

Pandit Lakshmi Kanta Maitra : Even during the interim period? And have a general election also ? Absurd.

Sri M. Ananthasayanam Ayyangar : It all depends how long the interim period lasts. If it is a short one, there may not be any need for the dissolution. But what if it is otherwise? We know every sitting Member will be anxious to continue and every other person who has not had a chance may like to have the House dissolved. I am not casting any aspersions on any particular Member. I only say that in the circumstances I have mentioned, there must be some provision whereby, if necessary, an opportunity can be had of changing the Assembly and going to the electorate.

The Honourable Dr. B. R. Ambedkar : Sir, after what has fallen from you, I do not think it is necessary for me to pursue the matter any further. So far as the merits of the amended article are concerned, I do not think anything has been said which calls for a reply.

Shri H. V. Kamath : What about the clause concerning the Speaker?

The Honourable Dr. B. R. Ambedkar : That was there in the original draft.

Mr. President : I will now put article 312 to vote. The question is:

“That the proposed article 312 stand part of the Constitution.”

The motion was adopted.

Article 312 was added to the Constitution.

Articles 312A to 312E, 312 G and 312 H

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

That after article 312, the following new articles be inserted :—

312A. Any person holding office as Governor in any Province immediately before the commencement of this Constitution shall after such commencement be the provisional Governor of the corresponding State for the time being specified in Part I of the First Schedule until a new Governor has been appointed in accordance with the provisions of Chapter II of Part VI of this Constitution and has entered upon his office.

Provisions as to
provisional Governor
of Provinces

312B. Such persons as the provisional Governor of a State may appoint in this behalf shall become members of the Council of Ministers of the provisional Governor under this Constitution, and until appointments are so made, all persons holding office as Ministers for the corresponding State immediately before the commencement of this Constitution shall become and shall continue to hold office as members of the Council of Ministers of the provisional Governor of the State under this Constitution.

Council of Ministers
of Provisional
Governors.

312 C. Until the House or Houses of the Legislature of a State for the time being specified in Part III of the First Schedule has or have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the body or authority functioning immediately before such commencement as the Legislature of the corresponding Indian State shall exercise the powers and perform the duties conferred by the provisions of this Constitution on the House or Houses of the Legislature of the State so specified.

Provisions as to
provisional Legislatures
in State in Part III of the
First Schedule.

312 D. Such persons as the Rajpramukh of a State for the time being specified in Part III of the First Schedule may appoint in this behalf shall become members of the Council of Ministers of such Rajpramukh under this Constitution and until appointments are so made all persons holding office as Ministers immediately before the commencement of this constitution in the corresponding Indian State shall become and shall continue to hold office as members of the Council of Ministers of such Rajpramukh under this Constitution.

Council of Ministers for
States in Part III of the
First Schedule.

[The Honourable Dr. B. R. Ambedkar]

For article 312E I propose amendment No. 21:

“That in amendment No. 16 above, for the proposed new article 312E, the following be substituted :—

‘312E. For the purposes of elections held under any of the provisions of this Constitution during a period of three years from the commencement of this Constitution the population of India or any part thereof may, notwithstanding anything, contained in this Constitution, be determined in such manner as the president may by order direct.’ ”

“312G. A Bill which immediately before the commencement of this Constitution was pending in the Legislature of the Dominion of India or in the legislature of any Province or Indian State may, subject to any provision to the contrary, which may be included in rules made by Parliament or the Legislature of the corresponding State under this Constitution, be continued in Parliament or the Legislature of the corresponding State, as the case may be, as, if the proceedings taken with reference to the Bill in the Dominion Legislature or in the Legislature of the Province or Indian State had been taken in Parliament or the Legislature of the corresponding State.

312H. The provisions of this Constitution relating to the Consolidated Fund of India or of any State and appropriation of moneys out of such fund shall not apply in relation to moneys received or raised or expenditure incurred by the Government of India or the Government of any State between the commencement of this Constitution and the thirty first day of March, 1950, both days inclusive, and any expenditure incurred during that period shall be deemed to be duly authorised if the expenditure was specified in a schedule of authorised expenditure authenticated in accordance with the provisions of the Government of India Act, 1935, by the Governor-General of the Dominion of India or the Governor of the corresponding Province or is authorised by the Rajpramukh of the State in accordance with such rules as were applicable to the authorisation of expenditure from the revenues of the corresponding Indian State immediately before such commencement.”

