

Friday, 22nd August, 1947

Volume V



14-8-1947
to
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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

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CONSTITUENT ASSEMBLY OF INDIA

Friday, the 22nd August 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (the Honourable Rajendra Prasad) in the Chair.

MEMBERS TAKING THE PLEDGE

The following Members took the Pledge.

1. Mr. Prafulla Chandra Sen (West Bengal : General).
2. The Honourable Pandit Govind Ballabh Pant (United Provinces : General).

REPORT OF THE UNION POWERS COMMITTEE—*contd.*

Mr. President: We shall now proceed with the discussion of the items in List I in the Appendix to the Report of the Union Powers Committee. We shall take up item No. 1. I find there is notice of amendment by Sir Ramaswami Mudaliar, Sir V. T. Krishnamachari, Shri Srinivasan and Shri Venkatachar.

ITEM 1

Sir V. T. Krishnamachari (Jaipur State): Mr. President, Sir, I move:

“That in item 1, all the words after the word ‘thereof’ be deleted.”

My reason is that the words beginning from “generally” are unnecessary. They are explanatory. I understand they have been adopted from some judgement of the High Court of Australia. It seems to me to be unnecessary to add these descriptive words to the list of subjects. That is the reason why we have set down this amendment on the order paper. We have no objection to the sense of the words, but we consider that in the list such descriptive explanations are out of place.

(Messrs. K. Santhanam Naziruddin Ahmad and T. A. Ramalingam Chettiyar did not move their amendments—No. 5 in List No. 1, No. 4 in List No. IV and No. 6 in List No. I.)

Mr. President: There is no other amendment to this item of which I have notice. If anyone wishes to speak on the amendment which has been moved he may do so.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President Sir, the amendment which stood in my name is the same as the one which has been moved though it is in a different phraseology. I submit that the words proposed by the amendment to be deleted are unnecessary. The expression “defence” in item No. 1 is, think, comprehensive enough. No further descriptive words are necessary as will appear from numerous

[Mr. Naziruddin Ahmad]

other items in the List—both in the List attached to the Report and the List attached to the Government of India Act. I Will cite one or two instances: item No. 3—“Central Intelligence Bureau”; No. 6—“Defence industries”; No. 7—“Naval, Military and Air Force works”. There are numerous other similar items. The items are described merely by name. According to a well-known principle applicable to such cases all incidental or ancillary powers necessary to give them full effect, are implied in these expressions. They are cryptic expressions which explain themselves. Everything necessary to those subjects is implied. In these circumstance, the proposed deletion will bring the item into line with many other similar items in the list. So, in order to secure uniformity as well as to remove much surplusage, I support this amendment.

Shri M. Ananthasayanam Ayyangar (Madras: General) : Sir, it is not unusual to elaborate the points that come in these lists. I would request the attention of the House to item No. 33 in List No. 1 of the Government of India Act, 1935. Corporations are a Central Subject. “The incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporation, but not including corporations owned or controlled by a Federated State..... etc.”. That is the language used. They have said what they mean by the word ‘corporation’.

In various countries where ‘defence’ alone was entered as an entry in the federal list, they have taken this matter to a court of law. Differences arose and the courts, had to interpret the word ‘defence’. Here I have got a case (Australian Bread Case 21 C. L. R. 433) where Griffith C. J. said the word ‘defence’ includes all acts of such kind as may be done in the United Kingdom either under the authority of Parliament or under the Royal Prerogative of the Realm. Among others it includes preparations for war in time of peace, and any such action in time of war as may be taken for the successful prosecution of the war and the defeat of the enemy. Sir, this explanation was given, or this decision was arrived at after elaborate discussion in a court of law. Should we once again go through this travail? I think, Sir, if the Honourable the mover of the amendment has no objection to these items being there, the inclusion of them may be allowed. The only objection is that it is not elegant. The language is not elegant. It is not a piece of literature that we are enacting here. It is a piece of law. It is better to be more specific. Wherever it is possible to avoid doubts, let us avoid them.

Mr. N. Gopaldaswami Ayyangar (Madras: General) : Sir, the reasons for the inclusion of the words, whose omission has been suggested, have been recognised by the Hon’ble the Mover himself, and have been elaborated by Mr. Ananthasayanam Ayyangar. I have nothing to add to those reasons. I think that on the whole it is better that we should not incur the risk of courts possibly taking different views upon a question of that sort. As we are all agreed that the substance of what those words indicate must be included in the item of ‘Defence’, it is much better that we do include those words in this item. If the Hon’ble the Mover has no objection, I would suggest his withdrawing his amendment.

Mr. President: The mover of the amendment wishes to withdraw. Has he got the leave of the House to withdraw it ?

(The amendment was by leave of the Assembly withdrawn.)

Item 1 of List I—Federal Legislative List, was adopted.

ITEM 2

Mr. President: Again there is an amendment in the name of Sir V. T. Krishnamachari.

Sir V. T. Krishnamachari: Mr. President, Sir, I move the deletion of item 2. My reason is that requisitioning is temporary acquisition, and there is item 43—Acquisition of property for purposes of the Federation, which covers what is substantially implied in item 2. It seems to me that there is unnecessary duplication. It is for that reason that I move the deletion of item 2. In times of war, item 1 confers all powers of requisitioning that may be needed.

Mr. President: There are certain other amendments also.

I think we had better discuss this because this amendment suggests the deletion of the whole item. So any other amendments which are only for adding something or subtracting something may be taken up later on. Does anyone wish to say anything about this amendment?

Mr. K. M. Munshi (Bombay: General) : Mr. President, the amendment, Sir, is based on a little misconception, if I may so put it. The power to requisition has been construed to be included in the Defence power, and is a prerogative of the Crown in England. In India the question arose during the last war when the Central Government exercised the power of requisitioning, and the point was raised that requisitioning during the war was a Defence power, and Defence, not being a subject which was within the legislative competence of the Central Legislature, the Defence of India Act could not include the item of requisition in it. This was largely conceded in some of the High Courts and Parliament had even to intervene at a stage. Now, no doubt therefore, the Union possessing the powers of defence under item 1, would have the power to requisition immovable and movable property during war, but in the period of peace or during the time when preparations are being made, it is doubtful whether the power to requisition would be included in the Defence power. This item No. 2 has been specifically mentioned to obviate any doubt on this question. As already pointed out by my friend Mr. Ananthasayanam Ayyangar earlier during the debate, there have been numerous decisions on some of these items and we do not want the same point litigated over and over again in our courts for the satisfaction of the litigious public and members of my profession. Therefore it is necessary that this power should be specifically mentioned—including training and manoeuvres—since even during peace time, the power for requisitioning may have to be used. That is the whole object of it and I am sure my Honourable Friend Sir V. T. Krishnamachari will withdraw his amendment.

Shri Himmat Singh K. Maheshwari (Sikkim & Cooch Behar Group): Mr. President, Sir, during the war, requisitioning was resorted to in many places as a special measure, but it involves great hardship to many individuals, and the power was abused in a very large number of cases. During war time such abuse may be tolerated, but it is now proposed to grant this power of abuse to every 'local Hitler' who is likely to use such power against every person whom he may dislike. I suggest, Sir, that the House should throw out this item as a safeguard for the freedom and security of the common man.

Mr. Hussain Imam (Bihar : Muslim) : Mr. President the power to requisition lands for the purpose of defence is one of the most essential

[Mr. Hussain Imam]

powers which we should give to the Centre in order to maintain the stability and strength of the Union. But there is no doubt that what the last speaker said is a fact. Lands were requisitioned and they continue to remain requisitioned two years after the termination of the war even today. There is no doubt that there has been a great deal of mis-management by the former government. But the mis-management by the former government is no reason why we should not trust our own representatives to do better when the time comes.

I have come here to make a suggestion that as requisitioning of lands for the purpose of defence is an essential thing, it should be in the central list. But I want to suggest that this requisitioning should be also for the purposes of peace. There are time when lands have to be requisitioned in times of peace. For instance just now we have got the case of the Central and Provincial Governments having to deal with the great influx of refugees from the different areas. For dealing with such problems there should be power for the requisitioning of property by the State. I would therefore like to point out to the draftsmen the need for including an item of this nature in the concurrent list.

Shri H. Chandrasekharaiya (Mysore State) : Mr. President, Sir, in my opinion the amendment moved seems to be a very reasonable one. The necessity for the proposed entry has not been explained by Mr. K. M. Munshi who thought fit to oppose the amendment. He referred to a case which happened during the time of the war, but he did not cite any case which happened during times of peace. The requisitioning, as put down here does not even require the previous consultation of the Province or the federating State. Even in the Government of India Act of 1935 there is no entry of this kind in the Federal List. In fact, whenever lands have to be acquired for the purpose of the Federation, Section 127 of that Act provides that it should be done under certain conditions and with payment of compensation. But as the entry now stands, it implies requisitioning any land straightaway and in an arbitrary manner even without referring the matter previously to the concerned Unit. For all these reasons, I pray that the House will kindly accept the amendment proposed by Sir V. T. Krishnamachari.

Shri M. Ananthasayanam Ayyangar: Sir, the mover of the amendment did not take exception to this item on the ground that it is unnecessary or inconvenient, but only on the ground that it is covered by a later entry, item No. 43 in the list. "Acquisition of property for the purposes of the Federation." In his opinion, that is a more comprehensive item, and therefore this item No. 2 need not find a separate place as a separate entry in this list. That is all the objection I, however, feel that there is necessity for such a separate entry. Requisitioning of property for defence purposes is a different thing from requisitioning them for general purposes of the Federation. In the one case it is restricted to land and in the other it can be all kinds of property.

