

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

“That for clause (4) of article 121, the following be substituted :—

‘(4) No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the judges present at the hearing of the case but nothing in this clause shall be deemed to prevent a judge who does not concur from delivering a dissenting judgment or opinion.’ ”

The amendment was adopted.

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

Article 121, as amended, was added to the Constitution.

The motion was adopted.

Article 121, as amended, stand part of the Constitution.

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### **New Article 122-A**

**Dr. Bakshi Tek Chand** : Sir I move:

“That with reference to amendments Nos. 1909 and 1926 of the List of Amendments, after article 122 the following new article be inserted :—

122-A. In this Chapter, references to any substantial question of law to the interpretation of this Constitution shall be construed as including references to any substantial question of law as to the interpretation of the Government of India Act, 1935, or of any Order in Council or order made thereunder or of the Indian Independence Act, 1947, or of any order made thereunder.”

Interpretation.

Sir, the necessity for adding this new article has arisen because in several sections of this chapter which relates to the powers of the Supreme Court, the expression used is “as to the interpretation of this Constitution”. For instance, in article 110 which takes the place of section 205 of the Government of India Act, power is given to a party to prefer an appeal to the Supreme Court in any matter, whether in civil, criminal or other proceedings, if the High Court certifies that the case involves a substantial question of law “as to the interpretation of this Constitution.” “This Constitution” would mean the Constitution which is being passed by, this Constituent Assembly now. There may be other cases, however, in which the question of the interpretation of the Government of India, Act of 1935 or of an Order in Council by His Majesty or an order of the Governor General issued under the powers conferred on them by the Government of India is involved; similarly, questions relating to the interpretation of the Indian Independence Act of 1947 may arise. No provision for appeals in such cases is made in the article as drafted. Such questions may have arisen in such cases which are pending before the High Court or before subordinate Courts on the day the new Constitution comes into operation. What will happen to them? Unless we enlarge the meaning of this expression “this Constitution” in the manner in which it is suggested in this amendment, there will be no appeal at all from the decisions of the High Court in those matters. Those matters may be of very vital importance, and may arise in connection with legislation which has been enacted by the provincial or Central legislatures or in Ordinances promulgated by the Governor or the Governor-General. If these questions arose in cases which had been decided by the High Court and are pending before the Privy Council on the date on which the New Constitution comes into force, they will be automatically transferred to the Supreme Court under the transitional provision, made in article 308(2) which will be placed before this House at the proper time. But there is no provision with regard to cases in which similar questions are involved. But which have not yet been decided either by the subordinate court or by the

[Dr. Bakshi Tek Chand]

High Courts in India or which may arise in suits to be instituted hereafter. Under the existing law, appeals from such cases lie to the Federal Court; but the Federal Court will cease to exist on the date when the new Constitution comes into force. In order that appeals in such cases may under articles 110 and 111 or other articles, lie to the Supreme Court, provision must be made in the Constitution Act. Therefore, it has been found necessary to insert this interpretation clause, instead of repeating these words in article 110, or article 111 clause (2) or article 116, and in one or two other articles.

The effect of this will be that the words “this Constitution” wherever they occur in this chapter will mean questions relating to interpretation of the Constitution which is now being passed, but also include questions relating to the interpretation of the Government of India Act 1935 or any Order in Council or order made thereunder, of the Indian Independence Act or orders made thereunder.

**The Honourable Shri K. Santhanam :** Sir, I wish to raise a rather delicate point. From the date this Constitution comes into force, the Government of India Act, 1935 and all orders made thereunder, and the Indian Independence Act of 1947 and all orders made thereunder lapse altogether. They cease to have any kind of legal validity and if any laws made under them continue, it will only be in virtue of some provision inserted in this Constitution saying that all laws which are in force at the commencement provided they are not repugnant to this Constitution, shall continue. Their legal validity will depend upon the provisions of this Constitution and therefore question will arise only under this Constitution. I think this is a sort of juridical—I would not call it absurdity—impropriety, It is altogether meaningless. We can not ask our Supreme Court to go into the interpretation of constitution which have become absolutely dead and which have no kind of legal validity. It is possible that anybody can sue in a court of law under the Government of India Act, 1935, after this Constitution comes into force? There may be arguments based on some interpretation. Is it right that the Supreme Court should sit to consider and say that this is the interpretation of section 211 of the Government of India Act of 1935, because at that time the Government of India Act would have lapsed altogether, or can the Supreme Court interpret some articles of the Indian Independence Act of 1947? This Indian Independence Act was an Act made by the British Parliament. How can the Supreme Court of India say that this is the interpretation of a particular section made by the Parliament of Britain? They can only say how far the laws made under the Government of India Act, 1935 are consistent with this Constitution or have been continued by this Constitution. All questions of interpretation of the Constitution can arise before the Supreme Court only as interpretation of this Constitution. In interpreting this Constitution, they may refer to the Government of India Act or the law made by Parliament. I may also say that after discussion with Mr. Alladi Krishnaswami Ayyar, he thinks this point of view must be considered. I think this is a matter which requires proper consideration by lawyers who are better versed in law than myself.

