

Wednesday, 10th August, 1949

Volume IX

30-7-1949  
to  
18-9-1949



# CONSTITUENT ASSEMBLY DEBATES

## OFFICIAL REPORT

REPRINTED BY LOK SABHA SECRETARIAT, NEW DELHI  
SIXTH REPRINT 2014

---

Printed at JAINCO ART INDIA, NEW DELHI.

THE CONSTITUENT ASSEMBLY OF INDIA

*President:*

THE HONOURABLE DR. RAJENDRA PRASAD.

*Vice-President:*

DR. H.C. MOOKHERJEE.

*Constitutional Adviser:*

SIR B.N. RAU, C.I.E.

*Secretary:*

SHRI H.V.R. IENGAR, C.I.E., I.C.S.

*Joint Secretary:*

MR. S.N. MUKHERJEE.

*Deputy Secretary:*

SHRI JUGAL KISHORE KHANNA.

*Marshal:*

SUBEDAR MAJOR HARBANS LAL JAIDKA.

## CONTENTS

### Volume IX—30th July to 18th September 1949

	PAGES		PAGES
<b>Saturday, 30th July 1949—</b>		<b>Thursday, 11th August 1949—</b>	
Taking the Pledge & Signing the Register .....	1	Draft Constitution—(contd.) .....	351—391
Draft Constitution—(contd.) .....	2—42	[Articles 5 and 6 considered].	
[Articles 79-A, 104, 148-A, 150, 163-A and 175 considered].		<b>Friday, 12th August 1949—</b>	
<b>Monday, 1st August 1949—</b>		Draft Constitution—(contd.) .....	393—431
Draft Constitution—(contd.) .....	43—83	[Articles 5 and 6 considered].	
[Articles 175, 172, 176, 83, 127, 210, 211, 197, 212, 214 and 213 considered].		<b>Thursday, 18th August 1949—</b>	
<b>Tuesday, 2nd August 1949—</b>		Government of India Act, 1935 (Amendment) Bill .....	433—472
Taking the Pledge and Signing the Register .....	85	<b>Friday, 19th August 1949—</b>	
Draft Constitution—(contd.) .....	85—127	Draft Constitution—(contd.) .....	473—511
[Articles 213, 213-A, 214 and 275 considered].		[Articles 150, 215-A, 189, 190, 250 and 277 considered].	
<b>Wednesday, 3rd August 1949—</b>		<b>Saturday, 20th August 1949—</b>	
Draft Constitution—(contd.) .....	129—163	Draft Constitution—(contd.) .....	513—554
[Articles 276, 188, 277-A, 278 and 278-A considered].		[Articles 277, 279-A and 280 considered].	
<b>Thursday, 4th August 1949—</b>		<b>Monday, 22nd August 1949—</b>	
Draft Constitution—(contd.) .....	165—204	Draft Constitution—(contd.) .....	555—595
[Articles 188, 277-A, 278, 279, 280, 247, 248, 248-B and 249 considered].		[Articles 284, 285, 285-A, 285-B and 285-C considered].	
<b>Friday, 5th August 1949—</b>		<b>Tuesday, 23rd August 1949—</b>	
Draft Constitution—(contd.) .....	205—240	Draft Constitution—(contd.) .....	597—635
[Articles 249 to 253 considered].		[Articles 286 to 288-A and 292 considered].	
<b>Monday, 8th August 1949—</b>		<b>Wednesday, 24th August 1949—</b>	
Draft Constitution—(contd.) .....	241—274	Draft Constitution—(contd.) .....	637—676
[Articles 253, 254, 254-A and 255 considered].		[Articles 292 to 295 and 295-A considered].	
<b>Tuesday, 9th August 1949—</b>		<b>Thursday, 25th August 1949—</b>	
Draft Constitution—(contd.) .....	275—311	Draft Constitution—(contd.) .....	677—699
[Articles 255 to 260 considered].		[New Article 295-A considered].	
<b>Wednesday, 10th August 1949—</b>		<b>Friday, 26th August 1949—</b>	
Draft Constitution—(contd.) .....	313—349	Draft Constitution—(contd.) .....	701—717
[Articles 260 to 263, 267 to 269 and 5 & 6 considered]		[Articles 296, 299 and Third Schedule considered].	
		<b>Monday, 29th August 1949—</b>	
		Draft Constitution—(contd.) .....	719—736
		[Seventh Schedule : List I : Entries 1 to 7 considered].	

PAGES	PAGES
<b>Tuesday, 30th August 1949—</b>	
Draft Constitution—(contd.) .....	737—782
[Seventh Schedule—(contd.): List I : Entries 7 to 12, 9-A, 13 to 15, 15-A, 16 to 26, 26-A, 27 to 40, 40-A and B and 41 to 52 considered.]	
<b>Wednesday, 31st August 1949—</b>	
Draft Constitution (contd.) .....	783—828
[Seventh Schedule—(contd.): List I : Entries 53 to 57, 57A, 58, 58-A, 59 to 61, 61-A, 62 to 64, New Entry 64-A, 65 to 70, 70-A, 71 to 73 and 73-A considered].	
<b>Thursday, 1st September 1949—</b>	
Statement <i>re</i> : Vindhya Pradesh Representation in the Assembly .....	829—830
Draft Constitution—(contd.) .....	830—875
[Seventh Schedule—(contd.): List I : Entries 74 to 91: List II : Entries 1—15 considered].	
<b>Friday, 2nd September 1949—</b>	
Condolence on the death of Shri Gopinath Srivastava .....	877
Draft Constitution—(contd.) .....	877—928
[Seventh Schedule—(contd.): List II : Entries 15 to 67; List III : Entries 1, 2 and 2-A considered].	
<b>Saturday, 3rd September 1949—</b>	
Draft Constitution—(contd.) .....	929—965
[Seventh Schedule—(contd.) List III : Entries 2-A, 3 to 25, 25-A, 26, 26-A, 27, 28, 28-A, 29 to 31, 31-A, 32, 33, 33-A, and B, 34, 34-A, 35, 35-A, 36 and New Entry 88-A considered].	
<b>Monday, 5th September 1949—</b>	
Draft Constitution—(contd.) .....	967—1008
[Fifth Schedule : Paragraphs: to 6; Sixth Schedule: Paragraph 1 considered].	
<b>Tuesday, 6th September 1949—</b>	
Draft Constitution—(contd.) .....	1009—1054
[Sixth Schedule : Paragraph 2 to 15 considered].	
<b>Wednesday, 7th September 1949—</b>	
Draft Constitution—(contd.) .....	1055—1099
[Sixth Schedule : Paragraphs 16 to 18, and 1 and 20; Articles 281 to 282- considered].	
<b>Thursday, 8th September 1949—</b>	
Draft Constitution—(contd.) .....	1101—1147
[Articles 282-B, 282-C, 283 and 274-A to 274-E of Part X-A considered].	
<b>Friday, 9th September 1949—</b>	
Draft Constitution—(contd.) .....	1149—1192
[Articles 264 to 266, 296 and 299; Seventh Schedule and articles 250, 202, 234-A, New article 242-A, 248-A, 263 and 263-A considered].	
<b>Saturday, 10th September 1949—</b>	
Draft Constitution—(contd.) .....	1193—1266
[Articles 24 considered].	
<b>Monday, 12th September 1949—</b>	
Draft Constitution—(contd.) .....	1267—1348
[Article 24 and part XIV-A- Language considered].	
<b>Tuesday, 13th September 1949—</b>	
Draft Constitution—(contd.) .....	1349—1426
[New Part XIV-A (Language) considered].	
<b>Wednesday, 14th September 1949—</b>	
Abolition of Privy Council Jurisdiction Bill .....	1427
Draft Constitution—(contd.) .....	1427—1493
[New Part XIV-A (Language) considered].	

PAGES	PAGES
<b>Thursday, 15th September 1949—</b>	Draft Constitution—( <i>contd.</i> ) ..... 1621—1673
Draft Constitution—( <i>contd.</i> ) ..... 1495—1541	Motion <i>re</i> Translation of the Constitution.
[New Articles 112-B and 15-A considered].	[Articles 303 and 300-A and B considered].
<b>Friday, 16th September 1949—</b>	[Eighth Schedule and Articles 303, 304, 99, 305 and 1 considered].
Draft Constitution—( <i>contd.</i> ) ..... 1543—1590	<b>Sunday, 18th September 1949—</b>
[Articles 15-A, 209-A to E, 315 and 303 considered].	Motion <i>re</i> October meeting of ..... 1675 Assembly.
<b>Saturday, 17th September 1949—</b>	Draft Constitution—( <i>contd.</i> ) ..... 1676—1693 [Article 1 considered].
Abolition of Privy Council ..... 1591—1620 Jurisdiction Bill	

CONSTITUENT ASSEMBLY OF INDIA

*Wednesday, the 10th August 1949*

---

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

---

DRAFT CONSTITUTION—(Contd.)

**Article 260**—(Contd.)

**Mr. President :** Dr. Ambedkar.

**The Honourable Dr. B. R. Ambedkar** (Bombay: General): At the close of yesterday's sitting, Sir, I was dealing with the argument advanced by my Friend Pandit Kunzru in support of his amendment. I began by saying that it was desirable to remind the House of the provision contained in article 251(2) and article 253 as a sort of background to enable Honourable Members to follow what exactly Pandit Kunzru wanted by his amendment.

Now I would briefly summarise what I said yesterday. The position is that so far as income-tax is concerned, the distribution and allocation of the proceeds are left to the President to determine, while the distribution and allocation of the Central duties of excise are left to be determined by law made by Parliament.

The next point to bear in mind are the provisions contained in article 260 which deals with the Finance Commission. Under clause (3) of article 260, it is provided that the Finance Commission is to advise and make recommendations with regard to the distribution and allocation, not merely of the taxes which are made distributable by law made Parliament, but also with regard to the distribution and allocation of the income-tax. Now, what my Friend, Pandit Kunzru, wants to do, if I have understood him correctly, is that he wants to take out the collection, allocation and distribution of income-tax from the purview, so to say of the Finance Commission. His point was this that while the President may well take the advice of the Finance Commission in making the allocations of Central duties of excise, he should be, so to say, made independent of the Finance Commission with regard to the income-tax. The only qualification that he wants to urge is this that so far as the initial distribution of the income-tax is concerned, the President may well consult the Finance Commission and act in accordance with or after taking into consideration the recommendations made by the Finance Commission, but any subsequent variation of the income-tax allocation may be left to be done by the President independently of any recommendations that may be made by the Finance Commission. I think I am right in interpreting what he intends to do by his own amendment. The question, therefore, is a very simple and small one. Should the President be left altogether independent of any recommendations of the Finance Commission in varying the distribution of the income-tax between the provinces and the Centre and the allocation of the proceeds of the income-tax so set apart between the different provinces? The draft amendment as I have moved provides, that the President shall take into consideration the recommendations of the Finance Commission in making any variations that he may want to do with regard to the distribution and allocation of the income-tax. I quite appreciate his

[The Honourable Dr. B. R. Ambedkar]

point of view that, if this was left to be decided by the President on the recommendations of the Finance Commission, the hands of the President may be so tied that he may have to yield to the recommendations of the Finance Commission or to the clamour that may be made by the provinces with the result that he may be forced to do injury to the Central finances. I share his feelings that the Centre should be made as independent as one can make it so far as finance is concerned, because in my mind there can be no doubt that we must not do anything in the Constitution which would jeopardise either the political or the financial existence of the Central Government, but there is also the other side to the matter, *viz.*, supposing there was a clamour made by all the provinces, which is, perfectly possible to imagine because it is their common interest, urging the President to allocate more revenue to the provinces, would it not be placing the President at the mercy of the provinces? If, on the other hand, there was a report of the Commission containing recommendations that the Centre should not give more revenue under the income-tax to the provinces, it would, in my judgment, strengthen the hands of the President in refusing to accede to such a clamour from the provinces. If I may use the language with which we are now familiar under the Government of India Act, the difference between the draft article as it stands, now and the amendment proposed is that according to Pandit Kunzru, the President should be free to act in his discretion, while the draft as proposed by me says that he should act in his individual judgment which means.....

