ARTICLE 86

***The Honourable Dr. B. R. Ambedkar :** (Bombay : General): Sir, I am sorry I cannot accept the amendment of my Friend Mr. Lari. I think it unnecessary to give an elaborate reply to the arguments advanced by the mover, in view of my complete agreement with what has been said on the other side by Mr. Ananthasayanam Ayyangar and Mr. T. T. Krishnamachari. I do not think it would be desirable to waste the time of the House in adding anything to what they have said.' Their reply I find is quite complete.

I, however, accept the amendment of Mr. Santhanam for the substitution of the words ' Constitutent Assembly ' for the words ' Legislature of the Dominion of India '.

***[Except the amendment of Mr. Santhanam, other amendments were rejected. Article 86, as amended was added to the Constitution]***

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ARTICLE 88

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

" That in clause (2) of article 88, for the words ' both Houses are ' the words ' the House referred to in sub-clause (c) of that clause is ' be substituted."

Sir, it is just a matter of clarification by referring to the House referred to in sub-clause (c).

**Mr. President :** Amendment No. 1651. I think that is covered.

(Amendment No. 1652 was not moved.)

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

" That in clause (2) of article 88, before the last word ' days ' the word 'consecutive' be inserted."

(Amendment No. 1654 was not moved.)

**The Honourable Shri K. Santhanam :** Sir, I move :

" That in clause (4) of article. 88, the words ' total number of ' be deleted."

Sir, I do not want to press the deletion of the proviso. I want to amend the amendment to that extent....

**The Honourable Dr. B. R. Ambedkar :** I shall be grateful if my Honourable Friend would leave this matter to the Drafting Committee to consider and then we can bring it up afterwards ?

**The Honourable Shri K. Santhanam :** I agree, Sir.

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ARTICLE 88

**‡The Honourable Dr. B. R. Ambedkar :** Sir, there is only one amendment moved by my Friend Mr. Kamath which calls for some

* CAD, Vol. VIII, 20th May 1949 p. 172.

† *Ibid,* p. 178.

‡ *Ibid.,* p. 183.

reply. His amendment is No. 1656 by which he seeks the omission of the wards " for the purposes of this Constitution ". My submission is that those words are very essential and must be retained. The reason why I say this will be found in the provisions contained in clause (2) of article 87 and article 91. According to clause (2) of article 87, the main provision therein is that the Bill shall be passed independently by each House by its own members in separate sittings. After that has taken place, the Constitution requires under article 91 that the Bill shall be presented to the President for his assent. My Friend Mr. Kamath will realise that the provisions contained in article 88 are a deviation from the main provisions contained in clause (2) of article 87. Therefore it is necessary to state that the Bill passed in a joint sitting shall be presented to the President notwithstanding the fact that there is a deviation from the main provisions contained in clause (2) of article 87. That is why I submit that the words " for the purposes of this Constitution" are in my judgment necessary and are in no sense redundant.

With regard to the observations that have been made by several speakers regarding the provisions contained in article 88, all I can say is, there is some amount of justification for the fear they have expressed, but as other Members have pointed out, this is not in any sense a novel provision. It is contained in various other constitutions also and therefore my suggestion to them is to allow this article to stand as it is and see what happens in course of time. If their tears come true I have no doubt that some Honourable Member will come forward hereafter to have the article amended through the procedure we have prescribed for the amendment of the Constitution.

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***The Honourable Dr. B. R. Ambedkar :** Sir, while going over this article, I find that it requires further to be considered. I would therefore request you not to put this article to vote today.

Mr. President : There are four amendments moved to this article, and the first amendment is No. 1669 that in clause (1) of article 90, the word 'only' be deleted. Mr. Naziruddin Ahmad wishes to emphasise the importance of that amendment. That may be taken into consideration by the Drafting Committee. The whole article is going to be reconsidered.

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* CAD, Vol. VIII, 20th May 1949 p. 191.

ARTICLE 91

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

"That in the proviso to article 91, for the words ' not later than six weeks ' the words ' as soon as possible ' he substituted."

**Mr. Naziruddin Ahmad :** I have an amendment to this amendment, No. 94.

**Mr. President :** I think that is of a drafting nature.

**Mr. Naziruddin Ahmad :** There would be a difference in actual practice.

**Mr. President :** So, you consider it to be substantial ?

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**Shri T. T. Krishnamachari :** There is slight difference in language. I think Dr. Ambedkar's proposal will be the better one.

**Mr. President :** I shall put this to the vote. It need not be moved.

Amendment No. 1689 : this is also the same as amendment No. 1688 of Dr, Ambedkar. We have taken it as having been moved. Is it necessary to move this ? You can move it if there is some slight difference.

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**†Mr. President :** I would now put the amendments to vote. Do you want to say anything, Dr. Ambedkar ?

