

[Shri T. T. Krishnamachari]

Letters Patent, as it is applied to our courts is simpler than this longish proviso and the purport of it was more or less analogous to the provision that we are now seeking to introduce as a proviso to article 111, instead of the original proviso. I do not think there is any scope for discussion in this particular matter, because what is done by this amendment is to simplify and restrict the limitation that is put in regard to appeals to the Supreme Court. If honourable Members are satisfied with this explanation it can go through. If, on the other hand, they want an elaborate explanation of the whole question of how the powers of benches in the high courts were affected by the Letters Patent, and how much we have borrowed there from. I think my honourable Colleague Mr. Alladi Krishnaswami Ayyar is prepared to satisfy Members on this particular point.

Sir, I move.

Mr. President : The question is:

“That for the proviso to clause (1) of article III, the following proviso be substituted :

‘Provided that no appeal shall lie to the Supreme Court from the judgement, decree or final order of one judge of a High Court.’ ”

The amendment was adopted.

Article 112

Shri T. T. Krishnamachari : Sir, I move:

“That with reference to amendment No. 364 of List XV (Second Week), for article 112, the following article be substituted:-

‘112. (1) The Supreme court may, in its discretion, grant special leave to appeal from any judgement, decree, determination sentence or order in any cause or matter passed or made by any Court or tribunal in the territory of India.

Special leave to appeal
by the Supreme Court.

(2) Nothing in clause (1) of this article shall apply to any judgement, determination, sentence or order passed or made by any court of tribunal constituted by or under any law relating to the Armed Forces.’ ”

The amendment to clause (1) of article 112 as it now stands is a very simple one. The words “final order” in the original article are sought to be removed and revised by the insertion of the words “determination, sentence or order” So far as clause (2) is concerned, the amendment must be perfectly clear to honourable Members. It seeks to exclude from the jurisdiction of the Supreme Court (the omnibus jurisdiction which article 112 confers on it) any decision of a court-martial covering matters which relate to the armed forces and matters which are governed by the Army Act. I understand that this follows the practice that now obtains in the U.K. where courts do not interfere with the decisions of the court-martial. I would at once confess that this matter, which escaped our attention at the time this article was framed and put before the House, has now been brought to our notice by the Defence Department, who have convinced us that a provision of this nature which obtains currency in other countries should also find a place in our Constitution.

Sir, if you would permit me I would like to move also another amendment which relates to the same subject, so that discussion on the whole matter might be taken up together.

Sir, I move:

“That to article 203, the following clause be added, namely:—

‘(4) Nothing in this article shall be deemed to extend the powers of superintendence of a High Court over any court or tribunal constituted by or under any law relating to the Armed Forces.’ ”

Clause (4) of article 203 and clause (2) of article 112 deal with the same subject. In the case of article 203 it seeks to prohibit the jurisdiction of the High Courts extending to courts-martial, whereas a similar restriction in regard to the Supreme Court is contemplated under article 112. The reason for introducing these two new amendments is the view expressed by the Defence Ministry that such protection is necessary in respect of the decisions of courts-martial which deal with the Armed Forces and the analogy of what obtains in other countries was brought before us. We therefore felt that there was a case for putting in a provision of this nature in articles 112 and 203.

Prof. Shibban Lal Saksena : Sir, I move:

“That in amendment No. 421 of List XVIII (Second Week), clause (2) of the proposed article 112 be deleted.”

I wish to bring a charge of breach of faith against Dr. Ambedkar in this matter. Sometime ago I had tabled an amendment to article 112A in which I had specially desired that provision should be made that persons sentenced to death by courts-martial should be able to appeal to the Supreme Court. Dr. Ambedkar assured me that such persons are covered by article 112 and the Supreme Court can take notice of such persons under its powers under article 112. Probably a report of the discussion in the House appeared in the papers and the Defence Department has tried to strengthen itself against the protection given by this article to persons condemned by courts-martial. And therefore Dr. Ambedkar has been asked to table this amendment. Mr. T. T. Krishnamachari just now said that this was necessary because the Defence Department wants so. Probably they have read the report of the discussion and that is why they have asked for this provision.

I therefore, think, Sir, that this is not fair. I had withdrawn my amendment that day on the assurance that this will be covered by this article and now just the reverse provision is being made and it is going to be accepted. I have seen and heard many Judge-Advocates who deal with these military courts-martial and they say that they are the persons who prepare the prosecution and they are also the persons who hear the cases and then give the judgement and if any Judge-Advocate made frequent decisions against cases prepared by himself, then he is also dismissed by the military authorities. They do not like that these cases should be dismissed. I think, Sir, this is a grave matter. Recently after the War in Britain also a Commission was appointed to study the administration of these military courts-martial and they also recommended that the procedure should be made more civilized and in the name of discipline the people should not be butchered. I have seen that the present procedure of Judge-Advocates is something against all the laws of jurisprudence and I think that at least persons convicted of death should have the right of appeal to the Supreme Court after their judgements. I consider that this provision is not only unfair but is also against the promise given to me by Dr. Ambedkar on a previous occasion.