**Pandit Hirday Nath Kunzru** (United Provinces: General): Will the honourable Member permit me to make my point clear, because I feel that he has probably not completely understood what I said? May I make clear what I said in one or two sentences. Under clause (3) of article 260 the President may refer any matter he likes to the Finance Commission for its opinion. I do not, therefore, want to debar the President from consulting the Commission in any matter that he likes. All that I am objecting to is that the Finance Commission without any reference from the President, should have the power to say that the allocation of the net proceeds of the income-tax between the Centre and the provinces is not what it should be and that new percentages recommended by it should be fixed. This is all that I said yesterday.

**The Honourable Dr. B. R. Ambedkar** : That rather makes the situation far more complicated because I cannot see how the Finance Commission can make any recommendation unless the point has been specifically referred to it or included in the terms of reference.

**Pandit Hirday Nath Kunzru** : Under sub-clause (a) of clause (3) of article 260 the Commission may on its own initiative make recommendations on that subject. Let my Friend read the sub-clause to understand the meaning.

**The Honourable Dr. B. R. Ambedkar** : “Any other matter referred to the Commission by the President in the interest of sound finance.”

**Pandit Hirday Nath Kunzru** : That is (d). Will the honourable Member refer to article 260, the article which we are discussing, with particular reference to the clause that I dealt with yesterday? Sub-clause (a) of clause (3) of article 260 says—

“It shall be the duty of the Commission to make recommendations to the President as to the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them.....”

That is the thing that I am objecting to. The power of the President under sub-clause (d) of clause (3) to refer any other matter that he likes to the Finance Commission will not be disturbed if my amendment is accepted.

**The Honourable Dr. B. R. Ambedkar:** I do not know. The position is quite clear whether the President is to be left in his complete discretion to make any allocation he likes with regard to the income-tax or whether he should be guided by the recommendations made by the Commission. It seems to me that the position of the President will be considerably strengthened if he could refer as a justifying cause to the recommendations made by the Finance Commission. It seems to me that the Finance Commission will be acting as a bumper between the President and the provinces which may be clamouring, for more revenue from income-tax. I therefore do not think there is any reason for accepting the amendment moved by my Friend, Mr. Kunzru.

**Mr. President :** I have now to put the two amendments to the vote. First, amendment No. 95 moved by Dr. Ambedkar. The question is:

“That for clause (1) of article 260, the following clause be substituted:—

(1) The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order, constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President.”

The amendment was adopted.

**Mr. President :** The question is:

“That with reference to amendment No. 95 of List I (Third Week) of Amendments to Amendments, for sub-clause (a) of clause (3) of article 260, the following sub-clause be substituted :—

- ‘(a) the distribution between the Union and the States of the net-proceeds of taxes on income which are to be divided initially between them under this Chapter;
- (aa) the allocation between the States of the respective shares of the net proceeds of taxes which are to be, or may be, divided between the Union and the States under this Chapter;’”

The amendment was negatived.

**Mr. President :** The question is:

“That in sub-clause (b) of clause (3) of article 260, for the words ‘revenues of India’ the words ‘Consolidated Fund of India’ be substituted.”

The amendment was adopted.

**Mr. President :** The question is:

“That article 260, as amended, stand part of the Constitution.”

The motion was adopted.

Article 260, as amended, was added to the Constitution.

---

### Article 261

(Amendment No. 2949 was not moved.)

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

“That in article 261, for the word ‘Parliament’ the words ‘each House of Parliament’ be substituted.”

[Amendment No. 99 (List 1, Third Week) was not moved.]



**Shri H. V. Kamath** (C.P. & Berar : General): Sir, I move:

“That with reference to amendment No. 2950 of the List of Amendments, in article 261, for the words ‘together with an explanatory memorandum as to the action taken thereon’ the words ‘together with such explanatory memorandum as he may think fit’ be substituted.”

I move also, Sir, by your leave the next amendment that stands in my name, namely amendment No. 139 of List IV, Third Week, to the effect:—

“That in amendment No. 2950 of the List of Amendments, for the words ‘each House of Parliament’ proposed to be substituted, the words ‘each House of Parliament for such action thereon as Parliament may deem necessary’ be substituted.”

This amendment No. 139 incorporates the amendment proposed by Dr. Ambedkar, amendment No. 2950 in our List of Amendments, so that if these two amendments of mine were accepted by the House, the article will read as follows :—

“The President shall cause every recommendation made by the Finance Commission under the foregoing provisions of this Chapter together with such explanatory memorandum as he may think fit to be laid before each House of Parliament for such action thereon as Parliament may deem necessary.”

To my mind, Sir, this article 261 coming as it does after article 260 and relating as it does to an important Commission, namely the Finance Commission, presents an unfortunate anomaly. This article is one of those numerous articles in our Draft Constitution which seek to centralize more and more power in the President, that is to say, the Executive; the President, of course acting upon the advice of his Council of Ministers as we have been repeatedly told here. I see no reason why the action to be taken on the recommendations of the Finance Commission should be left to the judgment solely of the President said his Cabinet. In article 260 which has been already adopted by the House. We have clothed Parliament with certain powers regarding this Finance Commission; Clauses (2) and (4) of article 260 vest in Parliament powers regarding the determination of qualifications for membership of the Commission and determination of the powers of the Commission. The Finance Commission, as has been made clear by Dr. Ambedkar and also by Pandit Kunzru is going to be a very important piece of machinery of the State. We have clothed the Finance Commission with vital powers. Though of course in law and in the Constitution, it is merely advisory and recommendatory, yet I have no doubt in my own mind that this Commission will play a vital part in the decision that the President or his Cabinet or Parliament might arrive at so far as financial matters are concerned. Sub-clause (d) of clause (3) gives powers with respect to general matters, that is to say, matters relating to federal finance in general. Besides this, the Commission has been invested with advisory powers regarding allocation of revenues between the Centre and the units and also as between the various units of our Union. Considering all these various aspects of this vital matter, I feel that we shall be failing in our duty if we do not provide in the Constitution that the last word as to the action to be taken on the recommendations of the Finance Commission shall rest with Parliament and not with the President.

I said a similar point in connection with another Commission, the article regarding which has already been adopted by the House, namely article 301, the Commission to investigate the conditions of backward classes. I then raised the issue that Parliament and not the President or the Executive should be clothed with powers regarding the action to be taken on the recommendations of that Commission. My Friend, Prof. Shibban Lal Saksena, I am glad to find, has now got a similar amendment to mine. I hope, Sir, that this

matter, important as it is, will receive the earnest and serious consideration of this House and that we shall see to it that where it is derogatory to the dignity of our Constitution and the sovereignty of our Parliament, the Executive is not clothed with these powers which are absolutely uncalled for, Parliament passes the law laying down the qualifications of the Commissioners; Parliament gives them certain powers; however, it has not the power to take, action, but the President has been clothed with the power to take action on the recommendations of the Commission. Parliament will be presented, unfortunately, with a *fait accompli*.

**Shri Brajeshwar Prasad** (Bihar: General): For purposes of elucidation, Sir, I would like to know from Mr. Kamath whether the position and powers of Parliament under the Draft is that of a sovereign body or it has got only limited powers.

**Shri H. V. Kamath** : I am glad my honourable Friend Mr. Brajeshwar Prasad has thought fit to raise this question by way of an interruption. If he scans the article carefully, he will find that memorandum referred to in this article is a memorandum as to the action taken thereon. That is to say, it does not say “proposed to be taken thereon”. The President will take action on the recommendation and then it will be laid before Parliament.

**Shri Brajeshwar Prasad** : You said that Parliament is a sovereign body; I say Parliament is not a sovereign body.

**Shri H. V. Kamath** : If Parliament is not going to be, sovereign, if my Friend wants to make the President sovereign in relation to Parliament, I have no quarrel with him.

**Shri Brajeshwar Prasad** : Read the Draft and say whether it is a sovereign Parliament or a limited Parliament.

**Shri H. V. Kamath** : I do not want to enter into any academic discussion. I am concerned only with the particular article before the House. The article deals with the powers of the President *vis-a-vis* Parliament as regards the Finance Commission's recommendations. If we turn to article 275 and others, there at least we have got this provision that Parliament should approve of a certain action taken by the President; otherwise, that action ceases to have validity. Here, there is no such provision at all. The President will submit a memorandum to Parliament describing the action taken on the recommendations of the Commission and it will be laid before Parliament. For what purpose, God alone knows. For what purpose this would be laid before Parliament, for approval, disapproval rejection or consideration, nothing is stated.

**Pandit Thakur Das Bhargava** (East Punjab: General), Merely for information.

**Shri H. V. Kamath** : Pandit Thakur Das Bhargava says, merely for information. If that is the intention of the article, it is a most pernicious measure. Parliament will be treated with scant regard and with, I may even say, contempt, if this article is passed as it is. We must certainly provide whether Parliament will have power to reject, or what powers will be given to it, with regard, to the action taken by the President on the recommendations of the Finance Commission. If Parliament is going to have no powers at all in this matter, not last word in this matter, I am constrained to say that we are clothing the President with more and more powers which are absolutely uncalled for, absolutely unnecessary in this respect. The Finance Commission being a very important body. I would once more plead, before I conclude, it must be subordinate to Parliament which is going to be a sovereign legislature. It is no use the President presenting Parliament

[Shri H. V. Kamath]

with a *fait accompli* telling them “this is the action I have taken”. I think this will be a very humiliating position for the sovereign Parliament and derogatory to its dignity. I hope Dr. Ambedkar and his wise team will look into the matter very closely and just as the other day, after a full dress debate, upon article 280, we find a new amendment will shortly be moved by Dr. Ambedkar, seeking to give some authority to Parliament with regard to the suspension of fundamental rights,—that has been included in the agenda,—so also I hope Dr. Ambedkar, the Drafting Committee and the House look into the matter very closely and see to it that Parliament retains ultimate control over the action to be taken on the recommendations of the Finance Commission and not leave it to the sweet will and pleasure of the President and the executive. Sir, I move amendments 138 and 139, of List IV, Third Week, and commend them for the earnest consideration of the House.

**Prof. Shibban Lal Saksena** (United Provinces: General): Sir, I beg to move:

“That with reference to amendment No. 2950 of the List of Amendments, in article 261, for the words ‘action taken thereon to be laid before Parliament’, the following words be substituted :—

‘containing his proposals for action that should be taken thereon to be laid before each House of Parliament. The House of the People shall have the right, to amend the proposals made by the President by a resolution passed by the House of the People. The proposals of the President in their original form or in the form in which they emerge after they are, amended by the House of the People shall thereafter become law.’ ”

After the amendment is adopted, the article will read as follows:—

“The President shall cause every recommendation made by the Finance Commission under the foregoing provisions of this Chapter to-ether with an explanatory memorandum containing his proposals for action that should be taken thereon to be laid etc.....law.”

