

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 1st August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock. Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(Contd.)

Article 175—(Contd.)

Mr. President : We were dealing with article 175 day before yesterday before we rose. We shall now continue discussion on article 175. The question was raised by Shri Satish Chandra that he had an amendment to article 172 and that unless it became clear what the shape of article 172 would be, he did not know whether to move or not to move the amendment, of which he had given notice, to article 175. I would like to know if he would press that point.

Shri T. T. Krishnamachari (Madras: General) : Sir, may I submit that that article has very little to do with article 172. Article 172 seeks to resolve a conflict between the two Houses, whereas article 175 deals with the Governor's assent to Bills passed by the legislatures and when he can send a Bill back to the legislature for reconsideration. Anyway, the shape of the amendment to article 175 completely clears the position of all ambiguities. Therefore, I suggest that article 175 be considered apart from 172.

Mr. President : Would it not be better if we were to dispose of 172 first?

Shri T. T. Krishnamachari : That is entirely to be decided at your discretion. We may take up 172 first and then have the vote on 175.

Mr. President : Do you have any objection?

The Honourable Dr. B. R. Ambedkar (Bombay: General) : I have no objection, Sir, I am entirely in your hands.

Mr. President : Then we shall dispose of 172 first and then go to 175.

Article 172

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

“That for article 172, the following article be substituted :—

Restriction of powers of Legislative Council as to Bills other than Money Bills.	‘172. (1) If after a Bill has been passed by the Legislative Assembly of a State having a Legislative Council and transmitted to the Legislative Council—
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- (a) the Bill is rejected by the Council; or
- (b) more than two months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it; or
- (c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree,

the Legislative Assembly may again pass the Bill in the same or in any subsequent session with or without any amendments which have been made suggested or agreed to by the Legislative Council and then transmit the Bill as so passed to the Legislative Council.

(2) If after a Bill has been so passed for the second time by the Legislative Assembly and transmitted to the Legislative Council—

- (a) the Bill is rejected by the Council; or

in penalising the Upper House for no fault of that House. If the House is not called certainly it cannot consider the Bill, and such a Bill could not be deemed to have been considered by the Upper House. Therefore in order to protect the Upper House the Drafting Committee rejected both these possibilities of determining the starting point, namely, the passing of the Bill and the reception of the Bill, a proposal which was embodied by them in the draft article as it stands. And they deliberately adopted the provisions contained in the new article as is now proposed, namely, when the Bill has been tabled for consideration if the Upper House does not finish its consideration within the particular time fixed by this clause, then obviously the right of the Upper House to deal with the matter goes by its own default, and no one can complain; certainly the Upper House cannot complain. My honourable Friend Pandit Kunzru will therefore see that rather than whittle down the rights of the Upper House the new proposal has given the Upper House rights which the executive could not take away.

Pandit Hirday Nath Kunzru : Does this childish explanation satisfy the honourable Member himself ?

The Honourable Dr. B. R. Ambedkar : If my honourable Friend chooses to call it childish he may do so, but I have no doubt that the new clause is a greater improvement than the clause as it stood. I am sorry if Pandit Kunzru is not satisfied. But he did not raise any point to which I have not given an explanation.

Mr. President : The question is:

“That in sub-clause (b) of clause (1) of the proposed article 172, for the words ‘two months’ the words ‘three months’ be substituted.”

The amendment was adopted.

Mr. President : The question is :

“That proposed article 172, as amended, stand part of the Constitution.”

The motion was adopted.

Article 172, as proposed and amended, was added to the Constitution.

Article 175—(Contd.)

