): Prof. Shah is in order.

Prof. K. T. Shah : Sir, I have moved already:

“That for article 43, the following be substituted:—

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

The original article provides for the election of the President by an electoral college consisting of the members of the Central Legislature as well as those of the Provincial or States legislatures. That I think is not sufficiently representative of the people's will; and as such I at least am persistent enough to insist upon the people's will being always held supreme.

I have felt it necessary, even apart from any other scheme, that at every point, wherever I can help it, the sovereign people shall come in, whether you like it or not, and that the people's will be asserted, whether you like it or not. It is therefore I suggest that every adult citizen shall have his share in electing the head of the State; and accordingly, instead of indirect election through the representatives of the legislatures which may be elected after two, three or four years interval, I would suggest that every time a presidential election takes place, that election shall be by the votes of the people themselves.

I will give you both positive or negative arguments for this amendment. I have been accustomed to this kind of suggestion that, either my amendment is not in proper time, or this is not the proper place for it, or the third dimensional argument,—“I oppose it.” These are the three—dimensional answers to my arguments. In reply I hold that this is the only time and the only place where I can bring forward this particular amendment; and as for opposition without reason I am of course sufficiently reasonable not to take notice of it.

[Prof. K. T. Shah]

The point I wanted to make is this. On a previous occasion it was suggested that the principle having been settled, it is brought up in another shape today, and so this amendment should not be taken up. I put it to you, Sir, and through you to the House, that even if one had put up this idea at the time that the general principles of the Constitution were considered, I would invite the House dispassionately to consider the point I am making now, namely that 14 or 15 months ago, when we decided upon what are called the leading principles, and nothing more than the leading principles, we were under a stress and strain, and were passing through difficult circumstances and were under influences, which, I venture to submit, deflected our judgment, unbalanced our outlook, and, therefore, we voted for and accepted ideas, which, in my opinion, were not then, and are not consistent with the idea of a true, real, working democracy, in every sphere of life. If you wish to go back on it I have nothing more to say. After 15 months we are now in a position to take a more sober, balanced, and impartial view of the situation. As such if we are true to our ideals, if we are true to the principles which we have proclaimed from the house-top, if we are true to the slogans on which we asked the old Imperialist regime to quit and yield place to the children of the soil, I put it to you, Sir, that there is nothing improper, there is nothing out of the way for me to put before the House this amendment. It is after all for the House to judge. I only want to submit to the House the considerations on which it can accept my point of view.

If the Draft before us is treated on the ground that it is something like the report of a Select Committee on a Bill coming before the House, I still say that at that stage any member would be entitled to have his say even on that ground. As I have read the rules, even at the stage of a Select Committee Report before the House, a Member can say that the entire report be sent back for reasons arising out of it, without questioning the principle of the Bill, and, in this case, of the Draft.

Thirdly, after all, the principles that you have accepted, as I have understood them, are the principles contained in the Objectives Resolution; and nothing that I am saying here involves going back upon that Resolution. The Objective principle assures us that ours is a democratic, secular, sovereign republic. That is in no way questioned by my amendment. For the rest they are matters of detail.

Having given you these three reasons against the objection that this is not the time nor the place. I would now pass on to say that, positively considered, the President, whether you make his term three, four or five years, will be, during that period, unless he is guilty of any offence for which he can be impeached and removed, the head, not only of the Government even under your scheme, but will also embody the sovereignty of the people, as Mr. Tyagi pointed out in this House the other day.

And as representing the sovereignty of the people, in their collective capacity, at home and abroad, he must be in a position to command the confidence of the people, be they majority or minority. And I at least hold the view that the President, once elected, ceases to be a party man even as the President of this House is. So I have only suggested that the President will be the President of the whole Indian Union, who will be equally respected, equally revered and obeyed by every citizen, no matter whether he voted for him or not at the time of the election.

Thinking in these terms I hold that we should arm the President with the authority to say that he represents the people. It is no use telling him that there may be conflict between the Prime Minister, or the majority party in

the House, and the President elected by the people. Such a conflict need not arise. The President will function only in an emergency; he will function, not ornamentally only, but in a representative capacity with the representatives of other countries. Accordingly this sort of argument would seem to be puerile namely, that you want the President to be a sort of mere gramophone of the Prime Minister. I do not want the President to be anything but the head of the State and representative of the people in their collective capacity and in their sovereignty. For this reason I hold that the President, not being a creature of party majorities in the Centre or the local legislatures but a real representative of the people, and one elected to function as the head of the State and as its representative, this fact is a conclusive argument.

In this view I may say that the possibilities of conflict between the Ministry and the head of the State, or other difficulties are, in my opinion, matters of detail, which, given good sense, given loyalty to the central theme of this constitution, given sincerity amongst you the makers of the Constitution, may be easily solved. I take the view that you will do very well to have the President elected by the adult vote, instead of by an indirect round about method. After all your Parliament is liable to be dissolved at any time. Though a maximum term of four or five years for the People's House, is provided, there is also provision for its dissolution at any time. The local Legislatures in the States may also be dissolved. The President on the other hand will be elected for a definite period. As such he will be outside the turmoil of party passion, will be outside the momentary ups and downs—the vicissitudes of Parliamentary fortunes; and will be much more likely to maintain balance, and to give a degree of stability to our Government which it may not have under party passions. Accordingly I commend this amendment and I trust it would be considered on its merits, and not on mere pettifogging points of order.

(Amendment Nos. 1054, 1061, 1067 were not moved.)

Mr. Vice-President : Amendment Nos. 1056, 1058, 1060 and 1068 are all of similar import, and can be taken together.

(Amendment Nos. 1058, 1056, and 1060 were not moved.)

Mr. Mohd. Tahir (Bihar: Muslim): Mr. Vice-President, Sir, I beg to move:

“That in clause (b) of article 43, the word ‘elected’ be deleted.”

In this article we are going to form the electoral college for the election of the President. It has been said that the President shall be elected by members of an electoral college consisting of (a) the members of both Houses of Parliament and (b) the elected members of the Legislatures of the States. I want that the word ‘elected’ in (b) should be deleted. My reasons for doing so are these. In the election of the President are we going to be more democratic or are we going to be guided by some sort of imperialistic ideas? If we delete the word ‘elected’ I assure the House that we will be more democratic in this respect, because members of either House—they are elected or nominated—but the members as such must have equal rights and privileges so far as the business of the Legislature is concerned. Therefore it appears to be very improper that there should be a distinction between members and members. Whether a member is elected or is nominated he must have equal rights and privileges so far as the voting for the President is concerned. In this way I think we will be more democratic in our action. Therefore I submit that the amendment which I have moved may be duly considered by the House as well as by the honourable Mover and accepted. With these words I move.

Mr. Tajamul Husain (Bihar : Muslim): Mr. Vice-President, Sir, I beg to move:

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

I shall read article 43. It says: “The President shall be elected by the members of an electoral college consisting of (a) the members of both Houses of Parliament, and (b) the elected members of the Legislatures of the States”. Clause (a) says that the President shall be elected by the members of both the Houses of Parliament. The Upper House has got nominated members while the lower House, the House of the People, has got only elected members. So the President, it appears from this article, will be elected both by elected members and by nominated members of Parliament. And clause (b) says that the President will be elected by the elected members of the Provincial Legislatures. I cannot understand why only the *elected* members of the Provincial Legislature are to elect him while both elected and nominated members of the Central Legislature are to elect him. This seems to me to be anomalous. Article 44 tells us how the members are to vote. There is no provision either in this article or anywhere in the Constitution as to how nominated members are to vote. There are provisions only for elected members. Therefore I think that there is some drafting mistake. That is the reason why I have moved this amendment that the word ‘elected’ be added in clause (a) of article 43, so that both the elected members of the Central Legislature and the elected members of the Provincial Legislatures will elect the President. There will be no nominated members voting, and there is no provision as to how a nominated member is to vote. My amendment is very simple. I have not much to say. I have no doubt the House will accept it and also that the Honourable Dr. Ambedkar will accept the amendment.

Mr. Vice-President : I am not putting amendment No. 1063 standing in the name of Dr. Ambedkar and others to vote, because it is identical with 1064 which has just been moved.

Do you accept it, Dr. Ambedkar?

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

Mr. Vice-President : Then I will not put it to vote.

An amendment to amendment No. 1064 standing in the name of Shri Gokulbhai Daulatram Bhatt was not moved as the honourable Member is not in the House.

I disallow, as merely verbal, amendment Nos. 1065 and 1066.

Shri S. Nagappa (Madras : General): I do not move amendment No. 1069, Sir.

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

“That to article 43, the following explanation be added:—

‘Explanation.—In this and the next succeeding article, the expression “the Legislature of a State” means, where the Legislature is bi-cameral, the Lower House of the legislature.’ ”

It is desirable that this amendment should be made, because there may be two legislatures in a State and consequently if this amendment is not made it will be open also to the Members of the Upper Chamber to participate in the election of the President. That is not our intention. We desire that only Members who are elected by popular vote shall be entitled to take part in the election of the President. Hence this amendment.

Mr. Vice-President : Mr. Mohd. Tahir may now move his amendment No. 23 to this amendment.

Mr. Mohd Tahir: I beg to move:

“That in amendment No. 1070 of the List of Amendments, in the proposed explanation, for the words ‘the Lower House of the Legislature’, the words ‘the Legislative Assembly of the State’ be substituted”.

Now, Sir, with due respect to my friend Dr. Ambedkar I am moving this amendment. In my opinion, the term ‘Lower House of the Legislature’ has got no existence of its own. Because, we have defined ‘the Legislatures’ of the States not only in this draft Constitution, but also it will be found in the Government of India Act. There the Legislatures of the State have been defined either as the Legislative Council or the Legislative Assembly. We have given a particular definition for the Houses in the States, namely one, called Legislative Council and the other the Legislative Assembly, in article 148 of the draft Constitution. Therefore my humble submission is that wherever we have to use a term regarding either of these Houses, we must use only the term which has been defined in our Constitution and no other.

