Wednesday, 15th June, 1949

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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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THE CONSTITUENT ASSEMBLY OF INDIA

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SUBEDAR MAJOR HARBANS LAL JAIDKA.

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CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 15*th 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.

Article 203

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

"That in article 203, for the marginal heading, the following be substituted :—

'Power of superintendence over all courts by the High Court'."

I also move:

"That in clause (2) of article 203, before the words 'The High Court may', the words 'without prejudice to the generality of the foregoing provisions', be inserted."

I further move:

"That with reference to amendment No. 2664 of the List of Amendments—

(i) in clause (1) of article 203, after the words 'all courts' the words 'and tribunals' be inserted;

(ii) in clause (2) of article 203, sub-clause (b) be omitted."

(Amendment No. 2665 was not moved.)

Shri H. V. Kamath (C.P. & Berar & General) : Mr. President, I move:

"That in clause (2) of article 203, before the words 'Every High Court' the words 'In particular' be inserted."

If the House reads the article with all the clausers together it will see that clause (1) specifies certain general powers with which every High Court is sought to be invested under this article. To my mind therefore it appears that so far as clause (2) of this article is concerned, which provides for certain specific powers or invests the High Court with powers in certain cases, it is necessary that this clause should particularise these specific provisions. Clause (1) has certain general provisions. Clause (2) which follows clause (1) and which specifies certain particular things must provide that the High Court may in particular do this and do that.

As regards amendment No. 2664 moved by Dr. Ambedkar which relates to the marginal heading of this article, a point was raised in this very House the other day with regard to marginal headings and Dr. Ambedkar himself told the House that marginal headings are by some deemed part and by others not deemed part of the Constitution. I do not know therefore whether a formal amendment in this connection is necessary. Apart from that, I am not quite sure whether the amendment moved by him in this regard in quite happily worded. The amendment reads "Power of superintendence over all courts by the High Court". What the article provides is certain powers of superintendence and cognate matters". I do not think it is quite necessary to insert the words "over all courts". The article provides for powers of superintendence. Even if the phrase "over all courts" is not included in the marginal

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heading it will be quite clear what powers of superintendence are meant to be included in this article. It is enough to say "Powers of superintendence by the High Court" and the article will mention "over all courts" and such other matters. What is intended by the article is to provide the High Court with powers of superintendence. As to over what courts, can follow in the article itself. The marginal heading originally read, "Administrative functions of High Courts". Following the spirit of that marginal heading I think the words "Powers of superintendence by the High Court" are enough and we may leave out the words "over all courts". Sir I move.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. President, Sir, with respect to the amendment moved by my honourable Friend Mr. Kamath think it has now become superfluous after amendment No. 2666 which says "Without prejudice to the generality of the foregoing provisions the High Court may." This is better than the wording contained in Mr. Kamath's amendment, namely "In particular etc." Therefore I think Mr. Kamath will not press his amendment.

I am very happy at the amendment moved by Dr. Ambedkar—No. 209—by which he has stated that "every High Court shall have superintendence over all courts and tribunals". I wanted to draw the attention of the Honourable Doctor to labour tribunals. Every day labour tribunals are getting more and more important. Our experience of these tribunals is very bad. They yet have to copy the traditions of the judicial courts. I hope now, when the High Court has powers over them, they will also be brought under its supervision and control so that we can have better justice in labour tribunals and also the right procedure.

I am also glad that sub-clause (b) of clause (2) has been omitted. In this way its power has been widened. Originally it had power only to withdraw suits and appeals confined to civil cases. Now it can call any cases that it may like. I therefore support the amendment strongly.

Mr. President : The question is:

"That in article 203, for the marginal heading, the following be substituted :—

'Power of superintendence over all courts by the High Court'."

The amendment was adopted.

Mr. President : The question is:

"That in clause (2) of article 203, before the words 'The High Court may' the words 'Without prejudice to the generality of the forgoing provision' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That in clause (2) of article 203, before the words 'Every High Court' the words 'In particular' be inserted."

The amendment was negatived.

Mr. President : The question is:

"That with reference to amendment No. 2664 of the List of Amendments—

(i) in clause (1) of article 203, after the words 'all courts' the words 'and tribunals' be inserted;

(ii) in clause (2) of article 203, sub-clause (b) be omitted."

The amendment was adopted.

Mr. President : The question is:

"That article 203, as amended, stand part of the Constitution."

The motion was adopted.

Article 203, as amended, was added to the Constitution.

Shri T. T. Krishnamachari (Madras : General): Sir, articles 209-A, 209-B, 209-C, 210 and 211 may be held over. We are still not ready with our alternative drafts.

Honourable Members : Yes, they may be held over.

Article 270

Mr. President : Then we go to article 270.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I beg to move:

"That in article 270, the words 'the Dominion of' be deleted."

The word 'Dominion' is applicable to India as it is constituted today. In the new set-up of things which is being drawn by this Consititution the word 'Dominion' or the idea of any Dominion would be repugnant to our Constitution. That is why I have sought the deletion of this. If the deletion is accepted the passage will run thus namely "the Government of India" and not "the Government of the Dominion of India".

(Amendment No. 2976 was not moved.)

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

"That with reference to amendment Nos. 2975 and 2976 of the List of Amendments, in article 270, for the words 'assets and liabilities' the words 'assests, liabilities and obligations' be substituted."

Now, as regards the amendment moved by Mr. Naziruddin Ahmad, may I say that he has evidently forgotten that we are using the words "Government of India" to indicate the Government that will come into existence under the new Constitution, while the "Government of the Dominion of India" is a term which is being used to indicate the Government at the present moment? Consequently, if his amendment is accepted it would mean that the Government of India is succeeding to the liabilities, obligations and assests of the Government of India. It would make absurd reading. Therefore the words as they are there are very appropriate and ought to be retained.

The Honourable Shri K. Santhanam (Madras: General): I am afraid we are passing this article in a hurry. As it has been our attempt to bring the Indian States into line with the provinces, we are here simply providing that the old provinces will be continued while no such provision is made for the States.

The Honourable Dr. B. R. Ambedkar : What is your amendment?

The Honourable Shri K. Santhanam : I am not moving any amendment. I am only commenting on the article as it is. I think that both the articles 270 and 271 are subject to the same disabilities as the other articles which are concerned only with the Provinces and not with the States and therefore probably it will be better for the future Constitution if these two are brought in line and the article made more comprehensive so as to include the States also. Wherever the States are continued as States they should be deemed to be the successors of the old States and where they have been amalgamated or merged into the provinces they should also be mentioned appropriately. For instance, Baroda has been merged with Bombay. If you pass article 270 as if

[The Honourable Shri K. Santhanam]

is, it will mean that the old Bombay province, without Baroda, will be a State as given in the Schedule. I think proper provison should be made. Now it simply says: "...shall respectively be the successors of the Government of India or the provinces." Under the Government of India Act, Bombay was a province without the Baroda State. Today it is a province with the Baroda State included. So I would like to know what is the implication of passing article 270, as it is. Also, in the future Bombay may be construed not to include Baroda or Kolhapur. All these things have to be considered. I think it is desirable that consideration of article 270 also may be postponed so that it may be brought into line with the other provisions which may be made.

Shri H. V. Kamath : This article raises a number of issues. My Friend Mr. Santhanam has just observed that this article ought not to be passed in a hurry. I agree with him for the following reasons: Firstly, as Mr. Santhnam said, the provinces specified in Part I of the First Schedule have undergone vast changes and are perhaps still undergoing considerable changes. We cannot at the present stage say what exactly the position will be when the Constitution commences. The example of the Bombay province has been cited. This article itself mentions at the tail-end of it West Bengal and East Punjab. It takes cognizance of the creation of these new provinces. Does it not stand to reason therefore that we should take notice of the various States that have merged into what were known as Governors' Provinces? Not merely Bombay, but Madras, Central Provinces and I believe Bihar have all undergone changes. There have been tacked on to these provinces several States. Because of these mergers, etc. there have been substantial changes made requiring changes to be made in Part I of Schedule I and in Part III of the First Schedule. Several States mentioned in Part III have disappeared from the Indian scene. For instance if you take Part III of the First Schedule you will find that Baroda is not in the picture. It has merged with Bombay. Kolhapur too has gone out of the picture and joined Bombay. So, unless the Schedule itself is recast and Parts I and III re-adjusted, I do not think it will be wise on our part to mention here the assests, liabilities and obligations obtaining at the time of the commencement of the Constitution. We must be clear in our own minds what the provinces specified in Part I and the States specified in Part III of the First Schedule were and what they are today.

Mr. President : Has the Schedule been adopted?

Shri H. V. Kamath : Not yet. That is why I say that this article may be held over till we adopt the Schedule.

Secondly, I am not quite sure in my own mind whether it would be adequate to say "the Government of India" in line 2 of this article, because further on in the same article we say "the Government of the Dominion of India". In order to draw a clear distinction between this and that, I suggest that we might as well as say, "the Government of the Indian Republic" in line 2 of this article or "the Government of the Union of India." As the House will recollect, article 1 of the Constitution is to the effect that India shall be a Union of States.

To make a distinction between the Dominion of India and the future Government of India, we must either say the Government of the Republic of India or the Government of the Union of India. Merely to say "Government of India" will not do.

As regards the use of the phrase "the Dominion of India", I am not quite sure in my own mind what exactly the constitutional position is. If I remember aright, at the opening of this session, the Honourable Shri Jawaharlal Nehru moved a resolution before this House on our future relations with the Commonwealth. The resolution as drafted originally said the Dominion Prime Ministers' Conference in London, etc. etc. but later the Honourable Shri Jawaharlal

Nehru himself changed it to "the Commonwealth Prime Ministers' Conference." Press reports which emanated at that time said that the Conference had decided to drop the word "Dominion". I do not know when exactly this change will take effect. This will perhaps continue till we proclaim ourselves a Republic. Then the question does not arise. But after what transpired at the Commonwealth Prime Ministers' Conference in London last April, we can even today, if we will, drop the word 'Dominion'. As regards the title of the Commonwealth, there are different opinions. Mr. Attlee said, "you can call it what you will," and Mr. Chiefley, the Prime Minister of Australia, the other day speaking in the House of the Representatives in Australia said that he would continue to call it the British Commonwealth, would prefer the prefix "British". It is up to us in India to call ourselves what we like, and if the British Government and the Commonwealth do not insist on calling ourselves the Dominion of India, certainly I do not see any reason why we should not drop the word 'Dominion' at once. Mr. Attlee said at the Conference that the Commonwealth countries can call themselves what they like. I therefore think that it is left to us to call our country what we will. I think that even today we can stop calling ourselves a Dominion and call ourselves the Union of India or whatever we may decide about it. After all there is no constitutional obligation to call ourselves a Dominion if I have understood correctly the proceedings of the Commonwealth Prime Ministers' Conference and also what was told by our own Prime Minister in this House. I therefore think, Sir, that this article could be amended very usefully, very wisely, with a view to precision, constitutional or otherwise. It should be amended in the light of the proceedings of the Commonwealth Conference. We can even today call ourselves either India or some other term that the House may decide. Therefore considering all the various aspects of the matter, I feel that this article bristles with difficulties and I think it will be wise for this House to hold it over for a more suitable day when we can deliberate over this in greater detail. I therefore move, Sir, that the amendment as well as the article may be held over for a later date.

Prof. Shibban Lal Saksena : Mr. President, Sir, I am unable to understand whether this article is essential for our Constitution. It says that the new Government of India and the Governments of the States shall be the successors of the Government of the Dominion of India. Sir, in the Preamble we say that we, the people of India, are giving ourselves this Constitution. That being the case, I do not see why it is necessary to say that we are the successors of the Government of the Dominion of India. I do not think that this article is necessary in the Constitution. Besides this, as my Friends pointed out, the wording of the article needs to be changed and the article needs to be reconsidered. As Mr. Santhanam has pointed out, the provinces have changed a lot and there must be some provision to take into account the changes that have taken place. I am also not able to understand the purpose of the last five lines of this article "subject to any adjustment made or to be made, etc." I do not know whether this confers any extra legal right. I want Dr. Ambedkar to tell us what will happen if this clause is deleted. Will that mean that the new Government under this Constitution will have no property and will not be the successor of the present Government of the Dominion of India? I want that the purpose of this article should be properly explained. I feel personally that it is not necessary and need not be incorporated.

Shri R. K. Sidhwa (C.P. & Berar: General): Mr. President, Sir, I would like to understand the objections raised to this article by my Friends Mr. Kamath and Professor Shibban Lal Saksena, but I cannot follow exactly what they meant, when they objected to the enactment of this article. The article is very clear, that is to say, it says that the coming Government of India will be the successor of the present Government of the Dominion of India. My Friend, Mr. Kamath, does not want the word "Dominion" to be used and instead the word "Commonwealth" to be introduced.

