

is taken up. But we shall accommodate the Members in this respect and I do not think any serious inconvenience is caused if we take up article 100 and those that follow it.

Article 100

Mr. President : Amendment No. 1784, of which notice has been given by Shri Himmat Singh K. Maheshwari, is not really an amendment. It is a negative amendment so far as that is concerned.

Amendment No. 1785 is by Mr. Naziruddin Ahmad. That is a drafting amendment. So we can leave that there.

The question is:

“That Article 100 form part of the Constitution.”

The motion was adopted.

Article 100 was added to the Constitution.

Article 101

Mr. President : Article 101.

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

“That in clause (1) of article 101, after the words, ‘called in question’, the words ‘in any court’ be inserted.”

I only wish to make explicit what I believe is tacit in this article, and I suppose what is meant here is that the validity of any proceedings shall not be called in question in any Court, and therefore to make it quite clear and explicit I suggest the insertion of these words.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I move:

“That in clause (2) of article 101, for the words ‘or other member’, the words, ‘and no member’ be substituted.”

Clause (2) in the article runs thus:

“No officer or other Member of Parliament.....” and so forth.

In fact, ‘No officer or other Member’ seem to imply that an officer is a Member of the House. The word ‘other’ is absolutely misleading. It gives a false impression. The amendment is accepted would make the passage run like this :

“No officer and no Member of Parliament.....” and so forth.

In fact, I want to draw a distinction between an officer and a Member. This is the simple reason for this amendment. I do not wish to move the next amendment.

Mr. President : I think that seems to be an unnecessary amendment.

The Honourable Shri K. Santhanam : (Madras: General): I think both the amendments are mistaken. In the one case, the proceedings are not to be called in question in any court, while in the other case the Speaker and the Deputy Speaker may be rightly called officers of Parliament. So they must also be exempted. I think that is the intention of that clause.

Mr. President : Does it cover the other officers?

The Honourable Shri K. Santhanam : ‘An officer of Parliament’ will include the Speaker and other officers appointed by the Speaker for the purpose of Parliament. It is intended to be comprehensive and not restricted.

Mr. President : 'No Member' will also include the Speaker?

The Honourable Shri K. Santhanam : The Speaker will also be a Member. So I think the words 'other Member' is used.

Mr. President : Supposing it is 'no officer' and 'no Member' it will include Speaker and Deputy Speaker.

The Honourable Shri K. Santhanam : May be. I do not think there is any great harm.

Mr. President : Probably it is intended that other officers should be protected, as for example, the Marshal.

The Honourable Shri K. Santhanam : 'Officers' includes all officers. The question is whether 'Member' should be there. There would not be any particular difficulty felt if it is left as it is. So far as the first part is concerned, I do not think we would restrict it by putting in the words 'and no member'.

Shri K. M. Munshi (Bombay: General): There is something wrong with the loud speaker in front of you, Sir.

The Honourable Dr. B. R. Ambedkar : Sir, with regard to the amendment of Mr. Kamath, I do not think it is necessary, because where can the proceedings of Parliament be questioned in a legal manner except in a court? Therefore the only place where the proceedings of Parliament can be questioned in a legal manner and legal sanction obtained is the court. Therefore it is unnecessary to mention the words which Mr. Kamath wants in his amendment.

For the reason I have explained, the only forum there the proceedings can be questioned in a legal manner and legal relief obtained either against the President or the Speaker or any officer or Member, being the Court, it is unnecessary to specify the forum. Mr. Kamath will see that the marginal note makes it clear.

With regard to the amendment moved by my Friend Mr. Naziruddin Ahmad, he has not understood that the important words in sub-clause (2) are 'in whom powers are vested'.

Mr. Naziruddin Ahmad : For maintaining order.

The Honourable Dr. B. R. Ambedkar : 'No officer or other Member of Parliament in whom powers are vested' are the persons who are protected by sub-clause (2). The Speaker is already an officer and also a Member. No power has to be conferred upon him. The Constitution confers the power on him. Therefore, having regard to the fact that it is only 'other Member' that is to say, Member besides the Speaker or the Deputy Speaker as the case may be who requires to be protected. Therefore the word 'other' is important.

Mr. President : What is the effect of the words 'or for maintaining order'?

The Honourable Dr. B. R. Ambedkar : Supposing there is a brawl in the House I do not like to put it that way. But, supposing there is a brawl in the House, and the Speaker, not finding any officer at hand to remove a certain Member, asks certain other Member who is present to remove the Member who is causing the brawl. Then that particular Member is the Member who is invested with this authority by the Speaker and he would come under "other Member".

Mr. President : ‘Or any other officer who is not a Member of the House’ Does he come under that.

The Honourable Dr. B. R. Ambedkar : ‘Officer’ would be there.

Shri H. V. Kamath : May I ask for some clarification? Mr. Santhanam, referring to my amendment said that the validity of any amendment can be called in question not merely in the court of law, but also in a legislature. Does Dr. Ambedkar agree with him?

The Honourable Dr. B. R. Ambedkar : I am responsible for the explanation I have given.

Shri H. V. Kamath : As regards the other point mentioned by Dr. Ambedkar that the marginal sub-head is clear, may I point out that in the other forum, *viz.*, the Legislative Assembly. I was told that the marginal headings have nothing to do with legislation as such and that articles or sections are taken without reference to the marginal headings. If this is so, if you do not read the marginal heading and the article together, the meaning to my mind is not clear.

The Honourable Dr. B. R. Ambedkar : On that point there are two views. One is that the marginal note is not part of the section and the other view is that the marginal note is: for instance, Mr. Mavalankar when he was in Bombay held the view that the marginal note was not part of the section, but the present Speaker of the Bombay Assembly recently said that the marginal note was very much part of the section as it gives the key to the meaning of the section.

Mr. President : The question is:

“That in clause (1) of article 101, after the words ‘called in question’, the words in any court’ be inserted.”

The amendment was negatived.

Mr. President : The question is:

“That in clause (2) of article 101, for the words ‘or other member’, the words, ‘and no member’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That article 101 stand part of the Constitution.”

The motion was adopted.

Article-101 was added to the Constitution.

PART V—CHAPTER III

Mr. President : Part V—Chapter III.

(Amendments Nos. 1789 and 1790 were not moved.)

Prof. K. T. Shah : (Bihar: General): Sir, I beg to move:

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

It would then be

‘Extraordinary Powers of the President’.

I particularly wish to draw attention to this aspect that any power the Head of the State or the Chief Executive has should be of an executive character. If any other powers are proposed to be put in under this article, it should be clearly understood that they are extraordinary; that is to say, they are not to

[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.