

In showing the necessity why it is desirable in my judgment to confer appellate criminal jurisdiction upon (be Supreme Court as specified in the sub-clauses of article 111-A, I propose to separate sub-clauses (a) and (b) from sub-clause (c) because they stand on a different footing. As the House knows, (a) and (b) confine the appellate jurisdiction of the Supreme Court only to those cases where there has been a sentence of death : in no other case the Supreme Court is to have criminal appellate jurisdiction. That is the first point that has to be borne in mind.

I shall state briefly why it is necessary to confer upon the Supreme Court this limited appellate jurisdiction in cases where there has been a sentence of death passed upon an accused person. The House should note that so far as our criminal jurisprudence, as it is enshrined in the Criminal Procedure Code, is concerned, there is one general principle which has been accepted without question and that principle is this that where a man has been condemned to death he should have at least one right of appeal, if not more.

Mr. President: May I just point out one thing? Your amendment does not cover the case of a person whose sentence has been enhanced to a sentence of death.

The Honourable Dr. B. R. Ambedkar : We do not propose to give such a thing. That is the point. With regard to enhancement of the sentence we do not propose to confer criminal jurisdiction of an appellate nature on the Supreme Court. We do it with open eyes and I think everybody ought to know it. That is not the intention. It must be generally accepted that where a man has been condemned to death he should have at least one right of appeal. Starting with that premise and examining the provisions of the Criminal Procedure Code it will be found that there are three cases where this principle is, so to say, violated or not carried into effect. The first case is the case where, for instance, the District Judge acting as a Sessions Judge acquits an accused person; the Government which has been invested with a right of appeal against the acquittal appeals to the High Court, and the High Court in its appellate jurisdiction condemns the man to death. In a case like this no appeal is provided. That is one exception to the premise.

The second case is the case of the Sessions Judge in the High Courts of Bombay, Calcutta and Madras, where sitting in a Sessions Court he acquits a criminal; then the government takes an appeal to the High Court

on its appellate side and the appellate side on hearing the appeal condemns the man to death. There again there is no appeal. Then there is the third case, which is worse, namely, that under section 526 of the Criminal Procedure Code a High Court, in exercising of the powers conferred upon it by that section, withdraws a case to itself and passes a sentence of death. There again there is no appeal.

Mr. Naziruddin Ahmad : There is a right of appeal in such cases.

The Honourable Dr. B. R. Ambedkar : No. No appeal from the High Court.

Mr. Naziruddin Ahmad : Under section 411-A of the Criminal Procedure Code.

The Honourable Dr. B. R. Ambedkar : Section 411-A applies only to the High Courts of Calcutta, Bombay and Madras. Even there it does not apply to all cases or to cases where such High Courts have acted under section 506. Section 411-A is confined to appeals from the judgment of High Courts sitting on the original side, in sessions. Therefore, Sir.....*

Pandit Lakshmi Kanta Maitra : Section 526 generally refers to transfer of cases.

The Honourable Dr. B. R. Ambedkar : When a case is transferred and tried by the High Court, there is no right of appeal. It has extraordinary jurisdiction. Therefore these are three flagrant cases where the general principles that a man who has been condemned to death ought to have at least one appeal is not observed. I think, having regard to the enlightened conscience of the modern world and of the Indian people, such a provision ought to be made. The object of sub-clauses (a) and (b) therefore is to provide a right of appeal to a person who has been acquitted in the first instance and has been condemned to death finally by the High Court. I do not think that on grounds of conscience or of humanity there would be anybody who would raise objection to the provisions contained in sub-clauses (a) and (b).

Now I come to sub-clause (c). With regard to this the House will remember that it has today an operative force under the Criminal Procedure Code, section 411, so far as the High Courts of Calcutta, Madras and Bombay are concerned. This right of appeal to the Privy Council on a certificate from the High Court that it is a lit case was conferred by the Legislative Assembly in the year 1943, and very deliberately. We have therefore before us two questions with regard to the

*Dots indicate interruption.