As I said while discussing the last article, I feel that in this Chapter the ultimate authority of Parliament in regard to financial matters has been made secondary to the authority of the President. I regard this to be against the principles of democracy. Here we are appointing a Finance Commission which shall be charged with powers to make recommendations for allotments between the Union and the various States, for making grants-in-aid to various States, for even modifying terms of any agreement entered into by the Union. and in respect to any other matter which -may be referred to it by the President. Such are the wide powers which have been given to this Commission. Now this Commission will make a report after touring the country, after investigating the entire financial position and will submit its report to the President. I want to know whether the Parliament is the final authority to accept or reject any of the recommendations made by the Commission or the President is the final authority. I feel that it is a matter of deep consequence and cuts at the root of democracy if Parliament does not have the final say on this important question. I have therefore in this amendment suggested that after the report of the Commission is received the President shall lay a memorandum containing his advice to the legislature as to how far these recommendations should be accepted but the ultimate authority for accepting those proposals or rejecting them must be vested in the House of People. Mr. Kamath said that both the Houses of Parliament should vote upon such a Bill. Any Bill containing recommendations of the Finance Commission will be a financial Bill which can only be subject to the vote of the House of the People and not to the vote of the Upper House. Therefore I have here omitted the Upper House. I have said that the House of the People shall have

the right to amend the proposals made by the President by a Resolution passed by the House of the People. It is the House of the People that will determine whether the recommendations made by the Finance Commission on the proposals made by the President should be amended in some form or not. Normally when there is Parliamentary Democracy the Prime Minister will have a majority in the House of the People, and therefore whatever proposals the President will submit will surely be on the advice of the Prime Minister and therefore they will have the support of the majority of the House. There should therefore be no difficulty in getting them through, but the discussion in the Parliament will give the Opposition an opportunity to examine the proposals, to suggest amendments, to bring to the notice of Government another point of view which probably the Government may accept. If we deny the Opposition the right to bring forward amendments or criticise, the proposals, I do not think we are carrying on the form of democracy which we have accepted. I do not see how Dr. Ambedkar can get this article passed as it is. He is trying to give the power to the President, all along of course with two or three exceptions which make him all the more inconsistent. I have said that the authority of Parliament should be supreme in financial matters because on the proper control of finances depends the prosperity of the country. I therefore think that my amendment is a simple one and I hope the House will accept it.

**Dr. P. S. Deshmukh** (C.P. & Berar: General): Mr. President, I regret to say that both my friends Mr. Kamath and Professor Saksena are labouring under certain misconceptions. The first thing about this article 261 is that it does not give any additional power to President. There is no clause in this which seeks to give any additional power to President than what has already been decided by this House and is embodied in articles 254 and 255. Prof. Saksena was not also correct when he said that the Finance Commission has wide powers. Its powers are defined in 260 clause (3) and as would be quite clear, the powers are merely to make recommendations to the President. They have no final power to take any action whatsoever unless they act under clause (4), but those powers can be only those that are delegated to them by Parliament. Since it is only recommendations that they are competent to make, I do not think it is correct to say that the Finance Commission has wide powers. Nor can this article be, aid to enlarge the powers of President in any way. Whatever damage was to be done to the authority of the Parliament as the supreme body has already been done by articles 254 and 255 and no amendment whatever to 261 can rectify that position. I would however like to point out that it would have been better had the words 'by him' would have been added after the words 'thereon' so as to make it clear that the Parliament will have placed before it the President's action on the recommendations that have been made by the Commission and the recommendations themselves. Otherwise the article is quite satisfactory because when these papers are laid before Parliament, the Parliament would be competent to pass on it such resolutions or turn down any recommendations or to set aside any action taken so long as it has powers to do so. Those powers that have been expressly taken away from it by articles 254 and 255 cannot be exercised by Parliament even if we accept the amendments proposed by Prof. Saksena and Mr. Kamath. The Parliament will be incompetent to interfere with them. But the rest of the powers which it enjoys, as long, as they have not been specified as taken away from Parliament. it cannot be said to be not able to exercise. So I think the amendments suggested are not at all necessary, but the wording of the article as it stand is not as satisfactory as I would wish. It should have been made clear that excepting these cases governed by 254 the Parliament would be competent to take such action as it pleased on the recommendations of the Commission which are not specifically excluded from its purview.

[Dr. P. S. Deshmukh]

Otherwise I do not think there is likely to be any difficulty in retaining this clause as it stands.

The recommendations as well as the action of the President, I believe, are intended to be placed before Parliament and even after debate such distribution of finances which is within the discretion of the President and such charges on the consolidated funds of India which have been provided for under article 255, Parliament will not be in a position to interfere. So I think there is not much point in saying that Parliament will exercise those powers which are already there and which are not taken away. I therefore do agree that there is any need to amend this article.

**Pandit Thakur Das Bhargava :** Sir, I support the principle of the amendment of Mr. Kamath and the amendment of Mr. Saksena in regard to article 261, it is said the explanatory memorandum shall be, laid before Parliament and if you kindly pursue the wording of the article, you will see that the explanatory memorandum does not contain the proposal of the Finance Commission, but it refers to the action taken thereon. Action taken thereon can only mean that the President shall be the final judge of those proposals and he alone has, the discretion to accept or reject any of the recommendations made by the Finance Commission. This is very unsatisfactory. As a matter of fact, article 261 is the hope of all the provinces. At present, when we refer to article 255, as we discussed it yesterday, the need of the poor provinces will be looked into by Parliament, and in regard to article 254, it is a transitory provision. All these matters will be placed before the Finance Commission which will be appointed within two years, in the first instance, and subsequently after every five years. The proposals which the Finance Commission will make will be not of the nature of day to day affairs, but considered proposals regarding the fate of the provinces. All the progress in the provinces will depend upon the recommendations of the Finance Commission. The provinces do hope that the Finance Commission will be above board and will take their needs into consideration, so much so that we have intended under 262 (2) that Parliament shall determine the qualifications of those five members too. Therefore, my submission is that the report of the Finance Commission shall be a historic record and shall furnish the basis for those proposals which will affect the provinces vitally. The provinces, therefore, should have the say in the matter, through their representatives in Parliament. If the Cabinet or the President be the sole judges of such recommendations as the Finance Commission will make, I do not think it will inspire the confidence of the provinces. It is therefore, necessary that a matter of this importance, the Finance Commission which will come into being and which will make enquiries after every five or six years—because one year may be taken by the Commission to report—that a matter of this importance be placed before Parliament and Parliament should have the last word on it.

In regard to Parliament, I understand that the principle contained in the amendment of Professor Saksena is a very salutary one. According to the other provisions of this Constitution, it is the House of the People which has got the final voice in all matters relating to finance, and it is but meet that both Houses of Parliament be able to discuss the proposals of the Finance Commission, but the House of the People should have the final say in regard to financial matters. Therefore it is necessary that the proposals are laid before the House of Parliament and then discussed and any proposals that emerge out of these discussions should ultimately be recommended by the House of the People, and the law emerging therefrom should have the effect of Money Bills. All provisions that we have so far enacted in regard to Money Bill should apply to these also.

I am not impressed by the arguments of Dr. Deshmukh who thinks that in article 261 no power has been taken away from Parliament. My humble opinion is that in regard to 261, if the President has the power to take action, then the only purpose of the memorandum will give information to the Members. It is clear that the powers of Parliament as such are taken away. My Friend is of the view that after the action has been taken, then after it is placed before Parliament, the House will then be in a position to take action. This evidently cannot be correct. Even if it is correct, I think if the proposals are not in the first instance put before the House of the People, then a great deal of harm will be done. It will be difficult to reject or do away with the, recommendations already made. It is but fair that the report of the Finance Commission and the entire matter should be within the purview of the House of the People to debate upon and take action. My own apprehension is that after action has been taken by the President, this memorandum will only be placed for information and not for the purpose of taking action. I feel that this provision takes away the inherent power of Parliament to deal with financial matters, and therefore, I would like that the amendments of Mr. Kamath and Professor Saksena be accepted.

**Prof K. T. Shah** (Bihar: General): Mr. President, Sir, I also support the amendments moved by Messrs. Kamath and Saksena. I confess I am not very happy over this entire chapter relating to the appointment, powers and activities of the Finance Commission. The Finance Commission is so much more additional patronage in the hands of the executive, and will act, in so far as it is empowered under this article to act, against the inherent rights of a sovereign Parliament. It is impossible to agree that by this provision no power that normally vests in a sovereign Parliament is taken away, because, even according to article 261, the right to consider the memorandum, or the right to submit the memorandum to Parliament, will result only in a kind of postmortem examination of the action taken, which, if I may say so, will encourage only fruitless discussion, where the opposition may for opposition's sake, only find fault and where constructive suggestions would not be in order, because it will be only a debate on action actually taken, which cannot be remedied and which, therefore, can give occasion only to venting, as it were some past spite.

I do not think a provision of this kind will help either the requirements of economy, or, what is still more important, the requirements of popular sovereignty, as embodied in the Power of the Purse, as it is called, under the model we are copying—I mean the British Constitution. If, as these amendments propose, there is some chance given to Parliament to say the last word on the action to be taken, then there may be some hope that the rights of Parliament over matters financial will be kept intact. But if Parliament is only to review the action taken, and indicate its general dissatisfaction with the action taken, I do not think that it would be at all worthwhile making even such a submission. The Commissioners are presumably experts, well versed in their lines. It may, therefore, well be presumed that the recommendations they make are based on very strong considerations, and will not be lightly disregarded by the President or any other power. To that extent, therefore, the Commissioners may be said to be taking away the powers of Parliament. It is only to make it quite clear, as these amendments try to do, that the last word will rest with Parliament that I support these amendments. The sovereignty of the House of the People in matters financial ought to be left in no doubt. I therefore support these amendments.

**Mr. President :** May I just say one word? I did not like to mention it, but I think I should. I find there are too many conferences going on inside the

[Mr. President]

House with the result that even those Members who are desirous of listening to the speeches find it difficult to follow them. There is a tendency I find to gravitate, against the law of gravity, from the benches in the front to benches in the back, and I find that benches on the back afford opportunities of discussion which probably has nothing to do with the discussion that is going on in the House. I would therefore suggest to the Members that if any other question has to be discussed than that which is being actually discussed in the House, that might be discussed elsewhere.

**Shri Mahavir Tyagi** (United Provinces: General): Sir, will you also kindly ask the speakers to bring their points in such a way as to attract attention ?