**The Honourable Dr. B. R. Ambedkar :** No. Sir, I do not think any reply is necessary.

Naziruddin Ahmad's amendment was negatived.

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**Mr. President :** I would now put the amendments to vote. Do you want to say anything, Dr. Ambedkar ?

***[Dr. Ambedkar's amendments were accepted. Others were rejected. Article 91., as amended, was added to the Constitution.]***

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ARTICLE 67-A

**‡Mr. President :** We will take up article 67-A which was taken up the other day and was postponed.

**The Honourable Dr. B. R. Ambedkar :** (Bombay : General) : Sir, I move for permission of the House to withdraw this article.

**Mr. President :** I think he did not move it and so there is no question of withdrawing it.

**Mr. B. Pocker Sahib :** (Madras : Muslim) : No, it was taken up and the House is in possession of it. The Honourable Member should therefore give his reasons for withdrawing it.

* CAD, Vol. VIII, 20th May 1949, p. 192.

† *Ibid.,* p. 195.

‡ *Ibid.,* p. 197.

**Mr. President :** Yes, I am sorry I made a mistake. The Hnourable Dr. Ambedkar may give his reasons for withdrawing the article.

**The Honourable Dr. B. R. Ambedkar :** Sir, my reason is this. As I explained on the last occasion, we have made a provision for nominating certain persons to Parliament. The original proposal was to nominate fifteen persons; subsequently it was decided that these fifteen persons should be divided into two categories, viz., twelve representing literature, science, arts, social services, and so on; and a further provision should be made for the nomination of three persons to assist and advise the Houses of Parliament in connection with any particular Bill, I feel Sir, that the provision which is already contained in article 67 which permits the President to have twelve persons nominated to Parliament would serve the purpose which underlines this new article 67-A. The services that would be rendered by the persons nominated, if article 67-A were passed into law, would be also rendered by the persons who would be nominated under article 67; and therefore the nominations under article 67-A would be merely a duplication of the nominative system covered in article 67. Besides, it is fell that in an independent Parliament which is fully sovereign and representative of the people there should not be too much of an element of nomination. We have already twelve; there may be some nominations also regarding the Anglo-Indians and it is felt that to add to that nominated quantum would be derogatory to the popular and representatiave character of Parliament. That is why I wish to withdraw this article 67-A.

Article 67-A was, by leave of the Assembly withdrawn

STATEMENT *re:* ARTICLE 92 TO 99

***The Honourable Dr. B. R. Ambedkar :** Sir, I propose that we start now with article 100.

**Mr. President :** I take it that the discussion on articles 92 to 99 should be held over for the time being to enable the business relating to finance and finance bills to be considered further.

**The Honourable Dr. B. R. Ambedkar :** Yes. The position is this. When article 90 was under debate I suggested that the debate should not be concluded and that the article should not be put to the vote because I discovered, at the last moment, a flaw in the article, which I thought it was necessary to rectify. Now if that flaw is to be rectified, then articles 96 to 99 also require to be reconsidered in the light of that article. Article 91 we have passed. Articles 92 to 99 require further

* CAD, Vol. VIII, 23rd May 1949. pp. 197-98

consideration and therefore I want those articles to be held over for the lime being. But we can begin with article 100.

***[Article 100 was adopted and added to the Constitution as suggested by Dr. Ambedkar.]***

ARTICLE 101

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

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

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

**Mr. Naziruddin Ahmad :** For maintaining order.

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

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

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

* CAD. Vol. VIII, 23rd May 1949, pp. 200-01

**Mr. President :** 'Or any other officer who is not a Member of the House' does he come under that ?

**The Honourable Dr. B. R. Ambedkar :** 'Officer' would he there.

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

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

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

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

***[Two amendments were negatived. Article 101 was added to the Constitution.]***

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ARTICLE 102

***The Honourable Dr. B. R. Ambedkar :** Mr. President, Sir, my friend, Pandit Kunzru, has raised some fundamental objections to the provisions contained in this article 102. He said in the course of his speech that we were really reproducing the provisions contained in the Government of India Act, 1935, which were condemned by all parties in this country. It seems to me that my friend. Pandit Kunzru, has not borne in mind that there are in the Government of India Act, 1935, two different provisions. One set of provisions is contained in section 42 of the Government of India Act and the other is contained in section

* CAD, Vol. VIII, 23rd May 1949, pp. 213-17.

