

Shri T. T. Krishnamachari (Madras : General) : Mr. President, may I draw your attention to an irregular act on the part of the Assembly Staff. I would like to know, Sir, whether you have given any member of the staff disciplinary jurisdiction over the Members of the Constituent Assembly so that they can punish them for what they think is non-compliance with their request. A member of the staff has written to me to say that I would not get petrol coupons for a particular week because of something that I have not done in the past. I do not know whether he is entitled to do so and if you have authorized him to do so, and I think the whole action is perfectly irregular.

Mr. President : It is evident I could not have given any authority like that to any member of the staff; however, I shall look into the matter.

We shall now take up article 79-A.

DRAFT CONSTITUTION—(*Contd.*)

New Article 79-A

The Honourable Dr. B. R. Ambedkar (Bombay: General) : Sir, I move:

That in amendment No. 1 of List I (First Week) of Amendments to Amendments for the provisions of any law made under the said clause."

Secretariat of Parliament " 79-A. (1) Each House of Parliament shall have a separate Secretarial Staff:

Provided that nothing in this clause shall be construed as preventing the creation of posts common to both Houses of Parliament.

(2) Parliament may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of either House of Parliament.

(3) Until provision is made by Parliament under clause (2) of this article, the President may, after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, make rules regulating the recruitment and the conditions of service of persons appointed to the secretarial staff of the House of the People or the Council of States, and any rules so made shall have effect subject to the provisions of any law made under the said clause."

The House will see that this is a new article which is sought to be introduced in the Constitution. The reason why the Drafting Committee felt the necessity of introducing an article like this lies in the recent Conference that was held by the Speakers of the various Provinces in which it was said that such a provision ought to be made in the Constitution.

It was, as every one most probably in this House knows, a matter of contention between the Executive Government and the President ever since the late Mr. Vithalbhai Patel was called upon to occupy the President's Chair in the Assembly. A dispute was going on between the Executive Government and the President of the Assembly. The President had contended that the Secretariat of the Assembly should be independent of the Executive Government. The Executive Government of the day, on the other hand, contended that the Executive had the right to nominate, irrespective of the wishes and the control of the President the personnel and the staff required to serve the purposes of the Legislative Assembly. Ultimately, the Executive Government in 1928 or 1929 gave in and accepted the contention of the then President and created an independent secretariat for the Assembly. So far, therefore, as the Central Assembly is concerned, there is really no change effected by this new article 79-A, because what is provided in clause (1) of article 79-A is already a fact in existence.

But, it was pointed out that this procedure which has been adopted in the Central Legislature as far back as 1928 or 1929 has not been followed by the various provincial legislatures. In some provinces, the practice still continues of some officer who is subject to the disciplinary jurisdiction of the Legislative

Department being appointed to act as the Secretary of the Legislative Assembly with the result that that officer is under a sort of a dual control, control exercised by the department of which he is an officer and the control by the President under whom for the time being he is serving. It is contended that this is derogatory to the dignity of the Speaker and the independence of the Legislative Assembly.

The Conference of the Speakers passed various resolutions insisting that besides making this provision in the Constitution, several other provisions should also be, made in the Constitution so as to regulate the strength, appointment, conditions of service, and so on and so on. The Drafting Committee was not prepared to accept the other contentions raised by the Speakers' Conference. They thought that it would be quite enough if the Constitution contained a simple clause stating that Parliament should have a separate secretarial staff and the rest of the matter is left to be regulated by Parliament. Clause (3) provides that, until any provision is made by Parliament, the President may, in consultation with the Speaker of the House of the People or the Chairman of the Council of States, make rules for the recruitment and the conditions of service. When Parliament enacts a law, that law will override the rules made pro-tempore by the President in consultation with the Speaker of the House, of the People. I think that the provision that we have made is sufficient to meet the main difficulty which was pointed out by the Speakers' Conference. I hope the House will find no difficulty in accepting this new article.

[Amendments 43 and 44 of List II (First Week) were not moved.]

