

[Shri T. T. Krishnamachari]

Dr. Ambedkar's amendment is substantially the same; it deletes clause (2) and only retains clause (1).

Dr. P. K. Sen : I do not want to move that amendment.

(Amendments Nos. 2651, 2652 and 2653 were not moved.)

Mr. President : The question is:

"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.

The motion was adopted.

Mr. President : The question is:

"That article 198, as amended, stand part of the Constitution."

The motion was adopted.

Article 198, as amended was added to the Constitution.

Article 199

Mr. President : There are some amendments which want the article to be deleted. I do not take them as amendments. Amendment No. 2656 is one of a drafting nature.

Mr. President : The question is:

"That article 199 stand part of the Constitution."

The motion was negatived.

Article 199 was deleted from the Constitution.

Article 200

(Amendment No. 2657 was not moved.)

Shri Jaspat Roy Kapoor (United Provinces : General) : Mr. President, Sir, I beg to move:

"That in article 200, for the words 'The Chief Justice of a High Court' the words 'The President' be substituted."

To this amendment, Sir, I beg to move another amendment and that is this:

"That in article 200 after the words 'at any time', the words 'with the previous consent of the President' be inserted."

The article, when amended would read thus:—

"Notwithstanding anything contained in this Chapter the Chief Justice of a High Court may at any time, with the previous consent of the President request any person who has held the office of a Judge of that court to sit and act as a judge of the court and every such person so requested shall, while so sitting and acting, have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a judge of that court."

Prof. Shibban Lal Saksena : Do you drop the proviso?

Shri Jaspat Roy Kapoor : I have not come to that yet. It is not necessary for me to read it. I only want to deal with amendments for the time being to the first para of article 200. I will come to the question of deletion of the proviso later on.

Sir, under this article a retired Judge of the High Court is liable to be called back to sit on the Bench of the High Court if the Chief Justice thinks that it is necessary for him to call such a judge back. Now recalling a retired judge to sit again on the Bench of the High Court virtually amounts to a new appointment, though it may be only for the time being and since the President is the appointing authority, I think it is only proper and advisable that before such a request is made by the Chief Justice to any retired High Court Judge, the previous consent of the President must be obtained. The words that appear in this article, as it stands at present, are:

“That the Chief Justice of a High Court may at any time request any person.....”

without of course, any reference to the President. That does not seem to be proper. I think, therefore, Sir, that my amendment needs being accepted so that no retired judge may be called back without the express consent of the President taken in advance. Now, Sir, there is another amendment of which I have given notice and it reads thus:—

“That with reference to amendments Nos. 2658 and 2659 of the List of Amendments, in article 200, the proviso be deleted.”

“The proviso is: Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a judge of the court unless he consents so to do.”

I do not desire to formally move this amendment, but I do certainly wish Dr. Ambedkar to consider as to whether it is really necessary that this proviso should be retained at all. To me it appears, Sir, that this proviso is not only redundant, but it also does not appear to be a dignified one. It is redundant in this way. It seems to presume that the Chief Justice of a High Court would request a retired High Court Judge to come back and serve on the Bench without having previously consulted the retired Judge that is going to be requested. We should presume that the Chief Justice would be acting as a prudent man of ordinary common sense and he would certainly not make a request to a person only to get a ‘no’ from him. He would certainly take the retired Judge into confidence, ask him whether he is prepared to come back to the Bench and perform certain duties, and then alone he would approach the President to obtain his consent. In this view, Sir, I think this proviso is absolutely unnecessary. It does not look dignified to have this proviso here because it means that a request would be made by the Chief Justice and thereafter it would be open to the retired Judge to say, ‘no’. Of course, it is always open to a retired Judge to express his inability to accede to the request. Once a request having been made to him and thereafter to ask whether he is prepared to accede to the request or not looks like putting the cart before the horse. Therefore, this proviso is both unnecessary and gives a rather undignified appearance to this article.

Again, I have given notice of an amendment which is No. 212 in List III which runs thus:—

“The term ‘privileges’ shall not include the right to draw salary.”

