

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

[Shri Mahavir Tyagi]

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

[Shri H. V. Kamath]

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.
