

Mr. President : The question is:

“That for clause (2) of article 307, the following clauses be substituted:—

(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

(3) Nothing in clause (2) of this article shall be deemed—

- (a) to empower the President to make any adaption or modification of any law after the expiration of two years from the commencement of this Constitution; or
- (b) to prevent any competent legislature or other competent authority to repeal or amend any law adapted or modified by the President under the said clause.”

3. That in Explanation I to article 307, the words ‘ but shall not include an Ordinance promulgated under Section 88 of the Government of India Act, 1935’ be added at the end.

4. That in Explanation II to article 307, for the word ‘has’ the word ‘had’ be substituted and after the words ‘continue to have’ the word ‘such’ be inserted.

5. That for Explanation III to article 307, the following be substituted:—

Explanation III.—Nothing in this article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration, or the date on which it would have expired if this Constitution had not come into force.”

The amendment was adopted.

Mr. President : The question is:

“That article 307, as amended, stand part of the Constitution.”

The motion was adopted.

Article 307, as amended, was added to the Constitution.

Article 308

Mr. President : We go to article 308. Dr. Ambedkar.

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

“That for clause (3) of article 308 the following clause be substituted:—

‘(3) Nothing in this Constitution shall operate to invalidate the exercise of jurisdiction by His Majesty in Council to dispose of appeals and petitions from, or in respect of, any judgment, decree or order of any court within the territory of India in so far as the exercise of such jurisdiction is authorised by law, and any order of His Majesty in Council made on any such appeal or petition after the commencement of this Constitution shall for all purposes have effect as if it were an order or decree made by the Supreme Court in the exercise of the jurisdiction conferred on such court by this constitution.’ ”

Also:

“That after clause (3) of article 308, the following new clause be inserted:—

‘(3a) On and from the date of commencement of this Constitution the jurisdiction of the authority functioning as the Privy Council in a State for the time being specified in Part III of the First Schedule to entertain and dispose of appeals and petitions from or in respect of any judgment, decree or order of any court within that State shall cease, and all appeals and other proceedings pending before the said authority on the said date shall be transferred to, and disposed of, by the Supreme Court.’ ”

Sir, the purpose of the first amendment is merely to continue the authority of the Privy Council to dispose of certain appeals which might be pending before it under the law which the Constituent Assembly very recently passed—section 4—in case they are not finally disposed of before the 26th January,

assuming that to be the date on which this Constitution comes into existence. The important words are—"to dispose of the appeal". There is no power to entertain an appeal. And the other important words are—"such jurisdiction authorised by law", that is to say, references to the recent Act that was passed. The Privy Council will have no other jurisdiction no more jurisdiction than what we have conferred. It has been so arranged by consultation that in all probability, on the date on which this Constitution comes into existence the Privy Council would have disposed of all the cases which had been left to them for disposal under that particular enactment. But it might be that either a case remains part-heard, or case has been disposed of in the sense that the hearing has been closed, but the decree has not been drawn, and in that sense it is pending before them. It was felt that rather than to provide for a transfer of undisposed or part-heard cases to the Supreme Court which would cause a great deal of hardship to litigants, it was desirable, to make an exception to our general rule, that the jurisdiction of the Privy Council will end on the date on which the Constitution comes into existence. That is the main purpose of amendment No. 6.

With regard to amendment No. 7, it is well-known that in some of the India States there are Privy Councils which supervise the judgments of their High Courts, for the reason that they did not recognise the jurisdiction of the Privy Council or rather, the Privy Council of His Majesty in England. They, therefore, had their own Privy Council. Now it is felt that in view of the provision in the Constitution that there should be direct relationship between the Supreme Court and the High Courts in the different States, both in Part III and in Part I, this intermediary institution of a Privy Council of an Indian State in Part III should be statutorily put an end to, so that on the 26th January, all appeals in any State from a High Court in a State in Part III will automatically come up to be disposed of by the Supreme Court.

I am told that these Privy Councils are called by different names in the different States. If that is so, the Drafting Committee proposes to get over that difficulty by having a definition of Privy Council in our article 306 so as to cover the different nomenclature and variations of these institutions.