I am not moving this amendment even formally. But I would very much like the Honourable Dr. Ambedkar to make it plain on the floor of this House whether the term ‘privileges’ does or does not include the right to draw salary. I believe, Sir, it is not the intention of the Drafting Committee that a retired Judge of the High Court when called back to serve on the Bench of the High Court should be given again the salary which a permanent judge of the High Court is entitled to. I believe, it is not their intention. But I certainly wish that no ambiguity in regard to this matter should be left and it should not be open to interpret this term later on as meaning that salary also is due to the Judges

[Shri Jaspat Roy Kapoor]

who are called back after retirement. If the term were to include the right to draw salary, it only nullifies one of the previous articles which we have just passed laying down that a Judge shall retire at the age of sixty, because under this article, even after retirement at the age of sixty, a Judge can be called back even though he may be sixty-one, sixty-two, or seventy-five; if the Chief Justice or the President so like, they can call back a retired Judge even after the age of sixty and enable him to continue to sit on the Bench of the High Court for any number of years and give him even the full salary that a permanent Judge of the High Court is entitled to. That would be a position that we should not be prepared to accept. It is be said that the President and the Chief Justice should be relied upon and that they would never like to circumvent a previous article which we have just passed, I would say, when we are framing a Constitution and when we are framing it in such an elaborate and detailed manner, we should not leave these things merely to the good sense of the Chief Justice or the President, but make a definite provision for everything. My purpose, of course, would be amply served if the Honourable Dr. Ambedkar makes it plain today that the word 'privileges' does not include the right to draw salary.

Mr. President : There is amendment No. 201 of which notice has been given by Dr. Ambedkar which is exactly the same as the amendment moved by Mr. Jaspat Roy Kapoor. That amendment need not be moved.

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

"That in article 200, the words 'subject to the provisions of this article' be omitted."

Mr. President : Two amendments have been moved. Does anybody wish to speak?

Mr. Tajamul Husain (Bihar: Muslim): Mr. President, Sir, article 200 lays down the manner in which a retired High Court Judge can be asked to come back and perform the duties of a Judge temporarily. It says that it is the Chief Justice of that High Court who would request him to come and sit on the Bench. If he agrees, then, of course, he will be appointed for the time being. There is an amendment by my honourable Friend Mr. Jaspat Roy Kapoor which says that instead of the Chief Justice of that Court calling him, the President of the Union should do it. I think there is very little difference between the two, whether it is the Chief Justice or the President who should make the request. But I personally think in a matter like this where a retired Judge, who was appointed when he was appointed by the President of the Union and who is a man known to the Chief Justice, is being called back, there is no reason why in a matter of day-to-day administration, we should ask the President to perform this task. The Chief Justice knows every retired judge, the merits of each of the judges. I submit that this amendment of Mr. Jaspat Roy Kapoor is not right and therefore I oppose it. I think the article as it stands may be accepted and it is the Chief Justice who should make the request and not the President.

Shri Rohini Kumar Chaudhari (Assam: General) : Mr. President, Sir, I welcome this article as amended by my honourable Friend Mr. Jaspat Roy Kapoor. I fully endorse the remarks which have been made by him so far as the deletion of the proviso is concerned. I consider this proviso is absolutely meaningless and redundant. A request from the Chief Justice does not stand in the place of any command from a Sovereign and a request when it is made by the Chief Justice should not be treated as such. Everybody knows it. After all a request is a request. That is to say, when a Chief Justice makes a request to one of his ex-colleagues that request does not have the force of a command, and nobody would consider it disloyal if he does not comply with

that request. I am inclined to think there will be hardly any occasion when such a request will be disregarded. If the *ex*-Judge is not prevented by illness or some other serious reason, he is bound to accept that position with alacrity. We have seen how District Magistrates after retirement have scrambled for the position of honorary magistrates. Therefore, it is not very easy to imagine a position when an *ex*-Judge would refuse to hold the position temporarily or where he would be unwilling to accept that position without very strong reason.