Shri H. V. Kamath : I wanted to say " the Government of the Republic or Union of India." My Friend, Mr. Sidhva, has not heard me correctly.

Shri R. K. Sidhwa : But you were talking of the Commonwealth all along and of what Pandit Jawaharlal Nehru said in his speech on the Commonwealth resolution. Whatever may happen later on, today we are the Dominion of India. That cannot be denied. Therefore the article says that whatever property is there of the present Government will automatically go to the new Government. It is necessary that that should be mentioned; otherwise technical objections may arise. Similarly with regard to the last few lines. The matter has been made very clear. Whether it is necessary to have such an article or not is a different matter. I personally feel that to strengthen our hands it is necessary that such an article should be embodied. I therefore support this article.

Shri Mahavir Tyagi (United Provinces: General) :Sir, we have agreed to remain in the Commonwealth and I do not see there should be any reason to object to the word "Dominion". My honourable Friend, Mr. Kamath, wants to behave like a woman who has married a man and still insists on calling herself a maiden. Once you are in the Commonwealth, what is the good of your getting away from the name "Dominion" I think, I would under these circumstances prefer to be a Dominion in right earnest. That would have been a better decision. Anyway now, whatever decision we have adotped, once we are in the Commonwealth, we should not fight shy of calling ourselves a Dominion. It would be much better for us to call ourselves a Dominion than neither to remain a Dominion nor to remain independent. So, I think the wording should not be objected to.

Shri Alladi Krishnaswami Ayyar (Madras: General) : Mr. President, in principle there can be no objection either to article 270 or to the amendment that has been proposed. All the liabilities of the previous Government will have to be taken over by the successor Government but I just want to point out that it may be when what are referred to as the merged States are incorporated with each province or unit-state, then certain modifications may be necessary in regard to article 270 in the mutual adjustments of rights and obligations, because in the case of a unit the successor Government will not be merely the old province *plus* the merged State. Therefore, in regard to previous obligations, necessary adjustments may have to be made later on. There can be no exception to the general principle enunciated in article 270 though article 270 may require certain modifications when that scheme materialises or when we are able to come to a definite conclusion as to the position of the merged States *vis-a-vis* the units. With these words, I support the article 270 with the amendment.

Shri S. V. Krishnamoorthy Rao (Mysore State): Mr. President, Sir, I see, no reason to hold up this article on the ground that the position of the States is not yet clarified. In fact the provision is "for the time being specified in Part I of the First Schedule and the House has not accepted the First Schedule and at the time of accepting the First Schedule, it could be clarified as to what each particular State means and as Shri Alladi Krishnaswami Ayyar put it, there is no justification for holding up this article on that one ground and therefore, I support this article.

Shri T. T. Krishnamachari : Mr. President, Sir, I have listened with attention to the objections raised to passing this article at this stage and in the manner it has emerged, by honourable Friends in this House. I am afraid, Sir, though their objections were logical. I feel we cannot give in to those objections and postpone the consideration of this article for the reason that the provisions which

they want to bring into this article, namely, that the succession with regard to assets, debts, rights and liabilities of what are now called Indian States which have already merged or which are likely to be merged hereafter in the provinces and States which are likely to accede or come into the scheme of Federation in the same manner as the provinces, as the whole position is so nebulous at the moment. It may be that on examination it would not be worthwhile undertaking the assets and liabilities of some States that are coming in as units of the Federation. It also may be that the position of Governments of the States which have got merged into the provinces are such that we would not like to take over their liabilities, because we do not know what they are; we cannot take over the assets and liabilities of an administration, which is not carried on approved lines, in which we do not know exactly where we stand. So the whole position will have to be reviewed at the time when we bring in the Indian States into the picture. Also, Sir, it is possible that between now and the time when this constitution is to be promulgated, there might be more States merging into what are now called provinces. In the present state of thing as they are in India, there is no point in saying that we shall not proceed to act in matters where we have definite information, where we can prescribe certain methods by which we can complete this taking over of the administration of the past along with the assets and liabilities, merely because in the case of certain other States, we have not got full information. I would at the same time like to tell honourable Member of this House that the problem of the States is one of the headaches that we have to face today as constitution-makers. It may be that we will have to leave a chapter relating to States in Part III of the First Schedule without being filled in until the last week or last fortnight before finalising the constitution when we will incorporate in that chapter the state of things as they are at that time, make regulations for States which have come into the federation on the same line as the provinces make arrangements for States which have merged in the provinces and all the incidental and consequential provision that have to be found in a Constitution of this nature, and even then it may be that some States might have to be left out. There is no point in my trying to explain at length the difficulties that we have to face, because the difficulties will be apparent to anybody who looks into the various covenants and the exact position of the States from the documents issued from time to time by the State Ministry ; but I do not think that it is any justification for postponing indefinately consideration of articles which are in themselves complete in so far as the territories they deal with. Any further changes—changes are occurring day after day and there may be quite a lot of changes before the Constitution is complete—can only be brought in by special provisions and in a special chapter . I have no doubt that Dr. Ambedkar is very grateful to the honourable Members who have just now pointed out to him the lacuna in this article which I have no doubt he has also got in mind. The position will be adequately met before the Constitution is finalised and I think, Sir, in the meantime, the article may be passed as it is.

Mr. Mahboob Ali Baig Sahib (Madras: Muslim) : Mr. President, the central question is whether this article will entitle the future Government of India and the provinces to the assets and liabilities not only of British India under the old Constitution, that is the 1935 Constitution, but also to become successors of the States, the Native States as they were called.

Sir, the wording here is that the future Government of India and the Government of the States shall be the successors of the Dominion of India and of the Governors' provinces as mentioned in the Government of India Act of 1935. Under the Government of India Act, 1935, the States were kept apart and the Dominion of India or the Governors Provinces did not include the Native States at all. Therefore, if you are confining this article 270 and say that the future Government of India and of the States shall be the successors of the Dominion

[Mr. Mahboob Ali Baig Sahib]

of India and of the Governors' provinces, clearly, the future Government of India and of the States will not at all be the successors of the States that have merged or that are going to be merged. That is the clear interpretation that could be put upon this article 270. Therefore, you must introduce in this article 270 some other sentences or phrases in order to enable the future Government of India and of the States to be the successors not only of British India of the past, under the 1935 Act, but also of the State or States that may be merged. Otherwise, the Government of India and the future provinces will not be the successors of the States. Therefore, a suitable amendment is necessary and unless that is made, I think it would be a great defect.

Shri B. Das (Orissa: General) : Sir, we are dealing with the chapter which deals with property, contracts, liabilities and suits of the former Government of India, the present Government of India and the future Government of India that this Constitution is creating. Therefore I felt a little nettled when my honourable Friend Mr. Kamath brought in the word 'Commonwealth'. As far as I am concerned, Sir, I do not like the Commonwealth. But, as far as I understood the interpretation of the Commonwealth, it does not exist, it does not own any property, it has no secretariat; it has an imaginary, vague head, the King of the United Kingdom. Therefore, the question of the Commonwealth does not arise.

Under the Independence Act, the present Government is the Dominion Government of India and naturally it has inherited all the properties from the old British Government and the Governor-General has been given certain discretionary powers over the properties and assets. But, one thing I do not find here mentioned, that is our relations with the United Kingdom Government. The United Kingdom Government has not yet fully handed over the properties to the Dominion Government of India. It may be said that a Committee is sitting and trying to separate the assets belonging to the old India Office; but the financial aspect of the contract is not there. Will India Office building be handed over to India? The United Kingdom through the Bank of England owes 600 millions sterling to India. It may be said that we may get it any day. But, I am not so sure. If we want to get the full value of the 600 million sterling that England owes us, I do not see why this Constitution does not make any mention of it. There are strong views expressed in the United States of America and even in England that sterling will be devalued. If the sterling gets devalued, we will lose part of our money. Why should we not introduce an article in the Constitution regarding the assets that England owes to India? Is there any contract between the United Kingdom and India over these moneys which England has almost forcibly taken and which the United Kingdom wants to misappropriate by some means? Somehow, the world situation does not permit the United Kingdom to declare a moratorium. This is a lacuna which the Drafting Committee should examine. I do not see why they should fight shy of the United Kingdom because the so-called His Majesty's Government ruled over India some time in the past and because accidentally we happen to be a Dominion till the next January. I think somehow that aspect of the question regarding the 600 million sterling that the United Kingdom owes us, should be defined in Rupees and should be introduced in the Constitution. If the sterling is devalued by 20 per cent., we will lose 120 million sterling. Therefore, I say whatever England owes to us should be mentioned somewhere in this Constitution, not necessarily in articles 270 to 274. We need not fight shy, nor need we fear the United Kingdom because of its aggressiveness in the past and in future.

Shri V. S. Sarwate (Madhya Bharat): Mr. President, it seems to me that the difficulty regarding the States which have merged in the Provinces does not exist. The wording in this: "As from the commencement of this Constitution." Suppose for instance, the Constitution comes into existence on the 26th January,

1950, then, the provinces will be constituted on that date as the Governors' provinces *plus* the Indian States which have merged. The succeeding provinces would be the successors of the provinces as they stood on 26th January, 1950: in the case of Bombay, it would be Bombay *plus* Baroda. Therefore, there would be no difficulty as regards the States which have merged before the date of the commencement of the Constitution.

To my mind, there seems to be another difficulty. This article gives legalistic expression to a *de facto* thing. As soon as India was declared independent, it did succeed to the properties, assets and liabilities of the previous Government. That was a fact. My question is whether it is necessary to give legalistic expression to that fact? Why I raise this question is because the wording is, it would succeed to all liabilities and also assets. Supposing the previous, Government has given some pension or some reward in the form of grant of land to a person who served them in the disturbances of 1942, and the succeeding Government thinks that that grant was not proper or was against the national interests and therefore does not want to continue that grant, would the succeeding Government be bound to continue the grant by virtue of this section? I want to know whether the succeeding Governments would be bound by having this clause to continue all those things which were against our national interests. That is the difficulty which I would like the Mover of this clause to explain to the House. There may be many things which on a closer scrutiny would not deserve to be continued because they would be found to be against the national interests. So I would like to know whether this specific enumeration of this liability will bind the succeeding Government in a more particular manner. Supposing this article is omitted, what would be the effect? I think there would be no detraction from the present position of the Government except in the minds of legal persons; otherwise the fact is there that the present government has succeeded the previous government. The other sections stand in a different position. Supposing a property becomes an Estate. It is not necessary that the *de facto* circumstance that the Government has succeeded the previous Government must be stated in the Constitution itself.

The other point of view which I wish to bring before the House is that the Constitution is to include all the principles underlying the Constitution. This is something which is more in the form of a legal technicality. Is it necessary to include it in the Constitution itself? By a separate law which Parliament may pass, it may say that it takes upon itself the liabilities of the previous Government. I wish further to be made clear on this point—what is the difference between liability and obligations? to a layman it appears that liabilities do include obligations also. So where is the propriety of having the word 'obligation' therein? These are some of the points which I wish to bring to the notice of the House for clarification.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I did not think that this article would raise so much debate as it has in fact done, and I therefore feel it necessary to say a few words in order to remove any misapprehension or doubts and difficulties to which reference has been made.

The first question that is asked is, why is it necessary to have article 270 at all in the Constitution? The reply to that is a very simple one. Honourable Members will remember that before the Act of 1935 the assets and liabilities and the properties belonging to the Government of India were vested in a Corporation called the Secretary of State-in-Council. It was the Secretary of State-in-Council which held all the revenues of India, the properties of India and was liable to all the obligations that were contracted on behalf of the Government of India. The Government of India before 1935 was a unitary Government. There was no such thing as properties belonging to the Government of India and properties belonging to the provinces. They were all held

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by that single Corporation which was called the Secretary of State-in-Council which was liable to be sued and had the right to sue. The Government of India Act, 1935 made a very significant change, *viz*., it divided the assets and liabilities held by the Secretary of State-in-Council on behalf of the Government of India into two parts—assets and liabilities, which were apportioned and set apart for the Government of India and the assets and liabilities and properties which were set apart for the provinces. It is true that as the Secretary of State had not completely relinquished his control over the Government of India, the properties so divided between the Government of India on the one hand and the different provinces on the other were said in the Government of India Act, Section 172 which is the relevant section, that they shall be held by His Majesty for the Government if India and they shall also be held by His Majesty for the different provinces. But apart from that the fact is this, that the liabilities, assets and properties were divided and assigned to the different units and to the Government of India at the Centre. Now let us understand what we are doing by the passing of this Constitution. What we are doing by the passing of this Constitution is to abrogate and repeal the Government of India Act, 1935. As you will see in the Schedule of Acts repealed, the Government of India Act, 1935 is mentioned, Obviously when you are repealing the Government of India Act which makes a provision with regard to assets and liabilities and properties, you must say somewhere in this Constitution that notwithstanding the repeal of the Government of India Act such assets as belong to the different Provinces do belong notwithstanding the repeal of the Government of India Act to those Provinces. Otherwise what would happen is this, that there would be no provision at all with regard to the assets and liabilities once the Government of India Act 1935 is repealed. In fact we are doing no more than what we commonly do when we repeal an Act that notwithstanding the repeal of certain Acts, the acts done will remain therein. It is the same sort of thing. What this article 270 practically says in that notwithstanding the repeal of the Government of India Act, 1935, the assets and liabilities of the different units and the Central Government will continue as before. In other words they will be the successor of the former Government of India and the former Provinces as existed and constituted by the Act, 1935. I hope the House will now understand why it is necessary to have this clause.

