

**Article 203**

**The Honourable Dr. B. R. Ambedkar :** Sir, I wish that article 203 be held over.

**Mr. President :** Article 203 is held over.

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**Article 203-A**

(Amendment No. 2673 was not moved.)

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**Article 204**

**Prof. K. T. Shah :** Mr. President, Sir, I beg to move:

“That in article 204, for the word ‘shall’ the word ‘may’ be substituted.”

The amended article would read thus:

“If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution, it may withdraw the case to itself dispose of the same.

*Explanation.*—In this article, ‘High Court’ includes a court of final jurisdiction in a State for the time being specified in Part III of the First Schedule with regard to the case so pending.

**Mr. President :** It may withdraw the case to itself.

**Prof. K. T. Shah :** I do not wish that the withdrawal of the case must be compulsory or mandatory, but some discretion must be left, and the case may be withdrawn if the judge so decides, but not necessarily, as this article requires him to do as a clear compulsion on the judge to ask the case to be withdrawn.

There may be points of law, or even other issues involved; and in the absence of specific reasons or grounds on which you make it mandatory for him to withdraw the case, I think it would as well to make it permissive, and allow the case to be withdrawn if the judge so chooses, but not as a matter of necessary obligation. Had there been grounds stated, *viz.*, in the following events or in the case of any political or other factor being involved, then it would be compulsory to so withdraw, I would not have objected to the article as it stands. The substitution of “may” for “shall” will really help the courts of justice rather than hinder them. I therefore commend my amendment for the acceptance of the House.

**Mr. Mohd. Tahir :** Sir, I beg to move:

“That in article 204, after the words ‘it shall’ the words ‘after taking the opinion of such court in writing’ be inserted.”

If the amendment is accepted, the clause will read thus :

“If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution, it shall after taking the opinion of such court in writing, withdraw the case to itself and dispose of the same.

I have moved this amendment, Sir, because if any question of interpretation of this Constitution arises in any subordinate court, there can be no objection to such a matter being disposed of by the High Court after the case is withdrawn if such questions to arise in subordinate courts. I think it is better that the opinion of such court in writing should be obtained so far as the interpretation of such matter is involved in that court, because in many cases we find that the High Courts do agree with the judgments of the subordinate courts. Therefore, Sir, it does not mean that the subordinate courts are not in a position to

give their opinion so far as the constitutional matter is concerned, because they are not given this power to dispose of such matter the case has to be withdrawn by the High Court and when they are going to withdraw such matters, it is not only desirable but reasonable that the opinion of such subordinate courts where the questions of interpretation of constitution do arise should be taken before it is disposed of by the High Courts. With these few words, Sir, I move my amendment.

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

“That the explanation to article 204 be omitted.”

Sir, it is unnecessary.

**Dr. Bakshi Tek Chand :** Sir, I wish to say a few words in opposing the amendments which have been moved by Prof. K.T. Shah and Mr. Mohd. Tahir. The Amendment of Prof. Shah is to the effect that the word “may” be substituted for the word “shall” in the first part of article 204. If this amendment is accepted, then the whole of this article 204 will become unnecessary, as both under Section 24 of the Civil Procedure Code, and 526 of the Criminal Procedure Code the High Court has the power to withdraw in its discretion, any civil or criminal cases pending in any court subordinate to itself. The reason for inserting the word “shall” in article 204 is to make it obligatory on the High Court to withdraw the case, provided it is satisfied that the case pending in the Subordinate court involves a substantial question of law as to the interpretation of this Constitution. If the High Court is satisfied that such a question is involved, it shall withdraw the case to itself and dispose of the same. It is very necessary that all questions relating to the interpretation of the Constitution should be decided as early as possible. A case in a subordinate court may last for a year or two or more. Then, there may be an appeal to the District Judge and the case may come in the first or second appeal to the High Court after a very long time. In the meantime, the important question of constitutional law will remain unsettled. This will be very undesirable, indeed.

The second reason in this. There should be an authoritative decision on these questions by the highest court in the province at the earliest possible date. Otherwise, a particular point may be involved in a case pending in one district; the same point may be involved in three or four other cases pending in other districts and there may be contradictory decisions by these various subordinate courts, and this will result in great confusion. In order to ensure a speedy decision of important constitutional questions, and at the same time to see that an authoritative decision is given on those points by the highest court in the province, it is necessary that the word ‘shall’ should remain. It was with this object that this special provision is sought to be incorporated in the Constitution Questions relating to the interpretation of the Constitution are likely to arise soon after the Constitution comes into force. For that reason alone it is necessary that speedy and authoritative decisions should be given. From such a decision of the High Court, an appeal may, if necessary, be taken to the Supreme Court and the matter finally decided for the whole country. It is therefore, desirable to make a provision with regard to this in the Constitution.

