Monday, 6th June, 1949

Volume VIII

16-5-1949
to
16-6-1949

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

REPRINTED BY LOK SABHA SECRETARIAT, NEW DELHI
SIXTH REPRINT 2014

Printed by JAINCO ART INDIA, NEW DELHI-110 005

THE CONSTITUENT ASSEMBLY OF INDIA

President:

THE HON'BLE DR. RAJENDRA PRASAD.

Vice-President:

DR. H.C. MOOKHERJEE.

Constitutional Adviser:

SIR B.N. RAU, C.I.E.

Secretary:

SHRI H.V.R. IENGAR, C.I.E., I.C.S.

Joint Secretary:

MR. S.N. MUKERJEE.

Deputy Secretary:

SHRI JUGAL KISHORE KHANNA.

Marshal:

SUBEDAR MAJOR HARBANS LAL JAIDKA.

CONTENTS

VOLUME VIII—16th May to 16th June 1949

PAGES

Monday, 16th May, 1949—

Taking the Pledge and Signing the Register 1

Condolenc on the Death of Shrimati Sarojini Nadiu 1

Programme of Business ..... 1—2

Resolution *re* Ratification of Commonwealth Decision ..... 2—30

Tuesday, 17th May 1949—

Resolution *re* Ratification of Commonwealth Decision—(*Contd.*) ..... 31—72

Wednesday, 18th May 1949—

Government of India Act (Amendment) Bill ..... 73—77

Additions to Constituent Assembly Rules-38-A(3) and 61-A ..... 77—80

Draft Constitution—(*Contd.*) ..... 81—114
[New article 67-A, article 68, New Article 68A, article 69, New article 69-A, articles 70, 71 and 72 considered.]

Thursday, 19th May 1949—

Draft Constitution—(*Contd.*) ..... 115—156
[New article 72-A, B & C, articles 73, 74, 75, New article 75-A, articles 76, 77, 78, New article 78-A, article 79, New article 79-A, articles 80, 81, 82, New article 82-A, articles 83, 84 and 85 considered]

Friday, 20th May 1949—

Draft Constitution—(*Contd.*) ..... 157—196
[Articles 86, 87, 88, 89, 90, and 91 considered.]

Monday, 23rd May 1949—

Draft Constitution—(*Contd.*) ..... 197—227
[New article 67-A, articles 100, 101, 102 and New article 103-A considered]

Tuesday, 24th May 1949—

Draft Constitution—(*Contd.*) ..... 229—267
[Article 103 and New article 103-A considered]

Wednesday, 25th May 1949—

India (Central Government and Legislature) (Amendment) Bill 269

Report of Advisory Committee on Minorities etc. ..... 269—315

PAGES

Thursday, 26th May 1949—

Report of Advisory Committee on Minorities—(*Contd.*) ..... 317—355

Friday, 27th May 1949—

Addition of para 4-A to Constituent Assembly Rules (Schedule) ..... 357—375

Draft Constitution—(*Contd.*) ..... 375—399
[Articles 104 to 123 considered]

Monday, 30th May 1949—

India Act, 1946 (Amendment) Bill ... 401—402

Draft Constitution—(*Contd.*) ..... 403—441
[Articles 124 to 131 considered]

Tuesday, 31st May 1949—

Taking the Pledge and Signing the Register 443

Draft Constitution—(*Contd.*) ..... 443—485
[Articles 131 to 136 considered]

Wednesday, 1st June 1949—

Draft Constitution—(*Contd.*) ..... 487—528
[Artciles 137 to 145 considered]

Thursday, 2nd June 1949—

Adjournment of the House ..... 529—531

Draft Constitution—(*Contd.*) ..... 531—575
[Articles 146 to 167 considered]

Friday, 3rd June 1949—

Draft Constitution—(*Contd.*) ..... 577—617
[Articles 168 to 171 and 109 to 111 considered]

Monday, 6th June 1949—

Draft Constitution—(*Contd.*) ..... 619—659
[Articles 111 to 114, 119, 121 to 123 and 191 to 193 considered]

Tuesday, 7th June 1949—

Draft Constitution—(*Contd.*) ..... 661—701
[Articles 193 to 204 considered]

Wednesday, 8th June 1949—

Draft Constitution—(*Contd.*) ..... 703—744
[Articles 204 to 206, 90 and 92 considered]

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 6th June, 1949

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

DRAFT CONSTITUTION—(*Contd.*)

Article 111—(*Contd.*)

Mr. President : We have to proceed with the discussion of article 111. We have got a number of amendments which purport to come under this article but which really do not belong to this article. On Friday last, I allowed a long discussion in connection with article 110 which was not quite germane to the article but that was with a view to shortening discussion later on in connection with the other articles which followed. In connection with 111 which deals with appeals in civil cases to the Supreme Court, I should like that this question should not be made complicated by bringing in amendments relating to appeals in criminal cases. If we dispose of 111 as it is with such amendments as may be acceptable to the House in regard to that article without bringing in appeals in criminal cases, I would allow all the amendments relating to criminal appeals to be moved at a later stage without reference to this article. That I think would lessen discussion and concentrate the attention of the House on the amendments which deal with criminal appeals.

Prof. Shibban Lal Saksena : (United Provinces : General): Sir, I have an amendment to 1912.

Mr. President : I have a number of other amendments.

Prof. Shibban Lal Saksena : You have finished them all, Sir.

Mr. President : But you can move that if you want to.

Prof. Shibban Lal Saksena : Sir, I beg to move:

"That with reference to amendment No. 1912 of the List of Amendments, in clause (1) of article 111 before the words 'an appeal' the words 'subject to any law made by Parliament' be inserted."

This article 111 gives an absolute right of appeal to the Supreme Court in civil cases provided the case is a fit one for appeal to Supreme Court. Yesterday we saw that a similar right was not given in criminal cases even when death sentence was passed. I only want that the Supreme Court should not be flooded with civil cases and I want that the Parliament should from time to time review the working of the right of appeal to Supreme Court in civil cases.

Shrimati G. Durgabai (Madras: General) : What is the amendment?

Mr. President : It is with reference to amendment 1912 of the List of Amendments, namely,

"That in clause (1), before the words 'An appeal' the words 'Subject to any law made by Parliament' be added."

Prof. Shibban Lal Saksena : Sir, I only want that the Supreme Court should not be flooded with appeals against High Court judgments in civil cases.

Mr. President : The amendment is the same as the one which Shrimati Durgabai had given notice of—No. 1911. She did not move it. He is moving it as an amendment to another amendment.

Prof. Shibban Lal Saksena : Sir, I want that the Supreme Court should have the liberty to permit appeals to the Supreme Court only in those cases which Parliament by law decides. This will restrict the number of appeals in civil cases. Suppose today Parliament feels that appeals in civil cases should be allowed, it is quite possible that after some time the Parliament may feel that it is not necessary. So Parliament has the initiative and it has the power to take this right away after sometime. If Parliament has not that power, then the Constitution will have to be changed to permit any alteration in the civil jurisdiction of the Supreme Court.

I have said that if even appeals in small cases of civil law can go to the Supreme Court, why should appeals in cases of murder not go there. I therefore think that in these cases at least there is no reason why rich persons should be able to go to the Supreme Court and utilise it for civil litigation whereas in cases where small people are concerned, they should not be able to go there even to appeal against sentences of death. Therefore, if Parliament is given the power to regulate the right of civil appeals to the Supreme Court it will be a much better situation than what is contemplated by this article. This article will be misused and the Constitution will become a battle-ground for lawyers. They will take all civil appeals to the Supreme Court. And the High Courts, when big Counsels appear to argue cases of rich parties, will give them permission to go to the Supreme Court for appeal and the Supreme Court will be flooded with these appeals. The other day it was argued that if appeals of persons sentenced to death are also to go there, we shall be required to have about twenty to thirty judges in the Supreme Court. If this article remains as it is, and all appeals in civil cases are permitted to go to the Supreme Court, then in that case we will require very many more judges than even 20 or 30. Therefore, this is a very simple amendment which asks for powers to be given to Parliament which may from time to time change the requirements for appeal in civil cases to the Supreme Court.

Shri M. Thirumala Rao (Madras: General): How does this conform with the amendment to 1911?

Mr. President : Anyway that is the notice.

We have three other amendments which have no reference to criminal appeals in connection with this article.

(Amendments Nos. 1924 and 1925 were not moved.)

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

"That in clause (2) of article 111, for the words 'the case involves a substantial question of law as to the interpretation of this Constitution which has been wrongly decided', the words 'a substantial question of law as to the interpretation of this Constitution has been wrongly decided' be substituted."

Mr. President : Does anyone now wish to speak either on the article or on the amendments?

Shri S. Nagappa (Madras: General): When is the last minute when an amendment to an amendment can be moved? Prof. Saksena has moved an amendment at the eleventh hour!

Mr. President : Before the sitting for the day commences. But it is not an amendment to an amendment. It is only an amendment to an amendment!

There is one other amendment in the name of Dr. Ambedkar.

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

"That with reference to amendments Nos. 1916 to 1919 of the List of Amendments, in sub-clause (a) of clause (1) of article 111, after the words 'twenty thousand rupees' the words 'or such other sum as may be specified in this behalf by Parliament by law' be inserted."

Shri M. Thirumala Rao : The discussion on this clause has taken place on the last day of the sitting of this Assembly and it was a lawyer's day. We thought that the provisions of the Federal Court may be restricted to lawyers. When one reads the newspapers about the report of the discussion that has taken place here, unless he comes either as a litigant in a civil suit or an accused or a criminal in a criminal case, he has not got much place in the discussions that have recently taken place. But as a layman and taxpayer who has got some interest in the administration of law, I stand before you and offer a few remarks.

I am a bit surprised how the stolid and sedate Dr. Ambedkar, who is both an eminent lawyer and a jurist, has been jockeyed into accepting so many details in the Constitution about the powers of the Federal Court. Perhaps it is on the advice of eminent civil lawyers like Shri Alladi Krishnaswami Ayyar and also like another eminent lawyer, my Friend, Mr. Munshi, who on his own admission, is half civil and half criminal. But nevertheless it passes the comprehension of a layman why you should burden this Constitution with so many details in regard to the powers of the Federal Court. Sir, it was a learned discussion that took place of experts the other day about the provisions that should be incorporated in this Constitution and they have gone into such details as to fix the limit of appeals with regard to the civil suits that should go before the Supreme Court and a very interesting discussion has developed round the amendment moved by Mr. Thakur Das Bhargava that every criminal appeal also should go to the Federal Court. It is difficult to understand why we have to get away from the moorings of our ancient civilization or the system of law that obtain in our country. We have evolved a constitution that is a hybrid of the several constitutions of the world that are obtaining today. Nobody seems to have got a proper conception of what our Constitution, and what our judiciary should be to suit the genius of our country.

Justice during the last century when the British ruled in our country has been so inordinately delayed that justice delayed is justice denied. Only the richest in the country could purchase justice. The poor man had to go to the wall in obtaining justice. The village panchayat has been given the go-by Justice that has to be dealt with on-the-spot has been long forgotten and a chain of courts have been evolved where the richest man has the greatest opportunity of fighting the poor man and succeeding.

We have seen in our experience interesting cases that have gone before the Madras High Court. A zamindar's birth was disputed from the sixth year of his life and the man has gone about from court to court, from the lowest court in the land of the Privy Council without the question of his birth being decided, namely, whether he was the real and legal-born son of his father or not. For fifty years the zamindar has gone on indulging in litigation to get a decision whether he is the son of his father or not, yet the question was left open and the court relied on the will of the "father" who gave away his whole property to the zamindar. Fortunately the Congress Government has come to his rescue by abolishing the zamindari system. There are families where litigation has extended over three generations. The father started the litigation, the son

[Shri M. Thirumala Rao]

continued it and the grandson is still carrying on the litigation. The family has been reduced to impoverishment. That is the system of law which our legal pandits are discussing on the platform of this House. They are discussing what shape our Constitution should take.....

Mr. President : The honourable Member is delivering a very interesting speech but it has nothing to do with the article before us.

Shri M. Thirumala Rao : If I have got the right of opposing the article, though I do not want to exercise it, I take the opportunity of expressing my dissatisfaction at the way things are done in regard to this Constitution, incorporating every details into this Constitution. We have seen several Constitutions of the world. The Irish Constitution is a short one and it does not contain so many provisions in regard to the system of justice and administration.....

Mr. President : I am afraid we cannot at this stage go into the whole question whether the Constitution should be in the form in which it has been drafted.

Shri M. Thirumala Rao : My submission, is that we should not overburden the Constitution with so many details. Details as regards the Constitution such as the powers of the Federal Court and other courts should be left to the legislature of the country to be worked out. That is the point.

Mr. President : There is no amendment to that effect.

Shri M. Thirumala Rao : The amendment proposed by Dr. Ambedkar says that the powers of the Federal Court should be determined by law and not by the Constitution. That is the point I want to support.

I do not want to take up much time of the House but I want to draw the attention of the House to that fact that there is also an unexpressed silent opinion not only in the House but outside in the country also that the Constitution of our country should be as simple as possible, that the administration of justice should not be encumbered with too many technicalities which will ultimately result in the denial of justice to the poor. I urge that this House should not enter into legalistic details but should leave them to be decided by the legislature.

Shri Alladi Krishnaswami Ayyar : (Madras: General) : Sir, my sympathy is in support of the amendment proposed by Shrimati Durgabai, which she has not, however, brought under discussion, but which was later taken up by Mr. Shibban Lal Saksena.

