CONSTITUENT ASSEMBLY OF INDIA

Monday, the 6th June, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

Article 111—(*Contd.*)

Mr. President : We have to proceed with the discussion of article 111. We have got a number of amendments which purport to come under this article but which really do not belong to this article. On Friday last, I allowed a long discussion in connection with article 110 which was not quite germane to the article but that was with a view to shortening discussion later on in connection with the other articles which followed. In connection with 111 which deals with appeals in civil cases to the Supreme Court, I should like that this question should not be made complicated by bringing in amendments relating to appeals in criminal cases. If we dispose of 111 as it is with such amendments as may be acceptable to the House in regard to that article without bringing in appeals in criminal cases, I would allow all the amendments relating to criminal appeals to be moved at a later stage without reference to this article. That I think would lessen discussion and concentrate the attention of the House on the amendments which deal with criminal appeals.

Prof. Shibban Lal Saksena : (United Provinces : General): Sir, I have an amendment to 1912.

Mr. President : I have a number of other amendments.

Prof. Shibban Lal Saksena : You have finished them all, Sir.

Mr. President : But you can move that if you want to.

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

"That with reference to amendment No. 1912 of the List of Amendments, in clause (1) of article 111 before the words 'an appeal' the words 'subject to any law made by Parliament' be inserted."

This article 111 gives an absolute right of appeal to the Supreme Court in civil cases provided the case is a fit one for appeal to Supreme Court. Yesterday we saw that a similar right was not given in criminal cases even when death sentence was passed. I only want that the Supreme Court should not be flooded with civil cases and I want that the Parliament should from time to time review the working of the right of appeal to Supreme Court in civil cases.

Shrimati G. Durgabai (Madras: General) : What is the amendment?

Mr. President : It is with reference to amendment 1912 of the List of Amendments, namely,

"That in clause (1), before the words 'An appeal' the words 'Subject to any law made by Parliament' be added."

Prof. Shibban Lal Saksena : Sir, I only want that the Supreme Court should not be flooded with appeals against High Court judgments in civil cases.

Mr. President : The amendment is the same as the one which Shrimati Durgabai had given notice of—No. 1911. She did not move it. He is moving it as an amendment to another amendment.

Prof. Shibban Lal Saksena : Sir, I want that the Supreme Court should have the liberty to permit appeals to the Supreme Court only in those cases which Parliament by law decides. This will restrict the number of appeals in civil cases. Suppose today Parliament feels that appeals in civil cases should be allowed, it is quite possible that after some time the Parliament may feel that it is not necessary. So Parliament has the initiative and it has the power to take this right away after sometime. If Parliament has not that power, then the Constitution will have to be changed to permit any alteration in the civil jurisdiction of the Supreme Court.

I have said that if even appeals in small cases of civil law can go to the Supreme Court, why should appeals in cases of murder not go there. I therefore think that in these cases at least there is no reason why rich persons should be able to go to the Supreme Court and utilise it for civil litigation whereas in cases where small people are concerned, they should not be able to go there even to appeal against sentences of death. Therefore, if Parliament is given the power to regulate the right of civil appeals to the Supreme Court it will be a much better situation than what is contemplated by this article. This article will be misused and the Constitution will become a battle-ground for lawyers. They will take all civil appeals to the Supreme Court. And the High Courts, when big Counsels appear to argue cases of rich parties, will give them permission to go to the Supreme Court for appeal and the Supreme Court will be flooded with these appeals. The other day it was argued that if appeals of persons sentenced to death are also to go there, we shall be required to have about twenty to thirty judges in the Supreme Court. If this article remains as it is, and all appeals in civil cases are permitted to go to the Supreme Court, then in that case we will require very many more judges than even 20 or 30. Therefore, this is a very simple amendment which asks for powers to be given to Parliament which may from time to time change the requirements for appeal in civil cases to the Supreme Court.

Shri M. Thirumala Rao (Madras: General): How does this conform with the amendment to 1911?

Mr. President : Anyway that is the notice.

We have three other amendments which have no reference to criminal appeals in connection with this article.

(Amendments Nos. 1924 and 1925 were not moved.)

The Honourable Dr. B. R. Ambedkar : (Bombay: General): Sir, I move:

"That in clause (2) of article 111, for the words 'the case involves a substantial question of law as to the interpretation of this Constitution which has been wrongly decided', the words 'a substantial question of law as to the interpretation of this Constitution has been wrongly decided' be substituted."

Mr. President : Does anyone now wish to speak either on the article or on the amendments?

Shri S. Nagappa (Madras: General): When is the last minute when an amendment to an amendment can be moved? Prof. Saksena has moved an amendment at the eleventh hour!

Mr. President : Before the sitting for the day commences. But it is not an amendment to an amendment. It is only an amendment to an amendment!

There is one other amendment in the name of Dr. Ambedkar.

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

"That with reference to amendments Nos. 1916 to 1919 of the List of Amendments, in sub-clause (a) of clause (1) of article 111, after the words 'twenty thousand rupees' the words 'or such other sum as may be specified in this behalf by Parliament by law' be inserted."

Shri M. Thirumala Rao : The discussion on this clause has taken place on the last day of the sitting of this Assembly and it was a lawyer's day. We thought that the provisions of the Federal Court may be restricted to lawyers. When one reads the newspapers about the report of the discussion that has taken place here, unless he comes either as a litigant in a civil suit or an accused or a criminal in a criminal case, he has not got much place in the discussions that have recently taken place. But as a layman and taxpayer who has got some interest in the administration of law, I stand before you and offer a few remarks.