43. The provisions contained in section 43 conferred upon the Governor-General the power to promulgate ordinances which he felt necessary to discharge the functions that were imposed upon him by the Constitution and which he was required to discharge in his discretion and individual judgment. In the ordinances which the Governor-General had the power to promulgate under section 43, the legislature was completely excluded. He could do anything—whatever he liked—which he thought was necessary for the discharge of his special functions. The other point is this; that the ordinances promulgated by the Governor-General under section 43 could be promulgated by him even when the legislature was in session. He was a parallel legislative authority under the provisions of section 43. It would be seen that the present article 102 does not contain any of the provisions which were contained in section 43 of the Government of India Act. The President, therefore, does not possess any independent power of legislation such as the powers possessed by the Governor-General under Section 43. He is not entitled under this article to promulgate ordinances when the legislature is in session. All that we are doing is to continue the powers given under Section 42 to the Governor-General to the President under the provisions of article 102. They relate to such period when the legislature is in recess, not in session. It is only then that the provisions contained in article 102 could be invoked. The provisions contained in article 102 do not confer upon him any power which the Central Legislature itself does not possess, because he has no special responsibility, he has no discretion and he has no individual judgment. Consequently, my submission is that the argument which was profounded by my friend, Pandit Kunzru, went a great deal beyond the provisions of article 102. If I may say so, this article is somewhat analogous—I am using very cautious language—to the provisions contained in the British Emergency Powers Act, 1920. Under that Act also, the King is entitled to issue a proclamation, and when a proclamation was issued, the executive was entitled to issue regulations to deal with any matter, and this was permitted to be done when Parliament was not in session. My submission to the House is that it is not difficult to imagine cases where the powers conferred by the ordinary law existing at any particular moment may be deficient to deal with a situation which may suddenly and immediately arise. What is

the executive to do ? The executive has got a new situation arisen, which it must deal with *Ex hypothesi* it has not got the power to deal with that in the existing code of law. The emergency must be dealt with, and it seems to me that the only solution is to confer upon the President the power to promulgate a law which will enable the executive to deal with that particular situation because it cannot resort to the ordinary process of law because, again *Ex hypothesi,* the legislature is not in session. Therefore, it seems to me that fundamentally there is no objection to the provisions contained in article 102.

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

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

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

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

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

**The Honourable Dr. B. R. Ambedkar :** Now, I come to the other question raised by my friend, Mr. Kunzru, in his amendment No. 1802. His suggestion is that such legislation enacted by the President under article 102 should automatically come to an end at the end of thirty days from the promulgation of the ordinance. The provision contained in the draft article is that it shall continue for six weeks after the meeting of Parliament. Now, the reason why my friend. Pandit Kunzru, has brought in his amendment is this; he says that under the provisions contained in the draft article, a much longer period might elapse than six weeks, because he thinks that the executive may take, say, a month or two for summoning Parliament. If Parliament is summoned, say in four months, then the six weeks also might be there—that would be practicable—or it might be longer if the Executive delays the summoning of the Parliament. Well, I do not know what exactly may happen, but my point is this that the fear which my Honourable friend Pandit Kunzru has is really unfounded, because we have provided in another article 69, which says that six months shall not elapse between two sessions of the Parliament, and I believe, that owing to the exigencies of parliamentary business, there will be more frequent sessions of the Parliament than Honourable Members at present are inclined to believe. Therefore, I say, having regard to article 69, having regard to the exigencies of business, having regard to the necessity of the government of the day to maintain the confidence of Parliament, I do not think that any such dilatory process will be permitted by the Executive of the day as to permit an ordinance promulgated under article 102 remain in operation for a period unduly long, and I, therefore, think that the provisions as they exist in the draft article might be permitted to remain.

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

**The Honourable Dr. B. R. Ambedkar :** My own feeling is this that a concrete reason for the sentiment of hostility which has been expressed by my honourable friend, Mr. Kamath as well as my honourable friend Mr. Kunzru, really arises by the unfortunate heading of chapter " Legislative powers of the President". It ought to be " Power to legislate when Parliament is not in session". I think if that sort of

innocuous heading was given to the chapter, much of the resentment to this provision will die down. Yes. The word 'Ordinance' is a bad word, but if Mr. Kamath with his fertile imagination can suggest a better word, I will be the first person to accept it. I do not like the word "ordinance", but I cannot find any other word to substitute it.

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

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

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

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

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

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

**Some Honourable Members :** Article 61 (1).

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

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

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

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

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

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

**Mr. President** : I have considered that also.

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

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

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

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

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

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

***[All 6 amendments were rejected. Article 102 was added to the Constitution.]***

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

"That in the heading to Chapter IV of Part V, for the words ' federal Judicature ' the words ' Union Judiciary ' be substituted."

This is merely consequential to the earlier article where India has been described as a Union.

The amendment was adopted.

ARTICLE 102-A

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**Mr. President :** It is eight O'clock now. I think we had better close the discussion.

**Shri Brajeshwar Prasad :** (Bihar : General) : May I have one minute of the lime of the House to speak on this motion.

**Mr. President :** I think the House is not willing to hear further speaches now.

**The Honourable Dr. B. R. Ambedkar :** Sir, I do not think any reply is necessary. If I may say so. it was rather unfortunate that Professor Shah should have moved this amendment. This matter was discussed in great detail when we were discussing the directive principles of State Policy. I do not therefore see why this matter was raised again and why there was a debate. The matter had been partically concluded in article 39-A.

