

Text of constitution 44th amendment bill

NEW DELHI, September 2.

THE following are the remaining parts of the text of the 44th constitution amendment bill tabled in the Lok Sabha yesterday (A partial text appeared in these columns yesterday.)

(Clause) 27. For Article 150 of the constitution, the following article shall be substituted namely:—

"150. The accounts of the Union and of the states shall be kept in such form as the President may, after consultation with the comptroller and auditor-general of India, prescribe."

(Clause) 28. In article 166 of the constitution, after clause (3), the following clause shall be inserted namely:—

"(4) No court or other authority shall be entitled to require the production of any rules made under clause (3) for the more convenient transaction of the business of the government of the state."

(Clause) 29. In article 170 of the constitution,

(A) for the explanation, the following explanation shall be substituted, namely:—

"Explanation.—in this clause the expression, "population", means the population as ascertained at the last preceding census of which the relevant figures have been published: provided that the reference in this explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census."

(B) in clause (3), after the proviso, the following provisos shall be inserted, namely:

CENSUS FIGURES

"provided further that such readjustment shall take effect from such date as the President may, by order, specify and until such readjustment takes effect, any election to the legislative assembly may be held on the basis of the territorial constituencies existing before such readjustment:

provided also that until the relevant figures for the first census taken after the year 2000 have been published, it shall not be necessary to readjust the total number of seats in the legislative assembly of each state and the division of such a state into territorial constituencies under this clause 3.

(Clause) 30. (1) In article 172 of the constitution, in clause (1), for the words "five years" in the two places where they occur, the words "six years" shall be substituted.

(2) The amendments made by sub-section (1) shall apply to every legislative assembly in existence on the date of coming into force of this section.

(Clause) 31. In article 189 of the constitution, clauses (3) and (4) shall be omitted.

(Clause) 32. In article 191 of the constitution, the following sub-clause shall be substituted, namely:—

"(A) if he holds any such office of profit under the government of India or the government of any state specified in the first schedule as is declared by the parliament by law to disqualify its holder."

(Clause) 33. For art. 192 of the constitution, the following article shall be substituted, namely:

192. (1) If any question arises —

(A) As to whether a member of a house of the legislature of a state has become subject to any of the disqualifications mentioned in clause (1) of article 191, or

(B) As to whether a person found guilty of a corrupt practice at an election to a house of the legislature of a state under any law made by Parliament shall be disqualified for being chosen as, and for being, a member of either house of Parliament or of a house of the legislature of a state, or as to the period for which he shall be so disqualified, or as to the removal of, or the reduction of the period of, such disqualification, the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall consult the election commission and the election commission may, for this purpose, make such inquiry as it thinks fit.

(Clause) 34. In art. 194 of the constitution, for clause (3), the following clause shall be constituted, namely:

(3) In other respects, the powers, privileges and immunities of a house of the legislature of a state, and of the members and the committees of a house of such legislature shall be such as may from time to time be evolved by such house.

Corrupt practices

(Clause) 35. In art. 208 of the constitution, the following article shall be substituted, namely:

208. (1) If any question arises —

(A) As to whether a member of a house of the legislature of a state has become subject to any of the disqualifications mentioned in clause (1) of article 191, or

(B) As to whether a person found guilty of a corrupt practice at an election to a house of the legislature of a state under any law made by Parliament shall be disqualified for being chosen as, and for being, a member of either house of Parliament or of a house of the legislature of a state, or as to the period for which he shall be so disqualified, or as to the removal of, or the reduction of the period of, such disqualification, the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall consult the election commission and the election commission may, for this purpose, make such inquiry as it thinks fit.

(Clause) 34. In art. 194 of the constitution, for clause (3), the following clause shall be constituted, namely:

(3) In other respects, the powers, privileges and immunities of a house of the legislature of a state, and of the members and the committees of a house of such legislature shall be such as may from time to time be evolved by such house.

Judicial office

(Clause) 35. In art. 208 of the constitution, the following article shall be substituted, namely:

the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such government or authority or the residence of such person is not within those territories.

Redress of injury

(3) No petition for the redress of any injury referred to in sub-clause (b) or sub-clause (c) of clause (1) shall be entertained if any other remedy for such redress is provided for by or under any other law for the time being in force.

(4) No interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceedings relating to, a petition under clause (1) unless

(A) copies of such a petition and of all documents in support of the plea for such an interim order are furnished to the party against whom such a petition is filed or proposed to be filed.

(B) opportunity is given to such a party to be heard in the matter.

(5) The high court may dispense with the requirements of sub-clause (A) and (B) of clause (4) and make an interim order as an exceptional measure if it is satisfied for reasons to be recorded in writing that it is necessary so to do for preventing any loss being caused to the petitioner which cannot be adequately compensated in money but any such interim order shall, if it is not vacated earlier, cease to have effect on the expiry of a period of 14 days from the date on which it is made unless the said requirements have been complied with before the expiry of that period and the high court has continued the operation of the interim order.

