

[Prof. K. T. Shah]

be employed in normal times, in ordinary circumstances. Of course in extraordinary circumstances, as in the case of an emergency, the use of extraordinary powers would be both necessary and justified. I think that it is important, therefore to make it clear, in the heading itself that this is an avowedly extraordinary power which may take the form of the legislation without our calling its legislative power. Legislative power the executive head should not have. Or it may even take the form of an executive decree or whatever form seems appropriate in the circumstances. The point that I wish to stress is that we must not, by any mention here imply or convey or suggest that the law making powers of the President are any but extraordinary powers. I think this is sufficiently clear, and will be acceptable to the House.

Mr. Tajamul Husain (Bihar: Muslim): Sir, Chapter III deals with the legislative powers of the President. Professor Shah wants that instead of the word “legislative” the word “extraordinary” should be used. Article 102 makes it clear that it is an extraordinary power of the President. It is nothing but extraordinary but it is still legislative power. Therefore I oppose this amendment.

Mr. President : I do not think that any further discussion is necessary. The question is:

“That in heading to Chapter III of Part V for the word ‘Legislative’ the word ‘extraordinary’ be substituted.”

The amendment was negatived.

Article 102

Mr. President : Then we come to the article itself. The first amendment is No. 1792 by Shri Damodar Swarup Seth.

(The amendment was not moved)

Shri H. V. Kamath : Mr. President, Sir, I request permission at the outset to move this amendment in two parts. By some accident they have been lumped together in the Secretariat as one amendment.

Mr. President : Yes.

Shri H. V. Kamath : Sir, I move:

“That in clause (1) of article 102, for the words ‘when both Houses’, the words ‘when one or both Houses’ be substituted.”

If we turn to article 69 of the Constitution, and read clause (2) thereof, we find that the President may from time to time summon the Houses or either House of Parliament. So it is not unlikely that at a particular time both Houses may not be in session but only one House may be in session. Therefore I would restrict the power of the President only to such occasions when no House will be in session. According to this article the President is empowered to promulgate ordinances when both Houses are not in session. As I have already stated, referring to article 69, an occasion may arise when one House will be in session. Therefore to make this clear, we will have to say “except when both Houses or one of the Houses of Parliament are in session.”

My second amendment, that is the latter half of amendment No. 1793,* is purely verbal. I only move it formally and leave it to the Drafting Committee for its consideration, because it is obvious that the President may promulgate

*That for the words “Such Ordinances” the words “Such Ordinance or Ordinances” be substituted.

one ordinance or more than one ordinance. The article, as it stands, uses the plural. To provide for the contingency I have mentioned, I move this amendment. It is purely verbal and I do not wish to dilate on it any further.

There is a third amendment, amendment No. 1794, which stands in my name. On re-reading this article 102, I think it is not necessary because the President, before satisfying himself, will have recourse to every means at his disposal including consultation with his Council of Ministers. Therefore I do not propose to move amendment No. 1794.

Mr. President : Amendment No. 1795 is verbal and therefore disallowed.

Sardar Hukum Singh (East Punjab: Sikh): Amendment No. 1794 stands in my name also. I would like to move it.

Mr. President : I will give you an opportunity later.

Mr. B. Pocker Sahib : Mr. President, Sir, I move:

“That to clause (1) of article 102, the following proviso be added :

“Provided that such ordinance shall not deprive any citizen of his right to personal liberty except on conviction after trial by a competent court of law.” ”

Sir, this is a very important matter and affects the fundamental right of every citizen to be tried by a competent court of law before he is deprived of his liberty. No doubt there may be circumstances in which action should be taken immediately but that should not deprive the citizen of his fundamental right of being tried by a court of law. The reason why I have given notice of this amendment is the recent experience we have had in the various provinces in the matter of enforcing ordinances and even the Public Safety Acts which have taken the form of ordinances. The ordinances were later made into law, but the important matter to be noted is that the fundamental right of the citizen to be tried by a court of law has been lost to him. I know that in the province of Madras there have been hundreds of cases in which even the provisions made in the Public Safety Act passed by the legislature of that province have not been complied with the persons were arrested and detained in custody not merely for weeks but for months without even being the grounds for which they were arrested. This is a very scandalous state of affairs. You might have come across the judgments of the High Court which were published in the Press and this practice has been condemned in strongest words by the High Court of Madras, very recently. After all there may be some emergency in which some extraordinary power has to be exercised, but that should not in any way deprive a citizen of his elementary right, and after all, I do not know why the citizen should be deprived of that right, even though emergencies might arise, in which quick action is necessary. But the scandalous way in which even the Public Safety Act has been administered in an eye-opener to us that to give such a power to the President to pass ordinances, which give unrestricted powers to deprive the citizens of their liberty, should not be tolerated; and therefore, Sir, I submit that this is a very necessary and desirable proviso that should be added to this clause, and I would request the House to take into consideration the recent experiences in the administration of Public Safety Ordinances and Public Safety Acts, by which innocent citizens have been kept without trial for months and months together in very many cases a person is kept in custody for months and months and then he is just released without giving any reason. I submit, Sir, that in future there should be no rule for tolerating such a state of affairs, and therefore I would request honourable Members of this House to pay serious consideration to this aspect of this matter and though the drafters of this clause may have in view the Communists or such other bodies, even that is no justification for depriving the citizens of their liberty, entirely by such ordinances and that too indefinitely. Therefore, I submit, Sir, that this House may be pleased to accept this amendment.