Then again, whenever property is acquired for any particular purpose the nature of the purpose also varies. Sometimes for carrying on dangerous or noxious trades some property is requisitioned and specific powers are given to the Local Boards for this purpose. Therefore, I say there is need for distinguishing defence purposes from the other ordinary purposes. By providing it in item 43, pointed attention of the Assembly is drawn to this distinction.

The last speaker said that under the Government of India Act of 1935, the Provincial Government could acquire property for the purpose of the Federation on payment of compensation. I am sure a similar provision will be made here also, and the property of an individual would not be acquired without compensation. We have, in the Fundamental Rights already laid it down that no property would be acquired without the payment of adequate compensation. Therefore, this item may be allowed to continue in the list.

B. Pocker Sahib Bahadur (Madras: Muslim) : Mr. President, Sir, it is practically admitted that this item is covered either by item No. 1 or item No. 43 of the Federal list. Now the question that has to be considered is the retention or deletion of item No. 2, whether, even if it is superfluous, we should not keep it there. My view is that, in view of the fact that his particular detailed item is also covered by item No. 1, there is no necessity for mentioning it as a separate item. Moreover, if it is retained as item 2 it will give rise to difficult questions in the construction of item No. 1 whether it does cover many other points also. It may be argued that since one detail is particularly mentioned as item 2, other details are not covered by item 1. Therefore it is not at all advisable to retain this item 2 as a separate item in view of the fact that it is really covered by item No. 1. Therefore, I submit, Sir, that this may be deleted.

Shri S. V. Krishnamoorthy Rao (Mysore State) : Mr. President, I submit that neither item. No. 1 or No. 43 covers this item No. 2. A country like India with a large army will have to keep its Army fit and the training will have to be given in different geographical and climatic conditions. For that purpose, the Army will have to be requisitioning land in various parts of the country and in various parts of the year. So such power for the Centre is very necessary because Defence is a Central subject. So I oppose the amendment.

Mr. Tajamul Husain (Bihar: Muslim) : * [Mr. President, item 2 is that the Central legislature has got the power of acquisition and requisition of land anywhere it likes in the Indian Union for defence purposes. On that, an amendment has been tabled by my able friend that this item should be removed. Mr. President, I am unable to understand the logic as to why this amendment has been moved. Suppose there is an invasion of India, or Travancore which has acceded to the Indian Union, and it becomes necessary to establish a front there, then would you not give the Central legislature power to requisition land? I am astonished at this amendment. In my opinion the Central legislature should be given the power to requisition land for manoeuvres.]*

Mr. Naziruddin Ahmad: Mr. President, Sir, I certainly support the spirit of item No. 2, namely, that the Centre should have power for requisitioning land for its own purposes, but I should submit that the clause is unnecessary. It has been fully covered by item No. 1. There is a great distinction between 'acquisition' of land, which is taking complete title, and 'requisitioning' of land, which is taking possession for temporary use. I don't think therefore that item No. 43 will cover this item, but I submit it is covered by item No. 1. Once we elaborate each power, there will be no limit at which we should stop. There are a very large number of items which are expressed merely by catch words. So if we further define this power, a large number of ancillary powers will have also to be defined. That I submit would be introducing a vicious principle. 'Defence' is also covered by item 15 relating to 'War and Peace'. If there was any

[] English translation of Hindustani speech.

[Mr. Naziruddin Ahmad]

doubt, item No. 15 will remove it. For all these considerations, I submit that Item No. 2 is unnecessary and redundant and should be rejected.

Mr. N. Gopaldaswami Ayyangar: Sir, I think it is conceded by the House that in any case under certain circumstances the Federal Legislature should have power to make laws regarding requisitioning of lands for defence purposes. What has been put forward in favour of the amendment is that that power could be traced either to item No. 43 or to item No. 1.43, as the House knows, refers to acquisition of land for purposes of the Federation and, in connection with the interpretation of a section of the Defence of India Act which related to requisitioning of land, some High Courts in the country took the view that requisition did not come under acquisition. It was therefore necessary, especially after the war was over and for the purpose of completing what remained to be done in regard to properties which had been requisitioned during the war, to make statutory provision to enable the Centre to deal with requisitioned property for a limited period of three years. But we are now considering a constitution which is to be of permanent duration.

Now, Sir, it will be conceded that requisitioning will in any case be necessary under conditions of emergency, whether war or otherwise, for defence purposes including purposes of training and manoeuvres. Now when we reach a stage when such a power has to be taken, the Federal Legislature should be clothed with authority for making that law. Now if that power could be inferred from item 1—I have already said that doubts have been expressed about it being inferred from item 43—if that power could be inferred from item 1, it may be that item 2 is altogether unnecessary; but we have got to reckon with the fact that, while a number of other items which we have mentioned in detail could be brought under item 1, we have still enumerated them in this list. Now what is the harm in adding requisitioning to the number of those detailed items when you concede that requisitioning should come under the general power of defence? We shall have this power in the Federal list. Whether that power should be used and whether a law should be made during peace for enabling requisitioning to be done is a matter for the future Federal Legislature. It might be that in the law which may be proposed for requisitioning we may insert conditions which would not allow requisitioning to be done unnecessarily or when the conditions do not warrant it; but that in certain circumstances requisitioning may, not be necessary in peace time is not a ground for our eliminating this item from the list altogether. And there is another point I want to mention. Assuming that the contrary view is taken and it is held that requisitioning of land does not fall within the purview of item 1 of this list, what will be the position? The position will be that it will be an item which is not to be found in any of the 3 lists and therefore will become a residuary item and the power of making a law for dealing with that item will be with the Centre. I quite appreciate the position that, in view of the distinction that we are making in respect of the quantum of residuary power and the allocation of powers between the provinces and the Centre, if this item becomes a residuary item, in the case of the States, the States might claim jurisdiction to legislate for this item. But what will be the effect of the amendment which has been moved by the representatives of the Indian States? Supposing it is removed, then the power is necessary for the federation under certain circumstances and in certain emergencies. Then, whatever arguments we may have from the Centre's point of view will be concentrated on demonstrating that requisitioning is a very necessary item in the general power of defence and therefore we

would still, I think, have to legislate on them. Therefore I think the balance of considerations is in favour of leaving this item alone in the Federal list and, when any legislation is attempted on this particular item, then perhaps this House can take steps for ensuring that it is not used in circumstances which do not warrant it. I therefore suggest that this amendment may not be pressed.

Sir V. T. Krishnamachari: The main point the amendment seeks to make is that whatever powers of requisition may be needed in times of war and emergency must be conceded and are conceded under item 1. But public interest requires that powers in times of peace must be exercised under the Land Acquisition Act. The question is one of public policy—whether we want the power of requisitioning to be exercised in times of peace when there is no war or emergency. The object of this amendment is to prescribe that in times of peace, the ordinary Land Acquisition procedure should be used where lands are required for purposes of training and manoeuvres.

Mr. Tajamul Husain: Sir, I rise to a point of order. After the mover has replied, can there be any speech? Nobody has any right of reply. I want a ruling from you, Sir.

Mr. President: I thought Mr. V. T. Krishnamachari was going to withdraw the amendment. That was the reason for allowing him to speak.

Sir V. T. Krishnamachari: Sir, I do not press the amendment.

Mr. President: My anticipation was correct. He does not press the amendment.

Mr. Tajamul Husain: Then I withdraw my point of order.

Mr. President: The amendment is withdrawn. I take it the House allows him to do so.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then there are certain other amendments of which notices have been given.

(Messrs. K. Santhanam, Mohanlal Saksena, M. Ananthasayanam Ayyangar and N. Madhava Rao did not move the amendments standing in their names.)

Mr. President: I do not think there is any other amendment. So I put the original item to vote now.

Item 2 was adopted.

ITEM 3

Mr. President: Then we take item 3. I do not think there is any amendment to item 3.

Shri K. Santhanam (Madras: General): Sir, I want to speak about item 3. The Central Intelligence Bureau is not a proper subject. Central Intelligence should be the subject. Why should we have a legislative power confined to the Bureau? I do not see there is any need for restricting the scope. I would make a suggestion that the last word may be dropped and that Central Intelligence may be a proper subject.

Mr. President: Mr. Gopalaswami Ayyangar, that seems to be a reasonable suggestion.

Mr. N. Gopaldaswami Ayyangar: We shall consider it when settling the text.

Mr. President: Then I put item 3 to vote.

Item 3 was adopted.

ITEM 4

Mr. President: Then we proceed to item 4.

(Messrs. K. Santhanam, H. V. Pataskar, and Naziruddin Ahmad did not move the amendments in their names.)

Shri Himmat Singh K. Maheshwari: Sir, I move.

“That for item 4, the following be substituted:

‘Preventive detention in a Province for reasons of State connected with defence and external affairs.’”

