

Article 95

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

“That for article 95, the following article be substituted:

Supplementary, additional or
excess grants.

‘95. (1) The President shall—

- (a) if the amount authorised by any law made in accordance with the provisions of article 94 of this Constitution to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year; or
- (b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, cause to be laid before both the Houses of Parliament another statement showing the estimated amount of that expenditure or cause to be presented to the House of the People a demand for such excess, as the case may be.
- (2) The provision of the last three preceding articles shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorization of Appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or grant’.”

Shri R. K. Sidhwa : Sir, I move:

“That in amendment No. 12 of List I (Fourth Week), in clause (1) of the proposed article 95—

- (i) in sub-clause (a), the word ‘or’, occurring at the end, be deleted;
- (ii) sub-clause (b) be deleted; and
- (iii) at the end of clause (1), the following words be added :

‘and until both the Houses of Parliament pass such a demand, the expenditure shall not be incurred, and if incurred payment shall not be made.’”

Sir, the amendment moved by Dr. Ambedkar is in consequence of the previous articles passed. I welcome the amendment but I feel there is a flaw which requires to be remedied. The amended article would then read:

“The President shall..... cause to be laid before both the Houses of Parliament another statement showing the estimated amount of that expenditure or cause to be presented to the House of the People a demand for such excess, as the case may be and until both the Houses of Parliament pass such a demand, the expenditure shall not be incurred, and if incurred payment shall not be made.’ ”

We are all unanimous on the point that under the new set-up a new system should be introduced, so that as regards the finances there should be a thorough check by the Parliament. At present the procedure in the Parliament is most objectionable inasmuch as supplementary grants exceeding 100 crores are brought in, which are equal to one-third of the budget amount. It is most extraordinary and because of that power which the executive have got they have been most reckless in preparing the budget.

I will give you an illustration. In the last budget estimates of income the estimates of income increased by nearly fifty crores over the estimated amount and the expenditure increased by eighty crores. All that sixty crores over and above the estimated budget amount was spent by the executive and yet there was a deficit and new taxation was proposed. This is nothing short of hoodwinking the House by presenting misleading budget statements. I am sorry I cannot use less strong language. These inflationary budgets are intentionally brought before the House so as to show lesser revenue so that when the actuals are prepared they would show a deficit and if the budget is not balanced, they might propose new taxation. As I said sixty crores more were derived from revenue last year, yet eighty crores were spent over it and the budget was deficit and new taxes were proposed. There is no check on it. The executive feels

[Shri R.K. Sidhwa]

that they have a long rope, and that they can do what they like. Even today the Auditor-General has no right to pass a single item more than what the House has sanctioned in the budget. Yet when excess expenditure is incurred the Auditor-General goes before the Minister who tells him to pass the items and the Auditor-General puts his rubber stamp "No objection" and payments are made. This is very objectionable. There is no respect shown to the House by the executive. Is it fair? The budget has no sanctity. The budget statement is brought before the House, the House scrutinises it and tells the executive that they shall not spend more than what the House has sanctioned and yet the executive disregard the decision of the House and go on spending money.....

Mr. President : The honourable Member seems to think that he is delivering a speech before the Legislative Assembly when the budget is under discussion. He is on the amendment and I would like him to confine himself to it, that is to the principle underlying the amendment and not to expatiate on something that happened at the time of the last budget discussion.

Shri R. K. Sidhwa : I am giving only an illustration....

Mr. President : The same illustration has been given by the honourable Member more than once.

Shri R. K. Sidhwa : This amendment is so important that unless our responsibility is realised I can assure you, Sir, that our whole object will be frustrated by the Constitution we are framing.

Mr. President : If the amendment is incorporated in the Constitution that will be a sufficient safeguard and the honourable Member's speech will not be remembered.

Shri R. K. Sidhwa : I was making a case as to the justification for this amendment being incorporated in the Constitution. If the matter is left to the executive there is no chance of any likely improvement.

I was referring to the constitution of the free city of Danzig. There I found almost similar provisions. No supplementary amount is to be spent unless the House authorises it. It may be argued that in the event of an emergency what would happen? I want the executive to take stock of the whole year. The emergency does not happen for the purpose of spending money to the tune of hundreds of crores. It may involve a few lakhs but I object strongly to supplementary demands to the tune of hundreds of crores. Unless my amendment is accepted the very good object with which we are providing this article will be to that extent frustrated. These articles have been healthy and sound and they will be there for our future guidance. But as regards supplementary demands unless an amendment like the one proposed by me is incorporated in the Constitution the flaw will remain there and I can assure you (I repeat it again knowing the mind of the executive) there is not going to be any improvement as far as supplementary demands are concerned.