(6) Notwithstanding anything in clause (4) or clause (5), no interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceedings relating to, a petition under clause (1) where such order will have the effect of delaying any inquiry into a matter of public importance or any investigation or inquiry into an offence punishable with imprisonment or any action for the execution of any work or project of public utility, or the acquisition of any property for such execution, by the government or any corporation owned or controlled by the government.

(7) The power conferred on a high court by this article shall not be derogation of the power conferred on the supreme court by clause (2) of art. 32.

(Clause) 39. After art. 226 of the constitution, the following article shall be inserted, namely:

226A. Notwithstanding anything in art. 226, the high court shall not consider the constitutional validity of any Central law in any proceedings under that article.

Court jurisdiction

(Clause) 40. In art. 227 of the constitution,

(A) for clause (1), the following clause shall be substituted, namely:

(1) Every high court shall have superintendence over all courts subject to its appellate jurisdiction,

(B) After clause (4), the following clause shall be inserted, namely:

(5) Nothing in this article shall be construed as giving to a high court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision.

(Clause) 41. In art. 228 of the constitution, for the words "it shall withdraw the case and may—," the words, figures and letter "it shall withdraw the case and, subject to the provisions of art. 131 A, may—" shall be substituted.

(Clause) 42. After art. 228 of the constitution, the following article shall be inserted, namely:

228 A (1) No high court shall have jurisdiction to declare any Central law to be constitutionally invalid.

(2) Subject to the provisions of article 131 A, the high court may determine questions as the constitutional validity of state laws.

(3) The minimum number of judges who shall sit for the purpose of determining any question as to the constitutional validity of any state law shall be five:

Provided that where the high court consists of less than five judges, all the judges of the high court may sit and determine such question.

(4) A state law shall not be declared to be constitutionally invalid by the high court unless—

(A) Where the high court consists of five judges or more, not less than two-thirds of the judges sitting for the purpose of determining the validity of such law, hold it to be constitutionally invalid, and

(B) Where the high court consists of less than five judges, all the judges of the high court hold it to be constitutionally invalid.

(5) The provisions of this article shall have effect notwithstanding anything contained in this part.

Explanation.—in computing the number of judges of a high court for the purposes of this article, a judge who is disqualified by reason of personal or pecuniary bias shall be excluded.

(Clause) 43. After article 257 of the constitution the following article shall be inserted, namely:

"257 A (1). The government of India may deploy any armed force of the Union or any other force subject to the control of the Union for dealing with any grave situation of law and order in any state.

(2) Any armed force or other force or any contingent or unit thereof deployed under clause (1) in any state shall act in accordance with such directions as the government of India may issue and shall not, save as otherwise provided in such directions, be subject to the superintendence or control of the state government or any officer or authority subordinate to the state government.

(3) Parliament may, by law, specify the powers, functions, privileges and liabilities of the members of any force or any contingent or unit thereof of deployed under clause (1) during the period of such deployment."

(Clause) 44. In article 311 of the constitution, in clause (2)—

(A) The words "and where it is proposed, after such inquiry, to impose on him any such penalty until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry" shall be omitted;

(B) For the words "provided that this clause shall not apply", the following shall be substituted, namely:—

"Provided that where it is proposed, after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making a representation on the penalty proposed:

Provided further that this clause shall not apply—"

(Clause) 45. In article 312 of the constitution,—

(A) In clause (1)—

(I) For the word and figures "Part XI", the words and figures "chapter

vi of part VI or part XI" shall be substituted;

(II) After the words "All-India services", the brackets and words "including an all-India judicial service" shall be inserted;

(B) After clause (2) the following clauses shall be inserted, namely:—

"(3) The all-India judicial service referred to in clause (I) shall not include any post inferior to that of a district judge as defined in article 236.

(4) The law providing for the creation of the all-India judicial service aforesaid may contain such provisions for the amendment of chapter VI of part VI as may be necessary for giving effect to the provisions of that law and no such law shall be deemed to be an amendment of this constitution for the purposes of article 368."

Tribunals

(Clause) 46. After part XIV of the constitution, the following part shall be inserted, namely:

Part XIVA.
 Tribunals.

323 A (1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any state or of any local or other authority within the territory of India or under the control of the government of India or of any corporation owned or controlled by the government.

(2) A law made under clause (1) may—

(A) Provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each state or for two or more states,

(B) Specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals,

(C) Provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals,

(D) Exclude the jurisdiction of all courts, except the jurisdiction of the supreme court under art. 136, with respect to the disputes of complaints referred to in clause (1),

(E) Provide for the transfer to each such administrative tribunal of any cases pending before any court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment,

(F) Repeal or amend any other order made by the President under clause (3) of art. 37-D,

(G) Contain such supplemental, incidental and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

(3) The provisions of this article shall have effect notwithstanding anything in any other provision of this constitution or in any other law for the time being in force.

323B (1) The appropriate legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters specified in clause (2) with respect to which such legislature has power to make laws.