**Shri T. T. Krishnamachari:** Mr. President, I am afraid my honourable Friend Mr. Santhanam has been rather hasty in opposing this amendment and holding it as ridiculous.

As a proposition in the abstract what he says may be correct; but there are certain contingencies which might happen and which will not be provided for by this Constitution coming into force without a saving clause of this nature. Because, certain things may be done under the old Constitution and the new Constitution may contain provision that are not only different but also the

opposite of what were contained in the constitution Acts which it supersedes. While some acts of State may be *ultra vires* of the old Constitution, it may be *intra vires* of the new Constitution. What will happen to such a contingency if it occurs? For example, supposing in the old Constitution, a provincial Government is not permitted to levy a tax on the betterment value of property or a capital gains tax and we in the new Constitution put a provision in the appropriate Schedule that that particular subject shall be within the competence of the provincial Government, what is to happen in respect of an action which may be initiated, provided it is not barred by limitation, by a person aggrieved by the action of the provincial Government in imposing a tax which was *ultra vires* at the time when it was imposed because the old Constitution did not permit it? It is rather a delicate problem; it is not a conundrum; it is a fact which may well come into being because there may be provisions in the new Constitution which will ease the strain that is being felt in regard to the distribution of powers between the Centre and the provinces under the Government of India Act. What is contemplated by this new clause is this. Cases where a change has been made in the new Constitution will be covered and the interests of affected parties will be protected. I do not think it is quite so easy as saying that merely because we pass the new Constitution, that Constitution applies to all that has happened in the past. There is undoubtedly room for considerable difference of opinion. Parties may be seriously injured by a provision of this nature not being put in the constitution. The matter has been discussed at some length in the Drafting Committee and the proposition before the House is a result of it. Notwithstanding the fact that I should be chary of criticising any view expressed by my esteemed Friend Mr. Alladi Krishnaswami Ayyar.....

**Shri Alladi Krishnaswami Ayyar :** I have not given any opinion in the matter.

**Shri T.T. Krishnamachari :** He may have expressed the opinion if he felt strongly on the point and there is no harm in it.

What I say is, this provides for meeting a lacuna which exists or which is likely to come into being when the interest of parties may be affected by the absence of a provision of this nature in the Constitution. While I would not like to say anything to detract from the value of what my honourable Friend Mr. Santhanam has said, I think on reflection he will find that this new article is not absurd. On the other hand, it is dictated by principles of wisdom and careful thought rather than with the intention of introducing an additional conundrum into the Draft Constitution.

I support the motion moved by Dr. Bakshi Tek Chand.

**Mr. Naziruddin Ahmad:** Mr. President, Sir, I think there is a tempest in a tea pot. The article provides for a very likely and a very ordinary contingency which is likely to happen in Court from day to day. The Draft Constitution will come into operation on a certain date, but before the Draft Constitution comes into operation actions will be taken, Bills will be passed and other things done under the Government of India Act, 1935, and the Independence of India Act which now operates. All these acts will not necessarily be questioned or challenged during the pendency of those Acts and before actions taken and orders passed under the existing Constitution may be questioned after the commencement of this Act or even ten or twenty years later. Legality of deeds and grants made by the Mughal Emperors and the East India Company still now come into question. So this is a very important provision. If we do not pass it, there will be a lacuna and questions or cases will arise any time relating to past transactions. It is for this reason that I think that this really supplies and fills up a lacuna and it must be passed.

**Prof. Shibban Lal Saksena:** Sir, I would have wished to support Mr. Santhanam's view but I feel that if what he has said is necessary, this can be put in a Parliamentary Act. Why should it be in this Constitution? Why should it be for ever said that the interpretation of the Government of India Act and orders passed thereunder shall be interpreted by the Supreme Court? If, say, for a particular period or so, while these orders are in force or cases are pending under the Government of India Act, we require this provision, we can pass an Act of Parliament or we can pass an Ordinance on the very day this Constitution comes into force to meet this need, but why burden our Constitution with this? Therefore, I think that Dr. Ambedkar should remove this provision from our Constitution and either leave the Parliament to make such a provision to enable pending cases to be decided under that law or by an Ordinance until the Act is passed.