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

"That in amendment No. 12 of List I (Fourth Week), after clause (2) of the new article 95, the following new clause be added:

- '(3) After the first Parliament elected under this Constitution comes into being, the financial year, shall commence on the first November and end with the 31st of October.'"

Sir, the new procedure which is contemplated by this new amendment intends to give Parliament more time for the scrutiny of the estimates on the model of the British Parliament. In the British Parliament an Appropriation Act must be passed by the end of August. That means, five months after 31st

March. In England the months of April, May, June, July and August are some of the best months of the year. If our Parliament is to sit always during the three months of May, June, and July in Delhi, it will be very difficult. I therefore want that the consideration of the Budget should be taken up in the best months of the year in our country. Just as five months are allowed, after 31st March, for the Parliament to pass the Appropriation Act, I want that after the commencement of the financial year we should also get at least five months for passing the Appropriation Act. That means November, December, January, February and March. This will bring our procedure exactly in line with the procedure in British Parliament, Sir, in our country also, the financial year generally begins with Deepavali about the beginning of November, so that the fixing of the new financial year will be in consonance with our ancient traditions. I think therefore that in order that the purpose laying behind the amendment, which is to give the House more time and full facility to scrutinise all the estimates, may be achieved, it is necessary that the Budget should be discussed from the Deepavali to Holi, *i.e.*, from November 1st to March 31st. I think that if these days are fixed, we shall have the best portion of the year for the discussion of the Budget and passing the Appropriation Act. I hope Dr. Ambedkar will accept the amendment and spare the members of the new Parliament from having to sit in Delhi during the months of May and June as we are now doing.

Shri B. M. Gupte (Bombay: General): Sir, even after listening to the explanation given by Dr. Ambedkar I am inclined to oppose the provision in this article as far as the excess grants are concerned. I do not see how an occasion can arise for such a grant after the innovations we have made in the preceding article. It seems to me rather anomalous that after laying down a mandatory provision in one article we should provide in the next article for the regularisation of the breach of that mandatory provision. That is what it amounts to here. Perhaps the Mover of this amendment has overlooked the circumstances that have changed. I understand that this provision for excess grant was made on the recommendation of the Expert Committee that was appointed to consider the financial provisions. It has been said so in the footnote. So it is the Expert Committee that has proposed that such a provision should be made. I submit that the entire basis of the recommendation of the Expert Committee has been changed now by the proposals we have already adopted. I will invite attention to paragraph 79 of the report.

“It is usual in democratic constitutions to provide that no money can be drawn from the Treasury except on the authority of the legislature granted by an Act of Appropriation, but in this country the practice has been to authorise expenditure by resolutions of Government after the payments have been made and not by law. As the existing practice has been working well in this country appropriation by law does not appear to be necessary.”

So they definitely rejected the idea of an Appropriation Act which we have now adopted. That is one fundamental change that we have made. Formerly the Auditor-General could withdraw the amount in spite of the fact that it was not sanctioned by Parliament, because it was the executive that authenticated the Schedule. Now we have made a stringent provision by saying that it shall be done by an Act of Parliament. So, what the Auditor-General will now have to do is to defy an act of Parliament.

Another fundamental change we have made is this: The Expert Committee contemplated that the old system will continue. They took it for granted that the wording that is in the Government of India Act will also be maintained. I shall invite the attention of the House to the corresponding provision in the Government of India Act, 1935, as adapted. Section 35 says:

“Provided that, subject to the next succeeding section, no expenditure from the revenues of the Dominion shall be deemed to be duly authorised unless it is specified in the schedule so authenticated.”

[Shri B. M. Gupte]

So the present wording is that only that expenditure shall not be considered as authorised—not that ‘no money shall be withdrawn’. We have made the wording especially stringent in article 94. So, under the Government of India Act as long as the Auditor-General was confident that the executive would get the sanction of Parliament later on, there was no objection for him to withdraw the amount. But here under article 94 (3) he will have no power to do this unless he infringes the Appropriation Act of Parliament. I submit that it is not only that this provision about excess grant is inconsistent with clause (3) of article 94, but that it is hostile to the spirit of stricter control by Parliament of the finances of the country. I therefore submit that the point may be reconsidered whether the excess grant provision should be retained.