(2) The matters referred to in clause (1) are the following, namely:

(A) Levy, assessment, collection and enforcement of any tax,

(B) Foreign exchange, import and export across customs frontiers,

(C) Industrial and labour disputes,

(D) Land reforms by way of acquisition by the state of any estate as defined in article 31A or of any rights therein or the extinguishment or modification of any such rights or by way of ceiling on agricultural land or in any other way,

(E) Elections to either house of Parliament or the house or either house of the legislature of a state, but excluding the matters referred to in art. 329 and art. 329A.

(F) Production, procurement, supply and distribution of food stuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods for the purpose of this article and control of prices of such goods.

(H) Offences against laws with respect to any of the matters specified in sub-clauses (A) to (G) and fees in respect of any of those matters.

(I) Any matter incidental to any of the matters specified in sub-clauses (A) to (H).

(3) A law made under clause (1) may—

(A) Provide for the establishment of a hierarchy of tribunals.

(B) Specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of such tribunals.

(C) Provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals.

(D) Exclude the jurisdiction of all courts except the jurisdiction of the supreme court under art. 136 with respect to all or any of the matters falling within the jurisdiction of the said tribunals.

(E) Provide for the transfer to any such tribunal of any cases pending before any court or any other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunals if the causes of action on which such suits or proceedings are based had arisen after such establishment.

(F) Contain such supplemental, incidental and consequential provisions (including provisions as to fees) as the appropriate legislature may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders by, such tribunals.

(4) The provisions of this article shall have effect notwithstanding anything in any other provisions of this constitution or in any other law for the time being in force.

Explanation.—In this article "appropriate legislature" in relation to any matter means parliament or, as the case may be, a state legislature competent to make laws with respect to such matter in accordance with the provisions of part XI.

Clause 47. In article 330 of the constitution the following explanation shall be inserted at the end, namely:—

Explanation.—In this article and in article 332 the expression "population" means the population as ascertained in the last preceding census of which the relevant figures have been published:

Provided that the reference in this explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken

(Continued on Page 5)

Will of the people should prevail

(Continued from Page 5)

in the constitution are basically sound and the path for progress does not lie in denigrating any of these institutions. However, there could be no denial that these institutions have been subjected to considerable stress and strain and that vested interests have been trying to promote their selfish ends to the great detriment of public good.

It is, therefore, proposed to amend the constitution to spell out expressly the high ideals of socialism, secularism and the integrity of the nation, to make the directive principles more comprehensive and give them precedence over these fundamental rights which have been allowed to be relied upon to frustrate socio-economic reforms for implementing the directive principles. It is also proposed to specify the fundamental duties of the citizens and make special provisions for dealing with anti-national activities, whether by individuals or associations.

Parliament and the state legislatures embody the will of the people and the essence of democracy is that the will of the people should prevail. Even though art. 368 of the constitution is clear and categorical with regard to the all-inclusive nature of the amending power, it is considered necessary to put the matter beyond doubt. It is proposed to strengthen the presumption in favour of the constitutionality of legislation enacted by Parliament and state legislatures by providing for a requirement as to the minimum number of judges for determining questions as to the constitutionality of laws and for a special majority of not less than two-thirds for declaring any law to be constitutionally invalid. It is also proposed to take away the jurisdiction of high courts with regard to determination of constitutional validity of the same Central law in different high courts and the consequent possibility of the Central law being valid in one state and invalid in another state.

To reduce the mounting arrears in high courts and to secure the speedy disposal of service matters, revenue matters and certain other matters of special importance in the context of the socio-economic development and progress, it is considered expedient to provide for administrative and other tribunals for dealing with such matters while preserving the jurisdiction of the supreme court in regard to such matters under art. 136 of the constitution. It is also necessary to make certain modifications in the writ jurisdiction of the high courts under art. 226.

It is proposed to avail of the present opportunity to make certain other amendments which have become necessary in the light of the working of the constitution.

The various amendments proposed in the bill have been explained in the notes on clauses.

The bill seeks to achieve the above objects.

New Delhi 28th August, 1976.

H. R. GOKHALE

Concepts

Notes on clauses:

Clause 2. — The concepts of secularism, socialism and integrity of the nation are implicit in the constitution. These have been clearly spelt out in the amendments to the preamble.

Clause 4 — Article 31C, as presently worded, saves only laws giving effect to the directive principles specified in clause (b) and clause (c) of article 39 from attack on the ground of infringement of fundamental rights contained in articles 14, 19 and 31. The amendment seeks to widen the scope of the article so as to cover all the directive principles enumerated in Part IV.

Clause 5. — This amendment provides for the making of a parliamentary law to prevent or prohibit anti-national activities and to prevent or prohibit the formation of anti-national associations. The expressions, "anti-national activities" and "anti-national associations,"

have been defined in detail. The law made by virtue of this amendment shall not be deemed to be void on the ground that it takes away or abridges any of the fundamental rights conferred by articles 14, 19 and 31.

