

Article 203

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

Mr. President : Article 203 is held over.

Article 203-A

(Amendment No. 2673 was not moved.)

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that the withdrawal of the case must be compulsory or mandatory, but some discretion must be left, and the case may be withdrawn if the judge so decides, but not necessarily, as this article requires him to do as a clear compulsion on the judge to ask the case to be withdrawn.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it mandatory for him to withdraw the case, I think it would as well to make it permissive, and allow the case to be withdrawn if the judge so chooses, but not as a matter of necessary obligation.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