Shri R. K. Sidhwa : Mr. President, Sir, I have my doubts about this clause. I am in entire agreement regarding protection to be given to Armed forces and with the decision that martial law should not be subject to the revision by the Supreme Court. To that extent I am agreeable, but I can show a number of cases where a number of armed forces are involved with a number of the civil population. Sir, there have been many cases of military motor drivers who have met with accidents and killed a number of civilians and those cases are tried by court-martial and in almost 90 per cent of the cases the civilians, poor fellows, had to suffer. They do not get any compensation and nor justice nor is the military driver punished in any way or sentenced. My point, therefore, is that the Drafting Committee in the interests of the civilian population will kindly bear this matter in mind and make some arrangement or provision here that the civilian

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population who suffer from these accidents should be protected. They should not be tried by martial law. I can state a number of cases and if these cases are tried by the civil courts, there would have been fair trial. In the civil and criminal courts they get compensation and also subject to punishment. On account of this lacuna many of the drivers are so rash that they drive rash and kill many civilians. I draw the attention of the Honourable Dr. Ambedkar to this matter. Probably this matter did not come to his notice before, but this is a very important matter and while we want the armed forces to be protected and their appeal should not come to the Supreme Court, the civilians ought equally to be protected.

Shri B. Das : I wish Dr. Ambedkar should make it clear whether the tribunal in the territory of India applies to the Income-tax tribunal or the different Railway tribunals that we have. If the power is extended, then the Income-tax tribunal must be dissolved at once. We have got the Income-tax tribunal which is the final authority.

The Honourable Dr. B. R. Ambedkar : Are they relevant to this discussion? How does the Income-tax tribunal come here?

Shri B. Das : In this article it is stated:—

“The Supreme Court may, in its discretion, grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.”

I only wish to be assured by you that the ‘tribunal’ does not mean the Income-tax tribunal.

The Honourable Dr. B. R. Ambedkar : You said other personnel also. So far as my memory goes, this has been amended to make provision for income-tax cases also to be taken up in the Supreme Court. I know that it has been amended.

Pandit Thakur Das Bhargava : Sir, in my humble opinion clause (2) seems to be very wide and unnecessary. It reads as follows:

“Nothing in clause (1) of this article shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.”

So far as offences relating to the military personnel and military offences are concerned, they may be immune from the jurisdiction of the Supreme Court; but there are many laws relating to the Armed Forces which countenance the judgments etc. by courts constituted under those Acts and the accused in those cases are the civilian population or military personnel accused of civil offences. In regard to say, the Cantonment Act or in regard to the Territorial Forces Act, there are some offences in which the members of the civil population are accused and there is no reason whatsoever why such sentences should not be subject to the jurisdiction of the Supreme Court. I therefore think that this clause is too widely worded and needs amendment.

The Honourable Dr. B. R. Ambedkar : Mr. President Sir, in view of the observations made by my honourable Friend, Prof. Shibban Lal Saksena, it has become incumbent upon me to say something in relation to the proposed article moved by my honourable Friend, Mr. T. T. Krishnamachari. It is quite true that on the occasion when we considered article 112 and the amendment moved by my honourable Friend, Prof. Shibban Lal Saksena. I did say that under article 112 there would be jurisdiction in the Supreme Court to entertain an appeal against any order made by a Court-martial. Theoretically that proposition is still correct and there is no doubt about it in my mind, but what I forgot to say is this: That according to the rulings of our High Courts as well as the rulings of the British courts including those of the Privy Council, it has been a well recognized principle that civil courts, although they have jurisdiction under the statute will not exercise that jurisdiction in order to disturb any finding or decision given or order made by the Court-martial. I do not wish to go into the reason why

the civil courts of superior authority, which notwithstanding the fact that they have this jurisdiction have said that they will not exercise that jurisdiction; but the fact is there and I should have thought that if our courts in India follow the same decision which has been given by British courts—the House of Lords, the King's Bench Division as well as the Privy Council and if I may say so also the decision given by our Federal Court in two or three cases which were adjudicated upon by them—there would be no necessity for clause (2); but unfortunately the Defence Ministry feels that such an important matter ought not be left in a condition of doubt and that there should be a statutory provision declaring that none of the superior civil courts whether it is a High Court or the Supreme Court shall exercise such jurisdiction as against a court or tribunal constituted under any law relating to the Armed Forces.