I am a bit surprised how the stolid and sedate Dr. Ambedkar, who is both an eminent lawyer and a jurist, has been jockeyed into accepting so many details in the Constitution about the powers of the Federal Court. Perhaps it is on the advice of eminent civil lawyers like Shri Alladi Krishnaswami Ayyar and also like another eminent lawyer, my Friend, Mr. Munshi, who on his own admission, is half civil and half criminal. But nevertheless it passes the comprehension of a layman why you should burden this Constitution with so many details in regard to the powers of the Federal Court. Sir, it was a learned discussion that took place of experts the other day about the provisions that should be incorporated in this Constitution and they have gone into such details as to fix the limit of appeals with regard to the civil suits that should go before the Supreme Court and a very interesting discussion has developed round the amendment moved by Mr. Thakur Das Bhargava that every criminal appeal also should go to the Federal Court. It is difficult to understand why we have to get away from the moorings of our ancient civilization or the system of law that obtain in our country. We have evolved a constitution that is a hybrid of the several constitutions of the world that are obtaining today. Nobody seems to have got a proper conception of what our Constitution, and what our judiciary should be to suit the genius of our country.

Justice during the last century when the British ruled in our country has been so inordinately delayed that justice delayed is justice denied. Only the richest in the country could purchase justice. The poor man had to go to the wall in obtaining justice. The village panchayat has been given the go-by Justice that has to be dealt with on-the-spot has been long forgotten and a chain of courts have been evolved where the richest man has the greatest opportunity of fighting the poor man and succeeding.

We have seen in our experience interesting cases that have gone before the Madras High Court. A zamindar's birth was disputed from the sixth year of his life and the man has gone about from court to court, from the lowest court in the land of the Privy Council without the question of his birth being decided, namely, whether he was the real and legal-born son of his father or not. For fifty years the zamindar has gone on indulging in litigation to get a decision whether he is the son of his father or not, yet the question was left open and the court relied on the will of the "father" who gave away his whole property to the zamindar. Fortunately the Congress Government has come to his rescue by abolishing the zamindari system. There are families where litigation has extended over three generations. The father started the litigation, the son

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continued it and the grandson is still carrying on the litigation. The family has been reduced to impoverishment. That is the system of law which our legal pandits are discussing on the platform of this House. They are discussing what shape our Constitution should take.....

Mr. President : The honourable Member is delivering a very interesting speech but it has nothing to do with the article before us.

Shri M. Thirumala Rao : If I have got the right of opposing the article, though I do not want to exercise it, I take the opportunity of expressing my dissatisfaction at the way things are done in regard to this Constitution, incorporating every details into this Constitution. We have seen several Constitutions of the world. The Irish Constitution is a short one and it does not contain so many provisions in regard to the system of justice and administration.....

Mr. President : I am afraid we cannot at this stage go into the whole question whether the Constitution should be in the form in which it has been drafted.

Shri M. Thirumala Rao : My submission, is that we should not overburden the Constitution with so many details. Details as regards the Constitution such as the powers of the Federal Court and other courts should be left to the legislature of the country to be worked out. That is the point.

Mr. President : There is no amendment to that effect.

Shri M. Thirumala Rao : The amendment proposed by Dr. Ambedkar says that the powers of the Federal Court should be determined by law and not by the Constitution. That is the point I want to support.

I do not want to take up much time of the House but I want to draw the attention of the House to that fact that there is also an unexpressed silent opinion not only in the House but outside in the country also that the Constitution of our country should be as simple as possible, that the administration of justice should not be encumbered with too many technicalities which will ultimately result in the denial of justice to the poor. I urge that this House should not enter into legalistic details but should leave them to be decided by the legislature.

Shri Alladi Krishnaswami Ayyar : (Madras: General) : Sir, my sympathy is in support of the amendment proposed by Shrimati Durgabai, which she has not, however, brought under discussion, but which was later taken up by Mr. Shibban Lal Saksena.

Under article 111, if it stands alone without reference to any legislation by Parliament, the conditions of appeal will be crystallised and any change in the appeal procedure or in the right of appeal can only be by a constitutional amendment, which is not desirable. It ought to be an elastic provision. While the existing conditions of things may be perpetuated until Parliament intervenes, there is absolutely no reason why all the conditions of appeal must be stereotyped and moulded into a rigid pattern in the constitution framework of India. In that respect article 111 is a retrograde step. If you take into account the history of legislative powers in India from the time the Letters Patent were issued, the jurisdiction of the several High Courts in India was subject, even before popular element was introduced, to the general legislative jurisdiction of the Governor-General in Council: and today even an appeal to the Privy Council, under the provisions of the Civil Procedure Code, is subject to the jurisdiction of the central legislature in India. Under section 109 it is subject to any Order in Council that might be passed by His Majesty's Government. I am referring the days before the Dominion Act. Even an Order in Council by His Majesty's Government is a flexible provision and it is capable of change

without Parliament intervention because it is under the general jurisdiction conferred upon the Privy Council that the Order in Council is issued.