provision contained in section 411 of the criminal Procedure Code. There are two courses open to this House : either to take away this provision altogether or to extend this provision to all the High Courts. It seems to me that if you take away the provisions contained in section 411 which permit an appeal on a certificate from the High Court, you will be deliberately taking away an existing right which has been exercised and enjoyed by people, at any rate, in three different provinces. That seems to me an unnatural proceeding—to take away a judicial right which has already become, so to say, a vested right. The only alternative course therefore is to enlarge the provisions in such a manner that it will apply to all the High Courts. And the course that has been adopted in my amendment is the second course, namely, to extend it to all the High Courts. My Friends who are agitated that this might open the flood-gates of criminal appeals to the Supreme Courts have, I think, forgotten two important considerations. One important consideration is that the power of hearing appeals which is proposed to be conferred on the Supreme Court under sub-clauses (a) and (b) of clause (1) of the new article may vanish any moment that the legislature abolishes the death penalty. There will be no such necessity left for appeals to the Supreme Court if the legislature, thinking of what is being said in other parts of the world with regard to death penalty, and taking into consideration the traditions of this country, abolishes the death penalty; in that case sub-clauses (a) and (b) would ultimately fall into desuetude and the work of the Supreme Court so far as criminal side is concerned will diminish if not vanish.

With regard to sub-clause (c) it will be noticed that it has been confined in very rigid limits by the proviso which goes along with it, namely “Provided that an appeal under sub-clause (c) of this clause shall lie subject to such rules as may from time to time be made by the Supreme Court and to such conditions as the High Court may establish or require.” Therefore, the certificate is not going to be an open process available merely for the asking. It will be subject at both ends to the conditions and limitations laid down by the High Court and the rules made by the Supreme Court. Therefore it will be realised that sub-clause (c) is a very rigid provision. It is not flexible and not as wide as people may think.

Pandit Lakshmi Kanta Maitra : Modified by the proviso.

The Honourable Dr. B. R. Ambedkar: Yes, as modified by the proviso.

Now, I come to clause (2) of my amendment. There you have got the general power given to Parliament to enlarge the criminal jurisdiction of the Supreme Court beyond the three cases laid down in my amendment. There was a point of view that the three cases mentioned in clause (1) of my amendment ought to be enough and that there ought not to be a door kept open for Parliament for enlarging the criminal jurisdiction of the Supreme Court and that sub-clauses (a), (b) and (c) ought to be the final limit of criminal jurisdiction of the High Court. Well, the only answer I could give is this: It is difficult to imagine what circumstances may arise in future. I think it would be better to believe it if a man said that there would be no circumstances arising at all requiring Parliament to confer some kind of criminal appellate jurisdiction upon the Supreme Court. Supposing such a contingency did arise and if the provisions of clause (2) of my new article were not there, what would be the position? The position would be that the Constitution would have to be amended by the procedure we are proposing to lay down in a subsequent part of this Constitution. The question therefore is this: should we made it as hard as that, that the Parliament should also not have the power unless the Constitution is amended, or should we leave the position flexible by enabling Parliament to enact such law leave the time, the circumstances and the choice to the Parliament of the day?

The Honourable Shri K. Santhanam (Madras : General) May I point out that under article 114 Parliament will still have the power to invest the Supreme Court with jurisdiction.

The Honourable Dr. B. R. Ambedkar: I am afraid 114 does not deal with that matter. I have not got the copy with me; otherwise I would have replied. It is only with regard to the Union List.

The Honourable Shri K. Santhanam: It deals with the jurisdiction of the Supreme Court in relation to mailers contained in the Union List.

The Honourable Dr. B. R. Ambedkar: Yes, but supposing they want to enlarge the jurisdiction with regard, for instance, to the Concurrent List, List III, they cannot use article 114.

Now, Sir, I come to some of the observations which were made by my Friend, Mr. Alladi Krishnaswami Ayyar. His observations related mostly to sub-clause (3). His first question was, what is the use of having sub-

clause (3) if the provisions of sub-clause (3) are hedged round by the provisions contained in the proviso which goes with it, viz., rules to be made by the Supreme Court.

Pandit Lakshmi Kanta Maitra : It is sub-clause (c) and not sub-clause (3).

