

**Mr. President :** Amendment No. 89 moved by Mr. Jaspat Roy Kapoor has been accepted by Dr. Ambedkar. I will now put it to vote.

The question is:

“That in article 200 after the words ‘at any time’, the words ‘with the previous consent of the President’ be inserted.”

The amendment was adopted.

**Mr. President :** I will not put to the House amendment No. 2659.

The question is:

“That is article 200, the words, ‘subject to the provisions of this article’ be omitted.”

The amendment was adopted.

**Mr. President :** Now the question is:

“That article 200, as amended, stand part of the Constitution.”

The motion was adopted.

Article 200, as amended, was added to the Constitution.

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#### Article 201

**Mr. President :** There are no amendments to article 201. If nobody wants to speak on it, I will put it to vote.

The question is:

“That article 201 stand part of the Constitution.”

The motion was adopted.

Article 201 was added to the Constitution.

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#### Article 202

**Mr. President :** Article 202 is now for discussion.

**Shri H. V. Kamath :** Mr. President, I move:

“That in clause (1) of article 202, for the words ‘to issue directions or orders in the nature of the writs of *habeas corpus*, *mandamus*, prohibition, *quo warrants* and *certiorari*’ the words ‘to issue such directions or orders as it may consider necessary or appropriate’, and for the words ‘and for any other purpose’ the words ‘or for any other purpose’ be substituted respectively.”

If amendment No. 2660 were accepted, clause (1) of article 202 will read as follows :—

“Notwithstanding anything contained in article 25 of this Constitution, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue such directions or orders as it may consider necessary or appropriate, for the enforcement of any of the rights conferred by Part III of this Constitution or for any other purpose.”

The second part is purely verbal but I think this change is necessary. The clause as it stands relates both to the enforcement of the rights conferred by Part III and for any other purpose. If the word ‘or’ is substituted for the word ‘and’, it would make the meaning quite clear, that is to say, that the High Court has power to issue orders not merely when both are affected but on either ground. I think there should be no difficulty in the way of the House accepting this second part of the amendment. I sent in two separate amendments and that is why I am speaking about them separately.

As regards the first part of the amendment, I believe that in the interests of brevity, not however, at the expense of precision or clarity, we can omit the mention of the various writs. The courts should be competent to issue whatever

[Shri H. V. Kamath]

orders or writs that may be necessary for the enforcement of any of the rights enumerated in Part III, *i.e.* Fundamental Rights. By omitting the mention of these writs, the meaning of the clause would not be affected adversely in any manner. We have already stated in Part III, article 25, the writs that can be issued for the enforcement of the various fundamental rights. I remember that there was an amendment accepted by Dr. Ambedkar and the House on that occasion which slightly modified it by saying that the Supreme Court shall have powers to issue orders or writs including writs in the nature of *habeas corpus*, etc., or something to that effect; but in any case I believe that this clause, as it stands, is loaded with unnecessary and useless verbiage. The High Court Judges know what particular writs or orders or directions should be issued in particular cases. We need not lay down in the Constitution what particular writs or orders may be appropriate on particular occasions. The passage of time and the evolution of case law may bring to birth decrees or writs of some other nature. Why should we bind the High Courts to these particular writs mentioned in this clause? The verbal amendment substituting the word 'or' for the word 'and' will make the meaning clearer. Sir, I move.

**Dr. Bakshi Tek Chand :** Mr. President, Sir, I formally move:

"That in clause (1) of article 202, before the words 'in the nature of' the words 'including those' be inserted."

There is another amendment which I would like to move with your permission as an amendment to this amendment, which is of a verbal character and will clarify the position. This amendment to amendment reads as follows:—

"That with reference to amendment No. 2661 of the List of Amendments, in clause (1) of article 202, for the words 'or orders in the nature of the writs' the words 'orders or writs including writs in the nature' be substituted."