In List I of the Government of India Act of 1935 what is now item 4 forms part of item No. 1, and reads as follows: “Preventive detention in British-India for reasons of State connected with defence, external affairs or the discharge of the functions of the Crown in its relations with Indian States.” It will be noticed, Sir, that this particular item related to British Indian provinces only and not to the Federating States, the reason obviously being that if preventive detention were to be the exclusive concern of the Federal Government in the areas of the Indian States, the States themselves would find it impossible to take prompt action to prevent trouble in times of emergency. The present item seeks to extend this power to all the territories of the Federation and to that extent it makes the position of the States unduly difficult and it also involves unnecessary interference with their normal administrative machinery.

Another point, Sir, which I wish to bring to the notice of the House is that this item only vaguely describes the circumstances in which preventive detention may be ordered. The circumstances are summarised in the words “for reasons of State”. But this might include almost anything under the sun. I suggest, Sir, that it is desirable to state clearly which particular reasons of State should justify preventive detention. I have therefore suggested that such detention should be ordered only in connection with defence and external affairs and not in connection with other matters of which there will be plenty to be dealt with by the Federal Government.

We were told yesterday that List I in the present Report is almost identical with the corresponding Federal Legislative List in the Government of India Act, 1935. Now, although this particular item does find a place in the List, it has been substantially altered to the disadvantage of the States and also to the disadvantage of the subjects in as much as it seeks to spread its tentacles almost to an unlimited extent I hope, Sir, that the framers of the Report will find it possible to reconsider this particular item and modify it in the light of the suggestion I have made.

Shri Gopikrishna Vijayavargiya (Gwalior State) : *[Mr. President I oppose the friend who has just moved the deletion of this amendment on the ground that it is not in the interest of the States. I think the argument is wrong. As we are going to make a Federation, the States are also in duty bound to protect it. When we are going to establish a strong

*[]*English translation of the Hindustani speech.

united administration and a strong federation, do they intend to shelter those in States who go against this Federation ? We have to check all those who are disloyal to the country whether in provinces or in the States and the same law should be applicable everywhere.

I come from a State and submit that we gladly cede rights to the Federation and we must. This item must remain.]*

Shri B. L. Mitter (Baroda State) : Mr. President, I oppose the amendment moved by Shri Himmat Singh Maheshwari. The reasons he gave in support of the amendment tend to separate the States from the rest of India. The item is: "Preventive detention in the territories of the Federation for reasons of State." If the States form an integral part of the Dominion of India, then the reasons which make it necessary for the Government of India to take action should apply equally to the States as to the rest of the Dominion. An act of the State is never resorted to unless it is in the interests of the Dominion as a whole. That being so, I do not see why any distinction should be made between States and the rest of the Dominion when an important measure is considered necessary in the interests of the Dominion as a whole. Supposing some mischief is brewing in a State and it is necessary in the interests of the whole Dominion that preventive detention should be exercised in respect of that person, if the Central Legislature do not have the power to restrain such mischievous activities, then the whole object of preventive detention would be defeated. I oppose the amendment.

Mr. Naziruddin Ahmad: Mr. President, Sir. I should submit that I heartily desire that all the States should accede to the fullest extent possible so that they should be treated exactly as the Provinces. But for that purpose I think we should proceed in a legal and constitutional manner. I believe that the States have acceded on three broad matters Defence, Foreign Relations and Communications. Mr. Ayyangar informed the House that their Instruments of Accession consist of about 18 or 20 items on which they have acceded Constitutionally, therefore, I submit that the jurisdiction of the Federation over the States would extend only to those subjects on which they have acceded. Beyond that it would not be constitutionally proper or possible to extend our authority to the States. As I have already submitted the States should fully accede, but I should also think that that should be effected through negotiations and on a voluntary basis. It is the mutual appreciation and mutual selfinterest and mutual dependence for the safety and welfare of India as a whole that full accession should follow. I have therefore this difficulty of accepting item No. 4 in its fullest implications. I should therefore ask the constitution experts in the House, of whom there is quite a galaxy, to consider the matter dispassionately from a constitutional point of view and give their decision. Then the alleged difficulty pointed out of a trouble brewing somewhere in an Indian State and that the Federation should have full power to deal effectively with that trouble and the Federation should therefore have sufficient power to deal with a problem like that, but I think that that would contravene the conditions upon which the States have acceded. If it is for defence purposes or any of the purposes for which the States have acceded, there would be no difficulty. But, however justifiable we might feel in acting in the way suggested, It would be beyond our constitutional power, at any rate. constitutional propriety, to act in that way. I should therefore ask the Honourable the Mover of the Report to consider that, and I am sure it will receive adequate and effective consideration at his hands.

[Mr. Naziruddin Ahmad]

The other difficulty which I have felt on this item is a smaller one. It is about the last word in this item, namely "State". This item has been taken from item 1 of List I in the Government of India Act and the expression has been bodily lifted from that item of the Government of India Act. But in this report we have also used the word "State" in a different sense, namely, the Indian State. There may thus be some possible confusion. At any rate the use of the same technical expression in two different senses is inartistic and should be avoided. There may not be any actual misunderstanding resulting from this, but I should suggest that the Drafting Committee should consider the selection of some other suitable word, so as to prevent any possible confusion with the word "State" as it is understood in the Indian State. I should therefore consider that on the whole the item should be carefully considered and we should not proceed on mere grounds of convenience or expediency, but rather on the ground of justice and commonsense.

Mr. Hussain Imam: Mr. President, I rise to oppose the amendment, because it wants to create differentiation between the Units of the Federation; that the Provinces should be subject to the jurisdiction but the States should not be subject to jurisdiction. This is a formula to which I cannot agree, but I do fear that the item itself goes counter to the fundamental rights we hope to secure. Preventive detention is nothing but a method of arbitrary detention without trial. If you want to put a man under trial, then he will come under the ordinary law. No specific provision would be necessary for that purpose. It seems to me that we are trying to revive Regulation 3 of 1818 and similar measures that were taken. No doubt in modern democracy powers of this nature are given, but they are given under circumstances of grave menace to the peace and tranquillity in the country. It was only in times of war that regulations of this sort were passed in European as well as American countries. But in times of peace no reason of State should prevail and cause a person to be detained without his having committed an overt act. I therefore feel, Sir, that if this power is to be given, it should be qualified in such a manner that his right of preventive detention should remain with the Centre only in times of war and other grave menace to peace and tranquillity of the country. In ordinary times, a power of this nature would be misused. Human nature being what it is, it is necessary that we should provide some method whereby you can avoid the misuse of power. Power brings with it intoxication and it is rather difficult to imagine that it will not be misused in time of peace. I am therefore suggesting not its deletion, but elaborations so that proper precautions may be taken that it may not be misused.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Mr. President, Sir, this item No. 4 "Preventive detention in the territories of the Federation for reasons of State"; is a very important question involving an important principle. I have listened very carefully to the speech just delivered by my Honourable friend Mr. Hussain Imam. I can only tell him that I am one of those who have systematically opposed the preventive detention in any shape or form in the past. Mr. Hussain Imam rightly apprehends that this provision might lead to abuse and might be an instrument of oppression.

May I tell him that the situation is now completely changed? We must realise that we are going to start a new State of our own, absolutely independent State, and that the Central Government, the Union Government must be armed with certain powers which can be used by it, not for frivolous reason, but for the interests of the State itself. The

amendment which has been moved unduly restricts the scope of the powers that are sought to be conferred by item No. 4.

Mr. Hussain Imam has referred to Regulation III of 1818. I am sure he would realise that when the Britishers first came into this country and wanted to stabilise their Government here, in the very early stages of their occupation, they thought it necessary to have some legislative provision, some powers by which they could stop persons, potential mischief makers from doing any mischief to the State. Therefore, from their point of view, in the early days of the British Rule in this country, it was thought necessary that a legislative provision like Regulation III of 1818 should be provided to give the Executive certain powers to deal with mischief-mongers. Now, why does he apprehend that the Central Government, the Union Government which we are now going to set up under the New Constitution should abuse this power? I know no human agency, no human machinery is perfect. But you have to give the Central Government certain emergency powers which have got to be exercised by them in the interests of the Dominion itself. If there is an abuse as my honourable friend apprehends, because Regulation III of 1818 in the later stages of the British Rule came in for a lot of abuse—I know a lot of people were deported and civil liberties were suppressed—but now we have got our own State, our own Government elected by the people with a President elected by the people and of the people, and besides, it must not be forgotten that in the Fundamental Rights we have provided a relief of *Habeas Corpus*. There is no danger of civil liberties being trampled under ruthlessly and carelessly as it has been done in the past under the British Rule. If, for instance, in any part of the federation, in any territory, not necessarily in a province, in a Native State, some persons were found by the Government, on reliable information, out to create mischief that would not only be detrimental to the best interests of the Dominion, but to peace, do you think that the Government should sit quiet and not move in the matter, simply because there has been no overt act on their behalf which would bring them under the clutches of the law? There may be fifth columnists who may be secretly working in the Dominion itself, in any part of the territory; they may be in the pay of a foreign Government; they may even be in the pay of a rival Government of any Dominion Government in India. Therefore, in the present set-up of things, when we have within the geographical borders another independent State, it is all the more necessary that such a power should be provided in the constitution to be utilised by this Union Government when it thinks it necessary. It is quite possible in the scheme of things that one Native State may be conspiring against another and probably by no ordinary test, because of no overt acts, he could be brought under the clutches of law. If the Indian Government had reliable information that his activities were such that he would endanger the peace between two different parts of the Indian territory itself. Certainly the Central Government must have power to intervene to stop that mischief-making.