Under article 111, if it stands alone without reference to any legislation by Parliament, the conditions of appeal will be crystallised and any change in the appeal procedure or in the right of appeal can only be by a constitutional amendment, which is not desirable. It ought to be an elastic provision. While the existing conditions of things may be perpetuated until Parliament intervenes, there is absolutely no reason why all the conditions of appeal must be stereotyped and moulded into a rigid pattern in the constitution framework of India. In that respect article 111 is a retrograde step. If you take into account the history of legislative powers in India from the time the Letters Patent were issued, the jurisdiction of the several High Courts in India was subject, even before popular element was introduced, to the general legislative jurisdiction of the Governor-General in Council: and today even an appeal to the Privy Council, under the provisions of the Civil Procedure Code, is subject to the jurisdiction of the central legislature in India. Under section 109 it is subject to any Order in Council that might be passed by His Majesty's Government. I am referring the days before the Dominion Act. Even an Order in Council by His Majesty's Government is a flexible provision and it is capable of change

without Parliament intervention because it is under the general jurisdiction conferred upon the Privy Council that the Order in Council is issued.

Now, the amendment of Dr. Ambedkar is a move in the right direction, though I feel that it does not go far enough. It at least takes away one defect, *viz.,* the amount or value of the subject-matter becomes a matter of constitutional provision under article 111 as it stands. It take away that defect in that article. But I feel that the whole of that article should continue to be under the general jurisdiction of the future Parliament of India and there is no reason why you should fetter the discretion of Parliament in regard to the class of appealable cases. That is my feeling in the matter but I feel however that half a loaf is better than no bread. Therefore inasmuch as Dr. Ambedkar is willing to yield so far as clause (a) is concerned that is good enough, though I wish he had gone further and made all the provisions subject to the intervention of the future Parliament of India. Much as we owe to the British system of administration of justice, I am one of those who feel that there is considerable room for improvement by making it more elastic and flexible to suit the economic conditions of India. Gradation of appeals no doubt is a normal feature of English jurisprudence in England which is a very rich country with a population of forty millions and which has greater wealth than this poor country of three hundred millions. While, justice must be guaranteed to every individual, while every individual, must get a fair and proper trial, the gradation of appeals is not a necessary *sine qua non* for the proper administration of justice. If there is miscarriage of justice, if there is any serious procedural flaw and if there is anything radically wrong, by all means let the highest court in the land interfere. But there is no reason why, for example, in the provinces of India collegiate courts should not be established and, the intervention of the High Court diminished and the Supreme Court made merely a court of ultimate appeal in these matters to see that errors are set right. But I do not want all that reform to be introduced immediately. What I would desire is that while perpetuating the existing provisions for appeal they may be made subject to the intervention of Parliament, so that if a special committee is appointed and goes into the whole question of the system of administration of justice, all necessary reform may be introduced into the legal system in this country.

Then my honourable Friend Shri Thirumala Rao had a jibe against the lawyers. It was entirely unwarranted for the reason that there are lawyers who think in a larger terms of society and there are laymen who are more legalistic than lawyers. I notice on the other hand that there is a tendency among the lay elements to rely upon legalism rather than in the lawyer who thinks in larger terms of society and advanced thought in the world. Therefore that speech was unnecessary. The reason why unfortunately we had to mention article 111 is this: A simple reference could have been made to the jurisdiction of the Federal Court or the jurisdiction exercised by the Privy Council without mentioning the details as to the condition of appeal and then that might be made subject to the intervention of Parliament. But the House knows the sort of discussion that cropped up when reference was made to Parliamentary privileges. If you refer to the jurisdiction the Privy Council was exercising up till now under the various Statues, both Indian and English, there may be a feeling that this is derogatory to the dignity of the House. There has been a serious controversy in the press and on the platform as to whether it is at all justifiable to refer to the jurisdiction and powers and privileges of Parliament when enacting our Indian Constitution. That might be a good reason. But I do not see for a moment how these could be made simpler. Reference may be made in article 111 to the existing state of things and provision may be made that that state of things might be modified, remedied or changed by the intervention of Parliament. These are the reasons which induced me to accept

[Shri Alladi Krishnaswami Ayyar]

the amendment of Dr. Ambedkar though I wish he was able to go further and state that all these provisions shall be subject to the intervention of Parliament.

Shri B. Das (Orissa: General) : Sir, during the last three days while the House has been discussing the Chapter on Federal Judicature, I have been placed in an atmosphere of depression. My reaction was to oppose the amendment of Shrimati Durgabai, but when I heard my esteemed Friend Shri Alladi Krishnaswami Ayyar I felt much more confused and depressed. Sir, our foreign rulers have left us little. They bled us white and they left us with a number of lawyers here and outside who interpret the law for the maintenance of justice. In my boyhood days I used to pass through Calcutta and watch the Scales of Justice in the Writers' Buildings, the old Government Offices there. That Scale of Justice is the thing they have left behind and not real justice. Why my lawyer friends are so much enamoured of the interpretation of justice under the British system I do not know. I thought it unfortunate that during the transition stage we cannot suddenly think in terms of the Indian conception of justice. My conception of justice would be that justice should be based on truth. Whether in the Supreme Court or in the High Courts of Judicature, what is done is the interpretation of the laws left behind to us as heritage by our former British masters. So, Sir, I feel very much depressed. I wish that we had in this Chapter only three or four articles in which my honourable Friend, Dr. Ambedkar could put things in such a way that justice shall be rendered to everybody. But what we have are provisions for interminable and intermingling appeals from court to court finally ending in the Supreme Court. Now my honourable Friend Dr. Ambedkar is bringing out one or two more articles which, Sir, provide for criminal appeals being brought before the Supreme Court. In these circumstances, how will people get justice? Will it be justice or mere transfer of money from one pocket to another? This is all unproductive money. If my money passes to Shri Alladi Krishnaswami Ayyar's pocket or to Dr. Ambedkar's pocket, that will not be productive wealth. That will be unproductive wealth. Families have been destroyed in the past by these appeals to the Privy Council and their properties passing to the pockets of the lawyers who defended their contentions in the Privy Council.

I hope my honourable Friend Dr. Ambedkar and the legal luminaries in this House will conceive justice without expense. The moment you abolish the need for lawyers to defend litigants, litigation will come down. But I do not think that anybody would work for that end. Lawyer-ridden as we are, we are grateful to the lawyer classes because they are the first line of patriots who showed us how to agitate for our freedom. We are grateful to them. They are thinkers. They are scholars. But today I do appeal to them that they should suggest ways of reducing the cost of litigation. This Constitution provides nowhere that the cost of litigation should be brought down. The way discussion started the other day and responsible members suggested that hundreds of Supreme Court Judges would be necessary to hear every criminal appeal was disquieting to me. If there is justice based on truth it must be had in the first court or in the next appellate court. Why should we go on providing for appeals again and again doubting the judgment of the High Courts? We may soon have women judges in our High Courts too. I am very much disturbed. As a common man, I feel that justice is not justice, which ruins families, which brings destruction throughout justice is not justice, which bring out a new class which is parasite on the people of India *i.e.,* the lawyer's class. Something must be done. The Father of the Nation is no more. If the lawyer's class are true to the Father of the Nation, they should help to bring about justice in a way which will entail the least amount of expenditure.

I feel that Parliament should not interfere with the Supreme Court. Once we have decided to have a Supreme Court—though I protest against the expensive habit of having a Supreme Court, I am for it—we should help in its maintaining the highest standard of justice, and not allow Parliament to interfere with it. What do I know of the administration of justice? Why should I legislate and control the Supreme Court? Why should I lay down the rules of procedure for the High Court and Supreme Court Judges? We are not laying down the rules of procedure for the Federal Public Service Commission. We are not laying down the rules stipulating how the Auditor-General should control the expenditure that the Parliament of India will sanction. My point is that Parliament should not be too meticulous and should not exercise any power over the Judges of the High Courts or the Judges of the Supreme Court.

Shri V. S. Sarwate (Madhya Bharat) : Mr. President, Sir, I rise to support amendment No. 1912 . . . .

Shri L. Krishnaswami Bharathi (Madras: General) : That amendment has not been moved.

Mr. President : It was moved on Friday.

Shri V. S. Sarwate : Which proposes the deletion of the words 'except the States for the time being specified in Part III of the First Schedule'. I wish to restrict my observations to that amendment only. With that clause, the article limits the operation to the High Courts of provinces only. If this clause is omitted, that limitation will be taken away, but I would like to point out that this would not be sufficient for the purpose. It would not *ipso facto* invest the Supreme Court with power to hear appeals against the decisions of the High Courts in Indian States. To make my meaning clear, I would, in short, describe the present situation in the Indian States. Sometimes it is said that the States are in a backward condition. There are practically primitive conditions in the Indian States. There is no judicial service, etc. This sweeping generalisation is entirely wrong and gives a misleading conception of the state of the things in the Indian States. In most of the States enumerated in part III of the First Schedule, there is well constituted High Court and an efficient judicial service, but according to the constitution of the Indian States there is no appeal to the Privy Council from the judgment of the High Courts in these States. In most of the States a Judicial Committee had been appointed which heard appeals from the High Courts. In the minor States it is true that there is no judicial service of the kind which prevails in the provisions and there no High Courts, but the common people could have ready access to the Rulers. That acted as a check against the executive, and the Ruler in most cases gives them rough and ready justice. This met the requirements of the situation. In fact, in some cases with the limited area in which these Rulers exercised their jurisdiction, this did give better justice, for justice delayed is justice denied. In the provinces especially in civil cases the justice which is at present administered is so dilatory and so intricate that there is a saying in Hindi—

Jo diwani men jata hai woh diwana ho jata hai;

which gives a better idea of the state of things than the saying that justice delayed is justice denied. However, since the Unions were established in these States, things have changed. The minor States have been wiped off and they ought to have been, but the fact also remains that the masses of the people who had ready justice before have now been denied any effective substitute. In the States, where there were Judicial Committees, in most of the cases these Judicial Committees have disappeared. The result is that there is no appeal to the Privy Council and there is no appeal against the judgments of the High Courts. So there is this lacuna. Therefore in most

[Shri V. S. Sarwate]

of the Unions thinking people desire that their High Courts should be brought into line with the High Courts in the provinces and an appeal provided against the judgments of their High Courts. Recently a Pleaders' Conference was held in one of those Unions and a resolution was passed which recommended that an appeal should be provided against the judgments of the High Courts and also that the High Courts should be made entirely independent of the executive. Now, what I would point out is this: that, when this clause is taken away, there would lie an appeal from the judgments of the High Courts by virtue of this article, in the case of the provinces, but this is not the case with the High Courts in the acceding States. To my mind a further provision would be necessary which would make the judgments of the High Courts in these States appealable to the Supreme Court, and this provision could be made in three ways. In most of the Union States, there is a clause in the Covenant which provides that a Constitutent Assembly be constituted in the Union. This Constituent Assembly could provide in its Constitution that an appeal from the High Courts in their territory shall lie to the Supreme Court. This is one way. Another way would be that according to the new Covenant which has been entered into by these unions, this Parliament has been given powers to make laws, which would be binding on the States regarding subjects mentioned in List 1. This list contains one item which gives power to this Parliament to make laws regarding the powers of judicial courts. So under this Covenant the Parliament may pass a law by which the appeals of the High Courts in the acceding States will be appealable. The third would be to make a provision to that effect in this Constitution itself. Now, the Part VI which deals with the constitution of the Provincial High Courts does not apply to the States. That is the difficulty. So the beginning of this Part, *viz.,* article 128 which reads:— In this part, unless the context otherwise requires, the expression 'State' means a State for the time being specified in Part I of the First Schedule" needs to be amended appropriately: So that this part be made applicable to the High Courts in the acceding States: in the alternative a fresh part would have to be inserted by which similar provision could be made.

I would further point out that as a necessary corollary of this amendment No. 1912, article 113 would have to be dropped, because this clause provides for a reference to the Supreme Court against the judgment of the High Court in the acceding States and that would be no more necessary. Further in article 112 there is a similar provision "except the States for the time being specified etc." which may have to be dropped. My specific suggestions are that a provision would have to be made by which the judgments of the High Courts in acceding States would be appealable inasmuch as only taking away this clause from article 112 will not be sufficient and would not *ipso facto* invest the Supreme Court with that appellate power and further, article 113 would have to be omitted and a similar amendment would have to be made in article 112.

Shrimati G. Durgabai : Mr. President, Sir, while accepting and supporting the amendment moved by Dr. Ambedkar, I wish to offer a few remarks on this subject under consideration. I will say that I am in the main in agreement with the principle of the amendment moved by Prof. Shibban Lal Saksena. Though there was an amendment similar to that given notice of by me, I did not move it; but as I have already stated, I am very much in sympathy with the principle underlying that amendment. Sir, the article under consideration lays down, I am sure the House is aware, the conditions in detail for the appeals to the Supreme Court. These conditions are treated in sub-clauses (a), (b) and (c) of article 11. The effect of this article is to

make the conditions of appeal as part of the Constitution, and I am sure that it would be agreed that there should be an element of elasticity to the conditions of appeal, and if we have made these conditions as a part of the Constitution as we find sub-clauses (a), (b) and (c), that would introduce an element of rigidity and also the conditions will be stereotyped. So the object of my amendment, which I did not move, or the object of the amendment moved by Prof. Shibban Lal Saksena is to introduce that kind of elasticity and leave these conditions to the future Parliament to lay down if it finds absolutely necessary and essential. Now if there is to be a change and if we have made these conditions as part of the Constitution, the change could be brought about only by a constitutional revision. Therefore, I am sure that the House has realised the difficulty and the amendment given that there should be an elasticity by leaving this matter absolutely to the future Parliament is to, remove that rigidity and see that the conditions are not stereotyped.

