

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.”

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.

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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 extend 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