Therefore, it is not a question of civil liberties being in danger; it is a question of high reasons of State, and reasons of State should take precedence over everything. Therefore, I oppose this motion and support the original proposal for inclusion of item 4 in the federal list.

Mr. Tajamul Husain: Mr. President, Sir, I support item 4 and oppose the amendment. In my opinion, Sir, powers must be given to the Central

[Mr. Tajamul Hussain]

legislature to detain for reasons of State any person or group of persons. Now, Sir, supposing in a province or in a State, there is a group of persons who is in conspiracy with a foreign enemy power with a view that that foreign enemy power may invade India, what should we do at that time? Therefore, the Central legislature must have power to detain that group of persons at once and prevent it from doing further danger and mischief, and there should be no open trial. What would happen in an open trial? Many State secrets, weaknesses of the Indian Defence may be out. The enemy may know at what point we are weak. After all, you know, Sir, the technicalities of the law. Accused persons who are guilty may be acquitted. Therefore, with these few words, I strongly support that item 4 should be retained in its original form and the amendment should be opposed.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim) : Mr. President, Sir, my justification for intervening in this debate is to point out that this item in this list is included in order that the Federal legislature might legislate in regard to this item. If we understood that, all the objections raised have no place at all in this discussion. But, as preventive detention is abominable to a free country, to free citizens, some honourable members have sounded a note of warning that the Government coming into power, or rather newly coming into power, as the Honourable Mr. Hussain Imam pointed out, might get intoxicated with power, and in its enthusiasm, especially when it happens to be a party Government, in its enthusiasm to hold its power by all means, it might override the fundamental rights of the people not to be deprived of their liberty without trial. So I do not think that Mr. Hussain Imam was opposed to the granting of powers to the central legislature in this regard, but he only sounded a note of warning.

And now, Sir, even at this juncture it is necessary for us to see that in future when the central legislature thinks of passing a legislation unnecessarily undue advantage may not be taken by it on the ground that this item has been placed on this list; and the criticism of an Honourable Member with regard to the speech of Mr. Hussain Imam is not correct; as I have stated, he only sounded a note of warning. And it is also not correct to say that there is a provision of *Habeas Corpus* and that it will save the people from unnecessary and illegal harassment. If legislation of the sort of the 1818 Regulation was passed, *Habeas Corpus* would have no place at all. Therefore we cannot seek any comfort from the provision of *Habeas Corpus*. While I submit that a state must be armed with powers to detain persons in certain circumstances like war or grave menace to tranquillity, it is always necessary that provision should be made even in legislation in regard to the fundamental right and liberty of a citizen to be tried by competent courts of law and to be declared guilty or not guilty, if that is possible. Therefore while I am not opposed to the inclusion of this item, I along with Mr. Hussain Imam would sound a note of warning that in future when any legislation is sought to be made in regard to this item, free Indians should not be deprived of their liberty in free India.

An Honourable Member: The question may now be put.

Mr. N. Gopaldaswami Ayyangar: Sir, I take it that the main amendment before the House under consideration is the one moved by my Honourable friend Shri Himmat Singh Maheshwari. That amendment seeks to limit the power given by this particular item to preventive detention. In a province for reasons of State connected with defence and

external affairs. Now the difference between this amendment and the original item has two aspects. One is that the orbit of this detention should be limited to reasons of State connected with defence and external affairs; and the second as that the federal legislature should have power to make laws for detention only within the limits of a province. Perhaps I might dispose of the second of these limitations at once. Assuming that, for reasons of state it is necessary to detain a person, is it the intention of the Honourable Mover of this amendment that, if such a person escapes to the territory of an Indian State, the Federation should not get him detained there or have him brought back to British India and detained there? No, after all, the States also form part of the territories of the Federation, and, if detention of persons for reasons of State is necessary, that detention should be possible in any part of the area of the Federation. Therefore, Sir, this does not seem to accord with the spirit in which the States, ought to accede to the Federation.

Secondly, as regards the limitation in respect of matters connected with defence and external affairs, I am not sure if we should limit them to these two particular cases. There are matters which may not be connected with defence or external affairs in connection with which it may be necessary for the Government of the Federation to detain particular individuals. It may be a thing connected with the very existence of the State, but it may not relate to defence or external affairs. It would probably conduce to the disappearance of conditions which may threaten the existence of the State if we had power to control movements of people of that sort for a short while and kept them in detention for the purpose of ensuring that the atmosphere improves until the time arrives for our setting them free. In any case if it is necessary to have preventive detention powers in the case of persons in matters connected with defence and external affairs, there are other matters also in connection with which such power is necessary. Therefore, Sir, on both these grounds I do not think this amendment deserves to be supported by the House.

Then there were certain other matters referred to by other Honourable Members. Mr. Naziruddin Ahmad warned us against taking power which may not constitutionally be correct in view of the fact that the States might be acceding only in respect of a certain limited number of subjects. I am sure, Sir, that care will be taken to see that any powers that we take in this regard do not encroach upon the free sphere in which the the States will be allowed to act after they accede to the Federation. That is a matter relating to the wording of the clause and I can assure Mr. Naziruddin Ahmad that what he has said in that connection will be borne in mind.

Then I will refer to one or two points mentioned by my Honourable friend Mr. Hussain Imam. One of these suggested that preventive detention is something which will go against fundamental rights. Now fundamental rights are going to be enumerated in our constitution; and if we put preventive detention in the federal list, any laws that we make in respect of this item could not conflict with the rights that we shall recognise in the body of the constitution. Therefore, Sir, the legislation that we shall have the power to make cannot conflict with fundamental rights as recognised in the Constitution.

Then there was another matter. I think it was not Mr. Hussain Imam but Mr. Naziruddin Ahmad who brought it up. He referred to the use of the word "State" in the expression "reasons of State". The Honourable Member appears to have thought that in some way or other that word "State" might get confused with Indian States. I wonder if I have

[Mr. N. Gopaldaswami Ayyangar]

got his point all right. But, if I have got his point all right, my only answer to that point is that the word "State" has nothing to do with Indian States. Unfortunately in the Government of India Act, from which as he very properly said, we have lifted these expressions out into our own list, the word "State" has been printed with a capital letter. I think, that perhaps was a mistake. If we substitute a small letter for the capital letter, "reasons of state" would have the meaning which it was intended that that expression should have. I therefore, Sir, oppose this amendment and would ask the House to accept the item as it is.

Mr. President: The question is:

"That for item 4, the following be substituted:

'Preventive detention in a Province for reasons of State connected with defence and external affairs'."

The motion was negatived.

Mr. President: I shall, now put the original motion to the House.

The question is:

"That Item 4 in List I—Federal Legislative List be adopted *viz.*:

'Preventive detention in the territories of the Federation for reasons of State'."

The motion was adopted.

Mr. President: I might draw the attention of the House to the fact that we have gone through only four items and we have taken one and a half hours. We have got 84 items in the List. At this rate it will take five days to deal with the items. I do not wish to rush anything but I would urge Members to go as fast as they can.

ITEM 5

Shri K. Santhanam: I would request your permission to move the amendment in my name in List V in place of the one down in List I.

Mr. President: Yes.

Shri K. Santhanam: Sir, I move:

"That in Item 5 the words 'for the defence of the territories of the Federation and for the execution of the laws of the Federation and its Units' be deleted."

I need not take up much of the time of the House. These words are unnecessarily restrictive. The Federation should be able to use its forces for all legitimate purposes, including such work as is assigned to it by the United Nations or in pursuance of Treaties and Agreements. Therefore the deletion of these words gives a freer scope for the employment of our Military, Naval and Air Forces. I hope it will be accepted.

Mr. President: Motion moved.

"That in item 5 the words 'for defence of the territories of the Federation and for the execution of the laws for the Federation and its Units' be deleted."

Sir V. T. Krishnamachari: Mr. President, I would like to move amendments 11 and 12 to Item 5 in List I.

Sir, I move:

"That in item 5, after the words 'Air Forces' the words 'borne on the Federal establishments' be inserted."

This is a formal amendment. My next amendment relate to the second portion of item 5. Sir, I move:

“That in item 5, for the words ‘the strength, organisation and control of the armed forces raised and employed in Indian States’ the following be substituted:

‘The strength of the armed forces raised and employed in Indian States and the organisation and control of such part of the forces as may by agreement be earmarked for service with Federal Forces.’”

You will find a reference to this, Sir, in paragraph 5 of the report. The intention is to maintain all the existing powers of co-ordination and control now exercised over such forces. We agree that all the powers at present exercised should continue to be exercised by the future Federation, but we have attempted to reproduce the existing position in the amendment as we have tabled it. I shall be glad if Mr. Gopaldaswami Ayyangar will examine this and see whether this reproduces the existing position. We feel that this reproduces it more accurately than the original item, and we shall be glad if Mr. Gopaldaswami Ayyangar will examine this and employ such language as will correctly reproduce the existing position.

Mr. H. V. Pataskar (Bombay : General): Item 5 as it stands at present restricts the use of Naval, Military and Air Forces for two specific purposes, namely, “employment, thereof for the defence of a territory of the Federation and for the execution of the laws of the Federation and its Units.....”

As that employment is confined to these two objects, I have given notice of an amendment that the scope should be widened by adding:

“for implementing treaties and agreements with other countries for maintaining peace and security inside the territories of the Federation.”