Sir, we will now consider how the term ‘Lower House’ originated. I believe it originated from the fact that till now the Members of the Legislative Assembly are being elected by the common people, the general masses of the country paying 6 annas or 12 annas as chowkidari tax and so on, whereas the members of the Legislative Council are being elected by people having higher qualifications. From this difference the feeling naturally arose in the minds of the people that the Legislative Assembly is the Lower House and the Legislative Council the Upper House. This distinction I submit should not continue in our minds after achieving the independence of India. Therefore to my mind it does not appear to be fair to call the Legislative Assembly the Lower House. In no respect can the Assembly be said to be the Lower House. In respect of the number of members, the Assembly is greater than the Council. Also, the Legislative Assembly has got more powers than the Legislative Council of the States. In conclusion I submit that I base my arguments on the first point, namely that when we have given a particular definition as regards the Chambers of the States, it is in all fairness desirable that we should use only that expression namely, the Legislative Council and the Legislative Assembly and no other.

Mr. Vice-President : The article is now open for general discussion.

Shri K. Hanumanthaiya (Mysore): Mr. Vice-President, we listened with great respect to the arguments of Prof. Shah. He wants the President to be elected by adult citizens. To begin with, there is a technical difficulty. If the President is to be elected by adult citizens, every citizen gets the right to vote. Under the electoral system, the voters’ list is prepared according to some rules and certain people who are lunatics, who are convicted people and who have lost their sannads are not entitled to vote. But in this term ‘adult citizen’ is included even citizens who are not entitled to vote at the general elections. That means that for the Presidential election those disqualified at the general election can vote, if the wording found in the amendment of Prof. Shah is adopted.

Secondly, Sir, the Constitution which is before the House has adopted the Parliamentary system of government. A Parliamentary system presupposes responsible government. The government is carried on not directly by the people but by the duly elected representatives of the people and inconsonance with that principle, the framers of this Constitution have wisely made the presidential election an indirect election, not a direct election as Prof. K. T. Shah envisages.

Thirdly, Prof. Shah wants that the President should be a non-party man. If the procedure that Professor Shah envisages is adopted, he will

[Shri K. Hanumanthaiya]

certainly become a party candidate. The presidential candidate who has to carry on an election campaign from one corner of the country to another will certainly be put up by some party or another and that election campaign will naturally generate party feelings and the man who is elected to the presidential office through this means will never be able to forget his party affiliations and he will not serve the purpose that Prof. Shah has in view. On the other hand, Sir, if he is elected by the members of the legislatures and the Parliament, he is more likely to be a non-party man, just as the Speaker of the Assembly or the Parliament is likely to be. Therefore, the purpose that Professor has in view that the President should be a non-party man will be better served by his being elected by the legislature and not directly by the people.

Then, Sir, Prof. Shah wants the President to be a real sovereign. That is not the intention of the framers of this Constitution. In this Constitution, the President is given the position of reigning and not ruling. The President here is more or less analogous to the King of England in the United Kingdom. If we give the President real power and make him the real executive head, the whole structure as envisaged by the Drafting Committee changes its character. This amendment does not fit into the picture of this Draft Constitution and should therefore be rejected.

Shri Biswanath Das (Orissa: General): Sir, my honourable Friend Prof. K. T. Shah, has raised a very important issue, *viz.*, to introduce the system now in vogue in the United States of America. Sir, today in democratic countries, two different systems are working, one is the system now in vogue in the U.S.A. and the other is the Cabinet system of responsible government. We appointed a Committee, the Union Committee. This Committee, after due deliberation, weighing the *pros and cons*, all the advantages and difficulties of the working of the constitutions in various countries, have devised a system of responsibilities which is known as the system of Cabinet responsibility. Sir, the report of that Committee was adopted by the honourable Members of this House. It was up to Prof. Shah to have moved and taken a decision on this issue at that time. The Drafting Committee have only given shape to the decisions of the honourable Members of this House. It is, I am afraid, too late in the day to change the structure of our Constitution. A change in the system naturally means a change in a great many articles of this Constitution. Practically it disturbs the very basis of this Constitution. I would therefore appeal to my honourable Friend not to press his amendment. Sir, in justification of his plea, he has appealed to us to think of a President who would be a non-party man. I would plead with him that he has undertaken an impossible task. Sir, party system is the very basis of democracy. How on earth could you find a President who is a non-party man? Even the President of the United States is not a non-party man. Those who have seriously followed the working of the American Constitution and especially the last Presidential election must have come to the conclusion that it is the party system that is functioning in America. If Professor Shah thinks of a non-party President, he will have to think of something other than democracy. Sir, Turkey had a sort of non-party government but it has given it up in preference to a party system of government and elections have been introduced. You have to think of a totalitarian state if you think of a non-party President. It is impossible in the very nature of things. Therefore his plea that the President is and ought to be a non-party man does not at all appeal to me.

Sir, the whole question turns upon one issue, *viz.*, who is going to be responsible to the people of the country with regard to the administration.

A President coming through the direct vote of the people as such has an independent existence outside the sphere of the Parliament. It so happens that sometimes, as honourable Members may have seen conflicts do arise between the Parliament and the President, and it makes a smooth working of the machinery difficult. Sometimes important programmes may be upset because of these differences. Even the Parliamentary system has its own difficulties. The Parliamentary system is in vogue in very many countries. In France, difficulty was experienced with the cabinet system of government with the result that in their new constitution some modification has been made with the result that they hope that hereafter the Parliamentary executive in France will be more stable than before. Therefore it is for my honourable Friend Prof. Shah to devise ways by which this Parliamentary system of government, the Cabinet system of government will function well and properly with stability. I would appeal to him that a change in the important structure of our Constitution is not possible at this stage. We have at long and the country is waiting for a Constitution. I would appeal to him and also to the other honourable Members of this House to see that we speed up the discussion of the Constitution and pass it as early as possible. The Union Committee have given due attention to this question, and I would appeal therefore that the article may be accepted and the amendment may be rejected.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, of the amendments that have been moved, I can only accept 1064 and I very much regret that I cannot accept the other amendments.

Now, Sir, turning to the general debate on this article, the most important amendment is the amendment of Prof. K. T. Shah, which proposes that the President should be elected directly by adult suffrage. This matter, in my judgment, requires to be considered from three points of view. First of all, it must be considered from the point of view of the size of the electorate. Let me give the House some figures of the total electorate that would be involved in the election of the President, if we accepted Prof. K. T. Shah's suggestion.

So far as the figures are available, the total population of the Governors' provinces and the Commissioners' provinces is about 228,163,637. The total population of the States comes to 88,808,434, making altogether a total of nearly 317 millions for the territory of India. Assuming that on adult franchise, the population that would be entitled to take part in the election of the President would be about 50 per cent. of the total population, the electorate will consist of 158.5 millions. Let me give the figures of the electorate that is involved in the election of the American President. The total electorate in America, as I understand—I speak subject to correction—is about 75 millions. I think if honourable Members will bear in mind the figure which I have given; namely, 158.5 millions, they would realize the impossibility of an election in which 158.5 millions of people would have to take part. The size of the electorate, therefore, in my judgment forbids our adopting adult suffrage in the matter of the election of the President.

The second question which has to be borne in mind in dealing with this question of adult suffrage is the administrative machinery. Is it possible for this country to provide the staff that would be necessary to be placed at the different polling stations to enable the 158.5 millions to come to the polls and to record the voting? I am sure about it that not many candidates would be standing for election and they would not like non-official agencies to be employed, for the simple reason, that the non-official agency would not be under the control of the State and may be open to corruption, to bribery, to manipulations and to other undesirable influences. The machinery, therefore, will have to be entirely supplied from the Governmental administrative machinery. Is it possible either for the Government of India or for the State

[The Honourable Dr. B. R. Ambedkar]

Governments to spare officials sufficient enough to manage the election in which 158.5 millions would be taking part? That again seems to me to be a complete impossibility. But apart from these two considerations, one important consideration which weighed with the Drafting Committee, and also with the Union Committee, in deciding to rule out adult suffrage, was the position of the President in the Constitution. If the President was in the same position as the President of the United States, who is vested with all the executive authority of the United States, I could have understood the argument in favour of direct election, because of the principle that wherever a person is endowed with the same enormosity of powers as the President of the United States, it is only natural that the choice of such a person should be made directly by the people. But what is the position of the President of the Indian Union? He is, if Prof. K. T. Shah were to examine the other provisions of the Constitution, only a figurehead. He is not in the same position as the President of the United States. If any functionary under our Indian Constitution is to be compared with the United States President, he is the Prime Minister, and not the President of the Union. So far as the Prime Minister is concerned, it is undoubtedly provided in the Constitution that he shall be elected on adult suffrage by the people. Now, having regard to the fact, to which I have referred, that the President has really no powers to execute, the last argument which one could advance in favour of the proposition that the President should be elected by adult suffrage seems to me to fall to the ground. I, therefore submit that, having regard to the size of the electorate, the paucity of administrative machinery necessary to manage elections on such a vast scale and that the President does not possess any of the executive or administrative powers which the President of the United States possesses, I submit that it is unnecessary to go into the question of adult suffrage and to provide for the election of the President on that basis.

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

Mr. Vice-President : I shall now put the amendments to vote, one by one. Amendment No. 1051 standing in the name of Damodar Swarup Seth.

The question is:

“That for articles 43 and 44 the following be substituted:—

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

The amendment was negatived.

Mr. Vice-President : Amendment No. 1053 standing in the name of Professor K. T. Shah.

The question is:

“That for article 43, the following be substituted:—

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

The amendment was negatived.

Mr. Vice-President : Amendment No. 1057 standing in the name of Mr. Karimuddin.
The question is:

“That for article 43, the following be substituted:—

“43. The President shall be elected on the basis of adult suffrage.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 1068 standing in the name of Mr. Mohammed Tahir.