Shri H. V. Kamath (C.P. & Berar: General): Sir, May I move all the amendments standing in my name or am I to take my chance after Prof. Shibban Lal Saksena ?

Mr. President : All at once.

Shri H. V. Kamath: Mr. President, I move:

"That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in the proviso to clause (1) of the proposed new article 79-A, for the words 'shall be, construed as preventing the words 'shall prevent' be substituted.

That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in clause (2) of the proposed new article 79-A, for the words 'recruitment, and the conditions of service of persons appointed, to' the words 'recruitment to, the salaries and allowances and the conditions of service of' be substituted.

That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 79-A. for the word 'or' occurring in line 4. The word 'and' be substituted.

That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 79-A, the words 'as the case may be' be deleted.

That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 79-A. for the words 'recruitment and the conditions of service of persons appointed to' the words 'recruitment to, the salaries and allowances, and the conditions of service of' be substituted.

That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 79-A, for the words 'the House of the People or the Council of States' the words 'each House of Parliament' be substituted.

That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 79-A, all the words after the words 'Council of States' where they occur for the second time, be deleted."

Mr. President: Are not all these amendments more or less of a verbal nature ?

Shri H. V. Kamath : No, Sir. I shall however speak on the more substantial ones. If you deem fit you may kindly say which are verbal and I shall abide by your ruling, Sir.

Mr. President : No. 72 is verbal.

Shri H. V. Kamath: Nos. 72 and 73 go together. Coming to amendment No. 69, the object of this amendment is to eliminate unnecessary verbiage. We in this proviso to clause (1) I do not find any parallel in any other proviso which provisos have been moved and adopted. I have closely examined various provisos of articles that this House has adopted in the past, and for the words occurring in this proviso to clause (1) I do not find any parallel in any other proviso which we have adopted earlier. I shall refer to two or three articles that we have already passed. I shall invite your attention to article 22. The proviso to clause (1) says:

“Provided that nothing in this clause shall apply to an educational institution etc.”

It does not say:

“Provided that nothing in this clause shall be construed as applying etc.”

This is unnecessarily cumbering the Constitution with needless, redundant, superfluous verbiage.

I therefore feel that the meaning of this proviso could be adequately conveyed by merely stating that nothing in this clause shall prevent the creation of posts common to both Houses of Parliament. If the House is desirous of referring to other articles of similar nature, I shall invite its attention to article 42 clause (3) sub-clause (b). There again it says :

“Nothing in this article shall prevent Parliament from conferring by law functions on authorities other than the President.”

The proposed article, article 79-A, has a very clumsy construction, in my judgment, and no useful purpose would be served by the addition of the words “ shall be construed as preventing”.

I therefore submit that our object will be adequately served by merely stating that:

“Nothing in this clause shall prevent the creation of posts common to both Houses of Parliament.”

Then I come to amendment No. 71 which relates to recruitment and conditions of service of persons appointed to these posts—the secretarial staff or others of either Parliament.

Mr. President : Would you not leave the wording to the Drafting Committee ? I am sure the Drafting Committee will consider these.

Shri H. V. Kamath: It is in my judgment more or less substantial and I would crave your indulgence to let me speak.

Mr. President : If it is put to the House it may be lost.

Shri H. V. Kamath : That will be after my speech. I leave it entirely to the judgment of the House which I do not wish to fetter. I only wish to place my views before the House and it is open to the House to either accept or reject them. I submit that should not affect the moving of my amendments at this stage.