Clause 6. — This clause seeks to insert a new article 32A to provide that the supreme court shall have no jurisdiction to decide the constitutional validity of a state law in any proceedings under article 32 unless the validity of a Central law is also in issue in such proceedings. The high court will have no jurisdiction in such cases.

Clause 7 to 10 — Art. 39 is being amended to emphasise the constructive role of the state with regard to children.

New directives are being added in part IV to provide for — (1) free legal aid to economically backward classes; (2) participation of workers in the management of organisations engaged in any industry; and (3) protection and improvement of environment and safeguarding of forests and wild life.

Clause 11. — The constitution does not contain any provisions specifying the fundamental duties of the citizens. New part IV-A proposed in this clause enumerates these fundamental duties.

Clause 13. — The President acts on the advice of the council of ministers. It is being made explicit by this amendment that he shall be bound by such advice.

Govt. business

Clauses 14 and 28 — Art. 77(3) provides for the framing of rules for the convenient transaction of government business. These rules are treated by the government as confidential. However, as courts have been found to summon these rules for production, it is considered that this should be prevented. A new clause is, therefore, being added to provide that no court or authority shall compel their production. A similar provision is being made in article 166.

Clauses 12, 15, 16, 29 and 47 — In the context of the intensification of the family planning programmes of the government, it is considered that not only the allocation of seats in the house of the people to the states and the total number of seats in legislative assemblies of the states but also the extent of parliamentary and assembly constituencies and the reservation of seats for scheduled castes and scheduled tribes on the basis of the 1971 census, should be frozen till the year 2001. It is accordingly proposed to amend the relevant articles, namely art. 81 and 82 relating to the Lok Sabha, Art. 170 relating to the legislative assemblies of states, art. 55 relating to the manner of election of the President and art. 330 and 332 relating to the reservation of seats for scheduled castes and tribes in the Lok Sabha and the legislative assemblies of states. Provision is also being made to the effect that whenever, after a census, delimitation is undertaken, such delimitation is to take effect from the date to be specified by the President.

Clauses 17, 30 and 56 — It is proposed to change the duration of the Lok Sabha and the state legislative assemblies from five to six years. A consequential amendment is made in art. 371F(C) relating to Sikkim's legislative assembly.

Clauses 18, 22, 31 and 35 — presently under art. 100, the quorum for constituting a meeting of either house of Parliament is one-tenth of the total number of members. This provision can only be altered by a parliamentary law. The relevant provisions are proposed to be omitted from art. 100 and power is being taken to do it by means of rules under art. 118. Similar provisions are being made in relation to the state legislatures by amending art. 189 and 208.

Clauses 19 and 22 — Sub-clause (A) of clause (1) of art. 102 pro-

vides that a person shall be disqualified for being chosen as, and for being, a member of either house of Parliament if he holds an office of profit under the government of India or the government of any state, other than an office declared by Parliament by law not to disqualify its holder. The existing position has led to a great deal of uncertainty. The sub-clause is sought to be amended to provide that a person shall be so disqualified if he holds any such office of profit under the government of India or the government of any state as is declared by Parliament by law to disqualify its holder.

A similar provision is being made in article 191(1) (A) relating to state legislatures but the power to specify the offices will vest in parliament instead of in the state legislature.

Clauses 20 and 23 — The amendment proposed in clause 20 enlarges the scope of article 103. The question as to whether a member has become subject to any disqualification mentioned in clause (1) of article 102 as also the question whether a person is disqualified for being chosen as a member of either house of parliament, etc., on the ground of being found guilty of a corrupt practice, including the question as to the period of disqualification or as to the removal or the reduction of the period of such disqualification, shall be decided by the President after consulting the election commission which is empowered to hold an inquiry in this behalf. It is proposed to amend article 192 on similar lines.

Clauses 21 and 34 — This clause seeks to amend clause (3) of article 105 which provides that the powers, privileges and immunities of each house of parliament and of its members and committees thereof shall be those of the House of Commons or of its members and committees until they are defined by a parliamentary law. The amendment proposed is that the powers, privileges and immunities aforesaid of either house of parliament and of the members and the committees thereof shall be evolved by such house from time to time. A similar modification is being made in clause (3) of article 194 which relates to state legislatures.

Laws' validity

Clauses 23, 24 and 25 — Presently the constitutional validity of a Central law can be questioned either before the supreme court or the high court. This scheme is being altered as it is felt that, if a number of high courts give differing judgments as regards the validity of a Central law, the implementation of the Central law will become difficult. It is, therefore, proposed to invest the supreme court with exclusive jurisdiction as regards determination of the constitutional validity of central laws. Where a case involves constitutional validity of both a central and a state law, the supreme court alone will have jurisdiction to determine the constitutional validity of such laws.

Where cases involving the same or substantially the same questions of law of general importance are pending before the supreme court and one or more high courts or before two or more high courts the attorney-general can move the supreme court to withdraw the cases pending before the high court or high courts to itself and dispose of the same. Further, the supreme court is being empowered to transfer cases from one high court to another high court if it is expedient for the ends of justice so to do.

