

the Council of States as passed by the House of the People, and if agreed to in identical form within 30 days of the dissolution of the House of the People shall be deemed to have been duly passed by both Houses of Parliament, and shall be sent up to the President for his assent.

(8) A Bill pending in the Council of States at any stage but not considered by the House of the People shall not be deemed to have been passed at the time the House of the People is dissolved, but shall be deemed to have lapsed on dissolution of the House of the People.' "

The amendment was negatived.

Mr. President : The question is:

"That article 87 stand part of the Constitution."

The motion was adopted.

Article 87 was added to the Constitution.

Article 88

Mr. President : The motion is:

"That article 88 form part of the Constitution."

(Amendment No. 1644 was not moved.)

Shri H. V. Kamath (C.P. & Berar: General): Mr. President, I move:

"That in clause (1) of article 88, after the words 'If after a Bill' the words 'other than a Money Bill or other financial Bill' be inserted."

Shri M. Ananthasayanam Ayyangar : May I ask the honourable Member to see the proviso to article 88 which says: "Provided that nothing in this clause shall apply to a Money Bill." What is the advantage in transposing this clause?

Shri H. V. Kamath : Then the proviso itself must be altered. Sir, it is more or less a formal amendment, but it makes for clarity. I am all for brevity, but not at the expense of clarity and precision. Articles 89 and 97 deal with Money Bills and other financial Bills. Therefore, when we refer to a Bill in article 88, it would have been far happier and far clearer if we had laid it down specifically that the Bill referred to in this article was something different from or something other than a Money Bill or other financial Bill. My honourable Friend, Mr. Ananthasayanam Ayyangar, has rightly pointed out, and I am grateful to him for having done so, that there is a proviso here at the foot of clause (1) to this article referring to the exception made in regard to Money Bills. But, Sir, the language used in article 87 reads: "Subject to the provisions of articles 89 and 97 of this Constitution with respect to Money Bills and other financial Bills." So if we want to be consistent in our language and in our phraseology, I think Mr. Ayyangar would agree that even the proviso should have been drafted in consonance with the language used in article 87, article 87 refers to not merely Money Bills; but Money Bills and other financial Bills, and therefore, I would accept an amendment if moved by Mr. Ayyangar modifying the proviso in the light of my amendment and including other financial Bills along with the Money Bills referred to in this proviso.

Mr. President : What will be the effect, supposing your amendment is accepted and the proviso is not deleted? There is no amendment to delete the proviso.

Shri H. V. Kamath : That is unfortunate, I realize. But unless the proviso is modified suitably a sort of lacuna will remain. If you would permit Mr. Ayyangar or anyone else to move a suitable amendment to the proviso itself including financial Bills with Money Bills referred to in this proviso, then it would meet my objection completely; otherwise, I fear there would be a lacuna which might do violence to the consistency of language used in the two articles.

Shri Prabhudayal Himatsingka (West Bengal: General): There is amendment No. 1649 to delete the proviso to clause (1) of article 88.

Shri H. V. Kamath : If that is accepted and mine is also accepted, that suits the situation admirably. I therefore move my amendment.

(Amendments Nos. 1646, 1647, 1648 and 1649 were not moved.)

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

“That in clause (2) of article 88, for the words ‘both Houses are’ the words ‘the House referred to in sub-clause (c) of that clause is’ be substituted.”

Sir, it is just a matter of clarification by referring to the House referred to in sub-clause (c).

Mr. President : Amendment No. 1651. I think that is covered.

(Amendment No. 1652 was not moved.)

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

“That in clause (2) of article 88, before the last word ‘days’ the word ‘consecutive’ be inserted.”

(Amendment No. 1654 was not moved.)

The Honourable Shri K. Santhanam : Sir, I move:

“That in clause (4) of article 88, the words ‘total number of’, be deleted.”

Sir, I do not want to press the deletion of the proviso. I want to amend the amendment to that extent.

The point here is simple. What is intended is that the decision of the joint sittings should be taken by a simple majority. In all such cases, the usual wording is majority of the Members of both the Houses present and voting. The wording, ‘total number’ is generally used only in connection with absolute majority.

The Honourable Dr. B. R. Ambedkar : I shall be grateful if my honourable Friend would leave this matter to the Drafting Committee to consider and then we can bring it up afterwards?

The Honourable Shri K. Santhanam : I agree, Sir.

Shri H. V. Kamath : Sir, I move:

“That in clause (4) of article 88, the words ‘for the purposes of this Constitution’ be deleted.”

