

- (ii) a dispute to which any State is a party, if the dispute arises out of any provision of treaty, agreement, covenant, engagement, *sanad*, or other similar instrument which provides that the said jurisdiction shall not extend to such dispute’.”

I would request honourable Members to refer to, the Draft Constitution before this article was passed by the House. They will find these two provisos reproduced there word for word. It was felt at the time we moved this Draft Article 109 that in the circumstances in which we were then placed we could not ask the House to pass a proviso like proviso (1) and hence there is no proviso in the article as accepted by the House covering the case of States in para III as we had for its omission and only the incorporation of proviso (2) in the terms in which it has been then accepted by the House. But now circumstances have, changed and we find that a proviso similar to proviso (1) of the original draft has to find a place and therefore I have moved this amendment. I hope the House will accept it.

Mr. President : The question is:

“That for the proviso to article 109 the following proviso be substituted :

‘Provided that the said jurisdiction shall not extend to—

- (i) a dispute to which a State for the time being specified in Part III of the First Schedule is a party, if the dispute arises out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which was entered into or executed before the date of commencement of this Constitution and has, or has been, continued in operation after that date;
- (ii) a dispute to which any State is a party, if the dispute arises out of any provision of a treaty, agreement, covenant, engagement, *sanad*, or other similar instrument, which provides that the said jurisdiction shall not extend to such dispute’.”

The amendment was adopted.

Article 112

Shri T. T. Krishnamachari : May I request you to hold over this article till tomorrow ? There are certain Members in this House who have represented that they would like to examine this article a little further, and if it is not inconvenient, I would request the chair to hold it over till tomorrow.

Mr. President : It is held over. We will take up amendment No. 365, Article 119.

Shri T. T. Krishnamachari : In moving amendment No. 365, I would like you to permit me to incorporate in this amendment, amendment No. 388 which I have tabled today. Sir, I move :

“That article 119 be renumbered as clause (1) of article 119, and to the said article as so renumbered the following clause be added :—

- (2) The President may, notwithstanding anything contained in clause (1) of proviso to article 109 of this Constitution, refer a dispute of the kind mentioned in the said clause to the Supreme Court for opinion and the Supreme Court may, after such hearing as it thinks fit, report to the President its opinion thereon.”

This again happens to be part of article 119 as it originally appeared in the Draft Constitution. Practically word for word, except for the minor variations, I have introduced in my subsequent amendment with regard to the last three lines of this amendment, it appeared in the original article 119. We have now felt that it ought to be restored, though it was not originally put in 119 as it

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was passed by the House. The intention is more or less self-explanatory. It is a question of empowering the President to refer a matter like the one mentioned in the amendment to the Supreme Court for its opinion and for the Supreme Court to report to the President its opinion thereon and it varies vitally from the provision of article 119 as it stands now. It is found necessary in circumstances now present in view of the enlargement of the scope of the Constitution by the additions that have since been made.

Mr. President : The question is:

“That article 119 be renumbered as clause (1) of article 119, and to the said article as so renumbered the following clause be added:—

- ‘(2) The President may notwithstanding anything contained in clause (i) of the proviso to article 109 of this Constitution, refer a dispute of the kind mentioned in the said clause to the Supreme Court for opinion and the Supreme Court may’ after such hearing as it thinks fit, report to the President its opinion thereon.’”

The amendment was adopted.

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

“That in clause (3) of article 135, for the words ‘shall have an official residence’ the words ‘shall be entitled without payment of rent to the use of his official residences’ be substituted.”

This refers to the Governor. The amendment to article 48 referred to the President and it has been accepted by the House.

Shri H. V. Kamath : In my humble judgment there is a little discrepancy here. We have provided rent-free residences to the President and the Judges of the Supreme Court at the Centre. Similarly, on the same reasoning, should we not provide rent-free residences to the Governor and the High Court Judges? Why do we provide it for the Governor only?

The Honourable Dr. B. R. Ambedkar : Logic cannot be employed to make a proposition absurd.

Mr. President : The question does not arise here. The question is:

“That in clause (3) of article 135, for the words ‘shall have an official residence’ the words ‘shall be entitled without payment of rent to the use of his official residences’ be substituted.”

The amendment was adopted.

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

“That in clause (3) of article 135, for the words ‘the Legislature of the State the word ‘Parliament’ be substituted.”

The appointment of the Governor is now being made by the President. It is therefore felt that it would not be proper to leave his emoluments to be decided by the legislature of the State as it originally was when we had intended that the Governor should be elected. This should have been amended earlier, but we found that we could do it only at the last stage. Therefore, I am moving that the emoluments of the Governor shall be determined by Parliament by law.

Prof. Shibban Lal Saksena : I am glad that the change is being made. I would only like to know who will pay the salary of the Governor—will it come out of the provincial exchequer or the Central exchequer ?