Sir, in the law as it stood prior to the passing of the Federal Court Enlargement of Jurisdiction Act, the conditions of appeal were regulated by the Civil Procedure Code or by Order in Council made by His Majesty. This Civil Procedure Code was liable to be amended by Parliament. So, in answer to my friends who have just said that there should be no intervention of the Parliament, now I would say that this is not a new condition and the intervention of Parliament was not newly introduced because the Parliament could always intervene in the law as it existed today, that it could amend the Civil Procedure Code which would in the main regulate the conditions of appeal by bringing about a legislative change. So, Sir, it would have been very much better if a similar course could have been adopted and also I am sure that the House has noted this fact that the conditions obtaining today are not the conditions as existed some time back. They are radically different today, because we find that a large number of States are being brought under the Indian Administration and also the question is whether the Supreme Court should not be constituted as a Court of appeal from all over India and the idea also is to expand this jurisdiction and extend the jurisdiction to the States also. This position has been made clear by an amendment moved by my honourable Friend, Shri Raj Bahadur, which I am sure will be accepted. The effect of that amendment is to remove those restrictions with regard to the jurisdiction of the Supreme Court in relation to the States. Therefore the idea is to expand the jurisdiction and leave the conditions to the Parliament to lay down. Anyhow, I am very glad to support the amendment moved by Dr. Ambedkar, because it has accepted the major part of my amendment namely conditions (a) and (b) accepted, but condition (c) alone is now made rigid by having found a place in this Constitution. Even this matter could have been left to the future Parliament; it would have been open to the Parliament to say under what conditions an appeal should be considered as a fit one to come to the Supreme Court. Anyhow, Dr. Ambedkar has not considered it desirable, but while accepting the two, he has left this matter absolutely beyond the purview of Parliament. As Mr. Alladi Krishnaswami Ayyar stated, half a loaf is better than no loaf at all, and I also would agree with that view and support the amendment moved by Dr. Ambedkar.

Shri Yudhisthir Misra (Orissa State): Mr. President, Sir, I support the amendment moved by the honourable Member, Mr. Raj Bahadur for the deletion of the provision relating to the exclusion of the States specified in Part III of the First Schedule from the operation of article 111 of the Draft Constitution.

I endorse the arguments put forward in favour of the amendment. Besides that I want to submit another point for the consideration of this House. The

[Shri Yudhisthir Misra]

provision as it stands excluding the Indian States from approaching the Supreme Court will create anomalous position for those States which have integrated, namely, the States of Bombay, Madras, C.P., and Orissa. These States have been integrated with the neighbouring provinces and are administered as parts of the provinces. They are under the jurisdiction of the provincial High Courts. In the Draft Constitution, they have been put in Part III of the First Schedule although in the Draft Constitution it has been provided that they will be administered as if they are parts of the provinces; a positive provision of this kind in article 111 would exclude them from approaching the Supreme Court, or at least create confusion in the minds of the States people. To remove this, Sir, it is necessary that the provision in article 111 excluding the States in Part III of the First Schedule from the operation of this article should be omitted. I therefore, support the amendment moved by my honourable Friend, Mr. Raj Bahadur.

Shri Rohini Kumar Chaudhuri (Assam: General): Mr. President, Sir, a great deal has been said in this House by some of my esteemed Friends against the lawyers as a class.

Mr. President : No reply to that part of the remarks is required. You had better leave those remarks alone. Please confine yourself to the article and the amendments.

Shri Rohini Kumar Chaudhuri : All right, Sir. What I wanted to say is this: that the responsibility for framing this Constitution is not on the lawyers, but is on the layman, on the Members of the Constituent Assembly, the majority of whom are non-lawyers. It is the strong commonsense of the Members of this House which will decide the several points of the Constitution. The lawyers are there to advice us. Just as in a trial by jury, you cannot lay the responsibility on the Judge and lawyers, but the case has to be decided according to the commonsense of the jurors themselves, similarly, in this House, the responsibility of framing the Constitution is entirely on the Members of this House, the majority of whom are not members of the legal profession. Therefore, I would invite the House to look at this question from a layman's point of view as well.

If you look at this question from the layman's point of view what do you find? A great restriction has been imposed in article 111, and that restriction is that a certificate has to be granted by the High Court. You are not going to file an appeal directly from any other Court; you cannot file an appeal from the District Judges' or Sub-judges' courts. The matter has got to go up to the High Court and the High Court has to grant a certificate in order to enable you to file an appeal. Can any man, whether he be a layman or a lawyer suppose for a moment that a High Court against whose decision an appeal is going to be filed, will promiscuously or without any sense of responsibility grant a certificate ? That is a very big restriction. I should have thought that no other restriction was necessary after that. Even then, in this article you have laid down under what circumstances the certificate could be granted, and you have bound down the High Court to those circumstances. Therefore, the first restriction is that you cannot file an appeal without a Certificate from the High Court; the second restriction is that the High Court cannot grant the certificate in each and every matter and you have laid down that the matter should fall under certain categories in which alone a certificate could be granted. After this, I would ask, is it reasonable to lay down a further condition and say that it should be subject to any law which may be passed by Parliament?

I am rather diffident in making a strong appeal in this matter because no less a person than Shrimati Durgabai has sponsored the original idea and Shri Alladi Krishnaswami Ayyar has said that it has his fullest sympathy. Even then, I would venture to bring the matter to the special consideration of the House, the majority of whom are non-lawyers. Taking this question from the commonsense point of view, is it likely that ordinarily a court against whose decision a party is going to file an appeal, that court will inadvertently, recklessly grant a certificate? If you want that everything should be left to Parliament, why spend so much time over articles 110, 111, and 112? Just say that Parliament may by law lay down the procedure and the circumstances under which an appeal could be filed to the Supreme Court. That would finish the whole thing. Why go through all these articles 110, 111, 112, 113 and so on? Simply have one article that Parliament may by law prescribe the circumstances under which an appeal could be filed to the Supreme Court. You might mention there about the certificate just as it is mentioned in the Civil Procedure Code today. There is also mention about the valuation of Rs. 10,000 and about a question of principle being involved. But, having spent all the time in considering articles 110, 111 and so on, I should have thought that the House might consider whether it is necessary to adopt the amendment which has been put forward.

Mr. President : I think we have had enough discussion on this simple article 111 about which there seems to be no serious difference of opinion on the merits. Whatever may be said with regard to the people who have framed it, nothing has been heard against the provisions of the article. I would therefore request Members not to take more time over this when there is really no difference of opinion on the merits.

Dr. Bakhshi Tek Chand (East Punjab: General) : Sir, I will not detain the House for more than two or three minutes over this question. The amendment which Professor Shibban Lal Saksena has moved and which has been supported by Shri Alladi Krishnaswami Ayyar and Shrimati Durgabai is not as innocent as it appears to be. It is really of a very revolutionary character. If the amendment is carried, it will be open to Parliament at any time to take away entirely the jurisdiction of the Supreme Court in all civil matters. It was with a view to avert such a contingency that the Drafting Committee thought fit to include article 111 in the Constitution. If you add the words 'subject to any law made by Parliament' in the beginning of article 111, as is suggested in the amendment, Parliament may, at any time, if it so chooses, take away the jurisdiction of the Privy Council to deal with any civil matter falling *either* under clause (a) or (b) or (c) or in all of them taken together. That, I submit, will be a very serious matter. The provisions of article 111 as drafted and placed before the House are practically the same as those contained in the Civil Procedure Code. Indeed similar provisions have existed for more than a century, ever since the Judiciary Act of 1833 was passed and the Privy Council began to function as the Court of Appeal from decisions passed by the Supreme Courts of Calcutta, Bombay and Madras and later, from the various High Courts established under Letters Patent or the Indian High Court Act, 1861. The only difference in article 111 as originally drafted, and the provisions of sections 109 and 110 of the C.P.C. as they stand on the Statute Book today is that in clause (a) the valuation limit has been raised from Rs. 10,000 to Rs. 20,000. Dr. Ambedkar's amendment is that '20,000 *or such other value as* the Parliament may fix by law'. It gives the power to Parliament to raise or lower this pecuniary limit. But Parliament cannot take away the right of appeal in such cases, which is provided for in the Constitution Act, and which invests the Supreme Court with the power that has hitherto vested in the Privy Council. I submit that it will be improper

[Dr. Bakhshi Tek Chand]

to give Parliament power to take away that jurisdiction. This is a very important jurisdiction, and as has been pointed out by Mr. Rohini Kumar Chaudhuri, it must be maintained under the new Constitution. Honourable Members will see that it is not an unrestricted right of appeal in every civil matter which a litigant is given to go up to the Supreme Court. It is hedged in with several restrictions. Firstly, there must be a certificate from the High Court in every case. Where the value is Rs. 20,000 or such other value as Parliament may fix, and the High Court and the Court of first instance have differed, in that case an appeal will lie as of right. Then clause (b) provides that if the judgment is one of affirmance, the appeal will not lie as of right but only if the High Court certifies that the case involves a *substantial* question of law. This does not involve questions of law which may arise collaterally or incidentally! In those cases no appeal will lie. Then I do not see why any opposition is being offered to clause (c) being included in the Statute. This covers only those cases in which the question is of such general importance that the decision will affect a very large number of cases or is one in which a point of law is involved on which there is a difference of opinion between the various High Courts and it is necessary to have an authoritative pronouncement by the Supreme Court to resolve the conflict. Further, in such a case the particular High Court which has decided the case must certify that the case is a fit one for appeal. In that case only will an appeal lie. That will cover a very limited number of cases. So far as I know, at present not more than eight or ten appeals from all the High Courts of India go to the Privy Council under clause (c). It is a very very salutary provision, and must be retained. This article as drafted, with the modification suggested in Dr. Ambedkar's amendment should, I submit, be accepted and the amendment of Professor Saksena rejected.

Dr. P. K. Sen (Bihar: General) : Sir, may I offer a few remarks?

Mr. President : Is it necessary?

Dr. P.K. Sen : Very important, Sir.

Mr. President : I bow to the judgment of a Judge in this matter. He considers it important.

Dr. P. K. Sen : Sir I shall be very brief and I shall just touch upon the few points which I really consider to be very important. I rise to oppose the amendment of my honourable Friend Shri Shibban Lal Saksena. It has been supported by Shrimati Durgabai and some other honourable Members as also by no less an authority than Shri Alladi Krishnaswami Ayyar. The point on which they have laid stress is that article 111 should be made elastic, but the manner in which, according to them, elasticity is to be introduced would change the whole aspect of the article. Even elastic substances, Sir, if pulled violently give way and snap. Here, in this particular matter, elasticity is sought to be introduced in such a manner as to bring the article to the breaking point. Article 111 proposes to give power to the Supreme Court to hear appeals in certain specific classes of cases. The introduction of those words 'subject to such provisions of law as the Parliament may lay down' at the beginning of the article, which the amendment proposes, changes the whole aspect of the article. It really gives power to Parliament at any time to make a clean sweep of the article. Now if this article was worded in very extravagant terms, it would have been different but it really incorporates in it just the provisions which have been up to now in force in the Civil Procedure Code, and a very long course of years has proved that they are very salutary and satisfactory. The only question that might be raised was as to the minimum

figure of valuation and even that point has been relaxed by my honourable Friend Dr. Ambedkar who suggests that it should be 20,000 or such other valuation as may be fixed by Parliament later on. In that view it does seem to me that although as you have said, Sir, that it is a simple matter, it is not an unimportant matter at all. It really comes to this—shall we have the power vested now under the Constitution in the Supreme Court or shall we leave it *in vacuo*, as it were, to be done by Parliament at any further time? If we allow the amendment today, the power that is given in those introductory words will really enable the Parliament at any time to make drastic changes. Therefore, I submit, the House should give a very careful consideration to this question before supporting the amendment. The amendment should in my opinion be vigorously opposed by everybody who is interested in the welfare of this country and its highest tribunal.

The Honourable Dr. B. R. Ambedkar : Sir, I would begin by reminding the House as to exactly the point which the House is required to consider and decide upon. The point is involved between two amendments: one is the amendment moved by my Friend Prof. Shibban Lal Saksena, which is in a sense an exudation of amendment 1911 and my own amendment, which is amendment No. 25 in List No. 1 of the Fourth Week. Before I actually deal with the point that is raised by these two amendments. I should like to make one or two general observations.

The first observation that I propose to make is this. Article 111 is an exact reproduction of sections 109 and 110 of the Civil Procedure Code. There is, except for the amendments which I am suggesting, no difference whatsoever between article 111 and the two sections in the Civil Procedure Code. The House will therefore remember that so far as article 111 is concerned, it does not in any material or radical sense alter the position with regard to appeals from the High Court. The position is exactly as it is stated in the two sections of the Civil Procedure Code.

The second observation that I would like to make is this. Sections 109 and 110 of the Civil Procedure Code are again a reproduction of the powers conferred by paragraph 39 of the Letters Patent by which the different High Courts in the Presidency Towns were constituted by the King. There again, Section 109 and 110 are a mere reproduction of what is contained in paragraph 39.

The third point that I should like to make is this: that these Letters Patent were instituted or issued in the year 1862. These Letters Patent also contain a power for the Legislature to alter the powers given by the Letters Patent. But although this power existed right from the very beginning when the Letters Patent were issued in the year 1865, the Central Legislature, or the provincial Legislatures, have not thought fit in any way to alter the powers of appeal from the decree, final order or judgment of the High Court. Therefore, the House will realize that these sections which deal with the right of appeal from the final order, decree and judgment of the High Court have a history extending over practically 75 to 80 years. They have remained absolutely undisturbed. Consequently in my judgment, it would require a very powerful argument in support of a plea that we should now, while enacting a provision for the constitution of the Supreme Court disturb a position which has stood the test of time for such a long period.

It seems to me that not very long ago, this House sitting in another capacity as a Legislative Assembly, had been insisting that these powers which under the Government of India Act were exercised by the Privy Council, should forthwith, immediately, without any kind of dimunition or denudation be conferred upon the Federal Court. It therefore seems to me somewhat odd that when we have constituted a Supreme Court, which is to take the place

[The Honourable Dr. B. R. Ambedkar]

of the Federal Court, and when we have an opportunity of transferring powers of the Privy Council to the Supreme Court, a position should have been taken that these provisions should not be reproduced in the form in which they exist today. As I say, that seems to me somewhat odd. Therefore, my first point is this that there is no substantial, no material, change at all. We are merely reproducing the position as between the High Court and the Privy Council and establishing them as between the High Court and the Supreme Court.