Mr. President : Amendment Nos. 138 and 139—Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Mr. President, Sir, I need not move No. 138 because that means opposition to this clause. With regard to No. 139, it is an amendment of a verbal nature and I shall leave it to the discretion of the Drafting committee.

With regard to clause (3), empowering His Majesty in Council to dispose of appeals and petitions, even after the 26th January, 1950—the date when the Constitution comes into operation—it seem to be some to be somewhat startling. Only the other day we passed an Act in this House transferring all appeals and petitions pending before the Judicial Committee to the Federal Court. There were, however, certain exceptions. One exception was petition for leave. It was provided that if there was any petition for leave, fixed for hearing during the Michaelmas term which begins from today, in the Privy Council, they may merely grant or refuse leave. So the effect of this was that if the Privy Council did not give any leave, the matter was absolutely concluded and final. But if any leave was given, the Privy Council would not be entitled to hear it further. The further hearing will be held in the Federal Court and later on in the Supreme Court when the Federal Court is converted into the Supreme Court. Then there are certain other matters which may also be taken into consideration by the Privy Council, namely, appeals which have been heard, in

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which the Judicial Committee has pronounced its judgment, but its final acceptance by His Majesty has not yet been communicated. In those cases His Majesty would be entitled to accept the recommendations of the Privy Council even after that date.

At the time when the Act was being considered in the House, we were given to understand that there was no appeal which would be pending before the Privy Council from India. The 'only pending matters would be applications for leave, and if the applications are granted, then of course, the matter will be further heard in India. The only petition pending relates to Godse appeals. No other petition is pending. With regard to appeals', there would be nothing pending, except the acceptance of the recommendations of the Judicial Committee by His Majesty himself. But this acceptance by His Majesty is automatic and is never delayed. So there is no need, for clause (C) which is expressed in a needlessly 'wide form. This House has repeatedly asserted that all appeals must henceforth be heard by the Federal Court, but still this old idea seems to linger on in one shape or other, and clause (3) perpetuates that old idea which has been definitely given up by the House. During the arguments Dr. Ambedkar has referred to Section 4 of the recently passed Act. Section 4 of the recently passed Act runs thus:

"Nothing contained in Section 2 shall affect the jurisdiction of His Majesty in Council to dispose of—

- (a) any Indian appeal or petition on which the Judicial Committee of the Privy Council has before the appointed date delivered judgement, or as the case may be, reported to His Majesty, but which has not been determined by an order in Council of His Majesty;

The appointed day is today, i. e., the 10th October. If any Judgement has been passed before today, i. e., up to yesterday, but His Majesty has not signified his assent thereto the assent may be given. Then we come to clause (b):

"any Indian appeal or petition on which the Judicial Committee has, after hearing the parties, reserved judgment or order;"

and (c).

"any Indian appeal which has been entered before the appointed day in the list of business of the Judicial Committee for the Michaelmas sittings of the year 1949 and which after that day is not directed to be removed therefrom by or under the authority of the Judicial Committee."

So, if any appeal is pending for the present term in the Privy Council today this will be disposed of unless it is directed to be heard in India, but by virtue of the Act we have passed, the Privy Council will be bound to direct the transfer of these appeals to India. But it is well known that no Indian matters, other than the Godse matter, has been entered in the list. Then we come to clause (d).

"any Indian petition which has been lodged before the appointed day in the Registry of the Privy Council."

That is, petition for leave and other things, will also be merely heard, and special leave may be given or refused. If it is refused, there is an end of the matter. If it is allowed, then also there is an end of the matter, because the matter returns to India.

I submit, therefore, that clause (3) is absolutely too wide and embraces imaginary cases which do not exist. We should have a precise knowledge of what cases are pending before their Lordships of the Privy Council, how many there are, how many would be automatically transferred after the appointed day, the 10 October, that is, today and if any case would remain. We should have a clear picture of what matters there may possibly be which may be

pending before them and which may be disposed of under clause (3) even after the 26th January, 1950, the provisional date on which this Constitution will come into operation. We should really have a clear picture of the existing state of affairs instead of enacting a broad section dealing with all sorts of imaginary and hypothetical cases. I think after the final Independence of India on the 26th January, for these powers to linger in the Judicial Committee would be somewhat extraordinary in view of the Constitution that we have so far adopted and in view of our shedding our Dominion status, and acquiring an Independent status. In these circumstances, Sir, I submit that clause (3) should be deleted and not accepted. The matter should be clearly analysed and the House should be informed as to what are the matters which really might fall within the purview of clause (3). I therefore oppose clause (3) until the matter is clarified.

