

Mr. President : The question is:

“That in article 107 the words ‘subject to the provisions of this article’ be deleted.”

The amendment was adopted.

Mr. President : The question is:

“That article 107, as amended, stand part of the Constitution.”

The motion was adopted.

Article 107, as amended, was added to the Constitution.

Article 108

Mr. President : Article 108 is for the consideration of the House.

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

“That for article 108, the following be substituted:—

‘108. The Supreme Court shall sit at such place or places as the Chief Justice may, with the approval of the President, from time to time appoint.’ ”

The article as it stands is in my humble judgment, not happily worded. For the first time since we commenced the article by article consideration of the Constitution we have come across an article which lays down that a particular organ of the State shall meet at a particular place. We have passed already important and articles such as article 69 fixing the venue of meetings of the Houses of Parliament and article 48(4) fixing the official residence of the President. I am sure there are other articles concerning the place where certain bodies or organs of State are supposed to meet. But none of these articles specifies the name of any particular place where that organ of the State should meet. Why, may I ask Dr. Ambedkar, does he feel it necessary to specify in this article that the Supreme Court shall meet in Delhi? The entire Constitution is silent on the point of India's capital. There is nowhere any mention of the capital of our country in the Constitution. There was even an amendment in this House, which however was not moved, but I am told that my friends are pursuing that matter in another way. There have been frequent references to the necessity of desirability of a change in the capital of India. Anyway, without prejudice to that, notwithstanding any attempt that may be made in this direction, I propose to deal with this question here purely on merit. When the whole Constitution is silent on this point, why should we import this mention of the capital, of Delhi, in this article? Is it not far more desirable or happier to leave the choice of the venue of the Supreme Court to the Chief Justice and the President of the Indian Union? Certainly they are best fitted to judge this matter and I am sure that under the Constitution where we are going to elect a President of the Indian Union and have an eminent legal and juristic authority for the Chief Justiceship, I see no reason why we should specify in the Constitution that the Supreme Court should meet at a particular place. There is no valid reason at all for specifying Delhi in this article for that purpose. It may be that the Supreme Court might meet in another place; even if Delhi is to be the capital, they may decide for various reasons that they should meet in another place, I therefore think that the mention of Delhi in this article is unnecessary.

Just another point, Sir, The article as it stands reads as follows: “The Supreme Court shall be a court of record”. What the Supreme Court will be and will not be are matters which have been exhaustively dealt with in the preceding and succeeding articles. The term “court of record” is a borrowed

phrase and we need not use it here. Therefore my amendment lays down that the Supreme Court, shall sit at such place or places as the Chief Justice may, with the approval of the President, from time to time appoint. Sir, I move my amendment and commend it for the acceptance of the House.

Mr. President : There is an amendment to this article, No. 3 of List No. 1, notice of which has been given by Mr. Gadgil.

(The amendment was not moved.)

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

“That for amendment No. 1891 of the List of Amendments, the following be substituted:—

“That for article 108, the following articles be substituted:

‘108. The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

108-A. The Supreme Court shall sit in Delhi or at such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint.’ ”

Sir, after the general debate, I will say why the amendment that I am moving is necessary.

(Amendment Nos. 1892, 1893 and 1894 were not moved.)

Shri Jaspat Roy Kapoor : Mr. President, Sir, I beg to move:

“That in amendment No. 126 of List VI which has just been moved by Dr. Ambedkar, in the proposed article 108-A for the words ‘shall sit in Delhi or at such other place or places’ the words ‘shall sit at Delhi and/or such other place or places’ be substituted.”

Should, however, this amendment not meet with the approval of the House, I would like to move, in the alternative,—

“That in amendment No. 126 of List VI in the proposed article 108-A after the word ‘places’ the following words be inserted ‘or in Delhi and at such other place or places’.”

If my first amendment is accepted, the amended article would read thus:

“The Supreme Court shall sit in Delhi and/or at such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time appoint.”

Shri T. T. Krishnamachari : Will the honourable Member please make it clear whether there should be a stroke or a hyphen after ‘and’.

