

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 the court as he may direct:

Provided that the President 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 Union Public Service Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of services 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.”

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.

(Amendments 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.

Shri T. T. Krishnamachari : Sir, I would like to say a word. There is one particular point in Dr. Ambedkar’s amendment to which I would like to invite the special attention of this House. I refer to clause (3) which makes the administrative expenses of the Supreme Court, including salaries, allowances and pensions payable to or in respect of the officers and servants of the court a charge on the revenues of India. Sir, I want to draw the attention of the House to this particular clause, because it has been the intention of some of us that all items chargeable to the revenues of India should be brought in under one particular article, namely, article 92 if I remember aright. The only reason why this particular clause has been allowed to come in here is the fact that article 92 has been passed over—it has not been considered

by the House. So I would like to say that the House might perhaps at the appropriate time, when article 92 is being considered, permit a transposition at that stage of all clauses similar to this one—clause (3)—wherever it occurs, whether here, or in the matter of the Speaker's establishment or in the matter of the Auditor-General's establishment or in the matter of the Public Service Commission, should be brought under one head, so that people will know, at any rate the future legislators will know, what are the items which are sacrosanct and which are a charge on the revenues of India.

The second point is this. While I undoubtedly support the amendment moved by Dr. Ambedkar, I think it should be understood by the Members of this House, and I do hope by those people who will be administering justice and also administering the country in the future that this is a safeguard rather than an operative provision. The only thing about it is that a matter like the employment of staff by the Judges should be placed ordinarily outside the purview of the Executive which would otherwise have to take the initiative to include these items in the budget for the reason that the independence of the Judiciary should be maintained and that the Judiciary should not feel that they are subject to favours that the Executive might grant to them from time to time and which would naturally influence their decision in any matter they have to take where the interests of the Executive of the time being happens to be concerned. At the same time, Sir, I think it should be made clear that it is not the intention of this House or of the framers of this Constitution that they want to create specially favoured bodies which in themselves becomes an *Imperium in Imperio*, completely independent of the Executive and the legislature and operating as a sort of superior body to the general body politic. If that were so, I think we should be rather chary of introducing a provision of this nature, not merely in regard to the Supreme Court but also in regard to the Auditor-General, in regard to the Union Public Service Commission, in regard to the Speaker and the President of the two Houses of Parliament and so on, as we will thereby be creating a number of bodies which are placed in such a position that they are bound to come into conflict with the Executive in every attempt they make to display their superiority. In actual practice, it is better for all these bodies to more or less fall in line with the regulations that obtain in matters of recruitment to the public services, conditions of promotion and salaries paid to their staff. My own little experience of what is happening in regard to bodies of a similar nature, though not fortified by a constitutional provision of this kind, is that it does not do any good to have separate compartments in public service. What happens usually in this. If promotions and all matters of the nation are confined within the small area or the small ambit of a particular body, it often happens that the person who comes to the top of the Executive position in that body stays put for all time if that particular post is not brought into the cadre of the general services of the State, whether Central or Provincial; there will be a lot of inconvenience in having a sort of bottleneck into which a particular person who rises to the top of this narrow cadre finds that he will not be able to get out of it except by dismissal or removal; whereas, if the establishment of these particular bodies forms part of the general service and person employed therein who is found unsuitable in any one department can be transferred to another sphere of activity. It would stand to reason that it would be better to make it clear in passing that this article would not really operate as a bar to exercising full freedom by the authorities concerned of the powers given under this section. Nevertheless, it should be made clear that it is not the intention of the framers of the Constitution and this House that these bottlenecks should be created and that these bodies should function irrespective of the needs of the time and irrespective of the conditions that operate in the other services. It might happen that in the general service there may be a reduction of salaries, and if the Chief

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Justice says 'no' to a request of the Executive to fall in line on the ground that what happens to the executive departments is none of his concern, that so far as his department is concerned he will not permit a reduction of salaries, it will mean that we are helping to keep this body apart from the general services and it will be a source of conflict. So as the Executive and the services are much concerned, I do hope that the mere fact of putting these special officers like the Chief Justice and the Auditor-General in a privileged position will not mean that they will have to exercise their right in entirety but that such a position is a safeguard against a possible misuse of the power that is given to the Executive when there is need for them to expand their services, or in the matter of recruitment and so on. With these remarks, I think the proposition moved by my honourable Friend, Dr. Ambedkar, might go through.