I consider that article 200 as it stands amended by my honourable Friend Mr. Jaspat Roy Kapoor helps us a good deal. That helps us to get out of the hole which the amendment of my honourable Friend Dr. Ambedkar has put us in today. According to the amendment of Dr. Ambedkar, anyone who has held office as a Judge even for a single day will be disqualified from practising in any court in India; that is to say he will absolutely find himself out of employment, unless the Government is pleased to appoint him as an Ambassador or as a Minister Plenipotentiary or the finds his way through election and becomes a minister of some State, because the amendment which was moved by Prof. Shah has not been accepted by this House. The Chief Justice or a Judge of any Court even after retirement can look forward to the position of an Ambassador or High Commissioner or Minister or any other similar executive office. I do not understand why a Judge who has been sitting as Judge for five years and who has—so to speak—acquired the judicial habit—how can he be called upon to accept the position of a High Commissioner or that of an Ambassador is more than I can grasp.

Mr. President : The honourable Member is now discussing a proposition which we have already disposed of.

Shri Rohini Kumar Chaudhari : I am only talking of the position which has been created after the rejection of the amendment of Professor Shah and after the acceptance of the Honourable Dr. Ambedkar. The only solution which can relieve us of that position is the present article 200 which enables us to make provision for employment of *ex*-Judges, who have left the service at a fairly good age. He is fit to hold the responsible position of Minister or High Commissioner or Ambassador and still he is not in a position to practice in any Court in India, and the only help you can render to that man who had fortunately or unfortunately been selected as High Court Judge and held that position for one year or so is that his plight should be borne in mind by the Chief Justices of the different High Courts that whenever any opportunity occurs of providing any employment for such *ex*-Judges, they should be remembered and they should be requested to render service. Therefore I welcome this provision because in this method there is no limit of age; if only the Chief Justices of different High Courts in India will only bear in mind their *ex*-colleagues and try to provide for them in every opportunity, then the question of finding employment for *ex*-Judges gets solved to some extent at least.

I also wanted to mention another fact which require clarification, *viz.*, whether these *ex*-Judges who will be requested to sit as Judge will get any emolument. The article says that they will be given privileges of a High Court Judge. Whether the word 'privileges' includes also salaries or emoluments or remuneration, I want to know whether they will be honorary Judges or whether they will be stipendiary Judges, whether they will be merely content with the privileges of a High Court Judge which are of different variety or whether they will also be in the same status as the other Judges of the same Bench and whether they will get any salary or not, and whether there can be any limit of the term of their office or whether they can be requested to hold the office for any term exceeding two years, because in one of the articles I find that it was intended that in no case a temporary Judge should be appointed in this manner for more than two years. This is a point which requires clarification. I also want to know what designation they will have, whether

[Shri Rohini Kumar Chaudhari]

they will be called Judge of the High Court or not for the term in which they are working, but the article says they will not be deemed to be Judge of that Court for any other purpose excepting for sitting as a Judge. What will be their designation, will they form the personnel of the Judges of that High Court or they will have no designation and be merely requested to work for seven or eight days temporarily? I hope Dr. Ambedkar will clarify these two points, *viz.*, what will be their designation, what will be their salary, if any, and what would be the term of their office.

Dr. Bakshi Tek Chand : Mr. President, Sir, I had no intention of taking part in the debate on this article, if it had not been for the speeches which have been made by Shri Jaspat Roy Kapoor and Shri Rohini Kumar Chaudhari. It seems to me that the whole purpose and object of introducing article 200 in the Constitution has been misunderstood. It has been thought that this article is intended to nullify the article which has been passed already by the House that the Judges of the High Courts shall retire compulsorily at the age of 60. It is supposed that a Chief Justice of a High Court, acting under the powers given to him in article 200, may ask a retired Judge who is his friend or favourite to come and join the Court and may keep him there for any length of time. Mr. Chaudhari's suspicions are that this period may be two years or longer, that is to say, a Judge who has retired at the age of 60 may two years later, when he is 62, be recalled and may be asked to work again for a year or two or a longer period. Surely, if that is the underlying idea, there is a great deal in what the honourable Members have said. But if I may say so with great respect, that is not the intention of this article and that could not have been the intention of the Drafting Committee.