The object, of giving notice of this amendment was to widen the scope, because our country may make treaties with other countries and these forces might have to be employed for implementing those treaties. I find now that my friend, Mr. Santhanam has already moved an amendment, which is wider in scope than mine. He wants all those words that refer to the use of these forces to be deleted. If that amendment is carried, there is no point in moving my amendment. I therefore request that you allow me either to move it or not after Mr. Santhanam’s amendment is disposed of one way or the other.

Mr. N. Gopaldaswami Ayyangar: I straightaway wish to say that we propose to accept Mr. Santhanam’s amendment.

Mr. H. V. Pataskar: Therefore I need not move it.

Mr. S. V. Krishnamoorthy Rao: Sir, my amendment is in two parts.

“That in item 5, the words ‘and its units’ be deleted; and for the words ‘raised and employed’ the word ‘maintained’ be substituted.”

the latter part is merely verbal one and I do not press it. As regards the first portion, the Indian Union consists of the two parts, the democratic provinces with elected presidents, and the States with their autocratic dynastic governments. If the Federation undertakes to use its army to execute the laws of these States, then it will be a negation of democracy. I do not think any democratic government will allow that to be done. It is to prevent this that I tabled my amendment. But

[Mr. S.V. Krishnamoorthy Rao]

Mr. Santhanam's amendment certainly fulfils this purpose which I have in my mind, and since that amendment is accepted, I do not press mine.

(Shri V. I. Muniswami Pillay and Shri D. Govinda Doss did not move their amendment No. 5 in List III)

Mr. President: These are all the amendments which we have notice of. The original items and the amendments are now open for discussion.

Shri Ram Sahai (Gwalior State): *[Mr. President, as a representative of one of the States, I oppose the amendment moved by Sir V. T. Krishnamachari. The amendment implies that some forces should remain under the States and others under the Centre. But at the same time, the language of the amendment includes the word "agreement". By this, the little importance that the power regarding forces which the Centre had is lost. I wish to tell the House that the independent authority enjoyed by the Centre over the defence forces is also put to an end by this amendment. The condition of the armies in the States is so bad that they cannot be used for defence whenever they are needed. Some training is necessary. And hence it should be completely under the control of the Centre. I therefore oppose the amendment.]*

Shri Yudhisthir Mishra (Eastern States Gp.): Mr. President, Sir, I support the amendment which has been moved by my Honourable friend, Mr. Santhanam, to item of list I. The words sought to be deleted indicate how the naval, military and air forces of the Union Government would be employed. It is proper that the scope of the employment and the function of the forces should be dealt with by the future Union legislature and that it should not be restricted by the Constituent Assembly. Sir, I take objection, in particular, to the words "for the execution of the law of its units". It would be disastrous for the people of the States if for the execution of the laws of the States, as they stand now, the forces of the Union are employed. The laws in the provinces would be framed by the Provincial Legislature which will consist of the representatives of the people. But, Sir, there is no guarantee that in the Indian States the people of the States would have any hand in the framing of their laws. As long as the people of the States do not enjoy democratic rights they will fight against the autocracy of the rulers and also against the laws framed to suppress the movement of the people. In many of the States, especially in Orissa States, in the name of public safety, ordinances have been passed to suppress the movement of the people who are fighting for their freedom. It would be a tragedy if the forces of the future Union Government be employed to suppress the people who are fighting for what the Congress and the Indian people fought for the last 27 years. With these words, Sir, I support the amendment moved by Mr. Santhanam.

Mahboob Ali Baig Sahib Bahadur: Mr. President, Sir, the House is under a great handicap because the Honourable Member who gave notice of a certain amendment—Mr. Pataskar—has not actually moved his amendment. He has on the other hand said that if Mr. Santhanam's amendment is passed he would not move his amendment. I do not know, Sir, whether such a procedure is allowed. In any case, members who intend to support the amendment given notice of by Mr. Pataskar do not clearly see how his amendment is covered by that of Mr. Santhanam. It

[] English translation of the Hindustani speech.

may be contended that according to Mr. Santhanam's amendment the significance of the word "defence" is so wide that it covers the cases mentioned or contemplated by the amendment of Mr. Pataskar. But Mr. Pataskar's amendment is to this effect that the Union forces must be enabled to be employed for implementing the treaties and agreements with other countries. The government might enter into defensive and offensive treaties with other countries. In such cases, power must be given to the government to employ the forces for the purpose of implementing these treaties. Well, of these activities on the part of the Indian forces are included in the word "defence" which I consider is the real implication, then, I think Mr. Pataskar's amendment may be allowed to be moved. The other instance mentioned by him is for the maintenance of peace and security inside the territories of the Federation. Here again it may be contended that the words "defence of the territories" may include the maintenance of peace and security inside the territories of the Federation. There is a little difficulty here, Sir. For instance, if the Federation Government wants to send its troops into a native State—I mean an Indian State, I am sorry, excuse me—whether this legislature has got the right to legislate in regard to that, whether the Union Government has got the right or the power to send these troops to the Indian States for the maintenance of peace and security. Supposing there is a big riot or rebellion or some sort of thing happening in an Indian State, the question is whether the Central Government or the Union Government would be entitled to send troops to the Indian States. These are the instances covered by the amendment given notice of by Mr. Pataskar. As I said, the House is under a great handicap in this respect. The Mover stated that if Mr. Santhanam's amendment is passed, he would not move his. This hypothetical way of moving an amendment is rather peculiar; in any case, the mover of this amendment or those who want to support it may be given a chance to move the amendment even after Mr. Santhanam's amendment is passed.

Mr. A. P. Pattani (Western India States Gp.): Mr. President, the amendment moved by Sir V. T. Krishnamachari requires considerable attention, especially as the mover has said that the intention of that amendment is to stabilise the position as it is today. So far as I know, there are three types of forces employed in Indian States. One is the Field Service Troops, second is the General Service Troops and the third is the Internal Security Troops. I know that before the last war, there were some States that had forces which were not affiliated or pointed to what is known as the Indian States Forces scheme under which these three categories of forces which I have mentioned came. But even those States, who were maintaining these forces outside the category of the Indian States Forces scheme, obtained equipment and arms through the Central Government. To that extent, Sir, I submit to the House that whether the forces were Field Service Troops, General Service Troops, Internal Security Troops or troops outside any of those organisations, the strength and equipment of those troops was determined or rather permitted, or any other term we may like to use, by the Central Government. If my interpretation is correct, then I submit, Sir, that the recommendation of the Committee as it stands is the correct position and I trust the Mover will look at it in that light.

B. Pocker Sahib Bahadur: Mr. President, Sir, I entirely agree with the Honourable Mahboob Ali Baig when he says, that the House is under a very serious handicap in understanding the position as regards the motion and the various amendments before the House. We do not know, Sir, which are the amendments for consideration before the House.

[B. Pocker Sahib Bahadur]

Of course, there was the motion and there was Sir V. T. Krishnamachari's amendment. There was also Mr. Santhanam's amendment. Mr. Pataskar's amendment also is there, I take it, because although he said he was not moving it if Mr. Santhanam's amendment is carried he has moved it conditionally. Whether that procedure of moving an amendment conditionally is permitted or not it is for you, Sir, to say.

Mr. N. Gopalaswami Ayyangar: I thought, Sir, that Mr. Pataskar said he was not moving his amendment.

Mr. President: Yes; he did not move it.

B. Pocker Sahib Bahadur: Supposing Mr. Santhanam's amendment is not carried in spite of that, is it to be taken that Mr. Pataskar declined to move it?

Mr. President: Whatever the reason may be, it is always open to a member not to move an amendment of which he has given notice. For whatever reason he may not choose to move it. In this case Mr. Pataskar did not move his amendment, whatever reasons may have influenced him.

Mr. H. V. Pataskar: Sir, I would like to speak a word on this amendment, not my own.

Mr. President: He has not finished yet.

B. Pocker Sahib Bahadur: Even now Mr. Pataskar has not said definitely whether he has moved his amendment or has declined to move it.

Mr. President: As I have said, the amendment has not been moved and it is not before the House.

B. Pocker Sahib Bahadur: If that is so, I would submit—of course, it is a matter of procedure on which you have to give a ruling—that if an amendment has been given notice of and if the Honourable Member who has given notice of the amendment has spoken on that amendment and has not said whether he does not move it or he would like to move it conditionally—whatever it is—I would request you to give, a ruling as to whether it is open to any other member of the House to move the same amendment with the President's consent. In view of the uncertainty of the present position, I would request, you, Sir, to give me permission to move the amendment as my amendment if the fact is that the amendment is not before the House; if on the other hand, the amendment is before the House, I would like to support the amendment and give my reasons therefor.

Mr. President: I think under the rules it is open to any member to give notice of an amendment and later not to move it for any reason he likes, but if he has not given notice of an amendment he cannot adopt somebody else's as his own. Mr. Pataskar's amendment has not been moved and it is not before the House.

B. Pocker Sahib Bahadur: Mr. Pataskar's reason was that Mr. Santhanam's amendment answered the point and it is only on that ground that he has declined to move. I would say, Sir, that Mr. Santhanam's amendment does not answer the purpose and it would leave the whole clause,

incomplete. Therefore I would submit that it is necessary that the clause should be such as to include at least the purpose of Mr. Pataskar's amendment. Conditions will arise sooner or later in this country in which India has to enter into alliances with neighbouring States in order to defend herself against some foreign aggression of some kind or other. For instance it is very likely that India may have to enter into a Defensive alliance with the neighbouring State of, say, Pakistan or Afghanistan in order to defend herself against an aggression from Russia or some other country. Well, it is to provide for such a contingency that Mr. Pataskar's amendment has been proposed and it is necessary that specific provision should be made to enable the Federation to legislate on that. Therefore I would submit, whatever may be the technical position as to whether the amendment of Mr. Pataskar is before the House or not, it is very necessary that some provision should be made in order to make legislation under that subject possible for the federation.

