

CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 12th October 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(Contd.)

Second Schedule—(Contd.)

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. President, Sir, I would like to say a few words in explanation of the provisions contained in the Second Schedule, and I would like to begin with that part which deals with the salary of judges.

First of all, with regard to the Supreme Court, it will be seen that the salaries of the judges of the Supreme Court on the commencement of the Constitution will be for the Chief Justice Rs. 5,000 per month *plus* a free house, and the salary for a puisne judge will be Rs. 4,000 per month *plus* a free house. With regard to the Supreme Court, the position is this, that according to the Constitution, any Federal Court judge who chooses to become a judge of the Supreme Court will be appointed as a judge of the Supreme Court. If any judge of the Federal Court therefore chooses to become a judge of the Supreme Court, the question that arises is this: whether he should get the standard salary which has been fixed under the Constitution for the judges of the Supreme Court or whether any provision should be made for allowing him, to continue to draw the salary which he now gets as a judge of the Federal Court. The decision of the Drafting Committee has been that while the normal salaries of the Supreme Court Judges should be as stated in the Second Schedule. Provision ought to be made to enable the Federal Court judges to draw the salary which they are drawing at present in case they choose to become judges of the Supreme Court. For this purpose, the judges of the Federal Court are divided into two categories—those who are appointed as permanent judges before the 31st October 1948 and those who are appointed after 31st October 1948. In the case of the first category, *i.e.*, those who are appointed before the 31st October 1948, they will get a personal pay which would be equivalent to the difference between the salary which has been fixed by the Second Schedule and the salary that was payable to such a judge immediately before the commencement of the Constitution. With regard to those who are appointed after the 31st October 1948, they will get at the rates fixed in the Second Schedule, so that the Chief Justice of the Supreme Court will get Rs. 2,000 more than the salary fixed for the Chief Justice under the Constitution, while the puisne judges of the Federal Court, if they go to the Supreme Court, will be getting Rs. 1,500 in excess of the normal salary which is fixed for the puisne judge of the Supreme Court.

Coming to the High Court, the normal salary fixed under the Constitution for the Chief Justice is Rs. 4,000 and the normal salary for the puisne judges is Rs. 3,500. Here again, we have got a provision in the Constitution that any judge of a High Court, if he wishes to be appointed to the High Court, under the Constitution, the President is bound to appoint him and consequently the same problem which arises under, the Supreme Court also arises in the case of

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the High Court, because those judges who are now existing judges draw, in some cases, a higher salary than the salary that is fixed in the Second Schedule. In order, therefore, to remove any possible grievance, it has also been decided to follow the same procedure as has been followed in the case of the Federal Court, namely, to divide the judges into two categories—those appointed before the 31st October 1948 and those appointed thereafter. Thus, those in category one will get an additional pay as personal pay which will be equivalent to the difference between the salary fixed by the Constitution and the salary which they are drawing, and those who are in category two will get the salary as fixed by the Constitution.

Perhaps, it might be necessary to explain why we have adopted the 31st October 1948 as the dividing line. The answer is that the Government of India had notified to the various High Courts and the Federal Court that any judge who is appointed before the 31st October 1948 will continue to get the salaries which he was getting now but that the same assurance could not be given with respect to judges appointed after the 31st October 1948. It is in order to guarantee this assurance, so to say, that this dividing line has been introduced.

I would like to say a word or two with regard to the scale of salary fixed in Schedule 11 and the scale of salary obtaining in other countries. For instance, in the United States the Chief Justice gets Rs. 7,084 per month while the puisne judges get Rs. 6,958. In Canada the Chief Justice gets Rs. 4,584 and the puisne judges get Rs. 3,662. In Australia the Chief Justice of the High Court gets Rs. 3,750 and the puisne judge gets Rs. 3,333. And in South Africa the Chief Justice gets Rs. 3,892 and the puisne judges get Rs. 3,611. Anyone who compares the standard salary that we have fixed in Schedule II with the figures which I have given I think, will realise that our salaries if at all compare much better with the salaries that are fixed for similar functionaries in other countries except the U.S.A.

In fixing these salaries we have been as fair as we could be. For instance, it would have been perfectly open for the Drafting Committee to say, following the rule that those who have been appointed before the 31st October, 1948, if their salary is in excess of what is the normal salary fixed by the Constitution, we could have also made a provision that the Judges of the High Court of Nagpur shall get less than the normal salary, because their salary is less than the normal salary as at present existing. But we do not propose to perpetuate any such grievance and therefore we have not introduced a counter vailing provision which in strict justice to the case, the Drafting Committee would have been justified in doing. I therefore submit that so far as the salary of the judiciary is concerned there can hardly be any ground for complaint.

I come to the question of the President. The President of the Union is obviously a functionary who would replace the present Governor-General and in fixing the salary which we have fixed, namely Rs. 10,000, we have to consider, in coming to a conclusion, as to whether it is less or more than the salary that the Governor-General has been drawing.

As every one knows, under the Government of India Act, 1935, the salary of the Governor-General was fixed at Rs. 2,50,800 a year which came to Rs. 20,900 *per mensem*. This salary was of course subject to income-tax. Under the recent Act passed by the Legislative Assembly the salary of the Governor-General was fixed at Rs. 5,500 but that salary was free of income-tax. I am told that if the salary of the Governor-General was subject to income-tax it would come to somewhere about Rs. 14,000. In fixing the salary of the President at Rs. 10,000 we have taken into consideration two factors.

One factor is that the salary of the President should be subject to income-tax. It was felt by the Drafting Committee as well as by a large body of Members of this House that no person who is a functionary under the Constitution or a civil servant under the Constitution should be immune from any liability imposed by any fiscal measure for the general people of this country. Consequently, we felt that it was desirable to increase the salary of the President if we were to make it subject to income-tax.

The other reason why we fixed the salary at Rs. 10,000 is to be found in the salary of the existing Chief Justice of the Supreme Court, which is Rs. 7,000. It was the feeling of the Drafting Committee that since the President was the highest functionary in the State there ought to be no individual who would be drawing a higher salary than the President and if the Chief Justice of the Supreme Court was drawing a salary of Rs. 7,000 it was absolutely essential, from that point of view, that the salary of the President should be somewhat above the salary of the Chief Justice. Taking all these factors into consideration we thought that the proper salary would be Rs. 10,000.

Then, the President's salary carries with it certain allowances. With regard to these allowances I might mention that when the Government of India Act, 1935, was passed the Act merely fixed the salary of the Governor-General. With regard to the allowances the Act says that His Majesty in Council shall fix the same by Order but unfortunately the provisions of Part II of the Government of India Act, 1935, were never brought into force and consequently no such Order was ever made by His Majesty in Council although a draft of such an Order was prepared in the year 1937. So far therefore as the Government of India Act is concerned, there is nothing stated with regard to the allowances and therefore that Act did not furnish the Drafting Committee any material basis for coming to any definite conclusion. Consequently the Drafting Committee has left the matter with the provision that the President shall continue to get the same allowances which the Governor-General got at the commencement of the Constitution. Later on the Parliament may change the salary and allowances of the President subject to this, that they shall not be changed during the tenure of the President concerned.

I should like to give the House some idea as to what are the allowances which the President would be entitled to get if the provision suggested by the Drafting Committee, that the allowances payable to the Governor-General at the commencement of the Constitution should operate.

I find from the budget estimates for 1949-50 the following figures were included in the budget under the heading "Allowances to the Governor-General":

1. Sumptuary allowance of Rs. 45,000 per annum.
2. Expenditure from contract allowance Rs. 4,65,000.
3. State conveyance: Motor cars: Rs. 73,000.
4. Tour expenses : Rs. 81,000.

Total allowances are Rs. 6,64,000 per annum, according to the budget estimate of 1949-50.

I need not say, as I said, anything about the allowances, because the allowances are liable to be changed by Parliament at any time. The important question is about the salary and I submit that the salary of the President as fixed at Rs. 10,000 seems to me as also to the Drafting Committee to be a very reasonable figure, having regard to the circumstances to which I have referred.

I need not say much about the salary of the Governors. That has been fixed by an Order made recently by the Governor-General, and they appear to

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me to be quite reasonable and it also observes the same principle that in the provinces where the highest paid official is the Chief Justice the Governor should get something more than the Chief Justice of the province. It is from that point of view that the figure for the salary of the Governors has been fixed.

The only other provision to which I would like to refer is that originally it was not proposed to make any provision with regard to the salary of the Comptroller and Auditor General. There again, the salary has been fixed at Rs. 4,000 by Schedule II, subject to the proviso that while the present incumbent continues to function as the Comptroller and Auditor General he will get as personal pay the difference between the salary fixed by Schedule II and the salary which he is at present getting. When that incumbent disappears and another is appointed he will get the salary that is fixed by the Schedule.

I hope that the figures suggested by the Drafting Committee as salaries for the various functionaries dealt with in this Schedule will commend themselves to the House.

Mr. President : I now come to the amendments. I shall take up the different parts separately and ask Members to move them as we come to them. The first amendment is to Part I, amendment No. 259, by Shri Mahavir Tyagi.

Shri Mahavir Tyagi (United Provinces: General): *[Mr. President, Sir, I do not think that a salary of ten thousand rupees per month for the President and a salary of five thousand rupees for the Governor is to do much. After pondering over the problem for two days, I decided that I should freely express my opinion on this occasion. I feel that all the people in the civil services and Government officials should lead a good life and should command respect. India is a land of seers. Here dignity is not determined by money. (*Hear; hear*). In India sacrifice and penance have ever commanded respect. The Government officials who have taken upon themselves the burden of service permanently should have such salary as may enable them to lead a life of comfort and respect and to be free from want. But the political leaders among whom I count the President, the Governors and the Members of the Assembly also, who hold high Government offices through politics should discharge their duties in a spirit of selfless service. It has become customary in the world to provide high salaries for such functionaries and it appears that we also have no hesitation in providing high salaries. But I appeal to the Constituent Assembly that we should create a new precedent of sacrifice so that we may be able to set an example before the world and show to it a new path. We were able to achieve success and freedom, not because we were persons of wealth but because we were rich in renunciation. At present when there is moral degradation in the world, it is all the more necessary that India should show the correct path and should place before it the ideal of serving the nation through sacrifice. By our sacrifice and penance we would create an atmosphere of sacrifice not only in our own country but in the whole world. A society comes into being only through sacrifice, and for its uplift too it is necessary to awaken and encourage the feelings of sacrifice.

I think that the President of a nation is the symbol of its dignity. It is wrong to think in India that we can have dignity only through money. (*Hear; hear*). A dignified position can be achieved here only through sacrifice. It would be wishful thinking among us if I want that the presidential post should be honorary, The State should bear his expenses. But the person who holds the highest post in the land should lead as simple a life as that of a sanyasi. This is a land of the poor and the money that is realised from them through

*[] Translation of Hindustani speech.

taxes increases their poverty. I do not think that politicians should freely use that money for their personal use. Therefore, if no other change is possible at present I place for your acceptance the amendment that “the salary of the President shall not exceed ten thousand rupees”. Instead of fixing the salary at ten thousand it would be better to state that it shall not exceed ten thousand and that the salary of the Governors shall not exceed five thousand, so that if the future Parliament wants to lead the politics of the country on the path of sacrifice and penance it may be possible for it to reduce these amounts. It will be a pious hope for me if I wished that the members of the legislature also should not get anything else besides food allowance and travelling allowance. I am confident that if we enforce such a scheme, simplicity and honesty will surely prevail in the country and thereby we would be able to put a stop to the moral degradation that we find in the world today.

I have no objection in regard to the salaries of permanent government officials. Their salaries should be increased according to the conditions obtaining in the country. But those, who have followed the ideal of Mahatma Gandhi and have won the confidence of the poor people, should lead the life of the poor. Even if we meet the Presidents of other great nations we should talk to them in a humble way, because by doing so we would only enhance our prestige. At the same time we should lead the politics of the country with pride and self-confidence. I have nothing more to say on this. I only place my amendment before the House and appeal to it that because ours is a poor nation, our President should lead the life of the poor, so that he may be able to pay more of his attention towards his poor countrymen.