**Dr. P. S. Deshmukh :** Sir, my Friend Mr. T.T. Krishnamachari has explained the purpose of this new article that is before the House and the purpose is said to be that if we do not have this article, then the cases arising out of these various Acts and Statutes will probably not fall within the purview of the Supreme Court. My interpretation of the whole position is slightly different. In my view all that the new article wishes to provide for is to give cases arising out of the interpretation of the Government of India Act as well as the Indian Independence Act the dignity which is provided especially for interpretation of the Constitution in the various articles that have been incorporated in the Constitution. I do not think that this clause can be regarded as providing for the first time and only in this particular place a provision to save those cases which arise prior to coming into operation of the Constitution but arise out of the various enactment which have been mentioned in this article. The main purpose as it appears to me is to give the interpretation of the Government of India Act and the Indian Independence Act the same status as is given to the cases involving interpretations of the Constitution. I do not think however that the way in which the article has been worded is quite satisfactory. First of all, it puts the whole thing upside down. Instead of saying that the questions or interpretations of the Government of India Act and the Independence Act shall be interpreted as if they are question of interpretation of the Constitution, it puts the whole thing absolutely in the reverse; and secondly, if there is any provision necessary for saving those cases which arise out of Indian Independence Act, etc., I do not think the article as it stands provides for that. These are the observations I would like to make for the consideration of the Honourable Dr. Ambedkar. There are if I may repeat for the sake of clarity, two things: firstly that the wording of the article is not satisfactory, secondly, if the intention is that excepting for the article the cases arising out of the Government of India Act or the Independence Act will not be within the purview of the Supreme Court, then according to my view, the article does not seem to make adequate and proper provision for it.

**Shri L. Krishnaswami Bharathi :** May we have the benefit of Mr. Alladi's views? Shri Alladi Krishnaswami Ayyar: I do not want to say anything.

**The Honourable Dr. B. R. Ambedkar :** Sir, I accept the amendment moved by my Friend Mr. Tek Chand. The point is a very simple one. We are undoubtedly repealing the Government of India Act, 1935, and the Indian Independence Act and the orders made thereunder from the date of the passing of this Constitution; but it has to be realised that while we are putting these Statutes, so to say, out of action, we are not putting an end

to the rights and obligations which might have accrued under the Government of India Act. Consequently if there are parties who have obtained certain rights under the provisions of the Government of India Act and whose rights have now been extinguished by any rule regarding limitations, it is obvious that some forum must be provided for the adjudication of those rights. It is to meet this contingency *viz.*, of persons who have their rights accrued under the existing Government of India Act and which have not come before a court of law, it is for such contingency that this article is necessary. This matter could have been provided for, I agree, in two different ways, first of all, by amending the language of the article 110 where we have used the word "This Constitution", if we had merely said 'any law regarding the Constitution relating to the Constitution of the country' that probably might have sufficed but the point is that we would have been obliged to repeat this formula in three or four places. Instead of doing that, It was decided that the best way is to put in an omnibus clause to define what this Constitution means. I think this provision is very necessary and ought to remain part of the Constitution.

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

"That with reference to amendment Nos. 1909 and 1926 of the List of Amendments after article 122, the following new article be inserted:—

'122A. In this Chapter, references to any substantial question of law as to the interpretation of this Constitution shall be construed as including references to any substantial question of law as to the interpretation of the Government of India Act, 1935, or of any Order in Council or order made thereunder, or of the Indian Independence Act, 1947, or of any order made thereunder.' "

Interpretation

The motion was adopted.

Article 122-A was added to the Constitution.

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### Article 123

**Mr. President** : Article 123.

**Shri T.T. Krishnamachari**: 123 refers to those portions which were specifically omitted all along. Therefore it might be put to the House and possibly the House might negative it because it is unnecessary.

**Mr. President** : Yes. The Question is:

"That article 123 stand part of the Constitution."

The motion was negatived.

Article 123 was deleted from the Constitution.

**Mr. President** : After this we have to go back to the articles dealing with the States. We did up to 170. The subsequent articles deal with the procedure in the provincial Legislatures.

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### Article 191

**Shri T.T. Krishnamachari**: May I suggest that we might take up article 191 and the articles that occur thereafter. This and subsequent articles deal with the question of High Courts in the States and it would be easy for the House to deal with them because we have just now dealt with analogous articles relating to the Supreme Court.

**Mr. President** : If so, I am prepared to take up article 191 and subsequent article because they deal with High Courts, and as we have been dealing with the provisions regarding the Supreme Court and the provisions for the