

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

“That article 308, as amended stand part of the Constitution.”

The motion was adopted.

Article 308, as amended, was added to the Constitution.

### Article 310

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

“That for article 310, the following be substituted:—

310. (1) Notwithstanding anything contained in clause (2) of article- 193 of this Constitution, the judges of a High Court in any Province holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the judges of the High Court in the corresponding State, and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave and pensions as are provided for under article 197 of this Constitution in respect of the judges of such High Court.

(2) The judges of a High Court in any Indian State corresponding to any State for the time being specified in Part III of the First Schedule holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the judges of the High Court in the State so specified and shall, notwithstanding anything contained in clauses (1) and (2) of article 193 of this Constitution but subject to the proviso to clause (1) of that article, continue to hold office until the expiration of such period as the President may by order determine.

(3) In this article the expression ‘judge’ does not include an acting judge or an additional judge.”

this article is merely what we used to call a “carry over article” merely carrying over the incumbents to the new offices in the new High Courts if they choose to elect to be appointed.

**Mr. President** : Amendment No. 88.

**Mr. Naziruddin Ahmad** : I am not moving 88. I shall move 141.

**Shri R. K. Sidhwa** : Mr. President, I move :

“That in amendment No. 87 above, in clause (1) of the proposed article 310, after the word and figure ‘article 197’ the words ‘and Second Schedule’ be inserted.”

My amendment is a merely verbal one. My object in moving it is this. Reference has been made to article 197 in connection with the salary of the High Court Judges. The salary of the High Court Judges features in Second Schedule and I thought it advisable to mention it along with the article 197. Schedule is an important part of the Constitution, particularly in reference to this article wherein the salaries, allowances and other subjects relating to pensions will be mentioned. Therefore, in order to make it quite clear I have moved that the words “and Second Schedule” may be added to the words “article 197”.

**Mr. Naziruddin Ahmad**: Sir, I move:

“That in amendment No. 8 of List I (Second Week), in clause (1) of the proposed article, 310, for the words ‘as are provided for under article 197 of this Constitution in respect of the judges of such High Court the words as they were entitled to immediately before the said commencement’ be substituted.”

Clause (1) of this article provides that the Judges of a High Court would on the date on which the Constitution comes into force (provisionally on the 26th of January 1950), shall continue to be Judges of the same High Court.

**The Honourable Dr. B. R. Ambedkar** : May I draw attention to the fact that this Amendment anticipates Schedule 11 ? This matter is to be dealt with under Schedule 11 and the proper time would be when Schedule 11 is before the House.

**Mr. Naziruddin Ahmad :** I have carefully considered that also, but the matter would not be fully covered. There the scale of salary of the Judges after the commencement of the Constitution will be provided, but here the matter is entirely different. My amendment says that the pay which they were receiving immediately before the commencement of this Constitution, i.e. on the 25th of January 1950,—they will receive the same pay and enjoy the same conditions from 26th January also. The Schedule deals with the new scale of pay. That is an entirely different matter.

I submit there is no need for clause (1). The only need for this clause so far as I can see, is to justify the reduction of the pay of the existing Judges in an indirect manner. In fact, on the 26th of January, it is clear that even apart from this clause (1) of article 310, those Judges will continue to be the Judges of the High Court because the same High Court continues. We have not provided for similar continuance in the case of other public servants. Every one who is a public servant on the 25th of January will certainly continue to be the same servant on the 26th of January unless he is meanwhile dismissed or has resigned or is discharged or is dead. The continuance of his service as a Judge of a High Court from the 25th to the 26th January is automatic and no authority was needed as it is attempted to be given under clause (1). I submit that clause (1) from that point of view is absolutely unnecessary. But it introduces another idea, namely, it is an indirect attempt to reduce the pay of the existing Judges. In fact, so far as the existing Judges are concerned, they have a fixed scale of pay under existing conditions. Even if there was not this clause, they would have been receiving the same pay on and from the 26th January. The real purpose of the clause is to reduce the pay of the existing Judges. I submit that their pay should not be reduced, because they are receiving a particular pay on a contract on which they were appointed. Judges of the High Court are appointed from very good lawyers who must be supposed to have been earning a very decent incomes. There were only two conditions attached to the appointment of the High Court Judges, namely, they were to continue in the usual course till they attained the age of sixty, and secondly, they would not be allowed thereafter to practise in the High Court in which they were Judges and courts subordinate thereto. But today we are enacting conditions that their pay would be reduced and, further, on the attainment of the sixtieth year every High Court Judge would be precluded from practising not only 'in the High Court to which he is attached, or the subordinate Courts thereto, but in all other Courts, even outside the purview of that High Court, namely in the High Courts of other States and also in the Supreme Court. This would be breach of contract with them in two respects.