I have to say one thing more. Whenever money and political power are centred together at one place there occur corruption and degradation. The people begin to feel the authority of the persons who holds the reins of politics and thus a stronghold of corruption and degradation is created around him. The guards of the stronghold do not permit that political authority to awaken and nor do they allow any reform because they fear that any kind of reform might be detrimental to their pleasure-seeking. This increases the tendency to degradation. We should place high ideals before our President. If we give him money only he would command no respect in the country. Therefore, I appeal to the House that our President should work in an honorary capacity and should lead the life of the poor. This alone is in the best interest of the country, and this alone can make our President acceptable to the poor. With these words I move my amendment which reads thus:

“That in amendment No. 207 of List VI (Second Week), in paragraph 1 of the proposed Part I, before the figure ‘10,000’ and before the figure ‘5,500’, the words ‘not more than’ be inserted.”]

Prof. Shibban Lal Saksena (United Provinces: General): Mr. President, Sir. I beg to move:

“That in amendment No. 207 of List VI (Second Week), in paragraph 1 of the proposed Part I, for the figure and word ‘10,000 rupees’ the figure and word ‘1 rupee’ be substituted.”

Sir, I am glad my honourable Friend, Mr. Tyagi has already delivered his speech on my amendment rather than on his own. I am glad that the sentiments which I wanted to express by my amendment are shared by him and also by many members of the House as is evident from the cheers that the House gave him. In fact when I gave this amendment, it was after considerable hesitation. I felt that what I felt I must express in my amendment. The President of the Republic in our Constitution is a substitute for the British King because we have modelled our Constitution on the British lines. Now, in our country the ideal of Kingship is illustrated by kings like Janaka who lived like sanyasis. Even in our own times our master, our father, Mahatma Gandhi put before us the same ideal. I therefore think Sir, that by providing 1 rupee as the salary for the

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President, we shall only be doing something which is in consonance with our ancient civilisation and culture. So, by accepting this amendment, we shall be placing before the world and before the country, the ideals of our ancient civilization and culture. This will also ensure that the post of the President will not be aspired for by greedy men, but the honours shall be bestowed on men who are intellectually, morally and spiritually fit for the job, and who do not want to take it for the salary attached to it but who want to serve the country in the spirit of King Janaka, of Mahatma Gandhi and other great kings of ancient India.

In our Constitution we have armed the President with very wide powers. Schedules 3(a) and 4 of the original Draft containing Instruments of Instructions have been taken away from the Constitution. So that now the Constitution does not fetter his discretion in any manner. In our Constitution the President is authorised to do as he likes. We have given him very great powers. In fact throughout these discussions, on the Constitution, I have been opposing this piling up of all power upon him, because actually he will exercise all the powers on the advice of the Cabinet, but if the President is a sanyasi, then I am sure no Prime Minister shall have the courage to deflect him from the right course and he will be able to carry out his duties in an impartial manner.

Sir, when I put this figure I was also influenced by the present salaries and allowances of the Governor-General. I am told by my honourable Friends on the Finance Committee that the present budget of allowances etc. of the Governor General comes to about Rs. 20 lakhs per annum of which about Rs. 11 lakhs is spent on the repairs to the Government House alone and the remaining Rs.9 lakhs on sumptuary and other allowances of the Governor-General. I think, Sir, in a poor country like India whose leader Mahatma Gandhi put before us the ideals which should govern us, it should not cost this huge amount. I agree with my honourable Friend Mr. Tyagi that the entire cost of living of the Governor General should be borne by the State and I would permit him the allowances which he needs for that purpose. I am sorry today the dignity of India is supposed to consist in the huge salaries we can provide for our President and the huge buildings in which he should live. I think our ideals were different. The present Governor General when he was Premier of Madras lived in his own house and did not shift to the official residence of the Prime Minister in Madras, but here we have forced him to live in a building whose repairs alone cost about Rs. 11 lakhs. I think, Sir, that we must change these standards. We must live according to our own ideals, and our own culture and civilization. Sir, it is in that spirit that I have put forward this figure of one rupee.

Our Congress President, Sir, is an honorary person and today the Congress President has become one of the most important functionaries in the country. He devotes almost the whole of his time to the nation's service and he does not even get any allowance and yet I do not think that the work of the Congress has suffered in any manner. In fact the amount of work which our Congress President has to do is probably greater than that which would be required by the President of the Republic. I therefore think that in putting forward this figure of one rupee, I have only said what many other members also feel and which is in consonance with our ancient ideals and culture and our new aims and aspirations. I hope this amendment will be supported by the House and that the Drafting Committee will consider this measure.

Shri R. K. Sidhwa (C. P. & Berar: General): Mr. President, my amendment reads thus:

"That in amendment No. 207 of List VI (Second Week), in paragraph 1 of the proposed Part I, the following be added after the figures relating to salaries of President and Governor, in parenthesis :—

"The salaries of the President and the Governor shall be subject to income-tax."

Sir, my reason in moving this amendment and specifically mentioning in the Constitution that the President and the Governor's salaries shall be subject to income-tax is this: Although the honourable the Mover, Dr. Ambedkar has stated that their salaries are subject to income-tax it is a common rule and practice that the income-tax has to be recovered from everyone even if it is not mentioned. It is very clear, I have no doubt about that; but despite that I am anxious that this should be mentioned for this reason. At present our Governor-General was drawing a salary which was not subject to income-tax. You know, Sir, when he was drawing Rs. 20,000 he was subject to income-tax and yet people did not know what he was actually drawing; in as much as in the Parliament when the subject came up for discussion then most of the Members did not know that his salary was subject to income-tax. This matter was discussed from one end of the country to the other and the people thought that our Governor-General was drawing in cash Rs 20,000 and putting it into his pocket, whereas actually he drew only Rs. 8,000 or 9,000. The Legislative Assembly subsequently resolved that his salary should be Rs. 5,500 without any tax. Now, if you raise it today to Rs. 10,000 and do not let the people know—the people do not generally go by the income-tax or that so much is deducted by so many other taxes, they will state that President's salary is increased from 5,500 to 10,000. People only go by the figure. They ask what is the Governor-General drawing, and the masses say that he draws Rs. 10,000. I therefore desire that this should be made very clear to the masses. Any time you may argue with the masses that the Governor-General and the Governor are subject to the payment of Income-tax. Sometimes, they hesitate to believe. When they hesitate to believe, if this is mentioned in the Constitution, they may be refuted with a definite reply. I, therefore, feel, Sir, that, though it may be redundant, though it may not be necessary, to avoid unnecessary criticism that the President and Governors draw fat salaries. the insertion of the words mentioned in my amendment is very essential.

Coming to the amount of the salary, my honourable Friends. Mr. Tyagi and Professor Shibban Lal Saksena stated that the Governor-General should be a Sanyasi. Probably they have been carried away by ideas with which we have been taught to serve humanity without receiving any remuneration. Several of us have done that in the past for the attainment of freedom and to serve humanity without receiving any amount of compensation or money. We have done free service to humanity. That is one thing. But, you should not mix up two things which are quite distinct. The Governor-General is the administrative head of the Government. He has been restricted by so many limitations in this Constitution. I ask whether the Presidents of the Indian National Congress of the Provincial Congress Committee are restricted by so many restrictions as are stated in this Constitution. Is not our President of the Indian National Congress at liberty to do what he likes and earn what he likes? Has not the President of the Provincial Congress Committee been earning? I know are have scarified and we sacrificing immensely. I am also one of them.

Shri Mahavir Tyagi : He is not entitled to use public money on himself.

Shri R. K. Sidhwa : Kindly listen to me. You have had your say. I know the value of public money. I am not carried away by sentiments. I am a practical man and I believe in reality. What is the use of wasting public money? How do you feed your President, I want to know, when you have put in so many restrictions in the Constitution that he shall not do this, that he shall not do that, that he shall be so and so and all that? Have you not passed so many paragraphs in the Constitution binding him down? My honourable Friend Prof. Shah even wanted that whatever wealth he had should be shown before he is made the President. That was lost; but you know what the President ought to be. He should be above board. He should be a man of sterling character. Although

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not within the provisions of law, but morally, he is the custodian of the wealth of the country. He has to see how that wealth is being administered. For that purpose a paltry as salary is necessary. I use the word paltry: compare the salary of 20,000 minus Income-tax which came to about Rs. 9,000 the Viceroy drew, with the net salary of about 5,000 to be drawn by the President. Is it not a great sacrifice that our people are making—one hundred per cent. cut of the previous salary of the Governor-General and fifty per cent. of the previous Governors' salaries?

I have no quarrel or argument with those members, who lack in loose words as Sanyasi President. My honourable Friend Mr. Tyagi said that the President should be a sanyasi. Mr. Tyagi may be a sanyasi as he is a Tyagi. He may become the President if he has to become President at any time. I have no arguments with him. I only ask, are we here in a Congress platform? Here we are preparing a Constitution. I have sacrificed not only by going to jail, but big monetary sacrifice. Several hundreds and thousands of people have sacrificed similarly. We should not be actuated by what we did to achieve our freedom. We have won freedom; we have served humanity, we have served the best interests of the country by sacrificing everything as our master taught us. I must say,—I am not a prophet—even if our master was alive, he would have ridiculed the idea which my two Friends have put before the House, knowing him as I do very well, although several of my Friends may know him much more than me.

I therefore contend that the salary provided in the Constitution is a very reasonable one. I must say it is a great sacrifice. Is it not a sacrifice that our workers have made, who have become leaders, sacrificing large practice from the professional point of view, lawyers and doctors. I know of instances of people who were earning Rs. 20,000 and 30 000 serving at one time for Rs. 500 and today for Rs. 1,500. Is it fair to say that this is waste of public money? We do not want to squander public money. We must be generous enough to appreciate the work of our leaders and ourselves and also be proud of what we have sacrificed and we are sacrificing today. Do not put in a proposition that would make us the laughing-stock of the whole world. If I do not get claps from the House I do not mind. If Mr. Tyagi got claps from the House because he proposed one Rupee of a little more as a salary, I do not mind. If I am opposed in this House, I do not mind because I feel that this is the right proposal. I feel that without salary, that would make us the laughing-stock before the whole world. We must realise the great sacrifice that has been made by the President and the Governors in accepting this salary. I will come to the allowances when the time comes. So far as salaries are concerned, I think this is reasonable. May I move the amendment regarding the allowances, Sir?

Mr. President : Yes; you may move that.

Shri R. K. Sidhwa : Sir, my amendment No. 262 relates to the allowances in paragraphs 2 and 3. I move:

“That in amendment No. 207 of List VI (Second Week), for paragraphs 2 and 3 of the proposed Part I, the following be substituted :—

‘There shall be paid to the President and to the Governor the following allowance :

The President shall draw a lump sum of Rs. 135,000 per annum which shall include the cost of renewal repair and maintenance of furniture and motor vehicles, also including sumptuary, contract and all other allowances.

The President shall also draw Rs. 10,000 per annum as touring expenses.

The Governors shall draw a lump sum of Rs. 15,000 per annum which shall include the cost of renewal, repair and maintenance of furniture and motor vehicles, also including sumptuary, contract and all other allowances.

The Governors shall also draw Rs. 7,000 per annum as touring expenses.’ ”

So far as the allowances of the Governor-General were concerned, I was myself hunting since yesterday the Orders made by His Majesty in Council for the Governor-General and I could not find any Chapter or Schedule except for the Governors. My honourable Friend Dr. Ambedkar made it very clear that the Schedule never came into existence. I thought it may be somewhere and that I was not able to lay my finger on it, I now learn that it never came into existence and that the Secretary of State fixed the allowances for the Governor-General. What was that, I do not know. But, Dr. Ambedkar gave us an illustration which I had also culled from the last budget as to what was provided for our Governor-General. He has given a figure, Rs. 6,64,000 for the various types of allowances for the Governor-General.