Mr. President : Amendment No. 1797 is covered by an amendment which has been moved by Mr. Kamath.

(Amendments Nos. 1798 and 1799 were not moved.)

Shri Jaspat Roy Kapoor (United Provinces: General): Mr. President, I have given notice of an amendment to No. 1798.

Mr. President : Amendment No. 1798 has not been moved. No question of moving an amendment to an amendment, which has not been moved, arises.

Shri Jaspat Roy Kapoor : I am sure it will be readily accepted by Dr. Ambedkar. It is a formal amendment, but yet necessary.

Mr. President : If it is a formal amendment, you can talk it over with him.

Shri Jaspat Roy Kapoor : I leave it to you whether it may be allowed to be moved or not.

The Honourable Dr. B. R. Ambedkar : It is not in the printed list.

Mr. President : It is in the list which has been circulated today. Item No. 39—List II (Second week).

Shri Jaspat Roy Kapoor : I submit, Sir, that the words “assented to by the President” in clause (2) of article 102, may be deleted, because they are obviously redundant. It is a Bill which is assented to and not an act. Once a Bill has been assented to by the President, it becomes an Act. Thereafter, no further assent of the President is necessary.

Mr. President : This is not an amendment to an amendment. It is really an amendment to the original article.

Shri Jaspat Roy Kapoor : It is only an amendment with reference to the amendment.

Mr. President : I have disallowed that kind of amendment on a previous occasion, which comes under the guise of an amendment to an amendment. I rule this out also.

(Amendment No. 1800 was not moved.)

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

“That in sub-clause (a) of clause (2) of article 102, after the words ‘both Houses of Parliament’, the words ‘within four weeks of its promulgation’ be inserted.”

If my amendment be accepted by the House, the clause will read thus:

“Every such ordinance, shall be laid before both Houses of Parliament within four weeks of its promulgation, etc. etc.”

The importance of the appropriateness of this amendment of mine arises out of a lacuna which has crept in here. No article in this Chapter provides for the life of an ordinance promulgated by the President. So far, we were under the impression, at least going by the experience of the Government of India Act and the ordinance making power of the Governor General provided for therein, that an ordinance expires or dies a natural death at the end of six months. But, some how or other, this Chapter is silent on that point.

Mr. President : The article says, “shall cease to operate at the expiration of six weeks from the re-assembly of Parliament.”

Shri H. V. Kamath : Six weeks from the re-assembly of Parliament. Suppose, Parliament is not summoned at all. We expect our President to be a Constitutional President and that he would always act upon the advice or direction of Parliament. But if the President is inclined to dictatorship, or to exercise dictatorial powers,—who knows what the future has in store for us ?—and if this article is left as it is, he may very well refrain from summoning Parliament to consider the emergency that has arisen or the circumstances which has made it necessary for him to promulgate the ordinance. If we read the entire chapter, we will find that there is no time limit specified for summoning Parliament. The article merely says that the ordinance shall be laid before both Houses of Parliament. For that also there is no time limit. Then, it shall cease to operate at the expiration of six weeks from the reassembly of Parliament. Suppose the President summons Parliament, say, after one year—Dr. Ambedkar says ‘no’ by a gesture—perhaps he is constitutionally minded and he does not aspire to dictatorial powers if he be elected President—certainly a man different from him might take unfair advantage of this article and refrain from summoning Parliament within a reasonable period. Therefore, I think it is necessary

Mr. President : Article 69 clause (1) might take the position clear. It says: “The Houses of Parliament shall be summoned to meet twice at least in every year and six months shall not intervene between their last sitting in one session and the date appointed for their first sitting in their next session.”

Shri H. V. Kamath : He can summon the next session six months after promulgating the ordinance. Then, six weeks after the re-assembly of Parliament, the ordinance expires. This means that an ordinance can continue in force for seven and a half months or a day or two less than seven and a half months, and not six months as it was even during the British regime. This is a very important chapter in as much as we are seeking to clothe or invest the President with certain powers against which the Congress and all patriots fought during the British regime,—I mean the ordinance-making power of the Governor-General. I want to restrict this power as far as we can. Therefore, I want to provide a constitutional safeguard against the misuse of this article. I want this article to provide that an ordinance promulgated by the President shall be laid before Parliament within four weeks of its promulgation. There is no practical difficulty about this at all. Parliament can be summoned, I am sure, as it is done in many other countries, even within two weeks. You can summon an emergent session, and four weeks is a liberal period of time within which to summon both Houses of Parliament.

If we turn to article 275, there it is definitely laid down in sub-clause (c) of clause (2) that a Proclamation “shall cease to operate at the expiration of six months....” But, here, as I have already pointed out, this lacuna has crept in and I would be happy if it is definitely laid down that an ordinance promulgated by the President would expire at the end of six months. I do not know how this oversight has overtaken the wise men of the Drafting Committee. I would be happy if this safeguard is laid down in this chapter to the effect that no ordinance shall continue in force after the expiry of six months, or that every ordinance will die a natural death at the end of six months. If that be not accepted, then, I think my amendment is the only way out, that Parliament must be summoned within four weeks of the promulgation of the ordinance. The article provides that it shall cease to operate within six weeks after that. This would make the ordinance making power very much restricted. This would give an ordinance a life of ten weeks at most. It may happen that now and then the President may have to promulgate ordinances and it may be that it will not be practicable, for various reasons to summon Parliament every time. But, then, it must be made

[Shri H. V. Kamath]

clear in this article that no ordinance shall have effect six months after its promulgation. I hope Dr. Ambedkar, even if he does not accept my amendment—I am not pressing my amendment in case this article stipulates the maximum life of an Ordinance,—will provide specifically for this, that no ordinance shall continue in force as the expiration of six months from the date of its promulgation. We should not leave it merely to the working of article 69, because under that article, as I have already calculated by simple arithmetic, an ordinance could continue in force for seven and a half-months. I hope therefore, that the Drafting Committee would reconsider this matter and definitely provide for an ordinance expiring at the end of six months from the date of its promulgation, at the latest.