The question is:

“That in clause (b) of article 43, the word “elected” be deleted.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 1064 standing in the name of Mr. Tajamul Husain.

The question is:

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

The amendment was adopted.

Mr. Vice-President : Amendment No. 1070 standing in the name of Dr. Ambedkar.

The question is:

“That to article 43 the following explanation be added:—

“Explanation.—In this and the next succeeding article, the expression “the legislature of a State” means, where the legislature is bicameral, the Lower House of the legislature.”

The amendment was adopted.

Mr. Vice-President : Amendment No. 23 of List I (Fourth Week) standing in the name of Mr. Mohammed Tahir.

The question is:

“That in amendment No. 1070 of the list of amendments in the proposed explanation, for the words “the Lower House of the Legislature” the words “the Legislative Assembly of the State” be substituted.”

The amendment was negatived.

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

The question is:

“That article 43, as amended stand part of the Constitution.”

The motion was adopted.

Article 43, as amended was added to the Constitution.

Article 15

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

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

It is quite clear to any one who has listened to the debate that has taken place last time that there are two sharp points of view. One point of view

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says that “due process of law” must be there in this article; otherwise the article is a nugatory one. The other point of view is that the existing phraseology is quite sufficient for the purpose. Let me explain what exactly “due process” involves.

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

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

trusted to determine which law is good and which law is bad. It is rather a case where a man has to sail between Charybdis and Scylla and I therefore would not say anything. I would leave it to the House to decide in any way it likes.

Mr. Vice-President: I shall now put the amendments one by one to vote. No. 523.

The question is:—

“That in article 15, for the words “No person shall be deprived of his life or personal liberty except according to procedure established by law” the words “No person shall be deprived of his life or liberty without due process of law” be substituted.”

The amendment was negatived.

Mr. Vice-President : The question is—

“That in article 15, for the words “except according to procedure established by law” the words “due process of law” be substituted.”

The amendment was negatived.

Mr. Vice-President : No. 528.

Shri S. V. Krishnamurthy Rao (Mysore): I do not press it.

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

Mr. Vice-President: No. 530.

The question is:—

“That in article 15, for the words “procedure established by law” the words “due process of law” be substituted.”

The amendment was negatived.

Mr. Vice-President : No. 526

The question is:—

“That in article 15 for the words “except according to procedure established by law” the words “save in accordance with law” be substituted.”

The amendment was negatived.

Mr. Vice-President : No. 527.

The question is:—

“That in article 15 for the words “except according to procedure established by law” the words “except in accordance with law” be substituted.”

The amendment was negatived.

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

The question is:—

That article 15 stand part of the Constitution.

The motion was adopted.

Article 15 was added to the Constitution.

Article 44

Mr. Vice-President : We shall now take up article 44.

The motion is:—

That article 44 form part of the Constitution.

I am going to call over the amendments one by one.

No. 1071 is of a negative character and is therefore disallowed.

(Amendments Nos. 1072 and 1073 were not moved.)

Amendment No. 1074 is disallowed as being formal.

Amendment No. 1075—Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar :

Sir, I move—

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

Before proceeding to give the reasons for the amendment I would like with your permission to go back for a minute to clause (2) of this article and explain the scheme as set out in sub-clauses (a) and (b) of that clause. Honourable Members will see that the President is to be elected by elected Members of the Lower House of each State Legislature and by elected Members of both Houses of Parliament—the two to form a single electoral college. Sub-clause (1) of article 44 says that as far as practicable there shall be uniformity in the scale of representation of the different States in the election of the President. It would have been possible to achieve this uniformity by the simple method of assigning each member of the electoral college one vote. But this is not possible because of the disparity between the members of the Legislature and their ratio to population that exists between the different classes of States. In the case of States in Part I of the First Schedule, article 149(3) fixes the scale of representation—one representative for every one lakh of population. In the case of States in Part III, no such scale is laid down. The scale may vary from State to State. In one State, it may be one representative for every 10,000 population. In another, it may be one for every 20,000. That being the position, the value of the votes cast in the election of the President by the members of the State Legislatures cannot be measured by the simple rule of assigning one vote one value. The problem, therefore, is how to bring about uniformity in the value of the votes cast by members who do not represent the same electoral unit. The formula adopted to obtain the value of a vote cast by an elected member of the Legislature of a State is to divide the population of that state by the total number of elected members of the Legislature of that State; and to divide the quotient so obtained by 1,000, and if the remainder is not less than 500 then add one to the dividend. This is what is stated in sub-clauses (b) and (c) of clause (2).

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

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

Mr. Vice-President : No. 1076 is disallowed as being formal.

Amendment No. 1077—Mr. Mahavir Tyagi.

Shri Mahavir Tyagi (United Provinces: General): Sir, I may be permitted to move 1078 instead of 1077.

Mr. Vice-President : No. 1077 will not be put to vote. I allow 1078 to be moved.

Shri Mahavir Tyagi : Sir, I beg to move—

“That for clause (3) of article 44, the following be substituted:—

(3) The election of the President shall be held by secret ballot and in accordance with the system of majority preferential voting by the single alternative vote.”

Sir, the system of majority preferential voting by the single alternative vote is the name of the method which has been envisaged in this article. Proportional representation by the single transferable vote is always as a rule used in such elections where the constituencies are plural and minorities are given the privilege of sending their representatives according to the proportion of the number amongst the electors. It is said that in Ireland the election of the President is held by single transferable vote. I submit that everything that is done else where should not be taken to be a gospel truth. From the very amendment the House will understand that while it elects only one man for one office, and there is only one office vacant which is going to be filled, the minorities cannot have any representation. It is proportional representation. How will they have a proportion in one man—that man belongs to one party. The minorities will have no proportion in that one President elected by proportional representation. Unless the constituency is plural the proportion does not come in. So it is neither proportional representation because he is a “representative”; generally speaking—in ordinary parlance—I do not know—one might be very critical and look into the dictionary—but generally speaking one representative is known as “representative”. If there are more than one man then they may be known as “representation”. One is not known as “representation”.

Pandit Lakshmi Kanta Maitra (West Bengal : General) : What is majority preferential system?

Shri Mahavir Tyagi : I am coming to that. A single constituency for election is neither proportional because the minority does not get any proportion in one seat, Nor is it representation because representation always signifies a number of persons together, and not one person. One representative is known as representative. Therefore it is neither proportional nor representation. Nor is it a transferable vote. Transferable vote means a vote which is transferred from one person to another in the manner in which it is described in the single transferable voting system. The balance of a candidate’s vote after his election, is transferred to another candidate. It is not a question of transferring the balance of votes here. There is only one candidate. The whole voting will be alternative so that if one candidate gets defeated and his name is eliminated, then the vote is altered as it is from the name of the defeated candidate; instead of the voter’s first choice, the vote goes to his second choice. So this system, although it is called proportional, is not, in fact, proportional. Neither is it representation, as I have just now explained Nor is it a “single vote”. As it is, every voter in the legislatures of the States will have about 99.8 or 99.7 votes. Here it is not a case of one man, one vote as is envisaged in the single transferable vote system. The total population of a State will first be divided by thousand, and the result will be further

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divided by the number of voters in the electoral college in the province, which means that the number of votes one member of the Assembly will cast may be about 100, never more than 100, it may be 99 point or so. I must also point out that in sub-clause (b) it is stated—

“If, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause (a) of this clause shall be further increased by one;”

Here, by some clerical error probably, they have forgotten to mention what is to happen to the balance if it is less than half. Unless you mention that less than half will not be taken care of, or less than half shall be disregarded, the authorities may not disregard it. Just as in sub-clause (c) you have stated that fractions exceeding one-half will be counted as one and other fractions disregarded, so also you should have said something in sub-clause (b). Otherwise, the exact wording of this sub-clause (b) will be adhered to and each member of the legislative assembly in the Provinces and States may have not only 99 point something or 98 point something votes, but the calculation can go on to 98.0032 and so on. So a further serious defect will arise in the working of the complicated system of single transferable vote. On an average there will be 3,300 representatives of the States legislatures; and each one of them will have not only one vote, he will have so many votes. How can we call it a single transferable vote? They will not be a uniform number; one member will have 98 point something votes and in some other States it may be 80 votes only. So the number of votes each member will possess and cast will vary from State to State.

It is also not mentioned here that these so many votes with a voter will be given only to one candidate. Sir, I would very much like to draw the attention of the honourable Dr. Ambedkar to the effect of the clause as it stands at present. Each member of a legislative assembly will get a number of votes which will vary from legislature to legislature. I am sorry the honourable Dr. Ambedkar is not attentive.

Mr. Vice-President : Dr. Ambedkar, Mr. Tyagi wants to invite your attention to some points.

Shri Mahavir Tyagi : I want to invite attention to one point. The number of members in the legislatures in the provinces and States will be approximately 3,300 and.....

Shri S. Nagappa : Sir, can the honourable Member address another honourable Member? He has to address the Chair.

Shri Mahavir Tyagi : I am addressing the Chair. I want the honourable Member to pay attention to.....

Mr. Vice-President : Mr. Nagappa will kindly take his seat.

Shri Mahavir Tyagi: According to the calculations envisaged here, there will be approximately 3,300 members in the legislatures of the provinces and States. The votes they will have will not be one each. Each one of them will have as many votes as can be obtained by dividing the population of the State by one thousand, and dividing the result again by the number of legislators in the State. This means that each member will have not one vote, but as many as 98 votes or 97 votes or 80 votes and so on. How can you call such a system as single transferable vote?

I want to guard against one more defect, of which no notice seems to have been taken. You have not said that all these votes will be cast to one candidate. Suppose I am a legislator in U.P. and I have 98.5 votes and there are four candidates for one seat. You have never said that all the votes

should be given by me to one candidate only. I may give 90 votes of mine to one candidate, 4 to another and 5 to a third and so on. I can thus distribute my votes to the candidates according to my choice. You have said that each elector will have about 98 votes, but you have not said that all of them will have to be cast to one candidate. That being so, how will your single transferable system stand? I would request you to look into this and please correct this clerical error. You have not said that all the votes will be given to one candidate cumulatively and that they cannot be distributed among so many candidates.