With your permission, Sir, I would like to correct Rs. 35,000 into Rs. 1,35,000. My reasons are these. When I went for the first time after the attainment of independence into the Government House in Delhi,—so many of my friends must have also gone—my first impression was that the Government House was built only yesterday. My friends must have seen the tip-top way in which the building has been maintained. I can assure that the money which has been spent in the past is really well spent. The floor which has been used was shining like a mirror, the coiling, the golden colours and paintings and the various upholstery and the household requisites were as if only put in yesterday. The reason was good and open fact maintenance and up keep. Whether it was a woman housekeeper or man household I do not know; whoever it was deserves the greatest credit of the people of the country in keeping this historical place in such a condition as it is at present. It has been suggested that the building of the Government House should be turned into a hospital. I oppose that view. This is not meant for a hospital although it may be appealing to my friends Mr. Saksena or Mr. Tyagi. This should be used for a useful purpose. It is being used today for a museum and thousands of people are visiting it and have an opportunity to see the Government House.

Dr. P. S. Deshmukh (C. P. & Berar: General): What are we discussing? is it Government House or allowances?

Shri R. K. Sidhwa : Allowances. We must see that we are not miserly in that. I have therefore provided Rs. 1,35,000. The sum of 1,35,000 includes the Sumptuary allowance, contract allowance, and renewal of furniture. If you were to see the Order-in-Council providing allowance for Governors you will find that even the Bombay Governor gets only 35,000 and the staff—Military Secretary etc. 1,36,000. I am not touching that. They may be paid for actual number of appointments. I am told that the Bombay, Madras and Bengal Governors who had bands have abolished them. The maximum given to Madras is Rs. 43,000. If he has a body guard he is paid Rs. 1,26,000. I am not mentioning that in my allowance. Then there is a Surgeon and his establishment—maximum is Rs. 36,000 for Madras and 33,600 for Bombay I am not touching that. Because these are services which have to be paid. Then comes the maintenance and repairs of furnishings of official residences. Maximum is 34,000 to Bengal Madras 21,500 and Bombay is 25,000 with a minimum of 4,000 to Assam. We have seen the Government Houses of Governors and they are also big enough. Our Governor-General was Governor of Bengal and he stated there were 134 rooms and he was not himself able to visit these rooms and for its maintenance Rs. 25,000 may be a somewhat reasonable amount. Therefore after seeing the Government House in Delhi I was actuated to increase this amount to Rs. 1,35,000.

For Contract Allowance, i.e., an allowance for miscellaneous expenses including maintenance of motor cars a sum of Rs. 1,08,000 is provided for Bombay; Madras comes next and Bengal comes third. Minimum is 11,500 for Orissa.

[Shri R. K. Sidhwa]

Tour expenses are very heavy. 1,22,000 for Bengal, 1,13,000 for Madras and 65,000 for Bombay is provided. Previously the Governors used to visit for pleasure. They had no duty to perform. Rather he was an administrative head and in that sense he was Executive head and probably he had to travel about. Today our Governors will not have that executive Work. They will only visit whenever occasion arises. Therefore I have given for touring 10,000 to the President and 7,000 to Governors. I consider it a reasonable amount. The Governors are not expected to go away from their places and the President also. So I think a lump sum of 1,35,000 for the President and 15,000 for Governors would be reasonable, for repair and maintenance of furniture and motor vehicles also including sumptuary and other allowances, instead of the 35,000 I had provided previously.

The Honourable Dr. Ambedkar stated that these may be left to Parliament to decide. This is a very big item. I am told now 18 to 20 lakhs is being spent for the Government House, Delhi, for various purposes. We have no definite figures but a very large sum is being spent. Therefore I do feel that a specific mention in a schedule should be made for the purpose of Allowances for the President and Governors. After all the salaries are for their own personal purposes and I do not want to be told by the people that the Governors have taken small salaries and they are indirectly getting some money from these allowances. We have to tell the public at the same time that from the heavy sum of 2 lakhs allowances we have come to a small sum which is really necessary for the upkeep of the Government Houses. If we are simply converting the structure of the living of the Governors and Presidents by asking them to become Sanyasis, then let me tell you that these Government Houses are not suitable. Then they have to take to some huts—perhaps the time may come I do not know when there may be; when our outlook and our system of living is changed. We do not want the articles in Government House to be destroyed or spoiled. We have to maintain them at the State expense and it is for the future generation really to see that these buildings are monuments. Of course some of these are rickety buildings. Even the Bombay Government House is very old. I do appeal to the Drafting Committee to provide allowances in the Constitution so that it may not be stated that from the allowance money is being squandered away and motives attached to Governors. With these words I move my amendment.

Shri H. V. Kamath (C. P. & Berar: General): Sir, will there be a general discussion on each part or on the whole article?

Mr. President : I will take the amendments on the whole article and then we can have the general discussion No. 264.

Prof. Shibban Lal Saksena : Sir, I beg to move:—

“That with reference to amendment No. 210 of List VII (Second Week), for paragraph 8 of Part III, the following be substituted :

‘8. There shall be paid to the Speaker and the Deputy Speaker of the provisional Parliament, such salaries and allowances as were payable to the Speaker and the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution.’ ”

Sir, at present, Part III says—

“There shall be paid to the Speaker of the House of the People and the Chairman of the Council of States such salaries and allowances as were payable to the Speaker of the Constitution Assembly of the Dominion of India immediately before the commencement of this Constitution.”

Now, the position is, that for the interim period there is not to be a Speaker of the House of the People or a Chairman of the Council, of States. We are now making provisions only for the interim period, and later on the Parliament will decide the salaries. Therefore the present amendment does not fit in Part III further states—

“..... and there shall be paid to the Deputy Speaker, of the House of the People and to the Deputy Chairman of the Council of States such salaries and allowances as were payable respectively to the Deputy President of the Council of State immediately before the fifteenth day of August, 1947, the words ‘to the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before such commencement’ be substituted.”

In the amendment moved by Dr. Ambedkar he wants:—

“That for the words ‘respectively to the Deputy President of the Legislative Assembly and to the Deputy President of the Council of State immediately before the fifteenth day of August, 1947, the words ‘to the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before such commencement’ be substituted.”

If this amendment is accepted, the paragraph will read—

“..... and there shall be paid to the Deputy Speaker of the House of the People and to the Deputy Chairman of the Council of States such salaries and allowances as were payable to the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before such commencement.”

Now, this does not fit in with the present position. There is obviously some mistake, and therefore my amendment has been given. This amendment of mine says that “there shall be paid to the Speaker and the Deputy Speaker of the provisional Parliament, such salaries and allowances as were payable to the Speaker and the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution. I am sure Dr. Ambedkar has made some mistake and the Drafting Committee has overlooked it. I will draw the attention of my Friend Shri T. T. Krishnamachari to this portion of Part III which is obviously a mistake. We shall not have, in the interim period any Speaker of the House of the People. I hope my amendment will be accepted by the Drafting Committee and the necessary correction made.

Mr. President : Then we come to Part IV. Amendments Nos. 165 and 265 are the same; Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : (West Bengal: Muslim): Sir, I have to move Nos. 265, 267 and 270. I have consolidated them again in the latest list.

Sir, I beg to move:

“That in amendment No. 211 of list VI (Second Week), in the proposed Part IV, in subparagraph (I.) of Paragraph 10,—

- (i) for the figure ‘5,000’ the figure ‘6,000’ be substituted; and
- (ii) for the figure ‘4,000’ the figure ‘5,000’ be substituted.”

I also move:

“That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in subparagraph (3) of paragraph 10,—

- (i) for the words and figures ‘thirty-first day of October, 1948’ the words ‘commencement of this Constitution be substituted;
- (ii) for the words ‘the commencement of this Constitution’ the words ‘such commencement be substituted.”

I do not move part (iii) of my amendment.

I also move:

“That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in sub-paragraph (1) of paragraph 11—

- (i) for the figure ‘4,000’ the figure 5,000’ be substituted; and

[Mr. Naziruddin Ahmad]

- (ii) for the figure '5,000', the figure 4,000' be substituted."

I also move:

"That in amendment No. 211 of list VI (Second Week), in the proposed Part IV, in sub-paragraph (2) of paragraph 11,—

- (i) for the words and figure 'thirty-first day of October. 1948' the words 'commencement of this Constitution' be substituted;
- (ii) for the words 'the commencement of this Constitution' the words 'such commencement' be substituted."

Sir, with regard to the third part of this amendment, I wish to move it in a slightly altered form though the effect will be the same. The change will be merely verbal. I beg to move:

"That in Schedule Two Part IV. Paragraph 11, sub- paragraph (2), for the words 'shall be entitled' the words 'shall in addition to the salaries specified in sub- paragraph (1) of this paragraph be entitled' be substituted."

Sir, with regard to the general.....

Mr. President : Shall in addition to what?

Naziruddin Ahmad : "In addition to the salary specified in sub-paragraph (1) of this paragraph." This phraseology exactly in this form appears in sub-paragraph (3) of paragraph 10, and it has been omitted in this sub-paragraph by inadvertence, and the amendment which I suggest is appropriate in the context.

Sir, with regard to the general purpose of my amendments, they are intended increase certain salaries of the Judges of the Supreme Court and the High Courts so as to confirm to existing standards.

Mr. President : You are not moving amendment No. 271 ?

Mr. Naziruddin Ahmad : I am afraid I have not got a copy of it with me. Sir, I also move:

"That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in item (ii) of sub-paragraph (b) of paragraph 12, the words 'excluding any time during which the judge is absent on leave' be deleted."

Sir, my object, as I have already submitted, is to restore the pay of the Judges of the High Courts and the Supreme Court to the old standard. Sir, with regard to judges, one fact must be clearly remembered. It is that the Judges are taken from very successful members of the Bar who earn very good and substantial incomes. If he is not a good lawyer and does not earn much, it would not be worth while appointing him as a Judge. It is very necessary that the standard of our Judges should be adequate and should be maintained at a very high level. Judges, especially of the High Courts and of the Supreme Court, are eminent specialists and it is very necessary that they should be sufficiently and properly paid for the very high and eminent quality of their work. They must be treated as experts and must be paid on that basis. If we do not pay our Judges adequately, the result would be that in course of time very highly qualified lawyers would not be attracted to accept judgeships of the High Courts and of the Supreme Court.

With regard to the existing pay of the Judges, there was an amendment moved by Dr. Ambedkar that it should be paid only to the existing Judges. I had submitted an amendment a few days ago to article 310 to this effect, but I was then told that the proper place for it would be really this Schedule. I yielded but I do not agree that this is the proper place. Article 310 was the proper place because that article, so far as the High Court Judges are concerned, provides that on the, 26th January 1950, the existing Judges should also automatically be the Judges of the High Courts. Article 310 was perfectly unnecessary because every officer in whatever capacity he serves, automatically continues to serve although

the new Constitution comes into force. For the purpose of continuance of their services article 310 was clearly redundant. Such a provision was not considered necessary in the case of any other services. The article had a deeper purpose. I think it was introduced to reduce quietly and imperceptibly the pay of the Judges by transferring the provisions as to their pay to the second schedule and thereby getting an excuse to reduce their pay in a most indirect manner. I should think that even apart from article 310 the Judges would have continued as every other public servant would continue.

With regard to the Supreme Court Judges, the matter is entirely different. On the date on which the Constitution comes into force, the Federal Court Judges convert themselves into Supreme Court Judges. An article to that effect was necessary, but no article like 310 was at all called for or necessary in respect of Judges of the High Court. Now, Sir, article 310 allows existing Judges of the High Court to automatically carry on as Judges of the High Court on and from the commencement of the Constitution, they would have received the same salary as they were receiving previously. The pay of the Judges cannot be reduced merely because we have passed this Constitution. So, as I have already submitted, I insist that article 310 is an astute device to quietly reduce their pay.