Amendment No. 71. This clause (2) if this new article refers to recruitment and conditions of service. Now for any staff, secretarial or otherwise or any

body of public servants, various questions arise. Recruitment is the first, without which there is no body of public servants. Then conditions of service arise. But to my mind the conditions of service do not include the salaries, emoluments and other allowances that will be paid to those servants. I remember covenants that used to be signed by members of the all-India services. Various conditions of service were laid down in those covenants that used to be executed between officers of all-India services and the Secretary of State. Notably, I remember personally the Indian Civil Service. There various conditions of service were laid down, but there was no reference at all to salaries and emoluments of the servants of that category. I am sure in every other Department, in every other field of service, Government or otherwise, a similar rule will hold, and that is salaries and emoluments are matters apart from conditions of service. I have no doubt on that point and I do not know whether the House will hold the same view, but from my experience in this line salaries and emoluments are something quite apart from the conditions of service; but I am sure so far as this new article is concerned this House will desire that Parliament should regulate not merely questions of recruitment and conditions of service but also the other question of emoluments, that would be paid to the Secretarial staff of our future Parliament.

Therefore, in my judgment, it is very necessary that this article should make it clear that Parliament shall regulate not merely the recruitment, the cadre or strength of the staff and conditions of service, but also the other cognate matter of salaries and allowances that may be paid to the members of the staff. Already we have passed several articles, notably the articles pertaining to the Speaker, Deputy Speaker and similar other articles where we have definitely and explicitly, referred to the salaries and allowances that will be paid to these various dignitaries of Parliament. Therefore, it is necessary, in my judgment, that these words should also be included in this article so as to make it quite clear that salaries and allowances also should be regulated by Parliament.

Coming to my next amendments Nos. 72 and 73, I have to say only one word about them. We have already had it stated in the article moved by Dr. Ambedkar where the proviso states “nothing in this clause shall be construed. As preventing the creating of posts common to both Houses of Parliament.” Therefore, it is conceivable and also likely that there will be certain posts common to the House of the People and the Council of States. If that be so, then the possibility, nay, the desirability of creating certain posts common to both Houses of Parliament will certainly arise. The contingency will be inevitable that the President will have to consult not merely one or the other, the Speaker or the Chairman, but he must consult both of them. He will have to consult the Chairman of the Council of States as well as the Speaker of the House of the People, before creating posts common to both, and obtain the views of the Chairman and the speaker as to whether it is necessary to make the posts common to both Houses or leave them otherwise. If we adopt the proviso, then the contingency which I have referred to will arise of the President having to consult both the Speaker and the Chairman.

Once the House accepts this amendment of mine, then the subsequent few words—“as the case may be” drop out automatically, because when you say “Chairman and the Speaker” then there is no valid reason for retaining the words “as the case may be.” Therefore, amendments Nos. 72 and 73 go together.

Amendment No. 74 is identical with No. 71 and I have already stated the reasons for moving amendment No. 71 and so I do not propose to speak on amendment No. 74.

[Shri H. V. Kamath]

Coming to amendment No. 75, it refers to clause (3), *i.e.*, with a view to bringing this into conformity with or in line with clause (1) of the proposed new article. Clause (1) refers to each House of Parliament. I desire that the article should end on a note similar to its beginning, that it should conclude in the same manner as it has begun. It begins with a reference to "Each House of Parliament" and there is no reason why, without detracting from the meaning of the article or this particular clause we should not merely say "each House of Parliament" at the end also, instead of repeating the words "House of the People or the Council of States." I have already said in amendments 72 and 73 that the President will consult both Houses of Parliament and not merely the Chairman or the Speaker. Therefore it follows *ipso facto* and quite logically enough, that it will suffice if we merely state "each House of Parliament" and not repeat the words "House of the People or the Council of States."