Secondly, the single transferable vote does not exist here, because nobody has a single vote, everybody has plural votes. The number of voters will be 3,300 in State legislatures and the total number of votes will be about 3,30,000. And then the same number of votes will be cast here in Parliament by 735 voters. Therefore, here every voter will have something like 460 votes. In Ireland the system of single transferable voting might suit because there each voter has one vote, but it will not suit us here because here each one does not have one vote, but so many, and the number of votes a legislator gets varies from province to province or State to State.

Now, I come to the proposal I have made. My proposal is—

“The election of the President shall be held by secret ballot and in accordance with the system of majority preferential voting by the single alternative vote.”

According to this system, votes can be transferred from one candidate to another and the candidate who gets the minimum number of votes will be eliminated from the contest, and his votes will be altered and counted in favour of the next higher candidate of his choice. And this process of elimination will proceed on till there remains only one candidate in the contest. He will be declared elected. I therefore submit that my phraseology is more suitable although the method will remain practically the same. Only there is a technical difficulty which I have pointed out.

Begum Aizaz Rasul (United Provinces : Muslim): Sir, I beg to move:

“That in clause (3) of article 44, the words “in accordance with the system of proportional representation” be omitted.

My arguments have more or less been covered by the speech of the previous speaker. The object with which I move this amendment is that the first condition of proportional representation is the existence of a multiple member constituency. If only one man is to be returned then the question of proportional representation does not arise and this point has been clearly made out by Mr. Tyagi. Therefore I do not want to take up the time of the House in repeating his arguments. It might have been understood that the single transferable vote would have been beneficial in this election, because it would have meant the elimination of candidates who got the least number of votes. I will give an example of proportional representation in a constituency which is a multi-member constituency. For instance, if there are 100 voters and 5 people have to be returned and party A gets 50 votes, B gets 25 and C gets 25, in ordinary election all the candidates returned will come from Party A. Whereas in proportional representation Party A will get 3, B will get 1 and C will get 1. The idea is that the proportion of the electorate is reflected in the number of persons elected. For this it is essential that there is more than one seat but when there is only one seat how can the proportion of the electorate be represented in that seat, because one seat cannot be portioned into 3 or 2? Therefore I believe that this system of proportional representation will certainly not be correct for the election of the President and the minority as such where it is able to send in its candidate in a multiple member constituency cannot do so in a constituency which can only return one member. Hence it is that I have moved this amendment.

(Amendment Nos. 1080, 1081 and 1082 were not moved.)

Mr. Naziruddin Ahmad (West Bengal : Muslim): Sir, I propose to move amendment No. 25 on List I (Fourth Week) in place of Amendment No. 1083, because this amendment is acceptable to the honourable Member Dr. Ambedkar.

I beg to move:

“That for amendment No. 1083 in the List of amendments the following be substituted

“That for the explanation to article 44, the following Explanation be substituted:—

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

This amendment really combines the purpose of amendments Nos. 1081 and 1083. Amendment No. 1081 tabled by Dr. Ambedkar wanted to get rid of the first part of the Explanation. Amendment No. 1083 which stood originally in my name really wanted to effect certain important verbal changes in the latter part of the Explanation and the amendment which I have moved combines the purposes of both these amendments.

With regard to the elimination of the first part of the Explanation, which corresponds to Dr. Ambedkar’s amendment, I need not say anything. I shall confine myself to that part of the amendment with which I am concerned. In fact the House will be pleased to note that article 44 deals with the election of the President. By article 43 of the members of the Houses of Parliament at the Centre and the elected members of the Legislatures of the States are sought to be empowered to vote at the presidential election. By sub-clause (a) to clause (2) of article 44 it is provided that every member of the State legislature shall have a certain number of votes and that would be dependent upon the population of the State. But it is provided in the Explanation as it stands in the text that this population should be taken from the ‘last preceding census’. I submit that the original Explanation may lead to an impasse, as for instance, when the election is going to be held the figures of the ‘last preceding census’ may not be available. For example if there is a census on the 1st January 1951, as it is normally expected to be, and if there is an election of the President in February or March 1951—within two or three months of the Census—the figures of ‘the last preceding census’ will not be available. It takes about a year to prepare and publish the census figures. Thus if we keep the phraseology of the Explanation as it is we shall be bound to assign votes to the members of the State legislature in proportion to the population as ascertained in the last preceding census, whereas the figures of the last preceding census would not be available for the purpose. The result will be that the election of the President cannot be held. In these circumstances I have suggested the amendment that we should take the population from the last preceding census ‘for which the relevant figures have been published’. By these words the impasse would be avoided. If election is held within a short time of the census and the figures of that census are not available, then this amended Explanation will allow the figures of the previous 1941 census to be relied upon. That would remove the impasse which otherwise could not be avoided as we will have definite figures to go upon. In these circumstances I submit that the amendment should be accepted.

Mr. Vice-President : The article is now open for general discussion.

Prof. K. T. Shah : Mr. Vice-President, Sir, I had tabled an amendment on this clause suggesting its entire deletion which obviously was out of order, and has, therefore, been ruled out. My object in submitting that

amendment however, was to point out that the whole article sets up a machinery, not only very complicated and likely to give rise to serious disputes as regards the actual number of votes which a State may be entitled to, but which will fail, I submit, in the original purpose for which proportional representation by single transferable vote was devised. Proportional representation by single transferable vote is intended, I submit, to reflect in the legislative body all the shades of political philosophy, all the different interests, all the different opinions that may be found in a country, provided they can muster a given figure, say, 50,000 or 100,000, or whatever may be supposed to be the figure, which is entitled to have its voice heard in the legislative or similar large bodies. Proportional representation, therefore, is not suited, I submit, where the election is of the executive head, and where, after all a single individual is to be elected. I agree that you can work it on a proportional basis by having several candidates, and the votes of the different candidates are transferred from one to another according to the order of preference. That, however, will bring you something to this effect, that your finally elected President was the chosen representative, in the first degree, of let us say one-third: that he was the chosen representative in the second degree about one-tenth, that he was the chosen representative in the third degree—supposing there are three candidates—of one twentieth. This is a minority representative not of a majority.

I have had some experience of Proportional representation in the University of Bombay, and I have known that preferences as low as nine, ten, twelve and fifteen have actually been counted. Do you wish your President to be elected by transfers so that the fifteenth choice of a group may eventually succeed and he would eventually be elected? He would not be the representative even of a majority in the first degree—he would be the representative of a majority by a number of transfers, so that in the first degree he may actually be the representative of a minority. This is undesirable in the interests of national solidarity.

A properly organised minority may secure a sufficient number of votes for the individual or the candidate to stay on, until by transfer, re-transfer and re-retransfer he finally secures an absolute majority. That majority will be a misleading and a highly ambiguous majority, in which the major portion of the country will not be reflected.

I further feel that the machinery necessary for transfer and retransfer of anybody who gets last on the roll, so to say, of the list of candidates above will be itself causing difficulties, compared to which the difficulties urged on a previous occasion by the mere force of numbers does not appear to me to be so great. The latter difficulty seems to me to be needlessly exaggerated—that 200 million voters voting will make the election impossible. The 200 million voters will not all be voting at one place and at one time. That is physically impossible. But 200 million voters scattered, let us say, in 20,000 centres and each centre voting its proportion of voters is not at all a difficult thing which would rise to the level of an impossibility. We can, therefore, rule out completely the question of actual popular representation in the choice of the head of the State as impossible. Nor is the administrative machinery in my mind so difficult to provide. If only you look back to the history of representative institutions in this country, at the Centre, or in the Provinces, from only about thirty or forty years ago you will find that the electorate has, at each change, jumped eight or ten or twenty times; and that those who had held that the mere size of the electorate would make it impossible to work it have proved false prophets.

Take the last rise in the electorate from a few hundred thousands rising, to about 35 millions, a rise of some 100 times. And if a suggestion like the one I had the honour to put before the House was accepted, you would raise it only be seven or eight times. That would not be an insurmountable difficulty.

[Prof. K. T. Shah]

In any case the difficulty created by the system of Proportional Representation, and the reflection that the President actually may not be the choice in the first degree of a majority, would undermine the very basis of respect and reverence that the Head of the State should command.

I suggest, therefore, that the system of Proportional representation, apart from the other difficulties that have been put before the House by those who have moved amendments, should itself convince the House that it is a very dangerous—not to say vicious—principle, and as such ought to be disregarded. By all means have it, if you like, in the composition of your Legislature.

By all means have it, if you like, in the composition of other similar bodies. But when you select the head of the State, or of any unit within the Union, you should avoid the principle of Proportional Representation, as it is a double-edged sword that may cut both ways. It may represent all shades of opinion; at the same time it may bring to the head of affairs a man who is a representative in the first degree, only of a minority.

On these grounds I support the amendment that the principle of proportionate representation be deleted and that the article be amended accordingly.

Shri A. V. Thakkar (United States of Kathiawar : Saurashtra). Mr. Vice-President, Sir, I do not propose to speak on the question of proportional representation but on another point regarding the 'last preceding census'. As is well known, since the census of 1941 was taken there have been very great changes in the population of the country, particularly in certain Provinces. I would refer to the Provinces of East Punjab and West Bengal. I would also refer to the small changes in the United Provinces and Bombay. There large numbers of Hindus and Sikhs and other population have come in and added largely to the general population in those four Provinces. At the same time a large number of Muslims have left these four Provinces and gone to Pakistan. Therefore the census of 1941 has been made thoroughly unrepresentative of the numbers of people residing in these four Provinces. I would suggest that the last preceding census, namely the one of 1941, has very little value, looking at it from a common sense point of view. Government may therefore arrange to have either a new census taken for the whole country specially for the purpose of this Constitution or necessary arrangements may be made early for taking the new census of these 4 Provinces. It may be suggested that the census of 1951 may be advanced by one year, say, it may be taken in the year 1950 instead of in 1951. Or a special census may be taken only for these four Provinces which I have mentioned and the number of seats representing the population of those Provinces be determined therefrom. Unless this is done it will be very unfair to certain communities. I will name only one instance.