Mr. President : Amendment No. 1802. I think this amendment goes with amendment No. 1805. Both of them might be moved together. Would you like to move both the amendments together or separately?

Pandit Hriday Nath Kunzru (United Provinces: General): I do not propose to move amendment 1805. Sir, I beg to move:

“That in sub-clause (a) of clause (2) of article 102, for the words ‘six weeks from the re-assembly of Parliament’ the words ‘thirty days from the promulgation of the Ordinance’ be substituted.”

Article 102 requires that:

“An Ordinance promulgated under this article ‘shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of Parliament, or if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of these resolutions.’ ”

This is a vital matter to which the Constitutions recently passed in several European countries have attached the greatest importance. The power of passing an Ordinance is equivalent to giving the executive the power of passing a law for a certain period. If there is such an emergency in the country as to require that action should be immediately taken by the promulgation of an Ordinance, it is obviously necessary that Parliament should be summoned to consider the matter as early as possible. Suppose that law and order in the country are seriously affected and the Government of the day consider it necessary that an Ordinance should be promulgated at once in order to prevent the situation from deteriorating or to bring it under control, it is obvious that if the Legislature is not sitting, the Executive must be enabled to arm itself with adequate power to maintain the peace of the country; but it is equally necessary that the Legislative should be summoned without avoidable delay to consider the serious situation that makes the promulgation of the ordinance necessary. I do not therefore see why an Ordinance promulgated by the Governor-General should be in force for several months. The article, as it is, implies two things, first that the Ordinance will remain in force as long as Parliament does not meet, and secondly that even when Parliament meets, it will not expire immediately but will remain in force for six weeks from its re-assembling unless it is disapproved by both Houses before the expiry of that period. I know that a similar procedure is laid down in the Government of India Act, 1935, but such a procedure was understandable in the circumstances in which that act was passed. That Act was not meant to confer full responsible Government on us. The executive was not even partially responsible to the Legislature. The provisions of the Act were such as to enable the British Government to exercise authority with regard to the maintenance of law and order in the country in the last resort. All that has changed now. We have now a responsible Ministry. There is no reason therefore why the process laid down in the Government of India Act, 1935, should be sought to be copied in the new Constitution.

Sir, There are several countries in which the Executive does not possess this power. There are some countries in which the Executive though armed with the power of promulgating decrees has to summon the Legislature as soon as possible and to place certain kinds of decrees before it. Take for instance France. My impression is that the period during which an Ordinance can remain in force there is much shorter than it will be if article 102 is passed by the Assembly. I do not think that in the new circumstances there is any justification for arming the Executive with the wide powers conferred on it under the Government of India Act 1935. All legislation, and ordinance is a particular kind of Legislation, should be subject to the approval of Parliament and this approval should be sought as early as possible.

Sir, I shall make my meaning clearer by giving an illustration. Suppose soon after the winter session of the Assembly a situation requiring the promulgation of an Ordinance manifests itself in the country. Normally another session will be held only in October or November next. If article 102 is accepted the Ordinance will remain in force for about six months and possibly six weeks thereafter. The maximum period during which the Ordinance may remain in force can therefore be seven and a half months. This obviously is much too long a period and there is no reason why the Executive should have the power to legislate for so long a period. I think therefore that the period should be long enough to enable the legislature to meet and consider the extraordinary situation requiring the promulgation of an Ordinance, at any rate an Ordinance made necessary by factors affecting the peace or security of the country. For instance, if there are certain tariff laws that require to be changed immediately in the economic interests of the country, the Executive may well make the necessary change and nothing may be lost if we wait for six, seven or eight months and the Legislature considers the ordinance only after that. But when the ordinance relates to the peace or security of the country, or to similar circumstances, requiring extraordinary action to be taken by the executive under an Ordinance, then I think, we have to see that the period during which the Ordinance remains in force is as short as possible, and that any legislation that may be required should be passed by Parliament after a due consideration of all the circumstances.

Sir, my objection is not merely that the period during which the ordinance may remain in force is too long; it also relates to the character of the Ordinance that may be promulgated. The executive may in a hurry pass an ordinance which enough partially necessary, may not be required in all its details. It is therefore necessary that the legislature should be given an opportunity, not merely of considering the situation requiring the passing of an Ordinance, but also the terms of the Ordinance. It is quite possible, Sir, that the legislature, while taking the view that some legislation is necessary, may not agree completely with the Executive, and may modify the Ordinance that has been promulgated. For these two reasons, Sir, I consider it very necessary that the power of passing an Ordinance given to the executive should be much more limited than it would be under article 102. I hope that my honourable Friend Dr. Ambedkar will give the matter the consideration that it deserves and will agree within me that this is a matter in regard to which, if necessary, the House may be asked to postpone consideration, if he is not ready with the necessary amendment.