**Mr. President :** I will now put the amendment to vote.

***[The amendment was negatived.]***

ARTICLE 103

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

"That in clause (1) of article 103, for the words ' and such number of other judges not being less than seven, as Parliament may by law prescribe ' the words ' and until Parliament by law prescribes a larger number, of seven other judges ' be substituted."

The object of this amendment is that the constitution of the Supreme Court should not be held over until Parliament by law prescribes the number of Judges. The amendment lays down that seven Judges will constitute the Supreme Court.

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

" That in Explanation II to clause (3) after the words ' judicial office ' the words ' not inferior to that of a district judge ' be inserted."

* CAD. Vol. VIII. 23rd May 1949. p.218.

† *Ibid,* p. 227.

‡ *Ibid* 24th May 1949. p. 230.

# *Ibid.,* pp. 242-43.

I also move :

" That in clause (4) of article 103. for the words ' supported by not less than two-thirds of the members present and voting has been presented to the President by both Houses of Parliament' the words ' by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President' be substituted ".

**Mr. President :** There is an amendment to this amendment by Dr. Bakshi Tek Chand, of which he has given notice. It is No. 101 in the printed pamphlet containing the amendments to amendments.

The amendment was not moved.

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***Mr. President :** Amendment No. 1857 is a verbal amendment.

Amendment No. 1858 stands in the name of Professor K. T. Shah.

Is not that covered by the words ' incapacity and misbehaviour ' ?

**Prof. K.T. Shah :** I would accept it if you think that they are covered. I do not move it.

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**Mr. President :** ...Amendment No. 1862 stands in the name of Dr. B. R. Ambedkar. That is also a formal amendment to substitute for the words "a declaration" the words "an affirmation or oath". We have made similar changes whereever that expression occurs in other parts of the draft Constitution. I take it that it is moved.

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

" That in clause (6) of article 103, for the words * a declaration ' the words ' an affirmation or oath ' be substituted.'"

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†**Mr. President :** ...Dr. Ambedkar, would you like to say anything about the amendments.

**The Honourable Dr. B. R. Ambedkar :** Mr. President, Sir, I am prepared to accept two amendments. One of them is No. 1829 moved by Mr. Santhanam, and the other is No. 1845, moved by Mr. Kamath, by which he proposes that even a jurist may be appointed as a Judge of the Supreme Court. But with regard to Mr. Kamath's amendment No. 1845, I should like to make one reservation, and it is this. I am not yet determined in my own mind whether the word " distinguished " is the proper word in the context. It has been suggested to me that the word " eminent " might be more suitable. But as I said, I am not in a position to make up my mind on this subject; and I would, therefore, like to make this reservation in favour of the Drafting Committee, that the Drafting Committee should be at liberty when it revises the Constitution, to say

* CAD. Vol. VIII 24th May 1949, p. 244.

† *Ibid* pp. 257-60.

whether it would accept the word "distinguished" or substitute "eminent" or some oilier suitable word.

Now, Sir. with regard to the numerous amendments that have been moved, to this article, there are really three issues that have been raised. The first is, how are the Judges of the Supreme court to be appointed ? Now, grouping the different amendments which are related to this particular matter, I find three different proposals. The first proposal is that the Judges of the Supreme Court should be appointed with the concurrence of the Chief Justice. That is one view. The other view is that the appointments made by the President should be subject to the confirmation of two-thirds vote by Parliament and the third suggestion is that they should be appointed in consultation with the council of States.

With regard to this matter, I quite agree that the point raised is of the greatest importance. There can be no difference of opinion in the House that our judiciary must both be independent of the executive and must also be competent in itself. And the question is how these two objects could be secured. There are two different ways in which this matter is governed in other countries. In Grexat Britain the appointments are made by the Crown, without any kind of limitation whatsoever, which means by the executive of the day. There is the opposite system in the United States where, for instance, offices of the Supreme Court as well as other offices of the Slate shall be made only with the concurrence of the Senate in the United States. It seems to me, in the circumstances in which we live today, where the sense of responsibility has not grown to the same extent to which we find it in the United States, it would be dangerous to leave the appointments to be made by the President, without any kind of reservation or limitation, that is to say, merely on the advice of the executive of the day. Similarly, it seems to me that to make every appointment which the executive wishes to make subject to the concurrence of the Legislature is also not a very suitable provision. Apart from its being cumbrous, it also involves the possibility of the appointment being influenced by political pressure and political considerations. The draft article, therefore, steers a middle course. It does not make the President the supreme and the absolute authority in the matter of making appointments. It does not also import the influence of the Legislature. The provision in the article is that there should be consultation of persons who are *ex hypothesi,* well qualified to give proper advice in matters of this sort, and my judgment is that this sort of provision may be regarded as sufficient for the moment.