Then we come to the question of merit. It is a well-known fact that the Judges of the High Courts were receiving high salaries commensurate with the high quality of intellectual work they were accustomed to do. In fact, by accepting the position of a judgeship of the High Court, there has already been a very substantial financial sacrifice. We have here in this House two eminent ex-Judges of High Courts and they will bear testimony that the post of a Judge of a High Court is no sinecure job. It is a very laborious and extremely anxious post, and a Satisfactory discharge of their duties involves tremendous labour and heavy work. It is not anybody and everybody who can prove to be a very good High Court Judge. It is only a specialist of very high attainments who can do so. Only a man of high intellectual abilities and one capable of putting in much industry that can discharge the duties of a High Court Judge. The qualities of the Federal Court or of the Supreme Court Judges are to be still higher. I submit therefore that the pay of these Judges should not be reduced. The pay which they were getting should be continued, but the present suggestion of the Drafting Committee is to the effect that only those Judges who were appointed before the 1st November 1948, should continue to get their previous salary, but a Judge appointed later on would be receiving much less. I do not see the justice for this distinction at all, bearing in mind that the value of the rupee has considerably depreciated apart from the present devaluation. The rupee at the most was worth, before devaluation, about four annas as compared with its pre-war value. Now on account of the recent devaluation, the rupee has further depreciated, and therefore the Judge's salary is really not worth much. The salary which is at present prevailing has been going on for a very long series of years. Also the Judges will have to pay a high rate of income-tax. If you pay a high salary to a Judge, you do not pay him all the money. You will deduct about 20 per cent. out of their pay and if the Judge has other incomes, the deduction will be much higher.

Dr. P. S. Deshmukh : Let him forego that income.

Mr. Naziruddin Ahmad : That is a high standard which is not practicable in our life. The honourable Member who interrupted me would not be willing to give up his own income. I submit that this income-tax will have to be taken into account. Minus the income-tax, the pay becomes very small, and then again on account of the depreciated value of the rupee, they get really much less. Considering the expert knowledge and high quality of work which is expected

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of them, they should continue to receive the old salary. Their life is not as boisterous or exciting as some of us take it to be. They are practically isolated from society. They cannot have the luxury of taking part in politics. (Shri H. V. Kamath: they go to clubs.) If they go to clubs, they enjoy themselves in a more sober manner than some of us would be inclined to. Judges after retirement were permitted to practise outside their Provinces. But now they cannot practise in any part of India. In these circumstances, I submit that no case has been made out for a reduction of their pay.

Coming to the pay of Supreme Court Judges, we are going to have Independence from the 26th January. (A Member: We are independent already.) We are not yet independent. We are still attached to the apron of the Anglo American bloc. We have no real liberty, no real freedom. On the attainment of the so-called Independence, the Federal Court will be converted to the Supreme Court. The Supreme Court will exercise not only the functions of the Federal Court but also those of the Privy Council. It will be the highest Court of India and will really be supreme in the matter of law. The Supreme Court will have higher powers and a high status than the Federal Court.

But while we raise the status from the judgeship of a Federal Court to that of the Supreme Court, and enhance their status and power, we are reducing their salary. This is a piece of injustice. Nothing is more important for the working of a Democracy than that the efficiency and quality of the Supreme Court Judges should be kept intact. If their pay is reduced, then only men of lesser intellect than what the increased quality, authority and prestige and power of the Court demands will be attracted to these high posts. The result would be depreciation of the quality of the work of the judiciary. The Supreme Court deserves the highest consideration from this House and the country. They have to be recruited from the Judges of the High Court and have to come to the Indian Capital and have to maintain two establishments at home and at the capital.

Then I come to the other part of my amendment relating to the pay of existing Judges. According to the present proposal, the existing Judges who were appointed up to the 31st October 1948, would a love continue to get their old pay. I submit this date is arbitrary and not based on sound principle. The salary of those Judges who were appointed after that date and before the inauguration of the new Constitution should also be protected. There is no reason why they should get less. Then there is a provision that a Judge of the Supreme Court could have an official residence; still that is confined to those Judges who will be appointed later on. Judges who were receiving high pay would be getting their pay but they would not be entitled to an official residence. I submit that the treatment of these two classes of Judges on two different bases is based on some sort of commercial instinct. I submit that all Judges of the Federal Court should have an official residence free of cost. Two of the amendments connected with this part of the subject are merely consequential and do not require any special mention.

Then I come to amendment 270, part (iii). This really fills a gap which has crept in due to an inadvertence on the part of the Drafting Committee. I draw attention to paragraph 10, sub-paragraph (3) There it is stated that an existing Judge should get the difference between the present pay and the new pay "in addition to the salary specified in sub-para (1) of this para". There the fact that the difference between the former pay and the new pay would be "in addition to" the salary which they would get is specifically mentioned in para. 10. But this condition is omitted in sub-para. (2) of para 10. The effect is that a Judge who is now drawing Rs. 4,000 who should be drawing Rs. 3,500 on account of the new pay

would get Rs. 500 more in addition to the Rs. 3,500 which is sanctioned; but as it is, it gives the impression that he gets only a special pay which amounts to the difference between Rs. 4,500 and Rs. 3,500 amounting only to 500. The fact that this would be “in addition” to the newly sanctioned pay is wanting in this sub-para (2) of para 11. This is an inadvertent omission and I submit that my amendment should be accepted.

Coming to my last amendment, this is of a formal nature and I do not wish to take the time of the House in explaining it. I suggest that it should also be accepted.

Shri Brajeshwar Prasad (Bihar: General): Sir, I move:

“That in amendment No. 10 of List I (Second Week), in the proposed Part IV, in paragraph 10,—

- (i) in sub-paragraph (1), for the figures ‘5,000’ and ‘4,000’, the figures ‘3,000’ and ‘2,000’ be substituted respectively; and
- (ii) in sub-paragraph (2), for the word ‘without’ the word ‘on’ be substituted.”

Sir, I have moved this amendment because I feel that we are providing too much to these judges. Dr. Ambedkar quoted the salaries of the judge of the Dominions. A false impression would be created in our minds unless we also bear in mind the average income of an Australian or Canadian. I would like to know what is the difference between the average income of an Indian and that of an Australian or Canadian.

Another argument which is usually advanced by those who stands for fat salaries for the judges is that they have got an important part to play in the Federal Constitution. It is said that the judges are the guardians of the liberties of the people and as such they are entitled to a higher salary. The question of dignity is also involved. These are some of the grounds on which a high salary is advocated. I would like to enter into a detailed discussion of these basic concepts which to my mind appear to be without any foundation.

If this Constituent Assembly does not abide by this criterion, the criterion being the average income of an Indian, it will be weakening the foundations of the State. Already people in this country believe that the Government of India have given all possible facilities to the Judges and Governors without taking into consideration the facts of our life. They have given all kinds of allowances to a handful of persons who are placed in different capacities such as Governor-General, Prime Minister, Ministers, Comptroller and Auditor-General, etc. These officers of the State who draw fat salaries, may I humbly submit, are looked down upon by the average man in this country. I am not in favour of the proposition that no high salaries should be paid. I am in favour of the proposition that as far as Foreign experts or technicians are concerned they should be given as much as they want but that as far as people living in this country are concerned as far as the people who are in the Congress are concerned, they must make some sacrifices for the cause of the country.

Am I to understand that after we have won our liberty all those ideals for which we stood should be put in cold storage? Are those ideals to be derided, looked down upon and laughed at? Far-sighted statesmen, politicians and public workers must bear in mind the fact that the urge for economic equality is so strong and insistent in our minds that they cannot easily afford to ignore it. I know as much as any other Member of this House that all talk of economic equality at the present moment is Utopian but you cannot say that this is a concept which has no foundation in reality. You are going to provide Rs. 5,000 and 6,000 as salaries but what about the common man in the villages? You

[Shri Brajeshwar Prasad]

say it is a democratic government. Have you consulted the people? Do you intend to do that? With great fear and trepidation, I beg to submit that I do not share the opinion of those lawyers who say that the judiciary has got a Very important part to play in the politics of our country. Of course everybody likes to over-estimate his own importance in life. A lawyer is always prone to think that he performs a very useful work in society. I would like to ask those persons who have not read the work of Mahatma Gandhi (I refer to Hind Swaraj, the political bible of every congressman) to refer to that chapter where he has expressed his own ideas about lawyers and judges.

I am of opinion that in this transition period through which we are passing it is neither the legislature nor the judiciary but the executive which has an important part to play. In the 19th century, especially in America, the judiciary did play a vital part, but circumstances as we are today the judiciary has no future in this country. The judiciary plays an important part in a society where the spirit of legalism is prevalent, where the foundations of the State are strong and where there is no revolutionary upheaval. In India the facts are otherwise. Our economic situation is deteriorating fast; the threat of internal revolution is growing and becoming insistent day by day and the danger of a foreign war is also looming large on the horizon. I do not see how the judiciary will be the guardian of our constitution, how it will be able to protect the life and liberties of the people when people are bent upon making mischief and resorting to insurrectionary methods.

Another argument usually advanced is that you must give such salaries and allowances as will enable the judges to maintain their dignity. I am apposed to this idea of dignity.' The whole concept is sheer vulgarity. The ideal before the people of this country has been plain living and high thinking. Dignity has nothing to do with money. It is only in the West where this conception is prevalent. But our conceptions and ideas are looked down upon by wise people. Some of us who still abide by our old ideals and traditions would like to emphasise, even though we know full well that we will not be heard, that we stand and shall stand by the ancient ideals of plain living and high thinking.

I would in this connection make one observation which is not strictly relevant. People may ask what about the allowances of the Members of the Constituent Assembly. I am not in favour of Rs. 45 per day. I want that we should be provided with a free third class pass for Delhi so that we may come here to attend the Assembly. We want that the Government should provide a hovel for us to live in and function as legislators, We want that this Government should provide for us only jail diet and we do not want a single pice more than this.....

Dr. P. S. Deshmukh : Are you taking jail diet?

Shri Brajeshwar Prasad : I am very keen on this point. I am sure this question is going to be raised either in this House or in the other House. It will not be strictly germane to the issue which is before the House at present if I digress more on this point.

Dr. P. S. Deshmukh : Are you eating in Jail?

Shri Brajeshwar Prasad : Dignity has no relation to the economic position of men. Men who have been honoured and respected most in this country have been saints and not millionaires. The dignity of a Judge will depend on the work that he will do, provided he does it in a spirit of service and sacrifice. It will not depend upon the amount of salaries and allowances that we may confer upon him. We are people in favour of a fat salary for a Judge? They say that

no good lawyer will condescend to become a Judge if you do not give him proper allowances and a proper salary. So, unless you tempt him with higher salaries he will not come and accept the post of a Judge. Sir, we do not like such Judges who will not work unless they get proper salaries and allowances. They are undependable persons who are mercenaries. How can they be protectors of our liberty if they cannot work unless they are given Rs. 5,000 as salary? As far as lawyers are concerned, we must do something in order to prevent them from earning beyond a certain limit. We must pass some laws so that it may become impossible for them to earn more than Rs. 1,000 a month.

Shri Mahavir Tyagi : What is your amendment?

Shri Brajeshwar Prasad : I am supporting my amendment that the salaries should be reduced and should be in consonance with the economic facts of our life. I would like to deal with this question to a greater extent and with more precision but I feel that the time at my disposal is short, I like to speak in general on the article itself. So, with your permission I shall make a few general observations on the other aspects of the article.

I refer to the schedule and to the salary of the President. I support the amendment moved by my Friend Prof. Shibban Lal Saksena. I support this amendment because I feel that the first President will be the last President under this Constitution. It is with this background that I am making my observations. Had I known that this Constitution would last for some time to come, that not only Congressmen but non-Congressmen would also become Presidents of the Indian Union, probably I would not make the observations that I am going to make now. It is really a matter of surprise and wonder how a man like Rajagopalachari our trusted leader, how a man like Sardar Vallabhbhai Patel who has sacrificed everything, how a man like your august self can think in terms of money. I know that these eminent personalities will never think in terms of money. I know, Sir, that you are going to be the President or somebody else from Members of the Congress High Command.