Mr. President : Dr. Deshmukh:

Dr. P. S. Deshmukh : I am not moving my amendment, Sir.

Mr. President : Mr. Shibban Lal Saksena's amendment is for deleting it. You can speak on it after the other amendments have been moved.

Mr. Mahavir Tyagi.

Shri Mahavir Tyagi : I am not moving my amendment, Sir.

Mr. President : Mr. Shibban Lal Saksena, you can speak on it.

Prof. Shibban Lal Saksena : Sir, I beg to move:

"That in amendments, Nos. 6 and 7 of List I (Second Week), the proposed clause (3) be deleted, and the proposed new clause 2 (a) be re-numbered as (3)."

Mr. President : It is not necessary to move it. You can speak on it.

Prof. Shibban Lal Saksena : This amendment is for the deletion of a clause only, not of an article. Sir, my objection to this clause (3) is that after the 26th January, I do not want that His Majesty in Council should have anything to do with this country. We shall become a completely free Republic on that day and the provision of this article which contemplates that His Majesty in Council shall be authorised to hear appeals pending on that day is, I think, derogatory to our independence. Objection may be raised that some appeals may be pending and that the litigants concerned will be put to great difficulty, but I want to draw the attention of this House to the footnote on page 153 of the Draft Constitution. In fact, the Drafting Committee themselves had originally under clause (3) of article 308 contemplated that the jurisdiction of the Privy Council shall cease on that date.

"On and from the date of commencement of this Constitution the jurisdiction of His Majesty in Council to entertain and dispose of appeals and petitions from or in respect of any decree or order of any court within the territory of India including the jurisdiction in respect of criminal matters exercisable by His Majesty by virtue of His Majesty's prerogative shall cease, and all appeals and other proceedings pending before His Majesty in Council on the said date shall be transferred to, and disposed of, by the Supreme Court."

So in the original article they had themselves contemplated that the jurisdiction of the Privy Council shall cease on the date on which this Constitution will come into force. The footnote says—

"The Committee thinks that all appeals and other proceedings pending before His Majesty in Council shall be finally disposed of by the time the Constitution comes into operation. If, however, some appeals or other proceedings remain pending before His Majesty in Council at the time of the commencement of the Constitution and any difficulty is experienced 'with regard to their transfer to, or disposal by the Supreme Court, the President may pass necessary orders under the 'removal of difficulties' (article 313)."

This is what the Drafting Committee have said in the footnote to the original article 308. I do not see that in view of the fact that we have passed

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article 313, there is any need for this new clause (3) which contemplates that the jurisdiction of the Privy Council may continue even after the 26th January when we will be a free and independent country. I think that we should not disfigure the Constitution by providing for the intervention of the Privy Council even after we have attained full independence. I think there has been some mistake here, because, article 313 is quite sufficient and there is no need for this clause (3) in article 308. Our Constitution should not be disfigured by this clause.

Mr. President : Dr. Ambedkar, would you like to say anything ?

The Honourable Dr. B. R. Ambedkar : Sir, I do not think that anything that has been urged in favour of the amendments that have been moved raises any matter of substance. It is a more a matter of sentiment, and I think from the point of view of convenience it is much better that we should have this clause and not feel in any way humiliated in doing it, because even if the Privy Council were to continue to exercise jurisdiction, within the limited terms mentioned in clause (3), it should not be forgotten, and I think my friends who have moved the amendments do seem to have forgotten the fact, that that jurisdiction is not the inherent jurisdiction of the Privy Council but the jurisdiction which this Assembly has conferred upon them. The Privy Council as a matter of fact would be acting as the agent of this Assembly to do a certain amount of necessary and important work. I, therefore, do not think there is any cause for feeling any humiliation or that we are really bartering away our independence.