Then there remains the last amendment, *i.e.*, No. 76. Here it is slightly more than verbal, and the point of substance in it is this. It touches on the authority and power of Parliament, *vis-a-vis* the rule-making power of the President. The article lays down that "any rules so made shall have effect subject to the provisions of any law made under the said clause." Now if this clause is studied carefully, it will be realised that this power is given to the President only until Parliament meets to deliberate thereon, and only so long as provisions in this regard are not made by Parliament. That is to say, they do not overlap. There is to be no overlapping of the authorities of the Parliament and the President, at any point. Until the new Parliament meets and deliberates on these matters, it is obvious that no rules, no provisions in this regard can be made, by Parliament. So, for that interim period, for the interregnum, power is given to the President to make rules in this respect. Once Parliament sits and deliberates and makes provisions in this regard on these various matters, the President's authority vanishes. The rules made by him have no power or force afterwards, once Parliament has made provisions in this regard. Therefore, in my judgment, to say that any rules made shall have effect, subject to provisions made under the said clause is wholly futile and fatuous, and I do not know how such a clause, such a provision could have at all found a place in this article. I wonder why this slip has been committed by Members and otherwise men of the Drafting Committee and other experts who have been grouped round them. To my mind this article makes it clear that Parliament shall make provisions, and until it does so, the President shall make rules. Then, what is the point in saying that these rules will be subject to any law made under the clause. Once Parliament has made provision in this regard, then the other rules have no authority; they die thereafter, and these rules will not govern in any manner the secretarial staff's recruitment, conditions of service and other matters connected with the staff of Parliament. But between now and the session of Parliament, for that period, the President will be empowered to make certain rules, but once Parliament meets and makes provisions, then the President, according to me, has no *locus standi* at all in this matter. Therefore it is absolutely pointless and purposeless and even derogatory to Parliament's dignity and authority to say that even after Parliament has met, the provisions in this regard made by the President will have effect subject to, etc., etc.

Clause (2), if it is read with and studied closely with clause (3), will make it quite clear to honourable Member that the last portion of clause (3). . . "and any rules so made shall have effect subject to the provisions of any law made under the said clause" must be deleted.

Shri Mahavir Tyagi (United Provinces: General): We are now more than convinced by the honourable Member's arguments that these words are not necessary.

Shri H. V. Kamath: If my friend Mr. Tyagi is convinced, I am very happy. I am not so sure that my other colleagues are equally convinced, but I am Certainly very glad to know from Mr. Tyagi that he has been convinced by my arguments, and I am glad that at least one Member of the House is with me, if not any others.

I therefore move these various amendments and commend them for consideration of the House.

Prof. Shibban Lal Saksena (United Provinces : General) : Sir, I move.

“That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in the clauses (2) and (3) of the proposed new article 79-A, before the word ‘recruitment’ the word ‘strength’ be inserted.”

I have added the word “strength” because the present article does not specify this. If you add this word, it will remove a lacuna. As far as the article itself is concerned, I believe that at one time our revered leader, the late Mr. Vithalbhai Patel, had to fight the battle of independence for the secretariat of the then Central Legislative Assembly with the then bureaucracy and it is a happy day today that we are incorporating this principle to ensure the independence of the secretariat staffs of our Parliament in the Constitution.

I support this amendment of Dr. Ambedkar and I hope by including the word “strength” you will remove the lacuna, which I think is present there.

Mr. President : All the amendments have now been moved. Does any Member wish to speak ?

Shri R. K. Sidhwa (C.P. & Berar: General) : Sir, I welcome this article. The Speaker’s secretariat ought to be quite separate from the executive. It is a recognised fact everywhere. But I have noticed, Sir, that when men, with the best of intentions, come into power, they do not want to part with the power which is not due to them. Therefore, many persons had to fight for this right in the past. I can give you illustrations, Sir, that in the Municipal Corporations also the secretariat branch is mixed even now with the executive. When I was the Mayor of Karachi I had to fight very hard with the secretariat department and the secretariat executive department did not like to budge an inch and part with any power. Ultimately, they had to yield and today, in pursuance of the resolutions passed by the All-India, Burma and Ceylon Mayors Conference, at Bombay, Calcutta and Madras there are separate secretariats for the Mayors. Therefore, it is in the fitness of things that the Speakers of all the provinces who met the other day under the chairmanship of the Speaker of the Parliament, decided that they must have a separate secretariat. I can cite you an illustration, Sir, that when the Speaker’s secretariat wanted pencils for the Members the executive refused to give them. I know of a province where at the instance of the House, Members complained that stenographers did not take down the proceedings properly, and therefore it was necessary that an additional stenographer should be added, but the executive refused to grant the additional stenographer even with the consent of the House. These conditions prevail even today and I am so glad that this article has been brought and has been put into the Constitution. If our executives, I mean the Ministers, had been reasonable, this article would not have been put into the Constitution and Parliament would surely have taken note of it. But when it is seen that even popular Ministers are not prepared to part with that power, there is no other alternative but to put such an article into the Constitution.