Shri K. M. Munshi (Bombay : General): Mr. President, I heartily support the amendment (No. 1967) moved by my Friend Dr. Ambedkar and take this opportunity once again to emphasise what I said while opposing Professor Shah's amendment the other day, that this Constitution, though it has not accepted the doctrine of the separation of powers, has maintained the independence of the judiciary to the utmost possible extent. Any fear therefore that this independence will not be maintained because we have not accepted the doctrine of separation of powers is an entirely unfounded one. It must be and I hope it will be the duty of the House at all times to maintain the independence of the judiciary.

My friend who spoke last supported the amendment which I also support. But he will forgive me if I do not associate myself with some of the remarks that fell from him. A judiciary is an independent organ of the State. I entirely agree with him that we cannot have kingdoms within kingdoms. The legislature, the executive and the judiciary are all organs of the State which must be maintained in their proper and respective places in a wholesome Constitution and therefore it is necessary, as stated in the clause, that the 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 the court as he may direct. Those officers are doing work in connection with the administration of justice. They are not officers who can be transferred to the executive side or to other Departments and it is essential that the cadre of such officers who are associated with the administration of justice should have its undiluted loyalty to the judiciary which it serves. The qualifications also are likely to be different. In this respect the provision with regard to reference to the Public Service Commission is wholesome. It will mean that there will be no favouritism in the matter of appointments. Once a person is appointed to the staff of the judiciary he must continue to be associated with the department. Therefore clause (1) is very important.

The amendment moved by Shri T. T. Krishnamachari is necessary, because so far as the financial burden is concerned, it can only be decided by the legislature. After all, the Parliament is responsible for the finances of the country and therefore the salaries, allowances and pensions must receive the approval of the President, *viz.*, the party in power. But we must safeguard the matter in this respect in a way that the independence of the judiciary will always be maintained.

In this connection I may draw the attention of the House to the comments made in a Memorandum submitted by the Federal Court and the

Chief Justice of the provincial High Courts. What they have stated is this:

“Thanks to the system of administration of justice established by the British in this country, the judiciary until now has in all matters played an independent role in protecting the rights of individual citizens against encroachment and invasion by the executive power. Unfortunately, however, a tendency has of late been noticeable to detract from the status and dignity of the judiciary and to whittle down their powers, right and authority which, if unchecked, will be most unsatisfactory.”

Well, the whole provision in this amendment is intended to prevent any whittling down of the status or dignity and the powers that they possess. It is essential that in a democracy the judiciary must be there to adjust the differences between citizen and citizen, between State and State and even between the Government of India and the State. If that independence is not secured, I am sure we would soon drift towards totalitarianism. I know that the country is passing through a crisis and naturally large powers have to be taken by the executive to preserve our national existence. But, at the same time the line of demarcation between a democratic method of preserving national existence and a totalitarian method should not be lost sight of. In that connection the independence of the judiciary demarcates the line between the democratic method and the totalitarian method. I am sure the provision of this Constitution will sufficiently guarantee the independence of the judiciary. With these words I support the amendment.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. President, after the speeches of my Friends Messrs. Krishnamachari and Munshi which the House heard just now, very few words are necessary to commend both the parts for the acceptance of the House.

There are two principles involved: One is that you must be able to maintain the independence of the judiciary and unless the judiciary has sufficient control over its own establishment its independence may become illusory. If the establishment looks for preferment or for promotion to other quarters, it is likely to sap the independence of the judiciary. But at the same time, it has to be recognised that the judiciary and its establishment would have to draw their allowances and their salaries from the public exchequer. The ultimate person who will be affected is the taxpayer. Therefore, while on the one hand you must secure the independence of the judiciary, the interests of the taxpayer on the other hand will have to be safeguarded in a democracy. That can only be done by giving sufficient control to the Government of the country which is responsible to the House of the People in the matter of finance. The effect of the present provision is that every time the expenses are not subject to the vote of the House. That is a good thing. It is made a primary charge on the public exchequer. The second effect is that the court concerned will have complete control over its appointments. At the same time this provision safeguards the interests of the public and of the Government in so far as the Government is representative of the public for the purpose of securing the finance of the country. That is, if there is to be an increase in the salary, the Chief Justice or other Judicial authority cannot take a line of his own. The problem actually arose in Madras at the time of the First Congress Ministry. The Chief Justice of the Madras High Court took up the position that the High Court stood on a different footing from the other establishments under the control of the provincial Government. The Cabinet differed from him and decided and he could have complete control over his establishment, but that in regard to the general scale of salaries, etc., he should fall in line with the others. This is a very fundamental principle. Whenever you are dealing with a question of salary or emoluments of a particular functionary you must adjust it to the general financial system of the country.