Mr. President : You must not go into personalities.

Shri Brajeshwar Prasad : I am not making any personal reference. I am saying that some Members of the Congress High Command will become President.

Mr. President : You need not speculate either!

Shri Mahavir Tyagi : Why not any of the low Command?

Shri Brajeshwar Prasad : I hold the opinion that a Member of the Congress High Command, who has worked throughout his life without salaries and allowances will very gladly work without any salary or allowances as President of the Union. I am, sorry, I am referring only to salary and not allowances. I feel that if we take this bold step it will rehabilitate the prestige of the Congress. It has a psychological value. The enemies of the Congress may not like this idea of mine. They may consider such an idea as impracticable. But what about Congressmen? We have no right to ask others to tighten their belts. We have no face to talk about non-violence and truth unless we reform our own conduct.

Mr. President : I think there is a lot of repetition going on. Other Members have made that point and so have you. I may remind the honourable Member that we have to finish this and the States question today.

Shri Brajeshwar Prasad : I wish to make two more observations. I would like to refer to the example of the great Khalifas of Islam. I want that our President should follow the footsteps of the great Shah Omar and Abu Bakr.

[Shri Brajeshwar Prasad]

Gandhiji was fond of referring to them as examples. Are we going to bury these principles of Asia at the altar of some European concept? I would refer the House to that letter which Gandhiji wrote to Lord Irwin on bended knees: he prayed for bread and got stones instead.

Mr. President : Amendment No. 167 of Mr. Kamath has already been covered by the amendment moved. Mr. Kamath may move 168 and the others.

Shri H. V. Kamath : Sir, I move:

“That in amendment No. 10 of List I (Second Week), in the proposed Part IV, sub-paragraph (3) of paragraph 10 be deleted.”

“That in amendment No. 10 of List I (Second Week), in the proposed Part IV, sub-paragraph (2) of paragraph 11, be deleted.”

“That in amendment No. 10 of List I (Second Week), in the proposed Part IV, in sub-paragraph (3) of paragraph 11, for the words ‘Every such judge’ the words ‘Every judge of a High Court’ be substituted.”

Amendment No. 168 seeks to delete sub-paragraph (3) of paragraph 10 of the proposed Part IV of this Schedule. Similarly amendment No. 171 seeks to delete sub-paragraph (2) of paragraph II of the proposed Part IV.

The last amendment is a more or less verbal one in connection with subparagraph (3) of paragraph II of this Part.

Amendment No. 167, seeking to delete the phrase or the clause “with regard to the non-payment of rent by Judges” has been covered as you, Sir, have observed, by the amendment moved by my honourable Friend, Mr. Brajeshwar Prasad.

Taking the last amendment first, that is amendment No. 173, because it is a short one, I invite the attention of the Drafting Committee to the unclear meaning of the phrase as it stands. In sub-paragraph (3) of paragraph 11 the phrase used is “Every such judge”, while in sub-paragraph (4) of para 10 of this Part, the phrase used is “Every judge of the Supreme Court”. If this phrase “Every such judge” in sub-para (3) of para 11 were to be accepted by the House, it might mean that it has reference only to persons referred to in sub-para (2) of this paragraph 11. Moreover, I see no reason why this should not be on the same lines as the language of sub-paragraph (4) of para 10, where a Judge of the Supreme Court is referred to. It is meet and proper that this phrase should be modified so as to refer to every judge of the High Court categorically and not merely to “every such judge”. Otherwise it might be misunderstood as having reference only to those judges referred to in paragraph 2.

I hope Dr. Ambedkar will find nothing in this amendment of mine to stand against on consideration of mere prestige and that he will see his way to accepting this very verbal and formal amendment.

My first amendment, Sir, which has been covered by Mr. Brajeshwar Prasad’s amendment seeks to delete the provision exempting the judges from paying rent for their residences. I wonder why Judges are being treated so very lavishly in our Constitution. If my honourable Colleagues were to look at this schedule as moved by Dr. Ambedkar, they will see that part IV relating to Judges covers nearly a page and half, while the others with regard to the President, the Governors, the Speaker, the Deputy Speaker are summed up in a paragraph or two. The House will also recollect that Dr. Ambedkar when speaking on this schedule, chose that part relating to judges first before he spoke about the President and the other dignitaries referred to in this schedule. Though I do not cavil at any member of the Drafting Committee—I feel it was perhaps inevitable that the

Drafting Committee weighted as it is by lawyers should have a soft corner for Judges; and some malicious critics might also say that some of us want to put ourselves right with our Judges in the India that is to be, we want to put ourselves in the right side of Judges and ingratiate ourselves.....

Mr. President : Please do not make any insinuations.

Shri H. V. Kamath : I, for one, do not share that view, but I fear we lay ourselves open to malicious criticism outside the House, and therefore, I felt that this provision regarding the non-payment of rent was undignified and detracts from the dignity of the Constitution. If the House will refer to article 48 of this Constitution which has been adopted already as well as article 135 of the Constitution also adopted by the House, they will see that neither the President of the Republic nor the Governor of a State has been given a residence free of rent; I mean it is not specifically stated in the Constitution. The relevant articles relating to the Governors and the President state that the President or the Governor shall have an official residence. That is all that those articles state and there is no reference to the payment or non-payment of rent. I ask the House, is it not undignified of us to say that such a dignitary will not be liable to pay rent for his house? We have already accepted the salutary provision that no dignitary, however high-placed he may be, shall be exempt from the payment of income-tax, as the Governor-General has been heretofore. When even the poorest labourer pays a rent of a rupee or more for his little tenement, why should not a judge pay a rent for his house? I am sure no judge will ask for this generous concession to him. I really fail to see why this provision as regards rent, so derogatory to the dignity of the House and of the Constitution, has been sought to be moved by Dr. Ambedkar in this House.

Next, coming to salaries, I do not wish to quarrel with him because the Chief Justice of the Supreme Court will receive Rs. 5,000 and the other judges will receive Rs. 4,000 each, and as regards the judges of the High Court, the Chief Justice will receive Rs. 4,000 and puisne judges will receive Rs. 3,500. But what I fail to see is why the present incumbents of these offices of judges of the Federal Court and the judges of the High Courts shall be entitled to receive the same salary as they were getting before. The other day the Honourable Sardar Vallabhbhai Patel pleaded for the continuance of conditions of service, salary, pension and cognate privileges in respect of the services of the Secretary of State, the I. C. S. and perhaps the Indian Police service and similar services. The House accepted, and rightly too, his plea and his appeal to the House to pass that particular article because there had been a guarantee given to these services by Government in August 1947. I do not know whether a similar guarantee has been given to the judges of High Courts and to the judges of the Federal Court and also to the Auditor-General to the effect that whensoever the Constitution will come into effect their salaries and other conditions of service will be secure. If that has been given by Government, I have nothing to say. We have got full confidence in Government, and we do not want the Government to go back on their lighted word, and if they have given any such guarantee to the judges of the Federal Court or the High Courts as regards their salaries and conditions of service, it is a different matter. Otherwise I see no reason why we should introduce a special clause or a paragraph in the schedule to the effect that the present incumbents will continue to receive the same salaries as before. I am sure that if we consult most of the judges at present serving in the High Courts and in the Federal Court, most of them, patriots as they are, and willing to serve the country with all their might and main, will not ask for this special concession. If one or two—even that I doubt,—ask for this special concession, I think the Constitution should not make a provision for a few individuals when

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no guarantee has been given by Government to these individuals. The Constitution deals with the whole country, its dignitaries, its people, its officers and public servants, etc., and not any particular individuals. If a few persons do not agree to serve the country under the Constitution we shall not and need not go out of our way to make provision for these few individuals. In the case of civilians it was rightly pleaded and accepted by the House because of the guarantee given by the Government to those civilians, but no guarantee so far as I know has been given by the Government to judges of the Federal Court or of the High Courts in respect of their salaries and conditions of service. That is why, Sir, I have sought to move the amendments Nos. 168 and 171 which have a bearing on the present incumbents of these offices of judges of the Federal Court and the High Courts.

One word, Sir, about these salaries. I agree wholeheartedly with my honourable Friend Mr. Tyagi that the highest dignitaries of the State, the President the judges and the ministers of the State ought to be genuine tyagis. He must be a real Tyagi in mind and spirit, in the spirit of the Gita which says:

अनाश्रितः कर्मफलं कार्यं कर्म करोति यः। स सन्यासी च योगी च न निराग्नः चाक्रियः

It is not the actual amount of the salary that a person is drawing; but the test is whether he is or is not attached to that salary. If he is actuated by the spirit of "Aparigraha" and is willing to resign his job at any time for a higher cause, then he is a real tyagi; he is a real sanyasi. He must serve in this spirit. In this modern world, as in ages gone before, while I will not go the length of saying: "सर्वे गुणाः कांचनमाश्रयन्ते" I feel that every person, every human being, his mind and spirit, is conditioned by the limitations of his body which persists in his corporeal or embodied existence in this world. He has got to be placed above want; he has got to be placed above fear; he has got to be placed above insecurity. Therefore salaries are and should be provided.

Dr. Ambedkar pleaded for the acceptance of these salaries and quoted certain figures from U. S. A., Canada and other countries. My honourable Friend Mr. Brajeshwar Prasad raised the pertinent point as to what relation or ratio those salaries bear to the national income or the per capita income of those countries. I do not wish to go into that subject. Dr. Ambedkar might throw some light on this subject in his reply to the debate. What I would like to say is this. Rumour has it that our Ministers have accepted a voluntary cut of 15 per cent. in their salaries. It is a very laudable decision if it is true. Mr. Brajeshwar Prasad referred to our own allowances and salaries. I am also in favour of reduction in our allowances. But, I would also suggest that this matter of allowances.

Dr. P. S. Deshmukh : Provided all accept it.

Shri H. V. Kamath : That was what I was going to say: provided that all public servants accept a voluntary cut in their emoluments; I would suggest that this thorny question of the salaries of Members of Parliament-it is well known that Members of this House do not receive any salaries, but only allowances-be placed on a sounder footing as soon as the provisional Parliament meets or earlier, and the Members also might be given a salary, and a nominal allowance when they come here. That would be much better.

Dr. P. S. Deshmukh : And a much wiser course.

Shri H. V. Kamath : Yes, much wiser too. After all Members have to come here from far distances unlike Ministers who stay in Delhi and do their work in Delhi.

Lastly, I would once again refer to my amendment which seeks to delete the provision for non-payment of rent. If this were to be included, I would also suggest that we might include therein a provision about a furnished house, and further as to how many bath rooms, how many bed rooms a Judges residence will have. Otherwise, this reference with regard to a free residence for a judge does not at all fit in with the dignity of the Constitution that we are considering, This must go, considering especially that the articles relating to the President and the Governors have no such provision exempting them from payment of rent.

Before, I close, I would earnestly request the Drafting Committee, and the House to see to it that whatever salaries may have been fixed in the past, we as a free Republic, as free India which has got to take an eminent place, in the comity of nations, which has got to play a vital part in the battle for progress and liberty and welfare of mankind, let us at least attempt in an honest and humble way to transvalue the values that exist today, and give a new direction and a new light, if I may say so to a mankind that is groping in this war-torn, war-weary world for new values and new light.

