

Article 195

The Honourable Dr. B. R. Ambedkar : I move:

“That in article 195 for the words ‘a declaration’ the words ‘an affirmation or oath’ be substituted.”

It is a very formal amendment.

Mr. President : The question is:

“That in article 195 for the words ‘a declaration’ the words ‘an affirmation or oath’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That article 195, as amended, stand part of the Constitution.”

The motion was adopted.

Article 195, as amended, was added to the Constitution.

Article 196

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

“That for article 196, the following article be substituted:—

‘196. No person who has held office as a judge of a High Court after the commencement of this Constitution shall plead or act in any court or before any authority by a person before any authority within the territory of India.’ ”

It is simply a rewording of the same.

(Amendments Nos. 87 and 2627 to 2631 were not moved.)

Shri Prabhu Dayal Himatsingka : In view of the amendment moved by Dr. Ambedkar now, my amendment (No. 2632) is not necessary.

(Amendments Nos. 2633 to 2637 were not moved.)

Sardar Hukam Singh : (East Punjab: Sikh): Sir, I beg to move:

“That in article 196, for the words ‘within the territory of India’ the words ‘within the jurisdiction of that High Court’ be substituted.”

It is not necessary for me, Sir, to make a speech as the amendment is self explanatory.

Shri H. V. Kamath : Sir, article 196 has now been brought in an amended form before the House by the Chairman of the Drafting Committee. To my mind even the amended article imposes too sweeping a restriction on persons who have held office as judges of high courts. We had visualised that a person could be appointed as a high court judge either for a long tenure or a very short tenure too. I suppose the amendment that has been moved by Dr. Ambedkar does not do away with the possibility of a person acting or holding office as a high court judge for a few months. Suppose a person has held office as a high court judge for a few months, six or nine months, do we seek to impose a restriction upon him, a man who has acted as a temporary judge for a short time? Do we seek to debar him from pleading or practising not merely in any court but even before any authority within the territory of India? It passes my comprehension why a person who has sat on the high court bench for a short while should not be allowed to appear before any court or authority within the whole of India. There would have been some meaning, as my Friend Sardar Hukam Singh has suggested, if the judge was precluded from appearing

either in that High Court where he held office or within the jurisdiction or within that territory of the Indian Union, where the High Court held sway and jurisdiction,—what I mean to say is, in that high court or in courts or authorities subordinate to that High Court in which he held office as a judge. But to my mind this sweeping constitutional prohibition is unwarranted and, may I say, undemocratic. I am inclined to support the amendment of my Friend Sardar Hukam Singh and I hope that it will receive some serious consideration at the hands of the House, and the article amended accordingly.

Prof. Shibban Lal Saksena : Sir, I am very much surprised at the speech of my honourable Friend Mr. Kamath on this article. This article deserves whole hearted support. In fact I should have thought that the words “after the commencement of this Constitution” should be deleted. I do not see why it should remain there. Everybody who has been a judge should be debarred from practising. The prohibition which you want to impose now has a very salutary reason behind it. In fact in Britain nobody who has been on the bench can practise at the Bar. It is a very well known principle. It is also well known that once when Lord Birkenhead and some others wanted to revert to the Bar, public opinion was so vehemently against it that they did not dare to carry out their resolve and practise. You may ask why should it be so. First of all, the dignity of the High Court demands that an ex-judge should not come back to the Bar. A High Court Judge may not have much money but his dignity is far greater than that of anyone else. So if he comes back to the Bar he would bring down the dignity of his office. It is for that reason that a man who has been a High Court Judge should not revert to his practice at the Bar. I would go even further. I would even say that those who have been ministers of justice should not be allowed to practise at the Bar. I have seen some advocates who have been ministers of justice going back to the Bar thus bringing down the dignity of their office. Probably during office they cultivated especial relations with the Chief Justice and other judges as they knew they might have to revert to the Bar. This should not be permitted.