**Mr. President** : That is beyond me.

**Shri Biswanath Dass** (Orissa: General): Sir, I stand to record my protest against the aspersions made by so scholarly a gentleman as Professor Shah. He finds unfortunately ghosts where there are none. He has made reference to Patronage. I would request him to show anything in the article wherein comes patronage. The appointment of a Finance Commission is a necessity. It is not peculiar to India. It is a necessity and has been accepted and adopted in India to suit the peculiar conditions of a federal structure that has been devised for her on the lines of similar other States. An that the Constitution has done is to lay down specific powers for Parliament to make laws by which a Finance Commission is to be appointed. And it has gone a little, further. It has laid down also the conditions and qualifications of persons to be appointed. May I refer you to article 260(2) in this connection, which lays down that "Parliament by law shall determine the qualifications etc. of the Finance Commission". I would request Professor Shah not to proceed with unjustifiable suspicion. If by the appointment of any Member of any Commission you mean patronage will come in, certainly you have to stop all State activities. That will be something like burning a house in a fight against flies. I hope therefore that Professor Shah will not play the role of an unnecessary opposition in a case where there is no scope for opposition.

Having stated so much about the unnecessary allegation made by our learned Professor, let me come to the vital issue that faces us in the discussion. I am sorry I have to differ from my esteemed colleagues Professor Saksena and Mr. Kamath. Both of them, I am sure, have erred grievously. They feel that powers of the Parliament are interfered with and that no discussion of a full and frank nature is possible under the circumstances. These two allegations seem to be the basis of their opposition.

Let me take the first, namely, that there will be no possibility of discussion. Parliament is to enact a law by which a Finance Commission is to be appointed. The impartiality of the Finance Commission is a matter beyond doubt, because the whole thing is left to Parliament itself. They have to devise the law, they have to lay down qualifications, and the choice of the personnel depends upon the Cabinet, I believe, in the name of the Governor-General. They represent the people. Under these circumstances I have no hesitation in believing that there will be an impartial Tribunal. The Finance Commission is thus a baby of the Parliament—it is an institution created by the Parliament under its own statute.

On appointment, the Commission makes a thorough, deep and searching enquiry, also if required sit in examination over the budgets and administration of provinces, and submit a report to the executive. Whose executive? The executive of the Parliament. Thereupon the Cabinet in the name of the

Governor-General take decisions and they practically accept the recommendations of the Finance Commission, just as in the case of the findings of the Election Tribunal where the Governor or the Governor-General has the power to interfere. But can you point out a case wherein a Governor or Governor-General has ever interfered? No, never. Therefore, precedents have been created and have been in existence wherein the recommendations of statutory bodies—judicial or quasi-judicial bodies—are accepted in *toto*.

Then the other stage comes in, namely, of their being placed before both Houses of Parliament. That again gives an occasion for discussion. Any member of the House, under its Rules of Procedure, can raise a debate. Political parties may also move Parliament for a debate and discussion. Therefore there is scope for discussion immediately after the sitting of Parliament.

The grant again comes before Parliament in the shape of a Money Bill. Then again Parliament has got the power to discuss the whole question on its merits. Is it possible for a responsible Ministry and a Cabinet to go beyond the wishes of the Parliament? It is impossible unless we visualise that we are not to have a parliamentary system of democracy having a Cabinet which is absolutely representative of the wishes, aims and aspirations of this honourable House.

One question more remains for me to discuss here and that is about the charged items. Charged items in our country are many. They have become a part of the Constitution. Charged items are inevitable and charged items are the creations of the Legislative Assemblies themselves, because they pass legislation and they agree to charge their own items of revenue and expenditure as a charged amount in their budget. Therefore it is one of their own creation. It is only a question whether you should have a prior sanction or a post-sanction. That is all the difference. Therefore in this regard I do not agree with my honourable Friends that any injustice or wrong, serious, great or constitutional, has been done in this regard. Sir, it will not be conducive to the advantage of the nation if a fraternal duel is undertaken in this House by politicians from provinces and States. Each member is anxious to see that his province gets more. True it is that when a member is elected, he represents, after the election, India and not his province. That is true, but the fact remains that we are men and we are average men, not rising so high as few people have done, like our leaders Sardar Patel or Pandit Jawarharlal Nehru. So within these limitations, I claim that a decision, after a judicial and thorough enquiry of a non-Political Body, of the nature required to be undertaken by the Finance Commission in regard to the aids to be given to provinces, is necessary. The power is also vested under the statute in the Governor-General to revise these grants whenever he likes after a certain period of years. With these words I strongly support the article and oppose the amendment.

**Shri B. N. Munavalli** (Bombay States): Mr. President, Sir, article 261 as it stands now empowers, as I understand, the President to place the recommendations of the Finance Commission together with the action taken thereon before the Parliament. This clearly shows that the Parliament will not be in a position to discuss the various recommendations that are going to be approved by the Executive and upon which action has already been taken. The amendments moved by my Friends Messrs. Kamath and Shibban Lal Saksena, as I understand them, require that the Finance Commission's recommendations should be placed before the House of Parliament before any action is taken, so that the House of Parliament may approve or disapprove or reject some of the recommendations made by the Finance Commission.



[Shri B. N. Munavalli]

Some of my Friends, for example, my honourable Friend Dr. P. S. Deshmukh, said that this article does not clothe the President with any more powers. That is true, but the Parliament will lose the opportunity of discussing and approving the recommendations if they were placed by the President after action has been taken by the executive. The whole difference between the article as it is and the amendments now put forth is that the power of discussion of the Parliament over the recommendations, before any action is taken, should not be removed. If the recommendations together with the action taken thereon by the executive are placed, the Parliament will be only in a position to approve and not to disapprove. Under these circumstances, I think that if these amendments are not accepted, the House of Parliament will lose much of its power. I therefore support the amendments and I commend that they be accepted by the House.

**Shri M. Ananthasayanam Ayyangar** (Madras: General): Sir, neither the amendment of Mr. Kamath nor that of Mr. Shibban Lal Saksena for substitution is good. I am requesting them to consider how substitution is not proper. These may be in addition to the power given under article 261. It is admitted, and there is no dispute regarding the fact, that the Finance Commission's recommendations are only recommendatory and not obligatory. Some person, whether the President or the Parliament, should take action on them. With respect to certain matters, the President can take action. Under article 251 which we have already passed, so far as income-tax is concerned, it is collected by the Centre. A percentage of the income-tax is divisible among the provinces or States. The allocation is also to be recommended by the Finance Commission. Now, until the Finance Commission goes into the matter as to what percentage ought to be shared and how that income-tax is to be distributed among the States according to their needs, the President has the exclusive power to prescribe the percentage. The Parliament does not interfere as far as income-tax is concerned. "Prescribed" means until the Finance Commission has been constituted, "prescribed by the President by order", and after the Finance Commission has been constituted, "prescribed by the President by order after considering the recommendations of the Finance Commission". Nowhere in this article does the Parliament come in. Before the appointment of a Finance Commission, the President by order can direct that such and such a percentage of the income-tax has to be distributed among the provinces and States and in what percentage. After the Commission is appointed, the President may, after looking into the Commission's recommendations, take action. He may change the allocation and the percentage. As article 261 now stands, he has to report to the Parliament what action he has taken regarding those recommendations where action has already been taken. Therefore, there is no good deleting that portion relating to the action. Therefore, instead of substitution, I would suggest the addition of the following words in article 261:

"With an explanatory memorandum of the action taken or to be taken thereon to be laid before the Parliament."

I will give my reasons as to why there cannot be substitution but addition. The principle of the amendments suggested has also to be accepted, because it is not in every case that the President takes action. There are certain matters where it is the Parliament that has to take action. Take excise duties in article 253. Under article 253, excise duties in the first instance have to be levied and collected by the Centre. The portion of the excise duties that may be distributed among the provinces and the principles have to be laid down by Parliament. Now, with respect to those excise duties also, whatever duties are collected by the Centre which can be shared by the States, with respect to them also the Finance Commission has jurisdiction to recommend the

allocation under article 261. Article 260 clause (3), sub-clause (a) relates to distribution between the Union and the States of the net proceeds of taxes which may be levied. Taxes are general. Taxes include not only income-tax, but also other taxes collected by the Centre, as for instance, the excise. But unlike income-tax which can be distributed by the President himself by order, excise duties have to be distributed by law made by Parliament. Parliament will do so, make allocations, after looking into the recommendations of the Finance Commission. Therefore, there are two aspects—one, the action taken by President, the other, the action taken by Parliament. Therefore, if article 261, as it stands at present, refers only to action taken by the President, it does not include action to be taken by Parliament. Under these circumstances, my respectful suggestion is, that instead of these amendments as the stand, these principles may be incorporated, and to effectuate this. I would suggest after the words “action taken” the words “and to be taken” may be included.

Sir, I have not tabled an amendment. After these amendments have come in and after this discussion, I find these amendments ought not to be in substitution, but in addition. I find that there is a lacuna and if you have no objection, and if honourable Friend the Chairman of the Committee also agrees, I can move an amendment in the following terms :

“As to the action taken or to be taken thereon to be laid before Parliament.”

I shall move this amendment if it is acceptable to the House and the Drafting Committee.

**Mr. President :** I am not taking that amendment at this stage, unless the Drafting Committee is prepared to accept it,

**Shri T. T. Krishnamachari** (Madras : General): Mr. President, Sir, I do not want to appear to be very wise, but I do feel that there has been considerable misapprehension in this House in regard to the scope of the work of the Finance Commission and I feel that the discussion that has taken place both on article 260, which the House has passed, and on this article arises out of that misapprehension.

I would ask the Members of this House to consider the origin of the scheme envisaged by this particular clause. There is an expedient that is being followed in Australia for the purpose of distribution of amounts set apart by the Centre either statutorily or otherwise to the States. The machinery in Australia, called the Australian Grants Commission, is the result of an Act passed by the Australian Federal Parliament in 1933. It is only a piece of administrative machinery similar to the *ad hoc* machinery that has been devised by the Government of India on various occasions, namely, Conference of Premiers of various States, Conference of Finance Ministers, Conference of Finance Secretaries, and so on. The creation of a body of this nature though it is put in the Constitution as an assurance to the States that an impartial machinery will be created for the purpose of distribution of grants, has no more sanctity about it than it would have under a Parliamentary Act. I would also ask the Members of this House to realise this particular fact. Parliament undoubtedly can make legislation in regard to what portion of the Central finances, subject to the provisions contained in this chapter, could be distributed to the provinces. My honourable Friend Mr. Shibban Lal Saksena twitted the Drafting Committee yesterday that, while they have given the President powers to determine the allocation in certain articles, in one article they failed to do so and, therefore, he suggested acceptance of the amendment moved by my honourable Friend Mr. Nichols Roy to that end. The explanation is that it would not be proper that a mere matter of administrative detail should be discussed at length by Parliament and decided on.