Pandit Thakur Das Bhargava : The question is whether this article is susceptible of this interpretation or not.

Dr. Bakshi Tek Chand : This article has been introduced in order to make it possible for the Chief Justice to introduce here the practice which has been in vogue in England and U.S.A. for a very long time. There, retired Judges are not invited to come back and become regular members of the Court even for 6 months or 8 months. It is only for decision of a particular case, or a group of cases of difficulty and importance, where it is thought that the ripe experience and expert knowledge of persons who had retired but who are still available in the realm will be very helpful, that their services may be requisitioned by the Chief Justice for assistance. In England a retired Judge when he is asked to do so, receives no salary at all. He gets only a small allowance, which used to be 2 guineas a day *plus* conveyance expenses—something like the Rs. 45 a day which the Members of this House receive when they sit in the House. It is considered derogatory to the position of a retired Judge to be re-employed as a regular member of the Court for six months or for a longer period and it will be very improper—indeed, it is inconceivable—that the Chief Justice of the Court will resort to this method of having his own “favourites” back on the Bench in order to get a particular decision in a case when he finds that his other colleagues do not take the particular view that he takes. Such a thing is unthinkable. Certainly, that could not be the object of enacting article 20. In England, eminent Judges—*e.g.* Lord Darling to asked at the age of 82 to come and sit for a particular case or group of cases, in which difficult questions of law had arisen and it was thought necessary to have the benefit of his talent and expert knowledge in that branch of law. After deciding the particular case or cases the Judges go back to their retirement. They come to London, stay there for a short time, receive this meagre allowance to meet hotel charges. About ten years ago they used to get two guineas a day *plus* taxi expenses, which used to come to twelve shillings a day that is Rs. 30 to Rs. 40 a day and no more.

It is considered a compliment by the Judge also, that the Chief Justice thinks that though he is retire, his talent will be of assistance in deciding cases. He therefore ungrudgingly placed his services at the disposal of the court. It is the Lord Chancellor who invites Members to sit in the Judicial Committee and it is the Chief Justice who asks the assistance of retired Judges in the High Court. I take it that that is the intention and all suspicions and fears, which have been expressed, are unfounded. Similarly it will be undesirable that when arrears pile up the Chief Justice should invite a retired judge at the age of 63, or 65, or 67 or more to come back to clear off these arrears. This would be very derogatory to the retired Judge and very improper for the Chief Justice to do so. If such a Judge is not to receive an allowance, then it will be introducing a system of having 'Honorary' Judges of the High Court, something like glorified Honorary Magistrates with all the attendant evils, of the system. That is not the intention. It could never have been the object of introducing this article in the constitution. The idea is to introduce in India the time-honoured practice which has been in vogue in England and U.S.A. for many many years and which is resorted to very rarely-once or twice a year for a period of a few weeks or so to decide a particular case or set of cases of every great difficulty and importance. That is what the article contemplates. I therefore submit that the article, as drafted, should be passed without any amendments and Members should have no apprehensions of the kind that have been expressed.

Shri H. V. Kamath : Mr. President, I desire to sound a note of caution. I am afraid that this article, if we adopt it in its present form incorporating the amendment of Dr. Ambedkar, or my Friend Mr. Kapoor, might entail unpalatable consequences at some time, consequences to my mind other than those which the wise men assembled here have intended. I am not aware from which written constitution of the world this article has been borrowed. In this article, neither the circumstances under which certain judges can act, nor the time during which they should sit has been mentioned. My learned Friend Dr. Bakshi Tek Chand, has stated that a judge will not be employed merely to dispose of accumulated arrears. I agree with him that it would be derogatory to the dignity of a High Court Judge to be called upon to dispose of some arrears. If that be not the case, then for what purpose will his talents be utilised? Obviously to my mind there is only one other category of cases, and that might be important cases involving issues of vital constitutional importance—issues that might arise between the Centre and the units, or between different units. Here as I stated earlier, it may be that the Executive may like to have a decision in a particular fashion and we have already decided here in this Assembly that the Judiciary shall not be completely separate from the Executive. We might take steps some time or other, but.

