

[Pandit Hirday Nath Kunzru]

India or any part of it is threatened. In such cases, instructions can be issued to the provincial government regarding the canons of financial propriety that they should follow. This provision too can be used only in special circumstances. It is clear that it can be used only in an exceptional situation. As I pointed out, Sir, when this article was under consideration, this article was brought in towards the end of our discussions simply in order to enable the Central Government to order the Provincial Governments to give up the policy of prohibition. For all practical purposes that was the sole object of this article. (Shri T. T. Krishnamachari: 'Question'). The language is certainly wide; but I feel morally convinced that had the Provincial Governments not persisted in giving up their Excise revenue in disregard of the advice given by the Central Government article 360 would have found no place in this Constitution.

I have shown, Sir, that the Drafting Committee has justified the new article 365 by referring to many articles the operation of which will be of a limited character. None of those articles justifies the extension of the power of the Central Government to such an extent as to make it permanent and applicable in all circumstances. I think, Sir, that if my honourable Friend, Pandit Thakur Das Bhargava's amendment is accepted, no difficulty will arise. We can go back to the position that existed before the Drafting Committee, eager to introduce as many changes as it could, suggested the insertion of the new article 365 in the Constitution. I, therefore, heartily support Pandit Thakur Das Bhargava's amendment.

**Mr. President :** I think we had better close this discussion on this article now.

**Honourable Members :** Yes, Sir.

**Mr. President :** We have had enough discussion and all the view points have been placed very clearly before the House. It is now for the Members to decide. We shall now go to article 372.

**Shri H. V. Kamath :** We have article 366 and there is my amendment No. 411. Mine is a new definition.

**Shri T. T. Krishnamachari :** There is no new item, Sir, referring to the Constitution.

**Shri H. V. Kamath :** The article as a whole has been amended by the Drafting Committee. I have got an amendment to the article, and it is consequential upon the amendments made by the Drafting Committee

**Mr. President :** It is quite clear that the 'Constitution' only means 'the Constitution of India'; it cannot mean any other Constitution. I think you had better leave it to them.

(Amendment No. 412 was not moved).

**Shri R. K. Sidhwa :** Mr. President, Sir, my amendment says:

"That article 373 be deleted."

This article relates to article 22. It says that after the commencement within one year the President shall have power until the Parliament makes the law for article 22. I feel, Sir, that article 22 is very important. Parliament will make law within three months after the commencement of this Constitution and therefore in my opinion.....

**Shri T. T. Krishnamachari :** It would not do because something has to be done under clause (4) of article 22 which nobody will be able to do on the 26th of January. If we do not have this provision, the whole thing will become inoperative.

**Shri R. K. Sidhwa :** I see the importance of it. I thought that the Ministry would be able to bring in a Bill in the Parliament within three months. If it is humanly not possible, I do not want to press.

**Prof. Shibban Lal Saksena** (United Provinces General): Mr. President, Sir. I beg to move:

“That in article 373, for the words ‘one year’ the words ‘three months’ be substituted.”

Sir, this article 373 is intended to give the President power as a sort of substitute for Parliament under article 22 especially clauses (4) and (7). If the new clause of Dr. Ambedkar, i.e., amendments 545 and 546 be taken as the final form in which article 22 will be in the Constitution then after the amendment is made, it will read like this :

“(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention :

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by order made by President under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of order made by president under sub-clauses (a) and (b) of clause (7).”

And clause (7) will read as follows :

“(7) The President may by order prescribe—

- (a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);
- (b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for such detention; and
- (c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause(4).”

Thus, Sir, the powers given to Parliament in the final form of article 22 are taken by the President for one year. I think, Sir, that this is something drastic. I can understand that immediately on the 26th of January we may not be ready with the new legislation. But I should certainly think that before the budget session is over, that is by April. we should have the new law passed. I am, therefore, suggesting, not the deletion of the article as my honourable Friend Mr. Sidhwa has suggested, but the substitution of three months for one year. It is, of course, obvious that the present session of the Assembly will be over by the 22nd of December and it may not be possible to meet again and pass the law before the 26th of January. But, I think before the budget session ends, the new law should be passed and we should not have to wait for one year to make this law, that is till the next December or January. I personally feel that the use of the words ‘one year’ shows to some extent the respect that the Drafting Committee pays to the liberties of the subject. This question deals with the taking away of the liberty of the subject and keeping him in detention. We do not want to leave this matter pending for one year. I think the period of three months given in my amendment is quite enough, and I think before the end of three months we should be able to provide in what circumstances the Government can detain a person for a longer period than three months. Clause (7) of article 22 gives the power to Parliament to make law prescribing the circumstances under which and the class or classes in which a person may be detained for a period longer than three months as also the