It is quite possible Sir, that the amendment in the form in which I have put it may be defective. It may be perfectly easy for any Member to get up and point out the defects in it. But what is necessary is not that destructive criticism should be resorted to, but that such action should be taken as will be consistent with the new constitutional status of the country, and be in conformity with the responsibilities of the legislature.

Mr. President : May I just point out that you have to move amendment No. 1805 also, as that becomes necessary in case this amendment is accepted.

Pandit Hirday Nath Kunzru : Yes, Sir, I agree. I see that it should be moved. I therefore move, Sir:

“That the Explanation to clause (2) of article 102 be omitted.”

I need not say anything about this amendment, because it is a necessary consequence of the amendment that I have already moved.

Mr. President : Mr. Jaspat Roy Kapoor has given notice of an amendment to this amendment. Does he move it?

Shri Jaspat Roy Kapoor : No, Sir.

Mr. President : Prof. Shah.

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

“That in sub-clause (a) of clause (2) of article 102, after the word ‘Parliament’, where it first occurs, the words ‘immediately after each House assembles’ be inserted; after the word ‘and’ where it first occurs the words ‘unless approved by either House of Parliament by specific Resolution’ and after the word ‘operate’ the word ‘forthwith’ be inserted; and the words ‘at the expiration of six weeks from the re-assembly of Parliament, or if, before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions;’ be deleted.”

Sir, the amended clause would be thus:

“Every such Ordinance shall be laid before both Houses of Parliament immediately after each House assembles, and unless approved by either House of Parliament by specific Resolution, shall cease to operate forthwith.”

The words “at the expiry of six weeks, etc. etc.”, will be all gone.

Sir, the principle of my amendment is the same as that which found such a powerful support from Pandit Kunzru. Most of us, I am sure, view with a certain degree of dislike or distrust the ordinance-making power vested in the Chief Executive. However we may clothe it, however it may necessary, however much it may be justified, it is a negation of the rule of law. That is to say, it is not legislation passed by the normal Legislature, and yet would have the force of law which is undesirable. Even if it may be unavoidable, and more than that, even if it may be justifiable in the hour of the emergency, the very fact that it is an extraordinary or emergency power, that it is a decree or order of the Executive passed without deliberation by the Legislature, should make it clear that it cannot be allowed, and it must not be allowed, to last a minute longer than such extraordinary circumstances would require.

This power is either not given in many constitutions, to the chief executive; or if given it is restricted as effectively and rigorously as possible, in some such manner as is proposed by this amendment. That is to say, if the ordinance has to be passed, in the hour of emergency or to meet extraordinary circumstances, it must be laid before either Houses of Parliament immediately it assembles; and unless each House approves of it by a Specific Resolution, it must cease to operate forthwith. This is the minimum needed in the interests of civil liberty.

I think we cannot show our distrust of this extreme power in the hands of the Executive more clearly than by requiring that, unless Parliament approves and thereby makes it, so to say, its own Act, unless the Legislature makes it

its own enactment, executive legislation of this kind, passed by the President, must cease to operate immediately. We must leave no room for any doubt as to the maximum length of time during which the Presidential Ordinance can remain in operation. If Parliament is not in sessions, or if a general election is pending and therefore Parliament is not able to meet a margin of time may be allowed; but it must be the shortest possible. In that case, of course, other amendments which have been moved will operate, and I hope will operate, that is to say, the maximum life of the Ordinance must be limited by the Constitution. Even if it is any time necessary, even if it is unavoidable and justifiable under an emergency, the maximum life of the ordinance itself must be limited to three or four weeks, or six weeks at the most. The period is immaterial; the principle is important. By saying that the period is immaterial I do not suggest that it can be extended to any length. All I say is that between three, four or six weeks not much material difference may be found. Ordinance-making by itself being an unusual, extraordinary, and undesirable power, it should be qualified by a maximum period being described for its life.

Secondly, if a longer period or duration appears necessary, in any case within that period, the Parliament must be called; and either House must consider the Ordinance, and unless approved by each House by a special resolution the ordinance must be deemed forthwith to cease to operate.

On those terms, and under those limitations only, I think it may be possible to agree to this extraordinary power being vested in the President.

It is true that though the nominal authority which makes the Ordinance, is that of the President, he would be acting only on the advice of the Prime Minister and the Prime Minister naturally would be responsible to Parliament, where the ordinary remedies of responsible Ministries may take effect. In spite of this factor, I would not leave it to the exigencies, or to the possibilities of party politics, to see that such extraordinary powers are exercised at any time or for any time, and that is why I would require, under the constitution and by the constitution, that a maximum period is prescribed to the life of an ordinance; and that a definite procedure be laid down whereby the ordinance can be approved by either House of Parliament by a specific resolution. Otherwise it shall cease to operate immediately thereafter. I hope this very important matter will commend itself to the House, and the amendment will be accepted.

(Amendments Nos. 1804, 1806, 1807 and 1808 were not moved.)

Sardar Hukam Singh : Sir, I beg to move:

“That in clause (1) of article 102, after the words ‘except when both Houses of Parliament are in session’ the words ‘after consultation with his Council of Ministers’ be inserted.”

