

made a little research and I find that the South African Parliament has passed an Act defining the immunities and privileges. I have got a copy; if he wants. I can transmit it for his study. It might be possible later on for our own Parliament to embody the privileges.

Shri Brajeshwar Prasad : Sir, in amendment No. 419 the words “Provincial Parliament” occur. This is a printing mistake. The word is not “Provincial”, but “Provisional”. This is a separate amendment which has not been moved by anybody else. May I move it?

Mr. President : I suppose the Provisional Parliament has got all the powers and privileges of the Parliament which will be of a permanent nature. So this does not arise really.

Shri Mahavir Tyagi : Could we not leave this power to the Parliament itself to decide?

Mr. President : That is exactly what the article says. The Parliament will define the powers and I privileges, but until the Parliament has undertaken the legislation and passes it the privileges and powers of the House of Commons will apply. So, it is only a temporary affair. Of course the Parliament may never legislate on that point and it is therefore for the Members to be vigilant.

Shri H. V. Kamath: Will it be open to the Provisional Parliament to define these powers ?

Mr. President : Certainly, it will be open to it, if it chooses to do it.

Shri B. Das : Sir, in this amendment No. 419, is it the “*Provincial* Parliament” or the “*Provisional* Parliament”?

Mr. President : It is a mistake. It ought to be “Provisional Parliament”. When Mr. Brajeshwar Prasad pointed it out I did not follow him. It is a mistake in printing. So, the Provisional Parliament has the same right as the permanent Parliament. Is any discussion necessary? So, I will put this amendment to vote.

The question is:

“That for clause (3) of article 85, the following clause be substituted—

- (3) In other respects, the privileges, immunities and powers of each House of Parliament and of the members and the committees of each House shall be such as may from time to time be defined by Parliament by law, and until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees at the commencement of this Constitution.’ ”

The amendment was adopted.

Article 111

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

“That for the proviso to clause (1) of article 111, the following proviso be substituted:—

‘Provided that no appeal shall lie to the Supreme Court from the judgment, decree or final order of one judge of a High Court.’ ”

This, in effect, simplifies the position as it now is. The present proviso is a longish one. The present proviso which the amendment seeks to supplant reads thus:—

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

It is felt that this is not necessary by reason of the fact that this was borrowed from the original Letters Patent, which was amended in 1928. The amended

[Shri T. T. Krishnamachari]

Letters Patent, as it is applied to our courts is simpler than this longish proviso and the purport of it was more or less analogous to the provision that we are now seeking to introduce as a proviso to article 111, instead of the original proviso. I do not think there is any scope for discussion in this particular matter, because what is done by this amendment is to simplify and restrict the limitation that is put in regard to appeals to the Supreme Court. If honourable Members are satisfied with this explanation it can go through. If, on the other hand, they want an elaborate explanation of the whole question of how the powers of benches in the high courts were affected by the Letters Patent, and how much we have borrowed there from. I think my honourable Colleague Mr. Alladi Krishnaswami Ayyar is prepared to satisfy Members on this particular point.

Sir, I move.

Mr. President : The question is:

“That for the proviso to clause (1) of article III, the following proviso be substituted :

‘Provided that no appeal shall lie to the Supreme Court from the judgement, decree or final order of one judge of a High Court.’ ”

The amendment was adopted.

Article 112

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

“That with reference to amendment No. 364 of List XV (Second Week), for article 112, the following article be substituted:-

‘112. (1) The Supreme court may, in its discretion, grant special leave to appeal from any judgement, decree, determination sentence or order in any cause or matter passed or made by any Court or tribunal in the territory of India.

Special leave to appeal
by the Supreme Court.

(2) Nothing in clause (1) of this article shall apply to any judgement, determination, sentence or order passed or made by any court of tribunal constituted by or under any law relating to the Armed Forces.’ ”

The amendment to clause (1) of article 112 as it now stands is a very simple one. The words “final order” in the original article are sought to be removed and revised by the insertion of the words “determination, sentence or order” So far as clause (2) is concerned, the amendment must be perfectly clear to honourable Members. It seeks to exclude from the jurisdiction of the Supreme Court (the omnibus jurisdiction which article 112 confers on it) any decision of a court-martial covering matters which relate to the armed forces and matters which are governed by the Army Act. I understand that this follows the practice that now obtains in the U.K. where courts do not interfere with the decisions of the court-martial. I would at once confess that this matter, which escaped our attention at the time this article was framed and put before the House, has now been brought to our notice by the Defence Department, who have convinced us that a provision of this nature which obtains currency in other countries should also find a place in our Constitution.

Sir, if you would permit me I would like to move also another amendment which relates to the same subject, so that discussion on the whole matter might be taken up together.

Sir, I move:

“That to article 203, the following clause be added, namely:—

‘(4) Nothing in this article shall be deemed to extend the powers of superintendence of a High Court over any court or tribunal constituted by or under any law relating to the Armed Forces.’ ”