

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 Friend, Shri Alladi Krishnaswami Ayyar, and to which I accord my wholehearted 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 live 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.

[5 amendments including 2 of Dr. Ambedkar were adopted. One was negatived. Article 121 as amended was added to the Constitution.]

ARTICLE 191

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

“That in sub-clause (a) of clause (I) 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 move:

“That with reference to amendments 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 Courts for State

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

(Amendments 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 amendment was adopted.

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

ARTICLE 192

(Amendments 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 word ‘six’ 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 of Records	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.
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*CAD, Vol. VIII, 6th June 1949, p. 656.

† *Ibid.*, p. 657.

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

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***Mr. President :** We were dealing with article 193 yesterday. We shall now resume consideration of that article. One amendment was moved but there are several other amendment. There is another amendment No. 2592 which is in the name of Dr. Ambedkar which, I think, will cover all these amendments except about the question of age. So I think that if Dr. Ambedkar moves his amendment first, probably it may not be necessary to take up these other amendments with regard to matters other than the age. With regard to the age, we may take up that question separately.

Mr. President : Then we shall have to take up the other amendments.

* * * * *

“That with reference to amendment No. 2610 of the List of amendments, in clause (c) of the proviso to clause (1) of article 193, after the words ‘High Court’ the words ‘in any State for the time being specified in the first Schedule’ he inserted.”

Sir, I formally move amendment No. 2614 in the List of Amendment.

Sir, I move :

“That with reference to amendment No. 2614 of the List of amendments, in sub-clause (a) of clause (2) of article 193 the words ‘in any State in or for which there is a High Court’ the words ‘in the territory of India’ be substituted.”

“That with reference to amendment No. 2614 of the List of amendments, in sub-clause (b) of clause (2) of article 193, after the words ‘High Court’ the words ‘in any State for the time being specified in the First Schedule’ be inserted.”

*CAD, Vol. VIII, 7th June 1049, p. 661.

†*Ibid.*, pp. 664-65.

“That with reference to amendment No. 2614 of the List of the amendments, in sub-clause (b) of Explanation I to clause (2) of article 193, for the words ‘in a State for the time being specified in Part I or Part II of the First Schedule’ the words ‘in the territory of India’ be substituted.”

“That with reference to amendment No. 2614 of the List of Amendments, in clause (h) of Explanation I to clause (2) of article 193 for the words ‘British India’ the word ‘India’ be substituted.”

“That with reference to amendment no. 2622.....”

Mr. President : Before moving that, you may formally move amendment No. 2622.

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

“That for Explanation II to clause (2) of article 193, the following be substituted :—

‘Explanation II.—In sub-clauses (a) and (b) of this clause, the expression ‘High Court’ with reference to a State for the time being specified in Part II of the first Schedule means a Court which the President has under article 123 declared to be a High Court for the purposes of articles 103 and 106 of this constitution.’”

Sir, I move :

“That with reference to amendment No. 2622 of the List of amendments, Explanation II to clause (2) of article 193 be omitted.”

The object of all these amendments 196 to 200 is to remove all distinctions between British India and the Indian States. Some of the amendments particularly amendments 199 and 200 are merely consequential upon the main amendment.

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***Mr. President:** Dr. Ambedkar, do you wish to speak on this ?

The Honourable Dr. B. R. Ambedkar : No, Sir. I do not think that any reply is called for.

[Only 4 amendments were adopted. Rest were rejected. Article 193, as amended, was added to the Constitution.]

ARTICLE 193-A

†**Mr. President:** Dr. Ambedkar, do you wish to say anything about Prof. Shah’s motion ?

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I regret that I cannot accept this amendment by Prof. Shah. Ill understood Prof. Shah correctly, he said that the underlying object of his amendment was to secure or rather give effect to the theory of separation between the judiciary and the executive. I do not think there is any dispute that there should be separation between the Executive and the Judiciary and in fact all the articles relating to the High Court as well as the Supreme

*CAD, Vol. VIII, 7th June 1949, p. 674.

†*Ibid.*, pp. 678-79.

Court have prominently kept that object in mind. But the question that arises is this : how is this going to bring about a separation of the judiciary and the executive. So far as I understand the doctrine of the separation of the judiciary from the executive, it means that while a person is holding a judicial office he must not hold any post which involves executive power ; similarly, while a person is holding an executive office he must not simultaneously hold a judicial office. But this amendment deals with quite a different proposition so far as I am able to see it. It lays down what office a person who has been a member of the judiciary shall hold after he has put in a certain number of years in the service of the judiciary. That raises quite a different problem in my judgment. It raises the same problem which we might consider in regard to the Public Service Commission, as to whether a Member of the Public Service Commission after having served his term of office should be entitled to any office thereafter or not. It seems to me that the position of the members of the judiciary stands on a different footing from that of the Members of the Public Service Commission. The Members of the Public Service Commission are, as I said on an earlier occasion, intimately connected with the executive with regard to appointments to Administrative Services. The judiciary to a very large extent is not concerned with the executive : it is concerned with the adjudication of the rights of the people *and* to some extent of the rights of the Government of India and the Units as such. To a large extent it would be concerned in my judgment with the rights of the people themselves in which the government of the day can hardly have any interests at all. Consequently the opportunity for the executive to influence the judiciary is very small and it seems to me that purely for a theoretical reason to disqualify people from holding other offices is to carry the thing too far. We must remember that the provisions that we are making for our judiciary are not, from the point of view of the persons holding the office, of a very satisfactory character. We are asking them to quit office at sixty while in England a person now can hold office up to seventy years. It must also be remembered that in the United States practically an office in the Supreme Court is a life tenure, so that the question of a person seeking another office after retirement can very seldom arise either in the United States or in Great Britain.

