

## CONSTITUENT ASSEMBLY OF INDIA

*Thursday, the 15th September 1949*

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

### DRAFT CONSTITUTION—(Contd.)

#### **New Article 112-B.**

**The Honourable Dr. B. R. Ambedkar** (Bombay: General): Mr. President, Sir, I move :

“That after article 112 A, the following new article be inserted:—

112-B. Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to matters other than those referred to in the foregoing provisions of this Chapter in relation to which jurisdiction and powers were exercisable by His Majesty in Council immediately before the commencement of this Constitution under any existing law’.”	Jurisdiction and powers of His Majesty in Council under existing law in certain cases to be exercisable by the Supreme Court.
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Sir, the position is this that according to the ruling of the Privy Council there is a distinction between civil matters and matters relating to Income-tax and, for instance, acquisition proceedings. It has been held that the proceedings relating to income-tax and to acquisition of property do not lie within the purview of what are called ‘civil proceedings.’ And it might therefore be held that unless a special provision was made the powers of the Supreme Court were confined to civil proceedings. In order to remove that doubt this article 112 B. is now proposed to be introduced so as to give the Supreme Court full powers over all proceedings, including civil proceedings and other proceedings which are not of a civil nature. That is the reason why this article is sought to be introduced.

**Pandit Thakur Das Bhargava** (East Punjab: General) : Sir, I beg to move:

“That in amendment No. 17 above, in the proposed new article 112 B, the words ‘or practice’ be added at the end.”

My only purpose in moving the amendment is that I am not sure if the words “under any existing law” will cover the entire scope of the jurisdiction which the Privy Council has been enjoying for such a long time. We have now got a Bill which is going to be introduced in a day or two—I think it is coming for discussion on the 17th—in which an attempt has been made to confer such jurisdiction on the Federal Court as has been enjoyed by the Privy Council. Paragraph 2 of the Bill says :

“As from the appointed day, the jurisdiction of His Majesty in Council to entertain, and save as hereinafter provided to dispose of, appeals and petitions from, or in respect of, any judgment, decree or order of any court or tribunal (other than the Federal Court) within the territory of India, including appeals and petitions in respect of criminal matters, whether such jurisdiction is exercisable by virtue of His Majesty’s prerogative or otherwise, shall cease.”

My submission is that it is doubtful in what manner and in what matters the Privy Council has been exercising jurisdiction. If there were no pre-existing

[Pandit Thakur Das Bhargava]

law, but the Privy Council was exercising jurisdiction only as a matter of practice, those jurisdictions must be taken away from the Privy Council and conferred on the Federal Court. Much of the Constitution of England is by way of conventions, so that we have to see that the jurisdiction of our Federal Court may be foolproof and is no less expensive than that of the Privy Council.

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

“That in amendment No. 17 above, the proposed new article 112 B be numbered as clause (1) and the following clause be added:—

‘(2) The Supreme Court shall also have jurisdiction to hear appeals against sentences of death passed by Courts-martial.’”

Sir, in article 112 of the Constitution, the Supreme Court has been given very wide powers. It has been said that the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree or final order in any case or matter, passed or made by any court or tribunal in the territory of India in cases where the provisions of article 110 or article 111 of this Constitution do not apply. So, there is inherent power in the Supreme Court. I want to make this specific as this question is important.

I have had occasions to discuss this matter with many persons who are connected with decisions of the courts-martial. One thing that has struck me is that in the hearing of the courts-martial, the Judge Advocate who is the Judge is also the prosecuting counsel. When a military officer is prosecuted for breach of army discipline, the case goes to the Judge Advocate who is both the Court and also the person to give directions as if he were the prosecution Counsel in that case, with the result that he prepares the prosecution case and at the same time sits in judgment on the accused. Naturally, he cannot be expected to be so fair and impartial as laws of jurisprudence would expect him to be. The man who is the prosecutor should not be the Judge. I know of many cases where the ends of justice have not been met for this reason.

Recently the British Government appointed a Commission to enquire into the procedures of Courts-Martial. That Commission recommended that the Judge Advocate should have nothing to do with the prosecution. Hence my amendment that the Supreme Court shall also have jurisdiction to bear appeals against sentence of death passed by Courts-martial.

**Mr. Naziruddin Ahmad** (West Bengal: Muslim): Sir, the amendment which stands in my name is of a verbal nature and, therefore, I shall leave it to the Drafting Committee to consider. I, however, with your permission, desire to take part in the general discussion.

This article 112 B seeks to be very intricate and circumspect in its approach. It is the inevitable result of piecemeal introduction of articles on the subject. I submit that the way in which the present articles have been worded would make it absolutely difficult to realise what they mean, Article 112 B tries to give jurisdiction to the Supreme Court over subjects on which “His Majesty in Council” had powers. We are thus linking the rights and powers of the Supreme Court in matters of appeal to the undefined powers of His Majesty in Council. I think instead of proceeding in a roundabout manner like this, the more satisfactory

course would have been to say that Income-tax and Acquisition proceedings are subjects on which there would be a right of appeal before the Supreme Court.

