

Mr. President : Then there is the amendment moved by Shri Muniswamy Pillay.

Shri V. I. Muniswamy Pillay : I would like to withdraw that amendment.

The amendment was by leave of the Assembly, withdrawn.

Mr. President : Then I Put the article as moved by Dr. Ambedkar. The question is :

“That proposed article 282 C stand part of the Constitution.”

The motion was adopted.

Article 282 C was added to the Constitution.

Article 283

Mr. President : Then we come to article 283. Dr. Ambedkar.

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

“That for amendment No. 3037 of the List of Amendments (Volume II), the following be substituted :-

“That for article 283 the following article be substituted:—

283. Until other provisions is made in this behalf under this Constitution, all the laws in force immediately, before the commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of this Constitution, as an All-India service or as service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution’.”	Transitional provisions.
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This is a purely transitional provision.

Mr. President : There is amendment No. 12 of Shri Jaspat Roy Kapoor. That is not moved.

No. 252 of Mr. Naziruddin Ahmad is purely of a drafting nature.

No. 253 of Pandit Thakur Das Bhargava is not moved.

There is no amendment moved, then. Does anyone wish to say anything about this article?

(No Member rose to speak.)

Then I put article 283.

The question is :

“That proposed article 283 stand part of the Constitution.”

The motion was adopted.

Article 283 was added to the Constitution.

Article 302

Mr. President : Then we take up article 302. Dr. Ambedkar.

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

“That in clause (1) of article 302 after the word ‘Governor’ the words ‘or Ruler’ be inserted.”

[The Honourable Dr. B. R. Ambedkar]

“That in the second proviso to clause (1) of article 302, for the words and figures bring against the Government of India or the Government of a State such proceedings as are mentioned in Chapter III of Part X of this Constitution, the words ‘bring appropriate proceedings against the Government of India or the Government of a State’ be substituted.”

“That in clause (2) of article 302, after the word ‘Governor’ the word ‘Ruler’ be inserted.”

“That in clause (3) of article 302, after the word ‘Governor’ the words ‘or Ruler’ be inserted.”

“That in clause (4) of article 302—

- (a) after the word ‘Governor’ in the first place where it occurs, the words ‘or Ruler’ be inserted;
- (b) for the word ‘Governor’ in the second place where it occurs, the words ‘as Governor or Ruler’ be substituted; and
- (c) after the word ‘Governor’ in the third place where it occurs, the words ‘or the Ruler’ be inserted.”

An Honourable Member : What about 13, Sir

Mr. President : It is not in the Order Paper. It is held over.

The Honourable Dr. B. R. Ambedkar: Amendments 14, 16, 17 and 18 are purely drafting amendments. The only amendment perhaps which requires an explanation is No. 15. The reason for bringing in this amendment is that reference to Chapter II really means reference to article 274. Article 274 deals with the right of suit against Government and that article is divided into two parts. One part deals with the right of suit as exists on the date of the commencement of the Constitution. The other part is regarding the power of Parliament to make further provision with regard to the right of suit against Government. If the words as there remain, it would only mean that the right of suit against Government would be in terms of 274 as it would be on the date of commencement of the Act. The substitution of the words “appropriate proceedings” is intended to cover not only the right of suit as it would exist on the date of commencement of the Act, but also as to subsequent proceedings which Parliament may by law provide against the Government of the day. That is the reason for this amendment. I might also mention to the House that I find that if this amendment is carried, I shall also have to bring in a small consequential amendment in article 202 where there has been sort of omission.

Mr. President : There are several amendments printed in volume II of the printed amendments. I do not know if the Honourable Members would like to move them. 3203—Mr. Kamath.

Shri H. V. Kamath : Mr. President, Sir, I move amendment 3203. I do not move 3204, 3205 and 3206 as they do not arise in view of the changes in the article. Amendment 3203 is as follows :

“That in clause (1) of article 302, for the word ‘duties’ the word ‘functions’ substituted.”