Now, the amendment of Dr. Ambedkar is a move in the right direction, though I feel that it does not go far enough. It at least takes away one defect, *viz.,* the amount or value of the subject-matter becomes a matter of constitutional provision under article 111 as it stands. It take away that defect in that article. But I feel that the whole of that article should continue to be under the general jurisdiction of the future Parliament of India and there is no reason why you should fetter the discretion of Parliament in regard to the class of appealable cases. That is my feeling in the matter but I feel however that half a loaf is better than no bread. Therefore inasmuch as Dr. Ambedkar is willing to yield so far as clause (a) is concerned that is good enough, though I wish he had gone further and made all the provisions subject to the intervention of the future Parliament of India. Much as we owe to the British system of administration of justice, I am one of those who feel that there is considerable room for improvement by making it more elastic and flexible to suit the economic conditions of India. Gradation of appeals no doubt is a normal feature of English jurisprudence in England which is a very rich country with a population of forty millions and which has greater wealth than this poor country of three hundred millions. While, justice must be guaranteed to every individual, while every individual, must get a fair and proper trial, the gradation of appeals is not a necessary *sine qua non* for the proper administration of justice. If there is miscarriage of justice, if there is any serious procedural flaw and if there is anything radically wrong, by all means let the highest court in the land interfere. But there is no reason why, for example, in the provinces of India collegiate courts should not be established and, the intervention of the High Court diminished and the Supreme Court made merely a court of ultimate appeal in these matters to see that errors are set right. But I do not want all that reform to be introduced immediately. What I would desire is that while perpetuating the existing provisions for appeal they may be made subject to the intervention of Parliament, so that if a special committee is appointed and goes into the whole question of the system of administration of justice, all necessary reform may be introduced into the legal system in this country.

Then my honourable Friend Shri Thirumala Rao had a jibe against the lawyers. It was entirely unwarranted for the reason that there are lawyers who think in a larger terms of society and there are laymen who are more legalistic than lawyers. I notice on the other hand that there is a tendency among the lay elements to rely upon legalism rather than in the lawyer who thinks in larger terms of society and advanced thought in the world. Therefore that speech was unnecessary. The reason why unfortunately we had to mention article 111 is this: A simple reference could have been made to the jurisdiction of the Federal Court or the jurisdiction exercised by the Privy Council without mentioning the details as to the condition of appeal and then that might be made subject to the intervention of Parliament. But the House knows the sort of discussion that cropped up when reference was made to Parliamentary privileges. If you refer to the jurisdiction the Privy Council was exercising up till now under the various Statues, both Indian and English, there may be a feeling that this is derogatory to the dignity of the House. There has been a serious controversy in the press and on the platform as to whether it is at all justifiable to refer to the jurisdiction and powers and privileges of Parliament when enacting our Indian Constitution. That might be a good reason. But I do not see for a moment how these could be made simpler. Reference may be made in article 111 to the existing state of things and provision may be made that that state of things might be modified, remedied or changed by the intervention of Parliament. These are the reasons which induced me to accept

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the amendment of Dr. Ambedkar though I wish he was able to go further and state that all these provisions shall be subject to the intervention of Parliament.

Shri B. Das (Orissa: General) : Sir, during the last three days while the House has been discussing the Chapter on Federal Judicature, I have been placed in an atmosphere of depression. My reaction was to oppose the amendment of Shrimati Durgabai, but when I heard my esteemed Friend Shri Alladi Krishnaswami Ayyar I felt much more confused and depressed. Sir, our foreign rulers have left us little. They bled us white and they left us with a number of lawyers here and outside who interpret the law for the maintenance of justice. In my boyhood days I used to pass through Calcutta and watch the Scales of Justice in the Writers' Buildings, the old Government Offices there. That Scale of Justice is the thing they have left behind and not real justice. Why my lawyer friends are so much enamoured of the interpretation of justice under the British system I do not know. I thought it unfortunate that during the transition stage we cannot suddenly think in terms of the Indian conception of justice. My conception of justice would be that justice should be based on truth. Whether in the Supreme Court or in the High Courts of Judicature, what is done is the interpretation of the laws left behind to us as heritage by our former British masters. So, Sir, I feel very much depressed. I wish that we had in this Chapter only three or four articles in which my honourable Friend, Dr. Ambedkar could put things in such a way that justice shall be rendered to everybody. But what we have are provisions for interminable and intermingling appeals from court to court finally ending in the Supreme Court. Now my honourable Friend Dr. Ambedkar is bringing out one or two more articles which, Sir, provide for criminal appeals being brought before the Supreme Court. In these circumstances, how will people get justice? Will it be justice or mere transfer of money from one pocket to another? This is all unproductive money. If my money passes to Shri Alladi Krishnaswami Ayyar's pocket or to Dr. Ambedkar's pocket, that will not be productive wealth. That will be unproductive wealth. Families have been destroyed in the past by these appeals to the Privy Council and their properties passing to the pockets of the lawyers who defended their contentions in the Privy Council.

I hope my honourable Friend Dr. Ambedkar and the legal luminaries in this House will conceive justice without expense. The moment you abolish the need for lawyers to defend litigants, litigation will come down. But I do not think that anybody would work for that end. Lawyer-ridden as we are, we are grateful to the lawyer classes because they are the first line of patriots who showed us how to agitate for our freedom. We are grateful to them. They are thinkers. They are scholars. But today I do appeal to them that they should suggest ways of reducing the cost of litigation. This Constitution provides nowhere that the cost of litigation should be brought down. The way discussion started the other day and responsible members suggested that hundreds of Supreme Court Judges would be necessary to hear every criminal appeal was disquieting to me. If there is justice based on truth it must be had in the first court or in the next appellate court. Why should we go on providing for appeals again and again doubting the judgment of the High Courts? We may soon have women judges in our High Courts too. I am very much disturbed. As a common man, I feel that justice is not justice, which ruins families, which brings destruction throughout justice is not justice, which bring out a new class which is parasite on the people of India *i.e.,* the lawyer's class. Something must be done. The Father of the Nation is no more. If the lawyer's class are true to the Father of the Nation, they should help to bring about justice in a way which will entail the least amount of expenditure.