It has been said that temporary judges should not be debarred from practice. I hope that articles 198 and 199 would be so amended that there will no more be any temporary judges in our high courts and everybody who is on the bench will be there, once he is appointed, for the period the constitution allows him to be there. So the question of temporary judges not being debarred from practice does not arise. It is therefore a very salutary provision that a man who has once been on the bench should not come back to the Bar. I may be asked what are the practical reasons against it. First of all, a man who has been on the Bench and wants to come back to the Bar would always be thinking of the possibility of getting more clients. The clients will be attracted towards such a man and that will be unfair to his colleagues at the Bar. He may also try to develop contacts. It will not be very healthy when back to the Bar he may influence clients by saying that the Chief Justice is his friend. For these reasons I think a retired High Court Judge should not be permitted to resume practice. He should not even be permitted to practice in other High Courts. I agree that he should be given full pension, a sum almost equal to his salary so that he may maintain the dignity of the office which he once held. To enable a man to maintain his dignity and independence it is necessary that we must provide him full pension, seeing that we are not permitting him to revert to the Bar or seek other appointments which will interfere with his dignity and independence.

I am thankful to Dr. Ambedkar for the amendment he has moved. I only wish to remove the words ‘after the commencement of the Constitution.’ My object is that even those who have been judges before the commencement of the Constitution should not be allowed to revert to practice at the Bar.

Shri Mahavir Tyagi (United Provinces: General): Mr. President, I may be pardoned for venturing to give expression to my views on this issue. I am a layman and as such it may seem somewhat presumptuous that I should talk on academic matters concerning law. At another occasion, Dr. Ambedkar had objected to my saying that my feelings were such and such. He insisted that I should express my opinions and not feelings. It seems with literary men opinions vary with their feelings. To me feelings and opinion mean the same thing. I submit that in the case of judges of the High Court or of the Supreme Court, the seats that they occupy are the seats of God. It is so said in the villages. The villagers say: 'The seat of Justice is the seat of God'. The highest ambition of a man in any country therefore is to occupy the seat which is attributed to God. It has a great sanctity about it. Justice, in fact, does not depend on law. It is very strange that the British have created in the minds of people a sort of misgiving about justice. People have been made to think that a true interpretation of law is real justice. It is not so. In fact justice is an eternal truth; it is much to above law. At present what the lawyers do is to shackle the free flow of godly justice. Sir, the language used in the previous article is such that there is a possibility of laymen having godly qualities being appointed as justices. Why should we always have lawyers as judges? I do not know. Why should we presuppose that in future lawyers only will occupy the seats of judges? The provision for the appointment of judges says that the President, in consultation with the Chief Justice will appoint them. Why should we take it that a judge shall always be a graduate in law? I think there is a good possibility of persons, who are otherwise fully qualified to administer justice, occupying the posts of judges and attain the highest ambition of their life. It is wrong to think that the moment a non-lawyer is appointed a judge the dignity attributed to that post will be gone. My belief is that laymen would not only add to the dignity of this seat, but they would also make it more sacrosanct. If after retirement from this high office, its occupants were allowed to aspire for wordly wealth after doing the work of God, after imparting justice, they would stultify both the office and themselves. Sir, let me confess, I am opposed to the very profession of lawyers. They do not create any values or wealth. They attain knowledge of law and put their talents to auction or hire. Sir, if lawyers were appointed as judges and after retirement they were also permitted to carry on their legal practice in courts, the result would be that they would stultify the great office of 'Justice'; they would use these offices as spiring boards or ladders to build much more lucrative practice after retirement. I therefore submit that lawyers should not be permitted to have any practice in a court of law when they revert from the Bench. Sir, I am anxious that I should put in my views about the present manner of imparting Justice. I am afraid I am going slightly off the track. But I may be given this concession.

Mr. President : I am glad that the honourable Member has realised that he is going off the track.