[Shri Alladi Krishnaswami Ayyar]

You cannot secure special privileges for any particular class of the government servants or government officers or even sometimes of judges, without considering the general public economy and finances of the country. All the three principles have been secured by the original proposition as well as by the amendment which has been placed before the House. Under those circumstances I submit that both amendments may be accepted by the House as being consistent with the maintenance of the dignity and independence of the judiciary and at the same time securing the interests of the common taxpayer.

Shri M. Ananthasayanam Ayyangar (Madras: General): Mr. President, Sir, it is sometimes said that all the arguments were in favour of the plaintiff but the decree has gone against him. That is what I felt when I read the amendments and also heard the arguments of my Friend Mr. Alladi Krishnaswami Ayyar and the others who spoke before him. They want that the Supreme Court should be absolutely independent of the Executive and that the salaries of the judges ought not to be left to the vote of the legislature from time to time. This article 122 gives the jurisdiction to the Chief Justice for fixing of the salaries, allowances and pensions payable to or in respect of the officers and servants of the Supreme Court. This is sought to be modified by this amendment. Here in the clause as it stands, the Chief Justice need not take the approval of the President. It says "in consultation with the President". Therefore the Chief Justice is at liberty, consistent with his own independence and the independence of his officers to fix their salaries and allowances. The word "consultation" is deliberately used here. Now they have given this amendment to remove the word "consultation" and put in the word "approval". "Approval" is quite different from "consultation". It is now open to the President to block it. But who is the President to do it? Under the Government of India Act the Governor-General need not consult anybody and it was absolutely in his discretion to do anything he liked. Here in this Constitution the President means "in consultation with his Ministers". Therefore what really will happen is the Chief Justice will have to dance to the tune of the Minister for the time being. It may be said that the Cabinet as a whole will advise the President. In the Cabinet the Minister of charge of Law or Law and Order will have the controlling voice. The voice of the Minister is normally the voice of his Secretary. Therefore the Chief Justice of the Supreme Court will have to dance to the tune of a mere Secretary in the Home Department or the Law Department. What this amendment means is that he will be at the beck and call of the Ministry and so-called independence of the judiciary will be taken away. Therefore I do not see how this amendment is consistent at all with the principle of the independence of the judiciary and I do not see the wisdom of it. After this clause was originally framed, the framers have changed their opinion and they want to bring this clause into line with the provision in the Government of India Act. Section 216 of the Government of India Act as adapted refers to this matter.

"The administrative expenses of the Federal 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 the Dominion, and any fees or other moneys taken by the court shall form part of those revenues."

Section 242(4) proviso (b) reads:

"Rules made under the said provision (2) by a chief justice shall, so far as they relate to salaries, allowances, leave or pension, require the approval of the Governor-General."

They want to copy that provision. The Governor-General as representing the King, wanted to have absolute jurisdiction over all departments in this country.

including judges of the High Courts and the Federal Court. Why should we copy that provision? I am not in favour of this amendment. This amendment is not consistent with the principle of the separation of the judiciary from the executive, to which we are all committed and by which all of us stand.

Then, Sir, as regards clause (2) making the expenses of the Supreme Court including all salaries, etc., chargeable on the revenues of the Union, there was some doubt raised in some quarters whether it should be chargeable only in respect of the salaries of the judges or in respect of the salaries, etc., of other officers and servants also. It was claimed that if this is done, there will be many islands, various autonomous authorities created. The Supreme Court is an autonomous body, regulating its own affairs, including the salaries and pension of its officers. This is one set. The Auditor-General is the second set. The Public Service Commission is the third set. Therefore some people who wanted that Parliament should have control from time to time wanted to remove this clause also. I do not agree with that view. This clause ought to stand, for this reason that when with the one hand you have allowed the Chief Justice to regulate the salaries and pensions, with the other hand you cannot allow Parliament to interfere with these from time to time. If you do that, the whole thing will become nugatory. Even now, it is not too late and I would urge the honourable the Mover to reconsider this decision. If, however, he thinks that it should stand, I am not opposing this amendment. I am agreeable to this amendment.