Shri Jaspat Roy Kapoor : There should be a line between the two. If my second amendment is accepted, the article would read thus:

“The Supreme Court shall sit in Delhi or at such other place *or places in Delhi at such other place or places* as the Chief Justice of India, with the approval of the President, from time to time appoint.”

Sir, my reason for moving this amendment is that I believe that the proposed article 108-A does not really convey the meaning which it is intended to convey, and if it does, then I think it is obvious that an anomalous position is created thereby and the capital city of Delhi is being treated in a very unfair manner. The proposed article, as it stands, means that the Supreme Court shall sit in Delhi or at any other place in the alternative, which of course implies that it shall not then sit in Delhi at all. It means further that even if the Supreme Court holds its sittings in half a dozen places in the country, Delhi shall not be one of those places. Delhi and other places would, therefore, be mutually exclusive for the purposes of the sittings of the Supreme Court. I believe it is not the intention of the Honourable Dr. Ambedkar or even of Mr. T. T. Krishnamachari who appears to be the joint author of this amendment, that this article should be capable of this interpretation. Then, Sir, as regards the anomaly that arises out of it, I have to submit that it means that so long as the Supreme Court

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sits in Delhi, it will not have the right or the privilege to hold a circuit court anywhere else in the country. The Chief Justice may consider it necessary in the interests of his work or in order to give necessary facilities to the litigant public to hold circuit courts in different parts of the country. Even if the Chief Justice thinks that in view of the fact that large number of cases have accumulated, say from Madras or Bombay and in order to dispose of those cases or in order to give necessary facilities to the litigants so that they may not be put to the inconvenience of coming all the way to Delhi, it is necessary to hold circuit courts in Madras or Bombay, it will not be open to the Chief Justice to do so. Of course, if he is so disposed he can resort to a little device but then it will be so inconvenient and even ridiculous. He can shift the Supreme Court to a place very near Delhi, say Shahdra or some other new refugee township if the honourable the Minister for Rehabilitation is so disposed to accommodate the Chief Justice, and after shifting the Supreme Court to a place nearby, he can of course hold circuit courts in Bombay, Madras, or Calcutta as necessity may arise. Now, Sir, I submit that this anomalous position should not be allowed to stand. With regard to the injustice to Delhi itself, I submit that the present draft implies that even if the Supreme Court holds its sittings in half a dozen places it shall not be open to the Supreme Court to have even a circuit court in unfortunate Delhi. It means that either Delhi will have the privilege of having the sittings of the Supreme Court exclusively within itself, or it will not have even the facility of having a circuit court there. Either Delhi will be the monarch of all it surveys or it shall be thrown into oblivion. Sir, I cannot understand the logic of it, and, may I say, I cannot understand even the absurdity of this position. If behind this article there is the intention of anybody to remove the seat of Supreme Court from Delhi to some other place, I submit it should be said so in a straightforward and frank manner and that proposal should not be allowed to be brought in this rather back-door manner. But I believe, it is perhaps not the intention of the authors of this amendment, and I should not, therefore dilate on that aspect of it; and since it is perhaps not the intention of the authors, I would submit that it is necessary that this amendment should be amended in the manner in which I have suggested, so that it should be open to the Chief Justice of the Supreme Court to arrange for the holding of the sittings of the court either at Delhi or at some other place or places or both at Delhi and at other place or places. I hope, Sir, that this necessary amendment would be acceptable to the Honourable Dr. Ambedkar and also to the House.

Shri T. T. Krishnamachari : Mr. President, Sir, not being a lawyer, I am rather nervous to contradict my honourable Friend Mr. Jaspat Roy Kapoor, who has moved an amendment to the amendment moved by Dr. Ambedkar. But I think Sir, I do understand this foreign language to the extent that it is possible for a foreigner to understand, and I am afraid that I am unable to appreciate the necessity for making a simple clause, such as 108 happens to be now, into a very complex and difficult clause such as it would be if the amendment of Mr. Jaspat Roy Kapoor is accepted.