Dr. P. S. Deshmukh : May I point out that this section refers to the High Court and not to the Supreme Court?

Shri H. V. Kamath : We have laid down that the Judiciary will not be independent of the Executive and so long as that is so, there is no obviating the possibility or no guarantee against the judiciary being the handmaid of the executive: or if that is too strong a word, the judiciary kowtowing to the executive, not on all occasions but on some occasions, now that the House has not accepted Prof. Shah's suggestion that the plums of executive office should not be open to judges in office. So there is no guarantee that the judiciary will be actuated by a sense of the completest integrity and independence.

Dr. Ambedkar has moved another amendment seeking that the power of appointing the High Court Judges or the acting Judge of the High Court should be divided between the Chief Justice and the President. The Chief Justice

[Shri H. V. Kamath]

shall consult the President. It may be making assurance doubly sure that the right man will be called in. But we are not always sure—in fact none of us here can be sure—about the calibre of the men who will be filling these exalted offices and becoming the high dignitaries of our State in future. So long as the constitution does not ensure the separation of the judiciary from the executive, nor its independence, if the President is inclined to meddle in the judiciary, or is inclined to see that the judiciary kowtows to his will, or is subservient to his will, or is the handmaid of the executive, then the President will on certain issues dictate to the Chief Justice. But it is also quite likely that in effect the President will tell the Chief Justice to do such and such.....

Mr. President : Article 107, which we have already adopted relating to similar judges being invited to the Supreme Court is in exactly the same wording as this article, and all this argument now seems to me to be beside the point.

Shri H. V. Kamath : Have we incorporated this amendment about the President?

Mr. President : Yes.

Shri H. V. Kamath : I thought it was not there. I thought this was a new amendment, inserting the President in connexion with the appointment of acting Judges to the High Court. I should therefore submit so far as the High Court is concerned, if it is not merely to dispose of accumulated arrears then it must be to deal with certain cases which may involve technical or constitutional issues. In that event, I feel that the Chief Justice, so far as the acting Judges are concerned, is the competent authority and he need not consult the President at all. So far as the acting period is concerned, Dr. Bakshi Tek Chand has mentioned four, five or six weeks, and he has mentioned the case of Justice Darling. There was another great Judge, Justice Haldane. But such judges are rare and I hope that this system of appointing acting judges will not occur in our country.

Mr. President : The word “appointment” does not occur in the article at all. It is not an appointment but a request for particular occasions.

Shri H. V. Kamath : The article says that he acts as a Judge of the high court. It may not be technically an appointment.

Dr. Bakshi Tek Chand : He has to “act” because he has to decide cases.

An Honourable Member : He is not an acting judge.

Shri H. V. Kamath : He is an acting judge certainly. He acts as a judge of the high court, and is certainly an acting Judge of the High Court. Let us not do hair-splitting here.

To my mind when it is a case of a small period of ten days or a fortnight, as Dr. Bakshi Tek Chand told us, I do not see why the President should come into the picture at all. The Chief Justice is competent enough to ask any judge to dispose of any cases for the time being. The President, to my mind, need not come in, and the Chief Justice should be entrusted with the task of requesting a retired judge to act as a judge on any particular occasion.

Lastly, Sir, the proviso is absolutely meaningless, purposeless, redundant and superfluous. I do not know why the wise men of the Drafting Committee thought fit to incorporate the proviso here. It must have been in a fit of, may I say, adding a little verbiage to the constitution. No person can be compelled to do this work, unless you are going to enforce a system of *begar* in the country. We have done away with *begar* and I suppose, so far as the judges are concerned too, we shall not enforce *begar*. If the judge agrees to work he will

comply with the request of the Chief Justice. The proviso is therefore absolutely meaningless and pointless, and I hope the wise men of the Drafting Committee will see their way to delete the proviso.