I feel that in the context of this article the word “functions” expresses the meaning intended, far better than the word “duties”. We always refer to the functions, and powers, and not duties of an officer or dignitary.

With regard to clause (2). I have, a slight difficulty. Clause (2). says that no criminal proceedings whatsoever shall be instituted or continued against the President or the Governor or the Ruler of a State in any court during his term of office. The doubt that has arisen in my mind is as to whether the President or the Governor or the Ruler has no liability for any criminal act committed

by him during his term of office. Suppose for instance he commits a crime God forbid that the President or the Governor or the Ruler of a State should be guilty of criminal conduct, but human nature is fallible-so if he unfortunately commits a criminal act, does this clause mean that no proceedings can be instituted against him during the whole prescribed term, or whether it means while he is in office only, that is to say, whether as soon as a prima facie case is made against him, the President should resign his office irrespective of the period put in by him; whether in the case of a Governor or a Ruler committing a criminal act, the President ought to remove him from office. The phrase "during his term of office" is rather ambiguous. I hope Dr. Ambedkar or Mr. Krishnamachari whoever replies on behalf of the Drafting Committee; will throw some light on this matter and clarify the content of clause (2) of this article.

(Amendment Nos. 3207, 3208, 3209 and 3210, 19 and 256 were not moved.)

Mr. President : So there is only one amendment moved by Mr. Kamath. Does Mr. Ambedkar wish to say anything on that?

Shri T. T. Krishnamachari : No, Sir. Sir Alladi Krishnaswami Ayyar wishes to say something.

Shri Alladi Krishnaswami Ayyar (Madras : General) : Mr. President, after listening to the reasons which were given by the Honourable Dr. Ambedkar in regard to the amendment concerning the proviso to article 302, 1 should like to say a few words. In other parts of the Constitution we have made a provision guaranteeing fundamental rights. The High Court also is invested with the jurisdiction to ensure the necessary writs in regards to fundamental rights. When once the rights are guaranteed, it is only fit and proper that there must be the proper remedy against the encroachment of those rights. That is why we have provided that the High Court can exercise, all the jurisdiction in respect of the necessary remedies for the enforcement of fundamental rights. The second proviso, as it stands, reads :

"Provided further that nothing in this clause shall be construed as restricting the right of any person to bring against the Government of India or the Government of a State such proceedings as are mentioned in Chapter III of Part X of this Constitution."

That could only refer to suits as against the Secretary of State or against the Government referred to in Chapter 3, part X. There may be the danger of the proviso being so construed as to negative the enforcement of fundamental rights guaranteed in other parts of the Constitution. That is why the Honourable Dr. Ambedkar has brought forward the 'amendment before the, House so that effective remedies may be secured for the enforcement of the fundamental rights. It is all the more necessary because in the corresponding section 202 of the Government of India Act, it was held by the High Court that no sort of writ can lie against the Government, and therefore in order to make it quite clear that the restrictions imposed on the High Court in section 202 of the earlier Government of India Act no longer applied, this amendment is introduced. Therefore, if in the exercise of any statutory or other function, Government out-steps the limits of its power, it will be open for the aggrieved person to seek the necessary remedy. As the Honourable Dr. Ambedkar has already pointed out certain necessary changes might have to be made in other parts of the Constitution. The idea is to get over the restriction that has been placed by the High Courts in regard to the issuing of writs against the government. When the Government exercises quasi judicial or statutory functions it must be open to the High Court to issue the necessary writs. Even under the Act of 1935 the Madras High Court has taken the view that no such writ lies It is to get over this that the proviso is sought to be modified. There is no need to apprehend that the story of the conflict between the Governor-General

[Shri Alladi Krishnaswami Ayyar]

and the Supreme Court in those, days after the regulating Act will be repeated. That need not now be anticipated and this right I have no doubt will be wisely exercised by the High Court in the enforcement of fundamental rights guaranteed under the Constitution.

