

[Pandit Thakur Das Bhargava]

basic idea behind all the amendments is one of compromise. If you are pleased to hold them over one consolidated amendment shall come before the House.

Mr. President : I have no objection to that. But amendment No. 23 is a somewhat different matter.

Pandit Thakur Das Bhargava : Yes, Sir. It is absolutely different but that will remain as you have already ordered that it may stand over.

Shri T. T. Krishnamachari (Madras : General) : Sir, these provisions being a departure from the existing scheme in the Draft Constitution the House may be given some time to digest these new provisions.

Mr. President : I have no objection: it can stand over.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Amendment No. 37 also relates to that.

Mr. President : That will also stand over. All the amendments relating to appeals from decision in criminal cases will stand over.

Article 112

Mr. President : Can we take up article 112 now? I find that in regard to this also there are several amendments in regard to appeals. Perhaps this also may stand over, and the consideration of the article other than the portions concerned with criminal appeals may be taken up.

Shri Ram Sahai (Madhya Bharat) : *[Mr. President, I move my amendment which runs :—

“That in article 112, the words ‘except the States for the time being specified in Part III of the First Schedule, in cases where the provisions of article 110 or article 111 of this Constitution do not apply’ be deleted.”

My amendment consists of two parts. It is one of those amendments which I have moved in order to remove the distinction maintained between the Provinces and the States’ Unions. This amendment has two parts.

One part deals with the exclusion of Unions of States and States from the jurisdiction of the Supreme Court. I have moved this amendment against this exclusion. The second part deals with limitations of the rights of the Supreme Court in article 110 and 111. I understand that the second part of my amendment is covered by amendment No. 1932 moved by Dr. Ambedkar on behalf of the Drafting Committee. Hence I think that this part of my amendment will find no objection with him and he will accept it. As I understand that the House agrees with me that it would not be proper to apply such limitations on the rights of the Supreme Court, I think that the House will accept my amendment. I have particularly to place my views before the House regarding the amendment to the first part. The State and the Union of States have been kept entirely separate in the Draft Constitution and they have not been considered as provinces. When Dr. Ambedkar had moved the motion regarding the Draft Constitution in November last, he had expressed the view that there should be no difference between the Provinces and the Unions of States. He had rather declared that it would be better if the Constituent Assemblies going to be established in the States or the Unions of the States were abandoned. At that time I had made an appeal that this House, as it is constituted, can make a Constitution for the States and the Union of States, as it is doing for

*[] Translation of Hindustani speech.

the provinces. There is no person why we people assembled here cannot make the rules, laws or constitution or other things therein for the States as we like.

As regards this amendment, some difficulty may arise from the Instrument of Accession and the guarantee given by the Government of India thereby. But as far as I think there can be no difficulty in these things. Hence, so far as the question of bringing the provinces, States and the Unions of the States in line is concerned, there is no difficulty on account of the Instrument of Accession; particularly in regard to the jurisdiction of the Supreme Court. In the Instruments of Accession executed by the States and the Unions of States, all the subjects except taxation have been handed over to the Centre. When such a situation has developed, I do not understand what purpose can be served by keeping the High Courts of the States and the Unions of States outside the Jurisdiction of the Supreme Court.

I had submitted formerly that the States have such High Courts as possess very able persons who can do the same quality and amount of work as their counterparts in the provinces. There seems to be no reason why appeals from them should not go to the Supreme Court. I, therefore, submit that there should not be any difference on the question of appeals from the High Courts of the States and the Unions of the States to lie in the Supreme Court. It would be very much in the interest of the people of the States. In this way the Supreme Court will exercise a control over the High Courts of the States and the Unions of States, which will be beneficial to the people of those States. This will also end the question of depriving the people of the States of the justice of the Privy Council. As I have already submitted, Dr. Ambedkar had stated that there is no need for Constituent Assemblies there. I submit that a convention of the members of the States Constituent Assembly was held in November last under my Chairmanship. That Convention has issued a statement that there should be no difference between the Provinces, States and the Unions of States. In this connection they had also made a request to the States Ministry who later on appointed a committee to draw up a model Constitution for the States. I was also a member of the same. That Committee has drawn up a constitution for the States and Unions of States similar to the drawn up for the provinces. There is nothing in that to separate the States from the provinces. I would also submit that there is article 63 which is similar to article 111 here.