Now, Sir, I will come to the exact amendments of which I made mention in the opening of my speech namely, Prof. Shibban Lal Saksena's amendment and my amendment No. 25. If my amendment went through, the result would be this: that the Supreme Court would continue to be a Court of Appeal and Parliament would not be able to reduce its position as a Court of Appeal, although it may have the power to reduce the number of appeals, or the nature of appeals that may go to the Supreme Court. In any case, sub-clause (c) of article 111 would remain intact and beyond the power of Parliament. My view is that although we may leave it to Parliament to decide the monetary value of cases which may go the Privy Council, the last part of clause (1) of article 111, which is (c), ought to remain as it is and Parliament should not have power to dabble with it because it really is a matter not so much of law as a matter of inherent jurisdiction. If the High Court, for reasons which are patent to any lawyer does certify that notwithstanding that the cause of the matter involved in any particular case does not fall within (a) and (b) by reason of the fact that the property qualification is less than what is prescribed there, nonetheless it is a cause or a matter which ought to go to the Supreme Court by reason of the fact that the point involved in it does not merely affect the particular litigants who appear before the Supreme Court, but as a matter which affects the generality of the public, I think it is a jurisdiction which ought to be inherent in the High Court itself and I therefore think that clause (c) should not be placed within the purview of the power of Parliament.

On the other hand if the amendment moved by my Friend Prof. Saksena were to go through, two things will happen. One thing that will happen has already been referred to by my Friend Bakshi Tek Chand that Parliament may altogether take away the Appellate jurisdiction of the Supreme Court in civil matters. It seems to me that that would be a disastrous consequence. To establish a Supreme Court in this country and to allow any authority in Parliament to denude and to take away completely all the powers of appeal from the Supreme Court would be to my mind a very mendacious thing. We might ourselves take courage in our own hands and say that the Supreme Court shall not function as a court of appeal in Civil matters and confine it to the same position which has been given to the Federal Court.

The other thing will be that Parliament would be in a position to take away sub-clause (c) which, as I said, ought to remain there permanently, because it is really a matter of inherent jurisdiction. Therefore it seems to me that the plea that the appellate power of the Supreme Court should be made elastic is completely satisfied by my amendment No. 25, because under my amendment it would be open to Parliament to regulate the provisions contained in (a) and (b) without in any way taking away the appellate jurisdiction of the Supreme Court completely or without affecting the provisions contained in (c). Sir, I therefore oppose Mr. Saksena's amendment.

Mr. President : I shall now put Prof. Shibban Lal Saksena's amendment.

The question is:

"That in clause (1) of article 111 before the words 'An appeal' the words 'Subject to any law made by Parliament' be inserted."

The amendment was negatived.

Mr. President : The question is:

"That in clause (1) of article 111 the words 'except the States for the time being specified in Part III of the First Schedule' be deleted."

The amendment was adopted.

Mr. President : The question is:

"That with reference to amendments Nos. 1916 to 1919 of the List of Amendments, in sub-clause (a) of clause (1) of article 111, after the words 'twenty thousand rupees' the words 'or such other sum as may be specified in this behalf by Parliament by law' be inserted."

The amendment was adopted.

Mr. President : This disposes of amendments No. 1917 moved by Dr. Bakshi Tek Chand and also 1919 by Mr. Naziruddin Ahmad.

The question is:

"That to clause (1) of article 111 the following proviso be added :—

'Provided that no appeal shall lie to the Supreme Court from the judgment decree or order of one judge of a High Court or of one judge of a Division Court thereof, or of two or more judges of a High Court or of a Division Court constituted by two or more judges of a High Court, where such judges are equally divided in opinion and do not amount in number to a majority of the whole of the judges of the High Court at the time being'."

The amendment was adopted.

Mr. President : The question is:

"That in clause (2) of article 111, for the words 'the case involves a substantial question of law as to the interpretation of this Constitution which has been wrongly decided', the words 'a substantial question of law as to the interpretation of this Constitution has been wrongly decided' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That article 111, as amended, stand part of the Constitution."

The motion was adopted.

Article 111, as amended, was added to the Constitution.

Mr. President : As regards amendments relating to criminal appeals the best thing would be for Pandit Bhargava to move amendment No. 27 to which the other amendments may be taken up as amendments.

Pandit Thakur Das Bhargava (East Punjab : General) : Sir, in regard to amendments Nos. 27 and 28 notice was received last night of an amendment by Dr. Ambedkar, No. 190. This amendment now included both 112-A and B. Similarly there is a large number of other amendments bearing on the question of appeal. These can be taken up together so that ultimately the point may be decided. If Dr. Ambedkar wishes to take up this matter subsequently it may be allowed to be held over and I have no objection. You may, Sir, consider this matter, so that all may be decided at one time.....

Mr. President : That was exactly the procedure which I wanted to follow. Your amendment has to be moved to enable the other amendments to be moved.

Pandit Thakur Das Bhargava : I do not know whether Dr. Ambedkar wants it to be held over so that a consolidated amendment may come before the House. I have gone through all the amendments and I understand that the

[Pandit Thakur Das Bhargava]

basic idea behind all the amendments is one of compromise. If you are pleased to hold them over one consolidated amendment shall come before the House.

Mr. President : I have no objection to that. But amendment No. 23 is a somewhat different matter.

Pandit Thakur Das Bhargava : Yes, Sir. It is absolutely different but that will remain as you have already ordered that it may stand over.

Shri T. T. Krishnamachari (Madras : General) : Sir, these provisions being a departure from the existing scheme in the Draft Constitution the House may be given some time to digest these new provisions.

Mr. President : I have no objection: it can stand over.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Amendment No. 37 also relates to that.

Mr. President : That will also stand over. All the amendments relating to appeals from decision in criminal cases will stand over.

Article 112

Mr. President : Can we take up article 112 now? I find that in regard to this also there are several amendments in regard to appeals. Perhaps this also may stand over, and the consideration of the article other than the portions concerned with criminal appeals may be taken up.

Shri Ram Sahai (Madhya Bharat) : *[Mr. President, I move my amendment which runs :—

"That in article 112, the words 'except the States for the time being specified in Part III of the First Schedule, in cases where the provisions of article 110 or article 111 of this Constitution do not apply' be deleted."

My amendment consists of two parts. It is one of those amendments which I have moved in order to remove the distinction maintained between the Provinces and the States' Unions. This amendment has two parts.

One part deals with the exclusion of Unions of States and States from the jurisdiction of the Supreme Court. I have moved this amendment against this exclusion. The second part deals with limitations of the rights of the Supreme Court in article 110 and 111. I understand that the second part of my amendment is covered by amendment No. 1932 moved by Dr. Ambedkar on behalf of the Drafting Committee. Hence I think that this part of my amendment will find no objection with him and he will accept it. As I understand that the House agrees with me that it would not be proper to apply such limitations on the rights of the Supreme Court, I think that the House will accept my amendment. I have particularly to place my views before the House regarding the amendment to the first part. The State and the Union of States have been kept entirely separate in the Draft Constitution and they have not been considered as provinces. When Dr. Ambedkar had moved the motion regarding the Draft Constitution in November last, he had expressed the view that there should be no difference between the Provinces and the Unions of States. He had rather declared that it would be better if the Constituent Assemblies going to be established in the States or the Unions of the States were abandoned. At that time I had made an appeal that this House, as it is constituted, can made a Constitution for the States and the Union of States, as it is doing for

*[ ] Translation of Hindustani speech.

the provinces. There is no person why we people assembled here cannot make the rules, laws or constitution or other things therein for the States as we like.

As regards this amendment, some difficulty may arise from the Instrument of Accession and the guarantee given by the Government of India thereby. But as far as I think there can be no difficulty in these things. Hence, so far as the question of bringing the provinces, States and the Unions of the States in line is concerned, there is no difficulty on account of the Instrument of Accession; particularly in regard to the jurisdiction of the Supreme Court. In the Instruments of Accession executed by the States and the Unions of States, all the subjects except taxation have been handed over to the Centre. When such a situation has developed, I do not understand what purpose can be served by keeping the High Courts of the States and the Unions of States outside the Jurisdiction of the Supreme Court.

I had submitted formerly that the States have such High Courts as posses very able persons who can do the same quality and amount of work as their counterparts in the provinces. There seems to be no reason why appeals from them should not go to the Supreme Court. I, therefore, submit that there should not be any difference on the question of appeals from the High Courts of the States and the Unions of the States to lie in the Supreme Court. It would be very much in the interest of the people of the States. In this way the Supreme Court will exercise a control over the High Courts of the States and the Unions of States, which will be beneficial to the people of those States. This will also end the question of depriving the people of the States of the justice of the Privy Council. As I have already submitted, Dr. Ambedkar had stated that there is no need for Constituent Assemblies there. I submit that a convention of the members of the States Constituent Assembly was held in November last under my Chairmanship. That Convention has issued a statement that there should be no difference between the Provinces, States and the Unions of States. In this connection they had also made a request to the States Ministry who later on appointed a committee to draw up a model Constitution for the States. I was also a member of the same. That Committee has drawn up a constitution for the States and Unions of States similar to the drawn up for the provinces. There is nothing in that to separate the States from the provinces. I would also submit that there is article 63 which is similar to article 111 here.

As article 111 makes a provision for appeal similarly a provision has been made for appeal to the Supreme Court from the decisions of the High Courts of the States and the Unions of the States. Here the President has been empowered to appoint Governors, but it has not been done there. There the Rajpramukh will be recognised by the President. I think there is no difference in that. I think there can be no two opinions about this. The representatives of the States in this House have been elected on the same basis on which the representatives of almost all the provinces have been elected. Then, why do they not frame laws in this House for the States and for the Unions of States? I mean to say, as Dr. Ambedkar has already suggested, that the Constituent Assemblies formed for the States are meaningless. I feel that this is really a waste of the time of the public as also of its money and energy. When we have assembled here to frame a constitution, we are competent to frame constitutions for the States and for the Unions of States also. I do not think that our framing of constitution will in any way prejudicially effect the Instrument of Accession. We see that our Rajpramukhs are working in such a way that our progress or the country's progress may not be hampered. They want to work strictly according to the advice of the States Ministry. If the States Ministry suggests to them that it would be futile to form any

[Shri Ram Sahai]

Constituent Assembly whatsoever in the States, they would fully agree to its suggestion and would gladly accept it. The people there have of course been always eager for it and will be so. There appears to be neither any reason nor any necessity for forming separate Constituent Assemblies for States, particularly when the States Ministry is going to adopt the draft of a model constitution for the States and the Unions of States prepared by experts and the representatives of States similar to that for the provinces. The proposition before the House is that the provision in article 112 for excluding the States and the Unions of States and the provisions in articles 110 and 111 to limit the powers of the Supreme Court should be deleted and the remaining portion should be adopted.

Without taking more time of the House, I only submit that both parts of my amendment are worth accepting and I hope that the House will accept the whole amendment.]

(Amendments Nos. 1929 to 1932 were not moved.)

Prof. Shibban Lal Saksena : What about 31?

Mr. President : But the decision has already been taken.

Prof. Shibban Lal Saksena : This is separate. This is No. 31 of List I, Fourth Week.

Mr. President : But that is dependent on 1931 which was not moved. 1932 also was not moved. But you can speak on the article in the general discussion.

Prof. Shibban Lal Saksena : Mr. President, Sir, this article is a very important article in the Constitution. If there is a Supreme Court, it will have to have supreme powers. "The Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree or final order in any cause or matter, passed or made by any court or tribunal in the territory of India." By this article, the Supreme Court can entertain any appeal against any judgment. I would only wish that this power was extended. At Present, although it can entertain any appeal, it will have to decide that appeal according to the law of the land. It cannot go beyond those laws. But what I wish is that in cases where natural justice is under consideration the Supreme Court should be enabled to give judgments which may not be within the letter of the law. It should be permitted to give any judgment to satisfy the requirements of the cases. Even now, the Privy Council entertains appeals of this kind. Where natural justice is involved, they take appeals and give decisions which are not bound by the law of the land. I therefore wish that under article 112 where we give power to the Supreme Court to entertain any appeal, we should also enable it to decide those appeals on the principles of jurisprudence and considerations of natural justice. I therefore gave notice of my amendment, but I cannot now move it. But I hope that the point also will be taken into consideration. I would also like to say that my amendment to 111 was from the point of view that the Supreme Court should have power to entertain any appeal, whether it is civil or criminal. If this right is given under 112, there is no need for 111(1) (c), since the Supreme Court has discretion to entertain appeals. I hope that Dr. Ambedkar will try to extend the scope of the powers of the Supreme Court to enable the Supreme Court to go beyond the letter of the law where natural justice is involved.

Kaka Bhagwant Roy (Patiala and East Punjab States Union) : *[Mr. President, Sir, I have come to support the amendment moved by my honourable Friend, Shri Ram Sahai. Now that the petty States have been merged

*[ ] Translation of Hindustani speech.

into large unions, they have been raised to the status of provinces and thereby the subjects of the States have got rid of the personal rule of the princes.

Now when the Constitution of free India is taking shape, the distressed people of the States are looking up to this august Assembly so that there will be no discrimination between the general public of India and the States people.

I think that great injustice has been done to the people of the States by not allowing them the right to make an appeal in the Supreme Court. The people of the States should be given this right in view of the fact that it is being given to all the provinces.

I think that India as a whole cannot become strong unless the newly formed units of the States which form an integral part of India also become strong. Therefore, in order to make India strong, the States people should be given the same rights which are being given to the general public of other provinces.

So, I think that you who are making the Constitution of free India should not insert in it such a clause which would give a different status to the States people.

The People of the States are looking up to this august Assembly with great expectations that the people of the unions of States and the provinces would enjoy equal rights and that there will be no discrimination as such.

I hope that you will accept this amendment.]