Shri Mahavir Tyagi : You are also a lawyer and Sir, you will pardon me when I say that they stultify real justice, because they want to make God's justice flow through the artificial channels of law made by man. That is all what the lawyers do. Real justice is not bound by any shackles of law or argument. According to the practice of British jurisprudence justice is given only to the man who can engage a clever lawyer, because the realities are not taken into account. A judge is unfit to try a case if he has a personal knowledge about the incident. Unless he comes forward and gives evidence as a witness and is cross-examined, his knowledge of the facts of a case counts for nothing.

The present conception of justice does not appeal to me. The law courts at the present time are the nucleus and the fountain spring of all corruption, dishonesty and lies, and therefore the seats of judges are no more the seats of God in India. In our future set-up we should see to it that our courts achieve their old past glory and be not enslaved and dominated by "Law". Justice is a fact and Law a mere fiction. Justice is a reality and Law is only a mode of its expression. Let the man who is once appointed a judge, live a life of truthful glory. Once a judge, always a Judge. He must be content with his pension after retirement. If lawyers are ever appointed as judges they should not revert to practice because it is certain that if they do so they will use their posts as ladders for more practice.

I support the original proposition.

Shri B. M. Gupte (Bombay: General): Sir, I concur with my Friend Mr. Kamath in that this proviso is far too wide and drastic for our acceptance. According to the present situation the retired High Court judges are not allowed to practise in that High Court and in the courts subordinate to it. There is no further prohibition than that. I want to ask, what is our experience? Why do you want this change? Has this provision disclosed any defects? Has it brought forward any evil? If it has not, I do not see why there should be a change at all. Is the Bar flooded by retired judges? No, nothing of the sort has happened and can happen because success at the Bar is not so easy a thing that anybody can try his hand at it. The question of dignity may perhaps arise. I can understand that a man who has occupied the Bench should not in that very court set up practice. But apart from that, is it a fact that today no decent-minded person is prepared to accept the position of a High Court Judge because the proposed prohibition is not there? On the contrary the prestige of the post is so high that very able lawyers are prepared to accept it and aspire for it. I therefore submit that the answer to this question is again an emphatic 'No'. Then the point may arise that perhaps the retired Judge may exercise undue influence in the court. To that extent I concede that the ban should extend to all the subordinate courts throughout the territory. But that does not mean that he should be prevented from coming to the Supreme Court. Supreme Court is in no way subordinate to any High Court. He should also not be prevented from practising in other High Court. Therefore I submit there is no reason why we should make a departure from the existing practice.

I may be told the practice in England warrants the introduction of the innovation now being made. But, I ask, why go to England or America or Russia when we have got our own experience to work upon? I submit that the change is not warranted by the experience that we have already got. I am not saying that this change is merely unnecessary; it is undesirable. We have already been informed by the Drafting Committee in their foot-note to article 193 that: 'The result is that the best men from the Bar often refuse appointments on the Bench because under the existing age-limit of sixty years they would not have time to earn a full pension'. So, because of that age-limit, the best men are not coming. That is admitted by the Drafting Committee. Then the Committee has proposed that the salaries and pensions may be reduced. I quite understand Shri Mahavir Tyagi when he says that if pensions are sufficient as in England, the question does not arise. But there is a definite proposal by the Drafting Committee itself to reduce salaries. I am not prepared to say that it should be accepted. But there is that proposal for reduction of salaries and on top of that comes this prohibition that they shall not practise anywhere. What would be the cumulative effect of all these things? I submit the result will be that the best of men in the High Court Bar or mufassal Bar would not be prepared to accept the appointment. I am not urging this in the interests of the top men. They can take care