I will give the instance of the Scheduled Castes of the Punjab. Large numbers of these people residing in West Punjab have come over to East Punjab and their number has inconsequence very much increased. The number of seats that the Scheduled Castes will get—specially reserved for them—will be much fewer, being nearly one-half of what they are entitled to get under the existing population of these castes. The same thing applies to the Scheduled Castes of West Bengal also, though to a smaller extent. In East Punjab the difficulty is a very serious one. Therefore this minority would not get half its due representation if the figures of the preceding census were adopted.

Shri Rohini Kumar Chaudhari (Assam : General): *[Mr. Vice-President, on this last day of the fourth session, but not at the very closing period, of this Constituent Assembly I desire to speak in Hindi in this House. I have come to entertain this desire as a result of the visit I made a few days ago to the Hindi Sahitya Sammelan which was meeting under the Presidentship of Seth Govind

* [] Translation of Hindustani speech.

Das. My friend Shri Prakasam made a speech in Hindi in the Sammelan, and it was such as to make him known for his courage in every part of the country. Indeed his speech was so very sweet and fine as to cause the spread of his fame as a man of courage in all parts of the world. It made me reflect that if Shri Prakasam, a resident of the Deccan, could make such a fine speech in Hindi there was no reason why I could not do so.....]

Mr. Vice-President : Are you speaking on article 44 or any other matter?

Shri Rohini Kumar Chaudhari : *[And I concluded that I could not fail in my attempt to speak in Hindi simply because I am an Assamese.] Sir, I have exhausted my Hindi.

Mr. Vice-President : You will kindly make better use of your time.

Shri Rohini Kumar Chaudhari : My honourable Friend Mr. Thakkar Bapa, in the course of his speech, referred to the United Provinces and the Punjab. Very naturally he has forgotten Assam—In Assam, in 1941 the war was almost at the door and the census was taken in a very haphazard manner. Therefore it is all the more necessary for the province of Assam to have this amendment, which will allow us to take into consideration the relevant figures which may be arrived at just before the election, adopted. If we can have a census which will show the figures of different provinces as they now stand for the purpose of preparing the electoral rolls it will be of very great advantage. Take the case of Assam. Even the actual numbers of people who have come in as refugees to Assam from East Bengal have not yet been taken. We surmise that some 3 or 4 lakhs of people have thus come to Assam already. Therefore it is necessary that these figures should be taken into consideration at the time of fixing the total number of members for the provinces. At present, the population of Assam minus the district of Sylhet has been taken; but many from Eastern Bengal and from Sylhet have come to Assam and their figures must be taken into consideration in fixing the total number of seats for the province. This should be done also for fixing the number of seats in the electorates. Therefore I commend to this House the acceptance of the suggestion that the latest census figures may be taken into consideration at the time of delimiting the constituencies.

Pandit Lakshmi Kanta Maitra : Mr. Vice-President, Sir, article 44 with which we are dealing now provides that as far as practicable there shall be uniformity in the scale of representation based on population of the different States at the time of the election of the President. It will thus be seen that this article, innocuous as it seems, constitutes the very backbone of the working of this Constitution. This article incidentally provides for the mechanism of representation in the different legislatures constituting the units of the Indian Union. The framers of this draft Constitution have come to the conclusion that they should try to bring about a workable uniformity in the representation that is going to be given to the different States. Now, in the Explanation of this article, it has been provided that 'population' in this article means, the population as ascertained at the last preceding census. To this, Sir, an amendment has been moved by my friend Mr. Naziruddin Ahmad which runs as follows: "The latest census of which the relevant figures have been published." These words are to be put in place of the words 'the last preceding census'. I understand that this amendment is going to be accepted by the honourable Chairman of the Drafting Committee which for all practical purposes means that it will be accepted by the House. Personally speaking I do not see how this amendment at all improves the position. In my opinion it makes the position worse. Sir, anybody with commonsense can understand what 'the preceding census' means, but few can appreciate what is meant by 'the latest census of which the relevant figures have been published'.

* [] Translation of Hindustani speech.

[Pandit Lakshmi Kanta Maitra]

Sir, nobody knows, after a census has taken place, when the figures thereof are going to be published. It might be one year, two years or three or four years. When an election takes place, it is quite possible, I should rather say probable—that at that particular point of time the preceding census will not give you the relevant figures because it takes a lot of time to publish them. I therefore do not see how this amendment is going to improve the position. Unless the executive government—for a census is after all the function of the executive government and is conducted under orders of the executive government—takes proper steps to see that the publication of figures follows immediately the enumeration, I believe that the safeguard that is sought to be provided by way of giving uniformity of representation is going to be in a very large measure defeated. I want this aspect to be carefully considered. It is not as simple as we think.

Let us see how it will operate to the prejudice of certain provinces, apart from the question that enumeration and publication will not follow simultaneously and there is bound to elapse an interval of a pretty long time. Sir, we had the last census in 1941. I wish that my honourable Friend, Mr. Rohini Kumar Chaudhary from Assam, who started speaking in Hindi but broke down and started again in English, could make his point clear by making a straight speech in English. He had a point to make which unfortunately he could not. There is a very important point involved in this. In provinces like Assam, undivided Bengal, undivided Punjab, Sind and the North-West Frontier Province, where there was a preponderant body of Muslim population, there was at the time of the last census of 1941, a competitive race for increasing the numbers, and in these provinces that I have mentioned, except in Assam—I am not quite sure of Assam even though in Assam also a Muslim League Government was in power—it is a fact that communities developed a pathological interest in enhancing their numbers so as to get the maximum benefit in the next succeeding Constitutional Reforms. I cannot talk of other provinces because the Muslim community there was in a minority and no Muslim League Government was in power. So far as the provinces, I have mentioned, are concerned, I can say from my personal knowledge and experience—and I think Members from these provinces will testify to the same fact—that this was the state of affairs. The Census Commissioner also made an observation to that effect. Therefore, if today the census figures of 1941 are going to be any guide for fixing the number of seats in the particular provinces I have mentioned, we will get a very misleading picture of the population of these provinces indeed. Mind you, in undivided Bengal for more than ten years before partition, the Hindu community had absolutely no voice, had nothing to do with the Government or any of its departments. In any case, they were not in any important position and the dice were heavily loaded against them. Hence we clamoured then and I do maintain even now that the figures of 1941 are in no way any index to the real population of these provinces. Now, after the 15th August 1947, some of these provinces were divided. Bengal was divided; West Bengal came within the Indian Union. East Punjab came into the Indian Union. Assam was divided and a portion was retained by Assam and a portion went to Pakistan. Sind and the Frontier in toto went over to Pakistan. Thereafter followed the terrible upheavals which everybody knows, as a result of which East Punjab came to be denuded of all Muslims and the West Punjab of all Hindus. The course of events compelled us to change the scale of representation for East Punjab and West Bengal in the present Constituent Assembly. Today the position is that you do not know if there is any Muslim soul in East Punjab or whether there is any Hindu soul in West Punjab. From Sind, I think more than seventy-five per cent. of the Hindus have already come over to the Indian Union. So far as Bengal is concerned, lakhs of people have already come over to West Bengal from East Bengal.

You might differ about the figures. Some may put it at twenty lakhs, others at thirty lakhs or at something more, but the most conservative estimate would be twenty lakhs from Eastern Pakistan due to this partition business, and the number is increasing day by day because the exodus still continues. By the time the general election under the new constitution is held, there will be a further influx and the number may swell to forty lakhs. The influx of people from East Pakistan began in 1941. When the Japanese entered the war against Great Britain, people left Eastern Bengal and came in very large numbers to West Bengal, in quest of jobs, war service, contracts and all the rest of it. Then came the disastrous Bengal famine of 1943 and again very large numbers of people moved from Eastern Pakistan to Calcutta where there was a greater chance of getting a morsel of food than in Eastern Bengal. Thus in 1943 the influx intensified—which brought in a much larger number of people than the ravages of the Japanese war. I therefore ask the Chairman of the Drafting Committee to take this fact carefully into consideration that the population of West Bengal today is not to be judged by the published and ascertained figures in the census of 1941, that it is considerably in excess of them and the excess is due to the facts I have mentioned. First, the influx commenced with the Japanese aggression. Secondly it was intensified by the famine of 1943. Thirdly it has gone beyond all proportions due to the friendly activities of our friends in Eastern Pakistan. This is continuing and will continue, I am sure, notwithstanding all that we do in the Inter-Dominion Conferences. Therefore, Sir, the net result would be that if West Bengal is to be allocated seats on the principle of uniformity based on population figures of 1941 census as envisaged in this article, it will occasion grave injustice to the province which will be hopelessly under-represented in the legislatures, both Central and provincial.

If you want to avoid this, if you want a just and fair deal to be given to the provinces of West Bengal, East Punjab, Bombay and to the City of Delhi, where vast numbers of refugees from Pakistan have come and settled and have swelled their normal population, as indicated in the census figures of 1941, the first thing that the Government should do is that, before they put into effect the Constitution in so far as it relates to the composition of legislatures, they should order an *ad hoc* census in these provinces. I understand that the usual census would be due in 1951 and I further understand that the Government of the day is not prepared to wait till then for General Election under the new Constitution. They want to expedite the election in accordance with the Constitution which will be adopted. If this decision of the Government to enforce the Constitution and to hold the General Election thereunder, before the year 1951 stands, it is of utmost importance that there should be a fresh census before that, and that census should be ordered here and now for the provinces of West Bengal, East Punjab, Delhi and Bombay. These are the Provinces which are greatly affected, and I hope this aspect of the question would engage the serious attention, in the first instance, of the Chairman of the Drafting Committee, who, I am sure, will realize the injustice that would otherwise be occasioned. And I trust that he would advise the Government, of which he forms an important limb, that this should be given effect to before the Constitution is put into operation.