Shri Krishna Chandra Sharma (United Provinces : General): Mr. President, Sir, the provision of this article 112 are very important and very comprehensive. It lays down one important principle of Constitution, namely, that while in the scheme of the Government of India Act, the executive was all powerful and both the legislature and the judiciary were subordinate to it, this article, a provision of which type has not found a place in the Government of India Act of 1935, has given a status to the judiciary, equivalent and in no way subordinate to the executive and legislature. Therefore, Sir, this comprehensive as well as necessary provision in the scheme of the Draft Constitution does a great deal of good to the people and gives them the right to go to the highest tribunal against the action of the executive and has an appeal from the High Courts. Sir, I support the provisions of this article and I would further add that this article gives ample power to do justice in the hands of the Supreme Court and with these provisions in the Draft Constitution, I do not find any justification or any necessity whatsoever of making any provision with regard to the criminal appeal to the Supreme Court. Much has been said about the power of the Supreme Court with regard to the appeals in the case of death sentences. I would submit respectfully that one fundamental principle has been ignored all through the discussion, that is, to appeal with regard to death sentence and in the matter of criminal justice it is not only the question of the liberty of the person or the liberty of the accused that is in question, but there is a further question and that is the stability of the State and the peace in the land. You cannot go on prolonging the decision with regard to the crime done by a man against the State for a very long time. It would be detrimental to the State and it is a pernicious principle to hold that the life of a person or his liberty is sacred as such without any regard to the stability of the State or the peace of the land. They are contingent; everything in the State, whether it is the life of the individual, whether it is the liberty of the individual has to be considered, to be cared for, if it is not dangerous or detrimental to the stability of the State, to the peace of the land; and in taking these two fundamental

[Shri Krishna Chandra Sharma]

questions, if the criminal law is administered in accordance with these two fundamental principles, liberty of the accused and the stability of the State, I submit, Sir, this article provides ample safeguard. There is enough safeguard with regard to the justice being done to the individual whether in a civil case or in any order, or in a criminal case. Sir, I support the article.

Pandit Thakur Das Bhargava : Sir, in regard to article 112, I want to make one or two observations. This article 112 is exceptionally wide. The words are "in any cause or matter" and I understand this a departure from the established law of the land also. Now perhaps in all the provinces the revenue jurisdiction is quite exclusive and the Privy Council had got nothing to do with such jurisdiction, but our Supreme Court shall be fully omnipotent as far as a human court could be and it shall have all kinds of cases and I think that so far as the other courts of other jurisdictions are concerned, for instance, if there is an International Court sitting in India, if there is a Court Martial, if there is an Industrial tribunal, if there is an Income-tax tribunal, if there is railway tribunal, all kinds of cases will come before the Supreme Court and it becomes, therefore necessary as to what ought to be the range of the jurisdiction. What does the Supreme Court do in cases of this kind? My humble submission is that article 112 is the remnant of the most accursed political right of the divine right of kings. At the same time the jurisdiction of the article is almost divine in its nature, because I understand that this Supreme Court will be able to deliver any judgment which does complete justice between States and between the persons before it. If you refer to article 118, you will find that it says:— "The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament". So far so good: but my humble submission is that the Privy Council also, which as a matter of fact belonged to Great Britain and which was a sign of our judicial domination by the British, even that had very wide powers and proceeded to dispense justice according to the principles of natural justice. What is this natural justice? This natural justice in the words of the Privy Council is above law, and I should like to think that our Supreme Court, will also be above law in this matter, in this sense that it shall have full right to pass any order which it considers just; and in this light. I beg to submit before the House that this is a very important section and gives almost unlimited powers and as we have got political swaraj, we have judicial swaraj certainly. The right of appeal is absolute in articles 110 and 111, but so far as the special appeal Supreme Court jurisdiction is concerned, it is of a special nature and it is above law. Even if there is no right of appeal, the Supreme Court can interfere in any matter where dictates of justice require it to do so. I should therefore think that the Supreme Court shall exercise these powers and will not be deterred from doing justice by the provision of any rule or law, executive practice or executive circular or regulation etc. Thus the Supreme Court will be in this sense above law. I want that this jurisdiction which has been enjoyed by the Privy Council may be enjoyed and enlarged by our Court and not restricted by any canon or any provision of law.

Shri Alladi Krishnaswami Ayyar : Mr. President, it is necessary to realise the comprehensive nature and the Plenitude of the jurisdiction conferred by this article. The jurisdiction of the Supreme Court extends over every order in any cause or matter passed by any court or tribunal in the territory of India. Secondly, the Supreme Court is free to develop its own rules and conventions in the exercise of its jurisdiction. Sometimes we are labouring under a disadvantage, when we borrow the language of another enactment,

and of importing into the construction of the article all the self-imposed fetters by the Judicial Committee for various historical reasons.

There is nothing to prevent the Supreme Court from developing its own rules, its own conventions and exercising its jurisdiction in an unfettered manner so far as this country is concerned. The self-imposed restrictions of the Judicial Committee are traceable to the doctrine that the King is the fountainhead of all justice and it is not in the larger interests, as it was conceived, to extend his hand in every criminal case. No such fetter need be imposed on the exercise of that jurisdiction under article 112. For example, there is nothing to prevent the Supreme Court from interfering even in a criminal case where there is miscarriage of justice, where a court has misdirected itself or where there is a serious error of law. Purposely, the framers of the Constitution took care not to import into article 112 any limitation on the exercise of criminal jurisdiction. This discussion I hope will have a material bearing when we deal with the question whether any special criminal jurisdiction is to be vested in the Supreme Court or not. If only we realise the plenitude of the jurisdiction under article 112, if only, as I have no doubt, the Supreme Court is able to develop its own jurisprudence according to its own light, suited to the conditions of the country, there is nothing preventing the Supreme Court from developing its own jurisprudence in such a way that it could do complete justice in every kind of cause or matter.

With these words, I support article 112 as it stands.

Shri H. V. Pataskar (Bombay: General): Sir, article 112 has been specially incorporated for the purpose of giving special jurisdiction to the Supreme Court. I was a little surprised to find my honourable Friend Pandit Thakur Das Bhargava complaining that it was rather too wide. The article says: "The Supreme Court may, in its discretion grant special leave to appeal from any judgment decree or final order in any cause or matter....." No doubt the words 'any cause or matter' are such as to include any matter whether civil, criminal or revenue or otherwise. By special reference to revenue, it seems to me that Pandit Thakur Das Bhargava thought that it was not necessary that the Supreme Court should be in a position in special cases to interfere in matters which are decided on the revenue side. If you look at the history of the administration of certain Acts passed by the former Government in respect of revenue, and which are even continued in the present days, and the cases in which so much injustice has been done, you will find that it is necessary, when we are establishing a Court like the Supreme Court we should make provision in the Constitution that that Court should have the power in special cases of injustice, to grant special leave to appeal even in revenue matters. In our own province, there is the Revenue Jurisdiction Act against which for years there has been agitation on the platform and in public, because that Act was intended to put out the jurisdiction of the Court by the Executive. Certainly I appreciate that when we are establishing a Supreme Court for our country, it should have this special jurisdiction to grant leave to appeal in all matters whether they are civil, criminal, revenue or otherwise. Because, the Supreme Court is intended in this country to serve the functions of the King in some other countries where he is the fountain-head of all justice. Here, there is no King, and naturally therefore we must have some independent body which must be the guardian of administration of justice and which must see that justice is done between man and man in all matters whether civil, criminal or revenue. From that point of view, Sir, I think that having made a provision for a Supreme Court, it is necessary that special powers should be given to that Court as in this article 112.

There is another reason also. The Supreme Court is not likely to grant special leave in any matter whatsoever unless it finds that it involves a serious

[Shri H. V. Pataskar]

breach of some principle in the administration of justice, or breach of certain principles which strike at the very root of administration of justice as between man and man. I think article 112 as it stands is a very right one and should be there.

The Honourable Dr. B. R. Ambedkar : I do not think there is anything for me to say.

Mr. President : The question is:

"That in article 112, the words 'except the States for the time being specified, in Part III of the First Schedule, in cases where the provisions of article 110 or article 111 of this Constitution do not apply' be deleted."

The amendment was adopted.

Mr. President : The question is:

"That article 112, as amended, stand part of the Constitution."

The motion was adopted.

Article 112, as amended, was added to the Constitution.

New Article 112-A

Mr. President : There is notice of a new article to be moved by Dr. Ambedkar, amendment No. 191.

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

"That with reference to amendment No. 1932 of the List of Amendments, after article 112, the following new article be inserted :—

'112-A. Subject to the provisions of any law made by Parliament or any rule made under article 121 of this Constitution, the Supreme Court shall have power to review any judgment pronounced or order passed by it.' "

Review of judgments or orders passed by the Supreme Court.

Sir, the Draft Constitution, as it stands now,.....

Prof. Shibban Lal Saksena : On a point of order, Sir, amendment No. 1932 has not been moved.....

Mr. President : That has not been moved : I am taking this as a fresh article.

Shri T. T. Krishnamachari : May I mention, Sir, that amendment No. 1932 is exactly the same as amendment No. 1928? Actually, if amendment 1928 is moved, amendment 1932 cannot be moved.

Mr. President : I have already said that I have taken it as a fresh article.

The Honourable Dr. B.R.Ambedkar : The Draft Constitution contains no provision for review of its judgments. It was felt that that was a great lacuna and this new article proposes to confer that power upon the Supreme Court.

The Honourable Shri K. Santhanam (Madras: General) : Sir, I am afraid that the drafting of this is not quite as happy as it should be. For one thing, I do not think it is right to put an article in the Constitution giving a power to the Supreme Court and say that that power shall be limited by rules made by the Supreme Court. I think it is bad law. If you give a power to

the Supreme Court, it must be real power; you cannot say that that power could be limited by the Court itself. Again, the article says that the Supreme Court's power to review its judgment shall be regulated by law made by Parliament. I think this is altogether contrary to the article 112 which we have adopted, where you have given the Supreme Court the power to review any judgment or any order coming from anywhere. Parliament has no right to interfere even with its ordinary power of review.

Mr. President : This refers to its own decisions.

The Honourable Shri K. Santhanam : I am coming to that. I think there is a greater reason why the Supreme Court should be left unfettered to review its own judgment. When it is allowed an unfettered freedom even in matters which are ordinarily dealt with by Parliament and State legislatures, why should the Supreme Court be fettered by law made by Parliament about the review of its own judgment? In these two respects, the thing is rather defective. I would suggest to Dr. Ambedkar to see if it should go in this form or whether the form should not be reconsidered.

The Honourable Dr. B. R. Ambedkar : I think my Friend Mr. Santhanam is completely mistaken in the observations that he has made. First of all, we are not conferring any power to the Supreme Court to make any rules. That power is being delegated by article 121. If he refers to that article he will see that it reads thus :—

"Subject to the provisions of any law made by Parliament the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including, etc., etc."

Therefore it is not correct to say that we are giving power to the Supreme Court. The power is with the Supreme Court and is to be exercised with the approval of President. Another thing which has misled Mr. Santhanam is that he has not adverted to the fact that I proposed by amendment 42 in List I to add one more clause to article 121 which is (bb) and which deals with the rules to be made with regard to review. Therefore, having regard to these two circumstances, it is necessary that the review power of the Supreme Court must be made subject both to article 121 and also the amendment contained in No. 42.

Mr. President : The question is:

"That new article 112-A do stand part of the Constitution."

The motion was adopted.

Article 112-A was added to the Constitution.

Article 113

Mr. President : No. 113.

Shri T. T. Krishnamachari : The House has expressly excluded reference to State in Part III of the First Schedule all along and therefore this article may not be necessary. You can formally put it to the House so that the House can negative it.

The Honourable Dr. B. R. Ambedkar : That is so.

Mr. President : The question is:

"That article 113 stand part of the Constitution."

The motion was negatived.

Article 113 was deleted from the Constitution.

Article 114

Mr. President : Article 114. There is one amendment by Mr. Gupte.

(The amendment was not moved.)

Does anyone wish to speak?

The Honourable Dr. B. R. Ambedkar : My attention has been drawn by my Friend Shri Alladi Krishnaswami Ayyar that the articles of this Draft Constitution dealing with powers of the Supreme Court do not expressly provide for appeals in income-tax cases. I wish to say that I am considering the matter and if on examination it is found that none of the articles could be used for the purpose of conferring such an authority upon the Supreme Court, I propose adding a special article dealing with that matter specifically. But this article may go in.

Mr. President : The question is:

"That article 114 stand part of the Constitution."

The motion was adopted.

Article 114 was added to the Constitution.

Mr. President : We have already dealt with 115, and 116 to 120.

Article 119

Shri T. T. Krishnamachari : We have not dealt with 119.

Mr. President : Yes, 119. There is an amendment of which notice has been given by Mr. Kamath in 1952.

(Amendments 1952 to 1955 were not moved.)

There is another amendment No. 41.

Shri T. T. Krishnamachari : May I point out that 41 is substantially the same as 1953 and if nobody moves 1953, and if Mr. Kamath moves 1955, then 41 can be moved.

Mr. President : Neither 1953 has been moved nor is Mr. Kamath in a position to move 1955. He is busy otherwise. I understand it was moved on the 27th May. So we can take up 41.

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

"That with reference to amendment No. 1955 of the List of Amendments, clause (2) of article 119 be deleted."

Mr. President : The question is:

"That with reference to amendment No. 1955 of the List of Amendments, clause (2) of article 119 be deleted."

The amendment was adopted.

Mr. President : The question is:

"That article 119, as amended, stand part of the Constitution."

The motion was adopted.

Article 119, as amended, was amended to the Constitution.

Article 121

Mr. President : 120, we have passed 121. There are several amendments to this. No. 1958.

Mr. Z. H. Lari (United Provinces : Muslim) : Sir, I move :

"That in clause (1) of article 121, the words 'with the approval of the President' be deleted."

This article deals with certain provisions which are necessary to be made by the Supreme Court in the discharge of its duties and functions. If you look to the article, the main purpose of the article is that there must be such rules as shall govern persons practising before the Court, and the number of judges which shall hear particular kinds of cases, and rules as to granting of bail and the like. All these are such as should be left to the entire discretion of the Supreme Court. The necessity of having the approval of the President is in a way interference by the Executive with the Judiciary. I think that in all these matters, which really relate to internal arrangement by the Supreme Court, there should be no hand of the President therein, and as such, I think that these words are entirely superfluous. The Supreme court shall be competent enough to frame all the necessary rules and there is no necessity of securing the previous approval of the President.

