

Shri V. I. Muniswamy Pillay: May I say a few words about the amendment moved by Mr. Khandekar. So far as Mr. Sidhwa's point is concerned, a resolution practically comes to the same thing.

Mr. President : How will the office prepare the bills ?

Shri R. K. Sidhwa: On the basis of the resolution.

Mr. President : No, the office cannot prepare the bills on the basis of a voluntary resolution, unless the Member concerned gives it in writing. Can you do that for every Member here? Every Member will have to do it individually.

Shri R. K. Sidhwa: The salary of the Ministers is regulated by in Act. The act is not amended. Yet the cut has been only voluntary. In this case also similar procedure should be adopted.

Mr. President : The Ministers are so few in numbers and all of them can give it in writing. But we are here more than three hundred. All of us are not present here.

Seth Govind Dass (C. P. & Berar : General) : For one thing, most of our Members are not here. Therefore, let the Assembly decide this question.

Shri V. I. Muniswamy Pillay: Sir, these rules were made by this Assembly and I think it is only proper that a motion should be moved and carried. Mr., Khandekar was referring to the question whether Members were having any extra expenses. I do think that is relevant. When we accepted the original motion in this House, no personalities were concerned or mentioned. There were some members here having their families and servants. Thus having two establishments entailing heavy expenses. At the time the rules were made the Assembly came to the unanimous conclusion by fixing the allowances at Rs. 45. Now, this motion seeks to reduce it by Rs. 5 and make it Rs. 40 and instead of the *circutous* route *via* Bombay and paying more money from the Government, we are providing for the shortest route and paying the amount which is actually due.

Mr. President : I will first put Mr. Khandekar's amendment to the vote. The question is :—

“That in the amendments to Rule (D) and to paragraph 8, for the proposed figure, brackets and words ‘Rs. 40 (Rupees forty)’ the figure, brackets and words ‘Rs. 20 (Rupees twenty)’ be substituted.”

Mr. President : The question is:

“That the following amendments be made in the Rules governing the allowances of Members of the Constituent Assembly of India :—

- ‘(1) That in rule (D), relating to daily allowance, in paragraph 4 of the Handbook for Members, and in paragraph 8 (relating to allowances admissible to Members residing at the place where the Assembly meets) of the said Handbook for the figure, brackets and words ‘Rs. 45 (Rupees forty- five)’ the figure, brackets, and words ‘Rs. 40 (Rupees forty)’ be substituted.
- (2) That exception (c) to Note I under rule (A) in paragraph 4 of the Handbook for Members, be deleted’.”

The motion was adopted.

DRAFT CONSTITUTION—(contd.)

Article 59

Mr. President : Then we will take up the consideration of the articles on the Order Paper. Article 59, amendment No. 445.

The Honourable Shri K. Santhanam (Madras: General): May I suggest that we take up the articles for which amendments were circulated earlier. These amendments were given to us only this morning.

Mr. President : They were distributed to Members yesterday evening when we were sitting in the House.

Shri T. T. Krishnamachari : (Madras: General): Mr. President, Sir, the amendments to articles 59, 62, 141, 175 and 13 would mean reopening the articles already passed. May I suggest that the permission of the House be taken ?

Mr. President : Does the House give leave to reopen these articles ?

Honourable Members : Yes.

Shri T. T. Krishnamachari : Sir, I move:

“That for sub-clause (b) of clause (1) of article 59, the following sub-clause be substituted :—

‘(b) in all cases where the punishment or sentence is for an offence under any law relating to a matter to which executive power of the Union extends’.”

Sub-clause (b) of the original article 59, which relates to the powers of the President to grant pardons, reads thus :—

“(b) in all cases where the punishment or sentence is for an offence under any law relating to a matter with respect to which Parliament has, and the Legislature of the State in which the offence is committed has not, power to make laws.”

This means that the concurrent field would be left in a very nebulous position. In article 60 it is provided that in matters where Parliament so decides the executive power of the Union will extend to the States in respect of subjects falling within the concurrent field. This position will be left nebulous. Therefore the amendment seeks to remedy that defect, making the power of the President to grant pardon to extend to all matters to which the executive power of the Union extends.

There will have to be a consequential amendment in regard to article 141 where the power of pardon is given to the President, which I shall move presently if this amendment is approved by the House.

The Honourable Shri K. Santhanam : Sir, I have tabled an amendment to this. I could not send it earlier.

I move :

“That in amendment No. 445 of List XX, in the proposed sub-clause (b) of clause (1) of article 59, after the words ‘offence under any law’ the words ‘made by Parliament’ be inserted.”

I understand the purpose of amendment No. 445, but it goes much wider than its intention, because the executive power of the Union extends not only to laws made by Parliament but also to some of the laws made by the legislature of a State. For instance, in articles 234 and 234A which deal with the giving of directions, the executive power of the Union extends to some laws made by the Legislature of a State. Yesterday, in the matter of financial, emergency, we have provided that the executive power of the Union extends to matters relating to money Bills and financial matters. We do not want that in the case of offences under laws made by a State Legislature the right of pardon should accrue to the President. Therefore I want to limit it to offences under any law by Parliament. The point is when Parliament makes any law under the Concurrent List and gives executive power to the Union Executive then the power of pardon should be with

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the President. But we do not want to give the power of pardon to the President even when the executive power extends to laws made by a State legislature. Therefore I think the amendment is too wide and I want to limit it to laws made by Parliament.

