

Mr. President : I am sorry you are taking advantage of my leniency. Amendment No. 247, Shri Munavalli.

Shri B. N. Munavalli (Bombay States) : Sir, I move:

“That in clause (3) of the proposed new article 282B, for the word ‘If’, the words ‘if, on the application of the person, so affected,’ be substituted.

(2) That in amendment No. 2 of list 1, 7th week, in clause (3) of the proposed new article 282 B, for the words ‘any person’ the word ‘him’ be substituted.”

If this is not done, the question may be raised by the relatives of the person to whom a notice has not been given under 282 B (2) (b), or his friends may raise the question or, if any organisation of employees is in existence, it will raise that question. So according to this clause there is Wide scope. The purpose of my amendment is to restrict that scope to the person who has been affected. It is only that person that should raise this question so that it may be dealt with according to law. The general principles embodied in this article can be seen to exist in the laws of the various nations. Even in the U.S.A. it has been established that there should be permanency of tenure. In Great Britain also by tradition the permanency of tenure has become so firmly entrenched that it is not possible for any new Ministry to assail it. All these provisions have been substantially embodied in this article. Some of the honourable Members said that what has been provided in this article has been taken away by the proviso. Sir, it is not so. To my mind it seems that the proviso is applicable only in the case of those civil servants whose loyalty is very doubtful. There are civil servants whose political affiliations are open to criticism and whose loyalty to the existing government is doubtful. Under those circumstances there is no other course but to deal with them according to this proviso. Such laws can be traced in the history of other nations also. For example in 1933 when the National Socialists came to power in Germany they promulgated a Civil Service Law whereby it was provided that those civil servants whose political affiliations were questionable and open to criticism could be discharged or reduced in rank. So also those that came out openly in an aggressive manner against the existing government were severely dealt with. Similarly in our country also, for dealing with those civil servants whose loyalty is questionable and who come out openly in an aggressive manner against the government, there must be some proviso, so that the heads of departments could properly deal with them. Therefore I am of opinion that this proviso should exist and I support the provisions of this article wholeheartedly.

Mr. Mahboob Ali Baig (Madras: Muslim): Mr. President, Sir, it is to be regretted that this important question which involves millions of public servants should have been brought before us when we are very much pressed for time. Anyway, the President has been kind enough to allow us to move amendments in this regard. Sir, I move.

“That in clause (2) of the proposed new article 282 B, after the words ‘aforesaid shall be’ the word ‘suspended’ be inserted.”

“That in sub-clause (a) of the proviso to clause (2) of the, proposed now article 282 B, the following be added:—

“for offences of bribery, corruption or treason, or offences involving moral delinquency.”

Then 325.

Mr. President : That is already covered.

Mr. Mahboob Ali Baig : Amendment Nos. 325, 326 and 327 have already been moved, but I will comment on them. Then amendment No. 328. Sir, I move :

“That the following new clause be added at the end of the proposed new article 282 B :—

“The Parliament, in the case of Union services, and the Legislature of the State, in the case of State services, shall lay down rules and regulations in this behalf to be followed by the appropriate authority.”

Under article 282A a public servant holds his office during the pleasure of the President or the Governor as the case may be. The legal implication is that a public servant when he has been dismissed or removed, cannot claim to be restored through a court. That is the legal implication. So, it has become very necessary for us to provide safeguards which must be, adequate, fair and just, in order that the services may feel secure in their tenure of office, on which depends the welfare of the State and of the administration which is so necessary. Now, Sir, this article 282 B seeks to provide such safeguards. Let us see whether they are adequate, fair and just. That is the question before us when we are discussing this 282B. My first amendment, No. 323, proposes that a public servant cannot be suspended without being given an opportunity to show cause why he should not be suspended. The punishment of suspension is a severe one and a serious one. That is my proposal, Sir, as far as 323 is concerned.

My amendment No. 324 refers to sub-clause (a) of the proviso to clause (2). What I propose is that where a person is dismissed, removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge, then no opportunity need be given to the public servant for showing cause why he should not be dismissed or removed. It has already been argued by many honourable Friends who came before me that a man may be convicted and sentenced for offences which do not involve either a dereliction of duty as a public servant or for any offence involving moral turpitude or moral delinquency and such cases have been cited also. But I have added two or three instances also such as “for offences of bribery, corruption, or treason or offences involving moral delinquency”. The circumstances in which a public servant may have been convicted or sentenced in these cases are of a very serious nature and when he has been so convicted, he should not be given an opportunity. That seems to be fair; but if you state that he was convicted for any offence before a criminal court, then he need not be given any opportunity, it is too sweeping a circumstance and therefore, Sir, I submit that the amendment, as drafted by the Drafting Committee may be amended as I have suggested.