Similarly, in the United States, so far as pension is concerned, the pension of a Supreme Court Judge is the same as his salary : there is

no distinction whatsoever between the two. In England also pension, so far as I understand, is something like seventy or eighty per cent. of the salary which the Judges get. Our rules, as I said, regarding retirement impose a burden upon a man inasmuch as they require him to retire at sixty. Our rules of pension are again so stringent that we provide practically a very meagre pension. Having regard to these circumstances I think the amendment proposed by Prof. K. T. Shah is both unnecessary for the purpose he has in mind, namely of securing separation of the judiciary from the executive, and also from the point of view that it places too many burdens on the members who accept a post in the judiciary.

Shri H. V. Kamath : May I say that this amendment applies not to retired Judges but to Judges serving on the bench at the moment ?

The Honourable Dr. B. R. Ambedkar : If I may say so, the amendment seems to be very confused. It says that it shall apply to a person who has served “for a period of live years continuously”. That means if the President appointed a Judge for less than live years he would not be subject to this; which would defeat the very purpose that Prof. K. T. Shah has in mind. It would perfectly be open to the President in any particular case to appoint a Judge for a short period of less than five years and reward him by any post such as that of Ambassodor or Consul or Trade Commissioner, etc. The whole thing seems to me quite ill-conceived.

Mr. President : The question is :

“That the following new article 193-A after article 193 be added :

‘193-A. No one who has been a Judge of the Supreme Court, or of the Federal Court or of any High Court for a period of 5 years continuously shall he appointed to any executive office under the Government of India or the Government of any State in the Union, including the office of an Ambassador, Minister, Plenipotentiary, High Commissioner, Trade Commissioner, Consul, as well as of a Minister in the Government of India or under the Government of any Stale in the Union’.”

[This amendment of Prof. K. T. Shah was negatived.]

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ARTICLE 195

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

“That, in article 195 for the words ‘a declaration’ the words ‘an affirmation or oath’ be substituted.”

It is a very formal amendment.

The amendment was adopted.

Article 195, as amended, was added to the Constitution.

ARTICLE 196

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

“That for article 196, the following article be substituted :

Prohibition of practising in court or before any authority by a person who held office as a judgment a High Court.	‘196. No person who was held office as a judge of a High Court after the commencement of this Constitution shall plead or act in any court or before any authority within the territory of India’.”
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It is simply a rewording of the same.

Shri Prabhu Dayal Himatsingka : In view of the amendment moved by Dr. Ambedkar now, my amendment (No. 2632) is not necessary.

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‡**Mr. President:** Dr. Ambedkar do you wish to say anything ?

The Honourable Dr. B. R. Ambedkar : I do not think anything is necessary.

Mr. President : I will first put Sardar Hukam Singh’s amendment to the vote. If that is accepted, Dr. Ambedkar’s amendment will stand amended by this.

[The amendment was negatived. Dr. Ambedkar’s amendment was adopted. Article 196, as amended, was added to the Constitution.]

ARTICLE 196-A

(Amendment No. 2639 was not moved)

Mr. President : A similar amendment, No. 1870 was moved and discussed at great length and it was held over.

The Honourable Dr. B. R. Ambedkar : I suggest that article 196-A may be held over. A similar article, (No. 103-A) was held over.

Mr. President : I agree. This article will then stand over.

ARTICLE 197

The Honourable Dr. B. R. Ambedkar : Article 197 also may be held over.

Mr. President : I agree, this article also is held over.

ARTICLE 198

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

“That for article 198, the following article be substituted:—

Temporary appointment of acting Chief Justice.	“198. When the office of Chief Justice of a High court is vacant or when any such Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his
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*CAD, Vol. VIII, 7th June 1949, p. 680.

‡*Ibid.*, p. 085.

‡*Ibid.*, p. G85.

office the duties of the office shall be performed by such one of the other judges of the court as the President may appoint for the purpose’.”

Shri T. T. Krishnamachari : Sir, amendment No. 2650 is covered by the amendment moved by Dr. Ambedkar, because it relates to clause (2).

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ARTICLE 200

Dr. Ambedkar’s amendment is substantially the same ; it deletes clause (2) and only retains clause (1).