The other amendment moved by Mr. Tahir, is that the opinion of the court in which the case is pending should be taken in writing. I do not know what useful purpose will be served by taking the opinion of the subordinate court on these points. It should be borne in mind that the article does not lay down that every case in which a question of law as to the interpretation of the Constitution is involved will automatically be transferred to the High Court. There are two very important conditions which must be fulfilled. One is that the question involved must be a substantial question of law as to the interpretation of this Constitution, and not every question involving such interpretation, even if it

[Dr. Bakshi Tek Chand]

arises incidentally or collaterally. It should be a question of importance which goes to the very root of the case. Even then, it is not necessary that the case will be transferred to the High Court. The words of the article are that "the High Court is satisfied." The High Court shall examine the matter when it comes to its notice. If the Judges are satisfied that the question involved is a substantial question of law as to the interpretation of this Constitution, only in that case, will the case be withdrawn to the file of the High Court. Why it is necessary in such a case to obtain the opinion of the Subordinate Judge before coming to the High Court? This amendment will have the effect of delaying the decision of the point and of holding up the proceedings unnecessarily. I submit, therefore, that the article as drafted should be accepted with the amendment moved by Dr. Ambedkar, that the Explanation be deleted. That amendment is necessitated because, the explanation originally made this article applicable only to the provincial High Courts. Now, as in the new setup, the High Courts of the Indian States are being brought in line with the provincial High Courts, the Explanation has become unnecessary. The article, without the Explanation, contains a very important and salutary provision and should be accepted.

**Shri L. Krishnaswami Bharathi :** (Madras: General): Mr. President, Sir, I have only a small suggestion to make to Dr. Ambedkar. This article is very necessary. When a High Court is satisfied that a substantial question of law as to the interpretation of this Constitution is involved, it should certainly withdraw that case and decide it. But as the article reads, the High Court shall withdraw the case to itself and dispose of the same. It is for the Drafting Committee to consider whether it is necessary to withdraw the whole case and dispose the same. There may be many cases in the Munsiff's courts where this question may be raised. In my view, it is not quite necessary for the High Court to withdraw the whole case and try the case itself. It is quite enough that it may decide this question relating to the interpretation of the Constitution and then refer it back to the particular court to dispose of the case in conformity with the decision given regarding the interpretation of the Constitution. We have made a similar provision with reference to the Supreme Court. The Supreme Court is not bound, whenever there is mention of a question of interpretation of the Constitution, to refer it to a Full Bench of five Judges. If they are satisfied that it is a substantial question, they may refer it to a Fuller Court, get their opinion and thereafter the original court will decide the case in conformity with the opinion so given. Therefore, I think it may quite suffice if we say, it shall withdraw the question to itself. The High Court need not to be bound to dispose of the case. It may be very difficult for the High Court to be disposing of all manner of cases. For instance, in an injunction suit, the question may arise. It is not necessary for the High Court to try the whole case. I would therefore wish that the High Court may only withdraw the question relating to the interpretation of the Constitution and then refer it back to the original court to dispose of the case in conformity with the opinion so given. I leave it to Dr. Ambedkar to decide this matter.

**Mr. Tajamul Husain :** Mr. President, Sir, the High Court has got an inherent power to call for the record of any case and dispose of it. Article 204 says that the High Court shall, if there is any substantial question of law as to the interpretation of this Constitution involved in the case, call for record of the case and dispose of the case. My honourable Friend, Prof. Shah, wants that instead of the word 'shall' it should be 'may'. If you want to have the word 'may', the inherent power is already there and according to the inherent power, if there is a substantial question of law, or no point of law at all, it can call for the record and dispose of the case. Therefore, the word 'may' does not

help us at all. This point has been dealt with very thoroughly by my honourable Friend Dr. Bakshi Tek Chand and I do not wish to repeat the arguments. The only thing that I wish to say is this. Suppose a substantial question of law is involved, according to Professor Shah, the High Court may call for the record or it may not. It is not incumbent on the High Court to call for the record. Suppose, the High Court does not call for the record, look at the waste of time. By the time a case is decided in the subordinate court and goes to the High Court, it may take three or four years. Also look at the amount of expenses that will be incurred in the lower court as well as in the appellate court. Apart from that, a very important point of law will be pending and nobody will know what the decision is going to be. The sooner a substantial question of law is decided by the High Court, the better it is. Therefore, I oppose the amendment moved by Professor Shah.

As regards the amendment moved by Mr. Mohd. Tahir, he says that the opinion of the subordinate court should be taken. It always happens that in every case that the High Court calls for record, it takes the opinion of the lower court. It is absolutely unnecessary and redundant to have these words here. With these words, I oppose this amendment also.

The amendment moved by Dr. Ambedkar is perfectly correct. I support that amendment.

**Mr. President :** I want to dispose of this article before we rise. It is already twelve.

**The Honourable Dr. B. R. Ambedkar :** I am afraid I have to go to a Cabinet Meeting at 12 o'clock.

**Mr. President :** Then I do not think there is much to be said either against or for the amendment. All that could be said has been said. No more speeches.

**The Honourable Dr. B. R. Ambedkar :** With regard to the observations made by my Friend Mr. Bharathi . . .

**Shri H. V. Kamath :** Sir, you have called upon me to speak, I shall not take more than 2 or 3 minutes. Shall I speak now to tomorrow?

**Mr. President :** Tomorrow.

The House now stands adjourned till 8 o'clock tomorrow morning.

The Assembly then adjourned till Eight of the Clock on Wednesday the 8th June 1949.

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