

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 Ambedkar's amendment superseded this amendment.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- (b) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such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

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 :—

‘205. (1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct the expenses of High Courts.

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, allowances and pensions payable to or in respect of such officers and servants shall be fixed by the Chief Justice of the Court in consultations 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.

Mr. President : There are two amendments by Mr. Mahboob Ali Baig to this article. No. 141 and No. 142 in the printed List of Amendments to amendments.

(The amendments were not moved.)

Now the article is for general discussion.

Shri Brajeshwar Prasad (Bihar : General) Mr. President, Sir, I am not in favour of any whittling down of the powers of the High Courts. I feel, Sir, that in matters of salary, leave, pensions, etc. consultation with the Governor is necessary, if the word ‘governor’ here does not mean governor in consultation with the cabinet—with the Prime Minister. It is not clearly mentioned—it would have been better if it had been—that the Governor in his discretion should be consulted so far as the salaries, allowances and pensions of the Judges and other servants of the High Courts are concerned. Sir, there is another

provision that the conditions of service should be prescribed by the Chief Justice subject to any law made by the State Legislature. I do not want that either the Governor or the State Legislature should have anything to do with the provincial High Courts. There should be an integrated judiciary in this country. All the High Courts should form an integral part of the Supreme Court. I am against the provincialisation of the High Courts. I am against the interference of the executive authorities, the Governor and the Legislature, because of my well-known feeling against provincial governments. If these authorities are allowed to have any say in the administration of the High Courts, then there will be no independence for the provincial High Courts. Already the feeling is rampant, charges have been made, that there have been cases of interference with the administration of justice. I am definitely of opinion, Sir, that instead of the State Legislature and the Governor, we shall have to make a provision that Parliament and the President should be consulted. I know that the administrative expenses of these High Courts shall be charged upon the provincial revenues, but I think this difficulty can be obviated by charging this expenditure upon the Central revenues. Of course, this suggestion will entail an adjustment of the sources of the Central and provincial revenues. But in the interests of efficient administration, in the interests of one judiciary in the country, whatever difficulty there may be in the way must be overcome, and all questions of pensions, salaries, leave, etc. of the Judges and other servants of the High Courts should be placed in the hands of the Parliament and the President in consultation with the Chief Justice of the Supreme Court.

Mr. President : Do you wish to say anything, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar : No, Sir.

Sardar Hukam Singh (East Punjab : Sikh) : Mr. President, Sir, I should like to oppose this amendment moved by the Honourable Dr. Ambedkar. Apparently it looks to be very innocent, but I am afraid this might have far-reaching repercussions so far as the independence of the Judiciary is concerned. If we look at the different stages through which our Draft has been developing, I am constrained to conclude that we have been receding from democratic principles and centralising all powers in the executive or the legislature; rather I might say that we are proceeding towards the evolution of a police State. The history of this article is only one instance of so many and posterity would judge whether we are growing wiser everyday or whether we are going against democratic principles recognised all over and trying to centralise most of the powers in the legislature. If we just have a look at the original Draft, we will find that article 205 as drafted in February 1948 only provided that the salaries, allowances, pensions, etc. payable to or in respect of the officers and servants of a High Court shall be fixed by the Chief Justice of the High Court in consultation with the Governor of the State in which the High Court has its principal seat. But when in November this List of Amendments was published, there was some change and then it was laid down in the proviso to this article :

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

I think that so far there was no harm done, if we confine ourselves to this consultation. But now the present amendment says :

“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.”

[Sardar Hukam Singh]

This substitution seems to me to be a very serious one, though it looks to be a small matter on the face of it. The judiciary is the only safeguard against any infringement of public liberties and any encroachment however small on its independence, so far as I can make out, should be carefully watched and jealously guarded against. The judiciary itself, it is admitted, is too feeble to defend itself against the encroachment by the executive and the legislature and any dependence of it or inter-linking it with the legislature or the executive would jeopardise its independence. There is always a danger of its being overpowered by the executive or the legislature. As I have said already, I find this change towards vesting of more and more powers in the legislature and impairing the independence of our courts. In my opinion such a change as this amendment provides may turn out to be a source of friction between the judiciary and the executive by creating pinpricks. When you ask the Chief Justice to have the approval of the Governor, I think, it would humiliate him and bring him to a subordinate position. Psychologically at least such a procedure would have that effect. The very fact that the Chief Justice has to consult the Governor would be a sufficient guarantee that the rules would be framed in a spirit of accommodation. Can't he be trusted that he would not unnecessarily burden the exchequer by extravagant expenditure? No doubt the Governor is the keeper of the purse, but at the same time the judiciary is the guardian of the civil liberties and nothing should be done to jeopardize the independence of the latter. Consultation would be sufficient and I think this amendment now moved is a dangerous one and I oppose it.

Mr. President : The question is:—

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

‘205. (1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other judge or officer of the Court as he may direct :
Offices and servants and the expenses of High Courts.

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 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.

(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’.”

The amendment was adopted.

Mr. President : The question is :

“That article 205, as amended, stand part of the Constitution.”

The motion was adopted.

Article 205, as amended, was added to the Constitution.