I hope that this House will accept this amendment which is really intended to make the Supreme Court entirely immune from the influence of the Executive.

(Amendments Nos. 1959 to 1961 were not moved.)

Shri T. T. Krishnamachari : Sir, Dr. Ambedkar has gone out for the moment. May I move it ?

Mr. President : Yes.

Shri T.T. Krishnamachari : Sir, with your permission I move amendment 1962 standing in the name of the Honourable Dr. Ambedkar:

"That in sub-clause (b) of clause (1) of article 121, the words 'and the time to be allowed to advocate appearing before the Court to make their submissions in respect thereof' be deleted."

Mr. President : There is another amendment with reference to this amendment. It is No. 42.

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

"That with reference to amendments Nos. 1959, 1960 and 1962 of the List of Amendments, after sub-clause (b) of clause (1) of article 121, the following new sub-clause be inserted :—

'(bb) rules as to the procedure for the review of any judgment pronounced or order passed by the Court including the time within which applications to the Court for such review are to be entered;' "

This amendment is necessary in view of the fact that the House has already accepted a new clause moved by Dr. Ambedkar in respect of conferring powers on the Supreme Court to make rules for the purpose of reviewing its own decisions. This is a corollary to that amendment which the House has accepted.

(Amendment No. 1963 was not moved.)

[Shri T. T. Krishnamachari]

This amendment (No. 1964) has to be moved formally in order to enable the other amendments to be moved, of which notice has been given, namely, 42 and 43.

Sir, I formally move:

"That for the proviso to clause (2) of article 121, the following be substituted:

'Provided that it shall be the duty of every judge to sit for the said purposes unless owing to illness he is unable to do so, or owing to personal interest or other sufficient cause he considers that he ought not to do so.' "

Shri Alladi Krishnaswami Ayyar : Sir, I move:

"That with reference to amendment No. 1964 of the List of Amendments, for clause (2) of article 121, the following clauses be substituted :—

'(2) Subject to the provisions of the next succeeding clause, rules made under this article may fix the minimum number of judges who are to sit for any purpose, and may provide for the powers of single judges and Division Courts.

(2a) The minimum number of judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution, or for the purpose of hearing any reference under article 119 of this Constitution shall be five:

Provided that where the Court hearing an appeal under article 111 of this Constitution consists of less than five judges and in the course of the hearing of the appeal the court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal such court shall refer the question to a court constituted under this clause for opinion and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.' "

I do not think there is any need for comment on sub-clauses (2) and (2a) which speak for themselves. The only clause which requires some elucidation is the proviso. The main point of the proviso is that judicial time need not be unnecessarily wasted. A constitutional point may be raised by a party in the course of a general appeal in which other questions are raised. A court hears the appeal; it comes to the conclusion that really the constitutional point that is raised is not necessary for the disposal of the appeal, and that the case can be easily disposed of on the other point that has been raised. Under those circumstances it will be sheer waste of judicial time that a Bench of five Judges should hear this case, if otherwise a Bench of three Judges can under the rules of the Court dispose of the appeal. Therefore the provision is made—if the Bench that is hearing the case is satisfied that a real question of constitutional law has arisen, for the proper disposal of the case, the matter is referred to a full Bench of five Judges. They hear the constitutional question and the matter comes back before the three Judges who hear the original appeal and the other points of law that have been raised and that Bench disposes of the case. This is the normal procedure followed in cases where any point is referred to a full Bench for consideration by the High Courts in India. The idea is to assimilate this procedure to the procedure that is being followed for full Bench references to the High Court.

There is another point that I should like to mention so that the House may not think that I have brought it at a later stage and I have no doubt that Dr. Ambedkar will agree with it, namely, the express reference to article 111 of the Constitution in the proviso. Now there are various amendments tabled with a view to expand the jurisdiction of the Supreme Court and which have been left over. A constitutional question may be raised in the course of a criminal appeal if the Supreme Court is to be invested with criminal jurisdiction. Therefore possibly the expression "an appeal under article 111 of the Constitution" might have to be omitted. Or a constitutional point might arise even in the course of

a special appeal and if the court is satisfied that a constitutional question arises then it may be referred to a court constituted under this clause. I am mentioning it so that it may not be thought that we are trying to bring in new amendments at every stage.

With these words, Sir, I move the amendment that is tabled in the name of Dr. Ambedkar and myself.

Shri T. T. Krishnamachari : Sir, amendment No. 44 is no longer necessary, if as I suppose Mr. Alladi Krishnaswami Ayyar's amendment is to be accepted.

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

"That for clause (3) of article 121, the following be substituted :—

'(3) No judgment shall be delivered by the Supreme Court save in open Court, and no report shall be made under article 119 of this Constitution save in accordance with an opinion also delivered in open court.' "

Sir, I shall move also amendment No. 1966:

"That for clause (4) of article 121, the following be substituted :—

'(4) No judgment and no such opinion shall be delivered by the Supreme Court, save with the concurrence of a majority of the judges present at the hearing of the case but nothing in this clause shall be deemed to prevent a judge who does not concur from delivering a dissenting judgment or opinion.' "

Dr. P. S. Deshmukh (C.P. & Berar : General) : Sir, article 121 has undergone considerable change as a result of several amendments moved, some of them by or on behalf of Dr. Ambedkar and some others by Mr. Alladi Krishnaswami Ayyar. In view of that, the necessity for the retention of the words "with the approval of the President" has further diminished. I therefore feel considerable sympathy with the amendment that has been moved by Mr. Z.H. Lari, notice of which was given by Mr. Shanker Rao Deo and others. In view of the changes that have been now effected there is no need for any reference to the President, because in most matters the whole position has been particularized and specifically stated. We have laid down the number of judges that should be there to hear particular classes of cases. We have also provided for cases falling under article 109. We have by the fresh amendments accepted that the judgment shall be in open court. The only powers that are retained with the Supreme Court under the article are those by which they can frame rules on matters more of day to day procedure which are not of such vital importance or significance as must be laid before the President before they can be made operative. The position is not very different from the powers of the High Courts in the provinces. The High Court has got wide powers of making rules in almost every matter as enumerated in this article and they are not required under any rule or procedure to refer them to the Governor or obtain his consent. I therefore feel that a reference to the President is unnecessary and it would be good if the House accepts the amendment moved.

Shri B. Das : Sir, I would like Dr. Ambedkar to clarify the words "No report shall be made under article 119 of the Constitution save in accordance with an opinion delivered in open court." This affects the liberties of the press. Suppose the press gets hold of some opinion which the Supreme Court has given to the President and if it is published, is the Government going to prosecute the paper which has published that secret information which the Supreme Court has tendered to the President? Newspapers have their sleuths. There are sometimes intelligent newspaper men who are able to anticipate the advice of High Court judges or Supreme Court judges. Is it contemplated that the Constitution will empower the Parliament under the present law that the liberty of the press will be affected? That is the question involved whether the liberties of the press will be affected and pressmen will be prosecuted.

Dr. Bakhshi Tek Chand : Sir, I support the amendment moved by Mr. Lari (No. 1958), that in clause (1) the words "with the approval of the President" be deleted. Article 121 gives the Supreme Court the power to frame rules, relating firstly, as to persons practising before the Court; secondly, rules regulating the procedure for hearing appeals and for determining what class of cases are to be heard in single Bench or in Divisional Courts or by Benches consisting of a larger number of judges. It also empowers the Court to frame rules relating to costs and other incidental matters, rules for granting bail, stay of proceedings, providing for summary determination of any appeal which appears to the court to be frivolous, vexatious or for purposes of delay. Now, Sir, these all are matters which ought to be solely within the jurisdiction of the Chief Justice and the judges of the Supreme Court and there is no reason why they should be subject to approval of the President. If you see the constitution of the High Courts, as they have functioned in the country for the last eighty years or more and also the provisions of the Government of India Acts of 1915 and 1935 relating to these matters, you will find that it is purely within the jurisdiction of the Chief Justice and the judges of the High Court to frame rules in such matters, as the admission of advocates, attorneys, etc. and the constitution of Benches. Sanctions or approval of the Governor-General or Governor is not obtained for promulgating these rules. In this connection, I would draw the attention of the House to clauses 9 and 10 of the Letters patent of the Calcutta High Court and similar provisions in the Letters patent of all the other High Courts, *i.e.,* the presidency High Courts, as well as the High Courts of Allahabad, Patna, Nagpur and of the East Punjab, Orissa and Assam which have been established recently.

Clause 9 reads :

"And we do hereby authorise and empower the said High Court of Judicature at Fort William in Bengal to approve, admit, and enrol such and so many Advocates, Vakeels, and Attorneys as to the said High Court shall seem meet; and such Advocates, Vakeels and Attorneys shall be and are hereby authorised to appear ....."

Then clause 10 says:

"And we do hereby ordain that the said High Court of Judicature at Fort William in Bengal shall have power to make rules for the qualification and admission of proper persons to be Advocates, Vakeels and Attorneys-at-Law of the said High Court, and shall be empowered to remove or to suspend from practice, on reasonable cause....."

These provisions are not subject to the approval of the Governor or the Governor-General, though in several other matters such as the creation of new courts, the fixation of salaries of the staff and so on, rules framed by the High Courts, are subject to the approval of the Governor-General in the case of Calcutta and provincial Governments in the case of the other provinces. But so far as the admission of advocates, vakeels, etc. are concerned, the framing of the rules is purely a matter within the jurisdiction of the Chief Justice and the other judges of the High Courts, and no approval of the Governor-General or the Governor is necessary.

With regard to the constitution of Division Benches, the provision in section 108 of the Government of India Act, 1915 was as follows :—

"Each High Court may by its own rules provide as it thinks fit for the exercise by one or more judges or by division courts constituted by two or more judges of the High Court of the original and appellate jurisdiction vested in the court.

(2) The Chief Justice of each High Court shall determine what judge in each case is to sit alone, and what judges of the court, whether with or without the Chief Justice are to constitute the several division courts."

This provision was re-enacted with slight verbal alterations in section 223 of the Government of India Act, 1935. If this is the position relating to the

High Courts, why should a different rule be adopted in regard to the Supreme Court which will be the highest court in the country? Why should the previous approval of the President be necessary? In practice this will mean the approval of the Prime Minister. I submit this is a wholly unnecessary interference with matters which relate to the internal administration of the Supreme Court.

I have mentioned these two clauses relating to the admission, etc. of the advocates, pleaders and attorneys and with regard to the constitution of Benches. The other matters referred to in article 121 are matters of very small import; they relate to costs and other incidental matters. Obviously, the Supreme Court is the proper body to decide these matters.

Then there is the question of the granting of bail. Why should rules relating to this matter, which is purely a judicial matter, be referred to the executive? They should be left to the Chief Justice and the other Judges. Similarly rules as to stay of proceedings. When the Courts stay proceedings in a pending suit or appeal, generally security has to be taken for the due execution of the order which may ultimately be passed. Whether that security is to be certified before the Registrar of the Supreme Court or before the High Court are matters of detail which should be settled by rules framed by the Court.

This aspect of the matter seems to have escaped the attention of the Drafting Committee and there is no reason why the words "subject to approval of the President" should be imported, in the article. Sir, I support the amendment moved by Mr. Lari.

Prof. Shibban Lal Saksena : Sir, with regard to the amendment moved by my honourable Friend, Mr. Lari, there is a general feeling in the House, that Constitution allows too much interference with the work of the Supreme Court. We have given enough powers to the President, that is the Prime Minister, over the Supreme Court. If even in small matters like the framing of rules in regard to the powers vested in the High Courts, etc., we say that these should the subject to approval by the President, it is objectionable. We should make our Supreme Court etc. completely independent of the influence of the Executive. Once we have chosen a Supreme Court and the President himself has nominated the Judges there should be no further interference. They will frame rules which are contemplated in the section according to the canons of jurisprudence and in the best interests of the country. Sir, I support the amendment of Mr. Lari.

Shri T. T. Krishnamachari : On a point of information, Sir, may I ask the speaker whether he has changed his mind in regard to what he said with regard to article 111 where he wanted its provisions to be subject to the law made by Parliament?

Prof. Shibban Lal Saksena : Sir, I have not heard the question.

Mr. President : Mr. Krishnamachari has put a question which you do not understand and therefore need not answer.

Mr. Naziruddin Ahmad : Sir, I rise to support the amendment of Mr. Lari. As has been clearly explained by Dr. Tek Chand, with all the authority of his unique judicial experience, matters relating to rules under article 121 relate entirely to the procedure to be observed in Courts. In fact rules relating to practising lawyers and other things are matters of internal administration of the Courts. Such being the case, it will be extraordinary for the Court to send its proposals to the President for his approval. I could well understand and appreciate a provision which requires consultation with the President. That would have been something acceptable. I have no doubt whatsoever that if we delete these words the Supreme Court will always consult the Government.

[Mr. Naziruddin Ahmad]

But to make it a condition of the validity of the rules is somewhat extraordinary. I submit that the President, for all practical purposes, will mean the Ministry or the Government of the day. That is more objectionable. That the Supreme Court with whom vests the supreme authority of the judiciary and which should be absolutely independent of the executive should be required to take the approval of the executive in regard to internal matters of administration of the Court in its judicial functions, would be highly objectionable. With regard to rules for the grant of bails, whether bail should be granted or not is a matter for the legislature but the exact regulation of rules relating to the granting of bails, whether an application is to be made, whether a surety is to be taken, and so on and so forth, are matters for the internal administration of the Supreme Court. As regards stay of proceedings, it is a matter entirely in the discretion of the Court and it is impossible to provide in advance any definite rule as to stay of proceedings. They are matters entirely discretionary and change with the circumstance of each case. Nothing could be determined in advance. Rules should, therefore, be left to the discretion of the Court and somewhat general and elastic for easy application to individual cases. Again, matters which are incidental to the proceedings and matters for summary determination are all purely judicial matters. I do not wish to go into the details which have been so ably explained by Dr. Bakhshi Tek Chand. I submit that there should not only be no interference with the independence of the judiciary, but there should be no appearance of it even. For these reasons, these words are obnoxious and should be struck out. I have no doubt, as I have submitted, that the Supreme Court will always consult the Government and that should be enough. The matter should be left rather to convention than to legislation. With these few words, I support the amendment of Mr. Lari.