This question is not merely a theoretical question but is a question of great practical moment because it involves the discipline of the Armed Forces. If there is anything with regard to the armed forces, it is the necessity of maintaining discipline. The Defence Ministry feel that if a member of the armed forces can look up either to the Supreme Court or to the High Court for redress against any decision which has been taken by a court or tribunal constituted for the purpose of maintaining discipline in the armed forces, discipline would vanish. I must say that that is an argument against which there is no reply. That is why clause (2) has been added in article 112 by this particular amendment and a similar provision is made in the provisions relating to the powers of superintendence of the High Courts. That is my justification why it is now proposed to put in clause (2) of article 112.

I should, however, like to say this that clause (2) does not altogether take away the powers of the Supreme Court or the High Court. The law does not leave a member of the armed forces entirely to the mercy of the tribunal constituted under the particular law. For, notwithstanding clause (2) of article 112, it would still be open to the Supreme Court or to the High Court to exercise jurisdiction, if the court martial has exceeded the jurisdiction which has been given to it or the power conferred upon it by the law relating to armed forces. It will be open to the Supreme Court as well as to the High Court to examine the question whether the exercise of jurisdiction is within the ambit of the law which creates and constitutes this court or tribunal. Secondly, if the court-martial were to give a finding without any evidence, then, again, it will be open to the Supreme Court as well as the High Court to entertain an appeal in order to find out whether there is evidence. Of course, it would not be open to the High Court or the Supreme Court to consider whether there has been enough evidence. That is a matter which is outside the jurisdiction of either of these Courts. Whether there is evidence or not, that is a matter which they could entertain. Similarly, if I may say so, it would be open for a member of the armed forces to appeal to the courts for the purpose of issuing prerogative writs in order to examine whether the proceedings of the court martial against him are carried on under any particular law made by Parliament or whether they were arbitrary in character. Therefore, in my opinion, this article, having regard to the difficulties raised by the Defence Ministry, is a necessary article. It really does not do anything more but give a statutory recognition to a rule that is already prevalent and which is recognised by all superior courts.

I am told that some people feel some difficulty with regard to the law relating to the armed forces. It is said that there are many persons in the armed forces who are really not what are called men of the line, men behind the line. It seems to me quite impossible to make distinction between persons who are actually bearing arms and others who are enrolled under the Army Act, because the necessity of discipline in the armed forces is as great as the necessity of

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maintaining discipline among those who are not included among the armed forces.

My honourable Friend Mr. Sidhwa raised the question that sometimes when a member of the armed forces commits a certain crime, kills somebody by rash driving or any such act, he is generally tried by court-martial, and there is nothing done so as to bring him to book before the ordinary courts of criminal law. Well, I do not know; but I have no doubt in my mind that so far as a member of the armed forces is concerned, he is subject to double jurisdiction. He is no doubt subject to the jurisdiction of the court which is created under the military law. At the same time, he is not exempt from the ordinary law of the land. If a man, for instance, commits an offence which is an offence under the Indian Penal Code and also under the Army Act, he will be liable to be prosecuted under both the Acts. If a member of the army has escaped any such prosecution, it is because people have not pursued the matter. The general theory of the law is that because a man becomes a member of the armed forces, he does not cease to be liable to the ordinary law of the land. He continues to be liable, but in addition to that liability, he takes a further liability under the Act under which he is enrolled.

Shri Mahavir Tyagi : Can he have two punishments for one crime?

The Honourable Dr. B. R. Ambedkar : Oh, yes.

Shri R. K. Sidhwa : Why not make it clear?

The Honourable Dr. B. R. Ambedkar : It is quite clear. Section 2 of the Indian Penal Code says: "Every person". "Every person" means high or low, armed or unarmed.

Mr. President : Mr. T. T. Krishnamachari, would you like to say anything after this?

Shri T. T. Krishnamachari : No, Sir.

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

The question is:

"That in amendment No. 421 of List XVIII (Second Week), clause (2) of the proposed article 112 be deleted."

The amendment was negatived.

Mr. President : I shall put article 112 as proposed in amendment No. 421.

"The question is:

"That with reference to amendment No. 364 of List XV (Second Week), for article 112, the following article be substituted:—

'112. (1) The Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) of this article shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.'

The motion was adopted.

Article 112, as amended, was added to the Constitution.

Article 203

Mr. President : The question is:

"That to article 203, the following clause be added, namely:—

'(4) Nothing in this article shall be deemed to extend the powers of superintendence of a High Court over any court or tribunal constituted by or under any law relating to the Armed Forces.'

The amendment was adopted.