The Honourable Dr. B. R. Ambedkar : I am sorry, it is sub-clause (c). His point is that there is no use of having sub-clause (c) hedged as it is by the provisions laid down in the proviso. The first thing I would like to remind my Friend, Mr. Alladi Krishnaswami Ayyar is this, that the proviso which is attached to sub-clause (c) is word for word the proviso attached to Section 411 of the Criminal Procedure Code and word for word the proviso contained in article 109 of the Civil Procedure Code. My Friend, Mr. Alladi Krishnaswami Ayyar, will remember that we have introduced in the appellate civil jurisdiction of the Supreme Court a clause which is absolutely word for word the same as sub-clause (c) of clause (1) of article 111-A. Now, I should have thought that if there was some residue of good in sub-clause (c) of clause (1) of article 111, hedged as it is with all the limitations as to the rules to be made by the Supreme Court, as a man of commonsense, I should think, that there must be some residue of good left in sub-clause(c) here, notwithstanding the limitations contained in the proviso. My Friend also stated that there is a provision contained in article 112 which confers upon the Supreme Court the right to admit an appeal by special leave, which article is not limited to civil appeal but is a general article which speaks of any cause or matter. His point was that if that is there, why have sub-clause (c) ? My answer to him is again the same. If 112 defines the jurisdiction which the Supreme Court has over the High Courts, if that is there in civil matters, why have sub-clause (c) in clause (1) of Article 111-A ? My answer to him is this : If we can have sub-clause (c) in civil matters, notwithstanding the fact that we have 112, what objection can there be to have sub-clause (c) though we have 112 ? The point to be borne in mind is this that with regard to 112 we have left the Supreme Court with perfect freedom to lay down the conditions on which they will admit appeals. The law does not circumscribe their jurisdiction in the matter.

Shri Alladi Krishnaswami Ayyar : There is a condition in the case of civil appeals.

The Honourable Dr. B. R. Ambedkar : It is true. Now, I do not know how this article 112 will be interpreted by the Supreme Court. We have left it to them to interpret it. They may interpret it in the way in which the Privy Council has interpreted it or they may interpret it in any manner they choose ; either they may put a limited interpretation or they may put a wider interpretation. In case they put a limited interpretation, then I have no doubt about it that sub-clause (c) will have some value. I therefore submit, Sir, that my amendment is such that it meets the exigencies of the cases, satisfies the conscience of some people who object to people being hanged without having any right of appeal. I think it is so worded that the Supreme Court will not administratively or otherwise be overburdened with criminal appeals. I hope my Friends will now withdraw their amendments and accept mine.

Shri C. Subramaniam (Madras : General) : On a point of clarification, as to the implication of the difference of language.....

The Honourable Dr. B. R. Ambedkar : It is too late now.

Mr. President: The Honourable Doctor has not shown in his reply why he makes a distinction between cases in which death sentence has been passed for the first time by the High Court in revision by way of enhancement of sentence and cases in which death sentence is passed in reversal of a judgment of acquittal.

The Honourable Dr. B.R. Ambedkar : The case of an appeal against enhancement of sentence differs from a case of an appeal against acquittal in two respects. When the High Court enhances the sentence against an accused person it is not convicting him for the first time. The accused already stands convicted. In the case of an appeal against acquittal the High Court is reversing the finding of the trial court and convicting the accused. The second point of difference is that in the case of enhancement the proceedings are converted into regular appeal so that in an enhancement proceedings the accused gets a statutory right of appeal under the Criminal Procedure Code to show that not only enhancement of sentence is not warranted but even his conviction is not justified by the facts of the case. In enhancement cases there is already one appeal. That being so, no further appeal is necessary. Thirdly, the amendment recognizes conviction or acquittal as the basis for a right of appeal to the Supreme Court. It does not recognize the nature of sentence or the type of punishment as the basis for a right of appeal.

Mr. President: Supposing in a case the trial court holds that it is a case of grievous hurt, although it has resulted in death and passes a sentence of imprisonment and supposing there is an appeal to the High Court which by way of revision holds that it is a case of murder and not grievous hurt and gives a sentence of death. For the first time, the conviction is for murder by the High Court and the sentence of death is also passed for the first time.

The Honourable Dr. B. R. Ambedkar : For the moment I am not prepared to go beyond the proposition as set out in my amendment. If Parliament later on thinks that such a case ought to be provided, it has perfect liberty under clause (2).

Mr. President: It is a different matter and is for the House to decide. For myself, I have not been able to find the distinction.

Shri H. V. Pataskar (Bombay : General) : I have moved amendment No. 25 to the original amendment No. 24 of the Honourable Dr. Ambedkar.

Mr. President : There is no time for that. I think you are too late now. We cannot allow it at this stage.

I have to put the various amendments now and those Honourable Members who think that their amendments are covered by the new amendment of Dr. Ambedkar, I hope, would withdraw them.