Pandit Thakur Das Bhargava : *[Mr. President, Sir, I oppose the amendment regarding the approval by the President.

Every constitution provides for three basic requirements, viz., firstly, an independent judiciary; secondly, a legislature, and thirdly an executive. It would be a mistake for one to ask as to which of the three is of greater or lesser importance, because all the three, though independent in their respective spheres are component parts of the body politic of the State. A constitution, wherein a fully independent judiciary is not provided for, can never guarantee individual liberty to the people. However, we should examine the powers we have provided for the judiciary in our constitution and this would enable us to know whether it is proper or not to give such power to it. If you refer to article 109 which has not been taken into consideration as yet, you will find its wording to be rather significant. It confirms the provision that the Government of India will itself appear before the judiciary either as plaintiff or as defendant. Naturally it is clear from the words of that article that the Federal Government and the States would be appearing as parties to suits before the Supreme Court. Besides, if we refer to the other articles in the constitution, if we read the articles 7-20 dealing with Fundamental Rights or go through various other articles, it will be clear to us that the Supreme Court is the foundation stone of our liberty. It would never be right and proper to subordinate the powers of the Supreme Court to an individual entrusted with the powers of an executive nature. The previous article 102 has stated in plain words "The salaries, allowances and pensions payable to or in respect of the officers and servants of the Supreme Court shall be fixed by the Chief Justice of India in consultation with the President." I would respectfully submit Sir, if the words 'approval of the President' are added here, it will destroy the independence of the judiciary. It can never be desirable to do so. The demand for the addition of these words betrays a fear that the judiciary might increase to such an extent the salaries of its employees as may not be acceptable to the Government. But I can say that similar apprehensions may be expressed by the officers of the judiciary with regard to the use of his powers by the President. Again it may be suspected with equal force that the legislature would arbitrarily increase the number of

*[] Translation of Hindustani speech.

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Ministers. To entertain such doubts about the President or the Chief Justice indicates that we do not have complete confidence in them. I beg therefore, to submit that it is not proper to trifle with the powers of the Chief Justice in this way. I appeal Sir, that the judiciary must be given the same status that the Legislature and Executive have got. On their co-ordination depends our future, our liberty and every other thing which we want to develop in our hand. If we trifle with the powers of any of them it may land us in a number of difficulties. The judiciary might negative all our liberty; the legislature might enact laws which might cripple the judiciary and similar apprehensions might arise in respect of the executive. Our welfare, therefore, lies in their co-ordination. There is no cause for suspicion in this respect which can justify the addition of the words 'with the approval of the President'. As regards the provision in Section 242 of the Government of India Act, I would submit that we are not concerned with what the old Government wanted to do. What we are concerned with today is that our judiciary should be entirely independent so that we can rely on it. For that it is essential that it should work independently and the President or the Legislature may not be able to interfere with it. It is, therefore, essential that its rights should not be reduced. As we are providing that the salary of the President would be a charge on the Government revenue, so also the salary of the Chief Justice should be a charge on the revenues of India. Similarly the expenses incurred on all the officers, whose independence is essential for the proper working of this Constitution, should also be charged on the revenues. Once you have provided a sum for them, the Chief Justice should have power to spend it as he likes, and the Legislature and Executive should not be able to interfere in that.