It is also being provided that the minimum number of judges of the supreme court who shall sit for determining any question as to the constitutional validity of a Central law or of a Central and a state law shall be not less than seven and that a Central or state law shall not be declared to be constitutionally invalid unless not less than two-thirds of the judges hearing the case hold the same to be constitutionally invalid.

Clause 26 — This amendment

makes some consequential changes in article 145, following the insertion of new articles 131A, 139A and 144A.

Clause 27 — At present the comptroller and auditor-general has the power to prescribe the form in which the accounts of the Union and of the states shall be maintained. Consequent on the decision of the government to separate accounts from audit, this power is being given to the President to be exercised after consultation with the comptroller by amending article 150.

Clause 36 — This amendment relates to the qualifications to be fulfilled by a person for appointment as a high court judge. Sub-clause (B) of clause (2) of article 217 is being amended to provide that a distinguished jurist is also qualified for appointment as a high court judge. This amendment also provides that hereafter the period spent by a person, after he became an advocate, as a member of a tribunal or as the incumbent of any post under the Union or a state, requiring special knowledge in law, shall be taken into account for the purpose of computing the period during which such a person has been an advocate.

Clause 37 — This is a consequential amendment of article 225 following the insertion of new article 323B which provides for the exclusion of the jurisdiction of the high courts and the supreme court (except the jurisdiction under article 136) and for the setting up of tribunals in respect of certain specified matters including matters concerning the revenue.

Clauses 38 and 58 — Clause 38 seeks to amend article 226 to a significant extent. While the high courts continue to enjoy their power to enforce fundamental rights, they cannot hereafter exercise jurisdiction in every case where there is an invasion of a legal right which so far they have been doing by virtue of the jurisdiction conferred by the expression "for any other purpose" which is being deleted now.

Instead, the high courts are being vested with a restricted jurisdiction. They can exercise jurisdiction in (A) cases where there is a contravention of a statutory provision causing substantial injury to the petitioner, and (B) cases where there is an illegality resulting in substantial failure of justice. In either case the petitioner has to satisfy the court that he has no other remedy.

Interim orders

A provision is being made under clause 38 that the high courts shall not issue an interim order ordinarily except upon notice to the other side and after giving the other side an opportunity to be heard. An exception is made in cases where the loss or damage to the petitioner cannot be compensated in money. Notwithstanding this exception the high courts shall have no power to grant an interim order in any case where the effect of such order is to delay any inquiry into a matter of public importance or any investigation or inquiry into an offence punishable with imprisonment or any action for the execution of any work-project of public utility, etc.

A provision is also being made in clause 58 to cover petitions pending in the high courts.

Clause 39 and 42 — These amendments seek to exclude from the jurisdiction of high courts questions as to the constitutional validity of Central laws and provide for the minimum number of judges of a high court who shall sit for determining any questions as to the constitutional validity of a state law.

The minimum number is fixed at five but, where a high court consists of less than five judges, all the judges of the high court sitting together can hear such questions. Any judge disqualified by reason of pecuniary or personal bias has to be excluded in computing the number of judges of a high court. Where the number of judges hearing

(Continued on Page 7)

Central force to keep law & order in states

(Continued from Page 6)

a question as to the constitutional validity is not less than five, the decision as to constitutional invalidity shall be by a majority of not less than two-thirds and, where the number of judges is less than five, the law in issue cannot be declared to be constitutionally invalid unless all the judges hold it to be constitutionally invalid.

Clause 40—This clause seeks to amend article 227 to omit the reference to tribunals occurring in clause (1) of the article and make it clear that nothing in that article shall be construed as giving to a high court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision.

Clause 41—This amendment is consequential to the insertion of new article 131A.

Clause 43—By this amendment a new article 257A is inserted to empower the Union to send any armed force or other force of the Union for dealing with any grave situation of law and order in any state. Such force shall act in accordance with the directions of the Central government and shall not be subject to the control of the state government. Provision is also being made to empower parliament to define the powers, functions and the liabilities of the members of such a force.

Clause 44—This clause seeks to amend article 311(2) denying the government servant the opportunity to make a representation at the second stage of the inquiry against the penalty proposed to be imposed on him.

Clause 45—This clause seeks to amend article 312 of the constitution relating to all-India services to provide for the creation of an all-India judicial service by a parliamentary law. Such service shall not include any post inferior to that of a district judge.

Clause 46—This clause seeks to insert a new part XIVA which consists of articles 323 A and 323 B. The former provides for the setting up of administrative tribunals by a parliamentary law for determining disputes relating to the recruitment and conditions of service of Union Government servants and servants of the state, including the employees of any local or other authority within the territory of India or under the control of the government of India or of a corporation owned or controlled by the government. Such law will provide for the constitution of a tribunal for the Union and for a separate tribunal for each state or for two or more states and define the jurisdiction and powers of such tribunals.

New article 323-B provides for the creation of tribunals for the determination of disputes, complaints and offences respecting the various matters specified therein.