As article 111 makes a provision for appeal similarly a provision has been made for appeal to the Supreme Court from the decisions of the High Courts of the States and the Unions of the States. Here the President has been empowered to appoint Governors, but it has not been done there. There the Rajpramukh will be recognised by the President. I think there is no difference in that. I think there can be no two opinions about this. The representatives of the States in this House have been elected on the same basis on which the representatives of almost all the provinces have been elected. Then, why do they not frame laws in this House for the States and for the Unions of States? I mean to say, as Dr. Ambedkar has already suggested, that the Constituent Assemblies formed for the States are meaningless. I feel that this is really a waste of the time of the public as also of its money and energy. When we have assembled here to frame a constitution, we are competent to frame constitutions for the States and for the Unions of States also. I do not think that our framing of constitution will in any way prejudicially effect the Instrument of Accession. We see that our Rajpramukhs are working in such a way that our progress or the country's progress may not be hampered. They want to work strictly according to the advice of the States Ministry. If the States Ministry suggests to them that it would be futile to form any

[Shri Ram Sahai]

Constituent Assembly whatsoever in the States, they would fully agree to its suggestion and would gladly accept it. The people there have of course been always eager for it and will be so. There appears to be neither any reason nor any necessity for forming separate Constituent Assemblies for States, particularly when the States Ministry is going to adopt the draft of a model constitution for the States and the Unions of States prepared by experts and the representatives of States similar to that for the provinces. The proposition before the House is that the provision in article 112 for excluding the States and the Unions of States and the provisions in articles 110 and 111 to limit the powers of the Supreme Court should be deleted and the remaining portion should be adopted.

Without taking more time of the House, I only submit that both parts of my amendment are worth accepting and I hope that the House will accept the whole amendment.]

(Amendments Nos. 1929 to 1932 were not moved.)

Prof. Shibban Lal Saksena : What about 31?

Mr. President : But the decision has already been taken.

Prof. Shibban Lal Saksena : This is separate. This is No. 31 of List I, Fourth Week.

Mr. President : But that is dependent on 1931 which was not moved. 1932 also was not moved. But you can speak on the article in the general discussion.

Prof. Shibban Lal Saksena : Mr. President, Sir, this article is a very important article in the Constitution. If there is a Supreme Court, it will have to have supreme powers. "The Supreme Court may, in its discretion, grant 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." By this article, the Supreme Court can entertain any appeal against any judgment. I would only wish that this power was extended. At Present, although it can entertain any appeal, it will have to decide that appeal according to the law of the land. It cannot go beyond those laws. But what I wish is that in cases where natural justice is under consideration the Supreme Court should be enabled to give judgments which may not be within the letter of the law. It should be permitted to give any judgment to satisfy the requirements of the cases. Even now, the Privy Council entertains appeals of this kind. Where natural justice is involved, they take appeals and give decisions which are not bound by the law of the land. I therefore wish that under article 112 where we give power to the Supreme Court to entertain any appeal, we should also enable it to decide those appeals on the principles of jurisprudence and considerations of natural justice. I therefore gave notice of my amendment, but I cannot now move it. But I hope that the point also will be taken into consideration. I would also like to say that my amendment to 111 was from the point of view that the Supreme Court should have power to entertain any appeal, whether it is civil or criminal. If this right is given under 112, there is no need for 111(1) (c), since the Supreme Court has discretion to entertain appeals. I hope that Dr. Ambedkar will try to extend the scope of the powers of the Supreme Court to enable the Supreme Court to go beyond the letter of the law where natural justice is involved.

Kaka Bhagwant Roy (Patiala and East Punjab States Union) : *[Mr. President, Sir, I have come to support the amendment moved by my honourable Friend, Shri Ram Sahai. Now that the petty States have been merged

*[] Translation of Hindustani speech.

into large unions, they have been raised to the status of provinces and thereby the subjects of the States have got rid of the personal rule of the princes.

Now when the Constitution of free India is taking shape, the distressed people of the States are looking up to this august Assembly so that there will be no discrimination between the general public of India and the States people.

I think that great injustice has been done to the people of the States by not allowing them the right to make an appeal in the Supreme Court. The people of the States should be given this right in view of the fact that it is being given to all the provinces.

I think that India as a whole cannot become strong unless the newly formed units of the States which form an integral part of India also become strong. Therefore, in order to make India strong, the States people should be given the same rights which are being given to the general public of other provinces.

So, I think that you who are making the Constitution of free India should not insert in it such a clause which would give a different status to the States people.

The People of the States are looking up to this august Assembly with great expectations that the people of the unions of States and the provinces would enjoy equal rights and that there will be no discrimination as such.

I hope that you will accept this amendment.]