[Shri T. T. Krishnamachari]

The idea of the Finance Commission is a very restrictive one. If the idea of the Finance Commission is something like what I had at one time envisaged and tabled amendment which I did not move, namely, that in the first instance it ought to be a sort of Tax Investigating Commission, then I quite agree to all the propositions contained in the amendment moved by my honourable Friend Mr. Saksena. If it is going to be a matter in which the Finance Commission is going to be entrusted with reviewing the tax structure of this country and proposing amendments thereon, certainly Parliament must consider the report and Parliament must decide what steps the Central Government should take to implement its recommendations and how it can be incorporated either in the Constitution, or by means of a statute which will be applicable to the Central Government and also to the States. But that is not the position before us today. The position envisaged is a very limited one. In order to assure the States that they will have a fair deal the Drafting Committee has put in the body of the Constitution a provision which is not so wholly necessary to be put in the Constitution for the purpose of execution of that idea, namely, the creation of a Finance Commission. That is a limited objective. That objective I think the House will forgive my repeating it would be equally well-served by a Parliamentary Act. This article therefore has no more sanction than a Parliamentary act will have. That being so, Parliament must leave it to the executive to undertake the very onerous duty of distributing between the various provinces, on certain principles to be laid down by Parliament, the proceeds of certain taxes levied and collected by the Centre. I want the House to refer to article 253, clause (2), which says that Parliament will determine whether the whole or part of the duty will be distributed to the States, the principles on which they should be distributed, the actual quantum, etc. The application of the principle of distribution is not a matter for Parliament; it is a matter for the executive. If the executive misbehaves in any manner, it is then the obvious duty of Parliament to call the executive to order. But the House will have to recognise that while the Australian Grants Commission is a piece of administrative machinery, our Finance Commission will also only be an aid to the administrative machinery even though created by an article in the Constitution and their recommendations must be decided on by the executive, in consultation with the various Ministers of the States. Naturally the Commission is to be a permanent body or a semipermanent body. But if Parliament is going to take upon itself the duty of adjudicating the claims of the various provinces, then instead of having a Finance Commission we may well have a sort of conference of the finance and other ministers of the States which will report to Parliament and Parliament can discuss the report and take necessary action thereon. But what will be the result? I will ask the House to remember what happened here yesterday and the day before when individual claims of provinces, absolutely without any reference to the claims of other provinces were pressed and pressed hard for any length of time. Individual members spoke for about 75 minutes on the subject. And to what purpose? The speeches had no relation to the total amount of revenue that is likely to be distributable or to the claims of provinces other than their own. It is in order to prevent Members of Parliament making claims on an individual or provincial basis and each group insisting on the rights of particular provinces that we have proposed to leave the thing in the hands of an administrative machinery, an arbitral body to decide. The executive can accept their recommendations if they are feasible and desirable.

I think my honourable Friend Mr. Saksena, himself a very diligent student of public finance, will realise that he is really throwing an apple of discord into the midst of members of Parliament when he wants Parliament to undertake this onerous responsibility. The farther we remove this responsibility from

Parliament and entrust it to an independent body like the Finance Commission, the better it will be for the future of this country. I think the point that has been made by members who spoke in support of the amendment is without any substantial merit.

In regard to the particular amendment suggested by Shri M. Ananthasayanam Ayyangar, I do see that it has a point. But the words here "as to the action taken thereon to be laid before Parliament" also mean that if anything is left over, a discussion may be raised in Parliament and what has been done or has not done will all be explained by those who are in charge of the finances of the country. Such a discussion will probably be useful for the purpose of future guidance rather than for determining what was to be done at the moment. I therefore think that the House will do well to reject the amendment, not because it is pointless, but because it arises from a total lack of understanding of the very limited field envisaged by articles 260 and 261.

**Shri Brajeshwar Prasad :** Mr. President, Sir, I rise to support the article moved by Dr. Ambedkar. I differ those who oppose this article on the ground that it is not in consonance with the sovereignty of Parliament. It is only in unitary States like England that Parliament is a sovereign body. There is no legal sovereign in a federal constitution. Political sovereignty rests with the people. We have distributed powers between the Centre and the provinces. Even in those spheres that have been left to the Union Government, powers have been divided between three organs of the State, the Judiciary in the form of the Supreme Court, the Parliament and the President. Sometime last year I had occasion to raise the question at a different place that the President under the Constitution has got absolute powers and that his powers are not circumscribed by ministerial advice. Sir, having due regard to the fact that there is no legal sovereign in our Constitution, all talk of sovereignty of this House is entirely misplaced.

**Shri Rohini Kumar Chaudhuri** (Assam: General): Mr. President, Sir, I have come here to protest very strongly against the two amendments which have been moved by my Friends Mr. Kamath and Mr. Saksena. I submit, Sir, that the amended article 260 is being hailed by people who suffer under a sense of injustice being done to them in the past and who hail this amended article 260 because it has reduced the period from five years to two years and also in the subsequent stages to a period shorter than five years. Sir, it follows therefore that if you have really a desire to do justice to the more unfortunate provinces, you should do so as early as possible and as quickly as possible. Therefore the provision in article 260 which enables the President to deal with the recommendations made by the Finance Commission is a very welcome one. If you leave it to be decided by Parliament it will necessarily mean that both Houses of Parliament would have to consider it. If the amendment which has been put forward by Mr. Saksena is accepted, then it will be enough if the Lower House puts its seal to it; but then it would mean delay and it would mean also that if the matter entirely rests on the vote of the House of Parliament, then the question of each province fighting for its own share or more than its own share will arise, and those provinces that have a more potent voice will get more than they deserve in some and will deprive other provinces which deserve more. Therefore, both on the ground of quick meting out of justice and also on the ground of having better justice. I think it is certainly very welcome that a decision will be made by the President as early as possible and communicate the same to the Legislature. I do not mind if the decision is accompanied, as my Friend Mr. Kamath desires, by an explanatory note or not. But, since it is the desire of Mr. Kamath that an explanatory note may be given so that he may find scope for criticism, that note may be furnished. That will not harm us in any way. But what I would like to say on behalf

[Shri Rohini Kumar Chaudhuri]

of the poorer provinces that are labouring under a sense of injustice so far as finances are concerned—that injustice was not done by the present regime, but by the previous' one—is that we all welcome article 261 remaining as it is.

**Shrimati G. Durgabai** (Madras: General): I move that the question be now put.

**Shri Jagat Narain Lal** (Bihar: General): Sir, the question before us is not entirely free from difficulty. It is true that the Finance Commission is an expert body consisting or a few select experts to judge as to what should be assigned to the different provinces. If the Parliament is to be made a cock-pit by the different provinces combining to get things done as they like, it will be very difficult for the Central Government. On the other hand the difficulty of the poorer provinces is there. The Finance Commission will be a small body. In case the Finance Commission does not see its way to do justice to some of the provinces which cannot carry on without a proper allocation, the position will be difficult indeed. I would have liked to support the amendment which makes the decision appealable from the decision of the Finance Commission in certain cases. The article as it stands does not make the decision appealable. If, however, some provision could be made whereby the recommendations of the Finance Commission could be reviewed in special cases by somebody, by the Cabinet or the Parliament, I would like to welcome such an amendment or such a provision. These are the difficulties and I would, instead of supporting the amendment which says that the Lower House should sit in judgment in, every case, urge that some provision may be made whereby the recommendations of the Finance Commission in special cases, if any province wants it, may be reviewed by somebody who might sit in judgment on them. These are the few suggestions that I wanted to make.

**The Honourable Dr. B. R. Ambedkar** : Mr. President, Sir, I am sorry I cannot accept the amendments moved- to this article. It seems to me that -the amendment are based upon a complete misunderstanding of the provisions contained in article 261, and I feel that no amendment is necessary at all. In order to understand exactly what article 261 means, you have to go back to the previous articles which deal with the distribution of the income-tax and the distribution of the net proceeds of the Centrally collected excise duties. Obviously, with regard to the distribution of the income-tax, the article which we have passed so far leave the matter entirely with the President acting on the recommendations of the Finance Commission. That being so, it would not now be possible to say by an amendment that so far as the recommendations with regard to the distribution of the income-tax are concerned, the matter may be left to Parliament. My mission is that that issue is now closed we having passed an article leaving to the President the allocation and the distribution of the income-tax either in the initial stage or in the subsequent variations.

Now the other matter which is covered by article 261 relates to the distribution of the revenue collected from Centrally levied excise duties. It is also clear from the article that we have passed that this matter shall be governed by the law made Parliament. The President cannot do it himself. Therefore the words “shall put before Parliament a memorandum stating the action that has been taken” merely means this that the President shall say, as he is bound to say, that a Bill shall be introduced before Parliament to regularise or sanction the proceeds of the excise duties and the manner in which they are to be allocated. Consequently, if my friend, Prof. Shibban Lal Saksena, will read article 261 in relation to the other articles that we have passed, he

will realise that so far as the distribution of the excise duties is concerned, the result will be the same as what he proposes to bring about by his amendment. Therefore I think that his amendment is quite unnecessary.

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

The question is :

“That with reference to amendment No. 2950 of the List of Amendments, in article 261, for the words ‘together with an explanatory memorandum as to the action taken thereon’, the words ‘together with such explanatory memorandum as he may think fit’ be substituted.”

The amendment was negatived.

**Mr. President :** The question is:

“That in amendment No. 2950 of the List of Amendments for the words ‘each House of Parliament’ proposed to be substituted, the words ‘each House of Parliament for such action thereon as Parliament may deem necessary’ be substituted.”

The amendment was negatived.

**Mr. President :** The question is:

“That with reference to amendment No. 2950 of the List of Amendments, in article 261, for the words ‘action taken thereon to be laid before Parliament’ the following words be substituted:—

‘containing his proposals for action that should be taken thereon to be laid before each House of Parliament. The House of the People shall have the right to amend the proposals made by the President by a resolution passed by the House of the People. The proposals of the President in their original form or in the form in which they emerge after they are amended by the House of the People shall thereafter become law.’”

The amendment was negatived.

**Mr. President :** The question is:

“That in article 261, for the word ‘Parliament’ the words ‘each House of Parliament’ be substituted.”

The amendment was adopted.

**Mr. President :** The question is :

“That article 261, as amended, stand part of the Constitution.”

The motion was adopted.

Article 261, as amended, was added to the Constitution.

---

### Article 262

**Mr. President :** Amendment No. 141 is verbal. I take it that we should not have these formal amendments moved in every case.

**Shri H. V. Kamath :** This amendment relates to amendment No. 2951. If that amendment is not moved, this will not arise.

**Mr. President :** I am suggesting that verbal amendments like the substitution of “Consolidated Fund of India” for “the revenues of India” should be left to the Drafting Committee. Whenever such phrases occur, the Drafting Committee will put them a right.

**Shri H. V. Kamath :** Amendment No. 2951 seeks the substitution of the words “the revenues of India” by the words “Indian revenues”. If that amendment is not moved, my amendment will not arise.

**Mr. President :** That was given notice of before we accepted the term “Consolidated Fund of India”.

Does anyone wish to say anything on this article?

The question is :

“That article 262 stand part of the Constitution.”

The motion was adopted.

Article 262 was added to the Constitution.

### Article 263

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

“That for article 263 the following be substituted :—

‘263 (1) The custody of the Consolidated Fund of India, the payments of moneys into such Fund, the Custody of Consolidated withdrawal of moneys therefrom and all other matters connected with or Funds, the payment of moneys ancillary to the matters aforesaid shall be regulated by law made by Parliament, in to and withdrawal of and until provision in that behalf is so made by Parliament, shall be regulated moneys from such funds. by rules made by the President.

(2) The custody of the Consolidated Fund of a State, the payments of moneys into such Fund and the withdrawal of moneys therefrom, and all other matters connected with or ancillary to the matters aforesaid shall be regulated by law made by the Legislature of the State, and, until provision in that behalf is so made by the Legislature of the State, shall be regulated by rules made by the Governor of the State.’ ”

I do not think any explanation is necessary.

**Pandit Hirday Nath Kunzru :** Mr. President, I move:

“That in the amendment just moved by Dr. Ambedkar, after the words ‘Consolidated Fund’, wherever they occur, the words ‘and the Contingency Fund’ be inserted; and for the words ‘such Fund’, wherever they occur, the words ‘such Funds’ be constituted.”