Dr. P. K. Sen : I do not want to move that amendment.

(Amendments Nos. 2651, 2652 and 2653 were not moved.)

[The motion of Dr. Ambedkar was adopted. Article 198 as amended was added to the Constitution.]

***Mr. President :** There is amendment No. 201 of which notice has been given by Dr. Ambedkar which is exactly the same as the amendment moved by Mr. Jaspat Roy Kapoor. That amendment need not be moved.

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

“That in article 200, the words ‘subject to the provisions of this article’ be omitted.”

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† **The Honourable Dr. B. R. Ambedkar :** Sir, I did not think that this article would give rise to such a prolonged debate, in view of the fact that a similar article has been passed with regard to the Supreme Court. However, as the debate has taken place and certain Members have asked me certain definite questions, I am here to reply to them.

My Friend Mr. Kamath said that he did not know whether there was any precedent in any other country for article 200. I am sure he has not read the Draft Constitution, because the foot-note itself says that a similar provision exists in America and in Great Britain. (Inaudible interruption by Mr. Kamath) in fact, if I may say so; article 200 is word for word taken from section 8 of the Supreme Court of Judicature Act in England. There is no difference in language at all. That is my answer, so far as precedent is concerned.

But, Sir, apart from precedent, I think there is every ground for the provision of an article like article 200. As the House will recall we have now eliminated altogether any provision for the appointment of

*CAD, Vol. VIII, 7th June 1949, p. 688.

†*Ibid.*, pp. 693-95.

temporary or additional judges, and those clauses which referred to temporary or additional judges have been eliminated from Constitution. All judges of the High Court shall have to be permanent. It seems to me that if you are not going to have any temporary or additional judges you must make some kind of provision for the disposal of certain business, for which it may not be feasible to appoint a temporary judge in time to discharge the duties of a High Court Judge with respect to such matters. And therefore the only other provision which would be compatible with article 196 (which requires that no judge after retirement shall practise) is the provision which is contained in article 200. As my Friend Dr. Tek Chand said, there seems to be a lot of misgiving or misunderstanding with regard to the purpose or the intention of the article. It is certainly not the intention of the article to import by the back door for any length of time persons who have retired from the High Courts. Therefore nobody need have any misgiving with regard to this.

The other question that has been asked of me is with regard to the proviso. Many people who have spoken on the proviso have said that it appeared to them to be purposeless and meaningless. I do not agree with them. I do think that the proviso is absolutely necessary. If the proviso is not there it would be quite open for the authorities concerned to impose a sort of penalty upon a judge who refuses to accept the invitation. It may also happen that a person who refuses to accept the invitation may be held up for contempt of Court. We do not want such penalties to be created against a retired High Court Judge who either for the reason that he is ill, incapacitated or because he is otherwise engaged in his private business does not think it possible to accept the invitation extended to him by the Chief Justice. That is the justification for the proviso. The other question that has been asked is whether the word 'privilege' in article 200 will entitle a retired judge to demand the full salary which a judge of the High Court would be entitled to get. My reply to that is that this is a matter which will be governed by rules with regard to pension. The existing rule is that when a retired person is invited to accept any particular job under Government he gets the salary of the post *minus* the pension. I believe that is the general rule. I may be mistaken. Anyhow, that is a matter which is governed by the Pension Rules. Similarly this matter may be left to be governed by the rules regarding pension and we need not specifically say anything about it with regard to this matter in the article itself. This is all I have to say with regard to the points of criticism that have been raised in the course of the debate.

Shri H. V. Kamath : Is there such a provision in the Constitution of the United States ?

The Honourable Dr. B. R. Ambedkar : I have not got the text before me. In the United States the question does not arise because the salary and pension are more or less the same.

I am prepared to accept amendment No. 89 of Mr. Kapoor, because some people have the feeling that article 200 is likely to be abused by the Chief Justice inviting more than once a friend of his who is a retired judge. I therefore am prepared to accept the proposal of Mr. Kapoor that the invitation should be extended only after the concurrence of the President has been asked for.

Shri Jaspat Roy Kapoor: May I know whether it is the intention that the interpretation of the term 'privileges' should be left to the Parliament ?

The Honourable Dr. B. R. Ambedkar : It may have to be defined. There is no doubt about it that Parliament will have to pass what may be called a Judiciary Act governing both the Supreme Court and the High Courts and in that the word 'privilege' may be determined and defined.

Shri Jaspat Roy Kapoor : But the privileges will be the same in the case of a judge who has been called back and that of the permanent judges. That is what article 200 lays down.

The Honourable Dr. B. R. Ambedkar : Yes, but privilege does not mean full salary.

Mr. President : Amendment No. 89 moved by Mr. Jaspat Roy Kapoor has been accepted by Dr. Ambedkar. I will now put it to vote.

"That in article 200 after the words 'at any time', the words 'with the previous consent of the President' be inserted."