This is so evident that I might be met with the reply that in all constitutions it is supposed that the constitutional head always acts on the advice of his Council of Ministers and in other constitutions it is never put down expressly that he should do so. With that consciousness I have moved this amendment, because I feel that we are framing a written constitution wherein we are giving every detail, with the result that it is so cumbersome and bulky. Under such circumstances I feel that a matter of such importance and which is so apparent must be expressly put down. It may be said that conventions would grow automatically and the President shall have to take the advice of his Ministers. My submission is that here conventions have yet to grow. We are making our President the constitutional head and we are investing him with powers which appear dictatorial. Conventions would grow slowly and as this constitution is written and every detail is being considered, why should

[Sardar Hukam Singh]

we leave this fact to caprice or whim of any individual, however high he may be? If we clearly put down that he is to act on the advice of his Ministers, it is not derogatory to his position. With these words, Sir, I move my amendment.

Shri R. K. Sidhva (C.P. & Berar: General): On a point of order, Sir, the amendment moved by Mr. Pocker is out of order. His amendment reads:

“Provided that such ordinance shall not deprive any citizen of his right to personal liberty except on conviction after trial by a competent court of law.”

If you refer to article 15 under Fundamental Rights, which we have already passed, it says:

“No person shall be deprived of his life or personal liberty except according to procedure established by law, nor shall any person be denied equality before the law or the equal protection of the laws within the territory of India.”

This article which we have passed definitely defines what are the personal liberties and how they should be safeguarded. Hence this amendment would be out of order.

Mr. President : I do not think it is out of order. It is not consistent with article 15 which we have passed. It only confirms it. Therefore I, allow the amendment.

Dr. P. S. Deshmukh (C.P. Berar: General): Sir, there are a good many amendments moved to this article. It is quite natural for the House to emphasise that the ordinary powers of the Parliament shall not be circumscribed nor the Parliament's wishes defeated in any indirect way. It is with that intention that many Honourable Members of this House have come forward to limit the period of time of the operation of the ordinance and to insist that the President shall call a session of the Houses of Parliament at the earliest possible moment. I am afraid I have not been much impressed by the speeches in support of any of the amendments that have been moved.

The first amendment that has been moved by Mr. Pocker has been moved at a very wrong place. Not only has adequate provision been made already by the House regarding arresting of any person without there being any law under which he can be arrested but this is not the place where such an amendment should be moved because essentially I do not think that the House need fear that the President would misuse his power for the sake of arresting people without providing for it, or would promulgate an ordinance only for the sake of depriving any set of the citizens of India of their liberties. In any case the fundamental rights having already been approved I do not think there is any need for the amendment moved by Mr. Pocker. At the present moment many people have lost their liberties under the law of detention, the Public Safety Act and other laws passed in the Provinces. Honourable Members are correct in complaining that the provisions in the Public Safety Acts operating in the provinces have been somewhat arbitrarily and oppressively used and that it has caused considerable amount of dissatisfaction. But we are not dealing with the provinces, or their powers. we are here dealing with the legislative powers of the President and we have got to take notice of the fact that at the present moment Governments have ceased to be merely policemen or judges. A time there was when the Governments of the world were only policemen and judges. But now-a-days there is nothing that is outside the sphere of governmental activity. Amongst other things, Governments of the present day are shop-keepers; they are commission agents and even contractors. Every sort of duty that an ordinary citizen was performing is being performed

by the State under the exigencies of the present circumstances. I therefore feel, Sir, that the powers that we are giving to the President are all the more necessary because the day to day administration has become so complex.

Take, for instance, the administration of the controls. There are a thousand and one occasions when it would be necessary for the Executive to possess some such power. In the present extraordinary times through which the world is passing, Sir, I think it is absolutely necessary and desirable that the Head of the State should be empowered with these extraordinary powers.

Shri H. V. Kamath : The Constitution is not framed merely for extraordinary times; it is intended for many many years to come.

Dr. P. S. Deshmukh : I am sure, Sir, that the provisions that exist in this Constitution are such that there is no possibility of their being abused in ordinary circumstances also.

Pandit Kunzru said that it was well for the British Government to have had a section like this in the Government of India Act, 1935, when the Government was irresponsible. But when the Government is responsible to the Legislature there is no fear of its being abused. I think Pandit Kunzru has himself suggested a reply to his own argument. I am sure no President will act without the consent of the Cabinet and no Cabinet will act without the consent of the majority of the Members of the House. So, any power that is likely to be exercised under this Section by the President will have the tacit approval and consent of the Legislature, and for that reason I think the amendment of Sardar Hukum Singh is also not necessary. No President can continue to be in office if he were to issue ordinances which have not the consent of the Cabinet and ultimately of the Legislature. I, therefore, think, Sir, that there is no need for the safeguard which have been suggested. When the powers of withdrawal of Ordinance has been given to the President, I am sure, Sir, he will, as constitutional head—as the guardian of the people—not permit any legislative measure to continue for a day more than is absolutely necessary.

Then, Sir, as a consequence of the amendment which Pandit Kunzru has moved, he wants to omit the explanations. Now, actually, Sir, there are not two explanations. There is only one explanation. The third sub-clause of the article is also, in my opinion, a very important provision. It reads as follows:

“If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void.”

I think this provision should satisfy Mr. Pocker Sahib also, because if the legislative power exercised by the President goes counter to any of the Fundamental Rights, to that extent it shall be *ipso facto* void and shall be of no consequence whatever.

Under all these circumstances, Sir, I do not think there is need of any of the amendments that have been moved. I think the time which has been stated here, will probably be quite sufficient. But if in spite of this Dr. Ambedkar feels that he is convinced by the arguments that have been advanced and wants to make a provision for the immediate calling of the Parliament within the specified period of thirty days, I should have no objection, but I feel, Sir, that there is no likelihood of the legislative powers given to the President being misused and the powers of the sort which have been mentioned in the article are essential.