Now I come to the other question which has been raised that this article 270 does not make any reference to the liabilities and assets and properties of the Indian States. Now, there are two matters to be distinguished. First, we must distinguish the case of Indian States which are going to be incorporated into the Constitution as integral entities without any kind of modification with regard to their territory or any other matter. For instance, take Mysore, which is an independent State today and will come into the Constitution as integral State without perhaps and kind of modifications. The other case relates to State which have been merged together with neighbouring Indian Provinces; and the third case relates to those States that are united together to form a larger union but have not been merged in any of the Indian Provinces. Now in regard to a State like Mysore there is no doubt that the Constitution of Mysore will contain a similar provision with regard to article 270 that the assets and liabilities and properties of the existing Government of Mysore shall continue to be the properties, assets and liabilities of the new Government. Therefore it is not necessary to make any provision for a case of the kind in article 270. Similarly about States which have been united together and integrated, their Covenant will undoubtedly provide for a case which is contemplated in article 270. Their Covenant may well state that the assets and liabilities of the various States which have joined together to form a new State will continue to be the assets and liabilities of the new integrated State which has come into being by the joining together of the various States.

Then we come to the last case of States which have been merged with the Provinces. With regard to that I see no difficulty whatever about article 270. Take a concrete case. If a State has been merged in an Indian province obviously there must have been some agreement between that State which has been merged in the neighbouring Province and that neighbouring province as to how the assets and liabilities of that merged State are to be carried over—whether they are to vanish, whether the merged State is to take its own obligations, or whether the obligations are to be taken by the Indian Province in which the State is merged. In any case what the article says is that from the commencement of this Constitution—these words are important and I will for the moment take it that it will commence on 26th January—any agreement arrived at before that date between the Indian Province and the State that has merged into it will be the liability of the Province at the commencement of the Constitution. If, for instance, no agreement has been reached before the commencement of the Constitution, then the Central Government as well as the Provincial Governments would be perfectly free to create any new obligations upon themselves as between them and the unit or merged State or any other unit that you may conceive of. Therefore, with regard to any transaction that is to take place after the commencement of the Constitution it will be regulated by the agreement which the Provinces will be perfectly free under the Constitution to make, and we need therefore make no provision at all. With regard to the other class of States, as I said, in a case like Mysore it will be independent to make its own arrangement. When that arrangement is made we shall undoubtedly incorporate that in the special part which we propose to enact dealing with the special provisions relating to States in Part III. Therefore so far as article 270 is concerned, I think there can be no difficulty in regard to it and I think it should be passed as it stands.

Shri Mahavir Tyagi : May I know if the agreement mentioned here relates only to financial agreement or does it relate to territorial agreement also?

The Honourable Dr. B. R. Ambedkar : It speaks of assets and liabilities and obligations. If, for instance, a Province has admitted a certain State and has undertaken an obligation to pay the Ruler a certain pension that will be an obligation within the meaning of article 270. The transfer of territory will be governed by other provisions.

Shri H. V. Kamath : May I know why the word "rights" mentioned in the marginal sub-head is omitted in the article?

The Honourable Dr. B. R. Ambedkar : The Drafting Committee will look into it.

Shri B. Das : With regard to properties possessed by India in foreign countries, specially in the U.K. may I know why those are not included among properties in article 270?

The Honourable Dr. B. R. Ambedkar : I think that property is subject to partition between India and Pakistan, *e.g.* the India Office Library, etc., I understand that is being discussed.

Shri B. Das : What about the Sterling Balances?

The Honourable Dr. B. R. Ambedkar : My honourable Friend knows more about it than I do.

Mr. President : The question is:

"That with reference to amendment Nos. 2975 and 2976 of the List of Amendments in article 270, for the words 'assets and liabilities' the words 'assets, liabilities and obligations' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That article 270, as amended, stand part of the Constitution."

The motion was adopted.

Article 270, as amended, was added to the Constitution.

Article 271

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

"That in article 271—

(i) the words 'for the purposes of the Government of that State', in the two places where they occur, be omitted;

(ii) the words 'for the purposes of the Government of India', in the two places where they occur, be omitted."

Shri H. V. Kamath : Sir, I wish to raise what may be thought a minor point but I hope Dr. Ambedkar and his team of wise men will give some consideration to it when it comes to final drafting. The article with the present amendment refers to properties in the territory of India except the States for the time being specified in Part III of the First Schedule. The point I raised earlier applies to this article as well; that is why I suggest that they may be held over till we have debated the First Schedule. It is no use adopting these articles and then making changes in the Schedule later on. In the First Schedule we see what States are comprised in Part III of that Schedule. Many of the States, as I said before, have disappeared from the Indian horizon and are no longer integral entities within the territory of India. Baroda, Kolhapur and Mayurbhanj are no longer comprised in Part II of the First Schedule. Now if we pass the article today, as it is, about the various States mentioned in the Schedule without saying "subject to any modifications in the Schedule", etc. What will happen to property that belongs to States like Baroda, Kolhapur and Mayurbhanj which are merged in the provinces? I therefore suggest that the article should be held over until the First Schedule together with the various amendments comes before us for consideration.

Prof. Shibban Lal Saksena : Sir, I do not agree with the point of view put forward by Mr. Kamath. We are passing these articles in the hope that in the Schedules we shall put only those things to which we want these articles to apply. These Schedules can be framed according to our choice and they will contain only those matters which we want to be subject to these articles we are passing. I therefore think that after we have accepted article 270 as an essential part of the Constitution, this article is also important. Formerly the country was divided into a number of States and now in this Constitution every portion will come into the new Government. Therefore I do not think this article should be held over merely because there is to be a change in the Schedule.

Mr. President : The question is:

"That in article 271—

(i) the words 'for the purposes of the Government of that State', in the two places where they occur, be omitted;

(ii) the words 'for the purposes of the Government of India', in the two places where they occur, be omitted."

The amendment was adopted.

Mr. President : The question is:

"That article 271, as amended, stand part of the Constitution."

The motion was adopted.

Article 271, as amended, was added to the Constitution.

New Article 271-A

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

"That the following new article be added after article 271—

271-A. All lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union and be held for the purposes of the Union."

All lands, minerals and other things of value lying within territorial waters vest in the Union.

This is very important article. We are going to have integrated into the territory of India several States which are for the time being maritime States and it may be quite possible for such States to raise the issue that anything underlying the ocean within the territorial waters of such States will vest in them. In order to negativate any such contention being raised hereafter it is necessary to incorporate this article.

Shri H. V. Kamath : Sir, I wish my honourable Friend had clarified this article a little further and explained its significance and import. The construction of the article, to my untrained mind at least is not very clear. It speaks of "lands, minerals, and other things of value", etc. The point is whether besides minerals, what are referred to as things of value underlying the ocean are all things within Indian territorial waters included?

Mr. President : This has reference only to whatever is found on land within territorial waters.

Shri H. V. Kamath : The reference is to lands, minerals and other things of value. The point arises, what these 'other things of value' are ? What these 'things of value are' has to be defined. Was this expression borrowed from some other Constitution or has it been newly incorporated in our Constitution without bestowing much thought on it? If it is left vague, the matter would have to be decided by the Supreme Court. What one considers as a thing of value, another may not consider as of value. Does the expression mean precious stones or minerals or whatever is found under the surface such as fish, etc.? Some may consider even fish as of value, whereas vegetarians may not consider fish as a thing of value. The article may be re-drafted clearly indicating what the 'things of value' are, which, when found in the Indian territorial waters, shall vest in the Union. If you leave the article as it is at present worded, you will be providing a happy hunting ground for lawyers again.

Then again, the article says "All lands, minerals and other things of value underlying the ocean within the territorial waters of India". In Schedule I we have defined the States and the territories of India. But nowhere in this Constitution have we defined what the 'Indian territorial waters' are. The Constitution is silent on this point.

Mr. President : It is a well-understood expression in International Law.

The Honourable Dr. B. R. Ambedkar : It is unnecessary to define it separately.

Shri H. V. Kamath : When you think it necessary to define in the Schedule the territories of India, why should you not define in the Constitution what our territorial waters are? Under International Law, some three miles of sea from a nation's coastline is considered to be territorial waters. As stated in the four parts of the Schedule our territory comprises certain areas. There

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will be a demarcation of the territorial waters on the east coast and again a limit of the waters on the west. Some three miles beyond our coast will not be territorial waters. If you take the Andamans and Nicobars as the territories of India, the waters to a distance of 3 to 5 miles from those islands will be our territorial waters. It will be wise on our part to specifically define in the Constitution what our territorial waters will be. In these days new lands are being discovered in different parts of the globe. As such discoveries might lead to complications we must define our territorial waters.

As I stated earlier, nobody knows what "other things of value are". It is better now to put down clearly what they are. Otherwise everything underlying the ocean will be claimed as vested in the Union. It will be wiser and straighter and more honest to say 'everything that is found in the bed of the ocean'.

Pandit Thakur Das Bhargava (East Punjab : General) : All other things are there.

Shri H. V. Kamath : What is of value to one may not be of value to another. I do not attach any value even to precious stones. I submit that this thing may be clarified.

Lastly, I would ask Dr. Ambedkar and his wise men whether the phrase 'underlying the ocean' connotes whatever underlies the surface of the ocean or ocean-bed or whatever is discovered beneath the bed of the ocean. Probably the existing expression is clear to lawyers. As I am not a lawyer I plead guilty to ignorance of what 'underlying the ocean' means. I hope Dr. Ambedkar will clarify the position before the House proceeds to vote on this article.

Shri A. Thanu Pillai (Travancore States) : Mr. President, Sir, I wish to say a word about this article. It says : "All lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union." I can understand that a certain amount of control in respect of territorial waters should vest in the Union, but beyond that why should all property and things of value within the territorial waters vest in the Union? Why should the respective States be divested of the right to minerals etc. in territorial waters I fail to see. The States now enjoy rights over these waters and derive some revenue. For instance my State of Travancore collects Shank (shank) from the sea. There are minerals there to which the State is entitled. Why should that right be taken away, I cannot understand. This matter requires fuller consideration and I hope Dr. Ambedkar will enlighten the House as to the necessity for this provision in the form in which it is worded.

Then again there are the words 'other things of value'.

The Honourable Dr. B. R. Ambedkar : May I ask what exactly I have to explain?

Shri A. Thanu Pillai : Fish is a thing of value. 'All lands, minerals and other things of value' is the expression used in the article. Travancore as a maritime State gets good catches of fish. If fish is a thing of value underlying the ocean within the territorial waters of India, this article will deprive the State of the right to catch fish. On the whole this requires better consideration. I hope that the States will in no way be deprived of their existing rights except to the extent necessary for the safety of the Union so far as territorial waters are concerned.

Prof. Shibban Lal Saksena : Mr. President, Sir, when we were discussing article 31 clause (ii) reads as follows :—

> "(iii) that the ownership and control of the material resources of the community are so distributed as to best subserve the common good,"

My Friend, Professor K. T. Shah, had then moved an amendment saying that the control and ownership of the natural resources of the country in the shape of mines and mineral wealth, forests, rivers and flowing waters as well as in the shape of the seas along the coast of the country shall be vested and belong to the country collectively etc. At that time it was not accepted. I am glad therefore that Dr. Ambedkar has thought fit to provide in the Constitution that all lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union and be held for the purpose of the Union. But I would like to know from Dr. Ambedkar whether it is not necessary to mention about the skies. Now in international communications the sky also is important, *e.g.*, who shall fly over our skies, etc. I would like to know from Dr. Ambedkar whether it is not also necessary to mention about the skies in the Constitution.