Sir, I quite agree with the need for a certain amount of elasticity in regard to the place at which the Supreme Court will have to operate in the future; it may be, it would operate in Delhi or at some other place, or it would operate in Delhi and at some other place, that is precisely what my honourable Friend, Mr. Jaspat Roy Kapoor wants. If the court is to be fixed at Delhi it must also be possible for the Chief Justice to arrange for sittings elsewhere to make it a sort of peripatetic court, if it is necessary and he thinks that if in the event of the headquarters of the court being changed, it must be possible for the Court

to sit at Delhi in the same manner as it would sit in some other place, if the headquarters were Delhi itself. I think that is quite covered by the position of the words at the end of article 108-A as it now stands. It reads: "The Supreme Court shall sit in Delhi and at such other place or places." It certainly does not mean that the Supreme Court shall sit at either Delhi or at such other place; it does not preclude the possibility of the Supreme Court sitting at Delhi and at some other place, and so far as the construction of the wording is concerned, I do not think it is much of a legal technicality, but it is really a matter of language and the fears that are expressed by my honourable Friend, Mr. Jaspat Roy Kapoor are, I think, entirely unfounded and all the contingencies that he wants to import into a situation that might arise by a construction of article 108-A is provided for as the clause stands today. Sir, I think there is no point in putting "and/or" with which I am very familiar in any contract form or in a bill of lading or some such document covering a commercial transaction, where the possibility of an alternative being provided is very necessary, but it has no legal sanction whatever and I think, we cannot put in "and" and "or" and we cannot put a stroke in between "and" and "or" as an alternative one for the other and we cannot have both "and" and "or" simultaneously as the language would again be defective. I think the House may rest assured that the framers of this amendment had in view the contingencies which Mr. Jaspat Roy Kapoor has in mind and they felt convinced and they are also assured by persons competent to assure them that the article 108-A as it now stands will cover all possible contingencies. There will be difficulties if the amendment as envisaged by Mr., Jaspat Roy Kapoor is accepted. Sir, I support the amendment moved by Dr. Ambedkar.

Pandit Thakur Das Bhargava (East Punjab: General): Sir, I have listened to the argument of Mr. Jaspat Roy Kapoor as well as the argument of Mr. Krishnamachari. As the words stand, I am of the opinion they are certainly ambiguous and they are not clear. Certainly one could argue that the word "other" qualifies both 'place' and 'places'. This amendment, as it stands can be construed in to saying that the Court shall either sit at Delhi and if it sits at any other place except Delhi, then there can be no circuit court at Delhi. If the word "other" qualifies the word "places" then the court can sit at other places except Delhi. I thought that Mr. Krishnamachari would clear away this ambiguity but after hearing him, I am of the opinion that this amendment is certainly ambiguous. I do not think that the authors of this amendment meant to convey that Delhi shall be a place, which in the words of Mr. Jaspat Roy Kapoor, will either be a monarchical or a forbidden place. My humble submission as I understand the position today is the Government has not decided to leave Delhi. Delhi is the Capital and today we should make it sure that Delhi will be the place where the Supreme Court shall sit, I do not know if in any other country the Supreme Court of country sits at any place other than the Capital. As long as Delhi is the Capital, the proper place for a Supreme Court is at Delhi. Moreover, it is a court of record; it is a court which must have some permanent seat and Delhi is the proper place where it can have its permanent seat; there can be no doubt about it, but if at any other time the Capital is going to be changed, there will be no difficulty in amending this part of the Constitution or if it is to be provided, even today then it will be better provided if you adopt this amendment along with the second amendment of Mr. Jaspat Roy Kapoor, because then it will be open to the authorities to see that the place of the capital is changed, and while it is changed, Delhi is not deprived of its right of having a circuit Court, if it is so necessary. I for one do not understand how the Supreme Court will at one and the same time sit at Delhi and in any other place or places. In my

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humble opinion a court can be said to sit at a place where it has got a permanent seat. There is no reason to think that if a Supreme Court sits in a bench or as a circuit at some other place, it can be said that that court is sitting at that place alone. A court should be deemed to have a permanent seat and to sit at the place where it has got a permanent seat. It is necessary to avoid this ambiguity. If Mr. Krishnamachari thinks that the words 'and/or' can only be used in a conveyance or a contract and he has not seen it in a treaty or a legal document, then, the amendment of Mr. Jaspat Roy Kapoor is quite clear, and that amendment should be accepted.