The Honourable Shri K. Santhanam : Sir, I am rather surprised at this support for the removing of the words "with the approval of the President." The consequence of this will not be the independence of the Supreme Court from the Executive; it will only give the right to the Executive to limit the rule making power by law. So long as the first portion of the article is there, "Subject to the provisions of any law made by Parliament", the words "with the approval of the President" form the safety valve for the Supreme Court. Because, it will be open to Parliament to make a law taking away the rule making power altogether from the Supreme Court and Parliament may prescribe every one of these things by law. Therefore, it is always better to have the things done with the approval of the President, if you want to vest the ultimate power in Parliament.

Then it is a matter of public policy also. Take for instance rules as to the person practising before the Court. Should it be open to the Supreme Court to say that they shall recognise the Degrees of a particular University and not of any other University? The whole question of legal education and inter provincial matter also arise. This is a matter probably in which the Supreme Court will not have sufficient materials for coming to a judgment and it will have to consult the Executive, not only the Executive in the Centre, but also the Executive in the provinces. The Education Department in the Central Ministry will be the authority to say which law college is conferring proper Degrees. Otherwise, the Supreme Court will have to appoint a Commission to go into the standard of education of every University to see whether a particular Degree should be recognised. I do not think this should be left to the absolute power of the Supreme Court. Similarly, in matters relating to costs and fees, it is also a matter of public policy. It is but right that the Supreme Court should also have the co-operation of the Executive. This idea that the Supreme Court has to be somebody which is absolutely separate from every other institution set

up by the Constitution is a wholly wrong and mischievous idea. The Supreme Court has to be one of our safeguards. But, If it is to be put in a position of hostility to the Executive or Parliament, then, the power of the Supreme Court will vanish, because, after all, it has to depend upon the goodwill both of Parliament and the Executive. I would suggest therefore that this idea of independence of the Supreme Court should not be done to death as many Members are attempting to do.

There is only one other small point which I would like to point out. In the new clause which has been moved by my honourable Friend Mr. T. T. Krishnamachari by amendment No. 42, it is stated, rules as to the procedure for the review of any judgment pronounced or order passed by the Court including the time within which applications to the Court for such review are to be entered". I would suggest that this is not wholly consistent with the new article 112-A as has been adopted. There, it is said, not only the procedure, but the power of review itself, or the conditions of review will be limited by rules. I personally objected to that provision. But, having passed that, I think the subsequent amendment should be consistent with the provision already adopted. I would suggest that the words "the procedure for" may be left out. "Rules as to the review of any judgment" will be sufficiently comprehensive, If you want that the word "procedure" must stand in the clause, the words "rules as to the conditions of and procedure for" may be adopted to be consistent with the provision which we have already adopted.

The Honourable Dr. B. R. Ambedkar : Mr. President, I regret very much that I cannot accept the amendment moved by my honourable Friend Mr. Lari. It seems to me that he has completely misunderstood what is involved in his amendment.

The reason why it is necessary to make the rule-making power of the Supreme Court subject to the approval of the President is because the rules may, if they were left entirely to the Supreme Court, impose a considerable burden upon the revenues of the country. For instance, supposing a rule was made that a certain matter should be heard by two Judges. That may be a simple rule made by the Supreme Court. But undoubtedly, it would involve a burden on public revenues. There are similar provisions in the rules, for instance, regarding the regulation of fees. It is again a matter of Public revenue. It could not be left to the Supreme Court. Therefore, my submission is that the provisions contained in article 121 that the rules should be subject to the approval of the President is the proper procedure to follow, Because, a matter like this which imposes a burden upon the public revenues and which burden must be financed by the legislature and the Executive by the imposition of taxation could not be taken away out of the purview of the Executive.

I may also point out that the provisions contained in article 121 are the same as the provisions contained in article 214 of the Government of India Act, 1935 relating to the Federal Court and article 224 relating to the High Courts. Therefore, there is really no departure from the position as it exists today. With regard to the comments made by my honourable Friend, Mr. Santhanam relating to amendment No. 42 moved by honourable Friend, Mr. T. T. Krishnamachari, I am afraid, I have not been able to grasp exactly the point that he was making. All that, therefore, I can say is this, that this matter will be looked into by the Drafting Committee when it sits to revise the Constitution, and if any new phraseology is suggested, which is consistent with the provisions in the article which we have passed conferring power of review by the Supreme Court, no doubt it will be considered.

There is one other point to which I would like to refer and that is amendment No. 43. In amendment No. 43, which has been moved by my honourable

[The Honourable Dr. B. R. Ambedkar]

Friend, Shri Alladi Krishnaswami Ayyar, and to which I accord my whole hearted support, there is a proviso which says that if a question about the interpretation of the Constitution arises in a matter other than the one provided in article 110, the appeal shall be referred to a Bench of five judges and if the question is disposed of it will be referred back again to the original Bench. In the proviso as enacted, a reference is made to article 111, but I quite see that if the House at a later stage decides to confer jurisdiction to entertain criminal appeals, this proviso will have to be extended so as to permit the Supreme Court to entertain an appeal of this sort even in a matter arising in a criminal case. I, therefore, submit that this proviso also will have to be extended in case the House follows the suggestion that has been made in various quarters that the Supreme Court should have criminal jurisdiction.

Mr. President : The question is:

"That in clause (1) of article 121, the words 'with the approval of the President' be deleted."

The amendment was negatived.

Mr. President : The question is:

"That with reference to amendments Nos. 1959,1960 and 1962 of the List of Amendments after sub-clause (b) of clause (1) of article 121, the following new sub-clause be inserted :-

'(bb) rules as to the procedure for the review of any judgment pronounced or order passed by the Court including the time within which applications to the Court for such review are to be entered;' "

The amendment was adopted.

Mr. President : The question is:

"That in sub-clause (b) of clause (1) of article 121, the words 'and the time to be allowed to advocates appearing before the Court to make their submissions in respect thereof' be deleted."

The amendment was adopted.

Mr. President : The question is:

"That with reference to amendment No. 1964 of the List of Amendments, for clause (2) of article 121, the following clauses be substituted:—

'(2) Subject to the provisions of the next succeeding clause, rules made under this article may fix the minimum number of judges who are to sit for any purpose, and may provide for the powers of single judges and Division Courts.

(2a) The minimum number of judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution, or for the purpose of hearing any reference under article 119 of this Constitution shall be five:

Provided that where the Court hearing an appeal under article 111 of this Constitution consists of less than five judges and in the course of the hearing of the appeal the court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such court shall refer the question to a court constituted under this clause for opinion and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.' "

The amendment was adopted.

Mr. President : The question is:

"That for clause (3) of article 121, the following be substituted :

'(3) No judgment shall be delivered by the Supreme Court save in open court, and no report shall be made under article 119 of this Constitution save in accordance with an opinion also delivered in open court.' "

The amendment was adopted.

Mr. President : The question is:

"That for clause (4) of article 121, the following be substituted :—

'(4) No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the judges present at the hearing of the case but nothing in this clause shall be deemed to prevent a judge who does not concur from delivering a dissenting judgment or opinion.' "

The amendment was adopted.

Mr. President : The question is:

Article 121, as amended, was added to the Constitution.

The motion was adopted.

Article 121, as amended, stand part of the Constitution.

New Article 122-A

Dr. Bakshi Tek Chand : Sir I move:

"That with reference to amendments Nos. 1909 and 1926 of the List of Amendments, after article 122 the following new article be inserted :—

122-A. In this Chapter, references to any substantial question of law to the interpretation of this Constitution shall be construed as including references to any substantial question of law as to the interpretation of the Government of India Act, 1935, or of any Order in Council or order made thereunder or of the Indian Independence Act, 1947, or of any order made thereunder.'"

Interpretation.

Sir, the necessity for adding this new article has arisen because in several sections of this chapter which relates to the powers of the Supreme Court, the expression used is "as to the interpretation of this Constitution". For instance, in article 110 which takes the place of section 205 of the Government of India Act, power is given to a party to prefer an appeal to the Supreme Court in any matter, whether in civil, criminal or other proceedings, if the High Court certifies that the case involves a substantial question of law "as to the interpretation of this Constitution." "This Constitution" would meat the Constitution which is being passed by, this Constituent Assembly now. There may be other cases, however, in which the question of the interpretation of the Government of India, Act of 1935 or of an Order in Council by His Majesty or an order of the Governor General issued under the powers conferred on them by the Government of India is involved; similarly, questions relating to the interpretation of the Indian Independence Act of 1947 may arise. No provision for appeals in such cases is made in the article as drafted. Such questions may have arisen in such cases which are pending before the High Court or before subordinate Courts on the day the new Constitution comes into operation. What will happen to them? Unless we enlarge the meaning of this expression "this Constitution" in the manner in which it is suggested in this amendment, there will be no appeal at all from the decisions of the High Court in those matters. Those matters may be of very vital importance, and may arise in connection with legislation which has been enacted by the provincial or Central legislatures or in Ordinances promulgated by the Governor or the Governor-General. If these question arose in cases which had been decided by the High Court and are pending before the Privy Council on the date on which the New Constitution comes into force, they will be automatically transferred to the Supreme Court under the transitional provision, made in article 308(2) which will be placed before this House at the proper time. But there is no provision with regard to cases in which similar questions are involved. But which have not yet been decided either by the subordinate court or by the

[Dr. Bakshi Tek Chand]

High Courts in India or which may arise in suits to be instituted hereafter. Under the existing law, appeals from such cases lie to the Federal Court; but the Federal Court will cease to exist on the date when the new Constitution comes into force. In order that appeals in such cases may under articles 110 and 111 or other articles, lie to the Supreme Court, provision must be made in the Constitution Act. Therefore, it has been found necessary to insert this interpretation clause, instead of repeating these words in article 110, or article 111 clause (2) or article 116, and in one or two other articles.

The effect of this will be that the words "this Constitution" wherever they occur in this chapter will mean questions relating to interpretation of the Constitution which is now being passed, but also include questions relating to the interpretation of the Government of India Act 1935 or any Order in Council or order made thereunder, of the Indian Independence Act or orders made thereunder.

The Honourable Shri K. Santhanam : Sir, I wish to raise a rather delicate point. From the date this Constitution comes into force, the Government of India Act, 1935 and all orders made thereunder, and the Indian Independence Act of 1947 and all orders made thereunder lapse altogether. They cease to have any kind of legal validity and if any laws made under them continue, it will only be in virtue of some provision inserted in this Constitution saying that all laws which are in force at the commencement provided they are not repugnant to this Constitution, shall continue. Their legal validity will depend upon the provisions of this Constitution and therefore question will arise only under this Constitution. I think this is a sort of juridical—I would not call it absurdity—impropriety, It is altogether meaningless. We can not ask our Supreme Court to go into the interpretation of constitution which have become absolutely dead and which have no kind of legal validity. It is possible that anybody can sue in a court of law under the Government of India Act, 1935, after this Constitution comes into force? There may be arguments based on some interpretation. Is it right that the Supreme Court should sit to consider and say that this is the interpretation of section 211 of the Government of India Act of 1935, because at that time the Government of India Act would have lapsed altogether, or can the Supreme Court interpret some articles of the Indian Independence Act of 1947? This Indian Independence Act was an Act made by the British Parliament. How can the Supreme Court of India say that this is the interpretation of a particular section made by the Parliament of Britain? They can only say how far the laws made under the Government of India Act, 1935 are consistent with this Constitution or have been continued by this Constitution. All questions of interpretation of the Constitution can arise before the Supreme Court only as interpretation of this Constitution. In interpreting this Constitution, they may refer to the Government of India Act or the law made by Parliament. I may also say that after discussion with Mr. Alladi Krishnaswami Ayyar, he thinks this point of view must be considered. I think this is a matter which requires proper consideration by lawyers who are better versed in law than myself.

Shri T. T. Krishnamachari: Mr. President, I am afraid my honourable Friend Mr. Santhanam has been rather hasty in opposing this amendment and holding it as ridiculous.

As a proposition in the abstract what he says may be correct; but there are certain contingencies which might happen and which will not be provided for by this Constitution coming into force without a saving clause of this nature. Because, certain things may be done under the old Constitution and the new Constitution may contain provision that are not only different but also the

opposite of what were contained in the constitution Acts which it supersedes. While some acts of State may be *ultra vires* of the old Constitution, it may be *intra vires* of the new Constitution. What will happen to such a contingency if it occurs? For example, supposing in the old Constitution, a provincial Government is not permitted to levy a tax on the betterment value of property or a capital gains tax and we in the new Constitution put a provision in the appropriate Schedule that that particular subject shall be within the competence of the provincial Government, what is to happen in respect of an action which may be initiated, provided it is not barred by limitation, by a person aggrieved by the action of the provincial Government in imposing a tax which was *ultra vires* at the time when it was imposed because the old Constitution did not permit it? It is rather a delicate problem; it is not a conundrum; it is a fact which may well come into being because there may be provisions in the new Constitution which will ease the strain that is being felt in regard to the distribution of powers between the Centre and the provinces under the Government of India Act. What is contemplated by this new clause is this. Cases where a change has been made in the new Constitution will be covered and the interests of affected parties will be protected. I do not think it is quite so easy as saying that merely because we pass the new Constitution, that Constitution applies to all that has happened in the past. There is undoubtedly room for considerable difference of opinion. Parties may be seriously injured by a provision of this nature not being put in the constitution. The matter has been discussed at some length in the Drafting Committee and the proposition before the House is a result of it. Notwithstanding the fact that I should b e
chary of criticising any view expressed by my esteemed Friend Mr. Alladi Krishnaswami Ayyar.....