[The amendment of Dr. Ambedkar was adopted. Other amendments were mostly withdrawn. One was rejected. Article 111-A as amended, was added to the Constitution.]

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ARTICLE 164

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

“That in clause (1) of article 164 for the words ‘Save as provided’ the words ‘Save as otherwise provided’ be substituted.”

[Without discussion Amendment was accepted. Article 164, as amended was added to the Constitution.]

ARTICLE 167-A

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†**The Honourable Dr. B. R. Ambedkar :** Sir, various points have been raised in the course of this debate and I should like to deal with them one by one. If I heard my Friend Mr. Sidhva correctly he referred to article 165 dealing with the question of the taking of the oath or making the affirmation. The point about article 165 is this that if the provisions of

*CAD, Vol. VIII, 14th June 1949, p. 860.

†*Ibid.*, pp. 865-67.

article 165 are not complied with it does not cause a vacancy—the seat does not become vacant. All that 165 says is that no person can take part in the voting or in the proceedings of the House unless he has taken the oath. That is all. Therefore I do not see any difficulty about it at all.

Shri R. K. Sidhva : Why should it go to the Election Commission ?

The Honourable Dr, B. R. Ambedkar : I am coming to that. So far as 165 is concerned I think he will understand the fundamental distinction between that article and article 167. In the case of 165, there is no vacancy caused : there is only disability of taking part in the proceedings of the House.

Now, I come to the main amendment moved by my Honourable Friend Mr. T. T. Krishnamachari and that is article 167-A. Except for one point to which I shall refer immediately I think the amendment is well founded. The reason why the decision is left with the Governor is because the general rule is that the determination of disqualification involving a vacancy of a seat is left with that particular authority which has got the power to call upon the constituency to elect a representative to fill that seat. Although it is not so expressly stated, it is well understood that the question whether a seat is vacant or not by reason of any disqualification such as those mentioned in article 167 must lie with that authority which has got the power to call upon the constituency to elect a representative to fill that seat. There is no doubt about it that in the new Constitution it is the Governor who has been given the power to call upon a constituency to choose a representative. That being so, the power to declare a seat vacant by reason of disqualification must as a consequence rest with the Governor. For this reason so far as clause (1) of article 167-A is concerned, I find no difficulty in accepting it.

Now, I come to clause (2). This is rather widely worded. It says that any question regarding disqualification shall be decided by the Governor provided he obtains the opinion of the Election Commission and that he is bound to act in accordance with such opinion. If members will turn to article 167, they will find that, so far as the disqualifications mentioned in (a) to (d) are concerned, the Commission is really not in a position to advise the Governor at all, because they are matters outside the purview of the Election Commission. For instance, whether any particular person holds an office of profit or whether a person is of unsound mind and has been declared by a competent court to be so, or whether he is an undischarged insolvent or whether he is under any acknowledgment or adherence to a foreign power are matters which are entirely outside the purview of the Election Commission. They therefore could not be the proper body to advise the Governor. But when you come to sub-clause (e)

I think it is a matter which is within the purview of the Election Commission, because under (e) disqualifications might arise by reason of any corruption or any un-professional practice that a candidate may have engaged himself in and which may have been made a matter of disqualification by the Electoral Law.

Shri L. Krishnaswami Bharathi : Cannot the Election Commission make the necessary enquiries ?

The Honourable Dr. B. R. Ambedkar : There is no question of making any enquiry here. To ascertain whether a man is an undischarged insolvent no enquiry is necessary. Therefore my submission is that while clause (2) of article 167-A is right, it ought to be confined to circumstances falling within sub-clause (e) of article 167. I would therefore with your permission propose to amend clause (2) thus : "Before giving any decision on any question relating to disqualifications arising under sub-clause (e) of clause (1) of the last preceding article, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion."

Mr. President : As I read the amendment proposed by Shri T. T. Krishnamachari, it seems to me that it does not contemplate a case which has happened before the election or during the election. It contemplates cases arising after the election where a man after becoming a member of the legislature incurs certain disqualifications. These will be dealt with by the Election Commission.

The Honourable Dr. B. R. Ambedkar : What happens is that, after filing a petition, the Commission may find a candidate guilty of certain offences during the course of the election, after the election has taken place and the member has taken his seat.

Mr. President : Is not the Election Commission entitled to deal with such cases ?