The amendment was adopted.

[Dr. Ambedkar's original amendment was also adopted and article 200 as amended, was added to the Constitution.]

ARTICLE 202

***Dr. Bakshi Tek Chand :** ...I hope the amendment which I have moved will be accepted by Dr. Ambedkar and that the article, as amended, will be passed by the House.

Mr. President: Dr. Ambedkar, do you wish to move amendment No. 2663 ?

The Honourable Dr. B. R. Ambedkar : No. Sir, I accept bakshi Tek Chand's amendment. I do not think that any reply is necessary.

Shri H. V. Kamath : There has been an amendment to substitute “or” for “and”.

The Honourable Dr. B. R. Ambedkar : There is no difference as to the substance of the article.

Shri H. V. Kamath : It makes a difference as to the meaning.
(Amendment by Dr. Bakshi Tek Chand.)

“That with reference to amendment No. 2661 of the list of Amendments, in clause (1) of article 202, for the words ‘or orders in the nature of the writs’ the words ‘orders or writs including writs in the nature’ be substituted.”

The amendment was adopted.

[Article 202, as amended, was added to the Constitution.]

ARTICLE 203

***The Honourable Dr. B. R. Ambedkar :** Sir, I wish that article 203 be held over.

Mr. President: Article 203 is held over.

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ARTICLE 204

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

“That the explanation to article 204 be omitted.”

Sir, it is unnecessary.

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‡Mr. Tajmal Hussain : ...The amendment moved by Dr. Ambedkar is perfectly correct. I support that amendment.

Mr. President: I want to dispose of this article before we rise. It is already twelve.

The Honourable Dr. B. R. Ambedkar : I am afraid I have to go to a Cabinet Meeting at 12 o'clock.

Mr. President: Then I do not think “there is much to be said either against or for the amendment. All that could be said has been said. No more speeches.

The Honourable Dr. B. R. Ambedkar : With regard to the observations made by my Friend Mr. Bharathi.

Shri H. V. Kamath : Sir, you have called upon me to speak. I shall not take more than 2 or 3 minutes. Shall I speak now or tomorrow ?

Mr. President: Tomorrow.

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#Mr. President: We shall now take up the discussion of article 204.

*CAD, Vol. VIII, 7th June 1949, p. 698.

†*Ibid.*, p. 699.

‡*Ibid.*, 701.

#*Ibid.*, 8th June 1949, pp. 703-04.

“That with reference to amendment No. 2674 of the List of Amendments, for article 204 the following article be substituted :

‘204. If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may—

- (b) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgement on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.’”

Mr. President: Just as you please.

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*CAD, Vol. VIII, 8th June 1949, pp. 716-19.

to the interpretation of the Constitution but also upon other issues relating to the interpretation of ordinary law ? As I said, that was a very pertinent question the force of which I did feel when I heard his argument and I therefore asked your permission to allow this article to be kept back.

Now, if I may say so, a similar question was raised by my Friend Shri Alladi Krishnaswami Ayyar when we were dealing with article 121. which also dealt with appeals to the Supreme Court in cases which were of a mixed type, namely, cases where there was a question of constitutional law along with questions of the interpretation of ordinary law made by Parliament. According to the original draft it was provided that in all cases where there was an issue relating to the interpretation of the constitutional law, such an appeal should be decided by a Bench of five Judges. The question that was raised by Shri Alladi Krishnaswami Ayyar was that a party may, quite wickedly so to say—for the purpose of getting the benefit of a bench of five—raise in his grounds of appeal a question relating to the interpretation of constitutional law which ultimately might be found to be a bogus one having no substance in it. Why should five Judges of the Supreme Court waste their time in dealing with an appeal where as a matter of fact there was no question of the interpretation of constitutional law ? The House will remember that his argument was accepted and accordingly, if the House has got papers containing the Fourth Week's Amendment List No. 1, Amendment 43, they will find that we then introduced a proviso which said that in a case of this sort where an appeal comes from a High Court involving not necessarily the question of the interpretation of law but involving other questions, the appeal should go to an ordinary bench constituted under the rules made by the Supreme Court which may, I do not know, be a Bench of either two Judges or three Judges. If after hearing the appeal that particular Bench certifies that there is as a matter of fact a substantial question of the interpretation of the Constitution, then and then alone the appeal may be referred to a bench of five Judges. Even then the Bench of the five Judges to which such an appeal would be referred would decide only the constitutional issue and not the other issues. After deciding constitutional issues the Judges would direct that the case be sent back to the original bench of the Supreme Court consisting either of two or three Judges to dispose of the same.

My first submission is this, that in making tills amendment to article 204 which I have mewed this morning we are doing no more than carrying out the substance of the proviso to clause (2a) of article 121 contained in amendment No. 42. Here also what we say is this : that the High Court, if satisfied, may take the case to itself, decide the issue on constitutional law and send back the case to the subordinate Judge for the disposal of other issues involving the interpretation of ordinary law made by Parliament. I do not think we are making anything new, novel, strange or extraordinary as compared to what we have done with regard to the Supreme Court. Therefore my submission is this that if we accept, as we have accepted, the proviso to clause (2a) of article 121, the House cannot be making any very grave mistake or any very grave departure.....