The House has already agreed to the establishment of a Contingency Fund. It is therefore necessary to provide for the manner in which money may be put into the Contingency Fund and may be withdrawn from it. This is a purely formal amendment and I trust that the House will accept it.

**Mr. President :** I take it that Dr. Ambedkar will accept Pandit Kunzru’s amendment.

**The Honourable Dr. B. R. Ambedkar :** I accept the amendment.

**Mr. President :** The question is :

“That in amendment No. 206 above in the proposed article 263, after the words ‘Consolidated Fund’, wherever they occur, the words ‘and the Contingency Fund’ be inserted; and for the words ‘such Fund’, wherever they occur, the words, ‘such Funds’ be substituted.”

The amendment was adopted.

**Mr. President :** The question is:

“That proposed article 263, as amended, stand part of the Constitution.”

The motion was adopted.

Article 263, as amended, was added to the Constitution.

### Article 263-A

**Mr. President :** There is an additional article to be moved by Dr. Ambedkar.

**Shri T. T. Krishnamachari :** May I suggest that it should be held over?

**Mr. President :** Very well. Then we go to article 267. Articles 246, 265 and 266 are not on to-day’s list.

### Article 267

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

“That in article 267—

- (i) after the words ‘Crown in India’ the words ‘or after such commencement in connection with the affairs of the Union or of a State’ be inserted;

- (ii) for the words 'revenues of India' wherever they occur, the words 'Consolidated Fund of India' be substituted;
- (iii) for the words 'revenues of a State' wherever they occur, the words 'Consolidated Fund of the State' be substituted;
- (iv) the words and figure 'for the time being specified in Part I of the First Schedule' be omitted; and
- (v) for the words 'revenues of the State, the words 'Consolidated Fund of the State' be substituted.'

It is just consequential.

**Prof. Shibban Lal Saksena :** Sir, I beg to move:

"That for part (i) of amendment No. 102 above, the following be substituted:—

- (i) for the words "Crown in India", the words "Government of India prior to 15th August 1947 or after such commencement in connection with the affairs of the Union or the Government of a State" be substituted;'

Sir, I have suggested this amendment, because I do not want the words "Crown in India" to appear in our Constitution and to be a reminder of the period of our slavery for ever in future. I do not think that the word is so essential and it can be very easily avoided by converting it into "Government of India prior to 15th August 1947". I think this is a very simple amendment and the sentiment of the House, I am sure, will be in favour of it. The other portion of the amendment is merely the incorporation of Dr. Ambedkar's amendment and that I think will be acceptable to him. I therefore think that these words "Crown in India" should be changed into "Government of India prior to 15th August 1947".

**Shri H. V. Kamath :** Mr. President, I move, Sir, amendments 142, 143, 144, and 145 of List IV, Third week. Amendment No. 142 runs thus :

"That in part (i) of amendment No. 102 of List I (Third Week) of Amendments to Amendments, in article 267, for the words 'in connection with the affairs of the Union or of a State' (in the words proposed to be inserted), the words 'under the Government of the Union or of a State' be substituted."

The next amendment, 143, reads as follows :—

"That with reference to amendment No. 102 of List I (Third Week) of Amendments to Amendments, in clause (a) of article 267, for the words 'in connection with the affairs of such a State' the words 'under the Government of such a State' be substituted."

Amendment No. 144 reads to the following effect :—

"That with reference to amendment No. 102 of List I (Third Week) of Amendments to Amendments in clause (b) of article 267, for the words 'in connection with the affairs of the Union or another such State' the words 'under the Government of the Union or another such State' be substituted."

The last amendment, Sir, of mine, No. 145 of the same List, is to the following effect :—

"That with reference to amendment No. 102, of List I (Third Week) of Amendments to Amendments, in article 267, for the words 'an arbitrator' the words 'a tribunal' be substituted."

All these amendments are germane to the amendment just now moved by Dr. Ambedkar before the House, number 102 of list I (Third Week). These four amendment of mine fall into two categories. The first three are similar in nature and the last one is in another class. The first three seek to substitute certain expressions used in this article and thereby eliminate what I consider unnecessary and cumbrous verbiage. I do not know exactly whether in using



[Shri H. V. Kamath]

expression “affairs of the Union or of a State”, the Drafting Committee has got something else in mind than service rendered by a person under the Government of the Union or of a State. The article refers to pensions payable to or in respect of a person who has served in connection with the affairs of the Union or of a State. Naturally, if a person is entitled to some pension in connection with services rendered by him, I believe it must be under the aegis of the Government of the Union or of a State which is liable to pay the pension to him. Therefore, I feel that it is somewhat vague to use this expression “affairs of the Union”. What kind of affairs? The Union or a State may have all kinds of affairs. I suppose the article contemplates governmental affairs, and not any other affairs that may arise in connection with the Union or as between the Union and the constituent units. Therefore, this article must be clear; that is to say, it must specify, clarify and make it absolutely crystal clear that the services rendered by a person on account of which he will get a pension will be in relation to the Government of the Union or under the Government of a particular State.

If, of course, this expression in the proposed draft means the very same thing, then mine will be a formal or verbal amendment; by plea will be that it is far less cumbrous, and far more clear. English is a notoriously cumbrous language. Some of us tend to make it more so. I am reminded of one of Bernard Shaw’s witticisms. Bernard Shaw once said that the English language is a very cumbrous instrument of expression and when we want to say, we cannot do a particular thing, we go on elaborating and say, “I am very sorry, I regret very much I cannot do this.” The Chairman says, “no can”, and expresses himself as clearly and effectively. I do not want the Drafting Committee or this House to be, like the Chairman, so brief, terse or concise as to sacrifice the meaning of the article. Therefore, the first point that I want to make out is that this expression ‘in connection with the affairs of the Union’ must be clarified so as to mean, and to say what it means, that the services rendered by a person under the Government of the Union and the Government of the State and no other affairs of any kind are contemplated under this Article. That disposes of three amendments 142, 143 and 144 that I have just now moved before the House.

Coming to amendment No. 145, which seeks to substitute a tribunal for an arbitrator, I must at the very outset confess my partial if not total ignorance of civil law and ancillary legislation. Whether in constitutional law or in civil law there is an essential distinction between an arbitrator and a tribunal, I am not competent to have the last word on. But, from the meagre tit-bits that I have gathered during my experience in several fields, I feel that a tribunal has got a greater constitutional importance or sanctity than an *ad hoc* arbitrator that may be appointed for a particular case. According to this article, if adopted as moved before the House by Dr. Ambedkar, it is conceivable that it is very likely that several cases may arise where under the visions of this article there may not be agreement between the parties concerned. There may not be just one or two cases; it is very probable that we may be inundated with scores if not hundreds of cases, because not merely the Union is involved, but various other States are also involved. Do we, by adopting this article, contemplate the appointment of an *ad hoc* arbitrator whenever a case arises? That will mean that we will have several arbitrators appointed on several occasions. Or is it, our intention that to dispose of all cases of, this type, where agreement is not secured, to have a body of men, competent men, experts in their own line, to examine and decide all these cases and when they may arise? If that be our intention, then in my humble judgment, not an arbitrator, but a tribunal is called for. The wording of this

article also, I believe is not quite happy. It is said here that there will be an arbitrator..... that means to say one; I am sure we do not want to quarrel on the point that 'an' means one; I am happy that the Chief Justice of India has been empowered in this regard. But to say that he will appoint 'an arbitrator' and no more or no less I am sorry, no less cannot arise because less than one is zero—no more than one, is to fetter the judgment of the Chief Justice unduly. He may think that a particular case before him is either so complicated or the cases are so numerous or so varied that one, man cannot dispose of all these cases, and he might think that a tribunal will be more competent to decide these cases than arbitrator. I believe, so far as an arbitrator is concerned, both the parties have to signify beforehand their agreement to abide by the decision of the arbitrator. But if a tribunal is appointed and if we provide in the Constitution that the decisions of the tribunal will not be subject to any appeal and they will be final, we will be following a far wiser course than approving of this provision for a mere arbitrator. When this Constitution comes into force and this article comes into effect several cases of this type may arise and one arbitrator will not then be able to dispose of the cases with promptitude and alacrity and I make bold to say, with sufficient impartiality and justice. A tribunal or a high order is called for to dispose of these matters and so I move that instead of arbitrator' proposed in this article the Chief Justice of India should be vested with powers to appoint a full-fledged tribunal to dispose of these cases as and when they arise. I therefore move Nos. 142, 143, 144 and 145 and commend them for the consideration of the House.

**Dr. P. S. Deshmukh :** Mr. President, this a very simple article and I do not think the House need take long to pass it. It refers only to adjustments in respect of certain expenses and pensions. Mr. Kamath has moved an amendment to substitute 'arbitrator' by 'tribunal'. I would suggest to him that it is wholly unnecessary to transform a mere arbitrator into a tribunal with all the expenditure that it will involve. These are likely to be small cases and one person appointed by the Chief Justice to give an award so as to adjust the expenditure between the Union and the States would be quite enough. They are not likely to be very complicated cases nor is there like to be great feeling on either side in fighting these cases. But I would ask one question from Dr. Ambedkar, *viz.*, whether there would not be cases between the Union and more than one State on the one hand, and on the other hand between one and more than one State so as to require adjustment and arbitration, In 267 there is a provision for arbitration between Union and one State only. Nowhere the word State has been used in plural and there is no provision also for adjudication as between two States. I do not think it is possible to interpret this article so as to mean that the singular includes the plural and I therefore think it is either deliberately or has been inattentively omitted. I would like myself to be satisfied whether it is impossible that cases are likely to arise of distribution of expenditure between two individual States. I cannot conceive that it is unimaginable because they refer to a variety of cases. In this first para, it is stated as follows :—

“Where under the provisions of this Constitution the expenses of any court or commission, or pensions payable to or in respect of a person who has served before the commencement of this Constitution under the Crown in India, are charged on the revenues of India or the revenues of a State etc.”

I can say that this can very well refer to more than one State, and if that is the position whether it is not intended that such cases should be referred to an arbitrator? If that is so, the article would have to be suitably amended. Perhaps we have to say the word 'States' should be substituted for 'State' wherever the word occurs. But I merely ask this for clarification and, if Dr. Ambedkar is convinced that there is no likelihood of such cases arising

[Dr. P. S. Deshmukh]

between two individual States or the Union and two other States, then of course my point would not arise. But if it is conceivable that they will arise then a proviso will also be equally necessary.

**The Honourable Dr. B. R. Ambedkar :** Sir, I do not accept any amendment.

**Mr. President :** I put the amendments to vote.

The question is:

“That for part (i) of amendment No. 102 the following be substituted:—

- (i) for the words ‘Crown in India the words Government of India prior to 15th August 1949 or after such commencement in connection with the affairs of the Union or the Government of a State’ be substituted.’ ”

The amendment was negatived.

**Mr. President :** The question is:

“That in part (i) of amendment No. 102 of List I (Third Week) of Amendments to Amendments in article 267, for the words ‘in connection with affairs of the Union or of a State’ (in the words proposed to be inserted) the words ‘under the Government of the Union or of a State’ be substituted.”

The amendment was negatived.