Sir, this, to my mind, is an instance where these words could be omitted without sacrificing precision or clarity of meaning intended by this article. Whatever is drafted here, whatever article comes before the House is for the purposes of this Constitution. We are dealing with the Constitution. Nobody I am sure, would presume to say that anything which is embodied in this Constitution is for purposes other than this Constitution. Therefore, it is to my mind redundant, needless and superfluous to state in any article, or in this article for the matter of that, that the result of the voting shall be deemed to be for the purposes of this Constitution. I therefore move that these words which are to my mind unnecessary may be deleted. I move my amendment.

Mr. President : Amendment No. 1657. I think it is a drafting amendment.

(Amendment Nos. 1658 and 1659 were not moved.)

Shri T. T. Krishnamachari : I am afraid the amendment is of a drafting nature, seeking to omit certain words which are redundant.

Mr. President : Amendment No. 1660 is of a drafting nature.

(Amendment No. 1661 was not moved.)

Mr. President : I have received notice of an amendment from Prof. Shibban Lal Saksena, that for article 88, the following be substituted. I am afraid that it is not an amendment to any amendment. To which amendment is this an amendment?

Prof. Shibban Lal Saksena : To any of these.

Mr. President : How will you put it? It is an amendment to the original article and not an amendment to any amendment. You cannot circumvent the rule about time by merely saying that these are amendments to amendments. This is really not an amendment to any amendment. Notice of this should have been given before.

Prof. Shibban Lal Saksena : It is an amendment to amendment No. 1650.

Mr. President : How will you substitute the whole of article 88 in the place of these words?

Prof. Shibban Lal Saksena : What I am suggesting is that a joint sitting should be avoided.

Mr. President : That is a different matter. I entirely see that point that you want to avoid joint sittings. But you should have given notice of this in due time. You want to bring in this amendment which goes to the root of the whole matter in the shape of an amendment to an amendment, with which it does not fit in at all.

Prof. Shibban Lal Saksena : This procedure has been adopted throughout in bringing such amendments.

Mr. President : I do not think I can allow this kind of amendment which is really not an amendment to an amendment.

Prof. Shibban Lal Saksena : Then, may I speak on the clause, Sir ?

Mr. President : Yes, I shall see if all the amendments have been moved.

The article as well as the amendments are now open for discussion.

Prof. Shibban Lal Saksena : Mr. President, Sir, in this article a provision has been made by which in the case of disagreement over Bills between the Lower House and the Upper House, there shall be a joint sitting to solve the dispute. I had given notice of an amendment which you have thought fit to rule out; but I hope that the purpose of that amendment is worth consideration by this House.

Firstly, I do not think that an Upper Chamber is a very good institution. I am opposed to that itself. But as the House has accepted that, I do not want to say anything more about it. What I do want to say is that the Upper House should not have an authority out of all proportion to its importance. We have based our Constitution on the model of the British Parliament. There we have got the House of Lords and the House of Commons; but, authority of the House of Lord is very much restricted. What I want is that here too, the Upper House should have limited authority and this should not be almost equal in power with the Lower House, as it becomes if there are joint sittings. According to the present draft, a Bill which is passed in the House of the People will go to the Upper House and if rejected there, then there will be a joint session in which the members of both Houses will sit and decide the matter, by simple majority. Thus the Upper House may succeed in rejecting a Bill passed by the House of the People which will not have sufficient authority to give effect to that legislation by its own simple majority. I think the Upper House, even though it will be elected by the Provincial Legislatures, will not be as representative of the people as the Lower House. The Lower House will be directly elected. The Upper House will be elected by the Lower House and will have also some

[Prof. Shibban Lal Saksena]