With regard to the question of the concurrence of the Chief Justice, it seems to me that those who advocate that proposition seem to rely implicitly both on the impartiality of the Chief Justice and the soundness of Ms judgment. I personally feel no doubt that the Chief Justice is a very eminent person. But after all, the Chief Justice is a man with all the failings, all the sentiments and all the prejudices which we as common people have; and I think, to allow the Chief Justice practically a veto upon the appointment of judges is really to transfer the authority to the Chief Justice which we are not prepared to vest in the President or the Government of the day. I therefore, think that that is also a dangerous proposition.

The second issue that has been raised by the different amendments moved to this article relates to the question of age. Various views have been expressed as to the age. There are some who think that the judges ought to retire at the age of sixty. Well, so far as High Courts are concerned, that is the present position. There are some who say that the constitution should not fix any age-limit whatsoever, but that the age-limit should be left to be fixed by Parliament by law. It seems lo me that that is not a proposition which can be accepted, because if the matter of age was left to Parliament to determine from time to time, no person could be found to accept a place on the Bench, because an incumbent before he accepts a place on the bench would like to know for how many years in the natural course of things, he could hold that office; and therefore, a provision with regard to age, I am quite satisfied, cannot be determined by Parliament from time to time, but must be fixed in the Constitution itself. The other view is that if you fix any age-limit what you are practicality doing is to drive away a man who notwithstanding the age that we have prescribed, *viz.,* sixty-five, is hale and hearty, sound in mind and sound in body and capable for a certain number of years of rendering perfectly good service to the Slate. I entirely agree that sixty-five cannot always be regarded as the zero hour in a man's intellectual ability. At the same time, I think Honourable Members who have moved amendments to this effect have forgotten the provision we have made in article 107, where we have provided that it should be open to the Chief Justice to call a retired Judge to sit and decide a particular case or cases. Consequently by the operation of article 107 there is less possibility, if I may put it, of our losing the talent of individual people who have already served on the Supreme Court. I therefore submit that the arguments or the fears that were expressed

in the course of the debate with regard to the question of age have no foundation.

Now, I come to the third point raised in the course of the debate on this amendment and that is the question of the acceptance of office by members of the judiciary after retirement. There are two amendments on the point,—one of Prof. Shah and the other by shri Jaspat Roy Kapoor. I personally think that none of these amendments could be accepted. These amendments have been moved more or less on the basis of the provisions that have been made in the Draft Constitution relating to the Public Service Commission. It is quite true that the provision has been made that no member of the Public Services Commission shall be entitled to hold an office under the crown for a certain period after he has retired from the Public Services Commission. But it seems to me that there is a fundamental difference between the members of the judiciary and the members of the Federal Public Services Commission. The difference is this. The Public Services Commission is serving the Government and deciding matters in which Government is directly interested, *viz..,* the recruitment of persons to the civil service. It is quite possible that the minister in charge of a certain portfolio may influence a member of the Public Services Commission by promising something else after retirement if he were to recommend a certain candidate in whom the Minister was interested. Between the Federal Public Services Commission and the Executive the relation is a very close and integral one. In other words, if I may say so, the Public Services Commission is at all times engaged in deciding upon matters in which the Executive is vitally interested. The judiciary decides eases in which the Government has, if at all, the remotest interest, in fact no interest at all. The judiciary is engaged in deciding the issue between citizens and very rarely between citizens and the Government. Consequently the chances of influencing the conduct of a member of the judiciary by the Government are very remote, and my personal view, therefore, is that the provisions which are applied to the Federal Public Services Commission have no place so far as the judiciary is concerned. Besides, there are very many cases where the employment of judicial talent in a specialised form is very necessary for certain purposes. Take the case of our Friend Shri Varadachariar. He has now been appointed member of a Commission investigating income-tax questions.

**Shri Jaspat Roy Kapoor :** Let it be in an honorary capacity.

**The Honourable Dr. B. R. Ambedkar :** No, he is paid. It is an office of profit under the crown.

Therefore, who else can be appointed to positions like this, except persons who had judicial talent ? It would be a very great handicap if these very persons who possess talent for doing work of this sort were deprived by provisions such as Shri Jaspat Roy Kapoor suggests. And I have said that the relation between the executive and judiciary are so separate and distinct that the executive has hardly any chance of influencing the judgment of the judiciary. I therefore suggest that the provision suggested is not necessary and I oppose all the amendments.

Following two amendments were accepted.

(1) Amendment by Mr. Santhanam :—

"That in clause (2) of article 103. for the words 'may be' the words 'the President may deem' he substituted.