I am afraid the Drafting Committee who are naturally very tired are trying to introduce amendments drafted in haste. They have had a time to scrutinise them and we have had no time either to scrutinise them.

Shri T. T. Krishnamachari : May I on a point of order say that the honourable Member is perfectly right to speak about himself. If he has had no time, we agree. But I do not think he ought to cast any aspersions on the Drafting Committee as not having had any time to scrutinise them. I would like to say that we have scrutinised every amendment. If we did not have the time to scrutinise these amendments we would not have tabled them.

Shri B. M. Gupte: (Bombay: General): Saying that they had no time is not casting any aspersions on the Drafting Committee.

The Honourable Shri K. Santhanam: I am not disputing their intension or ability, but I am saying that they are hurried which is a matter of fact.

Mr. President : Now we are at the fag end of the clauses and over four or five clauses we need not quarrel.

The Honourable Shri K. Santhanam: But some of the amendments tabled are matters of substance which, I think, will have to be debated at length. I leave it to you, Sir, but so far as this is concerned I think the words “made by Parliament” are absolutely essential to make the meaning precise and clear.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, the amendment moved by my Friend Mr. Santhanam is quite unnecessary. It has been brought in by him because he has forgotten to take account of the provisions contained in article 60. Article 60 says that the executive power of the Union shall extend to all matters with respect to which Parliament has power to make laws, provided that it shall not so extend, unless the Parliament, law so provides, to matters with respect to which the Legislature of the States has also power to make laws that is, matters in the Concurrent List. Therefore, the amendment moved by my Friend Mr. Krishnamachari in sub-clause (b) of clause (1) of article 59 cannot go beyond the power of Parliament to make laws.

The Honourable Shri K. Santhanam: The article does not limit it only to those laws; it can also extend further.

The Honourable Dr. B. R. Ambedkar : No, it cannot extend further. The necessity for bringing an amendment in sub-clause (b) is this: that the executive power of the Centre extends not only to matters enumerated in List I but may also extend to matters enumerated in List III. And the position of the Drafting Committee is this, that whenever a law is made by Parliament, in respect of any matter contained in List III if the law confers executive power on the Centre, the power of the President to grant reprieve must extend to that law. Therefore, these words are necessary. Mr. Santhanam’s amendment is absolutely unnecessary and out of place because article 60 covers the point.

Mr. President : The question is :

“That in amendment No. 445 of List XX, in the proposed sub-clause (b) of clause (1) of article 59, after the words ‘offence under any law ‘ the words ‘made by Parliament’ be inserted.”

The amendment was negatived.

Mr. President : The question is:

“That for sub-clause (b) of clause (1) of article 59, the following sub-clause be substituted :-

- (b) in all cases where the punishment or sentence is for an offence under any law relating to matter to which the executive power of the Union extends;’

The amendment was adopted.

Article 62

Shri T. T. Krishnamachari: Sir, I move:

“That in clause (5) of article 62, for the words ‘who from the date of his appointment is. for a period of six consecutive months, not a member’, the words ‘who for any period of six consecutive months is not a member ‘ be substituted.”

This is a purely verbal alteration in regard to the qualification, or rather the disqualification, of Ministers. If my memory is correct, I think this wording was pointed out to us as being more suitable by my honourable Friend Mr. Gupte at the time we passed this article. And I think Dr. Ambedkar had in mind examining the position. We feel this is the more appropriate wording and therefore we have suggested this amendment.

Incidentally I might mention that there is an amendment tabled by my honourable Friend Mr. Santhanam which may be quite correct, but it is only a matter of variation again of the language. Really the amendment is not a matter of substance but putting the thing in the precise form so as to avoid any mistaken interpretation that may arise in the future.

The Honourable Shri K. Santhanam: It is quite correct as my Friend Mr. Krishnamachari has said that my amendment is only to make matters clear because, as the official amendment stands, there is no clear indication where to begin the period of six months and how to count it. It may also be construed—though it may not appear a very correct interpretation—that the period may be counted even before he became a Minister, because it may be said that if a person is not a member of Parliament he cannot be appointed a Minister. Our object is that a person who is not a member of Parliament may be appointed Minister, but after that appointment he must become a member within six months and must continue to be a member afterwards. Therefore my amendment is:

“That in amendment No. 446 of List XX, in clause (5) of article 62, for the proposed words ‘who for any period of six consecutive months is not a member’ the words ‘who, after the date of his appointment, is for any period of six consecutive months not a member’, be substituted.”

When we changed from the wording of the Government of India Act 1935, I remember this was discussed by us and we put the words “from the date of appointment” as the beginning of the period. But in interpretation it may mean that afterwards he may cease to be a member after six months and such a case may not be covered. So I agree that the amendment is desirable. But if the words “after the date of appointment” are put in it will become much more precise.