Prof. Shibban Lal Saksena : It has been said in the note to this clause that the employment of retired judges follows the practice in the U. K. and the U.S.A. That has been said in defence of retaining the section. In the U.S.A., as has been pointed out by the Chairman of the Drafting Committee himself the judges get a pension almost equal to their salary and in England they get a pension equal to 80 per cent of the salary which they drew as judges. If after retirement they are called to the Bench, it is not a matter of monetary gain to them, it is only a matter of distinction and of duty done for the state. I give my conditional support to this clause. If we also lay down that the retired judges of the High Court shall get as pension the full salary which they were getting when in office or at least 80 per cent of it as they do in England, then judges will not try to seek the favour of the Chief Justice so that they may be called back by him to the Bench. My Friend, Bakshi Tek Chand, said that this is only for particular occasions and for particular periods but the wording of the article does not warrant this. Under article 189 we should not have any additional or temporary judges. It is quite possible that there may be arrears and this may be a device to be adopted by the Chief Judges to recall retired judges and ask them to dispose of the arrears. The article does not say that the men requested shall not continue to act for two or three years. In fact I feel that this is calling back judges by the back door. I should have personally preferred a higher age of retirement for judges, sixty-six for High Courts and seventy for the Supreme Court. We could then have said that these judges will not have to be recalled. You retire them at sixty and then call them back. It only means that you are throwing open possibilities of nepotism and favouritism. The judges will be inclined to see that they do not get on the wrong side of the Chief Justice with the result that they will have no chance of recall. My suggestion is firstly, that the pension of the judges should be almost equal or 80 per cent. of their salary when in office and secondly, that they shall be called only in particular cases and for a stated period. They shall not be acting judges brought in by the back door.

The Honourable Dr. B. R. Ambedkar : Sir, I did not think that this article would give rise to such a prolonged debate, in view of the fact that a similar article has been passed with regard to the Supreme Court. However, as the debate has taken place and certain Members have asked me certain definite questions, I am here to reply to him.

My friend Mr. Kamath said that he did not know whether there was any precedent in any other country for article 200. I am sure he has not read the Draft Constitution, because the footnote itself says that a similar provision exists in America and in Great Britain. (Inaudible interruption by Mr. Kamath). In fact, if I may say so, article 200 is word for word taken from section 8 of the Supreme Court of Judicature Act in England. There is no difference in language at all. That is my answer, so far as precedent is concerned.

But, Sir, apart from precedent, I think there is every ground for the provision of an article like 200. As the House will recall we have now eliminated altogether any provision for the appointment of temporary or additional judges, and those clauses which referred to temporary or additional judges have been eliminated from Constitution. All judges of the High Court shall have been eliminated from the Constitution. All judges of the High Court shall have to be permanent. It seems to me that if you are not going to have any temporary or additional judges you must make some kind of provision for the disposal of certain business, for which it may not be feasible to appoint a temporary judge in time to discharge the duties of a High Court Judge with

[The Honourable Dr. B. R. Ambedkar]

respect to such matters. And therefore the only other provision which would be compatible with article 196 (which requires that no judge after retirement shall practise) is the provision which is contained in article 200. As my Friend Dr. Tek Chand said, there seems to be a lot of misgiving or misunderstanding with regard to the purpose or the intention of the article. It is certainly not the intention of the article to import by the back door for any length of time persons who have retired from the High Courts. Therefore nobody need have any misgiving with regard to this.