Mr. Tajamul Husain : Sir, I should first take up amendment No. 1802 moved by my honourable Friend Pandit Kunzru. Now, Sir, sub-clause (a) of clause (2) says that every ordinance shall be laid before Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of Parliament, etc. My honourable Friend Pandit Kunzru says that it should cease to operate at the expiration of thirty days from the promulgation of the Ordinance. I submit, Sir, I am unable to understand this. Ordinances are promulgated only in cases of emergencies. Suppose an emergency is such that it would last for more than thirty days, then what are we to do in that case?

Shri H. V. Kamath : Sir, the honourable Member has not properly understood Pandit Kunzru's amendment.

Mr. Tajamul Husain : Sir, I was not here when Pandit Kunzru moved his amendment. But from his amendment it is clear that he wants that the Ordinance should cease to operate at the expiration of thirty days from the time of promulgation of the ordinance. If that is the case, then I will place an example before you. Supposing the House of the People is dissolved today for the purpose of general election. It may take more than one month and in that case as soon as the dissolution takes place, the next day an emergency arises and the President of the Union promulgates an Ordinance. What are you going to do? There are no more members. How are you going to summon Parliament again? I oppose the amendment.

Now let me take amendment No. 1796 moved by Mr. Pocker. He says: 'Provided that such ordinance shall not deprive any citizen of his right to personal liberty except on conviction after trial by the competent court of law.' I cannot understand this. This is an extraordinary procedure. Ordinance means extraordinary procedure. In such an emergency the question of personal liberty does not arise. We do not know what will happen at that time. Therefore his amendment also should be opposed.

The amendment moved by Sardar Hukam Singh says that when an Ordinance is promulgated, there should be prior consultation with the Council of Ministers. It is very reasonable. We should support it. After all, the Prime Minister and the Cabinet are the chief representatives of the people. No doubt the President also represents the entire Union. But the Prime Minister and his Cabinet are I think more responsible people and they should be consulted before an Ordinance is promulgated. Therefore I support that amendment.

Mr. Mahboob Ali Baig Sahib (Madras: Muslim): Mr. President, Sir, I am in complete agreement with the amendment moved by Pandit Kunzru and also with the amendment moved by Mr. Pocker. I will speak first on the amendment moved by Pandit Kunzru. I think it must be possible for my Friend Dr. Ambedkar to accept it. Pandit Kunzru has clearly pointed out that the ordinance regime might continue for six months, and for six weeks added on to six months. Now the question is whether it is desirable that in a democracy, where you have got people's representatives in the country who could be summoned at short notice, that you should give any opportunity to the executive to postpone calling the Parliament which the executive is entitled to do for six months and give six weeks more. It is I submit undemocratic and will lead to executive oppression, to say the least. What I find in the present day is the tendency on the part of Members of the Cabinet to bring forward legislation or make proposals in

the Constitution itself based upon the present fears. The Government in power or the persons in charge of these matters consider that tension always exists and provision must be made for it, giving the executive power to meet any contingency. Well, we are prepared to give power to the executive to meet the situation the moment any contingency arises. When Parliament can be called at once within a week or ten days, I do not see any reason why we should allow an opportunity to delay calling the Parliament in order to decide whether the ordinance promulgated should continue. It is fraught with danger and the chances are that the executive might arrogate to itself the powers and will be tempted to postpone calling the Parliament. So, Sir, democratically-minded Dr. Ambedkar must be able to accept the suggestion embodied in the amendment of Pandit Kunzru.

Now, with regard to the amendment of Mr. Pocker. I do not want to revive the controversy which arose in the course of the discussion of article 15. There it was ruled that the protection of personal liberty can be in accordance with the procedure laid down by law, that is by Parliament. We have passed that. But why should we now not protect the liberties of the persons even from the arbitrary rule of the President, even though it may be for six months or two months? The merit of article 15 which was passed in that Parliament is to legislate with regard to the procedure. It is Parliament that has to lay down the procedure with regard to certain matters. For instance, when a man is deprived of his liberty without being brought to trial he may be clapped in jail, in accordance with the procedure laid down by Parliament. But now why should a single individual, the President, be allowed to pass an ordinance by which he might deprive a person of his liberty without letting him to be tried by a court of law? Therefore I support this amendment. I think it must be possible for Dr. Ambedkar to accept them.

The Honourable Dr. B. R. Ambedkar : Mr. President. Sir, my Friend, Pandit Kunzru, has raised some fundamental objections to the provisions contained in this article 102. He said in the course of his speech that we were really reproducing the provisions contained in the Government of India Act, 1935, which were condemned by all parties in this country. It seems to me that my Friend, Pandit Kunzru, has not borne in mind that there are in the Government of India Act, 1935, two different provisions. One set of provisions is contained in Section 42 of the Government of India Act and the other is contained in Section 43. The provisions contained in Section 43 conferred upon the Governor-General the power to promulgate ordinances which he felt necessary to discharge the functions that were imposed upon him by the Constitution and which he was required to discharge in his discretion and individual judgement. In the ordinances which the Governor-General had the power to promulgate under Section 43 the legislature was completely excluded. He could do anything—whatever he liked—which he thought was necessary for the discharge of his special functions. The other point is this; that the ordinances promulgated by the Governor-General under Section 43 could be promulgated by him even when the legislature was in session. He was a parallel legislative authority under the provisions of Section 43. It would be seen that the present article 102 does not contain any of the provisions which were contained in Section 43 of the Government of India Act. The President, therefore, does not possess any independent power of legislation such as the powers possessed by the Governor-General under section 43. He is not entitled under this article to promulgate ordinances when the legislature is in session. All that we are doing is to continue the powers given under Section 42 of the Governor-General to the President under the provisions of article 102. They relate to such period when the legislature is in recess, not in session. It is only