Sir, I would like to draw the attention of the House to article 111-A which gives absolute jurisdiction with regard to criminal cases where there is a final judgment, or order or sentence of a criminal Court, provided of course there is a substantial question of law and there is special leave. Then in article 112 it is said that the Supreme Court may give special leave to appeal from any judgment, decree or final order in any cause or matter passed or made by any Court or tribunal in the territory of India. These, I think, ought to be enough so as not to require any further clarification by means of article 111B.

Then again in article 112-A we have already provided that the Supreme Court has the powers to review any judgment pronounced or order passed in any case. So in these circumstances, the real utility of article 112-B is not very clear. If there are some loopholes in the articles already passed the better course would be to clarify the matter by specific enactments.

With regard to the British Constitution the greatest difficulty is that it is in a fluid condition. Nobody knows what the powers of the King are and nobody can define them with precision. They are determined by the Courts or by the Parliament when they arise. The proposal of linking the powers of the Supreme Court with the powers of His Majesty would be open to two objections, namely, the linking up of the Supreme Court with something which is vague and undefinable and secondly to inevitably perpetuate the designation of "His Majesty" in the Constitution of Free India.

**Shri Brajeshwar Prasad** (Bihar : General) : Mr. President, Sir, I rise to support Prof. Saksena. I feel that military courts are not likely to have proper regard for the sanctity of human life. I am against capital sentence. The traditions of non-violence are so strong in this country that it is not advisable to vest final powers into the hands of military tribunals in cases of death sentence. We cannot abolish capital punishment here. All judiciaries, even the Supreme Court are responsive to public opinion. I have no reason to think that our Supreme Court here will have no regard for public opinion and for the traditions of this country.

**Mr. President** : Dr. Ambedkar, would you like to say anything?

**The Honourable Dr. B. R. Ambedkar** : Sir, with regard to the amendment of my Friend, Pandit Thakur Das Bhargava, I do not think that that amendment is necessary if he is really enlarging the jurisdiction of the Court. The word "practice" is generally taken to cover matters of procedure, and article 112-B which I have proposed does not deal with procedure but deals with substantive matter of jurisdiction. Therefore his amendment "or practice" is unnecessary.

With regard to the amendment of my Friend Prof. Shibban Lal Saksena, there are two points to which I would like to reply. The first is this, that it there is to be an appeal to the Supreme Court in matters of sentence of death passed by Courts-martial, then such a provision could be easily made by the Indian Army Act giving the accused person the right to appeal, and it has been provided, if I may draw my friend's attention to clause (1) of article 114, that the Supreme Court shall have such further jurisdiction and power with respect to any matters in the Union List. it reads :

"114(1). The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer."

[The Honourable Dr. B.R. Ambedkar]

If Parliament thinks that such a power should be vested in the Supreme Court, there is no impediment in the way of Parliament making an appropriate provision in the Army Act conferring such a power on them.

Again, I should like to draw attention to article 112 which deals with matters of special need. Under that it would be open to the Supreme Court to entertain an appeal against a Court-martial because therein the words used are—

“any cause or matter made by any court or tribunal”,

and therefore, the wording being so large, no Court or tribunal could escape from the special jurisdiction of the Supreme Court provided under article 112. Therefore, my submission is that his amendment is also quite unnecessary.

With regard to the amendment of my friend Mr. Naziruddin Ahmad to omit the words “existing law”.....

**Mr. Naziruddin Ahmad :** I have not moved that.

**Mr. President :** He has not moved it, he has left it to the Drafting Committee.

**The Honourable Dr. B. R. Ambedkar :** If he has left it to the Drafting Committee I am very glad, Sir. We shall certainly pay the best attention that his point deserves.

**Mr. President :** Then I will put the amendments.

**Prof. Shibban Lal Saksena :** In view of the assurances given, I would like to withdraw my amendment.

**Pandit Thakur Das Bhargava :** I too am withdrawing my amendment, Sir.

The amendments were, by leave of the Assembly, withdrawn.

**Mr. President :** The question is:

“That proposed article 112-B stand part of the Constitution.”

The motion was adopted.

Article 112 B was added to the Constitution.

#### **New Article 15-A**

**Mr. President :** Then we go back to New Article 15-A.

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

“That after article 15, the following article be inserted:—

‘15-A. (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in this article shall apply—

(a) to any person who for the time being is an enemy alien, or

(b) to any person who is arrested under any law providing for preventive detention;

Provided that nothing in sub-clause (b) of clause (3) of this article shall permit the detention of a person for a longer period than three months unless—