

Mr. President : The question is:

“That in article 86, for the words ‘Legislature of the Dominion of India’ the words ‘Constituent Assembly of India’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That article 86, as amended, stand part of the Constitution.”

The motion was adopted.

Article 86, as amended was added to the Constitution.

Article 87

Mr. President : The House will take up article 87 for consideration. I find that amendment No. 1638 of Professor Shah is covered by article 98 which comes a little later.

Prof. K.T. Shah (Bihar : General): Sir, the second part is not covered. I shall move the second part only. Sir, I beg to move:

“That the following new clause be inserted before clause (1) of article 87:—

‘Either House of Parliament shall be entitled to receive petitions or representations from the people of India or from the people of any unit forming part of the Union of India.’ ”

Sir, I consider this a very important right of the people, and a privilege of Parliament, if I may say so, that the people whom the Parliament is supposed to represent should have the right to approach directly the sovereign legislature, and place before it grievances, or cases which require Parliament’s attention as the body concerned in any legislation pending before it.

Such petitions may also be in regard to any financial matter or administrative acts. In all such cases, in the ordinary way, unless some privilege of this kind is provided, the people, who theoretically are supposed to be sovereign will have actually no right of presenting their grievances, or views on any given matter to the sovereign legislature.

It may be—it frequently happens—that given the life of Parliament extending over five years, the House of the People elected four or five years before such an occasion arises, may have ceased to be in real contact, and therefore any real response to the wishes of the people, which in the period during which it has been in sessions has changed and is changing considerably, may be impossible.

Nor, is there any regular machinery by which Parliament may from time to time be able to test popular opinion, except in so far as the Ministry or Government chooses to place these matters before it. I suggest that the people should have the right of direct access for placing before Parliament on any given subject their views, and getting the Parliament’s reactions thereon. It is in this country an old privilege of the poorest, that fancying themselves aggrieved, or any individual fancying himself aggrieved, had a direct right of access to the Sovereign, even in the days of the old absolute emperors. In modern times, when we profess so much regard to the people as sovereign, when we are declaring from the house-tops that the ultimate sovereign is the people, and that we are only the servants or representatives of the people, I think it is not asking too much at all to suggest that this which forms admittedly the right of the people and the privilege of Parliament in Britain on which our Constitution is modelled, should also be included in our Constitution, namely that the people should have the right of direct access to Parliament and present petitions for that purpose.

I do not quite like the word ‘petition’ myself; but, as it has been used and as it is of popular use, in this matter I have adopted the word in presenting

[Prof. K. T. Shah]

this part of my amendment. Another amendment had been tabled by me, which I have however not moved, in which I was seeking to reverse the process, namely that Parliament should also, on given issues, ask or try to ascertain the opinion of the people, so to say by a parliamentary referendum, rather than by a Governmental referendum. I felt, however, that given the present tendency, given the accepted traditions, it might sound too novel or too radical to suggest that Parliament should ask the people their opinion, though in the strict theory of our democracy, in my opinion at any rate, it would be nothing unusual if some such procedure had been included. I repeat that that particular amendment I have decided not to move. But I think this one, its counterpart, is perfectly orthodox, and correct, and there ought to be no objection to it from any quarter, because it is a recognised thing. It is being frequently done, and there is no reason to believe that in this country it would either be unwanted or abused. I commend the motion to the House.

(Amendment Nos. 1639, 1640 and 1641 were not moved.)

Prof. K. T. Shah : Amendments Nos. 1642 and 1643 are on a similar subject. May I move them together, Sir? It will save time.

Mr. President : Professor Shah may move amendment Nos. 1642 and 1643 together.

Prof. K. T. Shah : Sir, I beg to move:

“That in clause (5) of article 87, after the words ‘A Bill which’ the words ‘has been passed by the Council of States and’ and after the words ‘the House of the People’ the words ‘shall not be deemed to have lapsed on a dissolution of the House of the People; but may be taken up by the new House of the People elected after such dissolution from the stage at which the Bill was at the time of the dissolution of the House; and if agreed to in identical form with that passed by the Council of States the Bill shall be deemed to have been duly passed by both Houses of Parliament, and shall be forthwith sent up for the assent of the President.

If any amendments are made in the House of the People in the Bill as passed by the Council of States, such a Bill shall be returned to the Council of States and if the amendments made by the House of the People are accepted and agreed to by the Council of States such a Bill shall not be brought back to the House of the People but shall be deemed to have been passed by both Houses of Parliament and shall forthwith sent up for the assent of the President’ be inserted respectively.”

and

“That after clause (5) of article 87, the following new clauses be inserted :—

‘(6) A Bill which is pending at any stage in the House of the People but not passed at the time of its dissolution shall be deemed to have lapsed on a dissolution of the House of the People.

(7) A Bill which has been passed through all the stages by the House of the People before its dissolution, but not sent to the Council of States at the time of its dissolution, shall be taken up by 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.’ ”

Sir, these are intended to economise the time of the House, and simplify its procedure in enacting legislative proposals coming before Parliament. It may be that a Bill after it has been duly passed by the Council of States, in all its stages in that House, and before it is sent up to the House of the People, the contingency may arise that the Lower House is dissolved before it takes up

the Bill. I suggest that such a Bill should not be deemed to have lapsed altogether; and that if it is agreed to by the new House of the People in the same form in which the Council of States had passed it, it should be deemed to have been passed by both Houses of Parliament, and be sent up to the President for assent. That is to say, it would not be returned a second time to the Council of States after being passed through all stages by the new House of the People as a new Bill brought in for the first time before the House, and then once again go through all the stages in the Upper House.