Sir, I have on several occasions, here and elsewhere, brought this matter to the notice of the authorities. I have pleaded with them for mercy and for justice in this respect. I want the House to bear in mind the consequences that would otherwise follow. On the one hand, the Hindu community would be hopelessly under-represented in the legislatures and on the other, there is every likelihood of the Muslim community getting heavy excess of representation, if the census figures of 1941 are acted upon. This would be a grave political injustice and I caution the Government to take note of this.

[Pandit Lakshmi Kanta Maitra]

Sir, I do not know whether I can really support this amendment with all my heart. As it is, I do not believe that this amendment improves the situation in any way. Anyway the whole matter is left to the House, and if the House thinks that the amendment of Mr. Naziruddin Ahmad will improve matters, I have nothing to say. Personally, I am of opinion that it does not improve matters.

Mr. Vice-President: I have here slips from four eminent members of our House. So far as I have been able to judge, the question centres round a particular amendment and I also believe that sufficient light has been thrown upon it. If honourable Members insist on their right to speak, I am willing to ask them one by one. On the other hand, if they are good enough to accept my suggestion, then the business of the House can be expedited. I am in their hands.

Many Honourable Members: A short discussion may be allowed.

Maulana Hasrat Mohani (United Provinces : Muslim): I want only two minutes, Sir.

Mr. Vice-President: Please come to the mike.

Maulana Hasrat Mohani: Mr. Vice-President, I have come here today simply to point out a very serious defect in this article and in all other sections relating to the election system that we have adopted in India, and that is this. The general procedure adopted in India and elsewhere also is that if there be only one candidate and there is only one seat, that candidate is automatically elected. I think this is a very serious defect in our system of election. In Soviet Russia even if there is only one candidate, still the election is held, as there is always a chance that a person may manoeuvre to remove the names of other rival candidates and in this way the electorate may be in a position to oppose him by a majority vote. Then it will not be on the basis that there is one candidate or one seat. I may say that I have not proposed any amendment in this Constitution because from the very beginning, I hold that this whole thing is absurd. I do not accept its authority. I regard this Constituent Assembly as not competent and therefore, I have not moved any amendment. I simply make a suggestion that something should be added by the Honourable Dr. B. R. Ambedkar and his Committee to remove this defect and adopt the same course that has been adopted in Soviet Russia. There, even when there is only one candidate, the election is still held to find out if it is not possible that the majority may be opposed to him. Even supposing there is not a sufficient number to oppose the man, I think, we are not justified in electing him automatically and taking him a selected.

Mr. Naziruddin Ahmad: With your permission, Sir, can I speak a few words?

Mr. Vice-President: I cannot break a convention which has been established after very great difficulty. Prof. Shibban Lal Saksena.

Prof. Shibban Lal Saksena (United Provinces : General) : Mr. Vice-President, Sir, I want to draw the attention of the House to one fact, to which my honourable Friend Mr. Tyagi referred. Herein, we have provided for proportional representation for the election of the President. I think that there is some mistake in this clause. Proportional representations is possible by means of the single transferable vote, but here every member will have more votes than one and they will be calculated according to elaborate and complicated calculations and I do not think that proportional representation is possible in such a case. I feel that Mr. Tyagi has rightly pointed out that the only way to elect the President in the first case can be by elimination. There should be voting and the man who gets the minimum votes should be discarded.

Then among the remaining candidates, there should again be voting and the candidate with the minimum number of votes should be discarded. In this way among the remaining two candidates, the man who gets more should be elected. That is the only way in which one man can be elected with the majority of votes. Proportional representation is not a direct method especially when every single voter in the Central Parliament will have a larger number of votes attached to him than members of the Provincial Legislature. What will happen is that the voters of the Central Legislature will give their first preferences to somebody, and similarly voters of the Provincial Legislatures will give preference to some other person and the preferences, when they are carried over to other members, are very difficult to calculate, because their ways are different. I, therefore, think that the Drafting Committee should reconsider this matter and substitute the system which I have suggested, and in that way, we can be sure that the man who is elected will have a real majority of votes and not votes which are less than 50 per cent. That I think should be one change in the article.

About the census, Sir, I also feel that there has been a great change in the population figures during the last ten years, especially in the big cities. I know in Cawnpore, the population in 1941 was four lakhs; now it is about ten lakhs. I do not know what will be the number of seats allotted to it and similar big cities. As has been pointed out by my honourable Friend, in the provinces of Punjab and Bengal, there has been a large exodus. I also know that the refugees who have come from outside, about a crore, have been distributed to all the provinces. I therefore agree with the revered Thakkar Bapa that there should be a census before the election. I must also suggest one thing. We are prepared to follow the principle of adult suffrage in the elections. We can allot seats for the first term on the basis of the number of electors in the various communities. Out of a population of 33 crores, you will have fifteen crores of voters and the seats may be distributed according to the proportion of the voters in the various communities. I think that is a better method. Either we do away with proportional representation altogether: that is one method of getting over the difficulty; still there will be difficulty in giving seats to the various provinces. I think this is a general difficulty and something should be done to remove it.

The amendment given notice of by Mr. Naziruddin Ahmad will only improve matters, if there is a census before the election takes place. If that is the purpose, I think that is a proper amendment to be accepted.

I think this system of election of the President by the different States is a proper system, when we have respected the system of direct election. Personally, I would have preferred direct election in which every voter would have voted for the election of the President by a direct vote. Although the President has no powers, still he would have great prestige. In fact, our President will be the substitute for the King in England. If the King in England has got prestige far above the Prime Minister, I think our President should have that prestige. I think this is the only method by which you can have an election in which the voters in every province will take part. I think at least this section should be reviewed by the learned Doctor to see that the system of proportional representation is replaced by the other system that I have recommended.

Shri R. K. Sidhwa (C. P. & Barar: General): Mr. Vice-President, Sir, this article relates to two important points: one relating to the election of the President in accordance with the system of proportional representation by means of the single transferable vote, and the other about the census on the population figures on which the representation of the different States has to be fixed.

[Shri R. K. Sidhwa]

Now, I consider, Sir, that the single transferable vote system is one of the best systems that has been produced. It gives the voter first choice, second choice and third choice for the election of a candidate. But, there is one factor: the single transferable vote system would work satisfactorily when there are more than one seat. Here is a question of electing one President. Therefore, I feel that while the system is very good, it would create many difficulties and complications if we adopt the method of the single transferable vote of which we have got sufficient experience. I would have preferred the elimination system in the election of the President. That would also give the right of voting to every voter and the candidate who gets the largest number of votes will be elected. For example, if there are five candidates, the man who gets the lowest number of votes is eliminated from the list. Then, all the voters again vote among the four remaining candidates, and whosoever gets the lowest number is again eliminated. Again, the same voters vote between the remaining three. At the end, all the voters exercise their vote between the remaining two. That means, each voter exercises the right for every candidate. In the election of the President, I would personally prefer the elimination system which would be really beneficial and efficient in working. I feel that the single transferable vote system would work satisfactorily where there are more than one seat and where a small minority has also the right of being returned.

Coming to the census, Sir, this is a very important matter and I should think that the point advanced by my honourable Friend Thakkar Bapa should not be lost sight of. Many honourable members have spoken on this subject and we all know that, after the partition, the 1941 census figures in certain provinces will certainly not work satisfactorily. I will give you an illustration. In Sind, there were thirteen lakhs of people. Except two lakhs who are now there, who could not be evacuated for want of transport, there are eleven lakhs of Sindhis who are scattered over the various parts of the country. There are four lakhs of them in Bombay; about two and a half lakhs in the United Provinces. I may tell you that there are many of them in Ajmere and in the various other States. I may also tell you that forty five per cent of the population of Ajmere consists of Sindhis. In Rajputana States, Jaipur, Jodhpur, there are nearly two lakhs of them. How could we rely on the 1941 census figures? Again, the 1941 census figures were defective. On account of the war, actually, the behest was issued by the then Government that the census should be taken on a very moderate scale. If you refer to the 1931 and the previous census, you will find that particulars are recorded in respect of all columns so that it gives you an idea of what our population consisted of. In the 1941 census, half the number of columns have been done away with. That had a reaction on the number of the population in the various provinces. I therefore consider it a very suicidal policy if the 1941 census is to be taken into consideration, particularly for the four or five provinces where the refugees have migrated. I do not know the real meaning of Mr. Naziruddin's Amendment. The amendment says, "the latest census of which the relevant figures have been published". Assuming that the election is to take place in 1950, the latest figures would be those of the 1941 census. When it is said that Mr. Naziruddin's amendment is going to be accepted, I would like clarification on the point what is conveyed by the phrase, "latest census of which the relevant figures have been published." The latest figures are already there of the 1941 census. I feel that before the election takes place, there should be a census, particularly for the provinces to which the refugees have migrated. Otherwise, I think a great injustice would have been done to them if for no fault of theirs they should be denied the right of voting by taking into consideration the 1941 census figures. I consider, Sir, this is a very important matter.

Mr. Naziruddin Ahmad's amendment creates complications and that requires clarification.

Shri H. V. Kamath : (C. P. & Berar: General): Mr. Vice-President, I rise to reinforce the plea that has been made by our venerable colleague Thakkar Bapa and ably supported by our friend Pandit Lakshmi Kanta Maitra. It is common knowledge that the census of 1941 was taken under extraordinary circumstances. A World War of tremendous magnitude was on and hundreds of thousands of people were displaced from their homes and scattered not merely all over the country but all over the world. This was one fact which contributed to the incorrect enumeration of the last census of 1941. Since then we have had catastrophes and calamities in rapid succession; for four years thereafter that Warraged, and in the middle of the war we had a famine and then soon after the war, we had vivisection of the country. These calamities have led to the uprooting of vast masses of the population, the destruction of large numbers of people and certainly to movements of large numbers of people from one part of the country to another. If we want to be fair at the next election and provide proper and just representation to the people, it is very necessary that there should be a correct enumeration before the elections are held.