Shri Alladi Krishnaswami Ayyar : Mr. President, Sir, I think that article 271-A is a very important article and Dr. Ambedkar deserves our congratulations for putting in this article. There are two points to be noticed : One is the criticism that there is no definition as to the extent of territorial waters. In fact, that is the merit, I should think, of the article, because it is one of the moot points of international law what exactly is the extent of territorial waters. The extent will depend not merely on the assertion of a particular State but upon the principle being accepted by the comity of nations. Even today, while England and America take one view, the other nations of the world take a different view as to the extent of territorial waters. Therefore it is a good thing that the extent of the territorial waters is not mentioned in article 271-A.

The second point is whether in general terms it is right to vest territorial waters in the Union. Even in America, the Supreme Court of the United States, when the question came up with regard to the State of California, held that even though the State originally exercised rights in the territorial waters, the correct view is that the territorial waters vested in the Federal Government. Therefore this article, in so far as it provides for the territorial waters vesting in the Union, is in consonance with advanced thought in the most federal of Constitutions, namely the American Constitution. The question as to the extent of jurisdiction by the States and the courts in the States may have to be separately dealt with.

The next point to be considered is the expression "shall be held for the purposes of the Union". The apprehension has been expressed that it might mean that every kind of advantage that will accrue from it will go to the Union and therefore the coastal States might suffer. I should think that the expression "be held for the purposes of the Union" is more elastic than the first part which says "shall vest in the Union". The expression "shall be held for the purposes of the Union" does not necessarily mean the Union Government as such. "For purposes of the Union" is a wider term than the expression "shall vest in the Union". Recently in Australia the question arose and it has been held that the expression "for purposes of the commonwealth" is a wider expression than the expression "Commonwealth" itself. Therefore I should think that the expression "for purposes of the Union" does not militate against some of the benefits being allotted to coastal States and should allay their apprehension that their present existing rights might be invaded.

Lastly, the words "all lands, mineral and other things of value underlying the ocean" are very important. One of the moot points in international law is as to whether there is any difference between what may be called surface rights and mineral rights and soil rights, and I am glad that this assertion is made here that all lands, minerals and other things of value underlying the ocean shall vest in the Union.

[Shri Alladi Krishnaswami Ayyar]

On all these grounds I support the amendment incorporating article 271-A.

Shri V. S. Sarwate : Mr. President, Sir, as the previous Speaker has expressed, this new article raises a very fundamental question. It raises the question of the relation of the Union Government and the States which have acceded and which are coastal. Before the House accepts this article, the Covenants which these States have entered into with the Government of India will have to be examined. It will entirely depend upon the rights which have been given by virtue of the Covenant with the Government of India. I do not know whether these Covenants have been examined and then as a result of that scrutiny this article has been added. A curious position will arise if, by virtue of the Covenant, these rights have not been given to the Government of India. Assuming for the moment that such a right is not given by the Covenant, the question is whether by virtue of this article in the Constitution, that right, would be created. I am afraid that the mere incorporation of this article would not create that right if that right does not already exist. To my mind it appears that the inclusion of this clause would only have this effect that if the right is already there, it has been expressed and specifically mentioned in this Constitution. If the right is not there, it would not be so vested or created in favour of the Government of India. So I submit that unless and until the Covenants have been closely examined and it had been found that the right has been vested in the Government of India, this article should not be accepted.

Shri A. Karunakara Menon (Madras: General) : Mr. President, Sir, my object in speaking on this new article 271-A is just to point out the difference that exists between the wording that is found in the marginal note and the wording that is found in the article itself. The wording in the marginal note is: "all lands, minerals and other things of value lying within territorial waters vest in the Union". This implies that all things of value lying within territorial waters belong to the Union. So, every thing of value, suspended even if it were within the territorial waters, are properties of the Union according to the marginal note; but what do we find in the article? There the wording is different. It says: "all lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union." My understanding of the words "underlying the ocean within the territorial waters" connotes altogether a different meaning from "things of value lying within territorial waters". Things of value underlying the ocean mean things left underneath the earth of the ocean and so the meaning is restricted. The things of value are restricted by the use of the words "underlying the ocean" whereas it is more wide when we say "things of value lying within territorial waters". I want to bring the words of the marginal note quite in agreement with the words that are found in the article; otherwise it might lead to complication in the future.

Shri M. Ananthasayanam Ayyanagar (Madras: General) : Sir, I desire only to make a small suggestion. What about the territorial waters themselves? Under this new article 271-A all lands, minerals and other things underlying the ocean within the territorial waters belong to the Union. All territorial waters shall belong to the Union. You say "all lands, minerals and other things". So far as territorial waters are concerned, apart from the question as to whether any particular country has got only jurisdiction over the territorial waters or the territorial waters belong to that particular country by way of ownership, and apart from the internal question whether it belongs to a province which abuts the territorial waters or to the Union, we must make it clear. Therefore, I think it is necessary to add that the territorial waters themselves belong or shall vest in the Union and be held for the purposes of

the Union. I think other things of value underlying the ocean will cover fish and other things. If they do not, it must also be made clear by saying "all the produce inside the ocean, apart from minerals and the land underlying the ocean besides these two other things also vest in the Union". This must be made clear to avoid a conflict between the provincial claim for territorial waters and the Union, and also to make sure that we lay a claim for territorial waters in our own country, whatever the International Law may be. There is a difference of opinion in the International Law regarding that matter. To give a quietus to such doubts, we must lay down a definite article that the territorial waters including all the produce available in any shape or form which might be there shall vest in the Union and be held for the purposes of the Union.

Shri A. Thanu Pillai : What about the water itself?

Shri M. Ananthasayanam Ayyangar : The territorial waters themselves must belong to the Union. We must have the waters, the right to water itself, ownership of the water itself and also the fish and other things.

Shri A. Thanu Pillai : What has my honourable Friend to say about the manufacture of salt by the States?

Shri M. Ananthasayanam Ayyangar : The water itself must belong to the Union. The ownership of territorial waters must be claimed by us.

Shri Mahavir Tyagi : Why not make the "water" also a part of this article?

Shri M. Ananthasayanam Ayyangar : I would say "all lands, minerals and other things of value underlying the ocean within the territorial waters and the territorial waters of India shall vest in the Union and be held for the purposes of the Union."

An Honourable Member : What about the air?

Another Honourable Member : What about the heavens?

The Honourable Dr. B. R. Ambedkar : Sir, I gave in my speech when I moved the amendment the reasons why we thought such an article was necessary. There seems to be some doubt raised by my honourable Friend Mr. Pillai that this might also include the right to fisheries. Now I should like to draw his attention to the fact that fisheries are included List II—entry No. 29.

Shri A. Thanu Pillai : My objection related to other matters as well.

The Honourable Dr. B. R. Ambedkar : I will come to that. I am just dealing with this for the moment. Therefore this entry of fisheries being included expressly in List No. II means that whatever jurisdiction of the Central Government would get over the territorial waters would be subject to Entry 29 in List No. II. Therefore, fisheries would continue to be a provincial subject even within the territorial waters of India. That I think must be quite clear to my honourable Friend, Mr. Pillai, now.

With regard to the first question, the position is this. In the United States, as my honourable Friend, Shri Alladi Krishnaswami Ayyar said, there has been a question as to whether the territorial waters belong to the United States Government or whether they belong to several States, because you know under the American Constitution, the Central Government gets only such powers as have been expressly given to them. Therefore, in the United States it is a moot question as yet, I think, whether the territorial waters belong to the States or they belong to the Centre. We thought that this is such an important matter that we ought not to leave it either to speculation or to future

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litigation or to future claims, that we ought right now to settle this question, and therefore this article is introduced. Ordinarily it is always understood that the territorial limits of a State are not confined to the actual physical territory but extent beyond that for three miles in the sea. That is a general proposition which has been accepted by international law. Now the fear is—I do not want to hide this fact—that if certain maritime State such as, for instance, Cochin, Travancore or Cutch came into the Indian Union, unless there was a specific provision in the Constitution such as the one we are trying to introduce, it would be still open to them to say: "Our accession gives jurisdiction to the Central Government over the physical territory of the original States; but our territory which includes territorial waters is free from the jurisdiction of the Central Government and we will still continue to exercise our jurisdiction not only on the physical territory, but also on the territorial waters, which according to the International Law and according to our original status before accession belong to us." We therefore want to state expressly in the Constitution that when Maritime States join the Indian Union, the territorial waters of that Maritime State will go to the Central Government. That kind of question shall never be subject to any kind of dispute or adjudication. That is the reason why we want to make this provision in article 271-A.

Shri M. Ananthasayanam Ayyangar : What about the ownership of the waters themselves?

The Honourable Dr. B. R. Ambedkar : What do you want to own water for? You may then want to own the sky above.

Shri M. Ananthasayanam Ayyangar : For the manufacture of salt, etc.

The Honourable Dr. B. R. Ambedkar : Your laws will prevail over that area. Whatever law you make will have its operation over the area of three miles from the physical territory. That is what is wanted and that you get by this.

Shri Mahavir Tyagi : Waters have not been included.

The Honourable Dr. B. R. Ambedkar : According to the International Law, the territory of a State not only includes its physical territory, but also three miles beyond. Any law that you make will operate over that area.

Shri Mahavir Tyagi : What about the rest of the waters?

The Honourable Dr. B. R. Ambedkar : Anything below the air you get.

Shri Mahavir Tyagi : What about waters beyond three miles?

Shri M. Ananthasayanam Ayyangar : May I ask Dr. Ambedkar if he is not aware that water is as much a property as anything else, if not better property, and disputes over water have arisen in plenty? To avoid dispute between a Province and the Union, is it not desirable to include waters also in the property of the Indian Union?

Mr. President : He has answered that; he thinks it is not necessary to say that.

The Honourable Dr. B. R. Ambedkar : Anything above the land goes with the land. If there is a tree above the land, the tree goes with the land. Water is above the land and it goes with the land.

An honourable Member : Sir. ……

Mr. President : I think we have sufficiently discussed and Dr. Ambedkar has

replied to the debate. We need have no further discussion. I will put the article to vote.

Shri K. Hanumanthaiya (Mysore State): I want one clarification, Sir. As Dr. Ambedkar says if territorial waters' that is, land three miles beyond the coast-line, belongs to the Union, where is the necessity for this section at all ?

Mr. President : That is the question which he has answered.

Shri K. Hanumanthaiya : If the interpretation of Dr. Ambedkar holds good.……

Mr. President : No more discussion about it. Dr. Ambedkar has said what he has to say. Members have to take it.

I shall now put the article to vote.

The question is:

"That the following new article be added, after article 271 :—

All lands, minerals and other things of value lying within territorial waters vest in the Union.

271-A. All lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union and be held for the purposes of the Union."

The motion was adopted.

Article 271-A was added to the Constitution.

Article 272

Mr. President : The motion is:

"That article 272 form part of the Constitution."

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

"That in article 272, after the word and figure 'Part I' in the two places where they occur, the words and figures 'or Part III' be inserted."

Shri H. V. Kamath : Mr. President, there is only one point that I want to raise in connection with this article which is before this House. The article seeks to extend the executive power of the Union and of each State for the time being specified in Part I or Part III of the First Schedule, not merely to the grant, sale, disposition or mortgage of any property held for the purposes of the Union or of such State, as the case may be, but also to the making of contracts. I wonder whether it is wise on our part to invest the executive with power to make contracts without any reference to or subsequent confirmation by the sovereign Parliament at the Centre. On a reference to articles 2 and 3, the House will see that Parliament has been invested with very wide powers of a fundamental character. This article, if adopted as it is, without any sort of clarification or without any authoritative exposition of the same—this has been moved before us without any speech by Dr. Ambedkar or any of his wise colleagues—seeks to invest the executive with the power or privilege of making contracts.

Mr. President : "Subject to any Act of the appropriate legislature."

Shri H. V. Kamath : Yes Sir. The first part says, "subject to any Act of the appropriate Legislature." But, the second part says, "as the case may be, and to the purchase or acquisition of property for those purposes respectively, and to the making of contracts." We should lay down specifically in the article that the right to make contracts should be subject to the right of Parliament or the appropriate Legislature to rescind it. Otherwise, I am afraid that

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some Ministry, either in the State or at the Centre may enter into some undesirable contract; and Parliament or the Legislature therefore should be invested with the power to rescind it. The article only says, 'subject to any Act'. I do not know whether Act means any Act already on the Statute Book or any subsequent right of the Legislature to rescind. I want this right to be conferred on Parliament and the Legislature specifically that both of them have got the power to rescind any contract that may be entered into by the executive at the Centre or in the States with regard to any property. If that safeguard were not provided for in this article, I fear we might land ourselves in trouble. I therefore think that clarification is necessary on this point to the effect that Parliament or the Legislature in the State has not merely the right to lay down the provisions with regard to disposition of property in various ways, and making of contracts but also has got the right to rescind any such contract made by a State or the Union.

