

Article 274

Mr. President : Article 274 is now for discussion.

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

“That in clause (1) of article 274, for the words ‘Government of India’, in the second place where they occur, the words ‘Union of India’ be substituted.”

Sir, with your permission I will also move my other amendments to this article now.

I move:

“That in sub-clause (a) of clause (2) of article 274, for the words ‘Government of India’ the words ‘Union of India’ be substituted.”

I move:

“That with reference to amendment No. 2980 of the List of Amendments, in clause (1) of article 274, after the word and figure ‘Part I’ the words and figures ‘or Part III’ be inserted.”

I move:

“That with reference to amendment Nos. 2980 and 2981 of the List of Amendments, in clause (1) of article 274, for the words ‘by the Legislature’ the words ‘of the Legislature’ be substituted.”

I move:

“That with reference to amendment No. 204 above, in clause (1) of article 274, after the words ‘corresponding Provinces’ the words ‘or the corresponding Indian States’ be inserted.”

I move:

“That with reference to amendment No. 206 above, in sub-clause (2) of article 274—

- (i) after the words ‘a Province’, the words ‘or an Indian State’ be inserted; and
- (ii) after the words ‘the Province’ the words ‘or the Indian State’ be inserted.”

Shri Jaspat Roy Kapoor (United Provinces : General) : I am not moving my amendment Nos. 2981 and 2984. They may well be referred to the Drafting Committee for consideration.

(Amendment No. 2982 was not moved.)

Mr. President : Does any one wish to speak on this article?

Shri H. V. Kamath : Mr. President, amendment No. 2980 seeks to substitute the words ‘Union of India’ for the words “Government of India” so far as suing or being sued is concerned. I do not know exactly what is the change that is sought to be effected by the substitution. Article 270 refers to the Government of India as being the successor Government to the Dominion of India. When I suggested that this might be changed to either “Union of India” or “Republic of India”, that was not accepted by the House. So under article 270 we recognise the Government of India as succeeding the Dominion of India so far as assets, liabilities and obligations are concerned. But when we come to article 274 we are told that for the purpose of suing or being sued it will not be the Government of India but the Union of India. So long as the Government of India Act was in force, whenever the Indian Government was sued or had to sue it was the Secretary of State for India that came into the picture. I do not know exactly why a suit may be filed against the Union and not against the Government of India. After all, what is the Union of India? Article 2 tells us that India shall be a Union of States. In law what is sued or may be sued is the whole body, the whole corporate body of the Union Government. The Union as such in law is not a corporation which may sue or

be sued. It is only the Union Government that may sue or be sued. In the light of article 1, if we want to be precise and exact so far as law is concerned, we should state in this article “the Government of the Indian Union”. As it is, however the sense is quite clear and therefore it will be wise to retain the phrase “the Government of India” instead of “the Union of India” as suggested in amendment No. 2980.

As regards the other amendments moved by Dr. Ambedkar, there are certain points which are obscure. If Dr. Ambedkar will turn to article 270 he will see that it refers to Governors’ provinces. In this article we refer to provinces. I think this is rather incorrect. So far as legal terminology is concerned, I think the provinces must be referred to as Governors’ provinces, not merely as provinces. If we turn to the First Schedule, Part I, the provinces are referred to as Governors’ provinces.

Then, Sir, about clause (2) of this article. The amendment in relation to this clause is No. 207. We do not know exactly what picture will emerge before us at the time of the commencement of this Constitution. Sub-clause (b) of clause (2) refers to Governors’ provinces and, by reason of this amendment of Dr. Ambedkar, to Indian States as well. It is purely a hypothetical case, but if for instance as regards an Indian State which is an integral part of the Indian Union at the time this Constitution comes into being, some legal proceedings are pending to which this Indian State is a party. Suppose subsequently Parliament by law, under article 3 or by some other means, provides for the merger of this State with some province. According to sub-clause (b) the effect will be that the corresponding Indian State shall be substituted, but what will happen if that State disappears, if it is merged into an adjoining province? There is no such corresponding State at all left.

All these things are obscure at this stage and that why I feel that the consideration of this Chapter, when there are so many obscure points of which we have not got a clear picture, may very wisely be held over till the entire picture comes before our eyes and the relationship between the various States and the Union is clarified. But some articles have already been moved and adopted by this House. I submit that this article has got some obscure points and I hope Dr. Ambedkar or any of his colleagues will come before the House to clarify these points before we adopt this article.

The Honourable Shri K. Santhanam : Sir, I have just a single point to make. In 274 (1) the words “enacted by virtue of the powers conferred by this Constitution” are wholly superfluous and meaningless because neither the Parliament nor the Legislature of any State can act except by virtue of the powers conferred by this Constitution. Therefore I suggest that these words may be dropped.