Annexure

Clause 48, 49, 52 and 53—At present a proclamation of emergency cannot be made in respect of a part of the country. The amendments proposed in these clauses are for enabling the President to make a proclamation of emergency in respect of a part of the country or, as the case may be, to restrict a proclamation of emergency made in respect of the country as a whole to a part of the country.

Clause 50 and 51—Under the existing article 356 a proclamation approved by parliament ceases to be in operation after a period of six months unless revoked earlier and can be renewed for a period of six months at a time but in no case beyond a total period of three years. The period of six months is now being enlarged to one year.

Clause (2) of article 357 is being substituted by a new clause to the effect that any law made by parliament or the president or any other authority in exercise of the powers of the state legislature under article 356 shall continue in force until altered, repealed or amended by the competent legislature or other authority.

Clause 54—By this amendment the expressions "Central law" and "state law" are being defined. This has become necessary because of the division of jurisdiction between the supreme court and the high courts as regards the determination of the constitutional validity of Central and state laws.

Clause 55—This clause seeks to amend article 368 to clarify the true scope of that article.

Clause 57—The amendments made by this clause seek either to amend the existing entries in the lists of the seventh schedule or to transpose certain entries or subjects in certain entries from one list to another. The entries or subjects which have been transposed from list I to list II are:

(1) Administration of justice, constitution and organisation of all courts except the supreme court and the high courts; (2) education; (3) weights and measures; (4) forests, and (5) protection of wild animals and birds.

It is also proposed that taxes on advertisements broadcast by radio or television should be excluded from the purview of entry 55 of the state list.

Clause 59—This clause provides for the removal of difficulties.

Extracts from the constitution of India:

We, the people of India, having solemnly resolved to constitute India into a sovereign democratic republic and to secure to all its citizens:

Justice, social, economic and political,

Liberty of thought, expression, belief, faith and worship,

Equality of status and of opportunity and to promote among them all fraternity assuring the dignity of the individual and the unity of the nation.

In our constituent assembly this twenty-sixth day of November, 1949, do hereby adopt, enact and give to ourselves this constitution.

31C. Notwithstanding anything contained in article 13, no law giving effect to the policy of the state towards securing the principles specified in clause (B) or clause (C) of article 39 shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31, and no law containing a declaration that it is for giving effect to such a policy shall be called in question in any court on the ground that it does not give effect to such a policy.

Provided that, where such law is made by the legislature of a state, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

39. The state shall, in particular, direct its policy towards securing— (F) That childhood and youth are protected against exploitation and against moral and material abandonment.

55. (1) As far as practicable there shall be uniformity in the scale of representation of the different states at the election of the President.

(2) For the purpose of securing such uniformity among the states "inter-se", as well as party between the states as a whole and the Union, the number of votes which each elected member of parliament and of the legislative assembly of each state is entitled to cast at such election shall

be determined in the following manner:—

(A) Every elected member of the legislative assembly of a state shall have as many votes as there are multiples of thousand in the quotient obtained by dividing the population of the state by the total number of the elected members of the assembly.

(B) 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) shall be further increased by one.

(C) Each elected member of either house of parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned of the members of the legislative assemblies of states under sub-clauses (A) and (B) by the total number of the elected members of both houses of parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.

(3) The election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

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.

74. (1) There shall be a council of ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions.

81. (1) (3) In this article, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

Seats allocation

82. Upon the completion of each census, the allocation of seats in the house of the people to the states and the division of each state into territorial constituencies shall be readjusted by such authority and in such manner as parliament may by law determine.

Provided that such readjustment shall not affect representation in the house of the people until the dissolution of the then existing house.

83. (1) (2) The house of the people, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the house.

Provided that the said period may, while a proclamation of emergency is in operation, be extended by parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the proclamation has ceased to operate.

100. (1) (3) Until parliament by law otherwise provides, the quorum to constitute a meeting of either house of parliament shall be one-fourth of the total number of members of the house.

(4) If at any time during a meeting of a house there is no quorum, it shall be the duty of the chairman or speaker, or a person, acting as such, either to adjourn the house or to suspend the meeting until there is a quorum.

102. (1) A person shall be disqualified for being chosen as, and for being, a member of either house of parliament:—

(a) If he holds any office of profit under the government of India or the government of any state, other than an office declared by parliament by law not to disqualify its holder.

103. (1) If any question arises as to whether a member of either house of parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall obtain the opinion of the election commission and shall act according to such opinion.

105. (1) (3) In other respects, the powers, privileges and immunities of each house of parliament, and of the members and the committees of each house, shall be such as may from time to time be defined by parliament by law, and, until so defined, shall be those of the House of Commons of the parliament of the United Kingdom, and of its members and committees, at the commencement of this constitution.

118. (1) Each house of parliament may make rules for regulating, subject to the provisions of this constitution, its procedure and the conduct of its business.

No. of judges

145. (1) Subject to the provisions of any law made by parliament, the supreme court may from time to time with the approval of the President, make rules for regulating generally the practice and procedure of the court including—

(2) Subject to the provisions of clause (3), rules made under this article may fix the minimum number of judges who are to sit for any purpose and may provide for the powers of single judges and division courts.