(2) Amendment by Mr. kamath :—

"That in clause (3) of article 103, the following new sub-clause be added :—

(c) or is an eminent jurist' ".

All four amendments of Dr. Ambedkar as shown before were adopted. In all 18 amendments moved by other members were rejected.

***[Article 103, as amended, was added to the Constitution]***

ARTICLE 103-A.

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***The Honourable Dr. B. R. Ambedkar :** I should like to dispose of this mailer in as few words as possible. Before I do so, I should like to state what I understand to be the idea underlying this particular amendment. For the purpose of understanding the main idea underlying this amendment, I think we have to take up three different cases. One case is the case of a Judge of the Supreme Court who has been appointed to an executive office with no right of reversion to the Supreme Court. Thai is one case. The second case is the appointment of a Supreme Court Judge after he has held that post to an executive office of a non-judicial character. The third ease is the case of a Supreme Court Judge being given or assigned duties of a non-judicial character with the right to revert to the Supreme Court. I understand that—my friend Dr. Sen may correct me if I am wrong—this amendment refers to the third proposition, *viz.,* the assignment of a Supreme Court Judge to non-judicial duties for a short period with the right for him to revert to the Supreme Court.

With regard to the first case that I mentioned, *viz.,* the appointment of a Supreme Court Judge to an executive office provided the Supreme

* CADVol. VIII. 24th May 1949, pp.266-67

Court Judge resigns his post as a Judge of the Supreme Court, I do not see any objection at all, because he goes out of the Supreme Court altogether.

With regard to the second case, viz., the assignment of duties to a Supreme Court Judge who has retired, we have just now disposed of it. There ought to be no limitation at all.

With regard to the third case, I think it is a point which requires consideration. We have had two cases in this country. One was the case which occured during the war when a Judge of the Federal Court was sent round by the then Government of India on diplomatic missions. We have also had during the regime of this Government the case where the Chief Justice or a Judge—I forget now—on one of the High Courts, was sent out on a diplomatic mission. On both occasions there was some very strong criticism of such action. My Friend, Mr. Chimanlal Setalvad, came out with an article in the *Times of India,* criticising the action of the Government. Personally I share those sentiments. I am, however, at present not in a position to accept the amendment as worded by Dr. P. K. Sen because the wording either goes too wide or in some cases too narrow. I am prepared to recommend to the Drafting Committee that this point should be taken into consideration. On that assurance, I would request him to withdraw his amendment.

**Shri Jaspat Roy Kapoor :** May I request that a decision on this clause may be held over till tomorrow because many of us would like to study it carefully.

**Mr. President:** Dr. Ambedkar has told us that he is willing to refer it to the drafting Committee for its consideration.

**Shri Jaspat Roy Kapoor :** It might stand over

**Mr. President:** When it is referred to the Drafting Committee, it means that it stands over, because when it comes back again, it will come back in the form in which it is approved by the Drafting Committee.

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ARTICLE 104

***The Honourable Dr. B. R. Ambedkar** (Bombay : General): Sir, I would request that article 104 be postponed.

ARTICLE 106

**†The Honourable Dr. B. R. Ambedkar :** I accept the two amendments—No. 124 of List No. VI and amendment No. 1883.

* CADVol. VIII, 27th May 1949. p. 375.

†*Ibid.* p. 377.

**Mr. President:** There have been two amendments moved. Both have been accepted by Dr.Ambedkar. I will now put them to the vote.

"That with reference to amendment No. 1883 of the List of amendments, in clause (1) of article 106, after the words ' Chief Justice may ' the words ' with the previous consent of the President and ' be inserted."

" That in clause (1) of article 106, after the words ' High Court' where they occur for the second time, the words 'duly qualified for appointment as a judge of the Supreme Court' be inserted."

Folling amendments were adopted.

***[Both the above amendments were accepted. Article 106, as amended, was added to the constitution]***

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ARTICLE 107

**Mr. President:** Amendment No. 1884. This is a negative amendment. So I rule it out.

Amendment No. 1885. That question has been decided. So this need not be moved.

**Shri Jaspat Roy Kapoor :** I am not moving amendment No. 1886 as there is another amendment on the same lines.

**Mr. President:** Amendment No. 1887 is more or less a verbal amendment. So it need not be moved.

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

"That in article 107 the words ' subject to the provisions of this article ' be deleted."

Those words are quite unnecessary.

**Shri T. T. Krishnamachari :** I move :

" That in article 107, in line 3, after the words ' at any time ', the words ' with the previous consent of the President' be inserted."

(Amendment Nos. 1889 and 1890 were not moved.)

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**†Mr. President:** We have now the amendments and the article for discussion.

**The Honourable Dr. B. R. Ambedkar :** I accept amendment 125 moved by Shri T. T. Krishnamachari.

The amendment was adopted.