**Dr. Bakhshi Tek Chand** (East Punjab: General): May I make a suggestion ? Will it not be proper to consider this matter when the Second Schedule is being considered ? Amendment No. 11 to the Second Schedule (which stands in the name of Dr. Ambedkar) covers the case of salaries of the Judges who were appointed on or before the 31st day of October 1948. Instead of dealing with this matter piecemeal, will it not be more convenient to deal with this, amendment when the Second Schedule is taken up? As will be seen from amendment No. 11, it does not deal merely with the salaries of Judges who will be appointed under the New Constitution but also has reference to the salary of judges who had been appointed before that date and will be working in the High Courts on the date of the commencement of this Constitution. If this amendment of Mr. Naziruddin Ahmad is lost, this might affect the amendments to the Schedule.

**Mr. Naziruddin Ahmad :** If it is proposed to consider this amendment along with amendments to Schedule IV I have no objection. But this is the proper time to raise the point. As to the contention that if this amendment is lost, the other amendment will also be considered as lost. I do not agree. This is

an amendment to save the pay of existing Judges, irrespective of the fact that they were appointed before a certain date. But the loss of this amendment will not mean the loss of the other amendment. As to the suggestion of Dr. Bakhshi Tek Chand that I should move this as an amendment to amendment No. 11, I await your instructions in this matter.

**Mr. President :** I do not think that the passing of this clause as it is will in any way affect the Schedule. It will not come in the way of the Schedule. In any case, I shall not rule that out on that ground.

**Mr. Naziruddin Ahmad :** That amendment is that the pay of the Judges who were appointed before a certain date would be saved. But my point was that the pay of Judges as they were on the 25th of January 1950 should be saved. There is a slight difference between this and that amendment of Dr. Ambedkar. I submit that the amendment of Dr. Ambedkar has been sent in after my amendment was circulated. It is really an attempt to remedy the situation to a certain extent, but it does not go far enough, to the extent I wish it to go. Sir, I shall certainly abide by your ruling.

**Mr. President :** If you like you may table another amendment to cover the point which you have now raised. Does anyone wish to say anything about this ?

**The Honourable Dr. B. R. Ambedkar :** There is no question of principle here.

**Mr. President :** There is one amendment moved by Mr. Sidhwa; that also is of a verbal character. Shall I put it to vote ?

**Shri R. K. Sidhwa :** I leave it to the Drafting Committee.

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

“That for article 310. the following be substituted;—

‘310. (1) Notwithstanding anything contained in clause (2) of article 193 of this Constitution, the judges of a High Court in any Province holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the judges of the High Court in the corresponding State, and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave and pensions as are provided for under article 197 of this Constitution in respect of the judges of such High Court.	Provisions as to Judges of High Court
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(2) The judges of a High Court in any Indian State corresponding to any State for the time being specified in Part III of the First Schedule holding office immediately before the date of commencement of this Constitution shall, ‘unless they have elected otherwise, become on that date the judges of the High Court in the State so specified and shall notwithstanding anything contained in clauses (1) and (2) of article 193 of this Constitution but subject to the proviso to clause (1) of that article, continue to hold office until the expiration of such period as the President may by order determine.

(3) In this article the expression ‘judge’ does not include an acting judge or an additional Judge.”

The motion was adopted.

Article 310 was added to the Constitution.

### Article 311

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

“That for article 311, the following article be substituted:—

‘311. (1) Until both Houses of Parliament have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution shall exercise all the powers and perform all the duties conferred by the provisions of this Constitution on Parliament.	Provisions as to provisional Parliament of the Union and the Speaker and Deputy Speaker thereof.
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*Explanation.*—For the purposes of this clause, the Constituent Assembly of the Dominion India includes—

- (i) the members chosen to represent any State or other territory for which representation is provided under clause (2) of this article, and