Shri Prabhu Dayal Himatsingka (West Bengal: General): Mr. President, I had given notice of amendments 212 and 213 which are on the agenda paper on page 4:

“That in amendment No. 10 of list I(second Week), in the proposed Part IV, in sub-paragraph (2) of paragraph 11, after the word and figure thirty-first day of October, 1948' the words or as Chief Justice before the tenth day of October. 1949' be inserted.”

and certain other amendments have been suggested. After having heard Dr. Ambedkar explain the position that those persons who have been appointed after 31st day of October 1948 were given an indication that that salary would be subject to the decision of the Constituent Assembly, and if the Constituent Assembly decided to reduce their salary, they will have to agree to such cuts, I do not propose to move it in that amended form. I find that in clause (2) of paragraph 11, there is a lacuna and evidently, it is due to the fact that it has not struck the Drafting Committee. It runs as follows: “Every person who was appointed permanently as a judge of a High Court in any province before the thirty-first day of October, 1948 and has on the date of the commencement of this Constitution become a Judge of the High Court in the corresponding State under clause (1) of article 310 of this Constitution, and was immediately before such commencement drawing a salary at a rate higher than that specified in sub-paragraph (1) of this paragraph, shall be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which was payable to him as a Judge of the High Court immediately before such commencement.” This contemplates that any person who was appointed as a Judge before the 31st of October 1948, will continue to draw the higher salary that he has been drawing on the day of the commencement of the Constitution. But, if a person is appointed after the 31st of October, he will come within the clause, that is to say, the salary will be reduced and he will get Rs. 3,500. If such a Judge who was appointed before the 31st of October 1948 continues to be a Judge in the same province and his salary is increased in the meantime after October 1948, he will continue to draw the higher salary if he is in the same province. But, if such a Judge has agreed to go to another province and has undertaken an additional liability of having to run a second house in the new province, he will not get the benefit of the additional salary. If a Judge is transferred from Bengal to Nagpur, he will not be entitled to the benefit of this additional salary. I

[Shri Prabhu Dayal Himatsingka]

evidently feel that there must be some mistake in the drafting. Otherwise, it could never be the intention of the draftsmen that a person who continues in the same province should draw the higher salary or the difference, but if he is transferred, if he undertakes to go to another province, he will not get the higher salary. He continues to be a Judge; he was appointed as a Judge before October 1948. With your permission, therefore, I suggest:

“That in amendment 211, of List VI (Second Week), in the proposed Part IV, in sub-paragraph (2) of paragraph 11, for the words ‘in the corresponding State’ the words ‘in a State for the time being specified in Part I of the First Schedule’ be substituted.”

Therefore the effect of this amendment will be—

“That in para. 11 sub-para. (2) for the words ‘corresponding State’ occurring in the fourth line of the said para. the words ‘in a State for the time being specified in Part I of the First Schedule’ be substituted.”

There is no reason why a Judge who has agreed to go to another province should be penalised, whereas a Judge who has continued to be in his own province and has not undergone the troubles of a transfer and additional expense should get more. I think if it is properly considered the Drafting Committee should have no objection to accept the amendment proposed by me. This will do away with the anomaly of persons of the same category-to and differentiation being made between two such persons. This is not an amendment in favour of any particular person. This will cover all the Judges who will come within this category. If there is a transfer from one province to another, they, will all be covered if they are drawing higher salaries. If there are no such cases, even then it will not affect anyone under the rules. Otherwise, there is this anomaly or omission or perhaps an unconscious injustice that might be done to any-person who may have undertaken to be a Judge in another province.

As regards scale, personally I would have been glad if the salary had continued to be, for all the Judges, the same that they have been drawing, as everybody knows the Judges should be above temptation and they should have no wants. After all, they do discharge very important duties and there are so many temptations Which come in their way and if they at all have any want, they may be tempted to go wrong. Of course money is not the only thing that might tempt a person. Character and other things are needed, but the Congress party having agreed to 3,500 being fixed for future Judges I do not quarrel with it, but I certainly oppose the amendments of Shri Brajeshwar Prasad and Mr. Kamath who want to reduce, the salary further to 3,000 and 2,000 and I hope the amendment I have moved will be accepted.

Shri R. K. Sidhwa : There are some amendments in my name.

Mr. President : I shall see that.

266 and 269 are already covered. 272: Mr. Saksena.

Prof. Shibban Lal Saksena : Sir, my amendment which has been moved also by Mr. Kamath was intended to remove this provision for special pay. I am Opposed to it, on principle. We are, now framing a new Constitution and in this we are providing the salaries which the incumbents of the various offices should get in Free India. But we are here providing in the amendment moved by the Drafting Committee than Judges and the Auditor-General shall continue to get that portion of present salary which is in excess of the new salary as special pay. The reason given is that some guarantee was given to these officers that they will not have their salaries reduced in their period of office. I think the guarantee was for the Judges of the Federal Court and not for the Judges of the Supreme Court or other Judges. I personally feel that if the future Chief Justice of the Supreme Court and Judges of the High Courts and the Auditor-

General in the future will be content with the salaries provided here, I not see why Judges who will take up their places in the new set-up in the Supreme Court and High Courts and the Auditor-General should not be content to have their salaries as fixed for the new incumbents. At present the Chief Justice gets Rs. 7,000 and Judges get Rs. 5,500. According to the new provision the Chief Justice will get only Rs. 5,000. Suppose one of the Judges on the Bench is promoted to Chief Justice ship he will get only Rs. 5,000. There will be an anomaly again. As Judge he draws Rs. 5,500. As Chief Justice he will get Rs. 5,000. We cannot provide for all these anomalies. What I wanted was that the assurance given was to the existing Judges of the Federal Court and when we are abolishing the Federal Court and are providing for a Supreme Court under the new Constitution, I do not think the guarantee has any meaning. Besides I think the officers also will not relish this special pay which only they will get and their successors will not get.

I do not for a moment consider that the Chief Justice and the Judges or the Auditor-General should not have proper salaries. In fact I feel that these officers should have handsome salaries because we have put down many conditions on them in the provisions concerning them. They must retire at 65 and 60. In the 'case of Supreme Court Judges also they will not be allowed to practice at the bar after retirement. All these are stringent conditions and I do feel that Judges of the High Court should be men who should be independent, who should not be afraid of giving rulings which may go counter to the wishes of the powers that be and for that purpose I think they must be above want, and should have no need to hanker after favours from the Executive. So the practice of giving them good salaries is quite wholesome and I also approve of the provisions. In fact I would very much like to settle the question of their pensions also. In England and America Judges of the Supreme Court have no age of retirement They go even up to ages of 80 and 90 and they have been very good judges even at these ages. We know that their pension is about three-fourths of their salaries, These are very great advantages and that contributes to their independence in giving judgments. Therefore, I am not opposed to giving high salaries to Judges. Besides I also know that those people have got to maintain special standards of life. They have to be reserved and they are denied the privileges of mixing with people. They cannot have all the parties and entertainments which the Minister enjoy and so I do not grudge them the salary provided for them. But I do not think there should be any differentiation or distinction between the first incumbents and those who succeed them. Let them all have the same salary, and if you think the salaries given are not proper, you may raise the salaries, but let it not be that the present Chief Justice of the Supreme Court will get a higher salary and his successors will get less. This should not be done.

I have to say that the accounts of the Republic will not be safe unless the Auditor-General is a man of extraordinary independence and integrity. I, therefore, think that his salary should be a handsome one and exactly on the same footing as that of the Chief Justice of the Supreme Court. I do not want that he should get a higher salary than his successors. I do not, therefore, want any difference between the salary of the present incumbent and his successors.

Mr. President : Mr. Sidhva. I have seen your amendment No. 94 and amendment No. 96. I do not think they arise now. They were to the original proposition which is embodied in amendment No. 92. That amendment has now been superseded by the amendment moved by Dr. Ambedkar, and these amendments do not fit in there. I think these are all the amendments. Shri Alladi Krishnaswami Ayyar.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. President, Sir, in supporting the article relating to the salaries as regards the Judges of the High Courts and of the Supreme Court under the new Constitution, I should like to state a few words in support of the proposition as moved by the Honourable Dr. Ambedkar. The scale of salaries now proposed is practically the same as that proposed by the Drafting Committee in the Draft Constitution published in February last year, with slight alterations in regard to the Judges of the Supreme Court a free house being provided for, and a slight reduction in the salary of the Associate Judges. In fixing the salary of the Judges the committee was quite alive, to the importance of maintaining the dignity, the efficiency and the independence of the judiciary, especially in a Federal Constitution where the highest judiciary is called upon not merely to decide ordinary disputes between citizen and citizen, and the State and the citizen, but also to decide questions of great constitutional importance on which would depend the future development of the Constitution. They took into account the scale of salary obtaining in Canada, Australia, South Africa and the great continent of America, and the scale of salaries obtaining in India in the British regime, as also the need for some kind of retrenchment, having regard to the general poverty of our country.

In any question of revision of salary, we cannot altogether ignore the administrative set-up with which we are starting. If we are starting over-night with a Constitution, with a fresh agency, with a fresh judicial or executive agency, we might have a carte blanche, and we might provide any salary we like, having regard to the economic and other conditions of our country. We have to remember we are building upon existing foundations, though in theory we are perfectly at liberty to frame any Constitution we like and we are in a position to provide any salary we like. These are the considerations which influenced the Drafting Committee in making the particular suggestion they have made. The slight alteration in regard to the rent-free quarters is due to the peculiar conditions in Delhi. It was felt that you must be in a position to provide free residence. Instead of the Judges having to wait some time for their lodging, it was thought it was much better to provide for an official residence for the Judges. That was the reason why a provision has been made in regard to the residence of the Judges.

The Drafting Committee, I might mention, was also quite alive, for example, to the system obtaining in the Continent where the salaries of Judges are much lower than those obtaining in England and in countries which are influenced or dominated by British jurisprudence. We have rightly adopted what may be called the British system of administration of justice. On the continent the Bench and the Bar are distinct institutions. Judges are not recruited at all from the bar, and in France the highest salary of the President of the Court of Cassation is about Rs. 1,300. Similarly the highest salary in the German Reich also was about Rs. 13,00. But then, they were really part of the civil service. We were anxious that the independence of the judiciary should be maintained, and we felt that such independence is best secured by the recruitment from the bar, and we have had regard to the fact that you cannot expect professional gentlemen to accept a place on the bench unless a decent remuneration is provided for. At the same time, we could not ignore the economic condition of the country, and we cannot treat the Judges as a separate caste, different altogether from the general cadre of services in the country. Taking all these factors into consideration, with an anxiety to maintain the independence of the judiciary, their honour and their prestige, the Drafting Committee, in consultation with other bodies finally has come forward with this scheme of salaries.

There are a few other points which have been adverted to, in the course of the debate. The first thing is, where is the need for any special provision

in regard to the judges who are appointed before November last year? Now to far as the members of the Civil Service and the Judges who were appointed to their respective posts before the Indian Dominion Act are concerned, their salaries were safeguarded by a special provision in the Dominion Act, which was adverted to in the course of the debate on the Civil Services, the other day. In the ordinary course, the Judges, including the Chief Justice, continued to be appointed in the old scale of salaries, even after the Dominion Constitution came into force, and even after the publication of the Draft Constitution in February last year; and we are told, it is only after November last that the Cabinet made it known to the future appointees that they must be prepared to accept their posts subject to the new scales of pay that might be adopted by the Constituent Assembly. It is taking these factors into account that a special provision has been inserted safeguarding the emoluments of those who were appointed to their respective posts prior to November last year. It is advisedly that we put the difference is an allowance in regard to those judges who were appointed before November, because the general principle is that the particular scale of salary is applicable to all judges. Those who were appointed as judges before November entered on their task on a certain understanding and therefore the Committee thought it proper that the differential pay must be considered as a special allowance. This is to emphasise the principle that the normal and accepted salary is that salary provided in the general provision of the Constitution. This has resulted no doubt in certain anomalies. They must be faced; they cannot be helped. For example, the Chief Justice of a High Court, if appointed later as a Judge of the Supreme Court, will get a lower salary than as Chief Justice of the High Court, though it may be he has a right to free residence in Delhi. Again, judges discharging the same or similar functions will get different salaries in the same Court, but these anomalies cannot in any way affect the main principle under lying this article. This is the one reason why the article as proposed deals with this differential, pay as I have already pointed out, as a special allowance. These are the points which I wanted to refer to so far as the judges are concerned.