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ARTICLE 108

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

"That for amendment No. 1891 of the List of Amendments, the following be substituted :—

"That for article 108, the following articles be substituted :

108. The Supreme 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.

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* CAD, Vol. VIII, 27th May 1949, p.377.

† *Ibid* p. 377.

‡ *Ibid,* p. 379.

108-A. The Supreme Court shall sit in Delhi or at such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint."

Sir, after the general debate, I will say why the amendment that I am moving is necessary.

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***The Honourable Dr. B. R. Ambedkar :** Mr. President, the amendment which I have moved covers practically all the points which have been raised both by Mr. Kamath as well as by Mr. Jaspat Roy Kapoor.

Sir, the new article 108 is necessary because we have not made any provision in the Draft Constitution to define the status of the Supreme Court. If the House will turn to article, 192, they will find exactly a similar article with regard to the High Courts in India. It seems therefore necessary that a similar provision should be made in the Constitution in order to define the position of the Supreme Court. I do not wish to take much time of the House in saying what the words ' a court of record ' mean. I may briefly say that a court of record is a court the records of which are admitted to be of evidentiary value and they are not to be questioned when they are produced before any court. That is the meaning of the words 'court of record'. Then, the second part of article 108 says that the court shall have the power to punish for contempt of itself. As a matter of fact, once you make a court a court of record by statute, the power to punish for contempt necessarily follows from that position. But, it was felt that in view of the fact that in England tills power is largely derived from Common Law and as we have no such thing as Common Law in this Country, we felt it better to state the whole position in the statute itself. That is why article 108 has been introduced.

With regard to article 108-A, Mr. Kamath raised a point as to why the word Delhi should occur. The answer is very simple. A court must have a defined place where it shall sit and the litigants must know where to go and whom to approach. Consequently, it is necessary to state in the statute itself as to where the court should sit and that is why the word Delhi is necessary and is introduced for that purpose. The other words which occur in article 108-A are introduced because it is not yet defined whether the capital of India shall continue to be Delhi. If you do not have the words which follow, " or at such other place or places, as the Chief Justice of India may, with the approval of the President,

* CAD, Vol. VIII, 27th May 1949, p. 382.

from time to time, appoint "then, what will happen is this. Supposing the capital of India was changed, we would have to amend the Constitution in order to allow the Supreme Court to sit at such other place which Parliament may decide as the capital. Therefore, I think the subsequent ward are necessary. With regard to the point raised by my honourable Friend Mr. Kapoor. I think the answer given by my friend Mr. Krishnamachari is adequate and I do not propose to say any more.

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***Shri Jaspat Roy Kapoor :** May I seek a small clarification from Dr. Ambedkar ? Will it be open to the Supreme Court so long as it is sitting in Delhi, to have a circuit court anywhere else in this country simultaneously ?

**The Honourable Dr. B. R. Ambedkar :** Yes, certainly. A circuit court is only a Bench.

***[Amendments of Dr. Ambedkar were accepted. Rest rejected. Article 108 and 108-A as amended, were added to the Constitution.]***

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**†The Honourable Dr. B. R. Ambedkar :** Sir, I want articles 109 to 114 be held over. The reason why I want these articles to be held over is because these articles while they state general rules, also make certain reservations with regard to the States in Part III of Schedule I. It is understood that the matter as to the position of the States in Part III is being reconsidered, so that the States in Part III will be brought on the same level and footing as the States in Part I. If that happens, then, there will be no necessity to introduce these reservations in these articles 109—114. I suggest these may be held over.

**Mr. President:** We will pass them over for the present.

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**‡Mr. President:** Amendment No. 1939, in the name of Dr. Ambedkar.

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

> '"That in article 115. the words and brackets ' (which relates to the enforcement of fundamental rights)' he deleted."

The words are superflous.

**Mr. President :** No. 1940 is the same as the one just now moved and so need not be moved. No. 1941 standing in the name of Mr.

* CAD, Vol. VIII, 27th May 1949, p. 383.

† *Ibid,* pp. 383-84.

‡ *Ibid.,* p. 385.

Naziruddin Ahmad is also of a drafting nature and need not be moved No. 1942 is not moved.

I think these are the amendments that we have now.

Does any Member wish to say anything ?

We shall now put the amendments.

I will first take Dr. Ambedkar's amendment No. 1939 (mentioned above).

The amendment was adopted.

***[Dr. Bakshi Tek Chand's amendment to amendment No. 1938, as given below was also adopted.]***

"That in article 115, for the words ' or orders in the nautre of the writs ' the words ' orders or writs, including writs in the nature ' be substituted. "

***[Article 115, as amended, was added to the Constitution.]***

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ARTICLE 117

***The Honourable Dr. B. R. Ambedkar :** Sir, there is one point which I should like to mention. It is not certainly the intention of the proposed article that the Supreme Court should be bound by its own decision like the House of Lords. The Supreme Court would be free to change its decision and take a different view from the one which it had taken before. So far as the language is concerned I am quite satisfied that the intention is carried out.