Prof. Shibban Lal Saksena : Sir, I do not think the observations of the Mr. Kamath and his apprehensions have any foundation because the article clearly says:

"(1) The executive power of the Union and of each State for the time being specified in Part I of the First Schedule shall extend, subject to any Act of the appropriate Legislature, to the grant, sale, disposition or mortgage of any property held for the purposes of the Union or of such State, as the case may be, and to the purchase or acquisition of property for those purposes respectively, and to the making of contracts.

(2) All property acquired for the purposes of the Union or of a State for the time being specified in Part I of the First Schedule shall vest in the Union or any such State, as the case may be."

So it means that this article applies to all contracts as well. There is no apprehension that contracts shall be made without reference to acts of legislature but I was wondering whether this article was necessary at all and whether this power does not vest in the Parliament without this article being in the Constitution. The Parliament can always pass laws for disposing of properties of the Union or purchasing of properties or mortgaging them. Why should there be an article of this sort in the Constitution itself? Parliament is all powerful and it can pass laws for purchase and disposal of properties of the Union. I do not see the necessity of this article at all in the Constitution.

Shri K. M. Munshi (Bombay: General): Mr. President, Sir, if my honourable Friend Mr. Kamath had considered the article fully, he would have found that the rights of the Parliament are fully protected. All the transactions which are mentioned there, grant, sale, disposal or mortgage are not legislative acts but executive acts and therefore appropriately vested in the Executive; they are subject to any Act of the appropriate legislature. Therefore the Parliament or the legislature of the State will pass laws and thereby the manner in which these transactions are to be entered into, the authority which is vested with the power to enter into these transactions, will be properly defined. It would bring down the whole Government if Parliament or Legislature is invested with executive power mentioned here. For instance, take the question of sale of a property. A screw in a distant military Cantonment belongs to the Government and some official wants to dispose it off; should the matter go to Parliament for this purpose? The whole idea of having two organs of State Executive and Legislature is that all executive action has to be done by the executive but under the qualifications, the authority and the manner prescribed by Legislature. So Parliament cannot have any executive power over these transactions and I think the clause as it is which has been really reproduced from the Government of India Act is a well-advised article and should be maintained.

Mr. President : Would you like to speak, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar : I think Mr. Munshi has clearly explained and I do not like to add anything to it.

Mr. President : The question is:

"That in article 272, after the words and figure 'Part I' in the two places where they occur, the words and figures 'or Part III', be inserted."

The amendment was adopted.

Mr. President : The question is:

"That article 272, as amended, stand part of the Constitution."

The motion was adopted.

Article 272, as amended, was added to the Constitution.

Article 273

Mr. President : We take up 273. Dr. Ambedkar.

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

"That in clause (1) of article 273, after the word and figure 'Part I' the words and figures 'or Part III' be inserted.

That with reference to amendment No. 201 above, in clause (1) of article 273, after the word 'Governor' in the two places where it occurs, the words 'or the Ruler' be inserted.

That with reference to amendment No. 201 above, in clause (2) of article 273, for the word 'the Governor of a State' the words 'the Governor nor the Ruler' be substituted."

Shri Mahavir Tyagi : Sir, reading the whole article as it is, one is at a loss to understand as to who will ultimately be responsible for the wrong transactions if there are any. The article reads:

"All contracts made in the exercise of the executive power of the Union or of a State for the time being specified in Part I of the First Schedule shall be expressed to be made by the President, or by the Governor of the State as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise."

From the words "shall be executed on behalf etc." I understand that the emphasis is not on the word 'executed' but on the use of the name of the Governor-General. I want to make it sure that in future it may not be construed that the meaning of the article is that whatever has been once agreed upon by the Governor or the persons above shall essentially be executed. I can understand that it shall be executed in the name of the Governor but the question is; is it also the meaning that whatever has been agreed upon by the Governor or those who do it in the name of the Governor, whether it is in our interest or not, shall at all costs be executed? For instance there may be occasions just as only lately the Ministers of the Dominion of India or Cabinet just issued a statement and announced that with regard to Kashmir they will have a referendum and that referendum will decide. . . . .

Mr. President : This is the case of the contract and it has nothing to do with a political act like that.

Shri Mahavir Tyagi : Yes in contracts also, suppose the assets of the Government are contracted away by the men at the helm of affairs, will there be

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no check? Will the Parliament's ratification be necessary or they will be executed only because the commitments have been made by a person at the helm? Will the Parliament have a hand in confirming it or not? Political commitments also have their repercussions financially. I do not want to mention Kashmir but then there are so many other transactions—I do not want to quote instances of the previous or present Government—I am just inventing instances. There may be occasions when some big financial deals are made which go against the interests of the country but this article says:

> "All contracts and assurances of property made in the exercise of that power shall be executed on behalf of the President."

If the meaning is only this that the execution will always be on behalf of the President, I do not mind. But if it means that it shall have to be executed at all costs I object to that.

Shri T. T. Krishnamachari : The liability is there.

Shri Mahavir Tyagi : Are you going to have the liability without defining the nature of the liability? If it were only a case of your defining that the liability shall always be executed in the name of the Governor or such other persons I can understand, because he is the head of the State and all executive action has to be taken in his name. But in clause (2) you say "Neither the President nor the Governor of a State—nor the Ruler now—shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution. This also I can understand in the case of the Governor whose name has been used only formally but I cannot pardon the officers or the Ministers who do wrong things in his name. Such an officer shall be personally and even morally responsible for his wrong action. A carte-blanche is sought to be given here that whatever is done, no personal liability will rest either on the man in whose name it is done, or on the person who does it. Unless a liability has been ratified by Parliament, somebody must be responsible for it. So I want a clarification of this issue, for, there may be big commitments made of a nature with which the nation might not agree. The commitments are to be executed and then nobody is to be liable for it. I think in matters of State everybody who works must be liable and responsible—even personally for all what he does. I deprecate the notion given to us by foreign rule here that a man who in the exercise of his official duties does wrong will not be responsible for that personally—as if an officer can do no wrong just as the king can do no wrong. This is a notion to which I do not agree. I feel that if a man commits an error or plays wrong with the finances of the State or does anything which injures the cause of the nation he must always know that the liability lies on his head and that he will be responsible to answer for it and also have to pay the liability. After all the liability must be located somewhere. Otherwise the officers will be free from all liabilities, and contracts and agreements and commitments will be made generally freely without having any regard to their propriety. If the Governors are not responsible, those who have committed themselves on his behalf or committed the nation must be responsible. It is only a question I have put to Dr. Ambedkar and I hope he will clarify the position.

Shri H. V. Kamath : Mr. President, I do not think that my Friend Mr. Tyagi's objection is valid. If he would take the trouble of turning to article 64(1) and also the corresponding article for the Governors in the relevant part he will find that all executive action of the Government of India or of a State shall be expressed to be taken in the name of the President or of the Governor. Here also this article follows article 64 very closely. This article

lays down that all contracts made in the exercise of the executive powers of the Union shall be expressed to be made—the words used are "expressed to be made"—by the President etc. Neither the President nor the Governor nor, in the light of the new amendment, the Ruler of the State actually makes the contract. Whatever contract is entered into or made by the Union or the State is expressed as having been made in the name of the President or the Governor or the Ruler.

Shri Mahavir Tyagi : Who actually does it?

Shri H. V. Kamath : The Union or the State does it.

Shri Mahavir Tyagi : It is the people.

Shri H. V. Kamath : If my Friend thinks the sovereign authority is vested in the people then the people are responsible for everything that happens in the Union or the State. That depends upon the connotation that my Friend wants to give to the vesting of the authority of the Union or the State. If it vests in the people then the people are responsible. Everything is done in the name of the people because it is a democratic Constitution, and everything done in the Union or the State is done for the people or by the people. But certainly whatever is done is expressed as having been done by the President or the Governor or the Ruler, whatever the case may be. It is only a constitutional or a legal formula for enabling certain contracts to be made effective or to be given effect to. Otherwise, if every contract is signed by the people of the Union or the people of the State then I suppose in constitutional law, before the High Court or the Supreme Court it will make no meaning whatsoever. Somebody will have to sign it. For instance, treaties are signed by the Foreign Minister or the Prime Minister here.

Shri Mahavir Tyagi : I do not object to the name of the Governor being used but to the immunity given to those persons who execute those undertakings and commit the country.

Shri H. V. Kamath : I am coming to that. Clause (2) lays down that "neither the President nor the Governor etc. shall be *personally* liables." Certainly it stands to reason, to logic and to the sense of law which I am sure the House possesses in abundant measure, that for anything that the President or the Governor or the Ruler does not actually do but that is expressed to be done in his name—the Cabinet at the Centre or the State will make the contract and the titular head of the Union or the State will sign the contract—he cannot be made personally liable. That is all that is meant by the article.

There is, however, another point which I would like Dr. Ambedkar to clarify in his reply, if at all he replies. That relates to the language of this article. I suppose this has been lifted bodily from the Government of India Act, as has been done in the case of various other articles. The article begins with "all contracts made in the exercise of the executive power of the Union or the State", but proceeding further the article refers to "all such contracts and all assurances of property". Suddenly these words "assurances of property" are pitchforked into the article. What exactly in constitutional terminology or legal parlance it means I do not know, because I am not a lawyer. "Contracts" I know; I am fairly well aware of its connotation. But what exactly is meant by "assurances of property" I do not know. What are the assurances, verbal or written, and what sort of assurances will be given with regard to property I do not know. Since the article starts with "contracts" is it not enough to say "contracts" later on too? I think it will be wiser to stick to that. I think this will create confusion and will not lead to any clear understanding of this article. Then the amendment of Dr. Ambedkar refers to the word "ruler". I do not know whether we are in future going to be saddled

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or burdened with a distinction between Governors and rulers. Today we have this distinction of course and that is why I suggested postponement of the consideration of these articles. We have been assured by Sardar Patel and the Prime Minister that they are trying—and I dare say they will succeed—to bring the States into line with the States mentioned in Part I of the First Schedule that is to say, Governors' provinces. I do not think that when this Constitution comes into force there will still be this distinction between Parts I and III; I think there will be only one category, and the distinction between ruler and Governor will vanish. With regard to terminology I think the ruler is not referred to as ruler but as Raja, Rajpramukh etc.

Mr. President : The question was raised yesterday and Dr. Ambedkar said that he would consider any other expression which might be more suitable.

Shri H. V. Kamath : I am sorry; I was not here yesterday. It therefore struck me that the expression "ruler of a State" would not be quite appropriate for the executive head of the State. I hope they will all be called Governor and the word "ruler" will not be used any longer. I hope these points will be clarified by Dr. Ambedkar.

Prof. Shibban Lal Saksena : Sir, I think the point raised by my honourable Friend Shri Mahavir Tyagi is due to his not having read article 272 carefully. The power to make contracts has been given there and it will be subject to Acts of the legislatures. He cited the case of Pakistan and contracts with them about property, etc. I am sure whatever has been done was done with the consent of Parliament. So all contracts made under this article will be in accordance with the laws of the legislature, and no one can make any contract in contravention of those laws.

I however do not see the necessity of the second clause of article 273. It is well known that the President or Governor acts in the name of Government and is not personally liable. So why make this provision specifically?

Shri Mahavir Tyagi : I would point out that in article 272 the "grant, sale, disposition or mortgage of any property" is mentioned; article 273 is different and refers to "contracts and assurances" etc.

Prof. Shibban Lal Saksena : The article says that contracts can only be made subject to laws made by the legislature. But I do not see the purpose of the exemption made in article 273(2). If the President or Governor contravenes the laws he may be impeached and any other officer doing so will be punished. I should like to know the reason for the special exemption made in this sub-section.

The Honourable Dr. B. R. Ambedkar : Sir, my honourable Friend Mr. Kamath had something to say about the use of the word "assurances", and I think his argument was that we were using the word "contracts" in one place and "assurances" in another. "Assurance" is a very old word in English conveyancing; it was used and is being used to cover all kinds of transfers and therefore the word "assurance" includes the word "contract". So there is no difficulty if both these words are used because assurance as a transfer of property has the significance of a contract.