I have purposely added the word “treason” for this reason. Clause (c) perhaps contemplates all cases where a person may be suspected of being disloyal and that a public servant is disloyal cannot be proved, it may be argued. It may also be true that there may be mere allegations against him. I submit that either you give an opportunity to him to prove that he is not disloyal or if he is tried by a court of law and found to be treasonable or disloyal, then he need not be given an opportunity. Beyond that it is not fair that he should not be given an opportunity to prove that he is disloyal and therefore he should be dismissed.

Now, Sir, with regard to clause (b) it has been argued by my honourable friends that we cannot conceive of cases where you cannot serve a notice upon him and a reasonable opportunity cannot be given to him. I do not know why such a clause has been introduced unless it be to facilitate the work of the inquiring officer when a delinquent has absconded and is not to be found anywhere. For that there is the, procedure which can be easily followed. I do

not see any reason why this clause should be there. With regard to (c), it is very unfortunate that this clause has been introduced. Even the Government of India Act, section 240, does not mention any provision of this kind. Where a foreign Government, a bureaucratic Government has not found it necessary.

Mr. President : The honourable Member is only repeating what has been said by more than one member. He can confine himself to amendment No. 328.

Mr. Mahboob Ali Baig : I consider that sub clause (c) is not only unnecessary but it is retrograde, and ought to be deleted.

Now with regard to clause (3) also I might mention that such a clause also does not find a place in section 240 of the Government of India Act. The reason for this may be that clause (b) states as follows :—"Where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied". This itself was quite enough. So perhaps it is not necessary to have introduced clause (3) here.

Then my amendment No. 328, I submit, is very necessary. The reason is that, as we know, these rules and regulations are framed not by the legislature but by the Government. I want that these rules and regulations should be framed by the legislature and not by the Governments concerned. The safeguards that you can provide.

Shri T. T. Krishnamachari (Madras : General) : If the honourable Member refers to article 282, he will find what he wants there.

Mr. Mahboob Ali Baig : So what I want is that in the absence of the help of the court in the case of persons sought to be removed you must provide very adequate, fair and just safeguards and those safeguards must be very clear and they must be made by the Parliament or the legislature to be followed by the appropriate authority. The words "reasonable opportunity" have no meaning at all. We have known many cases where the Government servants go to a court after being removed and they are told by the court that it has no jurisdiction at all because they are holding service during the pleasure of the Crown. The only way in which the Court can safeguard the rights of the person who goes to a court is to see what is a "reasonable opportunity" whether the procedure laid down by the Government, laid down by the legislature has been followed satisfactorily by the appropriate authority before dismissing him. It is only in those circumstances the Court can say whether the "reasonable opportunity" has been given to the person aggrieved and then come to his rescue. Even then he cannot be rescued or restored at all, but compensation only can be, granted to him. I am not only referring to the remedy that he may have before the court; but in order that he may feel secure, that he might have confidence in his office, it is necessary that these rules should be framed and the authorities concerned should follow them strictly. Though it is stated "if any question arises whether it is reasonably practicable to give notice to any person under clause (b)", you have not provided in clause (3) any appellate authority to find out whether the reasons given by the appropriate authority, that he is satisfied that it is not reasonably practicable to give notice are sound. It is the person who dismisses the Government servant who has to decide whether it is reasonably practicable to, give notice or not. You have not provided that some appellate authority should examine the matter and come to the conclusion that the appropriate authority who refused to give a reasonable opportunity is really right in having dismissed a Government servant without notice. If you say that the legislature might provide, for that, you might make it clear even now when we are dealing with this matter.

Therefore, Sir, my submission is that while the article makes an attempt to provide safeguards, in my considered view they are not adequate, fair and just

[Mr. Mahboob Ali Baig]

and it is necessary that in order to safeguard the interests of these millions of Government servants on whose efficiency and honesty our administration depends, these amendments of mine should be accepted.

(Amendment No. 367 was not moved.)

Prof. Shibban Lal Saksena : Mr. President, Sir, while carefully listening to the debate, I have been wondering whether the removal of this article from this Constitution would not be better than putting it in this form. In fact there is the fundamental principle that no man shall be condemned unheard. What we are laying down here is that some persons can be condemned unheard. If this article is removed, at least everybody could go to a court of law and say "I will be heard before I am punished." I know Dr. Ambedkar has introduced this article, not because of the provisos, but because of the fundamental principle involved in it that he wants to guarantee to the people in Government service that they shall not be removed from service or punished unless they are heard. But I say, Sir, that the provisos have ruined the whole thing. In fact under clause (a) even Pandit Jawaharlal Nehru, yourself and probably half of the House would all be liable to be dismissed because of our conviction on criminal charges during Satyagrah movement which did involve moral turpitude. I hope, Sir, the amendment of Pandit Thakur Dass Bhargava, of which he has given notice, will be accepted.

