

CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 15th 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

[Shri H. V. Kamath]

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 foregoing 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 Consitution 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