**Mr. President :** The question is:

“That with reference to amendment No 102 of List I (Third Week) of Amendments to Amendments, in clause (a) of article 267, for the words ‘in connection with the affairs of such a State’ the words ‘under the Government of such a State’ be substituted.”

The amendment was negatived.

**Mr. President:** The question is:

“That with reference to amendment No. 102 of List I (Third Week) of Amendments to Amendments, in clause (b) of article 267, for the words ‘in connection with the affairs of the Union or another such State’ the words ‘under the Government of the Union or another State’ be substituted.”

The amendment was negatived.

**Mr. President :** The question is:

“That with reference to amendment No. 102 of List I (Third Week) of Amendments to Amendments, in article 267, for the words ‘an arbitrator’ the words ‘a tribunal’ be substituted.”

The amendment was negatived.

**Mr. President :** The question is:

“That in article 267.—

- (i) after the words ‘Crown in India’ the words ‘or after such commencement in connection with the affairs of the Union or of a State’ be inserted;
- (ii) for the words ‘revenues of India’ wherever they occur, the words ‘Consolidated Fund of India’ be substituted;
- (iii) for the word ‘revenue of a State’ wherever they occur the words ‘Consolidated Fund of a State’ be substituted;
- (iv) the words and figure ‘for the time being specified in Part I of the First Schedule; be omitted; and
- (v) for the words ‘revenues of the State’, the words ‘Consolidated Fund of the State’ be substituted.”

The amendment was adopted.

**Mr. President :** The question is :

“That article 267, as amended, stand part of the Constitution.”

The motion was adopted.

Article 267, as amended, was added to the Constitution.

---

#### Article 268

**Mr. President :** We go to article 268. There is a formal amendment in the name of Dr. Ambedkar. I take it the House accepts it.

The amendment is :

“That in article 268, for the words ‘revenues of India’ the words ‘Consolidated Fund of India be substituted.’”

**Shri M. Ananthasayanam Ayyangar :** Mr. President, I wish to draw the attention of the House to what an important matter this Chapter relates—borrowing. Though the entire borrowing both of the Centre as well as of, the provinces and loans may be granted by the Union Government to States are put compendiously in two articles 268 and 269, they are more important and require greater scrutiny than the powers to impose taxation, with respect to which and for the distribution of which—the revenues of both the Union and the States—we have devoted a long Chapter. My intention in speaking on this matter is to draw the attention of the House now, and later on to make sure that the Parliament will devote greater attention to this matter. We have been seeing from time to time that the revenues are being collected for the year by Finance Bills. So far as borrowing is concerned—they may be short or long term, imposing heavy obligations upon not only the present generation but future generation also—sufficient attention is not being given to the manner in which borrowing can take place. Many of the loans which have been raised recently by provincial Governments have not been fully subscribed, some had to be withdrawn, and even we have been very chary of borrowing in the open market. I would suggest that a Commission of the kind of Finance Commission might be constituted for all time.

We do not want any other Commission. The Reserve Bank in the State Bank and it is competent to give us advice as to what ought or ought not to be done in this matter. Development schemes generally are to be undertaken by borrowings. They ought not to be legitimately borne on the current revenues because the benefits of these schemes will be shared not only by the existing people by the mass of the people now present, but also all the succeeding generations. From our recent budgets, it will be clear that the borrowing programmes are as wide as are the programmes for the revenues of the year. Under these circumstances, the matter of borrowing, the question of what loans are to be floated, is not being placed before Parliament. There is a similar provision in the existing Government of India Act. It is open to the Dominion Parliament to give directions as to the methods of borrowing, the amount of borrowing and so on. But all the same, all these matters have not been placed before us except as an appendix, as the tail-end of the budget, indicating what the capital outlay will be, and how in very brief outline, that money is to be made up. Parliament, when it makes provisions, should be very chary in granting permission to all and sundry loans being floated, irrespective of the capacity of the people to subscribe, etc. These and the purposes for which the borrowings take place will all be regulated by Parliament under article 268.

I find that both in articles 268 and 269, as regards loans that have to be borrowed by provinces, the consent of the Central Government is necessary in certain cases. In the present Government of India Act, there is a clause

[Shri M. Ananthasayanam Ayyangar]

that this consent ought not to be delayed or unreasonably delayed. There is no such provision in this article, because it is thought such a provision is not necessary. Under the Government of India Act, it was thought there will be a different agency who will not be, a national of this country, in charge of the administration. But now with national governments in the provinces and a national government at the Centre, it is felt that such a provision is not necessary. I hope articles 268 and 269 will meet the situation. They will be taken full advantage of and will help to keep even a closer scrutiny upon the revenues of the Union and of the Provinces. I support the articles as they stand. But in the matter of working, the matter will be placed before Parliament and the Executive will not take the entire responsibility on itself, of raising loans before coming to Parliament, in the future.

**Prof. Shibban Lal Sakesna :** Mr. President, Sir, in this article I again want to voice my feeling against arming the executive with powers to borrow upon the security of the revenues of India etc. Of course, the limits are to be prescribed Parliament by law. But beyond that, Parliament does nothing. Sir, I think in such important matters where the entire security of the State may be pawned, there must be some voice for Parliament. It must not merely be that Parliament shall fix the limit, but that in other matters the Executive shall have all the power. At least, after taking a decision, the executive must take the Parliament into confidence. After all the Ministry will have always the majority in the Legislature and whatever they may do, they will be able to carry through the House. That being so, I do not know why they should feel shy to bring these things to Parliament. I therefore, think that such sweeping powers as are proposed in this article, should not be given to the Executive. Sir, this is my only objection and I hope the House will consider it. I am sorry I did not give notice of any amendment.

**Shri H. V. Kamath :** Mr. President, I earnestly hope that the House will bestow very serious consideration upon this chapter, Chapter II, which refers to borrowing by the Union, or giving guarantees to loans made by other units of the union. Borrowings can easily be one of those rocks upon which the ship of State may founder; and in modern times, and in the modern world, when economics has assumed such tremendous importance, and when loans are floated and subscribed very frequently by every State, by every country in the world, I feel that the executive of the Indian Union-to-be, should not be vested with the power to decide upon borrowing, within the limits, of course, fixed by Parliament, no matter what the purpose of the borrowing may be. I feel that the purpose for which the loan is raised, under this article must be laid before Parliament and the approval of Parliament must be sought and obtained for the purpose of that loan. But under this article 268, Parliament is empowered merely to fix the limits—I suppose it means the pecuniary limits, the monetary limits, within the limits of so many crores, and that sort of thing. Also the second part of the article relates to similar safeguards—not very important, in my estimation—regarding monetary limits of the guarantees to be given by the Union for loans. Nowhere does the article envisage the purpose for which the loan is raised or borrowed or guarantee given. In recent months, as the House is very well aware, various proposals have been made for loans from the World Bank or loans from America or from some other country as is willing to finance and promote our economic and industrial development. The House will also recollect that this House sitting as Parliament, during the last budget session and even in earlier sessions, pointedly asked the Prime Minister and perhaps the Finance Minister too whether loans borrowed from foreign countries, from America, or may be from U.S.S.R. if Government will consider such a proposal, will be subject to any political economic or military strings. After all, I am sure that Parliament

will ultimately decide our international relations. It is neither the executive nor the President but Parliament which will have the final word on what our foreign relations are going to be, what our international policy is going to be. But the executive may be at variance with Parliament in certain matters and if the executive takes it into its head to pursue a foreign policy which Parliament later on may not approve or which be quite in consonance with the decisions of Parliament in this regard, a very unfortunate situation pregnant with dire consequences may arise when a commitment will have been made by the government of the day—by the President and the executive—with regard to borrowing or the raising of loans from foreign countries. Of course they will not transgress the limits prescribed by Parliament. They will not borrow more than one, ten or twenty crores—whatever the limit may be. But the real purpose of that loan may be kept a guarded secret, and the purpose of the loan is an essential matter which will ultimately help or hinder us, and save or destroy us. I hope the House will consider this aspect of the matter which is far more vital in my judgment than the financial limits to be fixed by Parliament. The purpose of the loan goes to the root of the matter. If the President or the executive borrows a loan from America and either in a secret pact or in some secret terms of the agreement there is some military commitment or a political commitment, to be effective in future if there be war,—that we will assist it against certain other countries,—do we wish to face such a dangerous situation as that? I therefore want that this article should be so amended as to enable Parliament not merely to fix the limits of borrowing and the giving of guarantees but also to see on every occasion that the purpose of the loan or the purpose of giving a guarantee is justified by circumstances and that it is in absolute and complete consonance with the policy adopted by Parliament in our internal as well as international relations—the more so in our foreign and international relations. If the executive raises a loan on terms contrary to the policy which has been approved of by Parliament or which may be subsequently enunciated by Parliament, a conflict may arise between Parliament and the executive and it will be too late in the day to undo the disastrous effect of a loan that might have been borrowed by the executive with certain commitments made without reference to Parliament. We must be on our guard against this situation arising in future. I plead, with the House that this is no small matter at all, to be dismissed with just a flippant consideration or just because Dr. Ambedkar or the Drafting Committee is not going to consider the matter. I plead in the name of the future of India, of the peace, liberty and progress that we all have at heart—of the peace of India as well as of the world—that this article, and this Chapter as a whole, should receive more consideration than most articles usually do at the hands of this House. I hope that not merely the financial limits but also the purpose of every loan will come before Parliament for its approval, and action is taken by the President in accordance with the policy laid down by Parliament with particular regard to our international relations or our internal policies.

**Prof. K. T. Shah :** Mr. President, Sir, I agree that every act of borrowing is an executive act. But the *power to borrow* need not necessarily be regarded as an Executive power exclusively, subject to such limits, if any, as Parliament may from time to time place. From this point of view I would like to suggest that the borrowing power, or the use of the national credit, is a very delicate matter. Under the Conditions under which we are now living, it cannot be treated too scrupulously or too carefully if we would bear in mind the interests not only of the present generation, but of generations to come. As we know, the security of the revenues of India—as the clause speaks here—is at the present time any rate and judged strictly from purely economic considerations, a very thin security. That is to say, we have been, in the last ten years or

[Prof. K. T. Shah]

so, habitually living in a deficit economy, and that deficit, considered in its budget aspect as well as in the aspect of the aggregate national economy, shows so far no sign of abatement. The various projects we have undertaken promise to remedy these deficits within ten or fifteen years. At the present moment, at any rate, and for some years to come it seems to me that our economy being a deficit economy, borrowing would be a necessity for years to come, and, as such, we cannot too carefully regulate, limit or restrict this power.

Taking this view I think that if the Constitution categorically assigns this power to the Executive, the Constitution would be doing injustice, not only to the Legislature, but also to the interests of, as I said before, generations to come. And for this reason. Parliament should not only regulate the borrowing by the Executive in the sense of fixing limits up to which borrowing can take place or lay down conditions for offering securities or guarantee, but Parliament should in my opinion say every year, in what may be called the Ways and Means Act, or the Finance Act, how much, shall be borrowed, so that from time to time—from year to year—the Parliament is aware of the state of the national credit and husbands it accordingly. The question is still more fearful as I conceive it, because it is very likely that borrowing within the home market may not suffice and that you may have to resort to borrowing outside the limits of the country. At that point, the danger would be much more acute than perhaps we are inclined to envisage it today. It has been the unfortunate experience of many countries which have been chronically indebted that the lender has time and again exercised influence, demanded security or guarantee, which is beyond the capacity of the country to afford. I will not quote, any remote examples, but even that country which was once regarded as the banker of the world—I mean Britain—whose credit is now being questioned is in a similar position, and the principal lender today is suggesting or inclined to interfere even in its domestic affairs. It is being alleged that the course which the present Government in England is following of all-round nationalisation bit by bit, makes the lender very nervous about the stability or security of that country. Suggestions, therefore, are not wanting that the accord between England and America may suffer.