Shri H. V. Kamath : My difficulty was about the language. The article starts with "all contracts" and then we have "all such contracts and all assurances of property", etc.

The Honourable Dr. B. R. Ambedkar : If there is any difficulty about the language it will be looked into by the Drafting Committee; I was explaining the technical difference between assurance and contract.

Then, Mr. Tyagi asked why a person should be freed of liability if he signs a contract. I think much of the objection raised by Mr. Tyagi would fully disappear if he were made a member of the Cabinet; I should like him to answer the question whether any contract that he has made on behalf of the Government of India should impose a personal liability on him. I am sure he knows the ordinary commercial procedure. A principal appoints an agent to do certain things on his behalf. Unless the agent has acted outside the scope of the authority conferred upon him by the principal, the agent has no personal liability in regard to any contract that he has made for the benefit of the principal. It is the same principle here. My honourable Friend Mr. Tyagi does not know that there is a well established system in the Government of India whereby it is laid down that it is only a document or letter issued by an officer of a certain status that binds the Government of India; a document or letter issued by any other officer does not bind the Government of India. We have therefore by rule specifically to say whether it is the Under-Secretary who would have the power to bind the Government of India, or the Joint Secretary or the Additional Secretary or the Secretary alone. Therefore I do not see why the person who is acting merely on behalf of the Government of India as a signing agency should be fastened upon for personal liability, because he is acting on the authority of the Government of India or within the authority of the Government of India. If the Government of India approves of any particular transaction to which the legislature raises any objection as being unnecessary, unprofitable or outside the scope of the legislative authority conferred by Parliament upon the executive Government, it is a matter between the Government and the Parliament. Parliament may either remove the Government or repudiate the contract or do anything it likes. But I do not understand how a personal liability can be fixed upon a man who is merely appointed as an agent to assure the other party that he is signing in the name of the Government of India. There is no substance in the objection raised by my Friend Mr. Tyagi.

Mr. President : I will now put the various amendments to vote.

The question is:

"That in clause (1) of article 273, after the word and figure 'Part I' the words and figures 'or Part III' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That with reference to amendment No. 201 above, in clause (1) of article 273, after the word 'Governor' in the two places where it occurs, the words 'or the Ruler' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That with reference to amendment No. 201 above in clause (2) of article 273, for the words 'the Governor of a State' the words 'the Governor nor the Ruler' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That article 273, as amended, stand part of the Constitution."

The amendment was adopted.

Article 237, as amended, was added to the Constitution.

Article 274

Mr. President : Article 274 is now for discussion.

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

"That in clause (1) of article 274, for the words 'Government of India', in the second place where they occur, the words 'Union of India' be substituted."

Sir, with your permission I will also move my other amendments to this article now.

I move:

"That in sub-clause (a) of clause (2) of article 274, for the words 'Government of India' the words 'Union of India' be substituted."

I move:

"That with reference to amendment No. 2980 of the List of Amendments, in clause (1) of article 274, after the word and figure 'Part I' the words and figures 'or Part III' be inserted."

I move:

"That with reference to amendment Nos. 2980 and 2981 of the List of Amendments, in clause (1) of article 274, for the words 'by the Legislature' the words 'of the Legislature' be substituted."

I move:

"That with reference to amendment No. 204 above, in clause (1) of article 274, after the words 'corresponding Provinces' the words 'or the corresponding Indian States' be inserted."

I move:

"That with reference to amendment No. 206 above, in sub-clause (2) of article 274—

(i) after the words 'a Province', the words 'or an Indian State' be inserted; and

(ii) after the words 'the Province' the words 'or the Indian State' be inserted."

Shri Jaspat Roy Kapoor (United Provinces : General) : I am not moving my amendment Nos. 2981 and 2984. They may well be referred to the Drafting Committee for consideration.

(Amendment No. 2982 was not moved.)

Mr. President : Does any one wish to speak on this article?

Shri H. V. Kamath : Mr. President, amendment No. 2980 seeks to substitute the words 'Union of India' for the words "Government of India" so far as suing or being sued is concerned. I do not know exactly what is the change that is sought to be effected by the substitution. Article 270 refers to the Government of India as being the successor Government to the Dominion of India. When I suggested that this might be changed to either "Union of India" or "Republic of India", that was not accepted by the House. So under article 270 we recognise the Government of India as succeeding the Dominion of India so far as assets, liabilities and obligations are concerned. But when we come to article 274 we are told that for the purpose of suing or being sued it will not be the Government of India but the Union of India. So long as the Government of India Act was in force, whenever the Indian Government was sued or had to sue it was the Secretary of State for India that came into the picture. I do not know exactly why a suit may be filed against the Union and not against the Government of India. After all, what is the Union of India? Article 2 tells us that India shall be a Union of States. In law what is sued or may be sued is the whole body, the whole corporate body of the Union Government. The Union as such in law is not a corporation which may sure or

be sued. It is only the Union Government that may sue or be sued. In the light of article 1, if we want to be precise and exact so far as law is concerned, we should state in this article "the Government of the Indian Union". As it is, however the sense is quite clear and therefore it will be wise to retain the phrase "the Government of India" instead of "the Union of India" as suggested in amendment No. 2980.

As regards the other amendments moved by Dr. Ambedkar, there are certain points which are obscure. If Dr. Ambedkar will turn to article 270 he will see that it refers to Governors' provinces. In this article we refer to provinces. I think this is rather incorrect. So far as legal terminology is concerned, I think the provinces must be referred to as Governors' provinces, not merely as provinces. If we turn to the First Schedule, Part I, the provinces are referred to as Governors' provinces.

Then, Sir, about clause (2) of this article. The amendment in relation to this clause is No. 207. We do not know exactly what picture will emerge before us at the time of the commencement of this Constitution. Sub-clause (b) of clause (2) refers to Governors' provinces and, by reason of this amendment of Dr. Ambedkar, to Indian States as well. It is purely a hypothetical case, but if for instance as regards an Indian State which is an integral part of the Indian Union at the time this Constitution comes into being, some legal proceedings are pending to which this Indian State is a party. Suppose subsequently Parliament by law, under article 3 or by some other means, provides for the merger of this State with some province. According to sub-clause (b) the effect will be that the corresponding Indian State shall be substituted, but what will happen if that State disappears, if it is merged into an adjoining province? There is no such corresponding State at all left.

All these things are obscure at this stage and that why I feel that the consideration of this Chapter, when there are so many obscure points of which we have not got a clear picture, may very wisely be held over till the entire picture comes before our eyes and the relationship between the various States and the Union is clarified. But some articles have already been moved and adopted by this House. I submit that this article has got some obscure points and I hope Dr. Ambedkar or any of his colleagues will come before the House to clarify these points before we adopt this article.

The Honourable Shri K. Santhanam : Sir, I have just a single point to make. In 274 (1) the words "enacted by virtue of the powers conferred by this Constitution" are wholly superfluous and meaningless because neither the Parliament nor the Legislature of any State can act except by virtue of the powers conferred by this Constitution. Therefore I suggest that these words may be dropped.

The Honourable Dr. B. R. Ambedkar : Sir, perhaps it might be desirable if I read to the House how the article would stand if the various amendments which I have moved were incorporated in the article. The article would read thus:

"The Government of India may sue or be sued in the name of the Union of India, and the Government of a State for the time being specified in Part I or Part III of the First Schedule may sue or be sued in the name of the State and may, subject to any provisions which may be made by Act of Parliament or by the Legislature of such State, enacted by virtue of the powers conferred by this Constitution, sue or be sued in relation to their respective spheres in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.

(2) If at the date of commencement of this Constitution—

(a) any legal proceedings are pending to which the Dominion of India is a party, the Union of India—"

[The Honourable Dr. B. R. Ambedkar]

that is the new thing—

"shall be deemed to be substituted for the Dominion in those Proceedings; and

(b) any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the province or the Indian State in those proceedings."

Now, this article, as it will be seen, merely prescribes the way in which suits and proceedings shall be started. This has no other significance at all. The original wording was that it shall be sued in the name of the Government of India. Obviously the Government of India, that is to say, the executive government, is a fleeting body, being there at one time and then disappearing and some other people coming in and taking charge of the executive.

Shri H. V. Kamath : The Government is not fleeting; the personnel of the Government may be fleeting.

The Honourable Dr. B. R. Ambedkar : There is a difference between the Government of India and the Union of India. The Government of India is not a legal entity; the Union of India is a legal entity, a sovereign body which possesses rights and obligations and therefore it is only right that any suit brought by or against the Central Government should be in the name of the Union or against the Union.

Now, with regard to the term "corresponding States" some difficulty was expressed. It may no doubt be quite difficult to say which State corresponds to the old State. In order to meet this difficulty, provision has been made in article 303 (1) (g) , which you will find on page 145 of the Draft Constitution, where it has been provided that a corresponding Province or corresponding State means in cases of doubt such Province or State as may be determined by the President to be the corresponding Province or, as the case may be, the corresponding State for the particular purpose in question. Therefore this difficulty—since the exact equivalent of an Old Province or State is difficult to judge as there are bound to be some variations as to territory and so on—can be solved only by giving power to the President to determine which new particular State corresponds to which particular Old State. So that provision has been made.

Sub-clause (2) deals with pending proceedings and all that Sub-clause (2) suggests is this: that when any proceedings are pending, where the entities to sue or to be sued are different from what we are providing in sub-clause (1) , the Union of India or the corresponding State shall be inserted in the old proceedings, so that the States may be sued in accordance with 274 (1) . With regard to the objection taken by my honourable Friend, Mr. Santhanam that the words "enacted by virtue of powers conferred by this Constitution" as being superfluous, all I can say is I disagree with him and I think these are very necessary.

Mr. President : The question is:

"That in clause (1) of article 274, for the words 'Government of India', in the second place where they occur, the words 'Union of India' be substituted. "

The amendment was adopted.

Mr. President : The question is:

"That in sub-clause (a) of clause (2) of article 274, for the words 'Government of India' the words 'Union of India' be substituted. "

The amendment was adopted.

Mr. President : The question is:

"That with reference to amendment No. 2980 of the List of Amendments, in clause (1) of article 274, after the word and figure 'Part I', the words and figures 'or Part III' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That with reference to amendment Nos. 2980 and 2981 of the List of Amendments, in clause (1) of article 274, for the words 'by the Legislature' the words 'of the Legislature' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That with reference to amendment No. 204 above, in clause (1) of article 274, after the words 'corresponding provinces' the words 'or the corresponding Indian States' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That with reference to amendment No. 206 above, in sub-clause (b) of clause (2) of article 274—

(i) after the words 'a Province' the words 'or an Indian State' be inserted; and

(ii) after the words 'the Province' the words 'or the Indian State' be inserted."

The amendment was adopted.

Mr. President : the question is:

"That article 274, as amended, stand part of the Constitution."

The motion was adopted.

Article 274, as amended, was added to the Constitution.

New Article 274-A

The Honourable Dr. B. R. Ambedkar : Sir, I would like this article to be held over.

Mr. President : Then there is a long amendment, a new part to be added by Mr. Sidhva.

Shri T. T. Krishnamachari : May I suggest that the House may take up Part XIII—the election chapter, article 289 and onwards as put in the Order Paper?

Shri R. K. Sidhva : Sir, this new article which I seek to move relates to the delimitation in local areas, urban and rural of the entire territory of India.

The Honourable Dr. B. R. Ambedkar : This is to be held over.

Shri R. K. Sidhva : Therefore, Sir, with your permission, I shall move it when that article comes in.

Article 289

Mr. President : We shall now take up Part XIII—article 289.

Shri T. T. Krishnamachari : May I suggest that amendment No. 99 may be taken up as it substantially replaces the whole article? All the other amendments may be discussed thereafter.

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

"That for article 289, the following article be substituted :—

289. (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States shall be vested in a Commission (referred to in his Constitution as the Election Commission) to be appointed by the President.

The superintendence, directions and control of elections to be vested in an Election Commission.

(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may, from time to time appoint, and when any other Election Commissioner is so appointed, the Chief Election Commissioner shall act as the Chairman of the Commission.

(3) Before each general election to the House of the People and to the Legislative Assembly of each State and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President shall also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the election Commission in the performance of the functions conferred on it by clause (1) of this article.

(4) The conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine:

Provided that the Chief Election Commissioner shall not be removed from the office except in like manner and on the like grounds as a judge of the Supreme Court and the conditions of the service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment:

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

(5) The President or the Governor or Ruler of a State shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1) of this article."