I feel that Parliament should not interfere with the Supreme Court. Once we have decided to have a Supreme Court—though I protest against the expensive habit of having a Supreme Court, I am for it—we should help in its maintaining the highest standard of justice, and not allow Parliament to interfere with it. What do I know of the administration of justice? Why should I legislate and control the Supreme Court? Why should I lay down the rules of procedure for the High Court and Supreme Court Judges? We are not laying down the rules of procedure for the Federal Public Service Commission. We are not laying down the rules stipulating how the Auditor-General should control the expenditure that the Parliament of India will sanction. My point is that Parliament should not be too meticulous and should not exercise any power over the Judges of the High Courts or the Judges of the Supreme Court.

Shri V. S. Sarwate (Madhya Bharat) : Mr. President, Sir, I rise to support amendment No. 1912 . . . .

Shri L. Krishnaswami Bharathi (Madras: General) : That amendment has not been moved.

Mr. President : It was moved on Friday.

Shri V. S. Sarwate : Which proposes the deletion of the words 'except the States for the time being specified in Part III of the First Schedule'. I wish to restrict my observations to that amendment only. With that clause, the article limits the operation to the High Courts of provinces only. If this clause is omitted, that limitation will be taken away, but I would like to point out that this would not be sufficient for the purpose. It would not *ipso facto* invest the Supreme Court with power to hear appeals against the decisions of the High Courts in Indian States. To make my meaning clear, I would, in short, describe the present situation in the Indian States. Sometimes it is said that the States are in a backward condition. There are practically primitive conditions in the Indian States. There is no judicial service, etc. This sweeping generalisation is entirely wrong and gives a misleading conception of the state of the things in the Indian States. In most of the States enumerated in part III of the First Schedule, there is well constituted High Court and an efficient judicial service, but according to the constitution of the Indian States there is no appeal to the Privy Council from the judgment of the High Courts in these States. In most of the States a Judicial Committee had been appointed which heard appeals from the High Courts. In the minor States it is true that there is no judicial service of the kind which prevails in the provisions and there no High Courts, but the common people could have ready access to the Rulers. That acted as a check against the executive, and the Ruler in most cases gives them rough and ready justice. This met the requirements of the situation. In fact, in some cases with the limited area in which these Rulers exercised their jurisdiction, this did give better justice, for justice delayed is justice denied. In the provinces especially in civil cases the justice which is at present administered is so dilatory and so intricate that there is a saying in Hindi—

Jo diwani men jata hai woh diwana ho jata hai;

which gives a better idea of the state of things than the saying that justice delayed is justice denied. However, since the Unions were established in these States, things have changed. The minor States have been wiped off and they ought to have been, but the fact also remains that the masses of the people who had ready justice before have now been denied any effective substitute. In the States, where there were Judicial Committees, in most of the cases these Judicial Committees have disappeared. The result is that there is no appeal to the Privy Council and there is no appeal against the judgments of the High Courts. So there is this lacuna. Therefore in most

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of the Unions thinking people desire that their High Courts should be brought into line with the High Courts in the provinces and an appeal provided against the judgments of their High Courts. Recently a Pleaders' Conference was held in one of those Unions and a resolution was passed which recommended that an appeal should be provided against the judgments of the High Courts and also that the High Courts should be made entirely independent of the executive. Now, what I would point out is this: that, when this clause is taken away, there would lie an appeal from the judgments of the High Courts by virtue of this article, in the case of the provinces, but this is not the case with the High Courts in the acceding States. To my mind a further provision would be necessary which would make the judgments of the High Courts in these States appealable to the Supreme Court, and this provision could be made in three ways. In most of the Union States, there is a clause in the Covenant which provides that a Constitutent Assembly be constituted in the Union. This Constituent Assembly could provide in its Constitution that an appeal from the High Courts in their territory shall lie to the Supreme Court. This is one way. Another way would be that according to the new Covenant which has been entered into by these unions, this Parliament has been given powers to make laws, which would be binding on the States regarding subjects mentioned in List 1. This list contains one item which gives power to this Parliament to make laws regarding the powers of judicial courts. So under this Covenant the Parliament may pass a law by which the appeals of the High Courts in the acceding States will be appealable. The third would be to make a provision to that effect in this Constitution itself. Now, the Part VI which deals with the constitution of the Provincial High Courts does not apply to the States. That is the difficulty. So the beginning of this Part, *viz.,* article 128 which reads:— In this part, unless the context otherwise requires, the expression 'State' means a State for the time being specified in Part I of the First Schedule" needs to be amended appropriately: So that this part be made applicable to the High Courts in the acceding States: in the alternative a fresh part would have to be inserted by which similar provision could be made.