Shri Alladi Krishnaswami Ayyar : On a point of explanation, Sir, I shall feel obliged if it is your view that there is no distinction between a point arising in the appellate stage and a point arising when the case is pending in the court of first instance.

The Honourable Dr. B. R. Ambedkar : I am only dealing with the general framework of the amendment. My submission is that the amendment I have moved is exactly on a par with the proviso that we have added to clause (2a) of article 121. Therefore my submission is that there is no very grave departure from what we have already done.

Then two questions have been raised. One is with regard to the use of the word 'judgment' It has been said that the word 'judgment' has been differently interpreted and that the party whose case has been withdrawn by the High Court for the purposes of determining the constitutional issue may not be in a position to approach the supreme Court, because under article 110 we have said that an appeal to the Supreme Court shall lie only from the judgment or the final order of the High Court. The contention is that the judgment may not be regarded as a judgment within the meaning of article 110 or may not be regarded as a final order. Well, having used the word 'judgment' in article 110 in that prticular sense, namely a decision from which an appeal would lie to the Supreme Court, I do not personally understood why the use of word 'judgment' in this amendment should not be capable of the same interpretation. But if the contention is correct I think the matter could be easily rectified by using the word 'decision' instead of 'judgment' and adding an explanation such as this that "the decision shall be regarded as a final order for the purpose of article 110". I do not think that that difficulty is insuperable.

With regard to the question of appeal it would certainly be open to the party whose case has been withdrawn to do what it likes. Once the judgment has been delivered by the High Court, in a case which has been withdrawn for the purpose of decision of the issue regarding the interpretation of the Constitution, it may straightway go to the Supreme Court and have that question finally decided, or it may wait until all issues have been decided by the subordinate Judge, an appeal has gone through the High Court on findings of fact with regard to those particular issues and thereafter take the matter to the Supreme Court. We do not bind the party to any of the procedure if the issue regarding the interpretation of the Constitution is on the same footing as what we may call a preliminary issue so that when a decision is taken it will be a decision of the whole case. I have no doubt about it that the party affected will, rather than proceed with the rest of the case before the subordinate Judge, go immediately to the Supreme Court and have an interpretation of the Constitution. I see no difficulty at all in this.

Now, the other question that was raised was this : my Friend Shri Alladi Krishnaswami Ayyar said something silting there. I could not hear him. Bui in private conversation he mentioned that it may be very difficult for a High Court to make a severance between an issue relating to the interpretation of the Constitution and the other issues and it may be that for the interpretation of the other issues and for the interpretation of the issue relating to the interpretation of the Constitution the High Court may have to consider other issues as well. It was also suggested that supposing the case was really a small one, but did involve the question of interpretation of law, why should the High Court be not permitted to dispose of such a small case rather than have it sent back to the subordinate court ? Well, in order to meet both these contingencies, the amendment gives the power to the High Court to dispose of the case itself. I do not think that that would not be found sufficient for the difficulties which have been pointed out. I therefore submit that the amendment does carry out the intentions we have, namely, that the High Court should not be encumbered with a decision of all the issues when it considers the whole case; it may be left free to decide a particular issue with regard to the specific question of the interpretation of the Constitution.

May I say one more thing ? There is no doubt a power under the Civil Procedure Code contained in section 24 permitting the High Court to withdraw any case to itself and determine it. But the difficulty with section 24 is that if the High Court decides upon withdrawal it shall have to withdraw the whole case. It has no power of partial withdrawal,

while our object is that the High Court should be permitted to withdraw that part of the case which refers to the interpretation of the Constitution. My submission, therefore, is that unless you provide specifically as we are doing now under article 204, the High Court will have to withdraw the whole case to itself if it wants to decide the question of the interpretation of this Constitution.

I would like to say one thing more. You will remember that there was no time between yesterday and this morning to apply all that close attention to the wording of this particular amendment which I have moved. I am therefore moving this amendment because I think it is very wrong to keep on holding up article after article because of certain minor defects or discrepancies. I should like to say that while I move this amendment I would like to have an opportunity given to the Drafting Committee to make such changes as it may deem necessary in order to remove the defects that have been mentioned if there are any, and bring it into line with the other articles which the assembly has passed.

Mr. President: I will now put the amendment of Professor Shah No. 2674 to vote.

Mr. H. V. Kamath : I thought Dr. Ambedkar's amendment superseded this amendment.'

The Honourable Dr. B. R. Ambedkar : I am substituting the entire article. You may withdraw amendment No. 2674.

Mr. President: Your amendment is for substituting the whole article. I will then put your amendment to vote.

The question is :—

“That for article 204, the following article be substituted :—

‘204. If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may—

(a) either dispose of the case itself, or

(b) determine the said question of law return to case to the court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.”