You have just passed the Directive Principles in which you have laid down that you want the separation of judiciary and the executive. I want to ask as to how you can effect it, if you do not allow the Chief Justice and his Department full liberty to spend. Do you want that for every petty post the Chief Justice will have to say it is essential and then send the proposal to the President, who ultimately means the Prime Minister and his Chief Secretary in that ministry and the Secretary etc. will comment as to whether the posts are necessary or not? Will it be proper that the Chief Justice should write for every post like this? There is no reason for you suspect that the one person in whose hands you would place the duty of maintaining the independence of India would not be duly discharging his duties. I respectfully submit that the underlying idea of these amendments is that we are apprehensive that the Chief Justice may spend too much money or contravene the constitution. There is no cause for such suspicion. We have seen in India that even under the British rule when the Judiciary was their own, it did not care for the executive. Do we not know that our Federal Court had invalidated section 26 of the Public Safety Act? If you wish that in this country we should have the same freedom as we have hitherto, or rather that we should have more independence it is essential that the status of the judiciary should not be lower than that of the Executive or Legislature.

The Members of the Assembly might remember that at the time of discussion on article 15, the question had arisen whether the judiciary would have the right to say, once a law has been enacted by the Legislature, that it is in accordance with justice or not, as is the convention in America where the judiciary can express its opinion whether a law of the Legislature is legal or not so far as the life and personal liberty of an individual is concerned. At that time the question under consideration was whether the judiciary should be given

so much power that it can even declare that any law enacted by the Legislature is not proper and valid. As such questions arise before you and as the House was, in a way, in favour of the proposal, I hope that in future too when any question arises, in this connection, the House would support the rights of the judiciary. When we want to give so many rights to the judiciary, I respectfully submit, that we should also not, owing to any fear, provide that for the posts of petty servants, the Chief Justice will have to depend on the Executive. This amendment is not proper and I oppose it.]

Shri Jaspat Roy Kapoor : Mr. President, Sir, I must confess that I do not feel happy either at the phraseology of this article 122, or at the idea underlying it. Sir, I yield to none in my desire that the judiciary of the country should be absolutely independent of the executive, but I think the independence of the judiciary must be confined only in respect of the administration of justice and under the garb of the independence of the judiciary, we should not go on empowering the judiciary to do things which fall ordinarily within the jurisdiction of the Executive or the Parliament. According to article 122, we are going to invest the Supreme Court, the Chief Justice and such of its other judges as may be nominated by the Chief Justice, as also some subordinate officers of the Supreme Court as may be nominated by the Chief Justice, with the right and authority of appointing many important persons, of filling up many important posts in the Supreme Court. I do not think Sir, there is any necessity for investing the Supreme Court with powers in respect of all these appointments. Then, Sir, we are not only going to invest the judiciary with this power, but we are going to give this power in an absolutely unfettered manner. Let us see what clause (1) says: "Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other judges or officer of the court as he may direct," and then it goes on: "Provided that the President 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 Union Public Service Commission."

Now, Sir, it is well and good that this proviso is being incorporated herein, but I feel, that in the place of the word 'may', there should have been the word 'shall'. The proviso should have definitely provided for consultation with the Union Public Service Commission. As I interpret it, it is liable to mean that the President may or may not make rule providing for consulting the Union Public Service Commission. For, it says, 'Provided that the President may by rule require.....'. It does not mean that in all cases the Public Service Commission must necessarily be consulted. I would, therefore, have very much wished that it should have been made obligatory that the views of the Public Service Commission shall always be taken into consideration.

Coming to clause (2), we find that in the proviso it is laid down that the salaries, allowances and pensions payable or in respect of such officers, etc., shall be fixed by the Chief Justice of India in consultation with the President. Of course, wisely enough I should say, Sir, the Honourable Dr. Ambedkar has today moved an amendment to the effect that in place of the words "in consultation with", we should have the words 'with the approval of' the President. This after-thought of course is a welcome thing. But, I submit that it would have been much better if all these appointments were originally to be made by the President himself. The proviso, as it stands, means that at the outset it is the Chief Justice or some other person nominated by him, who shall apply his mind to this subject. He will select some persons, fix their salaries and allowances and he shall, thereafter, simply put the whole thing before the President for his approval. Now, Sir, this is placing the President in a rather awkward and embarrassing position. If a proposal comes from such a high dignitary as the Chief Justice, the President will feel great

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delicacy in not readily accepting those suggestions. Ordinarily therefore, he will think, “why should I come in conflict with the Chief Justice in these matters? Let him have his own way”, though, if it were originally left to the President, his decision may have been probably very much different. I think, therefore, that it would have been much better that in this provision we should have had it laid down that all these things shall be decided by the President himself, and not by the Chief Justice with the approval of the President.