element which will be nominated by the President. Secondly, it will be a House one third of whose members will be elected every second year so that at least 2/3rds of the members will not represent the new spirit but will be persons who shall have been elected 2 years and 4 years before. I therefore, think that the Upper House will not represent the feelings of the people of the time and to give the members of that House the same status as the members of the Lower House is, I think reactionary. Even if we want to give the Upper House some status, we must give it only that authority which the House of Lords has got in England by the Act of 1911. When the House of Lords does not agree to a Bill passed by the House of Commons it automatically becomes law after the lapse of a particular period. In our Constitution if the Upper House rejects a Bill, there will be a joint sitting and the fate of the Bill will be decided by the Joint Sitting. I think the British model which we have adopted should also be adopted in the present case as well, and if a Bill is rejected by the Council of States, then the will of the House of the People should prevail, and the Bill must become law, irrespective of the fact that the Council of States has rejected it. If the Council of States delays the consideration of the Bill and the delay is longer than a specific period, then the Bill should be taken as passed. The Upper House should not be in a position to stultify a Bill passed by the Lower House. That is a very salutary principle and even in England where the institution of Upper House began they thought it fit to limit the powers of the Upper House and it is not allowed to stultify the voice of the people expressed by the House of Commons. By providing for a Joint session we are giving the Upper House a vital power, the power to act as a check on the progress and the wishes of the people who may like legislation passed at a rapid speed to bring our country abreast of the great nations of the world. In our country when we are so much backward, we shall need to go quickly and we do not need such brakes from the Upper House as the clause provides. I, therefore, feel that the practice in Britain should be adopted. The provision of the British Parliament has been copied by other Commonwealth countries as well. In Australia if in six months the Bill is not considered by the Upper House, then the House of People passes a Resolution that the Bill should be passed. In England even that is not required; so the purpose in both places is the same, that the House of Commons should have the final say and its voice should not be stultified by the Upper House. I therefore hope that in considering this clause, members will bear in mind that they are laying down a principle which may act as a brake on our progress. I do not want that this provision should disgrace the Constitution which we are passing for our new Free Independent Democratic Republic. I therefore hope that this provision for a Joint Sitting of both the Houses should not be accepted by the House and I hope that my words will be borne in mind by the House.

Shri Chimanlal Chakubhai Shah (Saurashtra): Mr. President, Sir, I oppose the amendment moved by Mr. Saksena.

Mr. President : I did not allow him to move the amendment. He spoke opposing the article.

Shri Chimanlal Chakubhai Shah : I speak in support of the article. Under article 87 we have provided that a Bill shall not become an Act unless assented to by both the Houses. That is a thing which we are perfectly clear about. Then the question arises as to what to do when there is a difference of opinion between the two Houses. It is possible that we may say that where there is difference of opinion we will leave the matter at that stage and allow the Bill to lapse and not make it an Act. That would be following the American model but there are some who feel that it should not be left at that stage and we should provide some machinery by which the difference of opinion between the two

Houses can be resolved. There are three or four ways in which that machinery can be provided. One is the British model under which after a certain lapse of time the Bill passed by the Lower House automatically becomes an Act if certified by the Speaker. Then there is the Irish model under which the Lower House should again pass a Resolution accepting the Bill once more on which it will become an Act. But the analogy between these two models and our model has no application at all because both those are unitary constitutions whereas ours is a federal constitution. In a Federal Constitution, the Upper House is composed of the representatives of the various units or states. It is not like the House of Lords which is hereditary or which by its very character is conservative. Our Upper House is elected by the representatives of the various States and therefore it is as representative as the Lower House itself in a particular manner. The object of providing an Upper House in the Centre is to see that the States' voice or the voice of the units is adequately represented. Therefore the third way of providing to resolve the deadlock is by Joint session. Now that is not a very ideal solution no doubt but it is a solution which is as good as possibly can be conceived of. When both the Houses meet together it is possible that either by compromise they resolve their differences or the majority of the Lower House will carry the day. But it is not right to say that the Lower House alone will be the sole judge of a particular Bill and that after a particular lapse of time the Upper House will have no voice, because the Upper House is intended to represent in a Federal Constitution the voice of the Units and they are as much elected representatives of the people as the members of the Lower House. I, therefore, submit that the solution embodied in Section 88, if not ideal, is as good as can be conceived of in a Federal Constitution and to copy the British Model is not proper because the composition of the House of Lords is entirely different from the one which we have conceived of under our Constitution and secondly it is a unitary Constitution whose model can have no application to a Federal Constitution. I, therefore, support article 88.

Shri M. Ananthasayanam Ayyangar : Sir, I am only trying to answer the point raised by my Friend, Mr. Kamath, by pointing out to him that there is a proviso under article 88 that—

“Provided that nothing in this clause shall apply to a Money Bill.”

But he thinks this is not exhaustive and therefore wants to put in the words “or other financial Bill”. With all respect to him, Sir, I submit that these words ought not to be there and I say this for these reasons, In this article a difference has been made between Money Bills and other Financial Bills. Money Bills come under article 90 which says—

“For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters.....”