Mr. Naziruddin Ahmad : You may have a special census. How can you proceed without figures? My attention was directed to the figures—not the 1941 census.

Shri H. V. Kamath : I do not insist upon a regular census being held before the elections but we must have the figures, not merely for the purpose of this article, but as we all know the Constitution provides for and I think we adhere to the principle of reservation for certain communities like the Scheduled Castes and the Muslims. Unless we know and we have the figures of these communities for whom reservation will be made in the legislature, how can we allot the number of seats for these communities? It is hoped in some quarters that perhaps at no distant date people who have migrated from Pakistan to India and *vice versa* may be enabled to go back, to their countries. I think it is a vain hope and I do not think the *status quo ante* will be restored in the near future. I remember, Sir, in this connection last year when the Provincial constitution was discussed here in this House, my friend Mr. Khandekar raised this point about the Scheduled Castes. He said that in 1941 the enumeration of Harijans was defective and that it was an underestimate and therefore he wanted that before the next elections there should be a re-enumeration in the whole of India. In my opinion this applies not only to Harijans but to all the communities which have got to be properly represented in the Legislature under the New Constitution. Replying to Mr. Khandekar, Sardar Patel, if I remember aright, though he did not make any promise, but he assured Mr. Khandekar and others of his way of thinking that this point will be duly borne in mind and considered and that before the elections we would try our best to arrive at correct figures for the population of the various communities in this country. My friend Mr. Algu Rai Shastri the other day referred to the non-representation of Sindhi Hindus in this Assembly. It is a great anomaly that though, after the partition the East Punjab non-Muslims or Hindus and the West Bengal Hindus have been re-presented—their re-presentations have been increased after the movement of these people from West Punjab to East Punjab and from East Bengal to West Bengal,—Sind has gone by default. Sind is now represented neither in this House nor in the Pakistan Constituent Assembly. They have lost the one seat which was allotted to them, because the Hindus that have migrated from Sind to India are scattered. Some are in Bombay, some are in C.P. and I do not know where

[Shri H. V. Kamath]

the others are scattered, and therefore it is difficult for any Provincial Assembly to elect any Sindhi as from that province because under our representation system, there must be at least 10 lakhs of people for one representative in this Assembly. But whatever that may be, we ought to have the enumeration of all these masses of people who have migrated either from Sind or West Punjab or East Bengal or the Frontier to India, prior to the next elections. Unless we have a correct record of all these movements of very large number of peoples, almost unparalleled in our recent history, it will be unfair and unjust to the people of our country to hold elections before the correct enumeration is made, if not by the regular census, at least by an *ad hoc* census as my friend suggested.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I accept the amendment No. 25 of List 1 to amendment No. 1083 moved by my friend Mr. Naziruddin Ahmad. The other amendments I am sorry, I cannot accept. Now, Sir, in the course of the general debate, two questions have been raised. One is on the amendment of Mr. Naziruddin Ahmad. It has been pointed out by various speakers that it would be very wrong to base any election on the last census *viz.*, of 1941. I am sure there is a great deal of force in what has been said by the various speakers on this point. It is true that the 1941 census was in some areas, at any rate, a cooked census; a census was cooked by the local Government that was in existence, in favour of certain communities and operated against certain other communities. But apart from that, it is equally true that on account of the partition of India there has been a great change in the population and its communal composition in certain provinces of India, for instance, in the East Punjab, Bombay, West Bengal and to some extent in U. P. also. In view of the fact that the Constitution provides for representation to various communities in accordance with their ratio of population to the general population, it is necessary that not only the total population, of every particular province should be ascertained but that the proportion of the various communities to which we have guaranteed representation in accordance with their population should also be ascertained before the foundations of the Constitution are laid down in terms of election.

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

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

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

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

The Honourable Dr. B. R. Ambedkar : I cannot possibly give an assurance. But no government will overlook the vast changes that have taken place in the composition and the total population of the different provinces. We have guaranteed representation to a great population consisting of various minorities. There

has been a great deal of debate, as honourable Members know, over the question of weightage, and we know that weightage has been disallowed. If we now have the elections and allow them to take place and the seats to be assigned on the existing basis of population, when as a matter of fact, that basis has been lost by migrations, it might result in weightage to various communities, and no representation to certain communities. Obviously in order to avoid such a kind of thing and to see that no community has any weightage, undoubtedly, government will have to see that the census is a proper census.

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

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

The other question that was greatly agitated by Mr. Tyagi and by Begum Aizaz Rasul and certain other members related to the election of the President. Now, there are two ways of electing the President. One way is to elect him by what is called a bare majority of the House. If a man got 51 percent., he would be elected. That is one way of electing the President and that is the simple and straightforward one. Now, with regard to that, it may just happen that the majority party would be in a position to elect the President without the minority party having any voice in the election of the President without the minority party having any voice in the election of the President. Obviously no Member of the House would like the President to be elected by a bare majority or by a system of election in which the minorities had no part to play. That being so, the election of the President by a bare majority has to be eliminated, and we have to provide a system whereby the minorities will have some voice in the election of the President. The only method of giving the minorities a voice in the election of the President is, so to say, to have separate electorates and to provide that the President must not only have a majority but he must have a substantial number of votes from each minority. But that again, seems to me, to be a proposition which we cannot accept having regard to what we have laid down in the constitution, namely, that there shall be no separate electorates. The only other method, therefore, that remained was to have a system of election in which the minorities will have some hand and some play, and that is undoubtedly the system of proportional representation, which has been laid down in the Constitution.

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

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

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

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

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

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

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

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

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

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

Sir I have nothing further to say on this point.

Shri Mahavir Tyagi : Sir, I want to know.....

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

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

I put amendment No. 1075 to vote.

The question is:

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

The amendment was adopted.

Mr. Vice-President : No. 1078. The question is:

That for clause (3) of article 44, the following be substituted:

"(3). The election of the President shall be held by secret ballot and in accordance with the system of majority preferential voting by the single alternative vote."

That amendment was negatived.

Mr. Vice-President : No. 1079. The question is:

That in clause (3) of article 44, the words "in accordance with the system of proportional representation" be omitted.

That amendment was negatived.

Mr. Vice-President : The question is:

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

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

The amendment was adopted.

Mr. Vice-President : The question is:

"That article 44, as amended, stand part of the Constitution."

The motion was adopted.

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

Article 45

Mr. Vice-President : The honourable Member concerned may move amendment No. 1084. I would like honourable Members to be as brief as possible, in which case we would be able to get through the article before the House concludes its deliberations today. But that does not mean that I am asking anybody not to speak or to omit important points which they might like to make.

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

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

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

Mr. Mohd. Tahir: There is some difference...

Mr. Vice-President : I do not want to stand in the way of any honourable Member but there does not seem to be much in this amendment. However, the honourable Member may move it.

Mr. Mohd. Tahir: Sir, I beg to move:

That for the substantive part of article 45, the following be substituted:—

“The term of office of the President shall be five years from the date the President enters upon the Office.”

The point was raised now that between the article as it stands and the amendment there is no difference. First I will deal with the article as it stands. It says “The President shall hold office for a term of five years from the date on which he enters upon his office”. Supposing the election of the President takes place in 1950 after the general election and the constitution of the Parliament, if there is a casual vacancy in the office of the President in 1951 or 1952, in that case the President will be holding office for five years, that is he will have the office from 1951 to 1955, whereas the Parliament which was constituted in 1950 ends in 1954. My amendment means that the term of office of the President will be for five years, which means that if there is any casual vacancy or the election of the President takes place in 1950 and then there is a casual vacancy in 1951, the office of the President who will be elected in the casual vacancy will end in 1954, that is the term of five years when the Parliament ends. This is the difference which I have made out in my amendment of the article as it stands.

The question now arises as to why I have moved this amendment. The only point before me is that I want that the election of the President or the General election should not be influenced by any authority in power. The election must always be free and democratic. For instance, if a man is elected as President in the casual vacancy and he continues in office after the term of the Parliament ends at the Centre, it follows that the man who will remain in office as President will easily influence the General election as well as the election of the President. I want, Sir, that there should be no influence on the general election or on the election of the President in any case and therefore if the article as it stands means that the President who is elected in a casual vacancy will also hold office only for the remaining term of five years, that is to say his office will run according to the term of the Parliament, then of course I am not going to press my amendment. But in case it means that the term of Parliament will end and the office of the President will continue, then surely my amendment will stand and I will press it. With these words I move and I hope the position will be made clear.

(Amendment No. 1085 was not moved.)

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

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

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

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

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

That in clause (a) of the proviso to article 45, for the words "Chairman of the Council of States and the Speaker of the House of the People" the words "members of the Parliament" be substituted.

I will not be very long. I only wish to submit that if the President, who has been elected by the members of the Parliament, wants to vacate his office by resigning his post, in all fairness it is desirable that he should address his resignation to the members of the Parliament and not to anyone else. The resignation letter may be handed over to the office, namely to the Speaker or to the Chairman of the Council of States, but he must address his resignation to the members of Parliament who elected him as President and to none else.

Mr. Vice-President: The next amendment is No. 1090 standing in the name of Mr. B. M. Gupte with an amendment to it by himself (No. 26 in List I. Fourth Week).

Shri B. M. Gupte (Bombay: General) : I desire to move the amendment in a slightly modified form. The modification is only formal. It is with regard to the re-arrangement of the clause. I seek your permission and that of the honourable House to move it in the revised form.

Mr. Vice-President : Does the House give permission to Mr. Gupte to move his amendment in a slightly different form? Of course it is not possible at this hour to supply copies of this to all the Members. So Mr. Gupte may read the original and the altered forms of the amendment.