The Honourable Dr. B. R. Ambedkar : Yes, but what happens is that a man as soon as he is elected is entitled to take his seat on taking the oath or making the affirmation. He does so and subsequently his rival files an election petition and he is dislodged on the finding of the Court that he has committed offences under the Election Act. That would also come under (e). After a man has taken his seat.....

Mr. President : It seems to me that there are two kinds of disqualifications. A member may have incurred certain disqualifications before he became a member or during the course of the election. The election tribunal will be entitled to deal with such cases.

The Honourable Dr. B. R. Ambedkar : That would depend upon what sort of procedure we lay down at a later stage.

Mr. President: But a man may become subject to a disqualification after taking his seat in the House.

The Honourable Dr. B. R. Ambedkar : That is what (e) provides for.

Mr. President: Then other disqualification may also come in. He might become unsound in mind and might be declared as such or he might become an undischarged insolvent.

The Honourable Dr. B. R. Ambedkar : Those are dealt with here. They are all about sitting members.

Shri L. Krishnaswami Bharathi : Please read the amendment.

The Honourable Dr. B. R. Ambedkar : There are two sorts of disqualifications : disqualifications which are attached to the candidature as such, namely, that such and such persons who are disqualified shall not stand for election. Then, after they are chosen, certain persons shall not sit in the House if they incur the disqualifications in 167. Let us not confuse the two things.

The Honourable Shri K. Santhanam : Both are covered by 167-A.

The Honourable Dr. B. R. Ambedkar : That may be so. Let me explain. It all depends on what kind of procedure we adopt. If we adopt the procedure that whether a candidate is qualified for election-or not shall be treated as a preliminary issue, that will not be a disqualification under article 167. If on the other hand we have the procedure, which we now have, that every question relating to election, including the question whether a candidate is a qualified candidate or not, can be taken up, then article 167 will apply. My intention as well as the intention of the Drafting Committee is to make a provision permitting the Election Commission to dispose of certain preliminary questions so that the election issue may be fought only on the question whether the election was properly conducted or not. Today we have the things lumped together.

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Mr. President: Then Mr. T. T. Krishnamachari's amendment.

"That for amendment No. 2441 of the List of Amendments, the following be substituted :—

"That after article 167, the following new article be inserted :—

Decision on questions as to disqualification of members.	167-A. (1) If any question arises to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of the last preceding article, the question shall be referred for the decision of the Governor and his decision shall final.
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(2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion."

The amendment was adopted.

New Article 167-A was added to the Constitution.

[Article 167-A, as amended by Dr. Ambedkar's amendment was added to the Constitution.]

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ARTICLE 203

***Mr. President :** We take up 203.

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

Shri T. T. Krishnamachari : 203 (2) (b)—there is the question of whether the particular sub-clause should be retained or modified. We require some time and we might be ready with it tomorrow.

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NEW ARTICLE 209-A

† Mr. President : There are certain new articles proposed, No. 209-A.

The Honourable Dr. B. R. Ambedkar : 209-A is to be held over.

Mr. President : Mr. Shibban Lal Saksena has given notice of one.

Prof. Shibban Lal Saksena : That also may be held over.

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ARTICLE 203

‡The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. President, Sir, I move :

“That in article 203, for the marginal heading, the following be substituted :—
‘Power of superintendence over all courts by the High Court’.”

I also move:

“That in clause (2) of article 203, before the words ‘The High Court may’, the words ‘Without prejudice to the generality of the foregoing provisions’, be inserted.”

I further move:

“That with reference to amendment No. 2664 of the List of Amendments—

(i) in clause (1) of article 203, after the words ‘all courts’ the words ‘and tribunals’ be inserted;

(ii) in clause (2) of article 203, sub-clause (b) be omitted.”

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Amendments were adopted.

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[Article 203, as amended by the above amendments was added to the Constitution.]

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ARTICLE 270

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

“That with reference to amendments Nos. 2975 and 2976 of the List of amendments, in article 270, for the words ‘assets and liabilities’ the words ‘assets, liabilities and obligations’ be substituted.”

*CAD, Vol. VIII, 14th June 1949, p. 873.

†*Ibid.*, p. 873.

‡*Ibid.*, 15th June 1949, p. 875.

#*Ibid.*, p. 877.