**Shri H. V. Kamath :** Then why not say " all other courts " ?

**The Honourable Dr. B. R. Ambedkar :** " All courts " means " all other courts."

***[Article 117 was adopted without amendment and added to the Constitution.]***

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ARTICLE 119

†**Mr. President:** Amendment No. 1951 is ruled out.

**Shri H. V. Kamath :** Sir, the point which I wish to raise in my amendment No. 1952 is a simple one. The article contemplates that the Supreme Court should report to the President its opinion or in its discretion it may with held its opinion. I believe what is meant is that when once the President refers the matter to the Supreme Court for its opinion there is no option for the Supreme Court. If that is not meant then the language is right. But if it is meant that once the President refers the matter to the Supreme Court it must report its opinion thereon to the President, then the word "shall" must come in. I wanted a clarification on that point.

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* CAD, Vol. VIII, 27th May 1949, p. 386.

† *Ibid* p. 387.

**The Honourable Dr. B. R. Ambedkar :** The Supreme court is not bound.

**Shri H. V. Kamath :** Then I do not move my amendment.

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***The Honourable Dr. B. R. Ambedkar :** May I request you, Sir, to hold over this article 119, because it has also reference to article 109 to 114 which we have decided to hold over.

**Shri H. V. Kamath :** Then, Sir, I shall reserve my right to move the amendment later on.

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ARTICLE 121

**†The Honourable Dr. B. R. Ambedkar :** I would request Sir, that this article be allowed to stand over.

ARTICLE 122

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

" That for the existing article 122, the following be substituted :—

' 122. *Officers and servants and the expenses of the Supreme Court.*—(1) Appointments of officers and servants of the Supreme Court shall be made by the chief Justice of India or such other judge or officer of court as he may direct:

Provided that the President may by rule require that in such cases may be specified in the rule, no person not already attached to the court shall be appointed to any office connected with the court, save after consultation with the Union Public Service Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other judge or officer of the court authorised by the Chief Justice of India to make rules for the purpose :

Provided that the salaries, allowances and pensions payable to or in respect of such officers and servants shall be fixed by the chief Justice of India in consultation with the President.

(3) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the revenues of India, and any fees or other moneys taken by the court shall form part of those revenues.' "

The object of this redraft is to make a better provision for the independence of the Supreme Court and also to make provision that the administrative expenses of the Supreme Court shall be a charge on the revenues of India.

Sir, there is an amendment to this amendment, which I should like to move at this stage :

"That in amendment No. 1967, for the proviso to clause (2) of the proposed article 122, the following proviso be substituted :—

' Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President' "

* CAD, Vol. VIII, 27th May 1949, p.387

† *Ibid* p.388.

**Mr. President:** There is an amendment of Mr. Kapoor to this amendment.

**Shri Jaspat Roy Kapoor :** It is now covered by the new amendment moved by Dr. Ambedkar. So I consider it unnecessary to move it.

(Amendment Nos. 1968 and 1969 were not moved.)

**Mr. President:** So there is only the amendment of Dr. Ambedkar. I shall first take the amendment he has moved to his own amendment.

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***The Honourable Dr. B. R. Ambedkar :** Mr. President, Sir, I would just like to make a few observations in order to clear the position. Sir, there is no doubt that the House in general, has agreed that the independence of the Judiciary from the Executive should be made as clear and definite as we could make it by law. At the same time, there is the fear that in the name of the independence of the Judiciary, we might be creating, what my Friend Mr. T.T. Krishnamachari very aptly called an "*Imperium in Imperio*". We do not want to create an *Imperium in Imperio* and at the same time we want to give the Judiciary ample independence so that it can act without fear or favour of the Executive. My friends, it they will carefully examine the provisions of the new amendment which I have proposed in place of the original article 122, will find that the new article proposes to steer a middle course. It refuses to create an *Imperium in Imperio,* and I think it gives the Judiciary as much independence as is necessary for the purpose of administering justice without fear or favour. I need not therefore, dilate on all the provisions contained in this new article 122, because I find that even among the speakers who have taken part in the debate on this article, there is general agreement that certain clauses of the new article 122 are unexceptionable, that is to say, clause (1), clause (3) and even clause (2). The only point of difference seems to be on proviso to clause (2). In the original proviso, the provision was that with regard to salaries, allowances and so on and so on, the Chief Justice shall fix the same, in consultation with the President. The amended proviso provides that the Chief Justice shall do it with the approval of the President, and the question really is whether the original provision that this should be done in consultation with the President or whether it might be done with the approval of the President, which of these two alternatives we have to choose. No doubt, the original draft, "Consultation with the President,"

* CAD, Vol. VIII. 27th May 1949, pp.397-99