The Honourable Dr. B. R. Ambedkar : Sir, perhaps it might be desirable if I read to the House how the article would stand if the various amendments which I have moved were incorporated in the article. The article would read thus:

“The Government of India may sue or be sued in the name of the Union of India, and the Government of a State for the time being specified in Part I or Part III of the First Schedule may sue or be sued in the name of the State and may, subject to any provisions which may be made by Act of Parliament or by the Legislature of such State, enacted by virtue of the powers conferred by this Constitution, sue or be sued in relation to their respective spheres in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.

(2) If at the date of commencement of this Constitution—

- (a) any legal proceedings are pending to which the Dominion of India is a party, the Union of India—”

[The Honourable Dr. B. R. Ambedkar]

that is the new thing—

“shall be deemed to be substituted for the Dominion in those Proceedings; and

- (b) any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the province or the Indian State in those proceedings.”

Now, this article, as it will be seen, merely prescribes the way in which suits and proceedings shall be started. This has no other significance at all. The original wording was that it shall be sued in the name of the Government of India. Obviously the Government of India, that is to say, the executive government, is a fleeting body, being there at one time and then disappearing and some other people coming in and taking charge of the executive.

Shri H. V. Kamath : The Government is not fleeting; the personnel of the Government may be fleeting.

The Honourable Dr. B. R. Ambedkar : There is a difference between the Government of India and the Union of India. The Government of India is not a legal entity; the Union of India is a legal entity, a sovereign body which possesses rights and obligations and therefore it is only right that any suit brought by or against the Central Government should be in the name of the Union or against the Union.

Now, with regard to the term “corresponding States” some difficulty was expressed. It may no doubt be quite difficult to say which State corresponds to the old State. In order to meet this difficulty, provision has been made in article 303 (1) (g) , which you will find on page 145 of the Draft Constitution, where it has been provided that a corresponding Province or corresponding State means in cases of doubt such Province or State as may be determined by the President to be the corresponding Province or, as the case may be, the corresponding State for the particular purpose in question. Therefore this difficulty—since the exact equivalent of an Old Province or State is difficult to judge as there are bound to be some variations as to territory and so on—can be solved only by giving power to the President to determine which new particular State corresponds to which particular Old State. So that provision has been made.

Sub-clause (2) deals with pending proceedings and all that Sub-clause (2) suggests is this: that when any proceedings are pending, where the entities to sue or to be sued are different from what we are providing in sub-clause (1) , the Union of India or the corresponding State shall be inserted in the old proceedings, so that the States may be sued in accordance with 274 (1) . With regard to the objection taken by my honourable Friend, Mr. Santhanam that the words “enacted by virtue of powers conferred by this Constitution” as being superfluous, all I can say is I disagree with him and I think these are very necessary.

Mr. President : The question is:

“That in clause (1) of article 274, for the words ‘Government of India’, in the second place where they occur, the words ‘Union of India’ be substituted. “

The amendment was adopted.

Mr. President : The question is:

“That in sub-clause (a) of clause (2) of article 274, for the words ‘Government of India’ the words ‘Union of India’ be substituted. ”

The amendment was adopted.

Mr. President : The question is:

“That with reference to amendment No. 2980 of the List of Amendments, in clause (1) of article 274, 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 Nos. 2980 and 2981 of the List of Amendments, in clause (1) of article 274, for the words ‘by the Legislature’ the words ‘of the Legislature’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That with reference to amendment No. 204 above, in clause (1) of article 274, after the words ‘corresponding provinces’ the words ‘or the corresponding Indian States’ be inserted.”

The amendment was adopted.

Mr. President : The question is:

“That with reference to amendment No. 206 above, in sub-clause (b) of clause (2) of article 274—

- (i) after the words ‘a Province’ the words ‘or an Indian State’ be inserted; and
- (ii) after the words ‘the Province’ the words ‘or the Indian State’ be inserted.”

The amendment was adopted.

Mr. President : the question is:

“That article 274, as amended, stand part of the Constitution.”

The motion was adopted.

Article 274, as amended, was added to the Constitution.

New Article 274-A

The Honourable Dr. B. R. Ambedkar : Sir, I would like this article to be held over.

Mr. President : Then there is a long amendment, a new part to be added by Mr. Sidhva.

Shri T. T. Krishnamachari : May I suggest that the House may take up Part XIII—the election chapter, article 289 and onwards as put in the Order Paper?

Shri R. K. Sidhva : Sir, this new article which I seek to move relates to the delimitation in local areas, urban and rural of the entire territory of India.

The Honourable Dr. B. R. Ambedkar : This is to be held over.

Shri R. K. Sidhva : Therefore, Sir, with your permission, I shall move it when that article comes in.

Article 289

Mr. President : We shall now take up Part XIII—article 289.

Shri T. T. Krishnamachari : May I suggest that amendment No. 99 may be taken up as it substantially replaces the whole article? All the other amendments may be discussed thereafter.