It is only in cases where these matters alone are dealt with in a particular Bill that a procedure is prescribed, as distinct from other financial Bills where not finance matters exclusively, but other matters also are incidentally raised. It is only a Bill which relates only to those matters provided in article 90 that can be introduced only in the House of the People. So far as the Upper House is concerned it has no jurisdiction in these matters except in the matter of recommendations which should be sent to the House of the People. The House of the People may or may not accept the recommendation. In either case the Bill will be considered to have been passed by both the Houses. So far as other financial Bills are concerned, another procedure is prescribed; and if any question arises as to whether a Bill is exclusively a Money Bill or not, the decision of the Speaker of the House of the People is to be final. So far as

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other matters are concerned, they can be introduced in both Houses of Parliament and both Houses have jurisdiction to go into them. Under article 88 they have exempted Money Bills alone. With respect to any other financial Bill, other than money Bills, which deals with other matters also, both Houses have got jurisdiction. In the case of Money Bills, they have to be introduced only in the Lower House; the Upper House can only recommend. I would therefore, submit that this amendment is unnecessary and contrary to the scheme of the Act. So Mr. Kamath's amendment is out of order.

Shri S. Nagappa (Madras: General): Mr. President, Sir, it was not my intention to speak on this article, but coming as I do from Madras I have been experiencing how the two Chambers have been working, and how the Upper Chamber retards the work of the legislature. So far as the Congress Legislative Party is concerned, it is meeting more or less as a joint sitting, for everything that has to be passed in the Legislature is being discussed there. As is well-known, it is in the Lower House that all Bills originate, but its number happens to be 215 and in a joint sitting with the Upper House, it is not a deciding factor. So the Upper House restrains legislation that is passed by the Lower Chamber. If the Upper Chamber does not agree with anything, it can suggest amendments, and send back the Bill to the Lower Chamber, and, it is the duty of the Lower Chambers to rectify any defects. If the Lower Chamber does not agree and there is a dispute, then there is a suggestion in the clause for joint sittings. If there is a clear division, say of 100 on one side and 150 on the other, then practically the Lower Chamber will become the deciding factors in the joint sitting. But the Upper Chamber does not represent the people directly. The Upper Chamber as constituted today happen to be representatives of the petty bourgeoisie and bureaucrats, and wherever there is any trend towards progressive legislation, they try to delay matters and even to torpedo legislation passed by the Lower Chamber. As a common man, as a layman, that is how I feel about this matter. Whether there should be an Upper Chamber or not was considered by the Provincial Legislature and I was against it for a very long time. But we are now going to have adult suffrage and all sorts of people will be getting into our legislatures, may be people of experience and also people of little experience. So it is better to have experienced politicians nominated in the Upper Chamber so that we may have their experienced politicians nominated in the Upper Chamber so that we may have their experience and guidance. That was the reason which made me support the proposal to have an Upper Chamber. I do not think there was such a provision in the 1935 Act; but after all we did not work that Act fully. We had experience of it only for about a year and a half from 1937 to 1939. Within this period I do not think we ever had occasion to have a joint sitting. But as I said, in the Congress Legislative Party, we members who belongs to both Chambers assemble and discuss and decide, and so we were practically having joint sittings. We also found that progressive legislations brought in by members of the Lower Chamber were more or less retarded or delayed by the Members of the Upper Chamber. But anyhow, the Honourable Dr. Ambedkar has explained that as it is constituted, the Upper Chamber will not act as a check or rather that it will not stand in the way of progressive legislation. The people to be elected to the Upper House will not be elected from the landlords or zamindars, but by the people of the Lower Chamber; so I agree to this. The members of the Lower Chamber will understand what sort of people are to be elected to the Upper House. That does not mean, however, that once elected it will be the will of the people who elected them that will prevail. It is the will of the people who are elected that will prevail in the House. That is the point to be considered to see that progressive legislations are not checked. In my opinion, in order to have a kind of check over the hasty legislations of the Lower Chamber, it would be better to have a time-limit during which the Upper Chamber must deal with a particular question.

During that period the Upper Chamber must either accept the legislation passed by the Lower Chamber or send it back to the Lower Chamber for rectifying any defects. If the Lower Chamber sticks to its own guns, and says that it will not yield, then by the sheer lapse of time it would become the law. That, I think would have been better than having joint sittings. But anyhow there is provision in this Constitution that after ten years, if the people feel the necessity for it, they can change any clause or article in it, and they say, "practice makes a man perfect." After some time, as in the future legislature there will be the real representatives of the people, they will be in a position to know actually the difficulties they have to face because of this clause, and they may effect the necessary change. Sir, with these words, I conclude.