Shri Brajeshwar Prasad : Sir, I am not whole-heartedly in favour of article 175. Under this article the Governor has no power to veto a Bill in his own discretion or initiative but can do so only if he is so advised by his Ministry. I am not in favour of this provision. Then, he cannot veto a Bill that has been twice passed by the Legislative Assembly; even that is not acceptable to me. He has not got power in his discretion to veto a Bill or to reserve a Bill for the consideration of the President. There are two classes of cases in which a Bill can be reserved for the consideration of the President. It can be so reserved under certain article of this Constitution, and also if the Governor is advised by his Ministry to do so. I want that the Governor should have power in his discretion to veto a Bill passed by the legislature, whether passed once or twice by it. Secondly, I am in favour of the President having power to reserve a Bill for his consideration, on his own initiative and authority. He should have power to issue an order to the Governor directing that a Bill passed by the legislature should be reserved for his consideration, or that a Bill should be disallowed whether the Governor reserves it or not. I know that this proposition will not be in consonance with what is supposed to be the democratic tendencies of the age. People think they are. Living in a democratic age. But I feel that we are living in a totalitarian age. I want power to be vested in the hands of the Governor

[Shri Brajeshwar Prasad]

of vetoing unjust and unsound legislation. This provision occurs in the Canadian federation and I want this power in our Constitution having due regard to the facts of our political life. I feel further that if the Governor has power to veto a Bill and the President has power to disallow a Bill, it will act as a potential check on disruptive legislative tendencies.

The fear of disruptive legislation is real in this country. One who has closely scrutinised the provisions of the legislative acts that have been passed by the provincial legislatures will agree with me that this fear is not imaginary, that this fear is very real. Sir, the proposal which I have placed before the House is in consonance, is in accord with the traditions of the Centralised system of Government that has existed in this country up till now. It is in consonance with the implications of Paramountcy that the British Government exercised over the Native States. Sir, I am in favour of veto power in the hands of the Governor and the President because I feel that this new experiment of Parliamentarism requires to be moderated, and regulated. I think it will be in accord with the facts, of our life. I want, Sir, that this power of veto should be frequently exercised by the Governor in his discretion. To refer every Bill to the President will not be in consonance with the dignity of the Head of a State. I want that provincial legislation should be delayed by the Governor in his own discretion. I have no confidence in provincial Ministers.

Prof. Shibban Lal Saksena : Mr. President, Sir, I am very sorry I cannot agree with the amendment proposed by Dr. Ambedkar. The original proviso to article 175 said—

“Provided that where there is only one House of the Legislature and the Bill has been passed by that House, the Governor may, in his discretion, return the Bill together with a message requesting that the House will reconsider the Bill or any specified provisions thereof and, in particular, will reconsider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House shall reconsider it accordingly and if the Bill is passed again by the House with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom.”

So, in the proviso as it originally stood, the Governor could send a Bill back with a message only when there was one House of the Legislature, but here in the new proviso even if there are, two Houses, the Assembly and the Council in a State, even then the Governor is given the power to return a Bill with his message. We have just now had a long discussion over the powers of the Legislative Council. The whole thing under the new proviso will come to this. Suppose a Bill is passed by the Assembly. It will go to the Upper House. It takes some time to be sent to the Upper House and then about two months in the Upper House. The Bill may be amended there. Thereafter the amended Bill comes back to the Assembly. The Assembly will then discuss it. A month may be taken over this. Then again ‘it is sent back to the Council and there it will be considered again for about a month, so that on the whole it will take about six months after it first becomes law. Now, power is given to the Governor to return the Bill with a message. No time limit is given; how long he will take to return the Bill is not mentioned. So, if this proviso is accepted, what it will mean is this : that any contentious legislation will again go to Assembly and then to Council and it may take another six months in all that and so the legislation may be held back, if the Governor is not inclined to help. I think that the original proviso is much better. In those provinces where there is only one House, where the safeguard of a Second Chamber ‘is not there. We may give the Governor the power to return a Bill, but where there is already a Council, where the Bill has been again discussed threadbare when every aspect of it has been examined thoroughly, the Governor should not have the power to send back a Bill. ‘I think this is very reactionary and no quick legislation will be possible under this proviso. I therefore think that the

original proviso to article 175 is much better than the one which has now been moved. I completely disagree with my Friend, Mr. Brajeshwar Prasad, who seems to favour everything which gives power to the Governor and the Council. He wants that the Governor should have power to hold up any legislation.

Shri Brajeshwar Prasad : I think it is wrong. The Governor is not an outsider. He is the representative of the Government of India. His views should prevail either over the Lower House or over any other authority in the province.