Now, as regards the amendment moved by Mr. Naziruddin Ahmad, may I say that he has evidently forgotten that we are using the words "Government of India" to indicate the Government that will come into existence under the new Constitution, while the "Government of the Dominion of India" is a term which is being used to indicate the Government at the present moment. Consequently, if his amendment is accepted, it would mean that the Government of India is succeeding to the liabilities, obligations and assets of the Government of India. It would make absurd reading. Therefore the words as they are there, are very appropriate and ought to be retained.

The Honourable Shri K. Santhanam (Madras : General) : I am afraid we are passing tills article in a hurry. As it has been our attempt to bring the Indian States into line with the provinces, we are here simply providing that the old provinces will be continued while no such provision is made for the States.

The Honourable Dr. B. R. Ambedkar : What is your amendment ?

The Honourable Shri K. Santhanam : I am not moving any amendment....

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***The Honourable Dr. B. R. Ambedkar** : Mr. President, Sir, I did not think that this article would raise so much debate as it has in fact done, and I therefore feel it necessary to say a few words in order to remove any misapprehension or doubts and difficulties to which reference has been made.

The first question that is asked is, why is it necessary to have article 270 at all in the Constitution ? The reply to that, is a very simple one. Honourable Members will remember that before the Act of 1935 the assets and liabilities and the properties belonging to the Government of India were vested in a Corporation called the Secretary of State-in-Council. It was the Secretary of State-in-Council which held all the revenues of India, the properties of India and was liable to all the obligations that were contracted on behalf of the Government of India. The Government of India before 1935 was a unitary Government. There was no such thing as properties belonging to the Government of India and properties belonging to the Provinces. They were all held by that single Corporation which was called the Secretary of State-in-Council which was liable to be sued and had the right to sue. The Government of India Act, 1935 made a very significant change, viz., it divided the assets and

liabilities held by the Secretary of State-in-Council on behalf of the Government of India into two parts—assets and liabilities, which were apportioned and set apart for the Government of India and the assets and liabilities and properties which were set apart for the Provinces. It is true that as the Secretary of State had not completely relinquished his control over the Government of India, the properties so divided between the Government of India on the one hand and the different Provinces on the other were said in the Government of India Act, Section 172 which is the relevant section, that they shall be held by His Majesty for the Government of India and they shall also be held by His Majesty for the different Provinces. But apart from that the fact is this, that the liabilities, assets and properties were divided and assigned to the different units and to the Government of India at the Centre. Now let us understand what we are doing by the passing of this Constitution. What we are doing by the passing of this Constitution is to abrogate and repeal the Government of India Act, 1935. As you will see in the Schedule of Acts repealed, the Government of India Act, 1935 is mentioned. Obviously when you are repealing the Government of India Act which makes a provision with regard to assets and liabilities and properties, you must say somewhere in this Constitution that notwithstanding the repeal of the Government of India Act, such assets as belong to the different Provinces do belong notwithstanding the repeal of the Government of India Act to those Provinces. Otherwise what would happen is this, that there would be no provision at all with regard to the assets and liabilities once the Government of India Act 1935 is repealed. In fact we are doing no more than what we commonly do when we repeal an Act that notwithstanding the repeal of certain Acts, the acts done will remain therein. It is the same sort of thing. What this article 270 practically says is that notwithstanding the repeal of the Government of India Act, 1935, the assets and liabilities of the different units and the Central Government will continue as before. In other words they will be the successor of the former Government of India and the former Provinces as existed and constituted by the Act of 1935. I hope the House will now understand why it is necessary to have this clause.

Now I come to the other question which has been raised that this article 270 does not make any reference to the liabilities and assets and properties of the Indian States. Now, there are two matters to be distinguished. First,

we must distinguish the case of Indian States which are going to be incorporated into the Constitution as integral entities without any kind of modification with regard to their territory or any other matter. For instance, take Mysore, which is an independent State today and will come into the Constitution as an integral State without perhaps any kind of modifications. The other case relates to States which have been merged together with neighbouring Indian Provinces; and the third case relates to those States that are united together to form a larger union but have not been merged in any of the Indian Provinces. Now in regard to a State like Mysore there is no doubt that the Constitution of Mysore will contain a similar provision with regard to article 270 that the assets and liabilities and properties of the existing Government of Mysore shall continue to be the properties, assets and liabilities of the new Government. Therefore it is not necessary to make any provision for a case of the kind in article 270. Similarly about States which have been united together and integrated, their Covenant will undoubtedly provide for a case which is contemplated in article 270. Their Covenant may well state that the assets and liabilities of the various States which have joined together to form a new State will continue to be the assets and liabilities of the new integrated State which has come into being by the joining together of the various States.

