

Mr. President : Yes, I think it will apply to this also.

The question is:

“That article 171 stand part of the Constitution.”

The motion was adopted.

Article 171 was added to the Constitution.

Article 175

Mr. President : There are certain amendments to this.

There is one by Sardar Bhopinder Singh Man.

Shri T.T. Krishnamachari : Articles 175 and 176 may be held over.

Shri M. Ananthasayanam Ayyangar : What about 172?

Mr. President : It is being held over. It is not being taken up today.

Article 187

(Amendment Nos. 2524 to 2529 were not moved)

Pandit Hirday Nath Kunzru : Mr. President, Sir, I beg to move:

“That in sub-clause (a) of clause (2) of article 187, for the words ‘six weeks from the reassembly of the Legislature’ the words ‘two weeks from the promulgation of any Ordinance’ be substituted.”

With your permission, Sir, I should like to move another amendment which is consequential to the amendment that I have moved. I moved:

“That the Explanation to clause (2) of article 187 be deleted.”

Sir, a similar question came up for discussion the other day with regard to the duration of the Ordinances issued by the Governor-General. My position today on this question is generally what it was the other day, but I feel that where the members of the Legislature live in a compact area, an area which is much smaller than that from which the members of the Central Legislature are drawn, it should be comparatively speaking much easier for them to meet. The period of fourteen days during which I should like an ordinance issued by the Governor to be placed before the Legislature should therefore be employed for the purpose.

The article as it is, Sir, provides an Ordinance issued by the Governor shall remain in force as long as the Legislature of his province does not meet. Even when the legislature meets it will remain in force for six weeks from the re-assembly of the Legislature “unless before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or as the case may be on the resolution being agreed to by the Council.” This means that as there may be an interval of more than five months between two sessions of the legislatures, it is obvious that an Ordinance issued by a Governor may remain in force for as long as five months or any period less than six month and six weeks more.

The explanation to clause (2) says that when there are two Houses of the Legislature to a State and they re-assemble on different dates the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause. Suppose that the Second House meets a month later than the Assembly. This will mean that the Ordinance will remain in force for some period less than six months *plus* the period of one month during which the Second House does not meet *plus* six weeks, unless before the expiry of six weeks a resolution disapproving of it is passed by the Legislative Assembly and is agreed

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to by the Legislative Council. Now it seems to me to be wholly unnecessary that an Ordinance which is an executive act should remain in force for so long a period. If an emergency arises requiring the promulgation of an Ordinance, requiring the executive to act without securing the permission of the Legislature, it is necessary that the Legislature should be summoned without unnecessary delay. I think therefore that the period during which it may remain in force should be reduced considerably.

The question then arises what should be the period that might be allowed to elapse before the Legislature meets to consider the Ordinance? I think that even in the biggest province two weeks will be ample for the meeting of the Legislature. It is clear, Sir, that if the Legislature were sitting when the emergency arose, then, however great and serious the emergency might be and however necessary it might be in the opinion of the executive to take immediate action, the executive would not be able to act without having a law passed by the Legislature. When the Legislature is not sitting, it is reasonable that the executive should be allowed to promulgate a measure that would have the same effect as an Act of the Legislature, but whatever the nature of the emergency may be, it can not justify the continuance of the Ordinance even for a day longer than is necessary to summon the Legislature and place the whole matter before it. The existence of a crisis, Sir, does not justify the executive in proceeding in such a way that an Ordinance passed by it may remain in force for as long as possible under the provisions of this article. The point of view of the executive should be not to delay the meeting of the legislature so that the Ordinance may remain in force as long as is possible legally, but to summon the legislature and place the matter before it as early as possible. It is only if it acts in this manner that its action will be in consonance with the spirit of the Constitution and the powers of the legislature in regard to all matters needing legislative sanction. I think, therefore, Sir, that my amendment is thoroughly reasonable. It will give the executive the power to act in at emergency and it will also enable the representative of the people to see that the ordinance does not remain in force unnecessarily, or, if it goes beyond the needs of the case, is modified in accordance with the judgment of the legislature.

As I pointed out the other day, the objection to a procedure of the kind laid down in this article is not merely that it unnecessarily prolongs the duration of an Ordinance, but that it prevents the legislature from considering whether the terms of the Ordinance are justified by the emergency. The legislature when it meets, may either disapprove of the Ordinance or if it agrees with the executive in thinking that a special situation calling for special action exists, may feel that the Ordinance confers excessive powers on the executive and may modify it in such a way as to safeguard the liberties of the ordinary man in so far as this is consistent with the existence of an emergency. When a crisis occurs, it does not mean that the rights of the people are to be suspended altogether. A situation may arise where this has to be done; but such a situation will obviously be of an exceptional character. In other situations requiring special action to be taken, the ordinary rights of the citizen should be protected as far as possible. It is necessary, therefore, that any Ordinance that is passed by the executive should be submitted to the scrutiny of the representatives of the people as early as possible.

(Amendment Nos. 2531, 2533 and 2534 were not moved.)