The amendment was adopted.

Mr. President : Now this becomes the original article. It disposes of all the amendment moved. The question is :—

“That article 204, as amended, stand part of the Constitution.”

The motion was adopted.

Article 204, as amended, was added to the Constitution.

[Dr. Ambedkar's amendment was carried. Article 204, as amended, was added to the Constitution.]

ARTICLE 205

***Mr. President:** The House will now consider article 205. There is an amendment to this by Dr. Ambedkar, No. 2676.

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

“That for article 205, the following be substituted ;—

Officers and servants of a High court shall be made by the Chief Justice and the expenses of of the Court or such other judge or officer of the High Courts, Court as he may direct:

Provided that the Governor of the State in which the High Court has its principal seat may by rule require that in such cases as 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 State Public service Commission.

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

Provided that the salaries, allowance and pensions payable to or in respect of such officers and servants shall be fixed by the Chief Justice of the Court in consultation with the Governor of the State in which the High Court has its principal seat.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court and the salaries and allowances of the Judges of the Court, shall be charged upon the revenues of the State, and any fees or other moneys taken by the Court shall form part of those revenues.”

Mr. President : There is an amendment by Mr. Kapoor.

The Honourable Dr. B. R. Ambedkar : Sir, I have an amendment to this amendment. If you will allow me I will move it. It is on page 3 of List II.

Mr. President: You can move it. —

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

“That with reference to amendment No. 2676 of the List of Amendments, for the proviso to clause (2) of the proposed article 205, 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 Governor of the State in which the High Court has its principal seat’.

Sir, these provisions are exactly the same as the provisions for the Supreme Court.

Mr. President : That covers your amendment, Mr. Kapoor.

Shri Jaspat Roy Kapoor (United Provinces : General) : Yes, Sir, it obviates the necessity for moving my amendment.

[Dr. Ambedkar’s amendment was adopted. Article 205, as amended, was added to the Constitution.]

ARTICLE 206

***The Honourable Dr. B. R. Ambedkar :** Sir, I move that this article be deleted.

Article 206 was deleted from the Constitution.

ARTICLE 90—*Contd.*

The Honourable Dr. B. R. Ambedkar : Sir, I would request you now to take the financial article. We may go back to article 90 which was under discussion.

Mr. President : We had a number of amendments to tills article which were moved that day before we adjourned discussion. They are amendments Nos. 3, 4 and 6 standing in the name of Dr. Ambedkar.

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

“That for sub-clauses (c) and (d) of clause (1) of article 90, the following sub-clauses be substituted :

‘(c) the custody of the Consolidated Fund or the Contingency Fund of India, die payment of moneys into or the withdrawal of moneys from any such fund;

(d) the appropriation of moneys out of the Consolidated Fund of India;”

Sir, Amendment No. 4 is covered by amendment No. 3 and so I am not moving it. Sir, I also move :

“That in sub-clauses (e) and (f) of clause (1) of article 90, for the words ‘revenues of India’, the words ‘Consolidated Fund of India’ be substituted.”

Sir, Amendment No. 5 standing in the name of Pandit Kunzru is also covered and therefore, it is necessary.

Sir, with your permission, I would like at this stage to make a short introductory speech in order to give the House an idea of some of the changes which are not covered by the specific amendments which I have moved just now, but which relate to the changes that have been made in the financial procedure to be observed with regard to financial matters.

The changes that we have made by the various amendments that I have proposed to move in connection with tills matter are these. The first change that has been made is that there shall be no taxation without law. If any levy is to be made upon the people, the sanction must be that of law. That is provided for in article 248 which will come at a later stage. In order to give the House a complete idea of what we are

doing, I mention the matter now. There was no such provision in the existing Draft Constitution. The second thing which is proposed to be done is to introduce the idea of what is called a Consolidated Fund. That will be done by the new article 248-A which will come at a later stage. We also wish to provide for the establishment of a Contingency Fund which Parliament may want to establish. That will be done by the new article 248-B.

I do not think that any explanation is necessary for the first provision, namely, that there should be no tax except by law. It is a very salutary provision and the executive should not have any power of levy upon the people unless they obtain the sanction of Parliament. With regard to the Consolidated Fund, it is really in a sense not a new idea at all; it is merely a new wording. The existing wording is "Public Account of the Governor General of India." If Honourable Members will refer to a volume called the Compilation of Treasury Rules, Volume I, they will find that the Public Account is also referred to as the Consolidated Fund. I shall read the definition. "Public Account of the Central Government means the Consolidated Fund into which moneys, received on account of the revenues of the Governor-General as defined in section 136 of the Act are paid and credited and from which all disbursements by or on behalf of Government are made."

Therefore, the use of the word "Consolidated Fund" is merely a change in nomenclature because that word is already used as an equivalent of the Public Account of the Central Government.