Coming to the service staff, the language is quite different from the original article in the List at page 11, as proposed at that time by the Honourable Dr. Ambedkar. He has made a certain improvement which I like. But I wish to make it clear that the staff of the secretariat should be quite, different from

[Shri R. K. Sidhwa]

the staff of the executive. The staff of the Speaker, I mean the Legislature, should be chosen from persons who are amiable, social, kind, useful and helpful to the Members, and not that kind of staff which exists in the Secretariat. I know that in our Parliament today we have got a staff who are helpful, kind, and always ready to help the Members in matters like the preparation of Bills, resolutions and questions. This is the kind of attitude that prevails also in the House of Commons. But if you go to the Central Secretariat, you will find quite a different type of staff. The practice in the House of Commons is that no staff shall be allowed to be recruited unless the Clerk of the House—whose post is equivalent to the Secretary of our Parliament—certifies that he is fit to be sent to the Public Service Commission. Then he will be allowed to sit for an examination by the Public Service Commission. That Clerk of the House keeps that man who aspires for a post in the secretariat, gives him a trial for a couple of months and sees whether he fulfills all the qualifications which I have mentioned. I can tell you from first-hand knowledge that the Clerk of the House of Commons is very careful to see that though an Additional Secretary, or an Assistant Secretary or an assistant clerk may be very good in the English language or in other matters, if he is not helpful, and kind and of an amiable nature, he is ruled out. Therefore he has no direct approach to the Public Services Commission either through the Ministries or the various departments until the Clerk of the House certifies that this man should proceed for the examination of the Public Services Commission. I would have preferred the original article which was moved by Dr. Ambedkar in that connection. In modification I had moved an amendment. I shall be pleased to have this clause put into the Constitution before the next Parliament comes in as I do not want the staff to be tampered with by anyone.

In the House of Commons the entire staff of its secretariat is appointed by the Clerk of the House and not even by the Speaker. Only as a matter of courtesy the Clerk of the House of Commons informs the Speaker that he is appointing so and so and the Speaker says it is all right. That is the practice. In May's Parliamentary Practice you will see that it distinctly lays down that the Clerk makes the appointment of the entire staff of the House of Commons. I therefore hope that a similar provision will be made by Parliament to that effect. I want to make it clear that, while we do not want the executive to interfere with the appointment of the staff of the Legislatures, it should not be understood that that power should go to the Parliament. It would be negating the very object of this amendment if Parliament takes upon itself to make appointments. Once a fit Secretary is appointed in the interest of discipline we must see that he makes all other appointments subject of course to the approval of the Speaker. The Speaker should have a voice because we are in the initial stage and I therefore desire, unlike in the House of Commons, that the Speaker should have a voice in the initial stage in the appointment of the staff. I do maintain, as I have already stated, that unless we have the proper type of staff of the kind I have mentioned we shall not be doing justice to Parliament and it will not serve the purpose of the article that we are providing in the Constitution. With these words I heartily support the amendment moved.

Shri Brajeshwar Prasad (Bihar : General) : Sir, I rise to support the new article 79-A moved by the Chairman of the Drafting Committee. I recognise the necessity of a separate staff for the Parliament, but there is one thing which is proposed to be done which I do not like. Questions relating to appointment, promotions and other conditions of service have been left to be determined by Parliament. The amendment which I wanted to move, but did not, suggested that it should be clearly laid down in the Constitution that all questions relating to appointment, in fact all appointments, must be made by the Federal Public Service Commission and not by the Speaker or the Chairman of the