[The Honourable Dr. B. R. Ambedkar]

then that the provisions contained in article 102 could be invoked. The provisions contained in article 102 do not confer upon him any power which the Central Legislature itself does not possess, because he has no special responsibility, he has no discretion and he has no individual judgment. Consequently my suggestion is that the argument which was propounded by my friend, Pandit Kunzru, went a great deal beyond the provisions of article 102. If I may say so, this article is somewhat analogous—I am using very cautious language to the provisions contained in the British Emergency Powers Act, 1920. Under that Act, also, the King is entitled to issue a proclamation, and when a proclamation was issued, the executive was entitled to issue regulations to deal with any matter, and this was permitted to be done when Parliament was not in session. My submission to the House is that it is not difficult to imagine cases where the powers conferred by the ordinary law existing at any particular moment may be deficient to deal with a situation which may suddenly and immediately arise. What is the executive to do? The executive has got a new situation arisen, which it must deal with *ex hypothesi* it has not got the power to deal with that in the existing code of law. The emergency must be dealt with, and it seems to me that the only solution is to confer upon the President the power to promulgate a law which will enable the executive to deal with that particular situation because it cannot resort to the ordinary process of law because, again *ex hypothesi*, the legislature is not in session. Therefore it seems to me that fundamentally there is no objection to the provisions contained in article 102.

The point was made by my Friend, Mr. Pocker, in his amendment No. 1796, whereby he urged that such an ordinance should not deprive any citizen of his fundamental right of personal liberty except on conviction after trial by a competent court of law. Now, so far as his amendment is concerned, I think he has not read clause (3) of article 102. Clause (3) of article 102 lays down that any law made by the President under the provisions of article 102 shall be subject to the same limitations as a law made by the legislature by the ordinary process. Now, any law made in the ordinary process by the legislature is made subject to the provisions contained in the Fundamental Rights articles of this Draft Constitution. That being so, any law made under the provisions of article 102 would also be automatically subject to the provisions relating to fundamental rights of citizens, and any such law therefore will not be able to over-ride those provisions and there is no need for any provision as was suggested by my Friend, Mr. Pocker, in the amendment No. 1796.

The amendment suggested by my Friend, Mr. Kamath, *i.e.*, 1793, seems to me rather purposeless. Suppose one House is in session and the other is not. If a situation as I have suggested arises, then the provisions of article 102 are necessary because according to this Constitution no law can be passed by a single House. Both Houses must participate in the legislation. Therefore the presence of one House really does not satisfy the situation at all.

Shri H. V. Kamath : Does it mean that when one House only is in session, say, the House of the People, the President will still have this power?

The Honourable Dr. B. R. Ambedkar : Yes, the power can be exercised because the framework for passing law in the ordinary process does not exist.

Shri H. V. Kamath : Shameful, I should say.

The Honourable Dr. B. R. Ambedkar : Now I come to the other question raised by my Friend, Mr. Kunzru, in his amendment No. 1802. His suggestion is that legislation enacted by the President under article 102 should automatically come to an end at the end of thirty days from the promulgation of the ordinance. The provision contained in the draft article is

that it shall continue for six weeks after the meeting of Parliament. Now, the reason why my Friend, Pandit Kunzru, has brought in his amendment is this: he says that under the provisions contained in the draft article, a much longer period might elapse than six weeks, because he thinks that the executive may take, say, a month or two for summoning Parliament. If Parliament is summoned, say in four months, then the six weeks also might be there—that would be practicable—or it might be longer if the Executive delays the summoning of the Parliament. Well, I do not know what exactly may happen, but my point is this that the fear which my honourable Friend Pandit Kunzru has is really unfounded, because we have provided in another article 69, which says that six months shall not elapse between two sessions of the Parliament, and I believe, that owing to the exigencies of parliamentary business, there will be more frequent sessions of the Parliament than honourable Members at present are inclined to believe. Therefore, I say, having regard to article 69, having regard to the exigencies of business, having regard to the necessity of the Government of the day to maintain the confidence of Parliament, I do not think that any such dilatory process will be permitted by the Executive of the day as to permit an ordinance promulgated under article 102 to remain in operation for a period unduly long, and I therefore, think that the provisions as they exist in the draft article might be permitted to remain.

Shri H. V. Kamath : Mr. President, Sir, may I ask one last question? Is it not repugnant to our ideas of conceptions of freedom and democracy, which are, I presume, Dr. Ambedkar's also, not to lay down the maximum life of an ordinance in this article?

The Honourable Dr. B. R. Ambedkar : My own feeling is this that a concrete reason for the sentiment of hostility which has been expressed by my honourable Friend, Mr. Kamath as well as my honourable, Friend Mr. Kunzru, really arises by the unfortunate heading of Chapter "Legislative powers of the President". It ought to be "Power to legislate when Parliament is not in session". I think if that sort of innocuous heading was given to the Chapter, much of the resentment to this provision will die down. Yes. The word 'Ordinance' is a bad word, but if Mr. Kamath with his fertile imagination can suggest a better word, I will be the first person to accept it. I do not like the word "ordinance", but I cannot find any other word to substitute it.