[Shri B. M. Gupte]

of themselves. They need no sympathy or pity from us. They would have their flourishing practice. But what would be the result of the whole thing on the independence of our judiciary? That is the problem. In the absence of top men, we shall have to choose men of lower calibre and men who have failed at the Bar will be raised to the Bench. Or otherwise practically the entire High Court will be manned by District Judges and Subordinate Judges. I put it to you whether it is a desirable position. We have all along been clamouring for the independence of the judiciary, but that cannot be achieved by merely laying down that a Judge shall not be removed from office except after an address by the Houses of the Legislature or by providing that their salaries and allowances are chargeable to the revenues of the State. The independence of the judiciary can be achieved only by making their conditions of employment such that men of really independent spirit would be attracted to those posts. I do submit that independent rising men would not be attracted if we make the prohibition so sweeping. I may be told that Sir Tej Bahadur Sapru was in favour of this provision. It may be. Sapru's is an honoured name and his views are entitled to our respectful consideration; but it does not mean that we should follow his views blindly irrespective of the merits of the case. To do that would be to bestow on him posthumously the position of a dictator, which he himself would have detested.

Mr. President : No Member who has supported this proposition has brought in the name of Sir Tej Bahadur Sapru. The honourable Member brings in his name and starts criticising his supposed opinion. I think it is not right.

Shri B. M. Gupte : Sir, I am anticipating an argument. Any way I would only submit, Sir, that we should consider all the relevant argument in favour of this proposal. And if we do that, the conclusion would be that the proposed provision is not such as would attract the proper men at the top to these very important position. I therefore submit that it is worth considering whether we should retain it in the form in which it has been put.

An Honourable Member : The question be now put.

Mr. President : I notice that about half a dozen Members still want to speak on this. I have noticed that in discussing the articles relating to the Supreme Court and the High Courts there is a tendency to prolong the discussion even where discussion is not required. I would ask Members not to have discussion for discussion's sake, as I feel in some cases we are having. I think we had better proceed with the voting on this article. Both points of view have been placed before the House.

The question is:

“That the question be now put.”

The motion was adopted.

Shri Prabhu Dayal Himatsingka : I want to draw the attention of the honourable the mover to amendment No. 2627 which says that no person who has held office as a Judge of a High Court shall be entitled to practice before any court. There are a number of temporary Judges in many High Courts at the present moment. As soon as this Constitution comes into being....

Mr. President : I am going to take the vote and you start speaking.

(Some honourable Members rose to speak.)

Mr. President : I will put the closure motion again.

The question is:

“That the question be now put.”

The motion was adopted.

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

The Honourable Dr. B. R. Ambedkar : I do not think anything is necessary.

Mr. President : I will first put Sardar Hukam Singh's amendment to the vote. If that is accepted, Dr. Ambedkar's amendment will stand amended by this.

The question is:

"That in article 196, for the words 'within the territory of India' the words 'within the jurisdiction of that High Court' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That for article 196, the following article be substituted:—

'196. No person who has held office as a judge of a High Court after the commencement of this Constitution shall plead or act in any court or before any authority within the territory of India.' "

Prohibition of practising in courts or before any authority by a person who held office as a judge of a High Court.

The amendment was adopted.

Mr. President : The question is:

"Article 196, as amended, stand part of the Constitution."

The motion was adopted.

Article 196, as amended, was added to the Constitution.

Article 196-A

(Amendment No. 2639 was not moved.)

Mr. President : A similar amendment, No. 1870 was moved and discussed at great length and it was held over.

The Honourable Dr. B. R. Ambedkar : I suggest that article 196-A may be held over. A similar article (No. 103-A) was held over.

Mr. President : I agree. This article will then stand over.

Article 197

The Honourable Dr. B. R. Ambedkar : Article 197 also may be held over.

Mr. President : I agree, this article also is held over.

Article 198

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

"That for article 198, the following article be substituted:—

'198. When the office of Chief Justice of a High Court is vacant or when any such Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office the duties of the office shall be performed by such one of the other judges of the court, as the President, may appoint for the purpose.' "

Temporary appointment of Acting Chief Justice.

(Amendment No. 2649 was not moved.)

Shri T. T. Krishnamachari : Sir, amendment No. 2650 is covered by the amendment moved by Dr. Ambedkar because it relates to clause (2).