Then, some point was made in the course of the debate that you must make a special provision in the Constitution that the President's salary is subject to Income-tax. Unless an immunity is given in the Constitution, it is an accepted principle of constitutional law that every officer; be he the President, the Chief Justice or a Judge of the High Court, or be he a Minister, will be subject to income- tax. If you make a special provision that the President's salary would be subject to income-tax, it will be open to the argument that, so far as the other officers or dignitaries are concerned, they are not subject to income- tax. That is not the principle of the Constitution. Therefore while increasing the salary of the President to Rs. 10,000. advisedly no reference is made to the fact that he shall be subject to income-tax. Every officer, every dignitary, however high-placed he may be, will be subject to income-tax unless the Constitution expressly exempts him from the operation of the income-tax law. That is the second point that I wanted to mention.

Then, so far the President's allowances are concerned, there is no need to go into the question of the allowances of the President, because Parliament is the supreme master of the situation. Instead of cumbering the Constitution with a detailed list of the allowances to which the President is entitled, reference is made to the fact that for the time being the President will be entitled to the allowances which the Governor-General was having. Later on, it will be open to Parliament to go into the whole question and revise the allowances as circumstances, the needs of the country and the dignity of the position of the President would require.

[Shri Alladi Krishnaswami Ayyar]

With these few words, Sir, I support the article as put forward by Dr. Ambedkar.

Pandit Hirday Nath Kunzru : (United Provinces: General): Mr. President, Sir, the Draft Constitution provided that the President should get a salary of Rs. 5,000 a month and the Governor of a State Rs. 4,500 a month. It was then proposed

The Honourable Dr. B. R. Ambedkar : President Rs. 5,500 a month.

Pandit Hirday Nath Kunzru : I have got the Draft Constitution before me and I have read out the figures from it. It was therefore proposed that the salaries of the principal judicial functionaries should be lower than these salaries. It was provided that the Chief Justice of the Supreme Court should get Rs. 5,000 a month and any other judge of the Supreme Court Rs. 4,500 a month. It was also provided that the Chief Justice of a High Court should get Rs. 4,000 a month and any other Judge of a High Court Rs. 3,500 a month. So far as the High Courts are concerned, we all know that the salaries of the Judges in all provinces were not the same. In the C. P. and the provinces of Orissa and Assam, the salaries were lower. Assam gave the lowest salaries. It gave Rs. 4,000 to its Chief Justice and Rs. 3,500 to every other Judge. Now, this is the scale of salary that has been proposed for the Judges of all the High Courts in the Constitution.

In the amendment placed before us by Dr. Ambedkar the salaries of the President and the Governors have been raised. The salary of the President has been very nearly doubled, and that of the Governors has been increased by Rs. 1,000 a month, but the salaries of the Judges of the Supreme Court and of the High Courts have been retained at the figures mentioned in the Draft Constitution. Only one exception has been made and that is in the case of permanent judges of the provincial High Courts. The amendment says that any Person appointed permanently as a Judge of a High Court in any province before the 31st Day of October 1948 and becoming a Judge of the High Court at the commencement of this Constitution in the corresponding State under clause (1) of article 310 of this Constitution shall be entitled to the same condition of service as respects salary, leave and pension as he was entitled to before the commencement of this Constitution. An amendment has now been proposed, that the special provision made for persons appointed permanently before the 31st day of October 1948 should be deleted. I take it that an exception has been made in the case of persons who will be appointed permanently as judges of High Courts before 31st October 1948, broadly speaking, to bring the provision into line with Section 10 of the Independence Act, 1947. That Section entitled all persons appointed by the Secretary of State or the Secretary of State in Council to the civil services of the Crown in India and all permanent judges of the Supreme Court and the High Courts to the same conditions of service, and other rights as they could enjoy under the Government of India Act, 1935. Dr. Ambedkar's amendment, however, differs in certain respects from the provisions of Section 10 of the Independence Act. The Independence Act gave a guarantee only in respect of those persons who had been appointed as permanent judges before the 15th August 1947. Dr. Ambedkar's amendment extends this right to persons appointed up to the 31st October, 1948. The amendment thus goes beyond the provisions of Section 10 of the Independence Act. But in one respect it fails to carry out the provisions of that Section. That Section laid down, that a person appointed permanently as a judge of a High Court, whether in the same province in which he was serving as a temporary or additional judge or in any other province, would be entitled to the same conditions of service and privileges that he was entitled to before the 15th of August

1947. In respect of the persons appointed to the civil services by the Secretary of State or the Secretary of State in Council the obligations created by the Independence Act have been fully carried out but the guarantees relating to the judges of High Courts have not been respected in one respect which I have already dealt with.

I think therefore that the amendment moved by Mr. Prabhu Dayal Himatsingka deserves to be favourably considered. A man may have been appointed as a judge, say, of the U.P. High Court some time ago. But he may, before the 31st October 1948, become the Chief Justice of, say, the Patna High Court. He will not, in that case, be entitled to receive Rs. 5,000 per mensem as his salary. It seems that in accordance with Dr. Ambedkar's amendment, he will be entitled to receive only Rs. 4,000, which is the same salary that he was entitled to receive before his transfer from the U.P. to Patna. This does not seem to me to be at all desirable. If you want to make an exception in the case of persons appointed as permanent judges before 31st October 1948, then carry out the guarantee that you mean to give not merely in the letter but also in the spirit. Once you have appointed a man permanently as a judge of a High Court, he can look forward to promotion of his work is satisfactory. Every judge of course cannot become a Chief Justice or a Judge of the Supreme Court, but some judges can and I see no reason why the judges who have been promoted because of their merit should be debarred from the benefit of the guarantee given under Section 10 of the Government of India Act.

As regards the future judges, Dr. Ambedkar referred to the salaries given in the United States, Australia, Canada and South Africa to the judges of the High Courts. He said, I believe, that with the exception of the United States, no country gave its judges more than India. If he said so, he must have forgotten that in England the judges of the High Court receive a higher salary than the judges of any High Court in India. We may, broadly speaking, say that with the exception of the United States and England, none of the countries mentioned by Dr. Ambedkar gave its judges higher salaries than India did.

I do not know what the pensions of the judges in Canada, South Africa and Australia are. But we have to take these rights into consideration in determining the salaries of the judges. In the United States of America, the pension of a judge of the Supreme Court is, I understand, equal to his salary. In England, the pension of a judge of the High Court is 70 per cent. of his salary. Under the Government of India Act, 1935, roughly speaking, the pension of a judge who has served for twelve years will be about one-third of his annual salary. Whatever justification there may have been for this when the Government of India Act was passed it is obvious, that the judges of the High Courts should be given higher pensions now. I was not able to hear all that Dr. Ambedkar said but I did not hear him refer to this question at all in his speech. The memorandum sent by the judges of the Supreme Court and the Chief Justices of the various High Courts in India deprecates a reduction in the salaries and gives it as the opinion of the judges that, the age of retirement of the judges and their pensions should be raised. The salaries have been reduced and the age of retirement has not been raised, but the pensions can still be raised. The judges of the High Courts and of the Supreme Court will occupy very responsible positions; they will, so to say, be the guardians of the Constitution. It is necessary therefore that their salaries and conditions of service and their position should be such as to command the respect of the people and to enable them to discharge their duties without any anxiety with regard to the maintenance of themselves and their families. I am personally in favour of the amendments moved by Mr. Naziruddin Ahmad regarding the salaries of the judges of the Supreme Court and those of the High Courts. But whatever

[Pandit Hirday Nath Kunzru]

the decision of the House on that point may be I think that if the reduction in the salaries is to be justified from any point of view it is imperatively necessary that the pensions of the judges both of the Supreme Court and of the High Courts should be raised. I do not know what my honourable Friend Dr. Ambedkar feels on this point but I shall be surprised if even he does not think that the present pensionary provisions require to be changed. I think that the judges of the Supreme Court and the High Courts should be allowed to draw, say, two-thirds of their salaries as pension.

Mr. President : So far as pension is concerned, may I point out that this is only an interim provision until the Parliament makes another provision? It is a matter left over for Parliament to consider.

Pandit Hirday Nath Kunzru : This is quite true but I should have liked my honourable Friend Dr. Ambedkar, when he explained his amendment, to refer to this matter too. I know that a law will have to be passed by Parliament fixing the pensions of the judges, but if responsible persons here—and no one is in a more responsible position than the Chairman of the Drafting Committee today—were to express the opinion that the, pensions ought to be increased and ought to be at least two-thirds of the salaries, I am sure this will carry weight with Parliament. But if the matter is left in the air, if no person to whose opinion Parliament may be expected to attach weight refers to it and leaves honourable Members to imagine that the present pensionary provisions require no change, it is very doubtful whether Parliament would be inclined to pass any law increasing the pensions.

This is my justification, Sir, for having referred to this question. I do not however wish to prolong this discussion any further. I do not think that there is the slightest chance of any amendment being accepted by the Drafting Committee. We all know the course that the discussions in this House have taken during the last two years. Broadly speaking no amendment, however reasonable, had a fair chance of being accepted by the Drafting Committee, but I do hope that even the Chairman of the Drafting Committee will not consider it inconsistent with his dignity to say that in his opinion the pensions of the judges of the Supreme Court and the High Courts should be raised.

Shri L. Krishnaswami Bharathi (Madras: General): Sir, the question be put.

Mr. President : The question is:

“That the question be now put.”

The motion was adopted.

The Honourable Dr. B. R. Ambedkar : Sir, all I wish to say is that there are three points which have been raised and which require some reply. Mr. Kamath attacked the provision in Schedule II allowing the judges of the Supreme Court a free house. This question of providing for a house in the Constitution for the judges of the Supreme Court was decided upon after careful consideration. It was felt that a large number of judges who would be appointed to the Supreme Court would be coming from the far ends of this country to the capital city and that it would not be proper to throw them on their own resources to find a house which would be in keeping with the dignity of their office. That was the principal reason why the Drafting Committee felt that the Government should have the obligation to provide a house.

With regard to the question of the house being free of rent, we thought that that was a sort of compensation for the reduction in the salaries of the Supreme Court judges, which we had proposed in comparison with the salaries of the judges of the Federal Court. Personally I was somewhat surprised at

the derisive remarks made by my honourable Friend Mr. Kamath on this particular point, because if he is objecting to a free house to anybody I should have expected him to say something about the free house which we provide both for the President as well as for the Governor-General and I personally

Shri H. V. Kamath : I did not refer to rent and I do not know whether it is a free house or not.

The Honourable Dr. B. R. Ambedkar : I do not think there is any substance in this particular point made by Mr. Kamath.

With regard to the question of the amount of salaries there have been a variety of views expressed in the House. My Friend Mr. Shibban Lal Saksena went to the length of saying that the President ought not to get more than one rupee. Well, I suppose, on that remuneration no one would be available to function as the President, except a wandering Sanyasi, and I have no doubt that a wandering Sanyasi would be the most unfit person to be the President of the Union, whatever may be his other virtues.

With regard to the judges' salary two questions have been raised. There are some here in this House who have said that the judges' salaries should be at a higher level than what is fixed in the Schedule. There are others who have said that the standard of salary we have fixed has no relation to the capacity of the country to pay. In my judgement, the slogan that anything that we could fix in this country should have relation to the income of the people is a good piece of political slogan, but I am not prepared to say that it is practical politics. Salaries in this country, as well as in every other country, most depend upon the law of supply and demand. Unfortunately or fortunately, there are any number of people who can be found suitable to function as Members of the Legislature, consequently we fix their salaries at a much lower level. Fortunately or unfortunately, the supply of persons who can function as judges is very limited. I do not propose to say that it is a rarity. But certainly it is a very difficult commodity to obtain and consequently we are required to pay the market price. I am sure that in my judgment the salary fixed in this Schedule conforms to what might be called the market price. Therefore, I do not think that there can be any serious quarrel on the level of salary that we have fixed.