Mr. President : I have notice of a number of amendments, some in substitution of the articles 289, 290 and 291 and some amendments to the amendments which are going to be moved. I think I had better take the amendments which are in the nature of substitution of these articles. Dr. Ambedkar has moved one. There is another amendment in the name of Pandit Thakur Das Bhargava.

Pandit Hirday Nath Kunzru (United Provinces: General) : May I ask, Sir, whether Dr. Ambedkar is not going to say anything in support of the proposition that he has moved? It concerns a very important matter. Is it not desirable that Dr. Ambedkar who has put forward an amendment to article 289 should say something in support of his amendment. I think he would be proceeding on sound lines if he took the trouble of explaining to the House the reasons for asking it to replace the old article 289 by a new article. The matter is of the greatest importance and it is great pity that Dr. Ambedkar has not considered it worth his while to make a few remarks on this proposition.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I did not make any observation in support of the motion for two reasons. One reason was that if a debate took place on this article,—it is quite likely that a debate would undoubtedly take place—there would be certain points that will be raised in the debate, which it would be profitable for me to reply to at the close so as to avoid a duplication of any speech on my part. That is one reason.

The second reason was that I thought that everybody must have read my amendment; it is so simple that they must have understood what it meant. Evidently, my honourable Friend Pandit Kunzru in a hurry has not read my new Draft.

Pandit Hirday Nath Kunzru : I have read every line of it; I only want that honourable Member should treat the House with some respect.

The Honourable Dr. B. R. Ambedkar : The House will remember that in a very early stage in the proceedings of the Constituent assembly, a Committee was appointed to deal with what are called Fundamental Rights. That Committee made a report that it should be recognised that the independence of the elections and the avoidance of any interference by the executive in the elections to the Legislature should be regarded as a fundamental right and provided for in the chapter dealing with Fundamental Rights. When the matter came up before the House, it was the wish of the House that while there was no objection to regard this matter as of fundamental importance, it should be provided for in some other part of the Constitution and not in the Chapter dealing with Fundamental Rights. But the House affirmed without any kind of dissent that in the interest of purity and freedom of elections to the legislative bodies, it was of the utmost importance that they should be freed from any kind of interference from the executive of the day. In pursuance of the decision of the House, the Drafting Committee removed this question from the category of Fundamental Rights and put it in a separate part containing articles 289, 290 and so on. Therefore, so far as the fundamental question is concerned that the election machinery should be outside the control of the executive Government, there has been no dispute. What article 289 does is to carry out that part of the decision of the Constituent Assembly. It transfers the superintendence, direction and control of the preparation of the electoral rolls and of all elections to Parliament and the Legislatures of States to a body outside the executive to be called the Election Commission. That is the provision contained in sub-clause (1) .

Sub-clause (2) says that there shall be a Chief Election Commissioner and such other Election Commissioners as the President may, from time to time appoint. There were two alternatives before the Drafting Committee, namely, either to have a permanent body consisting of four or five members of the Election Commission who would continue in office throughout without any break, or to permit the President to have *ad hoc* body appointed at the time when there is an election on the anvil. The Committee, has steered a middle course. What the Drafting Committee proposes by sub-clause (2) is to have permanently in office one man called the Chief Election Commissioner, so that the skeleton machinery would always be available. Election no doubt will generally take place at the end of five years; but there is this question, namely that a bye-election may take place at any time. The Assembly may be dissolved before its period of five years has expired. Consequently, the electoral rolls will have to be kept up to date all the time so that the new election may take place without any difficulty. It was therefore felt that having regard to these exigencies, it would be sufficient if there was permanently in session one officer to be called the Chief Election Commissioner, while when the elections are coming up, the President may further add to the machinery by appointing other members to the Election Commission.

Now, Sir, the original proposal under article 289 was that there should be one Commission to deal with the elections to the Central Legislature, both the Upper and the Lower House, and that there should be a separate Election Commission for each province and each State, to be appointed by the Governor or the Ruler of the State. Comparing that with the present article 289, there is undoubtedly, a radical change. This article proposes to centralize the election machinery in the hands of a single Commission to be assisted by regional Commissioners, not working under the provincial Government, but working under the superintendence and control of the Central Election Commission. As I said, this is undoubtedly a radical change. But, this change

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has become necessary because today we find that in some of the provinces of India, the population is a mixture. There are what may be called original inhabitants, so to say, the native people of a particular province. Along with them, there are other people residing there, who are either racially, linguistically or culturally different from the dominant people who are the occupants of that particular Province. It has been brought to the notice both of the Drafting Committee as well as of the Central Government that in these provinces the executive Government is instructing or managing things in such a manner that those people who do not belong to them either racially, culturally or linguistically, are being excluded from being brought on the electoral rolls. The House will realise that franchise is a most fundamental things in a democracy. No person who is entitled to be brought into the electoral rolls on the grounds which we have already mentioned in our Constitution, namely, an adult of 21 years of age, should be excluded merely as a result of the prejudice of a local Government, or the whim of an officer. That would cut at the every root of democratic Government. In order, therefore, to prevent injustice being done by provincial Governments to people other than those who belong to the province racially, linguistically and culturally, it is felt desirable to depart from the original proposal of having a separate Election Commission for each province under the guidance of the Governor and the local Government. Therefore, this new change has been brought about, namely, that the whole of the election machinery should be in the hands of a Central Election Commission which alone would be entitled to issue directives to returning officers, polling officers and others engaged in the preparation and revision of electoral rolls so that no injustice may be done to any citizen in India, who under this Constitution is entitled to be brought on the electoral rolls. That alone is, of I may say so, a radical and fundamental departure from the existing provisions of the Draft Constitution.

So far as clause (4) is concerned, we have left the matter to the President to determine the conditions of service and the tenure of office of the members of the Election Commission, subject to one or two conditions, that the Chief Election Commission, shall not be liable to be removed except in the same manner as a Judge of the Supreme Court. If the object of this House is that all matter relating to Elections should be outside the control of the Executive Government of the day, it is absolutely necessary that the new machinery which we are setting up, namely, the Election Commission should be irremovable by the executive by a mere *fiat*. We have therefore given the Chief Election Commissioner the same status so far as removability is concerned as we have given to the Judge of the Supreme Court. We, of course, do not propose to give the same status to the other members of the Election Commission. We have left the matter to the President as to the circumstances under which he would deem fit to remove any other member of the Election Commissioner, subject to one condition that the Chief Election Commissioner must recommend that the removal is just and proper.

Then the question was whether the Electoral Commission should have authority to have an independent staff of its own to carry on the work which has been entrusted to it. It was felt that to allow the Election Commission to have an independent machinery to carry on all the work of the preparation of the electoral roll, the revision of the roll, the conduct of the elections and so on would be really duplicating the machinery and creating unnecessary administrative expense which could be easily avoided for the simple reason, as I have stated, that the work of the Electoral Commission may be at times heavy and at other it may have no work. Therefore we have provided in clause (5) that it should be open for the Commission to borrow

from the provincial Governments such clerical and ministerial agency as may be necessary for the purposes of carrying out the functions with which the Commission has been entrusted. When the work is over, that ministerial staff will return to the provincial Government. During the time that it is working under the Electoral Commission no doubt administratively it would be responsible to the Commission and not to the Executive Government. These are the provisions of this article and I hope the House will now realise what it means and in what respects it constitutes a departure from the original article of the Draft Constitution.

Mr. President : Pandit Thakur Das Bhargava—do you wish to move your three amendments?

Pandit Thakur Das Bhargava : No, Sir.

Mr. President : Mr. Kapoor is not moving his amendment. The article is open for discussion.

Prof. Shibban Lal Saksena : Sir, I have given notice of an amendment to an amendment to article 289.

Sir, I beg to move:

"That in Amendment No. 99 of List I (Fifth Week) , the following amendments be incorporated:—

(1) At the end of Clause (1) add the following words:—

'Subject to confirmation by 2/3rd majority in a joint session of both the Houses of Parliament.'

(2) After the word appoint in clause (2) , the following words be inserted:-

'Subject to confirmation by 2/3rd majority in a joint session of both the Houses of Parliament.'

(3) In clause (3) , for the words 'after consultation with' the words 'in concurrence with' be substituted.

(4) In clause (4) for the words 'President may by rule determine' the words 'Parliament may by law determine' be substituted.

(5) In proviso (1) to clause (4) substitute 'Election Commissioners' for the words 'Chief Election Commissioner' in both places.

(6) In proviso (2) to clause (4) omit 'any other Election Commissioner or.' "

Mr. President, Sir, I must congratulate Dr. Ambedkar on moving his amendment. As he has said, his amendment really carries out the recommendations of the Fundamental Rights Committee and in fact the matter was so important that it was thought at one time that it should be included in the Fundamental Rights. The real purpose is that the fundamental right of adult franchise should not only be guaranteed in practice. He has explained to us that he was tried to make the Election Commission wholly independent of the Executive and he therefore hopes that by this method the fundamental right to franchise of all the individuals shall not only be guaranteed but that it shall also be exercised in a proper manner so that the elected People will represent the true will of the people of the country. After a careful study of his amendment I have suggested my above amendments to carry out the real purpose of Dr. Ambedkar's amendment in full.

What is desired by my amendment is that the Election Commission shall be completely independent of the Executive. Of course it shall be completely independent of the provincial Executive but if the President is to appoint this Commission, naturally it means that the Prime Minister appoints this Commission. He will appoint the other Election Commissioners on his recommendations. Now this does not ensure their independence. Of course once

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he is appointed, he shall not be removable except by 2/3rd majority of both the Houses. That is certainly something which can instil independence in him, but it is quite possible that some party in power who wants to win the next election may appoint a staunch party-man as the Chief Election Commissioner. He is removable only by 2/3rd majority of both Houses on grave charges, which means that he is almost irremovable. So what I want is this that even the person who is appointed originally should be such that he should be enjoying the confidence of all parties—his appointment should be confirmed not only by majority but by two-thirds majority of both the Houses. If it is only a bare majority then the party in power could vote confidence in him but when I want 2/3rd majority then it means that the other parties must also concur in the appointment so that in order that real independence of the Commission may be guaranteed, in order that everyone even in opposition may not have anything to say against the Commission, the appointments of the Commissioners and the Chief Election Commissioner must be by the President but the names proposed by him should be such as command the confidence of two-thirds majority of both the Houses of Legislatures. Then no person can come in who is a staunch party-man. He will necessarily have to be a man who will enjoy the confidence of not only one party but also of the majority of the members of the Legislature. Then alone he can get a 2/3rd majority in support of his appointments. I therefore, think that if the real purpose of the recommendations of the Fundamental Rights Committee is to be carried out, as Dr. Ambedkar proposes to do this by amendment, then he must provide that the appointment shall not be by the President subject to confirmation by a two-thirds majority of both the Houses of Parliament sitting and voting in a joint session.

Shri Mahavir Tyagi : Don't you think that the party will issue whips to elect a certain man ? He will be a party -man.

Prof. Shibban Lal Saksena : What I have said is this. He will not be a Member of Parliament. He can be anybody else, but whosoever is chosen must be a person who enjoy the confidence of at least two-thirds majority of both the Houses of Parliament so that one single party in power cannot impose its own man on the country.

Shri Mahavir Tyagi : The majority party will put up its own candidate for the job and issue whips that all should vote for that candidate. Whether he is a Member or outsider he will be a party nominee.

Prof. Shibban Lal Saksena : Majority means only 51 per sent., but I want a two-thirds majority.

Shri Mahavir Tyagi : You are having more than two-thirds majority already.

Prof. Shibban Lal Saksena : At this time nothing will help in this matter. Whosoever you put forward will be elected. But we are making a Constitution for ever and not only for today. Today of course whosoever is appointed by the President on the recommendation of the Cabinet will be approved. We are lucky in having as our Prime Minister a man of independence and impartiality and he will see that a proper person is appointed. But we can not be sure that the Prime Minister will always be such a personality. I want that in future, no Prime Minister may abuse this right, and for this I want to provide that there should be two-thirds majority which should approve the nomination by the President. Of course there is danger where one party is in huge majority. As I said just now it is quite possible that if our Prime

Minister wants, he can have a man of his own party, but I am sure he will not do it. Still if he does appoint a party-man and the appointment comes up for confirmation in a joint session, even a small opposition or even a few independent members can down the Prime Minister before the bar of public opinion in the world. Because we are in a majority we can have anything passed only theoretically. So the need for confirmation will invariably ensure a proper choice. Therefore, I hope this majority will not be used in a manner which is against the interests of the nation or which goes against the impartiality and independence of the Election Commission. I want that there should be provision in the constitution so that even in the future if some Prime Minister tends to partial, he should not be able to be so. Therefore, I want to provide that whenever such appointment is made, the person appointed should not be a nominee of the President but should enjoy the confidence of two-thirds majority of both the Houses of Parliament.