Mr. H. V. Pataskar: Sir, I would like to make it clear first of all that I did not move the amendment that stands in my name and the reason that I mentioned for doing so was that the amendment moved by my friend Mr. Santhanam has wider scope. On that point I would like to offer some further remarks. Now, Sir, from the clause under discussion the words "the raising, training, maintenance and control of Naval, Military and Air Forces and employment thereof", remain while the rest of the words from that clause 'for the defence of the territories of the Federation and for the execution of the laws of the Federation and its Units are omitted by the amendment which has been moved by my friend Mr. Santhanam. Naturally the object with which I had given notice of ray amendment was that it was mentioned in item 5 that these Naval Forces or Military Forces or Air Forces were to be used for two specific purposes which were mentioned viz., for the Defence of the territories of the Federation and for the execution of laws of the Federation and its units. Naturally I thought it was necessary that such Forces ought to be used for the purposes which were mentioned in my amendment. It is quite possible that we may have to enter into treaties with other countries and in that case we may have to make use of these Forces for implementing them. When only two purposes were mentioned, in the clause, I thought it was necessary that the other two purposes which to my mind were important should also be incorporated but when I found that my friend Mr. Santhanam moved as amendment by which he wanted to omit an reference to any purposes leaving it open to the Federal Government or the State to use them for any purposes whatsoever, I naturally thought that that amendment gave a wider scope and therefore my amendment became unnecessary. Now, therefore, to all those friends who may have any doubts I would like to say again that "The raising, training, maintenance and control of Naval, Military and Air Forces and employment thereof" naturally means that they could be employed for any purpose connected with the State. If necessary it may be further made clear by adding the words 'for purposes of State' after the words "employment thereof" and if the mover has no objection I would suggest an amendment to Mr. Santhanam's amendment to substitute the words 'for purposes of State' in place of the words which have been omitted. Of course, even if these words are not there the employment thereof will be entirely in the hands of the State and in their discretion Therefore I think the purpose for which I wanted to move my amendment does not any longer exist for the simple reason that now it is open to the State to use these forces for any purpose whatsoever. With these words, I would submit that I do not wish to move my amendment.

Mr. M. S. Aney (Deccan States) : Mr. President, Sir, there are two amendments which are under consideration of the House. One is by my Honourable friend Mr. Santhanam and the other is by Hon. Sir. V. T. Krishnamachari. This item which is under discussion deals with the question of Defence which in my opinion is of paramount importance and the House should very carefully consider the terms of this particular item. The whole structure of your Defence, its object and purpose, are to depend largely upon what you decide now. The first part of this item deals with the Federal Forces and the second part of it deals with the Forces maintained in the Indian States. I shall deal with the two Forces separately. In the first part the powers with regard to raising training, maintenance and control of Naval, Military and Air Forces and employment thereof for the Defence are claimed by the Central Government, for the Federal Forces and in the second part which deals with the strength and organization of the Forces raised and employed in the Indian State, powers in regard to that are also claimed by the Central Government or by the Federal Government. Mr. Santhanam wants to delete the portion which relates to the definition of the purposes for which the Federal Forces are to be employed. Mr. Santhanam's amendment is that we should not make any reference to the purposes for which the Federal Forces are to be employed. I want to invite the attention of this House to this particular point because it has some importance in my opinion in the interest of the units themselves. There are two objects which have been specifically stated here for which the Federal Forces could be employed. The first object is for the Defence of the territories of the Federation and the second is for the execution of the law of the Federation and its units. Now Defence of the territory is undoubtedly an incontrovertible matter and everybody can easily understand the use of the State Forces for that. For the second purpose it may not be easy for the Central Government to make use of that force unless specific provision is already made. Whether it is necessary to make use of that Force or not for that purpose is a matter which you must very carefully consider. Suppose a law of the Federal State is not obeyed by the people or a law of a unit is not obeyed by the people of the unit, are the Federal Forces to go and help those units in restoring law and order and enforce obedience of the people to the laws of the Federation and the units ? When you ask the units to join the Federation, when you ask the States also to become units, you indirectly take a responsibility to help them if necessary in the maintenance of law and order and those conditions are to be fulfilled. The Central Government should therefore have the power of allowing the Federal Forces to be used for those purposes at the time of emergency. It is necessary in my opinion to specify the purposes. There may be other purposes also for which the State Forces may be required and if we are not prepared to specify all those purposes, we may add at the end 'and for such other purposes as the State may determine from time to time.' In order to cover all those cases of emergencies when State Forces can be used some specific provision should be made. The Federal Forces exist not only for the purpose of Defence of the Federal territories from foreign invasion but also for the protection of the parts or units of the Federation from internal revolution as well. The use of the State forces for the latter purpose is very important and even necessary, in my opinion. Under the conditions under which our new Government is going to function it is necessary that some such power should be specifically given to the Federal Government for using those forces for the latter purpose. As regards that, I think that Mr. Santhanam is one with me. The omission of the words defining purposes will, according to him, widen the powers of the State. I fear that it may give rise to narrow interpretations of the powers, creating difficulties in times of emergencies

and thereby endangering the safety of the State. I therefore say that although I am not opposing the amendment it will be wise if he does not press his amendment and brings some other amendment such as, adding at the end the words 'for such other purposes which the State may think fit and proper'. Such an amendment will cover all cases which he has in view in bringing forward this amendment. I am only making these observations for the consideration of the House and of the drafting committee later on.

Now, coming to the second amendment which my Hon'ble Friend Sir V. T. Krishnamachari has moved, I appeal to Mr. Gopaldaswami Ayyangar who is nursing this law and doing all the piloting work to see whether, in view of the Instruments of Accession which each State is making, suitable changes could not be made to suit the conveniences of the States. I am very anxious, if we are going to give any definite assurance in the name of the Government of India to the States, to see that we do not give the impression that we are encroaching upon the power of the States in making this Schedule. I appeal to him to examine these provisions carefully and see whether the wording as it is found here is likely to be construed as encroaching upon what has been reserved for the States in this matter. It is a matter that should be settled by negotiation between him and the representatives of the States such as Sir B. L. Mitter and others. Their object also is the same, *viz.*, to create a strong force for the Federal Government for defending the territories of this country, for maintaining law and order and for preventing convulsions inside the country. These are my suggestions which I hope Mr. Gopaldaswami Ayyangar and the House will consider.

K. T. M. Ahmed Ibrahim Sahib (Madras : Muslim): Sir, on this occasion I would like to draw your attention to the very great handicap and difficulty which is experienced by Members on account of the sudden withdrawal of numerous amendments on the floor of the House. There are on the Agenda paper numerous amendments. Suddenly member after member rises and withdraws them. It is obvious, Sir, that the withdrawal by the Members is not due to their individual judgement, but is the result of decisions arrived at outside the House by the Party to which they belong. Therefore I would appeal to the Members of this House and to the President to see that the withdrawal is communicated by the Members beforehand so that the other Members of the House may be saved from the inconvenience caused by the sudden withdrawals. When we come to the House we have to come prepared in respect of all the amendments on the agenda paper and should have formed opinions as to whether to support or oppose them. Suddenly we are faced with these withdrawals and much time and energy is lost by us. It will be better if, as soon as the Party concerned decides upon these amendments their decisions are communicated to the office so that the office may communicate them to the other Members of the House that such and such amendments have been withdrawn. I hope that the Party concerned will have some regard for the convenience of the Members and communicate its decisions in regard to these amendments to the office in time so that we may be able to know what amendments Will be moved and what not. I am quite conscious of the fact that neither the President nor the House nor myself can compel any Member to give notice of his withdrawal earlier. But, when we know that the Party concerned has come to a decision with regard to these amendments much earlier than the date and hour of a meeting of the Assembly, it will be for the convenience of the Members if they tell us earlier that they are not moving such and

[K.T.M. Ahmed Ibrahim Sahib]

such amendments. I appeal to you, Sir, to see that this procedure is adopted. Hundreds of amendments are tabled and not even a few of them are being moved. Why all this inconvenience and why all this waste of energy? Sir, I appeal to you and to the Party concerned to have some regard for the convenience of the other Members.

Mr. President: I think it is the right of every Member of the House to give notice of any amendment he likes, and if any Member does not take advantage of that right which he possesses and does not give notice of amendments in his own name and depends upon somebody else, he can have no grievance if that other Member on whom he was relying does not move his amendment. It is not a question of convenience or inconvenience when Members are given time to send up their amendments which they later find it not necessary to move. No doubt with such withdrawals some inconvenience is caused. But no Member can have a grievance on the ground that any one Member has not moved his amendment. If the Honourable Member thinks that any particular matter is of such importance that an amendment should be moved, he must himself have given notice of an amendment in time. I cannot ask any Member not to withdraw an amendment if he wishes to, but I am quite sure Members will take into consideration the convenience of other Members and accommodate them wherever they can.

Mr. Gopaldaswami Ayyangar may now reply to the debate.

