

Mr. President : The question is :

“That in clause (3) of the proposed new article 79-A, all the words after the words ‘council of States’ where they occur for the second time, be deleted.”

The amendment was negatived.

Mr. President : The question is :

“That in amendment No. 1 of List I (First Week) of Amendment, % to Amendments, for the proposed new article 79-A, the following be substituted:—

Secretariat of Parliament. “79-A. (1) Each House of Parliament shall have a separate secretarial staff :

Provided that nothing in this clause shall be construed as preventing the creation of posts common to both Houses of Parliament.

(2) Parliament may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of either House of Parliament.

(3) Until provision is made by Parliament under clause (2) of this article, the President may, after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, make rules regulating the recruitment and the conditions of service of persons appointed to the secretarial staff of the House of the People or the Council of States, and any rules so made shall have effect subject to the provisions of any law made under the said clause.”

The motion was adopted.

New article 79-A was added to the Constitution.

Article 104

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

That for article 104, the following article be substituted:—

Salaries etc. of Judges “104. (1) There shall be paid to the judges of the Supreme Court such salaries as are specified in the Second Schedule.

(2) Every judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pensions as may from time to time be determined by or under law made by Parliament, and until so determined, to such privileges, allowances and rights as are specified in the Second Schedule :

Provided that neither the privileges nor the allowances of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.”

Sir, all that I need say is that the present article is the same as the original article except that the word “privileges” has been introduced which did not occur in the original text. What those privileges are I would not stop to discuss now. We will discuss them when we come to the second schedule where some of them might be specifically mentioned.

Shri Brajeshwar Prasad : Sir, I do not want to move any of the three amendments standing in my name.

Mr. President : As regards Mr. Sidhva’s amendment No. 79 this was with reference to No. 2 but since Dr. Ambedkar has moved amendment No. 77 from which the words which Mr. Sidhva wanted to omit have been omitted, his amendment does not arise now.

[Amendment No. 80 of List III (First Week) was not moved.]

Pandit Hirday Nath Kunzru (United Provinces : General) : Sir, I beg to move:

“That in amendment No. 2 of List I (First Week) of Amendments to Amendments, after clause (2) of the proposed article 104, the following new provision be added:

‘Provided that no law made under this article by Parliament shall provide that the pension allowable to a judge of the Supreme Court under that law shall be less than that which would have been admissible to him if he had been governed by the provisions which immediately before the commencement of this Constitution were applicable to the judges of the Federal Court’.”

Sir, the amendment moved by Dr. Ambedkar provides that the rights of a judge in respect of pension shall not be varied to his disadvantage after his appointment. I should therefore like to explain why I have thought it necessary to move my amendment. It is true that so far as existing incumbents are concerned, no change will be made in their pensions if article 104 is passed in the form proposed by Dr. Ambedkar. But we have to provide for the future too. Dr. Ambedkar proposes that the question of leave of absence and allowances and pensions should be dealt with by Parliament by law after the passing of this Constitution by the Assembly. There are so many matters to be dealt with in this connection that it is not possible to provide for all of them in the Constitution; they can be provided for either in the appropriate Schedule or in a parliamentary statute. Now Dr. Ambedkar himself has proposed that the salaries of the judges should not be left to be determined by Parliament and that they should be fixed by the Constitution. The salary provided for them in one of the Schedules will be lower than it is at present, and this has been done because judges of the Supreme Court have been given under article 308 the option of resigning should the salary and conditions of service suggested in the, Schedule not be acceptable to them. I shall discuss this matter when the Schedule is placed before the House. I may, however say that I personally think that the salaries provided for the judges of the Supreme Court are lower than they should be. Our effort should be to attract the best legal talent in our highest courts of justice and the conditions of service therefore should be such as to induce men with the best qualifications and with the highest reputation at the bar to accept judgeships of the Supreme Court. That, however, is not a matter that I can go into any detail at present but my amendment proposes that whatever changes may be made in future they should not affect the pensions that the judges are now entitled to get. The last proviso in Dr. Ambedkar’s amendment protects only the judges now holding office. But, so far as the future is concerned, Parliament will have the power to reduce the pension. Considering the present economic situation and also the fact that judges of the Supreme Court will not be allowed to plead or act in any court in the country, I think that, the least that we can do, is to provide that they should not be given a smaller pension than what they are entitled to now. It may be desirable in theory to leave everything in this respect to Parliament, but I think the question of pension is as important as that of salary. If you are not going to allow a judge of the Supreme Court after retirement to practice in any court in India, I think it is only fair that the present pension should not be reduced. It is not very high even at present; it is not very attractive to persons at the bar who enjoy a good practice. But if it is lowered further, there is a danger of making the judgeships unattractive to the best legal talent in the country.

This, Sir, is the justification for the amendment that I have moved. If it is accepted the effect will be to protect the Pensions not merely of the existing but also of the future judges of the Supreme Court in the same manner as their salaries will be protected.

(At this stage Mr. President vacated the chair, which was then occupied by Mr. Vice-President, Shri T. T. Krishnamachari.)