The Honourable Dr. B. R. Ambedkar : Mr. President, the amendment which I have moved covers practically all the points which have been raised both by Mr. Kamath as well as by Mr. Jaspat Roy Kapoor.

Sir, the new article 108 is necessary because we have not made any provision in the Draft Constitution to define the status of the Supreme Court. If the House will turn to article, 192, they will find exactly a similar article with regard to the high Courts in India. It seems therefore necessary that a similar provision should be made in the Constitution in order to define the position of the Supreme Court. I do not wish to take much time of the House in saying what the words 'a court of record' mean. I may briefly say that a court of record is a court the records of which are admitted to be of evidentiary value and they are not to be questioned when they are produced before any court. That is the meaning of the words 'court of record'. Then, the second part of article 108 says that the court shall have the power to punish for contempt of itself. As a matter of fact, once you make a court a court of record by statute, the power to punish for contempt necessarily follows from that position. But, it was felt that in view of the fact that in England this power is largely derived from Common Law and as we have no such thing as Common Law in this Country, we felt it better to state the whole position in the statute itself. That is why article 108 has been introduced.

With regard to article 108-A, Mr. Kamath raised a point as to why the word Delhi should occur. The answer is very simple. A court must have a defined place where it shall sit and the litigants must know where to go and whom to approach. Consequently, it is necessary to state in the statute itself as to where the court should sit and that is why the word Delhi is necessary and is introduced for that purpose. The other words which occur in article 108-A are introduced because it is not yet defined whether the capital of India shall continue to be Delhi. If you do not have the words which follow, "or at such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint" then, what will happen is this. Supposing the capital of India was changed, we would have to amend the Constitution in order to allow the Supreme Court to sit at such other place which Parliament may decide as the capital. Therefore, I think the subsequent words are necessary. With regard to the point raised by my honourable Friend Mr. Kapoor, I think the answer given by my Friend Mr. Krishnamachari is adequate and I do not propose to say any more.

Shri H. V. Kamath : May I ask one question, Sir? In the view just now enunciated by Dr. Ambedkar that the litigants should know the place where the Supreme Court will sit, and that the question of capital has not yet been settled and the court may have to sit in some other place or places, what is the point in specifying Delhi at all?

Mr. President : I think the question was put by the speaker in his first speech and it has been answered. Whether he is satisfied with the answer or not is a different question. The question has been answered.

Shri Jaspal Roy Kapoor : May I seek a small clarification from Dr. Ambedkar? Will it be open to the Supreme Court so long as it is sitting in Delhi, to have a circuit court anywhere else in this country simultaneously?

The Honourable Dr. B. R. Ambedkar : Yes, certainly. A circuit court is only a Bench.

Mr. President : I shall now put the amendments to vote.

Shri Jaspal Roy Kapoor : I beg leave of the House to withdraw my amendment, Sir.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : Amendment No. 126.

Shri T. T. Krishnamachari : May I suggest, Sir, that as it relates to two articles, it will be better to put them separately?

Mr. President : Yes. I put the first part of amendment No. 126.

The question is:

“That for article 108, the following article be substituted:

‘108. The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.’ ”

The amendment was adopted.

Mr. President : I am putting the second part.

The question is:

“108-A. The Supreme Court shall sit in Delhi or at such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time appoint.”

The amendment was adopted.

Mr. President : I think that covers the amendment of Mr. Kamath. I need not put that.

Shri T. T. Krishnamachari : That covers the entire proceedings so far as this article is concerned.

Mr. President : So, I shall put the article, as amended by Dr. Ambedkar’s amendment.

The question is:

“That article 108, as amended, stand part of the Constitution.”

The motion was adopted.

Articles 108 and 108-A were added to the Constitution.

Articles 109 to 114

Mr. President : The motion is:

“That article 109 form part of the Constitution.”

The Honourable Dr. B. R. Ambedkar : Sir, I want articles 109 to 114 be held over. The reason why I want these articles to be held over is because