I would further point out that as a necessary corollary of this amendment No. 1912, article 113 would have to be dropped, because this clause provides for a reference to the Supreme Court against the judgment of the High Court in the acceding States and that would be no more necessary. Further in article 112 there is a similar provision "except the States for the time being specified etc." which may have to be dropped. My specific suggestions are that a provision would have to be made by which the judgments of the High Courts in acceding States would be appealable inasmuch as only taking away this clause from article 112 will not be sufficient and would not *ipso facto* invest the Supreme Court with that appellate power and further, article 113 would have to be omitted and a similar amendment would have to be made in article 112.

Shrimati G. Durgabai : Mr. President, Sir, while accepting and supporting the amendment moved by Dr. Ambedkar, I wish to offer a few remarks on this subject under consideration. I will say that I am in the main in agreement with the principle of the amendment moved by Prof. Shibban Lal Saksena. Though there was an amendment similar to that given notice of by me, I did not move it; but as I have already stated, I am very much in sympathy with the principle underlying that amendment. Sir, the article under consideration lays down, I am sure the House is aware, the conditions in detail for the appeals to the Supreme Court. These conditions are treated in sub-clauses (a), (b) and (c) of article 11. The effect of this article is to

make the conditions of appeal as part of the Constitution, and I am sure that it would be agreed that there should be an element of elasticity to the conditions of appeal, and if we have made these conditions as a part of the Constitution as we find sub-clauses (a), (b) and (c), that would introduce an element of rigidity and also the conditions will be stereotyped. So the object of my amendment, which I did not move, or the object of the amendment moved by Prof. Shibban Lal Saksena is to introduce that kind of elasticity and leave these conditions to the future Parliament to lay down if it finds absolutely necessary and essential. Now if there is to be a change and if we have made these conditions as part of the Constitution, the change could be brought about only by a constitutional revision. Therefore, I am sure that the House has realised the difficulty and the amendment given that there should be an elasticity by leaving this matter absolutely to the future Parliament is to, remove that rigidity and see that the conditions are not stereotyped.

Sir, in the law as it stood prior to the passing of the Federal Court Enlargement of Jurisdiction Act, the conditions of appeal were regulated by the Civil Procedure Code or by Order in Council made by His Majesty. This Civil Procedure Code was liable to be amended by Parliament. So, in answer to my friends who have just said that there should be no intervention of the Parliament, now I would say that this is not a new condition and the intervention of Parliament was not newly introduced because the Parliament could always intervene in the law as it existed today, that it could amend the Civil Procedure Code which would in the main regulate the conditions of appeal by bringing about a legislative change. So, Sir, it would have been very much better if a similar course could have been adopted and also I am sure that the House has noted this fact that the conditions obtaining today are not the conditions as existed some time back. They are radically different today, because we find that a large number of States are being brought under the Indian Administration and also the question is whether the Supreme Court should not be constituted as a Court of appeal from all over India and the idea also is to expand this jurisdiction and extend the jurisdiction to the States also. This position has been made clear by an amendment moved by my honourable Friend, Shri Raj Bahadur, which I am sure will be accepted. The effect of that amendment is to remove those restrictions with regard to the jurisdiction of the Supreme Court in relation to the States. Therefore the idea is to expand the jurisdiction and leave the conditions to the Parliament to lay down. Anyhow, I am very glad to support the amendment moved by Dr. Ambedkar, because it has accepted the major part of my amendment namely conditions (a) and (b) accepted, but condition (c) alone is now made rigid by having found a place in this Constitution. Even this matter could have been left to the future Parliament; it would have been open to the Parliament to say under what conditions an appeal should be considered as a fit one to come to the Supreme Court. Anyhow, Dr. Ambedkar has not considered it desirable, but while accepting the two, he has left this matter absolutely beyond the purview of Parliament. As Mr. Alladi Krishnaswami Ayyar stated, half a loaf is better than no loaf at all, and I also would agree with that view and support the amendment moved by Dr. Ambedkar.

Shri Yudhisthir Misra (Orissa State): Mr. President, Sir, I support the amendment moved by the honourable Member, Mr. Raj Bahadur for the deletion of the provision relating to the exclusion of the States specified in Part III of the First Schedule from the operation of article 111 of the Draft Constitution.

I endorse the arguments put forward in favour of the amendment. Besides that I want to submit another point for the consideration of this House. The

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provision as it stands excluding the Indian States from approaching the Supreme Court will create anomalous position for those States which have integrated, namely, the States of Bombay, Madras, C.P., and Orissa. These States have been integrated with the neighbouring provinces and are administered as parts of the provinces. They are under the jurisdiction of the provincial High Courts. In the Draft Constitution, they have been put in Part III of the First Schedule although in the Draft Constitution it has been provided that they will be administered as if they are parts of the provinces; a positive provision of this kind in article 111 would exclude them from approaching the Supreme Court, or at least create confusion in the minds of the States people. To remove this, Sir, it is necessary that the provision in article 111 excluding the States in Part III of the First Schedule from the operation of this article should be omitted. I therefore, support the amendment moved by my honourable Friend, Mr. Raj Bahadur.

Shri Rohini Kumar Chaudhuri (Assam: General): Mr. President, Sir, a great deal has been said in this House by some of my esteemed Friends against the lawyers as a class.

Mr. President : No reply to that part of the remarks is required. You had better leave those remarks alone. Please confine yourself to the article and the amendments.