The second point made by Dr. Ambedkar was that this commission may not have permanent work and therefore only the Chief Election Commissioner should be appointed permanently and the others should be appointed when necessary on his recommendations. Our Constitution does not provide for a fixed four years cycle like the one in the United States of America. The elections will probably be almost always going on in some province or the other. We shall have about thirty provinces after the states have been integrated. Our Constitution provides for the dissolution of the Legislature when a non confidence is passed. So it is quite possible that the elections to, the various legislatures in the provinces and the Centre will not be all concurrent . Every time some election or other will be taking place somewhere. It may not be so in the very beginning or in very first five or ten years. But after ten or twelve years, at every moment some elections in some province will be going on. Therefore, it will be far more economical and useful if a permanent Election Commission is appointed—not only the Chief Election Commissioner but three or five members of the Commission who should be permanent and who should conduct the elections. I do not think that there will be lack of work because as I said in our constitution all the elections will not synchronize but they will be at varying times in accordance with the vote of no-confidence passed in various legislatures and the consequent dissolution of the legislatures. Therefore, I think that there will be no dearth of work. This Commission should be a permanent Commission and all the Commissioners should be appointed in the same manner as the Chief Election Commissioner. They should all be appointed by a two-thirds majority of Legislatures and be removable in the same manner.

In clause (3) it has been said that the President may appoint regional Commissioners after consultation with the Election Commission, that means the Chief Election Commissioner. Mere consultation means the President can have his way even disregarding the views of the Chief Election Commissioner. Therefore, I want "in concurrence with" so that if anyone disagrees,—if the Election Commission or the President disagree about a person—then he cannot be appointed.

Clause (4) says "the conditions of service and tenure of office of the Election Commissioners shall be such as the President may by rule determine". This I think is not proper. The conditions of service and tenure of office etc., of the Election Commissioners should not be in the power of the President to determine. Otherwise he can use his influence in a manner prejudicial to their independence. Therefore I want that these things should be determined by Parliament by law and they should be permanent so that nobody will be

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able to change them and no Election Commissioner will then look to the President for favours.

These are my suggestions so that the Election Commission may be really an independent Commission and the real fundamental right, the right of adult franchise, may be exercised in a proper manner. I agree with all that Dr. Ambedkar has said I only want to suggest that what he has suggested will not be sufficient to carry and what he wishes.

Shri H. V. Pataskar (Bombay: General) : Mr. President, Sir, I have carefully gone through the new amendment No. 99 moved by my respected Friend Dr. Ambedkar and I have also very carefully listened to the arguments that he advanced. While I agree with him entirely, that the election in any democratic form of Government must be free from any sort of executive interference I still do not understand and realise the necessity of making it wholly centralised always. That is the only point. I am going to discuss the difference between the original article 289 as it stood in the Draft Constitution and the new Article which has been suggested in its place by amendment No. 99, and particularly clause (3) of the same. I would now like to give a brief history of this article. There was first the report of the Union Constitution Committee dated the 4th July 1947 and so on page 55 there was this paragraph:

"The superintendence, direction and control of all elections, whether federal or provincial held under this Constitution, including the appointment of election tribunals for decision of doubts and disputes arising out of or in connection with such elections shall be vested in a Commission to be appointed by the President."

This clause (24) therefore laid it down that whether it is federal or provincial, the superintendence, direction and control of elections should vest in one single Commission. Then the matter came before this House on 29th June 1947 and I brought forward an amendment confining it to federal elections only. The idea was that there should be similarly constituted independent tribunals for provinces also. The underlaying reason even then was that elections should be free; the only question was that there should be separate independent Commissions for the provinces or States. The idea was that it would be difficult for one Commission sitting here in Delhi or somewhere else to supervise election all over India. That amendment was accepted by the then mover of the clause, Honourable Mr. Gopalaswamy Ayyangar. The idea of every one, including Dr. Ambedkar, then was that elections should be kept free from executive interference. The only point was that there should be different Commissions as one Commission could not carry out the functions entrusted to it. Then on 29th August the Drafting Committee was appointed which considered the decision of the House in framing article 289 (1) and (2) . The Draft Report says:

"The Committee has not thought it necessary to incorporate in the Constitution electoral details including delimitation of constituencies, etc."

They left it to be provided by auxiliary legislation. So they considered the decision of this House of the 29th July and the original article 289 is in conformity with that. And the House will consider whether clauses (1) and (2) of article 289 are not enough for the purpose. Granting that elections are the basis of democracy and should be free from executive interference, let us see whether article 289 (1) and (2) are or are not enough. So far as federal elections are concerned the provisions of the present amended or substituted article and clause (1) of article 289 are the same. Supposing we have to provide for the appointment of a federal Commission, it cannot be done by the Central Government which is an Executive Authority. It has

to be done by the President. Then with regard to clause (2) the Drafting Committee thought that with respect to appointment of a Commission for the province it will be equally independent if that appointment was made not by the Government of the day but by the Governor of the State. At the time of the Draft the idea was that there should be an elected Governor. Now at present we have no elected Governor but now we have provided for a Governor who will be nominated by the President. So virtually the appointment of the Commission to be made by the nominated Governor will be in the hands of the President himself. The Commission appointed by the President for the purpose of elections to the federal legislature can be independent. But I do not see why in the provinces the Commission appointed by the Governor should not be equally independent. His official existence depends entirely on the President. In that respect, if it was thought necessary, the power could be given to the President himself to make the appointment of a Provincial Commissioner. But is it necessary that we should go back and have one Central Commission only with all the inconveniences that it is likely to cause? Then clause (3) removes the regional Commission altogether. There is only one Central Commission and the regional Commissioners are to assist that Election Commission. Is it desirable that one Commission sitting in one corner of India should be entrusted to do this work, and the regional Commissioners are merely to assist? I see absolutely no reason why this should be done. Then I find that after the Constitution was presented to us, a note was given to us towards the middle of May 1949 which indicates to us the reasons for changing what we decided on 29th July 1947. Let us analyse the reasons given. The first reason is that this is a matter which requires careful consideration and that it has been hinted in a section of the press that in some provinces the Governments are helping the registration of their own supporters. This is a point which was adverted to by Dr. Ambedkar also. Sir, there will be no one in this House who will not condemn such practices aimed at the denying the people the franchise which this Constitution gives them. But then what is the remedy for it? The proper remedy would be to take action against people who resort to such practices. The Central Government has full power and authority to see that nothing of the kind is done. This is in the interests of democracy. Then we are told that it is hinted in a certain section of the press that certain provincial Governments are taking certain irregular actions. Sir, if it is merely a hint why should we be upset? Perhaps Dr. Ambedkar knows better how things are happening in the provinces. He may have information in the Cabinet. If this is so, it is better to take action against people who trifle with democracy on linguistic, racial or other considerations.

Another reason given is that in the bye-elections to the provincial assemblies it has been alleged by members of the losing party that provincial Governments take undue advantage of their position. That is bad. But I fail to understand how a change in the procedure as contemplated is going to bring about better state of affairs. If there are such people in Government they are unfit to be there in any democratic Government. If one or two instances of this kind have come to the notice the remedy is not to put down something in the Constitution which is not found anywhere else. These two reasons given in the report do not appeal to me.

Then it is said that the idea occurred of the Drafting Committee to change their draft of article 289 by a reference to what has been done in the Canadian Election Act of 1920. Sir, I find that Act refers only to the appointment of a Chief Commissioner for the purpose of election to the Dominion Parliament. At page 380 of his latest book on the Canadian Government, Dr. Dawson says that the appointment of a Chief Commissioner or Chief Electoral

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Officer was made to provide for an independent official to supervise the Dominion Elections. It is only for the Federal election that the Chief Officer functions. For that there is no objection here also. There is already article 289 (a) . It is rather strange that even for provincial elections such an appointment should be considered necessary by the Central Authority.

To my mind the reason for all these changes is to be found in the fact that we are now trying gradually to move away from the idea of federation. On account of certain happenings in the provinces, on account of certain internal situations and external factors which are threatening us we are trying more and more to reverse the process of having a federation with which we started our business here. The first resolution of this Assembly knows as the famous Objectives Resolution which we passed was to form a Union of autonomous units together with residuary powers. We are moving away from that position. We started with the idea of a Union or Federation of autonomous units. It may or may not be necessary now, to have such autonomous units. We have changed the name of a provinces into States. Then came the great tragedy of partition which gave a swing in favour of the unitary type of Government. It is due to this sort of thing that we are now trying to make everything, as we think safe. We are clinging to the form of federation but we are changing it from within in substance. It is this process which has resulted in the amendment now under consideration. The land-marks in this process are that we changed from the elected Governors into nominated Governors and we are wanting to have for the Centre power to legislate in respect of subjects given to the provinces. Now we have this proposal that in matters of election, even to provincial legislatures, the Centre alone should have power. In fact, this amendment No. 99 means that we are abolishing all provincial commissioners for elections, for what reason I do not know. If a Commission is appointed by the President for the Centre, why should not the same President appoint also election commissioners for the different provinces? Always why should we interfere with the provincial elections and thwart the process of democracy? I submit that this means that we are creating more and more points of difference between the Provinces and the Centre. After all, is this necessary? If you do not trust your Governor as he likely to be influenced by the provincial Government, let the President appoint provincial commissioners or regional commissioners for elections. Why do you suppose that in the provinces there will be no purity of administration and that democratic practices will not be followed? It is not proper. I think a provision like this will only mean that we are getting away from the principles of federation and our distrust of even the nominated Governors is there. We are going to have adult franchise and for the transition period certain exceptional provisions may be necessary. But that need not lead us into framing a provision of this nature. After all in elections on the basis of adult franchise, whether for the Centre or for the province, the same type of people are likely to be returned and so I do not understand why there should be this distinction between the two. This can only result in creating a spirit of hostility which cannot and should not exist. Sir, I admit that the present conditions justify that there shall be a strong Central Government, but what is the idea of the Central Government being strong? Is it the idea that the Central Government should be so strong that the provinces will be deprived of their legitimate powers? It has become the fashion these days to say that if anybody talks of the provinces, it is something anti-national. This is entirely wrong.

Mr. President : Are you likely to take much time?

Shri H. V. Pataskar : Yes, Sir.

Mr. President : Then you can continue tomorrow.

Mr. Tajamul Husain (Bihar: Muslim) : Before you adjourn the Assembly, since we have been reading in the papers that the Assembly. . . . . .

Mr. President : If the honourable Members had waited, I was myself going to make a statement before adjourning.

We shall continue the discussion of this article tomorrow. Before we adjourn today, I desire to make one statement with regard to the programme of work. We have already dealt with nearly three-fourth of the Constitution. These are certain articles and certain Parts which have not yet been dealt with, but with regard to which we are not in a position today to take up the discussion. For example, the position of the Indian State in some cases is not quite clear yet. Then, there is the question of the distribution of revenues between the Union and the Units. This requires consultation between the Central Government and the provincial Governments. We are not in a position to have that Conference immediately for various reasons, one of which is that the Finance Minister has to be away from India for some time in connection with urgent national work. It has therefore become necessary to adjourn discussion of the remaining articles of the Constitution for some time so that within the time available these consultations may be held and the articles may be taken up for consideration at a time when everybody is ready to deal with them finally. It has therefore been proposed that we adjourn discussion of the other articles of the Constitution after tomorrow and we meet again, say, about five weeks later, and then we pass the remaining articles of the Constitution in the second reading. When that will be finished, some time will be taken up in putting the various articles in their proper places, looking into the various articles from the drafting point of view and also considering whether any lacuna has been left or whether any changes are required when the whole picture is before the Drafting Committee. That will take some time and when that has been done, we shall meet for the third reading which, I hope, will be a short session because the whole thing will have been thrashed out in the second reading state and we shall be able to get through the third reading pretty rapidly. That is the programme as I envisage it, and therefore I desire Members to note that we shall be adjourning after tomorrow for about five weeks. I shall announce the exact date of the meeting later on.

Shri R. K. Sidhwa : Any idea of the date?

Mr. President : As I said, I shall announce the exact date later on.

Mr. Tajamul Husain : Under the rules, the President has no power to adjourn the House for more than three days.

Shri L. Krishnaswami Bharathi (Madras: General) : A formal resolution can be moved tomorrow before we adjourn.

Mr. President : When we adjourn, we shall adjourn in accordance with the rules.

We adjourn now till Eight O'clock tomorrow morning.

The Assembly then adjourned till Eight of the Clock on Thursday, the 16th June 1949.