Then we come to the last case of States which have been merged with the Provinces. With regard to that I see no difficulty whatever about article 270. Take a concrete case. If a State has been merged in an Indian Province obviously there must have been some agreement between that State which has been merged in the neighbouring Province and that neighbouring Province as to how the assets and liabilities of that merged State are to be carried over,—whether they are to vanish, whether the merged State is to take its own obligations, or whether the obligations are to be taken by the Indian Province in which the State is merged. In any case what the article says is that from the commencement of this Constitution—these words are important and I will for the moment take it that it will commence on 26th January—any agreement arrived at before that date between the Indian Province and the State that has merged into it will be the liability of the Province at the commencement of the Constitution. If, for instance, no agreement has been reached before the commencement of the Constitution, then the Central Government as well as the Provincial Governments would be perfectly free to create any

new obligations upon themselves as between them and the unit or merged State or any other unit that you may conceive of. Therefore, with regard to any transaction that is to take place after the commencement of the Constitution it will be regulated by the agreement which the Provinces will be perfectly free under the Constitution to make, and we need therefore make no provision at all. With regard to the other class of States, as I said, in a case like Mysore it will be independent to make its own arrangement. When that arrangement is made we shall undoubtedly incorporate that in the special part which we propose to enact dealing with the special provisions relating to States in Part III, Therefore, so far as article 270 is concerned, I think there can be no difficulty in regard to it and I think it should be passed as it stands.

Shri Mahavir Tyagi : May I know it the agreement mentioned here relates only to financial agreement or does it relate to territorial agreement also ?

The Honourable Dr. B. R. Ambedkar : It speaks of assets and liabilities and obligations. If, for instance, a Province has admitted a certain State and has undertaken an obligation to pay the Ruler a certain pension, that will be an obligation within the meaning of article 270. The transfer of territory will be governed by other provisions.

Shri H. V. Kamath : May I know why the word “rights” mentioned in the marginal sub-head is omitted in the article ?

The Honourable Dr. B. R. Ambedkar : The Drafting Committee will look into it.

Shri B. Das : With regard to properties possessed by India in foreign countries, specially in the U. K. may I know why those are not included among properties in article 270 ?

The Honourable Dr. B. R. Ambedkar : I think that property is subject to partition between India and Pakistan, *e.g.*, the India Office Library, etc., I understand that is being discussed.

Shri B. Das : What about the Sterling Balances ?

The Honourable Dr. B. R. Ambedkar : My Honourable Friend knows more about it than I do.

[Article 270, as amended by the only amendment of Dr. Ambedkar, was added to the Constitution.]

ARTICLE 271

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

“That in article 271 —

(i) the words ‘for the purposes of the Government of that State’ in the two places where they occur, be omitted;

(ii) the words ‘for the purposes of the Government of India’, in the two places where they occur, be omitted.”

[Amendment was carried. Article 271, as amended was added to the Constitution.]

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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—

All lands, minerals and other things of value lying within the 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 Union’.”
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This is a very important article. We are going to have intergrated 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 negative any such contention being raised hereafter it is necessary to incorporate this article.

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‡Shri H. V. Kamath : ...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.

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#Shri H. V. Kamath : I hope Dr. Ambedkar will clarify the position before the House proceeds to vote on this article.

*CAD, Vol. VIII, 15th .Tune 1949, p. 886.

†*Ibid.*, p. 887.

‡*Ibid.*, p. 887.

#*Ibid.*, p. 888.

Shri A. Thanu Pillai (Travancore States): Mr. President, Sir, I hope Dr. Ambedkar will enlighten the House as to the necessity for this provision in the form in which it is worded.

The Honourable Dr. B. R. Ambedkar : May I ask what exactly I have to explain ?

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***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 in 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 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

*CAD, Vol. VIII, 15th June 1949, pp. 891-93.

either to speculation or to future 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 States 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 any 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 disputes 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 :—

<p>All lands, minerals and other things of value lying within territorial Waters vest in the Union.</p>	<p>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.</p>
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The motion was adopted.

Article 271-A was added to the Constitution.

ARTICLE 272

***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.”

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‡Mr. President : Would you like to speak, Dr. Ambedkar ?