Shri Rohini Kumar Chaudhuri : All right, Sir. What I wanted to say is this: that the responsibility for framing this Constitution is not on the lawyers, but is on the layman, on the Members of the Constituent Assembly, the majority of whom are non-lawyers. It is the strong commonsense of the Members of this House which will decide the several points of the Constitution. The lawyers are there to advice us. Just as in a trial by jury, you cannot lay the responsibility on the Judge and lawyers, but the case has to be decided according to the commonsense of the jurors themselves, similarly, in this House, the responsibility of framing the Constitution is entirely on the Members of this House, the majority of whom are not members of the legal profession. Therefore, I would invite the House to look at this question from a layman's point of view as well.

If you look at this question from the layman's point of view what do you find? A great restriction has been imposed in article 111, and that restriction is that a certificate has to be granted by the High Court. You are not going to file an appeal directly from any other Court; you cannot file an appeal from the District Judges' or Sub-judges' courts. The matter has got to go up to the High Court and the High Court has to grant a certificate in order to enable you to file an appeal. Can any man, whether he be a layman or a lawyer suppose for a moment that a High Court against whose decision an appeal is going to be filed, will promiscuously or without any sense of responsibility grant a certificate ? That is a very big restriction. I should have thought that no other restriction was necessary after that. Even then, in this article you have laid down under what circumstances the certificate could be granted, and you have bound down the High Court to those circumstances. Therefore, the first restriction is that you cannot file an appeal without a Certificate from the High Court; the second restriction is that the High Court cannot grant the certificate in each and every matter and you have laid down that the matter should fall under certain categories in which alone a certificate could be granted. After this, I would ask, is it reasonable to lay down a further condition and say that it should be subject to any law which may be passed by Parliament?

I am rather diffident in making a strong appeal in this matter because no less a person than Shrimati Durgabai has sponsored the original idea and Shri Alladi Krishnaswami Ayyar has said that it has his fullest sympathy. Even then, I would venture to bring the matter to the special consideration of the House, the majority of whom are non-lawyers. Taking this question from the commonsense point of view, is it likely that ordinarily a court against whose decision a party is going to file an appeal, that court will inadvertently, recklessly grant a certificate? If you want that everything should be left to Parliament, why spend so much time over articles 110, 111, and 112? Just say that Parliament may by law lay down the procedure and the circumstances under which an appeal could be filed to the Supreme Court. That would finish the whole thing. Why go through all these articles 110, 111, 112, 113 and so on? Simply have one article that Parliament may by law prescribe the circumstances under which an appeal could be filed to the Supreme Court. You might mention there about the certificate just as it is mentioned in the Civil Procedure Code today. There is also mention about the valuation of Rs. 10,000 and about a question of principle being involved. But, having spent all the time in considering articles 110, 111 and so on, I should have thought that the House might consider whether it is necessary to adopt the amendment which has been put forward.

Mr. President : I think we have had enough discussion on this simple article 111 about which there seems to be no serious difference of opinion on the merits. Whatever may be said with regard to the people who have framed it, nothing has been heard against the provisions of the article. I would therefore request Members not to take more time over this when there is really no difference of opinion on the merits.

Dr. Bakhshi Tek Chand (East Punjab: General) : Sir, I will not detain the House for more than two or three minutes over this question. The amendment which Professor Shibban Lal Saksena has moved and which has been supported by Shri Alladi Krishnaswami Ayyar and Shrimati Durgabai is not as innocent as it appears to be. It is really of a very revolutionary character. If the amendment is carried, it will be open to Parliament at any time to take away entirely the jurisdiction of the Supreme Court in all civil matters. It was with a view to avert such a contingency that the Drafting Committee thought fit to include article 111 in the Constitution. If you add the words 'subject to any law made by Parliament' in the beginning of article 111, as is suggested in the amendment, Parliament may, at any time, if it so chooses, take away the jurisdiction of the Privy Council to deal with any civil matter falling *either* under clause (a) or (b) or (c) or in all of them taken together. That, I submit, will be a very serious matter. The provisions of article 111 as drafted and placed before the House are practically the same as those contained in the Civil Procedure Code. Indeed similar provisions have existed for more than a century, ever since the Judiciary Act of 1833 was passed and the Privy Council began to function as the Court of Appeal from decisions passed by the Supreme Courts of Calcutta, Bombay and Madras and later, from the various High Courts established under Letters Patent or the Indian High Court Act, 1861. The only difference in article 111 as originally drafted, and the provisions of sections 109 and 110 of the C.P.C. as they stand on the Statute Book today is that in clause (a) the valuation limit has been raised from Rs. 10,000 to Rs. 20,000. Dr. Ambedkar's amendment is that '20,000 *or such other value as* the Parliament may fix by law'. It gives the power to Parliament to raise or lower this pecuniary limit. But Parliament cannot take away the right of appeal in such cases, which is provided for in the Constitution Act, and which invests the Supreme Court with the power that has hitherto vested in the Privy Council. I submit that it will be improper