The minimum number of judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this constitution or for the purpose of hearing any reference under article 143 shall be five.

Provided that, where the court hearing an appeal under any of the provisions of this chapter other than article 132 consists of less than five judges and in the course of the hearing of the appeal the court is satisfied that the appeal involves a substantial question of law as to the interpretation of this constitution the determination of which is necessary for the disposal of the appeal, such court shall refer the question for opinion to a court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.

150. The accounts of the Union and of the state shall be kept in such form as the comptroller and auditor-general of India may, with the approval of the President, prescribe.

170. (1) Subject to the provisions of article 333, the legislative assembly of each state shall consist of not more than 500, and not less than 60, members chosen by direct election from territorial constituencies in the state.

Assembly term

(2) for the purposes of clause (1) each state shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the state.

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

(3) Upon the completion of each census, the total number of seats in the legislative assembly of each state and the division of each state into territorial constituencies shall be readjusted by such authority and

in such a manner as parliament may by law determine.

Provided that such readjustment shall not affect representation in the legislative assembly until the dissolution of the then existing assembly.

172. (1) Every legislative assembly of every state, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the assembly.

Provided that the said period may, while a proclamation of emergency is in operation, be extended by parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the proclamation has ceased to operate.

189. (1) (3) Until the legislature of the state by law otherwise provides, the quorum to constitute a meeting of a house of the legislature of a state shall be ten members or one-tenth of the total number of members of the house, whichever is greater.

(4) If at any time during a meeting of the legislative assembly or the legislative council of a state there is no quorum, it shall be the duty of the speaker or chairman, or a person acting as such, either to adjourn the house or to suspend the meeting until there is a quorum.

Disqualification

191. (1) A person shall be disqualified for being chosen as, and for being, a member of the legislative assembly or legislative council of a state:—

(A) If he holds any office of profit under the government of India or the government of any state specified in the first schedule, other than an office declared by the legislature of the state by law not to disqualify its holder;

192. (1) If any question arises as to whether a member of a house of the legislature of a state has become subject to any of the disqualifications mentioned in clause (1) of article 191, the question shall be referred for the decision of the governor and his decision shall be final.

(2) Before giving any decision on any such question, the governor shall obtain the opinion of the election commission and shall act according to such opinion.

194. (1) (3) In other respects, the powers, privileges and immunities of a house of the legislature of a state, and of the members and the committees of a house of such legislature, shall be such as may from time to time be defined by the legislature by law, and, until so defined, shall be those of the House of Commons of the parliament of the United Kingdom, and of its members and committees, at the commencement of this constitution.

Naming of judges

208. (1) A house of the legislature of a state may make rules for regulating, subject to the provisions of this constitution, its procedure and the conduct of its business.

217. (1) (2) A person shall not be qualified for appointment as a judge of a high court unless he is a citizen of India and:—

(A) has for at least ten years held a judicial office in the territory of India; or

(B) has for at least ten years been an advocate of a high court or of two or more such courts in succession.

Explanation — for the purposes of this clause:— (A) In computing the period during which a person has been an advocate of a high court, there shall be included any period during which the person has held judicial office after he became an advocate;

(B) In computing the period during which a person has held judicial office in the territory of India or been an advocate of a high court, there shall be included any period before the commencement of this constitution during which he has held judicial office in any area which was comprised before the fifteenth day of August, 1947, within India as defined by the government of India act, 1935, or has been an advocate of any high court in any such area, as the case may be.

225 Subject to the provisions of this constitution and to the provisions of any law of the appropriate legislature made by virtue of powers conferred on that legislature by this constitution, the jurisdiction of, and the law administered in, any existing high court, and the respective powers of the judges thereof in relation to the administration of justice in the court, including any power to make rules of court and to regulate the sittings of the court and of members thereof sitting alone or in division courts, shall be the same as immediately before the commencement of this constitution.

Provided that any restriction to which the exercise of original jurisdiction by any of the high courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this constitution shall no longer apply to the exercise of such jurisdiction.

Courts' powers

226. (1) Notwithstanding anything in article 32, every high court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrant and certiorari, or any of them, for the enforcement of any of the rights conferred by part III and for any other purpose.

(1A) The power conferred by clause (1) to issue directions, orders or writs to any government, authority or person may also be exercised by any high court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such government or authority or the residence of such person is not within those territories.

(2) The power conferred on a high court by clause (1) or clause (1A) shall not be in derogation of the power conferred on the supreme court by clause (2) of article 32.

227. (1) Every high court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

228. If the high court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this constitution the determination of which is necessary for the disposal of the case it shall withdraw the case and may—(A) either dispose of the case itself, or (B) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof, pro-

ceed to dispose of the case in conformity with such judgment.

311. (2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry. Provided that this clause shall not apply:—

(A) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(B) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(C) Where the President or the governor, as the case may be, is satisfied that in the interest of the security of the state it is not expedient to hold such inquiry.