Shri Krishna Chandra Sharma (United Provinces : General): Mr. President, Sir, the provision of this article 112 are very important and very comprehensive. It lays down one important principle of Constitution, namely, that while in the scheme of the Government of India Act, the executive was all powerful and both the legislature and the judiciary were subordinate to it, this article, a provision of which type has not found a place in the Government of India Act of 1935, has given a status to the judiciary, equivalent and in no way subordinate to the executive and legislature. Therefore, Sir, this comprehensive as well as necessary provision in the scheme of the Draft Constitution does a great deal of good to the people and gives them the right to go to the highest tribunal against the action of the executive and has an appeal from the High Courts. Sir, I support the provisions of this article and I would further add that this article gives ample power to do justice in the hands of the Supreme Court and with these provisions in the Draft Constitution, I do not find any justification or any necessity whatsoever of making any provision with regard to the criminal appeal to the Supreme Court. Much has been said about the power of the Supreme Court with regard to the appeals in the case of death sentences. I would submit respectfully that one fundamental principle has been ignored all through the discussion, that is, to appeal with regard to death sentence and in the matter of criminal justice it is not only the question of the liberty of the person or the liberty of the accused that is in question, but there is a further question and that is the stability of the State and the peace in the land. You cannot go on prolonging the decision with regard to the crime done by a man against the State for a very long time. It would be detrimental to the State and it is a pernicious principle to hold that the life of a person or his liberty is sacred as such without any regard to the stability of the State or the peace of the land. They are contingent; everything in the State, whether it is the life of the individual, whether it is the liberty of the individual has to be considered, to be cared for, if it is not dangerous or detrimental to the stability of the State, to the peace of the land; and in taking these two fundamental

[Shri Krishna Chandra Sharma]

questions, if the criminal law is administered in accordance with these two fundamental principles, liberty of the accused and the stability of the State, I submit, Sir, this article provides ample safeguard. There is enough safeguard with regard to the justice being done to the individual whether in a civil case or in any order, or in a criminal case. Sir, I support the article.

Pandit Thakur Das Bhargava : Sir, in regard to article 112, I want to make one or two observations. This article 112 is exceptionally wide. The words are “in any cause or matter” and I understand this a departure from the established law of the land also. Now perhaps in all the provinces the revenue jurisdiction is quite exclusive and the Privy Council had got nothing to do with such jurisdiction, but our Supreme Court shall be fully omnipotent as far as a human court could be and it shall have all kinds of cases and I think that so far as the other courts of other jurisdictions are concerned, for instance, if there is an International Court sitting in India, if there is a Court Martial, if there is an Industrial tribunal, if there is an Income-tax tribunal, if there is railway tribunal, all kinds of cases will come before the Supreme Court and it becomes, therefore necessary as to what ought to be the range of the jurisdiction. What does the Supreme Court do in cases of this kind? My humble submission is that article 112 is the remnant of the most accursed political right of the divine right of kings. At the same time the jurisdiction of the article is almost divine in its nature, because I understand that this Supreme Court will be able to deliver any judgment which does complete justice between States and between the persons before it. If you refer to article 118, you will find that it says:— “The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament”. So far so good: but my humble submission is that the Privy Council also, which as a matter of fact belonged to Great Britain and which was a sign of our judicial domination by the British, even that had very wide powers and proceeded to dispense justice according to the principles of natural justice. What is this natural justice? This natural justice in the words of the Privy Council is above law, and I should like to think that our Supreme Court, will also be above law in this matter, in this sense that it shall have full right to pass any order which it considers just; and in this light. I beg to submit before the House that this is a very important section and gives almost unlimited powers and as we have got political swaraj, we have judicial swaraj certainly. The right of appeal is absolute in articles 110 and 111, but so far as the special appeal Supreme Court jurisdiction is concerned, it is of a special nature and it is above law. Even if there is no right of appeal, the Supreme Court can interfere in any matter where dictates of justice require it to do so. I should therefore think that the Supreme Court shall exercise these powers and will not be deterred from doing justice by the provision of any rule or law, executive practice or executive circular or regulation etc. Thus the Supreme Court will be in this sense above law. I want that this jurisdiction which has been enjoyed by the Privy Council may be enjoyed and enlarged by our Court and not restricted by any canon or any provision of law.

Shri Alladi Krishnaswami Ayyar : Mr. President, it is necessary to realise the comprehensive nature and the Plenitude of the jurisdiction conferred by this article. The jurisdiction of the Supreme Court extends over every order in any cause or matter passed by any court or tribunal in the territory of India. Secondly, the Supreme Court is free to develop its own rules and conventions in the exercise of its jurisdiction. Sometimes we are labouring under a disadvantage, when we borrow the language of another enactment,

and of importing into the construction of the article all the self-imposed fetters by the Judicial Committee for various historical reasons.