I do not think there is anything necessary to say by way of explanation of these articles.

There are two amendments Nos. 18 and 19 on the Notice Paper proposing to omit the word ‘provisional’ in articles 312A and 312B. I propose to accept these amendments in consonance with what we have already done.

Dr. P. S. Deshmukh : Mr. President, I move:

“That in amendment No. 16 above, in the proposed new article 312A, the word ‘provisional’, wherever it occurs, be deleted.”

“That in amendment No. 16 above, in the proposed new article 312B, the word ‘provisional’, wherever it occurs, be deleted.”

I am glad that the amendments are acceptable to Dr. Ambedkar. My reason for these are that it would be derogatory to the dignity of the President or the Governor to be described as ‘provisional’. I commend the amendments for the acceptance of the House.

Shri H. V. Kamath : I move:

“That in amendment No. 16 above, in the proposed new article 312E, for the words ‘by Order directs’ the words ‘may, with the approval of parliament, direct’ be substituted.”

If my amendment is accepted by the House this new article 312E will read as follows:

“For the purposes of elections held under any of the provisions of this Constitution during a period of three years from the commencement of this Constitution the population

of India or of any part thereof may, notwithstanding anything contained in this Constitution, he determined in such manner as the President may, with the approval of Parliament, direct.”

This 312E is somewhat different from the draft of the new article as it reached us a day earlier. Anyhow my amendment would apply to this draft article as well. The issue that this proposed new article raises is that of the elections to be held under this Constitution.

I believe the House will agree with me when I say that elections are a matter with which Parliament is and will be very intimately concerned, and will be interested in. I see no reason why Parliament should be left out of the picture so far as determination of the population of India or of any part thereof is concerned. We have just adopted an article providing for various matters upon the inauguration of the Constitution and the Proclamation of the Republic, and there will be an interim Parliament also functioning with effect from that date. To my mind there is no inherent difficulty about consultation by the President with this Parliament. I have not sought to provide that these matters must be provided for by Parliament. I only want that whatever measures, whatever action, whatever steps, are taken by the President in this connection must be laid before Parliament. My amendment comes to this, that whatever measures are taken by the President in this regard must meet with the approval of Parliament.

I do not wish to dilate or expatiate upon the desirability or the soundness of the amendment which I have moved. I am sure it will commend itself to the House, considering the matter with which this article deals. In the determination of the population of India or any part thereof I do not want that the President should act on his own or on the advice of his Council of Ministers. It is a very vital matter concerning elections to legislatures and this House will do well to provide that any measures taken by the President in this regard should be laid before Parliament for its consideration, and approval or otherwise. Otherwise we will be striking at the very roots of the Constitution that we are passing, where normally the supremacy of Parliament has been recognised. We are providing for a sovereign democratic Republic, and I do not see why in this matter of elections Parliament should not be taken into confidence by the President. I cannot see any inherent difficulty in or objection of the President laying his measures before Parliament. The straightforward course will be for the President to lay his decrees in this connection before Parliament, seek its approval and obtain it.

Mr. President : There is no other amendment to this article; but there is an amendment of which notice has been given by Mr. Sidhva but that relates really to article 311 which deals with the Central Legislature. When that article comes up, that amendment will become relevant, but it is not relevant to this article which deals with the provincial legislatures. We shall hold it over until article 311 comes before the House for consideration. Does anyone else wish to say anything on this ?

Prof. Shibban Lal Saksena : Mr. President, Sir, this is an omnibus article which provides for the needs of the transitional period. I only want to comment on article 312E and here I support Mr. Kamath in so far as he wants that the population may be determined by the President but it must be approved by Parliament. In fact, the original article 312E was more comprehensive. The revised article 312E says—

“For the purposes of elections held under any of the provisions of this Constitution during a period of three years from the commencement of this Constitution the population of India or of any part thereof may, notwithstanding anything in this Constitution, be determined in such manner as the President may be order direct.”

I think this too wide a power to give to the President. Here is this House which, it is proposed, will become the new Parliament. This House is passing a Constitution and we are providing here for the transitory period. If anything arises

[Prof. Shibban Lal Saksena]

during transitory period for which there is no provision in the Constitution, then this Constituent Assembly will still be there as the new Parliament. If there is any difficulty, it can be referred to Parliament and Parliament can make the necessary law for the purpose.