Then I come to the amendment moved by my friend, Mr. Himatsingka. I should like to say that he and I have the same case in mind and I have the greatest sympathy for the case he has in mind. But what he wants to do is to ask me to accept a general proposition, that is to say, a proposition saying "any judge appointed in any territory mentioned in Part I". I think it is not desirable to introduce in these clauses an amendment in general terms, for the simple reason that after the 31st October 1948, having regard to the provisions of our Constitution, there can be no distinction in the salary of judges on a provincial basis. All judges have been placed on the same basis irrespective of the High Court of the area within which that High Court is situated. Therefore, a general provision to remove any anomaly is not necessary because such an anomaly is not likely to recur. The anomaly exists because in the Government of India Act certain provisions with regard to the salary of judges did make a distinction between province and province. What I would like to tell my Friend is this; that the Drafting Committee hopes that this particular case will be provided for in another manner. If that happened there would be no necessity of adopting this particular amendment and the individual affected thereby would also be benefited. But if the Drafting Committee finds that that does not happen, then the Drafting Committee will reserve to itself the right of bringing in a specific amendment to remove the grievance of the specific individual we have in mind.

[The Honourable Dr. B. R. Ambedkar]

Before I close, I would like to ask your permission to introduce one or two phrases in the clause which have been inadvertently omitted. I refer to Part IV, paragraph I I sub-paragraph (2). I would like to introduce after the word “shall” in the seventh line the following words :

“In addition to the salaries specified in sub-paragraph (1) of this paragraph.”

I have also another amendment in sub-paragraph 3 of paragraph II. I would omit the first “such” and after the word “judge” I would add:

“of the High Court.”

Shri H. V. Kamath : That is my amendment.

The Honourable Dr. B. R. Ambedkar : I accept it, and I now hope the House will accept the Schedule as amended.

Shri R. K. Sidhwa : What about my amendment regarding the salaries and allowances of the president and the Governor?

The Honourable Dr. B. R. Ambedkar : That will be decided by Parliament.

Mr. President : I shall now put the amendments to the Schedule according to the Parts. We are now on Part I of the Schedule.

The question is :

“That in amendment No. 207 of List VI (Second Week), in paragraph I of the proposed Part, I, before the figure ‘10,000’ and before the figure ‘5,500’ the words ‘not more than’ be inserted.”

The amendment was negatived.

Mr. President : The question is :

“That in amendment No. 207 of List VI (Second Week), in paragraph I of the proposed Part I, for the figure and word ‘10,000 rupees’ the figure and word ‘1 rupee’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That in amendment No. 207 of List VI (Second Week), in paragraph 1 of the proposed Part I, the following be added after the figures relating to salaries of President and Governor, in parenthesis :-

‘The salaries of the President and the Governor shall be subject to income-tax.’ ”

The amendment was negatived.

Mr. President : The question is

“That in amendment No. 207 of List VI (Second Week), for paragraph 2 and 3 of the proposed Part I, the following be substituted :-

‘There shall be paid to the President and to the Governor the following allowance :

‘The President shall draw a lump sum of Rs. 135,000 per annum which shall include the cost of renewal, repair and maintenance of furniture and motor vehicles, also including sumptuary, contract and all other allowances.’

‘The President shall also draw Rs. 10,000 per annum as touring expenses.’

‘The Governor shall draw lump sum of Rs. 15,000 per annum which shall include the cost of renewal repair and maintenance of furniture and motor vehicles, also including sumptuary, contract and all other allowances.’

‘The Governors shall also draw Rs. 7,000 per annum as touring expenses.’ ”

The amendment was negatived.

Mr. President : There is no amendment to Part II. I come to Part III—amendment No. 264.

The question is

“That with reference to amendment No. 210 of list VI (Second Week), for paragraph 8 of Part III, the following be substituted :—

- ‘8. There shall be paid to the Speaker and the Deputy Speaker of the provisional Parliament, such salaries and allowances as were payable to the Speaker and the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution.’ ”

The amendment was negatived.

Mr. President : I now come to Part IV—amendment 265.

The question is :

“That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in Paragraph (1) of Paragraph 10,—

- (i) for the figure ‘5,000’ the figure ‘6,000’ be substituted; and
- (ii) for the figure ‘4,000’ the figure ‘5,000’ be substituted.”

The amendment was negatived.

Mr. President : Part (iii) of amendment 267 was not moved. So I shall put the first two parts to the House.

The question is :

“That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in sub-paragraph (3) of paragraph 10,—

- (i) for the words and figure ‘thirty-first day of October, 1948’ the words ‘commencement of this Constitution’ be substituted;
- (ii) for the words ‘the commencement of this Constitution’ the words ‘such commencement’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in sub-paragraph 11,—

- (i) for the figure ‘4,000 the figure ‘5,000’ be substituted; and
- (ii) for the figure ‘3,500 the figure ‘4,000’ be substituted’.”

The amendment was negatived.

Mr. President : The question is :

That amendment No. 211 of List VI (Second Week), in the proposed Part IV, in sub-paragraph (2) of paragraph 11,—

- (i) for the words and figure ‘thirty-first day of October, 1948’ the words ‘comment of this Constitution’ be substituted;
- (ii) for the words ‘the commencement of this Constitution’ the words ‘such commencement’ be substituted.”

The amendment was negatived.

Mr. President : The third part to amendment 270 was the one accepted by Dr. Ambedkar. As it is, the third part reads :

“In sub paragraph (2) of paragraph 11 in proposed Part IV of the schedule, after the words ‘specified in sub-paragraph 4 (1) of this paragraph, shall’ add the words ‘in addition to the salary specified in sub-paragraph (1) of this paragraph’.”

The Honourable Dr. B. R. Ambedkar : I would like to have my own words.

Mr. President : I think the wording is the same.

Pandit Hirday Nath Kunzru : Is Dr. Ambedkar entitled to move an amendment after the closure has been accepted ?

Mr. President : There is no difference between what Dr. Ambedkar has said and Mr. Naziruddin Ahmad's wording.

Mr. President : The question is :

"That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in sub-paragraph 2 of paragraph 11 in the seventh line after the word 'shall' the following be added :

'in addition to the salaries specified in sub-paragraph I of this paragraph.' "

The amendment was adopted.

The President : The question is :

"That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in item (ii) of sub-paragraph (b) of paragraph 12, the words 'excluding any time during which the judge is absent on leave' be deleted.' "

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 10 of List I (Second Week), in the proposed Part IV, in Paragraph 10,—

- (i) in sub-paragraph (1) , for the figures '5,000' and '4,000', the figures '3,000' and 2,000' be substituted respectively; and
- (ii) in sub-paragraph (2) for the word 'without' the word 'on' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 10 of the List I (Second Week), in the proposed Part IV, subparagraph (3) of paragraph 10 be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 10 of List I (Second Week), in the proposed Part IV, subparagraph (2) of paragraph 11, be deleted."

The amendment was negatived.

The President : The question is :

"That in amendment No. 10 of List I (Second Week), in the proposed Part IV. in subparagraph (3) of paragraph I 1, for the words 'Every such judge' the words 'Every judge of a High Court' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That for Part I of the Second Schedule, the following be substituted :—

'PART I

PROVISIONS AS TO THE PRESIDENT AND THE GOVERNORS OF STATES FOR THE TIME BEING SPECIFIED IN PART I OF THE FIRST SCHEDULE

1. There shall be paid to the President and to the Governors of the States for the time being specified in Part I of the First Schedule the following emoluments *per mensem*, that is to my :—

The President	10,000 rupees.
The Governor of a State	5,500 rupees.

2. There shall also be paid to the President and to the Governors such allowances as were payable respectively to the Governor-General of the Dominion of India and to the Governors of the corresponding Provinces immediately before the commencement of this constitution.

3. The President and the Governors throughout their respective terms of office shall be entitled to the same privileges to which the Governor-General and the Governors of the corresponding Provinces were respectively entitled immediately before the commencement of this Constitution.

4. While the Vice-President or any other person is discharging the functions of, or is acting as, President, or any person is discharging the functions of the Governor, he shall be entitled to the same emoluments, allowances and privileges as the President or the Governor whose functions he discharges or for whom he acts, as the case may be.' "

The amendment was adopted.

Mr. President : The question is :

"That in the heading in Part II, after the word and figure 'Part I' the words and figure 'or Part III' be inserted."

The amendment was adopted.

Mr. President : The question is :

"That for paragraph 7, the following paragraph be substituted:—

- '7. There shall be paid to the ministers for any State for the time being specified in Part I or Part III of the First Schedule such salaries and allowances as were payable to such ministers for the corresponding Province or the corresponding Indian State, as the case may be, immediately before the commencement of this Constitution.' "

The amendment was adopted.

Mr. President : The question is :

"That in paragraph 8, for the words 'respectively to the Deputy President of the Legislative Assembly and to the Deputy President of the Council of State immediately before the fifteenth day of August, 1947' the words 'to the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before such commencement, be substituted."

The amendment was adopted.

Mr. President : The question is :

"That for Part IV of the Second Schedule, the following be substituted :—

PART IV

PROVISIONS AS TO THE JUDGES OF THE SUPREME COURT AND OF THE HIGH COURTS OF STATES IN PART I OF THE FIRST SCHEDULE

(1) There shall be paid to the judges of the Supreme Court, in respect of time spent on actual service, salary at the following rates *per mensem*, that is to say:—

The Chief Justice	5,000 rupees.
Any other judge	4,000 rupees.

Provided that if a judge of the Supreme Court at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service in the Supreme Court shall be reduced by the amount of that pension.

(2) Every judge of the Supreme Court shall be entitled without payment of rent to the use of an official residence.

(3) Nothing in sub-paragraph (2) of this paragraph shall apply to a judge who was appointed as a judge of the Federal Court before the thirty-first day of October, 1948, and has become on the date of the commencement of this Constitution a judge of the Supreme Court under clause (1) of article 308 of this Constitution, and every such judge shall in addition to the salary specified in sub-paragraph (1) of this paragraph be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and

[Mr. President]

the salary which was payable to him as a judge of the Federal Court immediately before such commencement.

(4) Every judge of the Supreme Court shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe.

(5) The rights in respect of leave of absence (including leave allowances) and pension of the judges of the Supreme Court shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the judges of the Federal Court.

11. (1) 'There shall be paid to the judges of the High Court of each State for the time being specified in Part I of the First Schedule, in respect of time spent on actual service, at the following rates *per mensem*, that is to say :—

The Chief Justice	4,000 rupees.
Any other judge	3,500 rupees.

(2) Every person who was appointed permanently as a judge of a High Court in any Province before the thirty- first day of October, 1948, and has on the date of the commencement of this Constitution become a judge of the High Court in the corresponding State under clause (1) of article 310 of this Constitution, and was immediately before such commencement drawing a salary at a rate higher than that specified in sub-paragraph (1) of this paragraph, shall in addition to the salary specified in sub-paragraph I of this paragraph be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which was payable to him as a judge of the High Court immediately before such commencement.

(3) Every judge of the High Court shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe.

(4) The rights in respect of leave of absence (including leave allowances) and pension of the judges of any such High Court shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the judges of the High Court of the corresponding Province.

12. In this Part unless the context otherwise requires,—

- (a) the expression "Chief Justice" includes an acting Chief Justice, and a "Judge" includes an *ad hoc* judge;
- (b) "actual service" includes—
 - (i) time spent by a judge on duty as a judge or in the performance of such other functions as he may at the request of the President undertake to discharge;
 - (ii) vacations, excluding any time during which the judge is absent on leave; and
 - (iii) joining time on transfer from a High Court to the Supreme Court or from one High Court to another.' "

The amendment was adopted.

Mr. President : The question is :

"That the Second-Schedule, as amended, stand part of the Constitution."

The motion was adopted.

The Second Schedule, as amended, was added to the Constitution.

Shri H. V. Kamath : Mr. President, will you be able to throw some light on the length of this session ?

Mr. President : It all depends upon you. I do not mean you particularly; I mean the House. So I think we have to meet again in the afternoon. We shall sit at four o'clock. The House stands adjourned, up to 4 o'clock.

An Honourable Member : We shall meet from four to six o'clock.

Mr. President : That we shall see.

The Assembly then adjourned for Lunch till Four of the Clock in the afternoon.