Then I come to clause (3) of this article. According to this clause, the rights and privileges of the Parliament are being encroached upon. The clause lays down: “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.” I specifically draw the attention of the honourable Members of the House to the words, ‘shall be charged upon the revenues of India’. The implication of this clause is very serious, and of a far reaching character. It means that Parliament shall have absolutely no voice in this matter, and whatever the monetary proposals in respect of these appointments they shall not at all come before Parliament, and they shall stand accepted by the Government automatically, and the Parliament shall have absolutely no voice in the matter, and that this will not be subject to the vote of the Parliament at all. I see absolutely no justification why these salaries and allowances, etc., should not be subject to the vote of Parliament. I can quite understand that we should have such a provision with regard to the salaries and allowances of the Judges. That we have already provided when we passed the relevant articles in respect thereto. But, so far as even the ordinary chaprasi of the supreme court is concerned, even so far as the ordinary punka-pullar of the Supreme Court is concerned, his salary shall not be subject to the vote of Parliament. Why? We should not suspect others; but we should trust ourselves too. If we are asked to trust others, let us not be told that we should not trust ourselves. We trust the Judges of the Supreme Court in many important respects; let us trust the Parliament also to do the right thing in the matters of fixing salaries etc. If a power is not necessary to be conferred on the Judges of the Supreme Court, why should we thrust it upon them and divest ourselves of our own rights and privileges? The salaries of its subordinate officers should certainly be subject to the vote of Parliament and should not be out of the jurisdiction of Parliament. Take for instance, the chief Justice of the Supreme Court places before Parliament.....

Mr. President : The honourable Member has taken much time. I do not think it is necessary to prolong the discussion. We are nearing twelve o’clock.

Shri Jaspat Roy Kapoor : I am finishing, Sir, Supporting the Supreme Court places a huge budget extending over a crore of rupees or more. If Clause (3) stands as it is, Parliament shall have absolutely no control over that and the whole amount would have to be granted to the Supreme Court. It is said that we should not expect the Supreme Court to make such absurd proposals. I admit they will not indulge in absurdity. But, there are certain things which are within the special knowledge of Parliament which may not be within the knowledge of the Supreme Court. The financial position of the country is within the special knowledge of the Parliament. The Supreme Court Judges being ignorant of the actual financial position of the country may draw up budgets involving very huge expenses. For these reasons, I submit that this article is not very well conceived, nor properly worded.

Shri Krishna Chandra Sharma : (United Provinces: General): Sir.....

Mr. President : I hope the honourable Member will not take more than five minutes. I want to close the discussion of this article today.

Shri Krishna Chandra Sharma : Much has been talked about the independence of the judiciary. I do not quite understand where that question arises. There is nothing to restrict the independence of the judiciary so far as the article of the amendments are concerned. The original article 122 was that the Chief Justice of India will fix the salaries and allowances, etc., in consultation with the President. The amendment seeks only to substitute the word 'approval' for consultation. As my honourable Friend Mr. Jaspat Roy Kapoor said, it is not a question of independence or dignity of the Chief Justice of India. It is simply a question of the finances of the country. The President knows much better about the finances of the country and in accordance with the finances of the country, he will fix the salaries and allowances. There are other people in the administration of the country who would be putting in almost the same amount of labour, with the same capacity and qualification. Necessarily the same type of work with the same capacity, ability and qualification should carry similar salaries, allowances, pensions and other emoluments. So the question of independence of or the question of having any restriction or restrained whatsoever on the independence of the Judiciary does not arise at all. The appointment of the officers of the Court is entirely in the hands of the Supreme Court Judges and that should be so, because they have got to get work from these officers. In certain cases, when the President shall think fit, he is empowered to lay down rules that in certain classes of services, the Public Service Commission would be consulted, and there is no question here also of doing anything derogatory to the dignity and prestige of the Chief Justice. It is a question of State Policy, for the administration of the whole country. And so I commend both the amendments, for the acceptance of the House.