Honourable Members : Yes.

Shri B. M. Gupte: Sir, I beg to move:

That for amendment No. 1090 the following be substituted:—

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

Sir, the clause as it stands in the Draft Constitution provides that the resignation shall be addressed to two persons, namely, the Chairman of the Council of States and the Speaker of the House of the people. This is obviously inconvenient. It is therefore better that provision should be made that one person should receive the resignation and be responsible to set the machinery in motion to fill the vacancy. And that person is most properly the Vice-President. I have therefore provided that the Vice-President should receive the resignation. But at the same time it is desirable that the Speaker of the House of the people should also know it, and therefore by a subsequent clause I have provided that the Vice-President shall forthwith communicate this fact of resignation to the Speaker of the House of the people. I therefore hope the amendment will be acceptable to Dr. Ambedkar and to the House.

Mr. Vice-President : Does Mr. Kamath wish to move his amendment to this (No. 27 of List I. Fourth week)?

Shri H.V. Kamath : No. That has been covered by the amended amendment just now moved by Mr. Gupte.

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

That for the words "House of the People" in paragraph(a) of the proviso to article 45 and in all the other places where these words occur, the words "National Congress" be substituted.

Sir, in the future Constitution there will be two Houses at the Centre; the popular House would be called the House of the People and the Upper House will be called the Council of States. My proposal is that the popular House should be named after the National Congress which has been largely instrumental in obtaining freedom for this country.

Shri T. T. Krishnamachari : But actually the Congress still exists.

Mr. Naziruddin Ahmad : I want to perpetuate the name of the National Congress and want it to be assimilated in the Constitution itself.

Mr. Vice-President : I think you need not take up the time of the House.

Mr. Naziruddin Ahmad : I shall be very very brief. The struggle for independence has been going on for the last sixty years or more and it is to culminate in the session of the Congress in Jaipur under the presidency of Dr. Pattabhi Sitaramayya. I submit that the struggles and the services of the National Congress be recognized officially and the popular House be named after it.

I have the American precedent where the Legislature is called the Congress I have chosen, however, here to give that name to the popular House which really represents the will of the people. I believe it is an amendment based on sentimental grounds.

Maulana Hasrat Mohani : Are you a member of the Congress?

Shri S. Nagappa : He wants to be now.

Mr. Naziruddin Ahmad : It does not require one to be a member of the Congress to recognize or admit facts.

Mr. Vice-President : I beg of you to remember that we have only twenty minutes left.

Mr. Naziruddin Ahmad : Sir, I submit that on sentimental grounds alone the amendment should be accepted. In fact the culmination of today's independence represents the blood, toil, tears and the sweat of the Indian National Congress.

Mr. Vice-President : Does Mr. Kamath wish to move amendment No. 1092?

Shri H. V. Kamath : Here also I have been forestalled by Mr. Gupte and so it does not arise.

(Amendment Nos. 1093 and 1094 were not moved.)

Giani Gurmukh Musafir : (East Punjab : Sikh): *[Sir, My amendment is:

That in clause (b) of the proviso to article 45 after the words "violation of the constitution" the words "or of law" be inserted.

In relation to the President clause (b) says—"The President may for violation of the Constitution be removed from office by impeachment in the manner provided in article 50 of this Constitution".

After the words 'violation of the constitution' it is very necessary to add the words 'or of law'. The President should be impeached not only for the violation of the Constitution but he should be treated in the same manner for the violation of law too.]

Mr. Naziruddin Ahmad : I beg to move:

That in proviso (c) of article 45, after the word 'term' the words 'or resignation as the case may be' be inserted.

By this proviso, the President shall continue in office, notwithstanding the expiration of his normal term of his office, till his successor enters upon his office. I want to make the proviso to apply when he resigns before his normal term expires. This amendment is practically a drafting amendment worthy of consideration:

* [] Translation of Hindustani speech.

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

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

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

The question is:

“That for the substantive, part of article 45, the following be substituted:—

‘The term of office of the President shall be five years from the date the President enter upon the Office.’ ”

The amendment was negatived.

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

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

The amendment was adopted.

Mr. Vice-President : The question is—

That in clause (a) of the proviso to article 45, for the words ‘Chairman of the Council of States and the Speaker of the House of the People’ the words ‘members of the Parliament’ be substituted.

The amendment was negatived.

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

The question is:

That—

(1) Article 45 be re-numbered as clause (1) of that article.

(2) In clause (a) of the proviso to the said clause as so re-numbered for the words ‘Chairman of the Council of States and the Speaker of the House of the People’ the word ‘Vice-President’ be substituted.

(3) In the said article as re-numbered add the following clause:—

“(2) Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) of this article shall forthwith be communicated by him to the Speaker of the House of the People.”

The amendment was adopted.

Mr. Vice-President : The question is:

That for the words ‘House of the People’ in paragraph (a) of the proviso to article 45 and in all the other places where these words occur, the words “National Congress” be substituted.

The amendment was negatived.

Mr. Vice-President : The question is—

That in clause (b) of the proviso to article 45, after the words ‘violation of the Constitution’, the words ‘or of law’ be inserted.

The amendment was negatived.

Mr. Vice-President : The question is—

That in proviso (c) of article 45, after the word ‘term’ the words ‘or resignation as the case may be’ be inserted.

The amendment was negatived.

Mr. Vice-President : The question is—

That Article 45, as amended, stand part of the Constitution.

The motion was adopted.

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

Mr. Vice-President : It is now a quarter past one.

Shri T. T. Krishnamachari : The next article has only one small amendment.

Article 46

Mr. Vice-President : We shall now take up the next article. Article 46 is now before the House for its consideration.

As amendment No. 1097 is for the deletion of the article I disallow it.

The amendment of Professor Shibban Lal Saksena to this amendment falls as the main amendment has been ruled out.

Shri Krishna Chandra Sharma (United Province : General) : Sir, I move:

That in article 46 the words 'once', but 'only once' be deleted.

My amendment is a very simple one. It is to the effect that if a capable and efficient man is available, why should he not be allowed to serve a second term by seeking re-election and giving the benefit of his service to the nation as long as he is efficient and capable of service.

(Amendment No. 1099 was not moved).

Shri H.V. Kamath : Mr. Vice-President, I move:

"That in article 46, after the words 'only once' a comma and the words 'but he shall not be so eligible if he has been removed from office by impeachment in the manner provided in article 50' be added."

Even considering as the article as it stands, I think this amendment is to a certain extent necessary, purely for the purpose of clarifying the content of the article. But now, in view of the amendment moved by Shri Krishna Chandra Sharma, it is necessary for us to make this absolutely clear. It is likely that, in case Mr. Sharma's amendment is accepted, a person may contest the election again for the presidentship some years after his first or second term. It may be said against this amendment that the party nominating a candidate will certainly not nominate a person who has been removed from office by impeachment. But, considering that public memory is so short and even party memory is short, and there have been instances in various countries of the world where men who have been accused and impeached for corruption and other nefarious practices have been able to fill some office or other at a later date when people had forgotten the past such a provision becomes necessary. Such things have happened in many countries and it is not unlikely that such a thing may happen here also—God forbid—when party memory being short one cannot completely exclude the possibility of some person who has been guilty of corruption or other misdemeanour being put up to contest the election many years later. Therefore it is only to clarify the whole content of this article that a person who has been impeached cannot stand for election at any time say, 5, 10 or 20 years later that I have moved this amendment. It is necessary to lay down that even though people may forget or overlook the fact that a person had been impeached and removed from office, he should not have the right to contest the election for the Presidentship of the Indian Union.

Shri Mahavir Tyagi : Sir, the amendment that I am moving is a very simple one. I move—

"That the following proviso be added to article 46:—

'Provided that it will not apply in the case of a Vice-President who holds or who has held such office only temporarily in an acting capacity.'

The article deals with the admissibility of the President holding office a second time. My point is that a Vice-President who holds or who has held such office only temporarily in an acting capacity should not be debarred from standing for election to Presidentship twice. Of course, if "officiating" by the Vice-President is not considered as holding office or some such meaning is given, then my amendment will not be necessary. Either Dr. Ambedkar may accept my amendment or he may please clarify this point in his speech.

Mr. Vice-President : Even though this article is a very small and simple one, many honourable Members want to speak. I do not want to prevent

[Mr. Vice-President]

them from speaking but I would request them to withdraw their slips. If they insist on making their speeches before an already tired House, I am quite certain that what they may urge will not be taken into consideration. This is my view but I may be wrong.

Honourable Members : We will draw our request to speak.

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

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

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

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

"That in article 46 the words 'once, but only once' be deleted."

The amendment was adopted.

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

Shri H. V. Kamath : In view of Dr. Ambedkar's statement, I do not want to press it. The amendment was, by leave of the Assembly, withdrawn.

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

Shri Mahavir Tyagi: Sir, I withdraw it.

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

Mr. Vice-President : The question is:

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

The motion was adopted.

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

Mr. Vice-President : There has been a suggestion that the House should be adjourned for a few days for reasons which must be known to you all. Under the rules as they stand at present, the presiding officer does not have the power to adjourn the House for more than three days. Now I ask the House to permit me to adjourn the House for fourteen days, *i.e.*, till 10 A.M. on Monday the 27th December.

Shri T. T. Krishnamachari : Sir, a proper motion may be moved that the House may be adjourned for fourteen days.

Mr. Vice-President : I do not care how you bring it about. If what you suggest is the procedure, I am quite willing and a resolution may be brought forward in that form.

Shri Satyanarayan Sinha (Bihar: General): You can ask the House whether it is agreeable.

Mr. Vice-President : Is the House in favour of adjourning for fourteen days?

Honourable Members : Yes.

Mr. Vice-President : The House stands adjourned till 10 A.M. on Monday the 27th December.

The Assembly then adjourned till Ten of the Clock on Monday the 27th December 1948.