Prof. Shibban Lal Saksena : I know he is the nominee of the President, but it is quite possible that the party in power in the province may not be the same as the party in power in the Centre and the President may not be *persona grata* with that party. I therefore think that it will introduce a very wrong principle to give the Governor this power to go against the express wish of the Assembly and even of the Council. I think that the original proviso should remain and the Governor should have power to send back a Bill only where there is no Second Chamber.

Shri T. T. Krishnamachari : Mr. President, Sir, I thought that after the discussion on amendment No. 17 in List I the other day, there will be no need for further "explanation for amending the proviso to this article. I am afraid my Friend, Mr. Shibban Lal Saksena, has entirely misconstrued the position. If he construes that this amendment is worse than the proviso in the draft article and that it makes for further dilatoriness in the proceedings of the legislatures in the provinces or the States as the case may be, I would ask him to remember one particular point to which Dr. Ambedkar drew pointed attention, *viz.*, that the Governor will not be exercising his discretion in the matter of referring a Bill back to the House with a message. That provision has gone out of the picture. The Governor is no longer vested with any discretion. If it happens that as per amendment No. 17 the Governor sends a Bill back for further consideration, he does so expressly on the advice of his Council of Ministers. The provision has merely been made to be used if an occasion arises when the formalities envisaged in article 172 which has already been passed, do not perhaps go through, but there is some point of the Bill which has been accepted by the Upper House which the Ministry thereafter finds has to be modified. Then they will use this procedure; they will use the Governor to hold up the further proceedings of the Bill and remit it back to the Lower House with his message.

If my honourable Friend understands that the Governor cannot act on his own, he can only act on the advice of the Ministry, then the whole picture will fall clearly in its proper place before him. It may happen that the whole procedure envisaged in article 172 also goes through and then again something might have to be done in the manner laid down by this particular proviso but it is perhaps unlikely. It is a saving clause and vests power in the hands of the Ministry to remedy a hasty action that they might have undertaken or enable them to take an action which they feel they ought to in order to meet popular opinion which is reflected outside the House in some form or another and for this purpose only this new Proviso has been put in. It does not abridge the power of the responsible Ministry in any way and therefore, it does not detract from the power of the Lower House to which the Ministry is undoubtedly responsible; it does not confer any more power on the Governor. On the other hand it curtails the power of the Governor for the position envisaged in the original proviso which it seeks to supplant. I think with this explanation the House will agree to the amendments without any further discussion.

Mr. President : The question is :

"That for the proviso to article 175 the following proviso be substituted :—

'Provided that the Governor may, as soon as possible after the presentation to the Bill for assent, return the Bill if it is not a Money Bill together with a passage

[Mr. President]

requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and when a Bill is so returned the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with Or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom.' ”

The amendment was adopted.

Mr. President : The question is:

“That article 175, as amended stand part of the Constitution”.

The motion was adopted.

Article 175, as amended, was added to the Constitution.

Article 176

Mr. President : Then we go to article 176.

The Honourable Dr. B. R. Ambedkar : I suggest that it would be better if we take up 83-A and dispose it of.

Mr. President : I do not think there is much in article 176. We can take it up now. There is hardly any amendment. I find there are some amendments of which notice has been given printed at page 251 of the First Volume. Does any member wish to move any of those amendments ?

(Amendments Nos. 2482 to 2485 were not moved.)

There is another amendment to that in the Supplementary List, but that will not arise because it is an amendment to an amendment.

Now there is no amendment to this article 176.

Mr. President : The question is :

“That article 176 stand part of the Constitution.”

The motion was adopted.

Article 176 was added to the Constitution.

Article 83-A

Mr. President : Shall we go back now to article 83 ?

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

“That after article 83 the following new article be inserted :—

Decision on question
as to disqualifications
of members.

‘83-A. (1) If any question arises as to whether a member of either House of Parliament has been subject to any of the disqualifications mentioned in clause (1) of the last preceding article, the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question. The President shall obtain the opinion of the Election Commission and shall act according to such opinion.’ ”

This article is a replica, so to say, of article 167-A which we passed the other day which applies to similar cases in the provinces and I do not therefore think that any more explanation will be necessary.