I therefore do not think that we should burden our Constitution with powers given to the President for things not provided for in the Constitution. It is quite possible that during the transitory period matters may arise for which there is no provision in the Constitution, but which we should not permit the President to be the authority to decide. This very Parliament will be there. If any lacuna is seen, the President can refer it to this House and this House can frame a law providing for that contingency. In fact, the members of the Parliament will be elected on the basis of population. For a population of not less than five lakhs and not more than seven and a half lakhs there will be one representative in this House. So, determination of the population becomes very important and this should not be left to the sweet will of the President, which means actually the advice of the Ministers. To leave such an important power in the hands of the President will, I think, be unfair to this House and to the country. The amendment moved by Mr. Kamath is very fair, and if there is any action taken by the President on such an occasion, it should be laid before Parliament.

Then, Sir, I do not see any provision here regarding constituencies. I would like Dr. Ambedkar to inform us whether there is any provision in the Constitution for the delimitation of constituencies. Or, does he want to leave it entirely to the Election Commission? Formerly, under article 312B the constituencies were also to be delimited by the President. I am glad that he has omitted the provision. I do want to know whether any provision is made in the Constitution for the report of the Delimitation Commission to be submitted to the Parliament for approval. It should in the normal course be submitted to the Parliament which will come into existence in the coming January.

The Honourable Dr. B. R. Ambedkar : I cannot accept this amendment. My Friends Mr. Kamath and Prof. Saksena have read a great deal into this article 312E. As a matter of fact the article is of very limited importance and the question that is dealt with in this article is the determination of the population of any particular area. My friends very well know that according to the article which we have already passed the population for purposes of election is to be taken as determined by the last census. It is also accepted that having regard to the partition of India the census figures for 1941 cannot be taken as accurate, and consequently the delimitation of constituencies and the fixation of seats cannot be based upon the truncated provinces whose population figures have been considerably disturbed. Therefore, it is as well to have some one in authority to determine what the population should be taken to be and whether the population is to be taken as enumerated in the census or by a fresh enumeration or, as I said, by merely determining the population on the basis of the voting strength. These are the matters that are left to the President and I do not see what the approval of Parliament is going to do in a matter of this sort. It is a purely administrative matter necessitated by the special circumstances of the case and I think it is much more desirable to leave the matter to the President, if we want really that the elections should be expedited. I am therefore unable to accept the amendment moved by my Friend Mr. Kamath.

Shri H. V. Kamath : Has Dr. Ambedkar any objection to the principle of my amendment?

The Honourable Dr. B. R. Ambedkar : I do not accept it. The import of this article is very limited. It is the determination of the population, not

delimitation of constituencies. The delimitation of constituencies will take place according to the provisions of the Constitution.

Mr. President : The question is:

“That in the proposed new article 312A, the word ‘provisional’, wherever it occurs be deleted”.

The amendment was adopted.

Mr. President : The question is:

“That in the proposed new article 312B, the word ‘provisional’, wherever it occurs, be ,deleted.”

The amendment was adopted.

Mr. President : The question is:

“That in the proposed new article 312E, for the words ‘by Order directs’ the words ‘may, with the approval of Parliament, direct’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That proposed article 312A, as amended, stand part of the Constitution.”

The motion was adopted.

Article 312A, as amended, was added to the Constitution.

Mr. President : The question is:

“That proposed article 312B, as amended, stand part of the Constitution.”

The motion was adopted.

Article 312B, as amended, was added to the Constitution.

Mr. President : The question is:

“That proposed articles 312C. and 312D. stand part of the Constitution.”

The motion was adopted.

Articles 312C. and 312D. were added to the Constitution.

Mr. President : The question is:

“That proposed article 312E, as amended, stand part of the Constitution.”

The motion was adopted.

Article No. 312E, as amended, was added to the Constitution.

Mr. President : The question is :

“That proposed articles 312G and 312H stand part of the Constitution.”

The motion was adopted.

Articles 312G and 312H were added to the Constitution.

Articles 313

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

“That for article 313, the following be substituted :—

<p>313. (1) The President may, for the purpose of removing any difficulties, particularly in relation to the transition from the provisions of the Government of India Act, 1935, to the provisions of this Constitution, by order, direct that this Constitution shall, during such period as may be specified in the Order, have effect subject to such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary or expedient:</p>	<p>Power of the President to remove difficulties.</p>
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