The Honourable Dr. B. R. Ambedkar: Mr. President, Sir, I find that the financial provisions which are placed before this House have given considerable worry to the Members. I can appreciate that, for I remember that when, Mr. Churchill’s father became the Lord Chancellor, a budget was placed before him showing figures in decimals and dots thereon. Evidently he was not a student of mathematics and could not understand what the figures meant with a dot in it. So he wrote on the file, “What do these damned dots mean?” asking for an explanation from the Secretary of the Finance Department. Having regard to such difficulty of understanding from persons so highly placed as Mr. Churchill’s father. I am not at all surprised if the Members of this House also find similar difficulty in understanding these provisions. I should therefore like to go somewhat into elementary propositions in order to place the House in a right frame of mind.

Sir, I should like to tell the House the effect of the Provisions contained in article 92, article 93 (2) and article 94. Article 92 places upon the President the obligation to lay before Parliament a financial statement for the year—I would like to emphasize the words “for the year” showing the expenditure in certain categories, those charged on the revenues of India and those not charged on the revenues of India. After that is done, then comes into operation article 93 (2), which states how the estimates are to be dealt with. It says that the estimates shall be presented to the House in the form of demands and shall be voted upon by the House of the People. After that work is done, article 94 comes into operation, the new article 94 which says that all these grants made by the House of the People shall be put and regularised in the form of an Appropriation Act. Now, I would like to ask the Members to consider what the effect is of articles, 92, 93 (2) and 94. Suppose we did not enact any other article, what would be the effect? The effect of the provisions contained in articles 92, 93 (2) and 94 in my judgment would be that the President would not be in a position constitutionally to present before Parliament any other estimates during the course of the year. Those are the only estimates which the President could present according to law. That would mean that there would be no provision for submitting supplementary grants, supplementary demands, excess grants or the other grants which have been referred to such as votes on credit and things of that sort. If no provision was made for the presentation of supplementary grants and the other grants to which I have referred, the whole business of the executive would be held up. Therefore, while enacting the general provision that the President shall be bound to present the estimates of expenditure for that particular year before Parliament, he is also authorised by law to submit other estimates if the necessity for those estimates arises. Unless therefore we make an express provision in the Constitution for the presentation of supplementary and excess grants, articles 92, 93 (2) and 94 would debar any such presentation. The House will now understand why it is necessary to make that provision for the presentation of these supplementary demands.

The question has been raised as to excess grants. The difficulty, I think, is natural. Members have said that when it is stated that no moneys can be spent by the executive beyond the limits fixed by the Appropriation Act, how is it that a case for excess grants can arise? That, I think, is the point. The reply to that is this: We are making provisions in the terms of an amendment moved by my Friend, Pandit Kunzru, which is new article 248-B on page 27 of List I, where there is a provision for the establishment of a Contingency Fund out of the Consolidated Fund of India. Personally myself, I do not think that such a provision is necessary because this question had arisen in Australia, in a litigation between the State of New South Wales and the Commonwealth of Australia, and the question there was whether the Commonwealth was entitled to establish a Contingency Fund when the law stated that all the revenues should be collected together into a Consolidated Fund, and the answer given by the Australian Commonwealth High Court was that the establishment of a Consolidated Fund would not prevent the legislature of the Parliament from establishing out of the Consolidated Fund any other Fund, although that particular fund may not be spent during that year, because it is merely an appropriation although in a different form. However, to leave no doubt on this point that it would be open to Parliament, notwithstanding the provision of a Consolidated Fund to create a Contingency Fund, I am going to accept the amendment of my Friend, Pandit Kunzru, for the incorporation of a new article 248-B. It is, therefore, possible that apart from the fund that is issued on the basis of an Appropriation Act to the executive, the executive would still be in possession of the Consolidated Fund and such other fund as may be created by law from time to time. It would be perfectly possible for the executive without actually having any intention to break the Appropriation Act to incur expenditure in excess of what is voted by Parliament and draw upon the Contingency Fund or the other fund. Therefore a breach of the Act has been committed and it is possible to commit such an act because the executive in an emergency thinks it ought to be done and there is provision of fund for them to do so. The question, therefore, is this: when an act like this is done, are you not going to make a provision for the regularisation of that act? In fact, if I may say so, the passing of an excess grant is nothing else but an indemnity Act passed by Parliament to exonerate certain officers of Government who have in good faith done something which is contrary to the law for the time being. There is nothing else in the ideas of an excess grant and I would like to read to the Members of the House paragraph 230 from the House of Commons—Manual of Procedure for the Public business. This is what paragraph 230 says:—

“An excess grant is needed when a department has by means of advances from the Civil Contingencies Fund or the Treasury Chest Fund or out of funds derived from extra receipts or otherwise spent the money on any service during any financial year in excess of the amount granted for that service and for that year.”