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to give Parliament power to take away that jurisdiction. This is a very important jurisdiction, and as has been pointed out by Mr. Rohini Kumar Chaudhuri, it must be maintained under the new Constitution. Honourable Members will see that it is not an unrestricted right of appeal in every civil matter which a litigant is given to go up to the Supreme Court. It is hedged in with several restrictions. Firstly, there must be a certificate from the High Court in every case. Where the value is Rs. 20,000 or such other value as Parliament may fix, and the High Court and the Court of first instance have differed, in that case an appeal will lie as of right. Then clause (b) provides that if the judgment is one of affirmance, the appeal will not lie as of right but only if the High Court certifies that the case involves a *substantial* question of law. This does not involve questions of law which may arise collaterally or incidentally! In those cases no appeal will lie. Then I do not see why any opposition is being offered to clause (c) being included in the Statute. This covers only those cases in which the question is of such general importance that the decision will affect a very large number of cases or is one in which a point of law is involved on which there is a difference of opinion between the various High Courts and it is necessary to have an authoritative pronouncement by the Supreme Court to resolve the conflict. Further, in such a case the particular High Court which has decided the case must certify that the case is a fit one for appeal. In that case only will an appeal lie. That will cover a very limited number of cases. So far as I know, at present not more than eight or ten appeals from all the High Courts of India go to the Privy Council under clause (c). It is a very very salutary provision, and must be retained. This article as drafted, with the modification suggested in Dr. Ambedkar's amendment should, I submit, be accepted and the amendment of Professor Saksena rejected.

Dr. P. K. Sen (Bihar: General) : Sir, may I offer a few remarks?

Mr. President : Is it necessary?

Dr. P.K. Sen : Very important, Sir.

Mr. President : I bow to the judgment of a Judge in this matter. He considers it important.

Dr. P. K. Sen : Sir I shall be very brief and I shall just touch upon the few points which I really consider to be very important. I rise to oppose the amendment of my honourable Friend Shri Shibban Lal Saksena. It has been supported by Shrimati Durgabai and some other honourable Members as also by no less an authority than Shri Alladi Krishnaswami Ayyar. The point on which they have laid stress is that article 111 should be made elastic, but the manner in which, according to them, elasticity is to be introduced would change the whole aspect of the article. Even elastic substances, Sir, if pulled violently give way and snap. Here, in this particular matter, elasticity is sought to be introduced in such a manner as to bring the article to the breaking point. Article 111 proposes to give power to the Supreme Court to hear appeals in certain specific classes of cases. The introduction of those words 'subject to such provisions of law as the Parliament may lay down' at the beginning of the article, which the amendment proposes, changes the whole aspect of the article. It really gives power to Parliament at any time to make a clean sweep of the article. Now if this article was worded in very extravagant terms, it would have been different but it really incorporates in it just the provisions which have been up to now in force in the Civil Procedure Code, and a very long course of years has proved that they are very salutary and satisfactory. The only question that might be raised was as to the minimum

figure of valuation and even that point has been relaxed by my honourable Friend Dr. Ambedkar who suggests that it should be 20,000 or such other valuation as may be fixed by Parliament later on. In that view it does seem to me that although as you have said, Sir, that it is a simple matter, it is not an unimportant matter at all. It really comes to this—shall we have the power vested now under the Constitution in the Supreme Court or shall we leave it *in vacuo*, as it were, to be done by Parliament at any further time? If we allow the amendment today, the power that is given in those introductory words will really enable the Parliament at any time to make drastic changes. Therefore, I submit, the House should give a very careful consideration to this question before supporting the amendment. The amendment should in my opinion be vigorously opposed by everybody who is interested in the welfare of this country and its highest tribunal.

The Honourable Dr. B. R. Ambedkar : Sir, I would begin by reminding the House as to exactly the point which the House is required to consider and decide upon. The point is involved between two amendments: one is the amendment moved by my Friend Prof. Shibban Lal Saksena, which is in a sense an exudation of amendment 1911 and my own amendment, which is amendment No. 25 in List No. 1 of the Fourth Week. Before I actually deal with the point that is raised by these two amendments. I should like to make one or two general observations.

The first observation that I propose to make is this. Article 111 is an exact reproduction of sections 109 and 110 of the Civil Procedure Code. There is, except for the amendments which I am suggesting, no difference whatsoever between article 111 and the two sections in the Civil Procedure Code. The House will therefore remember that so far as article 111 is concerned, it does not in any material or radical sense alter the position with regard to appeals from the High Court. The position is exactly as it is stated in the two sections of the Civil Procedure Code.

The second observation that I would like to make is this. Sections 109 and 110 of the Civil Procedure Code are again a reproduction of the powers conferred by paragraph 39 of the Letters Patent by which the different High Courts in the Presidency Towns were constituted by the King. There again, Section 109 and 110 are a mere reproduction of what is contained in paragraph 39.

The third point that I should like to make is this: that these Letters Patent were instituted or issued in the year 1862. These Letters Patent also contain a power for the Legislature to alter the powers given by the Letters Patent. But although this power existed right from the very beginning when the Letters Patent were issued in the year 1865, the Central Legislature, or the provincial Legislatures, have not thought fit in any way to alter the powers of appeal from the decree, final order or judgment of the High Court. Therefore, the House will realize that these sections which deal with the right of appeal from the final order, decree and judgment of the High Court have a history extending over practically 75 to 80 years. They have remained absolutely undisturbed. Consequently in my judgment, it would require a very powerful argument in support of a plea that we should now, while enacting a provision for the constitution of the Supreme Court disturb a position which has stood the test of time for such a long period.

It seems to me that not very long ago, this House sitting in another capacity as a Legislative Assembly, had been insisting that these powers which under the Government of India Act were exercised by the Privy Council, should forthwith, immediately, without any kind of dimunition or denudation be conferred upon the Federal Court. It therefore seems to me somewhat odd that when we have constituted a Supreme Court, which is to take the place

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of the Federal Court, and when we have an opportunity of transferring powers of the Privy Council to the Supreme Court, a position should have been taken that these provisions should not be reproduced in the form in which they exist today. As I say, that seems to me somewhat odd. Therefore, my first point is this that there is no substantial, no material, change at all. We are merely reproducing the position as between the High Court and the Privy Council and establishing them as between the High Court and the Supreme Court.