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, if 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 the 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

[The Honourable Dr. B. R. Ambedkar]

approval of the President, which of these two alternatives we have to choose. No doubt, the original draft, "consultation with the President," left or appeared to leave the final decision in the hands of the Chief Justice, while the new proviso with the words "approval of the President" seemed to leave, and in fact does, and is intended to leave the final decision in the hands of the President. Now Sir, in deciding this matter, two considerations may be taken into account. One is, what is the present provision regarding the Federal Court? If honourable Members will refer to Section 216, sub-clause (2) of the unadapted Government of India Act, 1935, they will find that the provisions contained therein leave the matter to the approval—I am sorry it is section 242 sub-clause (4)—leaves the matter to the approval of the Governor-General. From that point of view, we are really continuing the position as it exists now. But it seems to me that there is another consideration which goes to support the proposition that we should retain the phrase "with the approval of the President" and it is this. It is undoubtedly a desirable thing that salaries, allowances and pensions payable to servants of the State should be uniform, and there ought not to be material variations in these matters with regard to the civil service. It is likely to create a great deal of heart-burning and might impose upon the treasury an unnecessary burden. Now, if you leave the matter to the Chief Justice to decide, it is quite conceivable—I do not say that it will happen—but it is quite conceivable that the Chief Justice might fix scales of allowances, pensions and salaries very different from those fixed for civil servants who are working in other departments, besides the Judiciary, and I do not think that such a state of things is a desirable thing, and consequently in my judgment, the new draft, the new amendment which I have tabled contains the proper solution of this matter, and I hope the House will be able to accept that in place of the original proviso.

There is one other matter which I might mention, although it has not been provided for in my amendment, nor has it been referred to by Members who have taken part in this debate. No doubt, by clause (3) of my new article 122 we have made provision that the administration charges of the Supreme Court shall be a charge on the revenues of India, but the question is whether this provision contained in clause (3) is enough for the purpose of securing the independence of the judiciary. Now, speaking for myself, I do not think that this clause by itself would be sufficient to secure the independence of the Judiciary. After all, what does it mean when we say that a particular charge shall be a charge on the consolidated funds of the State? All that it means is this, that it need not be put to the vote of the House. Beyond that it has no meaning. We have ourselves said that when any particular charge is declared to be a charge on the revenues of India, all that will happen is that it will become a sort of non-votable thing although it will be open to discussion by the Legislature. Therefore, reading clause (3) of article 122, in the light of the provisions that we have made, all that it means is this, that part of the budget relating to the Judiciary will not be required to be voted by the Legislature annually. But I think there is a question which goes to the root of the matter and must take precedence and that is who is to determine what are the requirements of the Supreme Court. We have made no such provision at all. We have left it to the executive to determine how much money may be allotted year after year to the judiciary. It seems to me that that is a very vulnerable position and requires to be rectified. At this stage I only wish to draw the attention of the House to the provisions contained in section 216 of the Government of India Act, 1935, which says that the Governor-General shall exercise his individual judgment as to the amount to be included in respect of the administrative expenses of the Federal Court in any estimates of expenditure laid by him before the Chambers of the Federal

legislature. So that if the executive differed from the Chief Justice as to the amount of money that was necessary for running properly the Federal Court, the Governor-General may intervene and decide how much money should be allotted. That provision now of course is incompatible with the pattern of the constitution we are adopting and we must therefore, in my judgment, find some other method of securing for the Chief Justice an adequacy of funds to carry on his administration. I do not wish for the moment to delay the article on that account. I only mention it to the House, so that if it considers desirable some suitable amendment may be brought in at a later stage to cover the point.

Mr. President : I shall first put to the House Dr. Ambedkar's subsequent amendment to his original amendment.

The question is:

"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.' "

The amendment was adopted.

Mr. President : Now I shall put Dr. Ambedkar's amendment No. 1967 as amended. The question is:

"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 Chief Justice of India or such other judge or officer of the court as he may direct.

Provided that the President 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 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 rules made under this clause shall, so far as they relate to salaries, allowances, leave or pension, require the approval of 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 money taken by the court shall form part of those revenues.' "

The amendment was adopted.

Mr. President : The question is:

"That article 122, as amended, stand part of the Constitution."

The motion was adopted.

Article 122, as amended, was added to the Constitution.

Article 123

Mr. President : The consideration of article 123 will stand over for the reason for which Article 109 to 114 have been held over.

The Assembly then adjourned till Eight of the Clock on Monday, the 30th May, 1949.