Therefore, there is nothing very strange about it. The only thing is that when there is a supplementary estimate the sanction is obtained without excess expenditure being incurred. In the case of excess grant the excess expenditure has already been incurred and the executive comes before Parliament for sanctioning what has already been spent. Therefore, I think there is no difficulty; not only there is no difficulty but there is a necessity, unless you go to the length of providing that when any executive officer spends any money beyond what is sanctioned by the Appropriation Act, he shall be deemed to be a criminal and prosecuted, you shall have to adopt this procedure of excess grant.

The Honourable Shri K. Santhanam : May I ask if under the provisions of the law as stated in the new article 95 (2) the three preceding articles will have effect? Does it mean that every supplementary demand should be followed by a supplementary Appropriation Act?

The Honourable Dr. B. R. Ambedkar : Yes; that would be the intention.

The Honourable Shri K. Santhanam : The appropriation will not be for the whole year?

The Honourable Dr. B. R. Ambedkar : There may be supplementary appropriation. That always happens in the House of Commons.

Prof. Shibban Lal Saksena : What about my amendment, Sir?

The Honourable Dr. B. R. Ambedkar : I am very sorry. Prof. Shibban Lal Saksena says that the financial year should be changed. Well, I have nothing to say except that I suspect that his motives are not very pure. He perhaps wants a winter session so that he can spin as long as he wants. If he wants longer sessions, he must sit during summer months as we are now doing.

Prof. Shibban Lal Saksena : You will then long for a holiday in the hills, not I. Summer will not influence my speeches at all.

Mr. President : The question is:

“That in amendment No. 12 of List I (Fourth Week), in clause (1) of the proposed article 95—

- (i) in sub-clause (a), the word ‘or’ occurring at the end, be deleted
- (ii) sub-clause (b) be deleted; and
- (iii) at the end of clause (1), the following words be added:

‘and until both the Houses of Parliament pass such a demand, the expenditure shall not be incurred, and if incurred payment shall not be made.’ ”

The amendment was negatived.

Mr. President : The question is:

“That for article 95, the following article be substituted:—

Supplementary additional or excess grants.

‘95. (1) The President shall—

- (a) if the amount authorised by any law made in accordance with the provisions of article 94 of this Constitution to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or
- (b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, cause to be laid before both the Houses of Parliament another statement showing the estimated amount of that expenditure or cause to be presented to the House of the People a demand for such excess, as the case may be.
- (2) The provisions of the last three preceding articles shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorization of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or grant.’ ”

The amendment was adopted.

Mr. President : The question is:

“That in amendment No. 12 of List I (Fourth Week), after clause (2) of the proposed new article 95, the following new clause be added:—

- ‘(3) After the first Parliament elected under this Constitution comes into being, the financial year, shall commence on the first November and end with the 31st of October.’ ”

The amendment was negatived.

Mr. President : The question is:

“That article 95, as amended, stand part of the Constitution.”

The motion was adopted.

Article 95, as amended, was added to the Constitution.

Article 96

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

“That for article 96, the following article be substituted:—

‘96. (1) Notwithstanding anything contained in the foregoing provisions of this Chapter, the House of the
Votes on account, Votes on People shall have power—
credit and exceptional grants.

- (a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 93 of this Constitution for the voting of such grant and the passing of the law in accordance with the provisions of article 94 of this Constitution in relation to that expenditure;
 - (b) to make a grant for meeting an unexpected demand upon the resources of India when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement;
 - (c) to make an exceptional grant which forms no part of the current service of any financial year; and to authorise by law the withdrawal of moneys from the Consolidated Fund of India for the purpose for which the said grants are made.
- (2) The provisions of articles 93 and 94 of this Constitution shall have effect in relation to the making of any grant under clause (1) of this article and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure.’ ”

(Amendment No. 1720 was not moved.)

The Honourable Shri K. Santhanam: Sir, I do not want to reopen the general principle which has been accepted; but I wish to say that the drafting of this article is rather defective.

For instance, in clause (1) it says, “ the House of the People shall have power”, and this is followed by, after sub-clause (c), “and to authorise by law.....” I think according to the Constitution, the House of the People cannot authorise by law.

The Honourable Dr. B. R. Ambedkar : I should say, Sir, that the Drafting Committee reserves to itself the liberty to re-draft the last three lines following sub-clause (c).

The Honourable Shri K. Santhanam : Sir, I am unable to understand this. In the House here we pass something which is obviously wrong and unconstitutional and then leave it to the Drafting Committee. I do not think we can leave it to the Drafting Committee to temper with the provisions we are making unless there is some lacuna or a mistake. We do not want to be faced with a new Constitution altogether and subjected to the trouble of looking at it article by article again. I do not think it is right for this House to pass a clause which is obviously wrong. Either he must say Parliament shall have power.....