

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

[Shri H. V. Kamath]

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