Shri R. K. Sidhwa: Mr. Vice-President, my attention was drawn by the Honourable President that my amendment has been accepted by my honour-

[Shri R. K. Sidhwa]

able Friend, Dr. Ambedkar as per his amendment No. 77 which he moved against his original amendment in List I No. 2. So far it is all right; but I find from clause (2) that the question of every judge's allowance, privileges, and rights are referred to the Parliament. Now I want this matter to be made, very clear whether Parliament will have the right to give a furnished house to the Chief Justice if this House is not in favour as is indicated from the acceptance of my amendment by the honourable the Mover. May I know whether in contravention of this House's decision when we refer the other matters of allowances to Parliament, would they be in order to pass any kind of law whereby the Chief Justice of the Supreme Court is allowed a furnished house ? Again if you refer to Part IV of Schedule 2, clause (11) relating to provisions as to the Judges of the Supreme Court and of the High Courts, it states :

"The Chief Justice or any other judge of the Supreme Court or a Chief Justice or any other judges of a High Court within the territory of India except the States for the time being specified in Part III of the First Schedule shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty etc. etc."

Unless you amend the language of this Schedule in view of the amended resolution, I think, Sir, this article will be rather in a confused state. I want to know what are the implications after the amendment of this article moved by Dr. Ambedkar. I find that he has not made any reference to the Schedule and I do not know whether he is going to make any reference to the Schedule hereafter, because that complicates the issue, and the purpose will be defeated if the matter is left to Parliament, who can against the wishes of the House pass orders that the Chief Justice can be given a furnished house.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I am sorry I cannot accept the amendment moved by my honourable Friend, Pandit Kunzru, and I think there are two valid objections which could be presented to the House for rejecting his amendment. In the first place, as regards the principle for which he is fighting, namely, that the rights of a judge to his salary and pension once he is appointed have accrued to him, and shall not be liable to be changed by Parliament by any law that Parliament may like to make with regard to that particular matter, I think, so far as my new article is concerned, I have placed that matter outside the jurisdiction of Parliament. Parliament, no doubt, has been given the power from time to time to make laws for changing allowances, pensions etc., but it has been provided in the article that shall apply only to new judges and shall not affect the old judges if that is adverse to the rights that have already accrued. Therefore, so far as the principle is concerned for which he is fighting, that principle has already been embodied in this article.

From another point of view his amendment seems to be quite objectionable and the reason for this is as follows. As everybody knows pensions have a definite relation to salary and the number of years that a judge has served. To say, as my honourable Friend, Pandit Kunzru suggests, that the Supreme Court judges should get a pension not less than the pension to which each one of them would be entitled. In pursuance of the rules that were applicable to judges of the Federal Court, seems to presume that the Federal Court Judge if he, is appointed a judge of the Supreme Court shall continue to get the same salary that he is getting. Otherwise that would be a breach of the principle that pensions are regulated by the salary and the number of years that a man has put in. We have not yet come to any conclusion as to whether the Federal Court Judges should continue to get the same salary that they are getting when they are appointed to the Supreme Court. That matter, as I said, has not been decided and I doubt very much (I may say in anticipation) whether it will be possible for the Drafting Committee to advocate any such distinction as to salary between existing judges and new judges. The amendment, therefore,

is premature. If the House accepts the proposition for which my Friend Pandit Kunzru is contending that the Federal Court Judges should continue to get the same salary, then probably there might be some reason in suggesting this sort of amendment that he has moved. At the present moment, I submit it is quite unnecessary and it is impossible to accept it because it seeks to establish a pension on the basis that the existing salary will be continued which is a proposition not yet accepted by the House.

Shri R. K. Sidhwa : The Honourable Dr. Ambedkar has not answered my point as to how the Parliament is competent to give a furnished house to the Chief Justice.

The Honourable Dr. B. R. Ambedkar : We are not rejecting it. Nothing is said about the furnished house. We shall discuss that.

Mr. Vice-President (Shri T. T. Krishnamachari) : The question is:

“That in amendment No. 2 of List I (First Week) of Amendments to Amendments, after clause (2) of the proposed article 104. The following new proviso be added:

‘Provided that no law made under this article by Parliament shall provide that the pension allowable to a judge of the Supreme Court under that law shall be less than that which would have been admissible to him if he had been governed by the provisions which immediately before the commencement of this Constitution were applicable to the Judges of the Federal Court.’ ”

The amendment was negatived.

Mr. Vice-President : The question is:

That for article 104, the following article be substituted:—

Salaries etc. of Judges. “(1) There shall be paid to the judges of the Supreme Court such salaries as are specified in the Second Schedule.

(2) Every judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament, and until so determined to such privileges, allowances and rights as are specified in the Second Schedule :

Provided that neither the privileges nor the allowances of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.”

The motion was adopted.

Article 104, as amended, was added to the Constitution.

New Article 148-A

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

That after article 148 the following new article be inserted :—

Abolition or creation of Legislative Councils in States. “ 148A. (1) Notwithstanding anything contained in article 148 of this Constitution, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two thirds of the members of the Assembly present and voting.

(2) Any law referred to in clause (1) of this article shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of the law and may also contain such incidental and consequential provisions as Parliament may deem necessary.

(3) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purpose of article 304 thereof.”