There is nothing to prevent the Supreme Court from developing its own rules, its own conventions and exercising its jurisdiction in an unfettered manner so far as this country is concerned. The self-imposed restrictions of the Judicial Committee are traceable to the doctrine that the King is the fountainhead of all justice and it is not in the larger interests, as it was conceived, to extend his hand in every criminal case. No such fetter need be imposed on the exercise of that jurisdiction under article 112. For example, there is nothing to prevent the Supreme Court from interfering even in a criminal case where there is miscarriage of justice, where a court has misdirected itself or where there is a serious error of law. Purposely, the framers of the Constitution took care not to import into article 112 any limitation on the exercise of criminal jurisdiction. This discussion I hope will have a material bearing when we deal with the question whether any special criminal jurisdiction is to be vested in the Supreme Court or not. If only we realise the plenitude of the jurisdiction under article 112, if only, as I have no doubt, the Supreme Court is able to develop its own jurisprudence according to its own light, suited to the conditions of the country, there is nothing preventing the Supreme Court from developing its own jurisprudence in such a way that it could do complete justice in every kind of cause or matter.

With these words, I support article 112 as it stands.

Shri H. V. Pataskar (Bombay: General): Sir, article 112 has been specially incorporated for the purpose of giving special jurisdiction to the Supreme Court. I was a little surprised to find my honourable Friend Pandit Thakur Das Bhargava complaining that it was rather too wide. The article says: "The Supreme Court may, in its discretion grant special leave to appeal from any judgment decree or final order in any cause or matter....." No doubt the words 'any cause or matter' are such as to include any matter whether civil, criminal or revenue or otherwise. By special reference to revenue, it seems to me that Pandit Thakur Das Bhargava thought that it was not necessary that the Supreme Court should be in a position in special cases to interfere in matters which are decided on the revenue side. If you look at the history of the administration of certain Acts passed by the former Government in respect of revenue, and which are even continued in the present days, and the cases in which so much injustice has been done, you will find that it is necessary, when we are establishing a Court like the Supreme Court we should make provision in the Constitution that that Court should have the power in special cases of injustice, to grant special leave to appeal even in revenue matters. In our own province, there is the Revenue Jurisdiction Act against which for years there has been agitation on the platform and in public, because that Act was intended to put out the jurisdiction of the Court by the Executive. Certainly I appreciate that when we are establishing a Supreme Court for our country, it should have this special jurisdiction to grant leave to appeal in all matters whether they are civil, criminal, revenue or otherwise. Because, the Supreme Court is intended in this country to serve the functions of the King in some other countries where he is the fountain-head of all justice. Here, there is no King, and naturally therefore we must have some independent body which must be the guardian of administration of justice and which must see that justice is done between man and man in all matters whether civil, criminal or revenue. From that point of view, Sir, I think that having made a provision for a Supreme Court, it is necessary that special powers should be given to that Court as in this article 112.

There is another reason also. The Supreme Court is not likely to grant special leave in any matter whatsoever unless it finds that it involves a serious

[Shri H. V. Pataskar]

breach of some principle in the administration of justice, or breach of certain principles which strike at the very root of administration of justice as between man and man. I think article 112 as it stands is a very right one and should be there.

The Honourable Dr. B. R. Ambedkar : I do not think there is anything for me to say.

Mr. President : The question is:

“That in article 112, the words ‘except the States for the time being specified, in Part III of the First Schedule, in cases where the provisions of article 110 or article 111 of this Constitution do not apply’ be deleted.”

The amendment was adopted.

Mr. President : The question is:

“That article 112, as amended, stand part of the Constitution.”

The motion was adopted.

Article 112, as amended, was added to the Constitution.

New Article 112-A

Mr. President : There is notice of a new article to be moved by Dr. Ambedkar, amendment No. 191.

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

“That with reference to amendment No. 1932 of the List of Amendments, after article 112, the following new article be inserted :—

‘112-A. Subject to the provisions of any law made by Parliament or any rule made under article 121 of this Constitution, the Supreme Court shall have power to review any judgment pronounced or order passed by it.’ ”

Review of judgments or orders passed by the Supreme Court.

Sir, the Draft Constitution, as it stands now,.....

Prof. Shibban Lal Saksena : On a point of order, Sir, amendment No. 1932 has not been moved.....

Mr. President : That has not been moved : I am taking this as a fresh article.

Shri T. T. Krishnamachari : May I mention, Sir, that amendment No. 1932 is exactly the same as amendment No. 1928? Actually, if amendment 1928 is moved, amendment 1932 cannot be moved.

Mr. President : I have already said that I have taken it as a fresh article.

The Honourable Dr. B.R.Ambedkar : The Draft Constitution contains no provision for review of its judgments. It was felt that that was a great lacuna and this new article proposes to confer that power upon the Supreme Court.

The Honourable Shri K. Santhanam (Madras: General) : Sir, I am afraid that the drafting of this is not quite as happy as it should be. For one thing, I do not think it is right to put an article in the Constitution giving a power to the Supreme Court and say that that power shall be limited by rules made by the Supreme Court. I think it is bad law. If you give a power to