312. (1) Notwithstanding anything in part XI, if the council of states has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, parliament may by law provide for the creation of one or more all-India services common to the Union and the states, and, subject to the other provisions of this chapter, regulate the recruitment, and the conditions of service of persons appointed, to any such service.

330. (1) Seats shall be reserved in the house of the people for:—(A) the scheduled castes; (B) the scheduled tribes except the scheduled tribes:— (i) in the tribal areas of Assam; (ii) in Nagaland; (iii) in Meghalaya; (iv) in Arunachal Pradesh and (v) in Mizoram; and

(C) The scheduled tribes in the autonomous districts of Assam.

(2) The number of seats reserved in any state or Union territory for the scheduled castes or the scheduled tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that state or Union territory in the house of the people as the population of the scheduled castes in the state or Union territory or of the scheduled tribes in the state or Union territory or part of the state or Union territory, as the case may be, in respect of which seats are so reserved, bears to the total population of the state or Union territory.

(3) Notwithstanding anything contained in clause (2), the number of seats reserved in the house of the people for the scheduled tribes in the autonomous districts of Assam shall bear to the total number of seats allotted to that state a proportion not less than the population of the scheduled tribes in the said autonomous districts bears to the total population of the state.

Emergency

352. (1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance, he may, by proclamation, make a declaration to that effect.

(2) A proclamation issued under clause (1):—

(A) may be revoked by a subsequent proclamation;

Provided that if any such proclamation is issued at a time when the house of the people has been dissolved, or the dissolution of the house of the people takes place during the period of two months referred to in sub-clause (c), and if a resolution approving the proclamation has been passed by the council of states, but no resolution with respect to such proclamation has been passed by the house of the people before the expiration of that period, the proclamation shall cease to operate at the expiration of 30 days from the date on which the house of the people first sits after its reconstitution unless before the expiration of the said period of 30 days a resolution approving the proclamation has been also passed by the house of the people.

353. While a proclamation of emergency is in operation, then:—

(A) Notwithstanding anything in this constitution, the executive power of the Union shall extend to the giving of directions to any state as to the manner in which the executive power thereof is to be exercised;

(B) The power of parliament to make laws with respect to any matter shall include power to make laws conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties,

upon the Union or officers and authorities of the Union as respects that matter, notwithstanding that it is one which is not enumerated in the Union list.

356. (1) (4) A proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the proclamation under clause (3):

Provided that if and so often as a resolution approving the continuance in force of such a proclamation is passed by both houses of parliament, the proclamation shall, unless revoked, continue in force for a further period of six months from the date on which under this clause it would otherwise have ceased to operate, but no such proclamation shall in any case remain in force for more than three years.

Provided further that if the dissolution of the house of the people takes place during any such period of six months and a resolution approving the continuance in force of such proclamation has been passed by the council of states, but no resolution with respect to the continuance in force of such proclamation has been passed by the house of the people during the said period, the proclamation shall cease to operate at the expiration of 30 days from the date on which the house of the people first sits after its reconstitution unless before the expiration of the said period of 30 days a resolution approving the continuance in force of the proclamation has been also passed by the house of the people.

357. (1) (2) Any law made in exercise of the power of the legislature of the state by parliament or the President or other authority referred to in sub-clause (A) of clause (1) which parliament or the President or such other authority would not, but for the issue of a proclamation under article 356, have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of one year after the proclamation has ceased to operate except as respects things done or omitted to be done before the expiration of the said period, unless the provision which shall so cease to have effect are sooner repealed or re-enacted with or without modification by act of the appropriate legislature.

358. While a proclamation of emergency is in operation, nothing in article 19 shall restrict the power of the state as defined in part III to make any law or to take any executive action which the state would but for the provisions contained in that part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect.

359. (1A) While an order made under clause (1) mentioning any of the rights conferred by part III is in operation, nothing in that part conferring those rights shall restrict the power of the state as defined in the said part to make any law or to take any executive action which the state would but for the provisions contained in that part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the order aforesaid ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect.

(2) An order made as aforesaid may extend to the whole or any part of the territory of India.

371. (F) Notwithstanding anything in this constitution:—

(C) In the case of the assembly deemed to be the legislative assembly of the state of Sikkim under clause (B), the references to the period of five years in clause (1) of article 172 shall be construed as references to a period of four years and the said period of four years shall be deemed to commence from the appointed day.

Seventh schedule (article 246) List I — Union list.

LIST II—STATE LIST: 1. Public order (but not including the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power).

2. Police, including railway and village police.

3. Administration of justice: constitution and organisation of all courts, except the supreme court and the high court; officers and servants of the high court; procedure in rent and revenue courts; fees taken in all courts except the supreme court.

11. Education including universities, subject to the provisions of entries 63, 64, 65 and 66 of list I and entry 25 of list III.

19. Forests.

22. Protection of wild animals and birds.

29. Weights and measures except establishment of standards.

55. Taxes on advertisements other than advertisements published in the newspapers.

LIST III—CONCURRENT LIST: 25. Vocational and technical training of labour.—Samachar.