Now, Sir, I will come to the exact amendments of which I made mention in the opening of my speech namely, Prof. Shibban Lal Saksena's amendment and my amendment No. 25. If my amendment went through, the result would be this: that the Supreme Court would continue to be a Court of Appeal and Parliament would not be able to reduce its position as a Court of Appeal, although it may have the power to reduce the number of appeals, or the nature of appeals that may go to the Supreme Court. In any case, sub-clause (c) of article 111 would remain intact and beyond the power of Parliament. My view is that although we may leave it to Parliament to decide the monetary value of cases which may go the Privy Council, the last part of clause (1) of article 111, which is (c), ought to remain as it is and Parliament should not have power to dabble with it because it really is a matter not so much of law as a matter of inherent jurisdiction. If the High Court, for reasons which are patent to any lawyer does certify that notwithstanding that the cause of the matter involved in any particular case does not fall within (a) and (b) by reason of the fact that the property qualification is less than what is prescribed there, nonetheless it is a cause or a matter which ought to go to the Supreme Court by reason of the fact that the point involved in it does not merely affect the particular litigants who appear before the Supreme Court, but as a matter which affects the generality of the public, I think it is a jurisdiction which ought to be inherent in the High Court itself and I therefore think that clause (c) should not be placed within the purview of the power of Parliament.

On the other hand if the amendment moved by my Friend Prof. Saksena were to go through, two things will happen. One thing that will happen has already been referred to by my Friend Bakshi Tek Chand that Parliament may altogether take away the Appellate jurisdiction of the Supreme Court in civil matters. It seems to me that that would be a disastrous consequence. To establish a Supreme Court in this country and to allow any authority in Parliament to denude and to take away completely all the powers of appeal from the Supreme Court would be to my mind a very mendacious thing. We might ourselves take courage in our own hands and say that the Supreme Court shall not function as a court of appeal in Civil matters and confine it to the same position which has been given to the Federal Court.

The other thing will be that Parliament would be in a position to take away sub-clause (c) which, as I said, ought to remain there permanently, because it is really a matter of inherent jurisdiction. Therefore it seems to me that the plea that the appellate power of the Supreme Court should be made elastic is completely satisfied by my amendment No. 25, because under my amendment it would be open to Parliament to regulate the provisions contained in (a) and (b) without in any way taking away the appellate jurisdiction of the Supreme Court completely or without affecting the provisions contained in (c). Sir, I therefore oppose Mr. Saksena's amendment.

Mr. President : I shall now put Prof. Shibban Lal Saksena's amendment.

The question is:

"That in clause (1) of article 111 before the words 'An appeal' the words 'Subject to any law made by Parliament' be inserted."

The amendment was negatived.

Mr. President : The question is:

"That in clause (1) of article 111 the words 'except the States for the time being specified in Part III of the First Schedule' be deleted."

The amendment was adopted.

Mr. President : The question is:

"That with reference to amendments Nos. 1916 to 1919 of the List of Amendments, in sub-clause (a) of clause (1) of article 111, after the words 'twenty thousand rupees' the words 'or such other sum as may be specified in this behalf by Parliament by law' be inserted."

The amendment was adopted.

Mr. President : This disposes of amendments No. 1917 moved by Dr. Bakshi Tek Chand and also 1919 by Mr. Naziruddin Ahmad.

The question is:

"That to clause (1) of article 111 the following proviso be added :—

'Provided that no appeal shall lie to the Supreme Court from the judgment decree or order of one judge of a High Court or of one judge of a Division Court thereof, or of two or more judges of a High Court or of a Division Court constituted by two or more judges of a High Court, where such judges are equally divided in opinion and do not amount in number to a majority of the whole of the judges of the High Court at the time being'."

The amendment was adopted.

Mr. President : The question is:

"That in clause (2) of article 111, for the words 'the case involves a substantial question of law as to the interpretation of this Constitution which has been wrongly decided', the words 'a substantial question of law as to the interpretation of this Constitution has been wrongly decided' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That article 111, as amended, stand part of the Constitution."

The motion was adopted.

Article 111, as amended, was added to the Constitution.

Mr. President : As regards amendments relating to criminal appeals the best thing would be for Pandit Bhargava to move amendment No. 27 to which the other amendments may be taken up as amendments.

Pandit Thakur Das Bhargava (East Punjab : General) : Sir, in regard to amendments Nos. 27 and 28 notice was received last night of an amendment by Dr. Ambedkar, No. 190. This amendment now included both 112-A and B. Similarly there is a large number of other amendments bearing on the question of appeal. These can be taken up together so that ultimately the point may be decided. If Dr. Ambedkar wishes to take up this matter subsequently it may be allowed to be held over and I have no objection. You may, Sir, consider this matter, so that all may be decided at one time.....

Mr. President : That was exactly the procedure which I wanted to follow. Your amendment has to be moved to enable the other amendments to be moved.

Pandit Thakur Das Bhargava : I do not know whether Dr. Ambedkar wants it to be held over so that a consolidated amendment may come before the House. I have gone through all the amendments and I understand that the