

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

“That in the proposed paragraph 4-A, the word ‘all’ be deleted.”

“That in the proposed paragraph 4-A, before the word ‘Kashmir’ wherever it occurs, the words ‘Jammu and’ be inserted.”

“That in the proposed paragraph 4-A, for the words ‘by nomination’ the words ‘by election by the Praja Sabha of the State of Jammu and Kashmir’ be substituted.”

“That in the proposed paragraph 4-A, for the word ‘nominated’ the word ‘elected’ be substituted.”

“That in the proposed paragraph 4-A, the words ‘by the Ruler of Kashmir on the advice of his Prime Minister’ be deleted.”

The amendments were negatived.

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

“That after paragraph 4 of the Schedule to the Constituent Assembly Rules, the following paragraph be inserted, namely:—

‘4-A, Notwithstanding anything contained in paragraph 4, all the seats in the Assembly allotted to the State of Kashmir (otherwise known as the State of Jammu and Kashmir) may be filled by nomination and the representatives of the State to be chosen to fill such seats may be nominated by the Ruler of Kashmir on the advice of his Prime Minister.’ ”

The motion was adopted.

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#### DRAFT CONSTITUTION—(*Contd.*)

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#### Article 104

**The Honourable Dr. B. R. Ambedkar :** (Bombay: General): Sir, I would request that article 104 be postponed.

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#### Article 105

**Mr. President :** Then I shall proceed to article 105.

(Amendments Nos. 1879 and 1880 were not moved.)

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

“That article 105 stand part of the Constitution.”

The motion was adopted.

Article 105 was added to the Constitution.

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#### Article 106

**Mr. President :** Article 106

(Amendments Nos. 1881 and 1882 were not moved.)

**Mr. President :** There is an amendment to this amendment. Since the main amendment is not moved I suppose this amendment drops.

**Shri T. T. Krishnamachari** (Madras: General): It is covered by amendment No. 1883 to which I shall move my amendment.

**Mr. President :** So much the better.

**Mr. Tajamul Husain** (Bihar: Muslim): Sir, may I with your permission move this amendment for Mr. Naziruddin Ahmad?

**Mr. President :** Yes.

**Mr. Tajamul Husain :** Sir, I move:

“That in clause (1) of article 106 after the words ‘High Court’ where they occur for the second time, the words ‘duly qualified for appointment as a judge of the Supreme Court’ be inserted.”

If at any time there is no quorum of the Judge of the Supreme Court to hold a Session, the Chief Justice may consult the Chief Justice of the High Court concerned and ask him to attend the sitting of the High Court as an *ad hoc* Judge for such period as may be found necessary for the Judge of the High Court to be nominated by the Chief Justice of India. No argument is necessary. The Judge who sits as an *ad hoc* Judge in the Supreme Court must be duly qualified for appointment as a Judge of the Supreme Court: otherwise he cannot sit.

**Shri T. T. Krishnamachari :** Sir, I shall with your leave move amendment No. 124 in List VI. Sir, I move:

“That with reference to amendment No. 1883 of the List of Amendments, in clause (1) of article 106, after the words ‘Chief Justice may’ the words ‘with the previous consent of the President and’ be inserted.”

The wording of this amendment is fairly simple as the House will understand that article 106 provides for the appointment of *ad hoc* Judges by the Chief Justice; that is, a Judge of any High Court may be requested to cooperate with the Chief Justice of the Supreme Court and sit in any of the Benches constituted by him to decide any particular case. Well, the article as it now stands means that the Chief Justice can do it without any reference to the Government of the day. I think, Sir, that the position is not quite as it ought to be for the reason that while the appointment of any of the Judges of the Supreme Court, including the Chief Justice, is done by the Executive, any addition to the Court should not be made without any reference to the Executive whatever. Of course, there are administrative and financial problems that might arise by the Chief Justice making a request to any of the High Court Judges of any State to co-operate with him in this manner, and even the propriety of the occasion demands that the Chief Justice should not act except in consultation with the head of the Executive. Therefore, Sir, I have moved that the words “with the consent of the President” should be put in. Actually, it will not be a very difficult matter to obtain his consent, as in most cases it will be a formal matter. Also, there is this safeguard, namely, there are occasions when the Supreme Court has decided matters which have a political flavour. The possibility of any political bias being exercised by the Chief Justice in the matter of the selection of an *ad hoc* Judge to help to decide any particular case can also be partly obviated by this safeguard. The history of the Judiciary in America has been almost a history of how politics has influenced the attitude of the judiciary. Any student of the American Constitution would know that politics has influenced to a very large extent the decisions in constitutional cases by the Supreme Court of America. There is undoubtedly need for a safeguard for providing that the Executive shall have some say in a matter like this and if they really feel that the selection of a particular Judge is not proper, it is probable that the attention of the Chief Justice might be invited to that particular aspect of the matter.

It is not merely to provide against a contingency like the one I have mentioned but also to conform to the proprieties involved in a matter like this that I have moved this amendment. I hope the House will have no difficulty in accepting it. Sir, I move:

**The Honourable Dr. B. R. Ambedkar :** I accept the two amendments—No. 124 of List No. VI and amendment No. 1883.

**Mr. President :** There have been two amendments moved. Both have been accepted by Dr. Ambedkar. I will now put them to the vote.

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

“That with reference to amendment No. 1883 of the List of Amendments, in clause (1) of article 106, after the words ‘Chief Justice may’ the words ‘with the previous consent of the President and’ be inserted.”

The amendment was adopted.

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

“That in clause (1) of article 106, after the words ‘High Court where they occur for the second time, the words ‘duty qualified for appointment as a judge of the Supreme Court’ be inserted.”

The amendment was adopted.

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

“That article 106, as amended, stand part of the Constitution.”

The motion was adopted.

Article 106, as amended, was added to the Constitution.

#### Article 107

**Mr. President :** Amendment No. 1884. This is a negative amendment. So I rule it out.

Amendment No. 1885. That question has been decided. So this need not be moved.

**Shri Jaspat Roy Kapoor :** I am not moving amendment No. 1886 as there is another amendment on the same lines.

**Mr. President :** Amendment No. 1887 is more or less a verbal amendment. So it need not be moved.

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

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

Those words are quite unnecessary.

**Shri T. T. Krishnamachari :** I move:

“That in article 107, in line 3, after the words ‘at any time’, the words ‘with the previous consent of the President’ be inserted.”

Sir, the purpose of this amendment is much the same as that of the amendment moved by me to the earlier article and accepted by the house. This article deals with the attendance of retired judges in the sittings of the Supreme Court. For the reasons mentioned by me earlier it will be necessary for the Chief Justice to obtain the previous consent of the President, before inviting any such person to act as a Judge of the Supreme Court.

(Amendment Nos. 1889 and 1890 were not moved.)

**Mr. President :** We have now the amendments and the article for discussion.

**The Honourable Dr. B. R. Ambedkar :** I accept amendment 125 moved by Shri T. T. Krishnamachari.

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

“That in article 107, in line 3, after the words ‘at any time’, the words ‘with the previous consent of the President’ be inserted.”

The amendment was adopted.