Prof. Shibban Lal Saksena : Sir, I beg to move:

“That for amendment Nos. 2523, 2525, 2526, 2527, 1529, 2530 or 2532 to 2534 of the List of Amendments, the following be substituted:—

- (i) That in clause (1) of article 187, for the words ‘for him to take immediate action, he may promulgate such Ordinances as the circumstances

appear to him to require' the words that immediate action be taken, he shall report the matter to the President who may then promulgate such Ordinances as the circumstances appear to him to require' be substituted, and the proviso to the clause be deleted.

- (ii) That in clause (2) of article 137, for the words 'assented to by the Governor' the words 'which has been reserved for the consideration of the President and assented to by him' be substituted.
- (iii) That in sub-clause (b) of clause (2) of article 187 for the word 'Governor' the word 'President' be substituted.
- (iv) That in clause (3) of article 187, after the words 'assented to by the Governor' the words 'or by the President' be inserted and the proviso to the clause be deleted."

Sir, after these amendments, the article will read as follows:

"187. (1) If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary that immediate action be taken, he shall report the matter to the President who may then promulgate such ordinances as the circumstance appear to him to require.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of the Legislature of the State which has been reserved for the consideration of the President and assented to by him, but every such Ordinance—

- (a) shall be laid before the Legislative Assembly of the State, or where there is a Legislative Council in the State, before both the Houses, and shall cease to operate at the expiration of six weeks from the re-assembly of the legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution, or, as the case may be, on the resolution being agreed to by the Council; and
- (b) may be withdrawn at any time by the President.

Explanation.—Where the House of the Legislature of a State having a Legislative Council are summoned to re-assemble on different dates, the period of six weeks shall be reckoned from the later of those dates for purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which would not be valid if enacted in an Act of the Legislature of the State assented to by the Governor or by the President, it shall be void."

Sir, I did not wish that our Constitution should be disfigured by any power of making Ordinances by the President or by anybody else. But, now the House has already accepted that the President shall have the power of making Ordinances on certain occasions. I only want that if Ordinance making power is to be provided for, then this power should be confined only to the President and should not be conferred on each and every Governor. There may about thirty Governors in the Country. I want that this power, which is an extraordinary one, should be confined only to the President of the Union. Therefore, I say if an emergency arises instead of the Governor himself passing an Ordinance, he must report the matter to the President who may then promulgate such Ordinances as may appear to him to be necessary. Of course, the Governor will have to justify to the President that it is necessary that such an extraordinary measure should be taken. The President and the Prime Minister will consider and take proper steps. An Ordinance in effect means the taking away of the entire power of the legislature and therefore, it should not be freely resorted to. In the Constitution for Free India which we are framing, we are still thinking in terms of the period of slavery through which we have just passed. I hope very soon the times will change and people will insist that no Ordinance should be passed and that everything should be done by the legislature by the peoples' representatives, and then, we shall resent any Governor issuing any Ordinance. I therefore think that this power of making Ordinances should not be conferred on every Governor, but should be conferred on the President only, if at all. When any

[Prof. Shibban Lal Saksena]

particular province wants an Ordinance, that Governor should report the matter to the President and shall then consider whether an Ordinance should be promulgated or not. That would also keep the Center informed of the situation in the provinces and would ensure that the Ordinances that are passed are passed after careful consideration.

The rest of my amendments are only consequential so that the main amendment is that the power of making Ordinances should be reserved to the President and should not be given to anybody else. I hope this amendment will commend itself to the House and will be accepted.

Shri Jaspal Roy Kapoor : Sir, my amendment No. 74 being more in the nature of a drafting amendment, I will simply wish that the Drafting Committee may take it into consideration while giving final touches to the Draft.

Pandit Thakur Das Bhargava : I submit the same thing with regard to amendment no. 75, Sir.

Mr. President : The article and the amendments are open for discussion.

(No Member rose)

The question is:

“That for amendment Nos. 2523, 2525, 2526, 2527, 2529, 2530, or 2532 to 2534 of the List of Amendments, the following be substituted:—

- (i) That in clause (1) of article 187, for the words ‘for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require’ the words that immediate action be taken, he shall report the matter to the President who may then promulgate such Ordinances as the circumstances appear to him to require’ be substituted.
- (ii) That in clause (2) of article 187, for the words ‘assented to by the Governor’ the words ‘which has been reserved for the consideration of the President and assented to by him’ be substituted.
- (iii) That in sub-clause (b) of clause (2) of article 187 for the words ‘Governor’ the word ‘President’ be substituted.
- (iv) That in clause (3) of article 187, after the words ‘assented to by the Governor’ the words ‘or by the President’ be inserted and the proviso to the clause be deleted.”

The amendment was negatived.

Mr. President : The question is:

“That in sub-clause (a) of clause (2) of article 187 for the words ‘six weeks from the re-assembly of the Legislature’ the words ‘two weeks from the promulgation of any Ordinance’ be substituted.” and

“That the Explanation to clause (2) of article 187 be deleted.”

The amendments were negatived.

Mr. President : The question is:

“That article 187 stand part of the Constitution.”

The motion was adopted.

Article 187 was added to the Constitution.

New Article 196-A

Mr. President : We take 196-A. This is an amendment No. 2639, of which Dr. P.K. Sen has given notice. A similar amendment relating to Supreme Court was moved by Dr. Sen, but was negatived today.

(Amendment No. 2639 was not moved.)

So it is dropped.