Mr. President : Would you like to say anything about Mr. Kamath's amendment ?

Shri T. T. Krishnanachari : We have been attempting to explain to him what it really means.

Mr. President : I will put Mr. Kamath's amendment No. 3203 to the vote.

Shri. H. V. Kamath : Is there no reply to my difficulty about the term of office ?

Mr. President : Mr. Krishnamachari has told the House that the thing has been explained to you.

Shri H. V. Kamath : No, it has not been explained.

Mr. President : You may not accept the explanation.

Shri H. V. Kamath : No, reasons have been given. If he does not wish to give reasons, I shall not force him. If he is not able to answer my question, then that is different.

Shri T. T. Krishnamachari : I am advised that the wording had better remain as it is.

Mr. President : Dr. Ambedkar, there is an amendment moved by Mr. Kamath that in clause (1) of article 302, for the word "duties" the word "functions" be substituted.

The Honourable Dr. B. R. Ambedkar : The word "functions" is a large word and it includes both powers and duties. We have said powers and duties which include, all the functions that we can have. It is unnecessary to have any kind of amendment like that.

Mr. President : The question is:

"That in clause (1) of article 302 for the word 'duties' the word 'functions' be substituted."

The amendment was negatived.

Mr. President : That is the only amendment that has been moved. I shall now put the amendment put by Dr. Ambedkar.

Shri T. T. Krishnamachari : The whole lot can be put together.

Mr. President : If the Members want that, I shall put them separately.

Very well. I shall put them together. The question is :

"(1) That in clause (1) of article. 302. after the word 'Governor' the words 'or Ruler' be inserted."

"(1) 'That in clause (1) of article 302, after the word 'Governor' the words 'or Ruler' 'bring against the Government of India or the Government of a State such proceedings as are mentioned in Chapter III of Part X of this Constitution' the words 'bring appropriate proceedings against the Government of India or the Government of a State be substituted.'"

(3) That in clause (2) of article 302. after the word 'Governor' the word 'Ruler' be inserted.

(4) That in clause (3) of article 302, the word ‘Governor’ the words ‘or Ruler’ be inserted.

(5) That in clause (4) of article 302—

- (a) after the word ‘Governor’ in the first place where it occurs, the words ‘or Ruler’ be inserted :
- (b) for the word ‘Governor’, in the second place where it occurs, the words “as Governor or Rule” be substituted: and
- (c) after the word ‘Governor’ in the third place where it occurs the words ‘or the Ruler’ be inserted.”

The amendments were adopted.

Mr. President : The question is :

“That article 302, as amended, stand part of the Constitution,”

The motion was adopted.

Article 302, as amended, was added to the Constitution.

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

“That the heading above article 243, and articles 243, 244 and 245 be omitted.”

That might be put, so that the others may be taken, separately. It is an independent thig.

Mr. President : The, question is

“That the heading above article 243, and articles 243, 244 and 245 be omitted.”

The motion was adopted.

The heading above article 243, and articles 243, 244 and 245 were deleted.

PART XA

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

“That after Part X, the following new Part be inserted, namely:—

“Part XA

Trade, Commerce and Intercourse within the territory of of India.

274 A. Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free.
Freedom of trade, commerce and intercourse throughout the territory of India.

274B. Parliament may, by law enacted by virtue of powers conferred by this Constitution, impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest.
Power of Parliament to impose restrictions on trade, commerce and intercourse by law.

274C. (1) Notwithstanding anything contained in article 274B of this Constitution neither Parliament nor the Legislature of a State shall have power to make any law giving or authorising the giving of preference to one State over another or making any discrimination or authorising the making of any discrimination between one State and another by virtue of any entry relating to trade or commerce in any of the Lists in the Seventh Schedule.
Restrictions of the legislative powers of the Union and of the states with regard to the trade and commerce.