With regard to the point raised by my Friend Prof. Saksena in which he referred to the footnote to article 308. I am quite free to confess that on a better consideration, it was found by the Drafting Committee that the removal of difficulties clause may not be properly used for this purpose. In order to remove all doubt, we thought it was better to have a separate clause like this to confer jurisdiction by the Constitution itself.

Mr. President : Then I will put the amendments to vote. There is only one moved by Prof. Shibban Lal Saksena No. 177. The question is :

“That in amendment Nos. 6 and 7 of List I (Second Week), the proposed clause (3) deleted and the proposed new clause 3(a) be renumbered as (3).”

The amendment was negatived.

Mr. President : Then I put the amendment moved by Dr. Ambedkar. The question is:

“That for clause (3) of article 308, the following clause be substituted:-

“(3) Nothing in this Constitution shall operate to invalidate the exercise of jurisdiction by His Majesty in Council to dispose of appeals and petitions from, or in respect of ; any judgment, decree or order of any court within the territory of India in so far as the exercise of such jurisdiction is authorised by law, and any order of His Majesty in Council made on any such appeal or petition after the commencement of this Constitution shall for all purposes have effect as if it were an order or decree made by the Supreme Court in the exercise of the jurisdiction conferred on such court by this Constitution’.”

The amendment was adopted.

Mr. President : Then I put amendment No. 7. The question is:

“That after clause (3) of article 308, the following new clause be inserted:—

“(3a) On and from the date of commencement of this Constitution the jurisdiction of the authority functioning as the Privy Council in a State for the time being specified in Part III of the First Schedule to entertain and dispose of appeals and petitions from or in respect of any judgment, decree or order of any court within that State shall cease, and all appeals and other proceedings pending before the said authority on the said date shall be transferred to, and disposed of, by the Supreme Court.”

The amendment was adopted.

Mr. President : The question is:

“That article 308, as amended stand part of the Constitution.”

The motion was adopted.

Article 308, as amended, was added to the Constitution.

Article 310

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

“That for article 310, the following be substituted:—

310. (1) Notwithstanding anything contained in clause (2) of article- 193 of this Constitution, the judges of a High Court in any Province holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the judges of the High Court in the corresponding State, and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave and pensions as are provided for under article 197 of this Constitution in respect of the judges of such High Court.

(2) The judges of a High Court in any Indian State corresponding to any State for the time being specified in Part III of the First Schedule holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the judges of the High Court in the State so specified and shall, notwithstanding anything contained in clauses (1) and (2) of article 193 of this Constitution but subject to the proviso to clause (1) of that article, continue to hold office until the expiration of such period as the President may by order determine.

(3) In this article the expression ‘judge’ does not include an acting judge or an additional judge.”

this article is merely what we used to call a “carry over article” merely carrying over the incumbents to the new offices in the new High Courts if they choose to elect to be appointed.

Mr. President : Amendment No. 88.

Mr. Naziruddin Ahmad : I am not moving 88. I shall move 141.

Shri R. K. Sidhwa : Mr. President, I move :

“That in amendment No. 87 above, in clause (1) of the proposed article 310, after the word and figure ‘article 197’ the words ‘and Second Schedule’ be inserted.”

My amendment is a merely verbal one. My object in moving it is this. Reference has been made to article 197 in connection with the salary of the High Court Judges. The salary of the High Court Judges features in Second Schedule and I thought it advisable to mention it along with the article 197. Schedule is an important part of the Constitution, particularly in reference to this article wherein the salaries, allowances and other subjects relating to pensions will be mentioned. Therefore, in order to make it quite clear I have moved that the words “and Second Schedule” may be added to the words “article 197”.

Mr. Naziruddin Ahmad: Sir, I move:

“That in amendment No. 8 of List I (Second Week), in clause (1) of the proposed article, 310, for the words ‘as are provided for under article 197 of this Constitution in respect of the judges of such High Court the words as they were entitled to immediately before the said commencement’ be substituted.”

Clause (1) of this article provides that the Judges of a High Court would on the date on which the Constitution comes into force (provisionally on the 26th of January 1950), shall continue to be Judges of the same High Court.

The Honourable Dr. B. R. Ambedkar : May I draw attention to the fact that this Amendment anticipates Schedule 11 ? This matter is to be dealt with under Schedule 11 and the proper time would be when Schedule 11 is before the House.