Mr. President : There is another amendment which has been moved by Sardar Hukam Singh in which he says that the President may promulgate ordinances after consultation with his Council of Ministers.

The Honourable Dr. B. R. Ambedkar : I am very grateful to you for reminding me about this. The point is that amendment is unnecessary, because the President could not act and will not act except on the advice of the Ministers.

Mr. President : Where is the provision in the Draft Constitution which binds the President to act in accordance with the advice of the Ministers?

The Honourable Dr. B. R. Ambedkar : I am sure that there is a provision, and the provision is that there shall be a Council of Ministers to aid and advise the President in the exercise of his functions.

Mr. President : Since we are having this written Constitution, we must have that clearly put somewhere.

The Honourable Dr. B. R. Ambedkar : Though I cannot point it out just how, I am sure there is a provision. I think there is provision that the President will be bound to accept the advice of the Ministers. In fact, he cannot act without the advice of his Ministers.

Some Honourable Members : Article 61 (1).

Mr. President : It only lays down the duty of the Ministers, but it does not lay down the duty of the President to act in accordance with the advice given by the Ministers. It does not lay down that the President is bound to accept the advice. Is there any other provision in the Constitution? We would not be able even to impeach him. Because he will not be acting in violation of the Constitution if there is no provision.

The Honourable Dr. B. R. Ambedkar : May I draw your attention to article 61, which deals with the exercise of the President's functions. He cannot exercise any of his functions, unless he has got the advice, 'in the exercise of his functions.' It is not merely to 'aid and advise'. "In the exercise of his functions" those are the most important words.

Mr. President : I have my doubts if this word could bind the President. It only lays down that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. It does not say that the President will be bound to accept that advice.

The Honourable Dr. B. R. Ambedkar : If he does not accept the advice of the existing ministry, he shall have to find some other body of ministers to advise him. He will never be able to act independently of ministers.

Mr. President : Is there any real difficulty in providing somewhere that the President will be bound by the advice of the ministers?

The Honourable Dr. B. R. Ambedkar : We are doing that. If I may say so, there is a provision in the Instrument of Instructions.

Mr. President : I have considered that also.

The Honourable Dr. B. R. Ambedkar : Paragraph 3 reads: In all matters within the scope of the executive power of the Union, the President shall, in the exercise of the powers conferred upon him, be guided by the advice of his ministers. We propose to make some amendment to that.

Mr. President : You want to change that. As it is, it lays down that the President will be guided by the ministers in the exercise of executive powers of the Union and not in its legislative power.

The Honourable Dr. B. R. Ambedkar : Article 61 follows almost literally various other constitutions and the Presidents have always understood that that language means that they must accept the advice. If there is any difficulty, it will certainly be remedied by suitable amendment.

Shri H. V. Kamath : You will be leaving this article silent on the subject of the maximum life of an ordinance which can extend to seven and a half months. It is impossible.

Mr. President : Is Mr. Kamath going to make a second speech on his amendment.

The Honourable Dr. B. R. Ambedkar : Our President is quite different from the President of the United States.

Shri H. V. Kamath : I only wish to say that inframing this article, we have gone one better than the British regime and it is a most atrocious position.

Mr. President : You have already made your speech. I do not think you are entitled to make that observation at this stage. I will now put the amendments to vote.

The question is:

“That in clause (1) of article 102, for the words ‘when both Houses’, the word ‘when one or both Houses’ and for the words ‘such Ordinances’, the words ‘such Ordinance or Ordinances’ be substituted respectively.”

The amendment was negatived.

Mr. President : The question is:

“That in clause (1) of article 102, after the words ‘except when both Houses of Parliament are in session’, the words ‘after consultation with his Council of Ministers’ be inserted.”

The amendment was negatived.

Mr. President : The question is:

“That to clause (1) of article 102, the following be added:

‘Provided that such ordinance shall not deprive any citizen of his right to personal liberty except on conviction after trial by a competent court of law.’ ”

The amendment was negatived.

Mr. President : The question is:

“That in sub-clause (a) of clause (2) of article 102, after the words ‘both Houses of Parliament’ the words ‘within four weeks of its promulgation’ be inserted.”

The amendment was negatived.

Mr. President : The question is:

“That in sub-clause (a) of clause (2) of article 102, for the words ‘six weeks from the re-assembly of Parliament’ the words ‘thirty days from the promulgation of any Ordinance’ be substituted” and

“That the explanation to clause (2) of article 102 be omitted.”

The amendment was negatived.

Mr. President : The question is:

“That in sub-clause (a) of clause (2) of article 102, after the word ‘Parliament’, where it first occurs the words ‘immediately after each House assembles’ be inserted; after the word ‘and’ where it first occurs the words ‘unless approved by either House of Parliament by specific Resolution’ and after the word ‘operate’ the word ‘forthwith’ be inserted; and the words ‘at the expiration of six weeks from the re-assembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions;’ be deleted.”

The amendment was negatived.

Mr. President : I think those are all the amendments.

The question is:

“That article 102 stand part of the Constitution.”

The motion was adopted.

Article 102 was added to the Constitution.

CHAPTER IV

Mr. President : There is an amendment of which I have a notice that a new article be added, article 102-A. We shall take it up.