Mr. N. Gopaldaswami Ayyangar: Sir, so far as I have followed this debate, there are only two amendments before us for taking a decision on in respect of this item. The first is the one moved by Mr. Santhanam. Sir, I accept his amendment with only one verbal change which does not affect the substance of it. As amended by him the first portion of Item 5 will read :

“The raising, training, maintenance and control of Naval. Military and Air Forces and the employment thereof”.

The rest of the words in that sentence will be omitted. I think it will be better to say ‘and their employment’ and drop the word ‘thereof’. That is the only thing.

Shri K. Santhanam: I have no objection.

Mr. N. Gopaldaswami Ayyangar: As for the point raised by Mr. Aney it is no doubt desirable to indicate some of the Purposes for which these Forces might be employed. But he also seemed to concede the position that such mention might limit the range of the purposes for which those Forces might be used.

On the whole I think it will be conceded that the purposes mentioned in the original draft are only the obvious ones and even if we omit them the words ‘their employment’ will cover those purposes as well as many other purposes for which the armed forces could be employed. I think, Sir, it is best to drop those words at the end of the first part of this item and leave it at the place where Mr. Santhanam has proposed that that sentence should be left. Then, Sir, the other important amendment that was proposed was the one which was moved by Sir V. T. Krishnamachari.

There is no difference of view between what those who support this amendment have at the back of their minds and what the Committee itself had at the back of its mind when it worded this particular item, the latter part of it, in the way that it has done. The intention of the Committee is stated in paragraph 5 of the Report. This says:

“We have included in the federal list the item ‘the strength, organisation and control of the armed forces raised and employed in Indian States’. Our intention in doing so is to maintain all the existing powers of coordination and control exercised over such forces.”

The purpose of the amendment is to draw attention to the degree of connection between the Centre and armed forces in the Indian States. The categories in which those forces are placed were mentioned by my Honourable friend Mr. Pattani and the Committee’s understanding of the present state of things was the one which has been embodied in the wording of this particular item. I understand that while the mover of this amendment thinks that the wording that has been suggested in the amendment is more in accord with the intention of the Committee than the wording in the item as drafted, he is not in a position to say that it is absolutely accurate; and he himself suggested that I should investigate this matter, and see that the intention of the Committee is implemented in the sense that it was intended to do. I therefore wish to give the Honourable the Mover of this amendment the assurance that I shall do so and we shall, if necessary, in the text of the constitution that will come up before the House later on re-word it in a manner which would be in accord with the intention as stated in paragraph 5 of the Report. I hope, Sir, that, in view of that assurance, the Mover will not press his amendment.

Sir V. T. Krishnamachari: I do not press that amendment.

Mr. President: We have Mr. Santhanam’s amendment which has been accepted by the Mover. It only involves a slight verbal change.

Mr. Santhanam’s amendment was adopted.

Mr. President: Then there is only a verbal amendment moved by Sir V. T. Krishnamachari that in item 5 after the words “Air Forces”, this words “borne on the Federal establishments” be inserted.

Sir V. T. Krishnamachari: I withdraw that in view of this amendment.

Mr. President: That is withdrawn and the second amendment is not also pressed. We have got the original item as amended by Mr. Santhanam and that is now put to the vote.

Item 5, as amended by Mr. Santhanam’s amendment, was adopted.

ITEM 6

Mr. President: Then we go to item No. 6.

Sir V. T. Krishnamachari: I do not press this amendment, Sir, in view of Mr. Alladi Krishnaswami Ayyar’s. I propose to support Mr. Alladi Krishnaswami Ayyar’s amendment. Therefore, I do not propose to move this amendment.

Mr. President: Mr. Alladi Krishnaswami Ayyar you have to move the amendment to item No. 6.

Mr. Alladi Krishnaswami Ayyar (Madras : General) : The amendment of which I gave notice runs in these terms:

“That for item 6 the following be substituted:

‘Industries necessary for the purpose of Defence or for the prosecution of war and declared as such by Federal law’.”

I might mention it has been suggested in some quarters that the first part of the amendment might make it a subject of litigation inviting a judicial decision as to whether industries are necessary for the purposes of defence and therefore the suggestion has been thrown out, that there may be a slight verbal amendment to my Motion, namely, industries declared by Federal Law as being necessary for the purpose of defence or for the prosecution of war. If the House has no objection to that verbal amendment with that verbal amendment I shall move my clause, *i.e.* “industries declared by Federal Law as being necessary for the purpose of defence or for the prosecution of war.”

In moving the amendment, I should just like to make a few observations. In the first place there is no intention behind this item to interfere with the normal function vested in a Provincial Government, namely, that industries must in the normal course be the sole concern of the Provincial Government. This is intended to be an exception to that rule and that is why the word “defence industry” was put in. But the word “defence industry”, it was rightly pointed out, is open to the legitimate comment, that under modern conditions of warfare any industry may be treated to be a defence industry and if so under the guise of this item the Union Legislature might interfere with Provincial Autonomy and the normal course of Provincial Administration.

Therefore, a certain qualification is necessary for the words “defence Industries” and that qualification is brought out by the amendment. No doubt, it gives power to the Federal Legislature to declare certain industries as defence Industries by Federal law. How does that make any difference, it might be legitimately commented upon. The answer is, the attention of the Federal legislature is particularly drawn to this point when the Federal Legislature is called upon to declare whether it is necessary for the purpose of defence or not. If, for example, it is likely to be wrongly used, the representatives of the people in the legislature will take exception to the enactment and urge that it does not carry out the object of the measure, namely Federal defence, that it is merely an object which is mentioned in the preamble, but the actual sections do not carry out to take exception to this fact, namely, that it is not intended to subserve the purpose of defence. I trust that this amendment will, while serving the purpose of defence, also remove the apprehension on the part of the provinces that under the guise of this item, there is any intention on the part of the Central Legislature to encroach upon the legitimate and proper sphere of the provinces, namely, the promotion and encouragement of provincial industries.

Mr. Himmat Singh K. Maheshwari : Mr. President, Sir, the amendment which stands in my name runs as follows:

“That in item 6, For the words ‘Defence industries’ the words, Industries for the manufacture of fire-arms, ‘atom-bombs and ammunition’ be substituted.”

The fact, Sir, that this item is vague has been realised and admitted *Prima facie* it is not clear which industries will fall under this category. Textiles or Sugar Mills, Vegetable Oil Mills or Cement, Iron and Steel factories, Cultivation of Food crops, all these are necessary for the purpose of defence. If the intention were to include them or some of them in item 6. I fear a great deal of confusion is bound to result. A comparison of the present list with the Government of India Act, 1935, also shows that the framers of that Act did not consider this item to be necessary for inclusion in the legislative list then. Even now, nobody seems to be clear in his mind as to what industries are really intended to be brought in. Mr. Alladi Krishnaswami Ayyar's amendment just moved does not seem to me to carry us far. Even now, the wording of the amendment moved by him is almost equally vague. I should like therefore, Sir, some explanation, some clarification to be given to the House as to what exactly the intention is in including this item. When such clarification is afforded, it will be time for me to consider whether I shall withdraw my amendment or press it.

Mr. President: Mr. Madhava Rao. I passed over an amendment which you have given notice of.

Mr. N. Madhava Rao (Eastern States) : Sir, in view of the amendment moved by Mr. Alladi Krishnaswami Ayyar, I do not propose to move my amendment.

Mr. President: These are all the amendments which I have got notice of. The amendments and the item are now under discussion.

Mr. Naziruddin Ahmad: Mr. President, Sir, I support the amendment moved by Mr. Alladi Krishnaswami Ayyar and oppose the amendment by Mr. Himmat Singh Maheshwari.

I think the need for this item has been already made clear by Mr. Gopaldaswami Ayyangar. I should have thought that item 1 'Defence' was comprehensive enough. But as he pointed out, this may lead to litigation and trouble and in order to avoid all misunderstanding different sub-items have been introduced. But then, there are ambiguities in the item even in its present form as to what 'defence industries' might mean. So, the amendment by Mr. Alladi Krishnaswami Ayyar has attempted to make the position clear. It is left to a Federal law to define the purpose. There is no doubt that when the Federal law attempts to define it, a very careful examination will be made of the industries which might reasonably come within the purview of the objective. But it is impossible now to further clarify it, because, if we attempt to do so, we will unduly restrict the scope of this item. As the assurance given by the mover of the first amendment would not be binding on the honourable the mover of the Report on behalf of the Leader of the House, I therefore think that the mover of the Report himself should give the assurance that in making legislation, the purpose of defence should be strictly adhered to. If this is done, I think there will be no trouble.

With regard to the last amendment, my fear is that it unduly restricts the scope of the item. Defence is so great and important a subject that everything, even personal or even national convenience must yield to the exigencies of defence and in these circumstances, we should give full power to the Federal Legislature to deal with it. There is no doubt that the convenience of the public would be taken into account so far

[Mr. Naziruddin Ahmad]

as can be consistent with the safety of India. With these few words, as I have already said, I support the first amendment and oppose the second.

Mahboob Ali Baig Sahib Bahadur: Mr. President, Sir, I consider that the amendment moved by Mr. Alladi Krishnaswami Ayyar is unnecessary. The motion for inclusion of defence industries is correct. It is enough. If Mr. Alladi Krishnaswami Ayyar's amendment is accepted, a difficulty is created. If we remember that these items mentioned in the list are the items with regard to which the legislature can legislate, it is not necessary for you to include in this very item that they should be declared by federal law as industries for defence purposes.