The other question that has been asked of me is with regard to the proviso. Many people who have spoken on the proviso have said that it appeared to them to be purposeless and meaningless. I do not agree with them. I do think that the proviso is absolutely necessary. If the proviso is not there it would be quite open for the authorities concerned to impose a sort of penalty upon a judge who refuses to accept the invitation. It may also happen that a person who refuses to accept the invitation may be held up for contempt of court. We do not want such penalties to be created against a retired High Court Judge who either for the reason that he is ill, incapacitated or because he is otherwise engaged in his private business does not think it possible to accept the invitation extended to him by the Chief Justice. That is the justification for the proviso. The other question that has been asked is whether the word 'privilege' in article 200 will entitle a retired judge to demand the full salary which a judge of the High Court would be entitled to get. My reply to that is that this is a matter which will be governed by rules with regard to pension. The existing rule is that when a retired person is invited to accept any particular job under Government he gets the salary of the post minus the pension. I believe that is the general rule. I may be mistaken. Anyhow, that is a matter which is governed by the pension rules. Similarly this matter may be left to be governed by the rules regarding pension and we need not specifically say anything about it with regard to this matter in the article itself. This is all I have to say with regard to the point of criticism that have been raised in the course of the debate.

Shri H. V. Kamath : Is there such a provision in the Constitution of the United States?

The Honourable Dr. B. R. Ambedkar : I have not got the text before me. In the United States the question does not arise because the salary and pension are more or less the same.

I am prepared to accept amendment No. 89 of Mr. Kapoor, because some people have the feeling that article 200 is likely to be abused by the Chief Justice inviting more than once a friend of his who is a retired judge. I therefore am prepared to accept the proposal of Mr. Kapoor that the invitation should be extended only after the concurrence of the President has been asked for.

Shri Jaspat Roy Kapoor : May I know whether it is the intention that the interpretation of the term 'privileges' should be left to the Parliament?

The Honourable Dr. B. R. Ambedkar : It may have to be defined. There is no doubt about it that Parliament will have to pass what may be called a Judiciary Act governing both the Supreme Court and the High Courts and in that the word 'privilege' may be determined and defined.

Shri Jaspat Roy Kapoor : But the privileges will be the same in the case of a judge who has been called back and that of the permanent judges. That is what article 200 lays down.

The Honourable Dr. B. R. Ambedkar : Yes, but privilege does not mean full salary.

Mr. President : Amendment No. 89 moved by Mr. Jaspat Roy Kapoor has been accepted by Dr. Ambedkar. I will now put it to vote.

The question is:

“That in article 200 after the words ‘at any time’, the words ‘with the previous consent of the President’ be inserted.”

The amendment was adopted.

Mr. President : I will not put to the House amendment No. 2659.

The question is:

“That is article 200, the words, ‘subject to the provisions of this article’ be omitted.”

The amendment was adopted.

Mr. President : Now the question is:

“That article 200, as amended, stand part of the Constitution.”

The motion was adopted.

Article 200, as amended, was added to the Constitution.

Article 201

Mr. President : There are no amendments to article 201. If nobody wants to speak on it, I will put it to vote.

The question is:

“That article 201 stand part of the Constitution.”

The motion was adopted.

Article 201 was added to the Constitution.

Article 202

Mr. President : Article 202 is now for discussion.

Shri H. V. Kamath : Mr. President, I move:

“That in clause (1) of article 202, for the words ‘to issue directions or orders in the nature of the writs of *habeas corpus*, *mandamus*, prohibition, *quo warrants* and *certiorari*’ the words ‘to issue such directions or orders as it may consider necessary or appropriate’, and for the words ‘and for any other purpose’ the words ‘or for any other purpose’ be substituted respectively.”

If amendment No. 2660 were accepted, clause (1) of article 202 will read as follows :—

“Notwithstanding anything contained in article 25 of this Constitution, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue such directions or orders as it may consider necessary or appropriate, for the enforcement of any of the rights conferred by Part III of this Constitution or for any other purpose.”

The second part is purely verbal but I think this change is necessary. The clause as it stands relates both to the enforcement of the rights conferred by Part III and for any other purpose. If the word ‘or’ is substituted for the word ‘and’, it would make the meaning quite clear, that is to say, that the High Court has power to issue orders not merely when both are affected but on either ground. I think there should be no difficulty in the way of the House accepting this second part of the amendment. I sent in two separate amendments and that is why I am speaking about them separately.

As regards the first part of the amendment, I believe that in the interests of brevity, not however, at the expense of precision or clarity, we can omit the mention of the various writs. The courts should be competent to issue whatever