Upper House. Having due regard to the facts of our political life, when there is hardly a ministry in the provinces which is not being condemned for patronage, for undue favour, for provincialism, it is not safe to vest this power or leave it in a nebulous state or to ask the Parliament to regulate these things. The Parliament's power must be circumscribed in this sphere; and if we want that the position of the Speaker should be above suspicion it is necessary that no patronage should be vested in his hands. We want a separate staff not just for the sake of dignity; simply because other Ministers have got their separate secretariat, therefore the Speaker must also have a secretariat so that his position and dignity may be in line with that of the other Ministers. We want this because it is a necessity; but there is no reason why the power of appointment, promotion and disciplinary matters relating to the services should be left in the hands of the Parliament, which will vest these powers in the hands of the Speaker. Sir, I have nothing more to say.

The Honourable Dr. B. R. Ambedkar: Sir, nothing that has been said, in my judgment, calls for a reply.

Mr. President : The question is:

“That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in the proviso to clause (1) of the proposed new article 79-A, for the words shall be construed as preventing’ the words ‘shall prevent’ be substituted.”

The amendment was negatived.

Mr. President : The question is

“That in amendment No. 42 of List II, in clauses (2) and (3) of the proposed new article 79-A, before the word ‘recruitment’ the word ‘strength’ be inserted.”

The amendment was negatived.

Mr. President : The question is :

“That in clause (2) of the proposed new article 79-A, for the words ‘recruitment, and the conditions of service of persons appointed, to’ the words ‘recruitment to, the salaries and allowances and the conditions of service of’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That in clause (3) of the proposed new article 79-A, for the word ‘or’ occurring in line 4, the word ‘and’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That in clause (3) of the proposed new article 79-A, the words as the case may be deleted.”

The amendment was negatived.

Mr. President : The question is :

“That in clause (3) of the proposed new article 79-A, for the words ‘recruitment and the conditions of service of persons appointed to, the words ‘recruitment to, the salaries and allowances and the conditions of service of’ be substituted”.

The amendment was negatived.

Mr. President : The question is:

“That in clause (3) of the proposed new article 79-A, for the words ‘The House of the People or the Council of States’ the words ‘each House of Parliament’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That in clause (3) of the proposed new article 79-A, all the words after the words ‘council of States’ where they occur for the second time, be deleted.”

The amendment was negatived.

Mr. President : The question is :

“That in amendment No. 1 of List I (First Week) of Amendment, % to Amendments, for the proposed new article 79-A, the following be substituted:—

Secretariat of Parliament. “79-A. (1) Each House of Parliament shall have a separate secretarial staff :

Provided that nothing in this clause shall be construed as preventing the creation of posts common to both Houses of Parliament.

(2) Parliament may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of either House of Parliament.

(3) Until provision is made by Parliament under clause (2) of this article, the President may, after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, make rules regulating the recruitment and the conditions of service of persons appointed to the secretarial staff of the House of the People or the Council of States, and any rules so made shall have effect subject to the provisions of any law made under the said clause.”

The motion was adopted.

New article 79-A was added to the Constitution.

Article 104

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

That for article 104, the following article be substituted:—

Salaries etc. of Judges “104. (1) There shall be paid to the judges of the Supreme Court such salaries as are specified in the Second Schedule.

(2) Every judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pensions as may from time to time be determined by or under law made by Parliament, and until so determined, to such privileges, allowances and rights as are specified in the Second Schedule :

Provided that neither the privileges nor the allowances of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.”

Sir, all that I need say is that the present article is the same as the original article except that the word “privileges” has been introduced which did not occur in the original text. What those privileges are I would not stop to discuss now. We will discuss them when we come to the second schedule where some of them might be specifically mentioned.

Shri Brajeshwar Prasad : Sir, I do not want to move any of the three amendments standing in my name.

Mr. President : As regards Mr. Sidhva’s amendment No. 79 this was with reference to No. 2 but since Dr. Ambedkar has moved amendment No. 77 from which the words which Mr. Sidhva wanted to omit have been omitted, his amendment does not arise now.

[Amendment No. 80 of List III (First Week) was not moved.]