About clauses (b) and (c), I cannot see how the mere giving of an occasion or an opportunity to show cause would be dangerous. You are not giving anybody an assurance that that explanation will be accepted. What I want is that these sub-clauses (b) and (c) must be removed. It is said that there are Communists in service whom it is necessary to remove and therefore this clause is necessary. It is said that it will be difficult to give an opportunity to show cause. I say, Sir, that by putting this clause in the Constitution, you are going to make the services a communist nest. I am not afraid of communism or their philosophy. By this clause, you are only making the people labour under a sense of injustice and grievance that they have not been heard. That is the feeling which in fact infects the people with disaffection and disloyalty. I therefore think that for the sake of seeing that the services are satisfied, you must give them an opportunity to be heard. I do not say that you must always accept their explanation; but they must have an opportunity to explain. I hope Dr. Ambedkar will accept the amendment.

Shri T. T. Krishnamachari : I move, Sir, that the question be now put.

Mr. President : Closure has been moved. The question is:

"That the question be now put."

The motion was adopted.

Mr. President : I shall now put the amendments to vote. Dr. Ambedkar, do you wish to say anything ?

The Honourable Dr. B. R. Ambedkar : I should like to say one or two words, Sir.

As I listened to the criticisms made by the various speakers who have moved their amendments, I have come to the conclusion that they have not succeeded in making a clear distinction between two matters which are absolutely distinct and separate : these matters are grounds for dismissal and grounds for not giving notice. This article 282-B does not deal with the grounds of dismissal. That matter will be dealt with by the law that will be made by the appropriate legislature under the provisions of article 282. In what cases a person appointed to the civil service should be dismissed from service would be a matter that would be regulated by law made by Parliament. It is not the purpose of this article 282-B to deal with that matter.

This article 282-B merely deals with, as I stated, the grounds for not giving notice before dismissal so that a person may have an opportunity of showing cause against the action proposed to be taken against him. The purport of this clause is to lay down a general proposition that in every case notice shall be given, but in three cases which have been mentioned in sub-clauses (a), (b) and (c), notice need not be given. That is all what the article says. It has been, in my judgment, a very wrong criticism which has been made by my honourable Friend Mr. Kamath that this article is a disgrace or a shame or a blot on the Constitution.

Shri H. V. Kamath : (*interruption*)

The Honourable Dr. B. R. Ambedkar : I should have thought that that was probably the best provision that we have for the safety and security of the civil service, because it contains a fundamental limitation upon the authority to dismiss. It says that no man shall be, dismissed unless he has been given an opportunity to explain why he should not be dismissed. If such a provision is a matter of disgrace, then I must differ from my honourable Friend, Mr. Kamath in his sense of propriety.

Shri H. V. Kamath : I am referring to the provisos to the article.

The Honourable Dr. B. R. Ambedkar : I am coming to the provisos.

So far as clause (2) is concerned, I have no doubt in my mind that everybody who has got commonsense would agree that this is the best proviso that could have been devised for the protection of the persons engaged in the civil service of the State. The question has been raised that any person who has been convicted in any criminal case need not be given notice. There, again, I must submit that there has been a mistake, because, the regulations made by a State may well provide that although a person is convicted of a criminal offence, if that offence does not involve moral turpitude, he need not be dismissed from the State service. It is perfectly open to Parliament to so legislate. It is not in every criminal charge, for instance, under the motoring law or under some trivial law made by Parliament or by a State making a certain act an offence that that would necessarily be a ground for dismissal. It would be open to Parliament to say in what cases there need not be any dismissal. It would be perfectly open to Parliament to exclude political offences. This clause in so many words merely deals with the question of giving notice. Parliament may exempt punishment for offences of a political character, exempt offences which do not involve moral turpitude. That liberty of the Parliament is not touched or restricted by sub-clause (a). I want to make this clear.