There is also an important idea behind this notion of a Consolidated Fund. Tills notion of a Consolidated Fund, as Members might know, arose in England some time about 1777. The object why the Consolidated Fund was created in England was tills. Originally Parliament voted taxes to the King, leaving the King to collect and spend it on such purposes as he liked. Oftentimes, the King spent the money for purposes quite different from the purposes for which he had asked it. Parliament could have no control after having voted the taxes. At a later stage. Parliament followed another procedure, namely, to levy a tax and to appropriate the proceeds of that tax for a certain purpose, with the result that when they came to passing the budget, there was practically no money left, all the taxes having been appropriated to specific purposes. Nothing was left for the general purposes of the

budget. In order to avoid his squandering of money, so to say, by appropriation of individual taxes for particular purposes, it was necessary to see that all revenues raised by taxes or received in other ways were, without being appropriated to any particular purpose, collected together into the one fund so that Parliament when it comes to decide upon the Budget has with it a fund which it could disburse. In other words, a Consolidated Fund is a necessary thing in order to prevent the proceeds of taxes being frittered away by laws made by Parliament in individual purposes without regard to the general necessity of the people at all. I therefore submit that the House will have no difficulty in accepting the provision for a Consolidated Fund because it is a very necessary thing. If I may say so, there is no Constitution which does not provide for a Consolidated Fund. If you compare the constitution of Australia, Canada, South Africa or Ireland, or any Constitution, you will find that they all have a provision which says that all funds raised by taxes or otherwise shall be pooled together in a Consolidated Fund. We are therefore not making any departure at all.

Then, the other provision which we seek to make is to provide for an Appropriation Act in the place of a certified Schedule by the President. Honourable Members, if they refer to article 94 of the Draft Constitution, will see what the present procedure is. First of all, what happens is this: the President, that is to say, the Government of the day is required by article 92 to present a Financial Statement to Parliament in a certain form, which form is laid down in sub-clause (2) of article 94, dividing the expenditure into two categories, one category containing the expenditure charged upon the revenues of India and the other category of expenditure not charged upon the revenues of India, that is to say, upon the Consolidated Fund. After that is presented, then comes the next stage which is provided for in article 93. Under article 93 what happens is this: Parliament proceeds to discuss the Financial Statement submitted to it, head by head, sub-head by sub-head, item by item and either agrees with the provisions made as to the amount by the executive or reduces it. This thing is done by resolutions passed by the House on any cut motion. After that is done, under the present procedure, the provisions of article 94 apply, namely, that the President then certifies what the Assembly has done in the

matter of making provision for the various heads of expenditure placed before it by Parliament. The new provision is that the procedure regarding certification by the President should be replaced by a proper Appropriation Act, passed by the legislature.

The argument in favour of substituting the procedure for an Appropriation Bill for the provisions contained in article 94 of the Draft Constitution is this. The legislature votes the supplies. It is, therefore, proper that the legislature should pass what it has done in the form of an Act. Why should the work done by the legislature in the matter of voting supplies be left to the President to be certified by an executive act, so to say ? That is the principal point that we have to consider. In the matter of Finance, Parliament is supreme, because, no expenditure can be incurred unless it has been sanctioned by Parliament under the provisions of article 93. If Parliament has sanctioned any particular expenditure on any particular head, then the proper authority to certify what it has done with regard to expenditure on any particular head is the Parliament and not the President. Therefore, the procedure of an Appropriation Act is substituted for the procedure contained in article 94 of this Draft Constitution.

I may also mention that article 94 was appropriate under the Government of India Act of 1935 for the simple reason that the Governor-General had a right to certify what expenditure was necessary for him for discharging his functions which were in his discretion and in his individual judgment. The expenditure which the Governor-General wanted to incur in respect of functions which were in his discretion and in his judgment were outside the purview and outside the power of Parliament. He was entitled to change the amount, to alter that, to add to them. It was consequently necessary that the Governor-General should be the ultimate authority for certification because he had independent power of making such budget provision as he wanted to make in order to discharge his special functions. Under our new Constitution the President has no functions at all either in his discretion or in his individual judgment. He has therefore no part to play in the assignment of sums for expenditure for certain services. That being so, the certification procedure is entirely out of place under the new Constitution. I might also say that the appropriation procedure is a procedure which is employed in all Parliamentary Governments in

Canada, Australia, South Africa and in Great Britain. I might also mention that, when this matter was discussed in 1935 when the Government of India Act was on the anvil, the proposal was made by the Secretary of State himself that the authentication of the expenditure sanctioned by the Assembly would be done by an Appropriation Act and not by certification, but the Government of India of the day did not like the idea of an Appropriation Bill for the reason that the Governor-General had power to fix certain amounts in the budget in order to provide for the discharge of his own functions. Otherwise the Secretary of State himself, as I said, was in favour of this proposal but his proposal was turned down by the Government of India in 1935. But my submission is this, that there is no necessity now for retaining this function which really gives the executive the authority to fix the amount and also to spend the money. I think it would be desirable to bring our procedure in line with the procedure that is prevailing in all countries where Parliament is supreme in the matter of sanctioning money for expenditure.