Shri Alladi Krishnaswami Ayyar : I have not given any opinion in the matter.

Shri T.T. Krishnamachari : He may have expressed the opinion if he felt strongly on the point and there is no harm in it.

What I say is, this provides for meeting a lacuna which exists or which is likely to come into being when the interest of parties may be affected by the absence of a provision of this nature in the Constitution. While I would not like to say anything to detract from the value of what my honourable Friend Mr. Santhanam has said, I think on reflection he will find that this new article is not absurd. On the other hand, it is dictated by principles of wisdom and careful thought rather than with the intention of introducing an additional conundrum into the Draft Constitution.

I support the motion moved by Dr. Bakshi Tek Chand.

Mr. Naziruddin Ahmad: Mr. President, Sir, I think there is a tempest in a tea pot. The article provides for a very likely and a very ordinary contingency which is likely to happen in Court from day to day. The Draft Constitution will come into operation on a certain date, but before the Draft Constitution comes into operation actions will be taken, Bills will be passed and other things done under the Government of India Act, 1935, and the Independence of India Act which now operates. All these acts will not necessarily be questioned or challenged during the pendency of those Acts and before actions taken and orders passed under the existing Constitution may be questioned after the commencement of this Act or even ten or twenty years later. Legality of deeds and grants made by the Mughal Emperors and the East India Company still now come into question. So this is a very important provision. If we do not pass it, there will be a lacuna and questions or cases will arise any time relating to past transactions. It is for this reason that I think that this really supplies and fills up a lacuna and it must be passed.

Prof. Shibban Lal Saksena: Sir, I would have wished to support Mr. Santhanam's view but I feel that if what he has said is necessary, this can be put in a Parliamentary Act. Why should it be in this Constitution? Why should it be for ever said that the interpretation of the Government of India Act and orders passed thereunder shall be interpreted by the Supreme Court? If, say, for a particular period or so, while these orders are in force or cases are pending under the Government of India Act, we require this provision, we can pass an Act of Parliament or we can pass an Ordinance on the very day this Constitution comes into force to meet this need, but why burden our Constitution with this? Therefore, I think that Dr. Ambedkar should remove this provision from our Constitution and either leave the Parliament to make such a provision to enable pending cases to be decided under that law or by an Ordinance until the Act is passed.

Dr. P. S. Deshmukh : Sir, my Friend Mr. T.T. Krishnamachari has explained the purpose of this new article that is before the House and the purpose is said to be that if we do not have this article, then the cases arising out of these various Acts and Statutes will probably not fall within the purview of the Supreme Court. My interpretation of the whole position is slightly different. In may view all that the new article wishes to provide for is to give cases arising out of the interpretation of the Government of India Act as well as the Indian Independence Act the dignity which is provided especially for interpretation of the Constitution in the various articles that have been incorporated in the Constitution. I do not think that this clause can be regarded as providing for the first time and only in this particular place a provision to save those cases which arise prior to coming into operation of the Constitution but arise out of the various enactment which have been mentioned in this article. The main purpose as it appears to me is to give the interpretation of the Government of India Act and the Indian Independence Act the same status as is given to the cases involving interpretations of the Constitution. I do not think however that the way in which the article has been worded is quite satisfactory. First of all, it puts the whole thing upside down. Instead of saying that the questions or interpretations of the Government of India Act and the Independence Act shall be interpreted as if they are question of interpretation of the Constitution, it puts the whole thing absolutely in the reverse; and secondly, if there is any provision necessary for saving those cases which arise out of Indian Independence Act, etc., I do not think the article as it stands provides for that. These are the observations I would like to make for the consideration of the Honourable Dr. Ambedkar. There are if I may repeat for the sake of clarity, two things: firstly that the wording of the article is not satisfactory, secondly, if the intention is that excepting for the article the cases arising out of the Government of India Act or the Independence Act will not be within the purview of the Supreme Court, then according to my view, the article does not seem to make adequate and proper provision for it.

Shri L. Krishnaswami Bharathi : May we have the benefit of Mr. Alladi's views? Shri Alladi Krishnaswami Ayyar: I do not want to say anything.

The Honourable Dr. B. R. Ambedkar : Sir, I accept the amendment moved by my Friend Mr. Tek Chand. The point is a very simple one. We are undoubtedly repealing the Government of India Act, 1935, and the Indian Independence Act and the orders made thereunder from the date of the passing of this Constitution; but it has to be realised that while we are putting these Statutes, so to say, out of action, we are not putting an end

to the rights and obligations which might have accrued under the Government of India Act. Consequently if there are parties who have obtained certain rights under the provisions of the Government of India Act and whose rights have now been extinguished by any rule regarding limitations, it is obvious that some forum must be provided for the adjudication of those rights. It is to meet this contingency *viz*., of persons who have their rights accrued under the existing Government of India Act and which have not come before a court of law, it is for such contingency that this article is necessary. This matter could have been provided for, I agree, in two different ways, first of all, by amending the language of the article 110 where we have used the word "This Constitution', if we had merely said 'any law regarding the Constitution relating to the Constitution of the country' that probably might have sufficed but the point is that we would have been obliged to repeat this formula in three or four places. Instead of doing that, It was decided that the best way is to put in an omnibus clause to define what this Constitution means. I think this provision is very necessary and ought to remain part of the Constitution.

Mr. President : The question is:

"That with reference to amendment Nos. 1909 and 1926 of the List of Amendments after article 122, the following new article be inserted:—

'122A. In this Chapter, references to any substantial question of law as to the interpretation of this Constitution shall be construed as including references to any substantial question of law as to the interpretation of the Government of India Act, 1935, or of any Order in Council or order made thereunder, or of the Indian Independence Act, 1947, or of any order made thereunder.' "

Interpretation

The motion was adopted.

Article 122-A was added to the Constitution.

Article 123

Mr. President : Article 123.

Shri T.T. Krishnamachari: 123 refers to those portions which were specifically omitted all along. Therefore it might be put to the House and possibly the House might negative it because it is unnecessary.

Mr. President : Yes. The Question is:

"That article 123 stand part of the Constitution."

The motion was negatived.

Article 123 was deleted from the Constitution.

Mr. President : After this we have to go back to the articles dealing with the States. We did up to 170. The subsequent articles deal with the procedure in the provincial Legislatures.

Article 191

Shri T.T. Krishnamachari: May I suggest that we might take up article 191 and the articles that occur thereafter. This and subsequent articles deal with the question of High Courts in the States and it would be easy for the House to deal with them because we have just now dealt with analogous articles relating to the Supreme Court.

Mr. President : If so, I am prepared to take up article 191 and subsequent article because they deal with High Courts, and as we have been dealing with the provisions regarding the Supreme Court and the provisions for the

[Mr. President]

High Court are more or less similar, Members may not find it difficult to carry on with the discussion of these articles. So I take up article 191.

(Amendment Nos. 2563, 2564, 2565 and 2566 were not moved.)

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

"That in sub-clause (a) of clause (1) of article 191, for the words 'the High Court of East Punjab, and the Chief Court in Oudh' the words 'and the High Courts of East Punjab, Assam and Orissa' be substituted."

Sir, I moved:

"That with reference to amendment Nos. 2567 and 2570 of the List of Amendments, for article 191, the following article be substituted:—

'191. (1) There shall be a High Court for each State.

(2) For the purposes of this Constitution the High Court existing in any Province immediately before the commencement of this Constitution shall be deemed to be the High Court for the corresponding State.

High Court for State.

(3) The provisions of this Chapter shall apply to every High Court referred to in this article.'"

Shri T.T. Krishnamachari: We might take up the discussion of this amendment first because if this is accepted by the House all the other amendments will be unnecessary. This alters the entire contour of the article while, it also simplifies it.

Mr. President : There are some amendments of which I have got notice. I shall run over them and see.

(Amendment Nos. 2568 to 2577 were not moved.)

Mr. President : There is therefore no other amendment except the one moved by Dr. Ambedkar. Does anyone wish to say anything about the amendment or the article?

The question is:

"That with reference to amendment Nos. 2567 and 2570 of the List of Amendments, for article 191, the following article be substituted:—

'191. (1) There shall be a High Court for each State.

(2) For the purpose of this Constitution the High Court existing in any Province immediately before the commencement of this Constitution shall be deemed to be the High Court for the corresponding State.

High Courts for State.

(3) The provisions of this Chapter shall apply to every High Court referred to in this article.' "

The amendment was adopted.

Mr. President : The question is:

"That article 191, as amended, stand part of to the Constitution."

The motion was adopted.

Article 191, as amended, was added to the Constitution.

Mr. President : I have left out one thing. There is a proposal by Prof. Shah—amendment 2562—that a new article, 190-A be added. I do not know if it will come at this stage. Does Prof. Shah wish to move it?

Prof. K.T. Shah (Bihar: General): Yes, Sir.

Mr. President : Have we not discussed this question in relation to the Supreme Court?

Prof. K.T. Shah : It has been discussed, I know.

Mr. President : It is any use going over the same ground?

Prof. K.T. Shah : In that case I shall not move it.

(Amendment 2562 was not moved.)

Article 192

(Amendment Nos. 2578 to 2580 were not moved.)

Mr. President : Amendment No. 2581 is in Dr. Ambedkar's name. This has to be formally moved.

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

"That in the proviso to article 192, the words beginning with 'together with any' and ending with 'of this Chapter' be deleted, and after the words 'fix' the words 'from time to time' be inserted."

Sir, I move:

"That with reference to amendment No. 2581, of the List of Amendments, for article 192, the following new articles be substituted:—

High Courts to be courts of Record

'192. Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.'

Constitution of high Courts

'192-A. Every High Court shall consist of a Chief Justice and such other judges as the President may from time to time deem it necessary to appoint:

Provided that the judges so appointed shall at no time exceed in number such maximum as the President may, from time to time, by order fix in relation to that to that Court.' "

(Amendment No. 2582 was not moved.)

Prof. Shibban Lal Saksena : Sir, I only wish to draw attention to one fact. Article 192 says:

"Every High Court shall be court of record and shall consist of a Chief Justice and such other judges as the President may from time to time deem it necessary to appoint."

and in the proviso it was said:

"Provided that the judges so appointed together with any additional judges appointed by the President in accordance with the following provisions of this Chapter shall at no time exceed in number such maximum as the President may by order fix in relation to that court."

My only objection to the use of the word "President" in this clause is that this the function of the Supreme Court. If the court feels that justice cannot be dispensed unless a certain number of judges are in the court. It is their province to recommend this. I therefore think that the President should fix the number on the advice of the Supreme Court Chief Justice or in consultation with him, so that the Supreme Court may have the initiative in advising the President as to what is the number of judges required for each High Court, That should I think be provided for.

Mr. President : The question is:

"That with reference to amendment No. 2581, of the List of Amendments, for article 192, the following new articles be substituted:—

192. Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

High Court to be courts

'192A. Every High Court shall consist of a Chief Justice and such other judges as the President may from time to time deem it necessary to appoint:

Provided that the judges so appointed shall at no time exceed in number such maximum as the President may, from time to time, by order fix in relation to that Court.' "

The amendment was adopted.

Mr. President : The question is:

"That article 192, as amended, stand part of the Constitution."

The motion was adopted.

Article 192, as amended, and 192-A were added to the Constitution.

Mr. President : Hon. Shri G.S. Gupta's amendment relates to the language question which we shall not take up now.

Article 193

(Amendment No. 2584 was not moved.)

Mr. B. Pocker Sahib (Madras: Muslim): Sir, I beg to moved:

"That for clause (1) of article 193, the following be substituted:—

'(1) Every Judge of a High Court shall be appointed by the President by a warrant under his hand and seal on the recommendation of the Chief Justice of the High Court concerned after consultation with the Governor of the State concerned and with the concurrence of the Chief Justice of India and shall hold office until he attains the age of sixty-three years.' "

There are two points involved in this amendment. Even in connection with the articles dealing with the appointment of Supreme Court judges I have made a reference to the recommendations in the memorandum of the Federal Court and the Chief Justices of the provincial High Courts. There fore I do not propose to deal with those points to which I had already referred. I would request the Members of this House to consider the points mentioned in the memorandum of the Federal Court and the Chief Justices of all the High Court in India. It is very valuable document and therefore proper weight should be attached to that by the House. I do not want to repeat those arguments to which I have referred on the previous occasion.

The important difference between my amendment and the article as it stands is that the amendment requires that the main recommendation must be from the Chief Justice of the High Court concerned after consultation with the Governor of the Province and the concurrence of the Chief Justice of India is insisted on. It is very necessary that the recommendation should be that of the Chief Justice of the High Court concerned and the Governor is only to be consulted. The concurrence of the Chief Justice of India is insisted on in my amendment which is an important thing. I do not want to repeat the arguments which I mentioned in connection with the appointment of the judges of the Supreme Court. The reason for the amendment is that in the matter of appointments to the High Courts there should be only consultation with the Governor and the Ministry should not have any real part in these appointments and they should be above political considerations.

Another point involved in the amendment is as regards the age. On this matter I would draw the attention of the House to the recommendation of the Federal Court and the Chief Justices of the High Courts in India. They state:

> "It is essential that a difference of three to five years should be maintained between the retiring age of the High Court judge and that of the Supreme Court judge. The age limit for retirement should be raised to 65 for High Court judges and to 68 years for Supreme Court judges."

They go to the extent of recommending that the age should be fixed for retirement at 65. We know cases in which retired High Court judges are very energetic and have held very responsible positions in life after retirement. When that is so, I do not see any reason why they should be compelled to retire at an earlier age. Therefore, I would request honourable Members to pay sufficient consideration to the recommendations made by the Federal Court and the Chief Justices of the various High Courts who put the age limit as high as 65, while my amendment only raises it to 63. I do not want to add anything more to what I have said.

The Assembly then adjourned till Eight of the Clock on Tuesday, the 7th June 1949.