With regard to sub-clause (b), this has been bodily taken from section 240 of the Government of India Act. I think it will be agreed that the object of introducing, section 240 of the Government of India Act was to give protection to the services. Even the British people who were, very keen on giving protection to the civil services, thought it necessary to introduce it proviso like Sub-clause (b). We have therefore not introduced a new thing which had not existed before. With regard to sub-clause (c), it has been felt that there may be certain cases where the mere disclosure of a charge might affect the security of the State. Therefore it is Provided that under sub-clause (c) the President may say that in certain cases a notice shall not be served. I think that is a very salutary provision and notwithstanding the obvious criticism that may be made that it opens a wide door to the President to abrogate the Provisions contained in sub-clause (2). I am inclined to think that in the better interests of the State, it ought to be retained.

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Coming to clause (3), this has been deliberately introduced. Suppose, this clause (3) was not there, what would be the position ? The position would be that any person, who has not been given notice under sub-Clauses (a) or (b) or (c), would be entitled to go to a court of law and say that he has been dismissed without giving him an opportunity to show cause. Now, courts have taken two different views with regard to the word 'satisfaction' : is it a subjective state of mind of the officer himself or an objective state, that is to say, depending upon circumstances ? It has been felt in a matter of this sort, it is better to oust the jurisdiction of the court and to make the decision of the officer final. That is the reason why this clause (3) had to be introduced that no Court shall be able, to call in question if the officer feels that it is impracticable to give reasonable notice or the President thinks that under certain circumstances notice need not be given.

Now, another misapprehension which I should like to clear is this. Some people think that under the provisions regarding civil service which I have introduced the Government has an absolute unfettered right to dismiss any civil servant and that this power is aggravated by the introduction of sub-clauses (a), (b) and (c) of clause (2). I submit that again is a misapprehension because under the provisions relating to Public Service Commission which we have passed already there is a provision that every civil servant who is aggrieved by any action taken by any officer relating to the conditions of service will have a right of appeal to the Public Service Commission. Therefore, even in cases where the Government has not given the officer an opportunity to show cause, even such an officer will have the right to go to the Public Service Commission and to file an appeal that he has been wrongfully dismissed contrary to the provisions contained in the rules made relating to his service. I, therefore, think that the apprehensions which have been expressed by honourable Members with regard to the provisions contained in this article are entirely misfounded and are due to misunderstanding of the provisions of this Act, the provisions of article 282 and the provisions relating to Public Service Commission.

Mr. President : The question is:

"That in the proposed new Article 282-B clause (1), for the words 'by an authority subordinate to that by which he was appointed' the words 'except by an order of the Union Public Service Commission, or, as the case may be, by the State Public Service Commission' be substituted."

The amendment was negatived.

Mr. President : The, question is :

"That in the proposed new article 282- B, in paragraph (b) of the proviso to clause (3) for the words 'Where an authority empowered to dismiss a person or remove or reduce him in rank' the words 'If the Union Public Service Commission, or, as the case may be, the State Public Service Commission, be substituted.'"

The amendment was negatived.

Mr. President : The question is:

"That sub-clause (b) of clause (2) of the proposed new article 282-B be deleted."

The amendment was negatived.

Mr. President : The question is:

"That clause (3) of the proposed new article 282-B be deleted."

The amendment was negatived.

Mr. President : The question is:

“That in sub-clause (a) of the proviso to clause (2) of the proposed new article 282-B, after word ‘conduct’ the words ‘involving moral turpitude’ be inserted.”

The amendment was negatived.

Mr. President : The question is:

“That in sub-clause (a) of the proviso to clause (2) of the proposed new article 282-B, after the word ‘charge’ the words ‘involving moral turpitude’ be inserted.”

The amendment was negatived.

Mr. President : The question is :

“That in the proviso to clause (2) of the proposed new article 282-B, sub-clause (c) be deleted.”

The amendment was negatived.

Mr. President : The question is :

“That in the proposed new article 282-B in sub-clause (b) of the proviso to clause (2) for the words ‘that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause’ the words ‘on grounds to be recorded in writing, that the whereabouts of that person are unknown’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in sub-clause (b) of the proviso to clause (2) and in clause (3) of the proposed new article 282-B for the word ‘practicable’ the word ‘possible’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That in sub-clause (c) of the proviso to clause (2) of the proposed new article 282 B, for the words ‘is satisfied’ the word ‘certifies’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That in clause (3) of the proposed new article 282 B, for the word ‘If’, the words ‘if on the application of the person, so affected,’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in clause (3) of the proposed new article 282 B for the words ‘any person’ the word ‘him’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in clause (2) of the proposed new article 282 B, after the words ‘aforesaid shall be’ the Word ‘suspended’ be inserted.”

The amendment was negatived.

Mr. President : The question is :

“That sub-clause (a) of the proviso to clause (2) of the proposed new article 282-B. The following be added —

‘for offences of bribery, corruption or treason or offences involving moral delinquency’.”

The amendment was negatived.