The other provision which is new which we have inserted is what is called vote on account. Now, it is necessary perhaps to explain why we have introduced it. For that purpose I should again like the House to refer to article 93 as it stands. Under article 93 no money can be issued or spent for any services unless the whole of the detailed budget is passed by Parliament. If you read article 93, that is the effect of it. The budget has to be presented under heads, sub-heads and items. Parliament has to pass that budget with regard to head, sub-heads and items. That is what is called passing the budget. Now, as you all know the budget is an enormous thing involving expenditure of something like 250 crores distributed on various items. If the provision of article 93 is to remain intact *viz.*, no money is to be spent unless all the details are passed by Parliament and if you also have the provision that the budget must be passed before the end of the official year is over, then you must have a very limited time fixed for the discussion of the budget because under the provisions of article 93 you cannot spend any money unless the budget had been passed in all its details. Either, as I said, you give up your right to discuss the budget in full or you make a change in article 93, or you may make another provision making an exception to article 93. The vote on account procedure which we propose to

introduce by an amendment provides for Parliament allowing a lump sum grant to the executive to be spent upon the services of the year for say about two months or so, so that the two months time will be available to Parliament to discuss in a much greater length—I don't say fully—the budget provisions and the financial provisions of the Government. Unless, therefore, you have a provision for a vote on account *i.e.*, lump sum grant given to executive to cover an expenditure for about two or three months, that may be decided by some agreement between the Government and the Leader of the Opposition—unless you make a provision for a vote on account you will not get time to discuss the budget at any greater length than what you have now. The House will remember that last time there was a great deal of feeling in the House that the Budget was rushed through, people had not more than seven or eight days given to them for the discussion of the different items and that the guillotine was applied. If the House therefore desires that it should have more time to discuss the details of the budget, to discuss the details of the financial provision, then some provision has got to be made in the Constitution whereby it will be open to the House to allow the executive to have a lump sum out of the Consolidated Fund, covering an expenditure of two months if the House wants two months for discussion. Since the provisions of article 93 are very stringent in the sense that no money can be spent unless the whole of the budget in all its details is passed we have got to make an exception to the provisions contained in article 93. Those exceptions are made by a provision which is called 'Provision for Votes on account'. These are, if I may say so, the three main changes that we have made in the Draft Constitution, Sir, with these words I move the amendments I have tabled.

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***Shri B. Das :** ...I again feel happy that these articles, as now going to be amended, will be fool-proof and the Ministers will not play truant and will not be extravagant in expenditure. I again congratulate Dr. Ambedkar over it.

The Honourable Rev. J. J. M. Nichols-Roy (Assam : General): Sir, before I speak, I would like to ask Dr. Ambedkar some clarification of certain points. Does this amendment force the Government of India

*CAD, Vol. VIII, 8th June 1948, p. 737.

to have a fund which is to be called a Consolidated Fund? Or is it an enabling amendment?

The Honourable Dr. B. R. Ambedkar : It is already there. It is only a change of name.

The Honourable Rev. J. J. M. Nichols-Roy : Then there must be an Appropriation Act passed in a Legislature and that must be passed in the same session?

The Honourable Dr. B. R. Ambedkar : Yes.

The Honourable Rev. J. J. M. Nichols-Roy : That will take time no doubt. Sir, in view of this I would make a few remarks. There has been a good deal of criticism regarding the expenditure of money and waste of money by the Ministers of the Government of India or it might be by the Governments of the Provinces. I suppose the principles in this article 90 will apply to the provincial Governments also—the same principles are in article 174.

The Honourable Dr. B. R. Ambedkar : Yes.

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***The Honourable Rev. J. J. M. Nichols-Roy :** ...I want to ask Dr. Ambedkar whether that is the position or whether every province will be forced to pass an Appropriation Act in order to appropriate money for expenditure.

The Honourable Dr. B. R. Ambedkar : The Appropriation Act will be compulsory, but the Vote on Account is optional for each Ministry. If any Ministry wants money on Vote on Account, it may ask the Legislature.

The Honourable Rev. J. J. M. Nichols-Roy : Suppose the Ministry in Assam or in any Province wants to follow the same procedure that we are having now, with the certificate of the Governor, will it be open to it to do so?

The Honourable Dr. B. R. Ambedkar : There is no certificate at all of the Governor now.

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† **The Honourable Dr. B. R. Ambedkar :** I do not think I can add anything usefully to what Mr. T. T. Krishnamachari has said. I should reserve my observations for the various amendments which will come up as I have no doubt the same arguments will be put forth.

[Amendments by Dr. Ambedkar mentioned earlier were adopted, others were rejected. Article 90, as amended, was added to the Constitution.]

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*CAD, Vol. VIII, 8th June 1948, p. 738.

† *Ibid.*, p. 741.