This amendment to amendment brings the phraseology of this article in line with that of article 115 which we have already passed in regard to the Supreme Court, and also of article 25, where similar powers are given to the Supreme Court in respect of the Fundamental Rights. This amendment is, therefore, purely of a verbal character and I would ask the House to accept it. In doing so, I may make one or two observations with regard to the remarks made by my Friend, Mr. Kamath. He suggests that it is not necessary to enumerate or specifically mention in the article the writs of *habeas corpus*, *mandamus*, *prohibition quo warranto and certiorari*. With great respect, I entirely differ with my honourable Friend. It is, in my opinion, very necessary that these writs should be mentioned by name. We have done so with regard to the Fundamental Rights in article 25 and we have also mentioned them in connection with the Supreme Court in article 115; and for the reasons for which these writs were specifically mentioned in these articles, they should be mentioned here also. These are the writs which, I may remind the House, have been among the greatest safeguards that the British judicial system has provided for upholding the rights and liberties of the people, and it is very necessary that they should be incorporated in our Constitution. At present High Courts which are not Presidency High Courts, *viz.*, the High Courts of Allahabad, East Punjab, Patna, Nagpur, Orissa, Assam, etc. have not got any of these powers. The writ of *certiorari* cannot be issued by any of these High Courts. Even in the provinces of Bengal, Bombay and Madras, this particular writ can be issued only within the limits of their respective ordinary original jurisdiction. For instance, in the province of Madras, if a particular proceeding is pending in the court of Trichinopoly or Madura, the High Court in Madras has got on jurisdiction to issue a writ. It is only in regard to cases coming from the city of Madras and a few miles around that the High Court has got this power. Outside these limits, it had got this power only with regard to European subjects. The reason for this was that the jurisdiction of these

High Courts was supposed to be derived from the Charters of the Supreme Courts which had been established in these provinces during the time of the East India Company by charters issued by the King of England, and it was said that their jurisdiction was limited only to the Presidency towns or to subjects of British extraction wherever they are found. In the new Constitution it is intended to give the power to issue these writs to every High Court, and will be exercised throughout the territories within its jurisdiction, and in order to put matters beyond doubt, it is necessary that these writs be specifically mentioned. Sir, we all know that the writ of *habeas corpus* is, the most important of these writs. With regard to this writ, until section 491 was added to the Code of Criminal Procedure, there was no power to issue this writ in the High Courts of Allahabad, Patna, Lahore and Nagpur. Section 491 gave this power to these High Courts only partially. Recently, before the East Punjab High Court the question arose whether the powers and procedures of the High Court under section 491 were co-extensive with the powers and procedure of the High Courts of England in this matter. As you know, Sir, if a writ is refused by one Judge, the party can move a second Judge, and in succession, a third Judge or a fourth Judge and so on, until he has exhausted all the Judges. In the East Punjab High Court the question was raised some six or eight months ago whether a party had a similar right to go to each Judge in succession, and it was held that this cannot be done, because they have not got the same powers as the High Courts of England to issue writs of *habeas corpus*. The power of non-Presidency High Court in India is derived from section 491 and under it you can apply for a writ only once. This will illustrate as to why it is very necessary that these writs should be mentioned by name so that there be left no ambiguity that the power and the procedure prevailing in England is to be followed here. I hope the amendment which I have moved will be accepted by Dr. Ambedkar and that the article, as amended, will be passed by the House.

**Mr. President :** Dr. Ambedkar, do you wish to move amendment No. 2663?

**The Honourable Dr. B. R. Ambedkar :** No, Sir, I accept Bakshi Tek Chand's amendment. I do not think that any reply is necessary.

**Shri H. V. Kamath :** There has been an amendment to substitute "or" for "and".

**The Honourable Dr. B. R. Ambedkar :** There is no difference as to the substance of the article.

**Shri H. V. Kamath :** It makes a difference as to the meaning.

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

"That in clause (1) of article 202, for the words 'to issue directions or orders in the nature of the writs of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*' the words 'to issue such directions or orders as it may consider necessary or appropriate', be substituted."

The amendment was negatived.

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

"That in clause (1) of article 202, for the words 'and for any other purpose', the words 'or for any other purpose' be substituted."

The amendment was negatived.

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

"That with reference to amendment No. 2661 of the List of Amendments, in clause (1) of article 202, for the words 'or orders in the nature of the writs' the words 'orders or writs including writs in the nature' be substituted."

The amendment was adopted.

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

"That article 202, as amended, stand part of the Constitution."

The motion was adopted.

Article 202, as amended, was added to the Constitution.