The Honourable Dr. B. R. Ambedkar : I think Mr. Munshi has clearly explained and I do not like to add anything to it. The amendment was adopted. Article 272, as amended, was added to the Constitution.

ARTICLE 273

‡Mr. President : We take up 273. Dr. Ambedkar.

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

“That in clause (1) of article 273, after the word and figure ‘Part I’ the words and figures ‘or Part III’ be inserted.

That with reference to amendment No. 201 above, in clause (1) of article 273, after the word ‘Governor’ in the two places where it occurs, the words ‘or the Ruler’ be inserted.

That with reference to amendment No. 201 above, in clause (2) of article 273, for the word ‘the Governor of a state’ the words ‘the Governor or the Ruler’ be substituted.”

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#The Honourable Dr. B. R. Ambedkar : Sir, my Honourable Friend Mr. Kamath had something to say about the use of the word “assurances”, and I think his argument was that we were using the word “contracts” in one place and “assurances” in another. “Assurance” is a very old word in English conveyancing; it was used and is being used to cover all kinds of transfers and therefore the word “assurance” includes the word “contract”. So there is no difficulty if both these words are used because assurance as a transfer of property has the significance of a contract.

Shri H. V. Kamath : My difficulty was about the language. The article starts with “all contracts” and then we have “all such contracts and all assurances of property”, etc.

*CAD, Vol. VIII, 15th June 1949, p. 893.

‡*Ibid.*, 895.

‡*Ibid.*, p. 895.

#*Ibid.*, pp. 898-99.

The Honourable Dr. B. R. Ambedkar : If there is any difficulty about the language it will be looked into by the Drafting Committee. I was explaining the technical difference between assurance and contract.

Then Mr. Tyagi asked why a person should be freed of liability if he signs a contract. I think much of the objection raised by Mr. Tyagi would fully disappear if he were made a member of the Cabinet: I should like him to answer the question whether any contract that he has made on behalf of the Government of India should impose a personal liability on him. I am sure he knows the ordinary commercial procedure. A principal appoints an agent to do certain things on his behalf. Unless the agent has acted outside the scope of the authority conferred upon him by the principal, the agent has no personal liability in regard to any contract that he has made for the benefit of the principal. It is the same principle here. My Honourable Friend Mr. Tyagi does not know that there is a well established system in the Government of India whereby it is laid down that it is only a document or letter issued by an officer of a certain status that binds the Government of India; a document or letter issued by any other officer does not bind the Government of India. We have therefore by rule specifically to say whether it is the Under-Secretary who would have the power to bind the Government of India, or the Joint Secretary or the Additional Secretary or the Secretary alone. Therefore I do not see why the person who is acting merely on behalf of the Government of India as a signing agency should be fastened upon for personal liability, because he is acting on the authority of the Government of India or within the authority of the Government of India. If the Government of India approves of any particular transaction to which the legislature raises any objection as being unnecessary, unprofitable or outside the scope of the legislative authority conferred by Parliament upon the executive Government, it is a matter between the Government and the Parliament. Parliament may either remove the Government or repudiate the contract or do anything it likes. But I do not understand how a personal liability can be fixed upon a man who is merely appointed as an agent to assure the other party that he is signing in the name of the Government of India. There is no substance in the objection raised by my friend Mr. Tyagi.

Mr. President : I will now put the various amendments to vote.

[All the three amendments by Dr. Ambedkar were accepted. Article 273, as amended, was added to the Constitution]

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 amendments 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 Jaspal Roy Kapoor (United provinces : General) : I am not moving my amendments Nos. 2981 and 2984. They may well be referred to the Drafting Committee for consideration.’

‡**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 tune 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

*CAD, Vol. VIII, 15th June 1949, p. 900.

‡*Ibid.*, pp. 901-02.

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—”

that it is the new thing—

“shall he 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 stated. 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 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.

[All the amendments of Dr. Ambedkar were accepted and Article 274 was added to the Constitution]

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.

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ARTICLE 289

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

“That for article 289, the following article be substituted :—

289. (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States shall lie vested in a Commission Referred to in this Constitution as the Election Commission) to be appointed by the President.

Superintendence,
directions and control of
elections to be vested in
an election commission.

(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may, from time to time appoint, and when any other Election Commissioner is so appointed, the Chief Election Commissioner shall act as the Chairman of the Commission.

*CAD, Vol. VIII, 15th June 1949, p. 903.

†*Ibid.*, pp. 904-07.