I think this stands to reason, especially having regard to the fact that both Houses are equally competent to initiate and deal with all Bills except money Bills. It may be in practice that the most important legislative proposals will originate in the Lower House. If not passed in the Lower House before dissolution, then automatically all such legislation pending there at any stage would be deemed to have lapsed, if the House is dissolved. But in the event of the Lower House passing any legislation in all its stages before its dissolution, and having so passed, sending up the proposal to the Upper House before it itself is dissolved, there should be no need to regard that Bill as having lapsed, because it has already been duly passed by the House of the People. The Upper House may then take it up and carry it through in all its stages, and if the Upper House agrees to it in the same form in which the Bill was sent up by the House of the People, there ought to be no need to send it back to the new Lower House elected after the dissolution.

I can conceive of a contingency in which this position may be abused; *i.e.* when controversial legislation may have been hurried through almost in the last days when the House of the People is likely to be dissolved, and the Upper House also being in sympathy with it might pass through all stages such Bills before the new Lower House can take up the matter. Difficulties of this nature might arise, especially if the newly elected House is dominated by a different party from that which preceded it. In that contingency, however there is no need to fear that the will of the people will not prevail, because either the Council of States may not pass the legislation passed by the previous House of the People, or if passed by it, it may not be assented to by the President. There is also nothing to prevent the new Lower House from enacting any other Bill contravening or rejecting the measure passed by its predecessor at the last moment. I think that by this amendment time would be saved, simplification of procedure would be assured, and duplication of work avoided.

No doubt these are merely procedural matters, which can be regulated primarily by each House or Parliament by rules. But if injunctions of this kind are incorporated in the Constitution itself, my amendment is necessary, as it will help to economise time. I commend it for the acceptance of the House.

Mr. President : I have received notice of certain amendments by Prof. Shibban Lal Saksena.

Prof. Shibban Lal Saksena : (United Provinces: General): There are two amendments. One is to article 87 and the other is to article 88. I am not moving the amendment to article 87.

Mr. President : These are all the amendments that we have got. Now the amendments and the original proposition are open to discussion.

Shri Brajeshwar Prasad (Bihar: General) : Mr. President, Sir, I am opposed to clause (2) of article 87 wherein it is stated that no Bill shall be deemed to have been passed by the House of Parliament unless it has been agreed to by both Houses. I do not see why in a democratic state, the representatives of the people should be placed on a par with the nominated representatives of the provincial governments. The supremacy of the Lower House must be recognised if democratic institutions are to function efficiently. It has been said

[Shri Brajeshwar Prasad]

that this clause is in conformity with the federal principles which have been agreed to in the beginning. I for one, Sir, do not see why anyone should trot out such an argument now. I do not consider this Draft Constitution to be purely Federal in character. It is partly federal and partly unitary and more unitary than federal in character. When we accepted federation the position prevailing in India was quite different. We did not accept the principle of federalism to accommodate the provinces. The provinces were never in our minds when we accepted the federal principle. We accepted federalism in order to meet the challenge of the Two-Nations theory of the late lamented Mr. Jinnah. We accepted federalism in order to persuade the Indian Princes to surrender a part of their sovereignty. Now the position is entirely changed. This country, Sir, has been unfortunately partitioned. The Princes today have been liquidated. The States today are in a far worse position than the Indian Provinces. Last time when the Constituent Assembly met I had spoken in this House in favour of a unitary State. Sir, I do not know what is in the mind of our Constitutional Pandits. Federation tends towards a unitary form of Government. I do not know of a single instance in history where a unitary form of Government has degenerated into federalism. As far as federalism is concerned, Sir, almost in all federal countries the constitution has tended towards a unitary form of Government. I visualize the role of a second chamber at the Centre merely as an advisory body. It should be a check upon hasty legislation, but to emphasize the federal character of the Constitution will be a retrograde step and those persons who talk and emphasize this aspect of our Constitution do a great disservice to the country. The Provinces were always subordinate to the Government of India and to say now that they have got autonomous and federal powers is really to turn the hands of the clock back. We are reversing, Sir, the process of history: we are emphasizing federalism, which is conservative in character and is full of weakness. Sir, I oppose clause (2) of article 87.

Mr. President : The question is:

“That the following new clause be inserted before clause (1) of article 87 :—

‘(1) Either House of Parliament shall be entitled to receive petitions or representations from the people of India or from the people of any unit forming part of the Union of India.’ ”

The amendment was negatived.

Mr. President : The question is:

“That in clause (5) of article 87, after the words ‘A Bill which’ the words ‘has been passed by the Council of States and’ and after the words ‘in the House of the People’ the words ‘shall not be deemed to have lapsed on a dissolution of the House of the People; but may be taken up by the new House of the People elected after such dissolution from the stage at which the Bill was at the time of the dissolution of the House; and if agreed to in identical form with that passed by the Council of States, the Bill shall be deemed to have been duly passed by both Houses of Parliament, and shall be forthwith sent up for the assent of the President.

If any, amendments are made in the House of the People in the Bill as passed by the Council of States, such a Bill shall be returned to the Council of States and if the amendments made by the House of the People are accepted and agreed to by the Council of States such a Bill shall not be passed by both Houses of Parliament and shall forthwith sent up for the assent of the President’ be inserted respectively.”

The amendment was negatived.

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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.