The Honourable Dr. B. R. Ambedkar : Sir, there is only one amendment moved by my friend Mr. Kamath which calls for some reply. His amendment is No. 1656 by which he seeks the omission of the words "for the purposes of this Constitution". My submission is that those words are very essential and must be retained. The reason why I say this will be found in the provisions contained in clause (2) of article 87 and article 91. According to clause (2) of article 87, the main provision therein is that the Bill shall be passed independently by each House by its own members in separate sittings. After that has taken place, the constitution requires under article 91 that the Bill shall be presented to the President for his assent. My Friend Mr. Kamath will realise that the provisions contained in article 88 are a deviation from the main provisions contained in clause (2) of article 87. Therefore it is necessary to state that the Bill passed in a joint sitting shall be presented to the President notwithstanding the fact that there is a deviation from the main provisions contained in clause (2) of article 87. That is why I submit that the words "for the purposes of this Constitution" are in my judgment necessary and are in no sense redundant.

With regard to the observations that have been made by several speakers regarding the provisions contained in article 88, all I can say is, there is some amount of justification, for the fear they have expressed, but as other Members have pointed out this is not any sense a novel provision. It is contained in various other constitutions also and therefore my suggestion to them is to allow this article to stand as it and see what happens in course of time. If there fears come true I have no doubt that some honourable Members will come forward hereafter to have the article amended through the procedure we have prescribed for the amendment of the Constitution.

Shri H. V. Kamath : In view of the light shed on my amendment (No. 1645) by Mr. Ananthasayanam Ayyangar, I beg leave of the House to withdraw the amendment.

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

Mr. President : The question is:

"That in clause (2) of article 88, for the words 'both Houses are' the words 'the Houses referred to in sub-clause (c) of that clause is' be substituted."

The motion was adopted.

Mr. President : The question is:

"That in clause (2) of article 88, before the last word 'days' the word 'consecutive' be inserted."

The motion was adopted.

Shri H. V. Kamath : In view of the clarification made by the Honourable Dr. Ambedkar I beg leave of the House to withdraw my amendment No. 1656.

The amendment was by leave of the Assembly withdrawn.

Mr. President : There have been two amendments which have been adopted to this article 88. I shall now put the amendment article to the House.

The question is:

“That article 88, as amended, stand part of the Constitution.”

The motion was adopted.

Article 88, as amended, was added to the Constitution.

Article 89

Mr. President : I think amendment No. 1662 is a verbal amendment and it is covered by the other provisions in the Draft Constitution.

Prof. K.T. Shah : It is a much more strong assertion of an undoubted privilege or right of the lower House. I do not see why it should be put negatively.

Mr. President : That right is there. It is not taken away by the provisions of the constitution.

Shri H.V. Kamath : Sir, at the outset I have to reiterate what I had to point out yesterday that I sent these as two separate amendments but unfortunately they have been lumped up in one. I have no desire to find fault with the office which is working at high pressure. I ask your permission to move the second part of the amendment only.

I move:

“That in clause (1) of article 89, for the words ‘not be introduced in the Council of States’ the words ‘be introduced in the House of the People’ be substituted.”

Mr. President : Is it not an amendment of a formal nature?

Shri H. V. Kamath : I freely admit Sir that it is an amendment of a formal nature and so I shall leave it to the Drafting Committee for consideration.

(Amendment No. 1664, was not moved.)

Shri T. T. Krishnamachari : Sir, I beg to move:

“That in article 89, for the words ‘thirty days’ wherever they occur the words ‘twenty one days’ be substituted.”

The idea is that after a money Bill has been passed by the House of the People it shall be transmitted to the Council of States for its recommendations. In actual practice the period of time involved might not be even more than a week. Thirty days is intended as an outside limit. At the time some of us framed this amendment, we were a little chary of suggesting a lower time-limit, than twenty-one days but I believe that a fortnight or fourteen days would be more than enough to cover all contingencies. If Dr. Ambedkar would agree and the House would give me leave I would like to substitute fourteen days instead of twenty-one days, as the former period would be more than adequate for the purpose. Sir, I move.

Mr. President : There are two amendments in the name of Mr. Naziruddin Ahmad (Nos. 1666 and 1667). They are amendments of a drafting nature.

So there is only one amendment to the article by Mr. T.T. Krishnamachari. The article is now open for discussion.

The Honourable Dr. B.R. Ambedkar : Sir, I accept the amendment moved by my Friend Mr. T.T. Krishnamachari. I would also agree to the further