It is unnecessary for you to include under this particular item that they should be declared by federal law as industries for defence purposes. Was it meant by the inclusion of certain items in this list to say that these are items with regard to which the Federal Legislature has the right to legislate? In these circumstances where is the necessary in this particular item to mention that certain items should be declared by federal law as defence industries? If we accept this amendment several difficulties will arise with regard to other items by contrast or by difference in the wording of this item and the other items.

This clause "declared as such by federal law" is unnecessary. The item may be left as it is. If you mean to specify in this particular item certain industries. I should very much prefer the amendment of Shri Himmat Singh K. Maheshwari which mentions the specific instances upon which the legislature can legislate although I do not agree that the items mentioned might not be extended. My preference is for the original item as it is. As I submitted the amendment of Mr. Alladi Krishnaswami Ayyar is not only unnecessary and superfluous but it might lead to unnecessary difficulties with regard to other items. If this House wants to specify certain items on which the legislature can legislate, it is better to enumerate all the items. Therefore I oppose both the amendments and support the item as it is in the original motion.

Mr. Alladi Krishnaswami Ayyar: Both in the Government of India Act and in the present report you will find the words declared by federal law" in several items by which such declaration is made a condition of the item being brought into the list. That is the object of the clause "declared by federal law to be necessary for the purpose of defence or for the prosecution of war".

Mahboob Ali Baig Sahib Bahadur: That does not justify the inclusion there.

Mr. N. Gopaldaswami Ayyangar: Sir, in the ordinary course of things I should have been grateful to Mr. Mahboob Ali Baig for the support he gave to the item as it stands in the list but I am afraid I have been persuaded to the view that Mr. Alladi Krishnaswami Ayyar's amendment is a better description of the power that should be vested in the Federal Legislature than the original item. The reason for that has been indicated by Mr. Alladi Krishnaswami Ayyar himself. But what I would draw the attention of the House to is the new description that is proposed in the amendment of Mr. Alladi Krishnaswami Ayyar. Industries are a subject primarily assigned to the province. If we are going to cut out of that subject a slice in respect of which the Federal Legislature should have power to make laws, it is desirable that that slice should be fairly well defined and that that power should be taken only in respect of those

industries which have to be taken out of the jurisdiction of the provinces and placed within the jurisdiction of the Centre. If we left the item to stand as it is in the original draft, the courts would have the jurisdiction to say whether a particular industry is or is not a defence industry: whereas if we adopted the language of Mr. Alladi Krishnaswami Ayyar's amendment as verbally modified by him, it would be for the federal legislature first to take a decision as to whether it is necessary for purposes of defence that a particular industry should be taken over under the control of the Federation; and, when the legislature has taken that decision, the courts cannot intervene to say that it is not an industry necessary for purposes of defence. That is why it has been decided to accept this amendment.

So far as the amendment moved by my Honourable friend Mr. Himmat Singh K. Maheshwari is concerned, the matter has been referred to already by Mr. Nasiruddin Ahmad. We cannot confine defence industries to the manufacture only of fire arms, atom bombs and ammunition. Even in times of peace the Federation may have to exercise jurisdiction over a number of industries which do not relate to those items. If it is necessary for purposes of feeding, clothing or otherwise equipping our armed forces that certain industries should be taken over under the control of the Federation—whether those industries should be owned by the Federation or controlled by it—there should be no impediment in the way of the Federal Legislature acting in the manner in which it is suggested that it should act. Therefore I would oppose Mr. Himmat Singh Maheshwari's amendment and accept the amendment of Mr. Alladi Krishnaswami Ayyar.

Mr. President: I will put first the amendment of Mr. Alladi Krishnaswami Ayyar to vote.

The question is :

“That for item 6 the following be substituted:

‘Industries declared by Federal Law as being necessary for the purpose of defence or for the prosecution of war’.”

The motion was adopted.

Shri Himmat Singh K. Maheshwari: I take it, Sir, that Mr. Alladi Krishnaswami Ayyar's amendment is only intended to put off decision and I have therefore no objection to withdrawing my amendment.

Mr. President: The amendment of Mr. Alladi Krishnaswami Ayyar takes the place of the original item and I will therefore put it to the House.

The question is:

“That the original item as amended by Mr. Alladi Krishnaswami Ayyar's amendment be accepted.”

Item 6, as amended, was adopted.

ITEM 7

Mr. President: There is only one amendment to item 7. That is by Shri Himmat Singh Maheshwari—No. 4 in List VI.

Shri Himmat Singh K. Maheshwari: Mr. President, Sir, the amendment which I beg leave to move is:

“That in item 7 the following be inserted at the end:
‘other than works belonging to a Federated State’.”

[Shri Himmat Singh K. Maheshwari]

The item as it stands at present is "Naval, Military and Air Force works". As I understand it, Sir, some Federal States have got Military and Air Force works built by them at their own expense. I take it that the Federation has no intention of taking these over, subject, therefore, to any assurance that may be forthcoming on this point I should like to say as little as possible and to await further remarks from the framers of the Report.

Mr. N. Gopalaswami Ayyangar: Sir, with regard to the last observation made by my honourable friend Mr. Himmat Singh let me say that the inclusion of this item as it stands in the list does not necessarily import any idea of the Federation expropriating any State of any of its rights of property in works built by it. But I must warn him at the same time that if, in the interests of the general defence of the country, the Federation should decide that it should take over and either own such works in Indian States or should control them, then it should be free to do that sort of thing. I do not think even Mr. Himmat Singh will question the right of the Federation in the interests of the general defence of the country to determine for itself what Military, Naval and Air Force works should be owned or controlled by the Federation and what might be left to the Indian States themselves. That will be a matter of detail in any legislation that may be undertaken. But the power will certainly be there in the Federation.

Shri Himmat Singh K. Maheshwari: In view of the explanation given I withdraw the amendment.

(The amendment was, by leave of the Assembly, withdrawn.)

Mr. President : The question is:

"That item 7 be adopted."

The motion was adopted.

ITEM 8

Mr. R. K. Sidhwa (C. P. & Berar: General) : Sir, item 8 in List I of the Appendix reads: "Local self-government in cantonment areas, the constitution and powers within such areas of cantonment authorities, the regulation of house accommodation in such areas and the delimitation of such areas." If you refer to the Government of India Act, 1935 (p. 299 item 2) the words are almost identical to what I have read before the House just now. It reads thus: "Local self-government in cantonment areas—not being cantonment areas of Indian States—the regulation of house accommodation in such areas etc." So the wording in this list coincides almost identically with what the Government of India Act says: My amendment reads thus:

"That in item 8, for the words 'Local self-Government in cantonment areas, the constitution and powers within such areas of cantonment authorities' the following be substituted:

'Control of the area occupied by military force, arsenals, factories for manufacturing areas, ammunition, etc.'

From the amendment that I have moved it will be seen that I am making a differentiation between the local self-government area and the cantonment area. This subject has for the last two decades been a most contentious subject and has been receiving the attention of the various authorities of India—I mean particularly the local authorities and the cantonment authorities—on the one side the Provincial Government and

on the other the Central Government. Just before the war the Government of India had to intervene and find out a way for this contentious subject that has been pending since over two decades. Then the war came in and the subject-matter is at a standstill. Those who have visited the cantonments and studied the subject, I am sure, will be able to grasp this contentious subject very easily. Notwithstanding that, I would suggest to the honourable House to bear with me for a few minutes to understand the intricate question that this item relates to.

There are in India several cantonments where troops are located. Within that cantonment area and within those areas where the troops are located there is a civil population. This civil population is also governed by the Cantonment Act. As far as the troops area is concerned that is kept by the Cantonment authority in as sanitary a state of affairs as possible and all amenities are given to the troops. But just about a mile and a half away from this troops area, where the civil population resides, these amenities are not given. There is scarcity of drinking water, the drainage system is very defective, hospitals and wells are lacking. In some places the area covered is from one mile to about eight or nine miles, and the limitations are so framed that at certain stations the area comes within the jurisdiction of the local authority—I mean the provincial government—and just across the road, only 25 yards away it is the cantonment area.

All sorts of complications have arisen so many times between the local authorities, the Central authorities and the Provincial authorities because the rights and privileges which the civil population enjoys outside the cantonment are denied to them inside the cantonment. This is because the cantonments are, as I said, governed by the Cantonments Act. Under this Act a limited number of persons are nominated from the Military authorities and a few from the rest of the population to look after the affairs of the cantonment. A few landlords and people like them may be there. All the other seats are filled by the military officers. Therefore the rights and privileges of the civil population inside the cantonment are denied to them whereas the population just across the boundary—just 25 yards off—are enjoying these rights, in their local bodies and municipalities.

Mr. M.S. Aney: How much more time will the Hon'ble Member take?

Mr. R.K. Sidhwa: I will take a long time, Sir. This is a matter on which I am not expressing merely my own views, but it is a matter on which the All India Local Bodies Association from year to year and from month to month.....

Mr. President: In that case, we shall continue the discussion tomorrow. You can continue your speech tomorrow if you like (*Some Honourable Members* : Not tomorrow, but Monday.) Yes, on Monday. The House stands adjourned till 10 o'clock on Monday.

The House then adjourned till ten of the clock on Monday, the 25th August 1947.