I mention this illustration just to point out the danger inherent in a provision like this, wherein the power to borrow is left almost unconditionally to the executive, the only condition being that Parliament may impose limits as to the amount and nature of guarantees from time to time that may be given. The wording of the article suggests that even the imposition of such limits is a very doubtful proposition. The limits, “if any—that means limits may not be there at all, and the Executive may be entitled to borrow without limit, either of the charge it may create upon the consolidated fund which will be then outside the annual votes of Parliament, or which may be so excessive that the country’s entire future may be mortgaged to the lender.

Now, that is a consideration which fills me, for one, with great apprehension for the future. I am not prepared to say that there should be an utterly unconditional or unlimited power even under the Constitution to the executive to borrow up to what limits and in what manner it likes whether at home or abroad. As you know, in the past I have pleaded for more power to the Parliament as against the executive. In this instance, I am even prepared to go so far as to say that, by express provision of the Constitution, even the power of the Parliament should be restricted in the matter of the use of the national credit. Not only should the power of the executive be restricted: the executive should only confine itself to administering the law,—the Act,—under which borrowing should be authorised every year, so that every year

Parliament is in a position to take stock. I go further and say that even the power of Parliament should be restricted in the nature of assurances and guarantees that it is in a position to give. Parliament should not, for instance, I suggest—be able to guarantee or mortgage the primary productive resources, nor mineral wealth nor rivers nor any of the primary sources of production on which the future happiness of the country may depend. And if such a thing as this can be done the people as a whole, I would suggest, should be in a position to know it, and a revision of the Constitution may be necessary before even Parliament could mortgage the resources of the country.

As I have said before, while I have always suggested that the supreme power should be vested in Parliament here is an instance in which, by the Constitution, I would limit the power even of Parliament to allow any borrowing within and much more so outside the country. This article, therefore, cannot be viewed too seriously, and I would appeal to the Draftsman to reconsider this matter if he takes into account as I hope he will take, the seriousness of the stakes involved in this article.

**The Honourable Dr. B. R. Ambedkar :** Sir, except for the last oration of my Friend Prof. K. T. Shah in which he suggested that we should introduce a clause putting limitation upon the authority of Parliament to sanction loans, I was really quite unable to understand the dissent which has been expressed by other speakers with regard to the provision contained in article 268. It is admitted that it is the executive alone which can pledge the credit of the country for borrowing purposes, for borrowing is an executive act in one aspect of the case, but in this article it is not proposed that the power of the executive to borrow is to be unfettered by any law that is to be made by Parliament. This article specifically says that the borrowing power of the executive shall be subject to such limitations as Parliament may by law prescribe. If Parliament does not make a law, it is certainly the fault of Parliament and I should have thought it very difficult to imagine any future Parliament which will not pay sufficient or serious attention to this matter and enact a law. Under the article 268, I even concede that there might be an Annual Debt Act made by Parliament prescribing or limiting the power of the executive as to how much they can borrow within that year. I therefore do not see what more is wanted by those who expressed their dissent from the provisions of article 268. It is of course a different matter for consideration whether we should have a further provision limiting the power of the Parliament to pledge the credit of the country. It seems to me that even that matter may be left to Parliament because it will be free for Parliament to say that borrowing shall not be done on the pledging of certain resources of the country. I do not see how this article prevents Parliament from putting upon itself the limitations with regard to the guarantees that may be given by Parliament for the ensurement of these loans or borrowings. I therefore think that from all points of view this article 268 as it stands is sufficient to cover all contingencies and I have no doubt about it that, as my friend Mr. Ananthasayanam Ayyangar said, we hope that Parliament will take this matter seriously and keep on enacting laws so as to limit the borrowing authority of the Union,— I go further and say that I not only hope but I expect that Parliament will discharge its duties under this article.

**Shri H. V. Kamath :** Would not Dr. Ambedkar agree to the deletion of the words “if any” ?

**The Honourable Dr. B. R. Ambedkar :** I have been considering that, but do not think that will improve matters, because the words are “as may from time to time”.



**Mr. President :** I take it the amendment to substitute the words “Consolidated Fund of India” is accepted.

The question is :

“That in article 268, for the words ‘revenues of India’ the words ‘Consolidated Fund of India’ be substituted.”

The amendment was adopted.

**Mr. President :** The question is :

“That article 268, as amended, stand part of the Constitution.”

The motion was adopted.

Article 268, as amended, was added to the Constitution

---

### Article 269

**Mr. President :** There are some amendments which are printed in the II Volume of the printed amendments on page 313.

(Amendment Nos. 2971 and 2972 were not moved.)

Then we shall take up amendment No. 107 by Dr. Ambedkar.

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

“That in clause (1) of article 269, the Words and figures ‘for the time being specified in Part I of the First Schedule, be omitted.”

“That in clause (1) of article 269, for the words ‘revenues of the State’ the words ‘Consolidated Fund of the State’ be substituted.”

“That with reference to amendment No. 2972 of the List of Amendments for clause (2) of article 269, the following clause be substituted :—

- ‘(2) The Government of India may, subject to such conditions as may be laid down by or under any law made by Parliament, make loans to any State or, so long as any limits fixed under article 268 of this Constitution are not exceeded, give guarantees in respect of loans raised by any State, and any sums required for the purpose of making such loans shall be charged on the Consolidated Fund of India.’”

The important change by my amendment No. 107 is that originally the Government of India was given a free hand in this matter; now the action of the Government of India is subject to such conditions as may be laid down by or under any law made by Parliament.

Sir, I move :

“That in clause (3) of article 269, the words and figures ‘for the time being specified in Part I or Part III of the First Schedule’ be omitted.”

**Shri Brajeshwar Prasad:** I am not moving amendment No. 108.

**Shri H. V. Kamath :** No. 146, I believe, is a verbal amendment and I leave it to the wisdom of the Drafting Committee.

**Shri B. Das :** (Orissa: General) : Sir, article 268 empowers, Parliament to fix by law the amount that could be borrowed by Provincial Governments. Article 269 was originally drafted differently. Now, the amendments that have been moved by Dr. Ambedkar shows that article 269, as sought to be amended by him, imposes further burden on the Finance Minister of Union Government. It also imposes additional burden on the Auditor-General of the Government of India without whose advice the Parliament will not be able to decide.

Today the Union Government is charged with additional responsibility of the borrowings of the States. Of course, it is qualified that such loans, such borrowings will be within the territory of India and also will be upon the

security of the revenues of the State. Sir, if we examine the finances of the various Provincial Governments we will find that except a few crores of loans that were raised when the Congress assumed responsibility for the administration of provinces in 1936, all loans have been borrowed on the credit of the Government of India, which task in future devolves on the Union Government. We have recently heard a controversy that certain provinces thought that they have the power to borrow any money. Certain provinces revolted and they thought that they can float any loans and issue any bonds or securities whether negotiable or non-negotiable. Those of us who think that all borrowings should be done through the Union Government felt at that time at the national credit of the Union Government would suffer if provinces were given the freedom in the matter of borrowing. I do not understand what is the security of the revenues of the Provincial Governments. Who is to fix them ? Will the Auditor-General fix at the time of the promulgation of this Constitution that such and such States and such and such provinces will have so much power of borrowing ?

Unfortunately, I do not like the wording of article 268. How will Parliament fix by law the amount of borrowing every year for the Union and for the different provinces. Sir, as my memory goes over the past twenty-five years, I do not remember a single occasion when the alien Government which ruled over us, consulted Parliament over their borrowing policy. It always came in through the backdoor of explanatory memorandum. Never has the Government of India introduced the practice of raising a debate on their borrowing policy. The borrowing is sanctioned when the Budget is passed, Then we have article 269 under which the finance ministers of the States can claim sums of money for the development of their States. Whatever money they claim, article 269 is going to provide. It will be a charge on the revenues of the State. But who will be the judge as to whether a certain province has got the paying capacity? Already the Government of India is committed to large development schemes on behalf of the provinces. We have the Bhakra Dam in East Punjab, the Hirakund Dam in Orissa, the Damodor Valley Corporation in Bengal and the Kosi Dam in Bihar about which my friends from Bihar are so very anxious. Who is to judge that these development projects will stand the national credit of the particular provinces for which the money is borrowed? I wish there is someone to do this. I think, Sir, whatever be enacted in articles 268 and 269, we must not throw this responsibility on Parliament alone. Parliament, as I know it for the last twenty-five years, pays very little attention to the question of borrowing. If I remember aright, there have been only half a dozen debates in all during the last twenty-five years on the policy of borrowing. Will we improve our financial knowledge, in the next few years when we will be discussing the national credit of the Union and of the provinces and who, will say boldly that such and such provinces will only have so many crores of loan and nothing more? Unfortunately when provincial feelings come into play in the discussion over such matters, members simply fight for the benefit of their own provinces. I think articles 268 and 269 envisage giving more powers to the Auditor-General. The Auditor-General must review and submit the papers to the Members of Parliament every year about the credit of each province, apart from the Union Government. The Auditor-General is not now doing that. I am discussing the handicaps that surrounds us in considering questions of this kind. Unfortunately the Finance Department of the Government of India is still following the old tradition and treating the Auditor-General as a mere auditor of a company, where the directors tell him to overlook certain errors and malpractices. But if the House accepts article 269 as it is, the House should somehow incorporate some provision whereby the Auditor-General must report to Parliament the credit conditions of the Provinces. Most of us are laymen and politicians. Very few members of Parliament will be financiers. Financiers do not belong to the class of democracy from which we

[Shri B. Das]

come. The future legislatures will not contain businessmen or men who understand stock exchanges or the financial credit of our country. Therefore, there is a double duty imposed by article 269 and I would ask my honourable Friend Dr. Ambedkar to explain how he thinks that Parliament will understand and appreciate the national credit of each of the States and of the Union and how it will limit the amount of borrowing of the Union Government and the States. The Parliament is empowered under article 268 and is going to be further empowered by article 269 to maintain the national credit of India. But then how will the national credit of India be maintained? I view with grave concern article 269. If any province rebels against the Centre and against the unification of the national economy of India, the national credit will not be a settled fact. Some other method must be thought of.

**The Honourable Shri K. Santhanam** (Madras: General): Sir, I wish to say a few words with reference to one point which struck me when Prof. Shah was speaking on article 268. Prof. Shah suggested that the Government of India and even Parliament should not be entitled to pledge the primary resources of the country in order to borrow. I entirely agree. But according to my reading of articles 268 and 269, there is no question of either the Government of India or any State pledging any particular resources for any particular borrowing. They give power to borrow only on the security of the Consolidated Fund of India or of the States. It will not be open to the Government of India to say that they pledge the railways for a particular loan, say from America. Only the entire Consolidated Fund of India will be the security. It means that it will only be a general security of the credit of the people of India. There can be no question of particular general resources or the railways being pledged for any loan either from abroad or internally. The same will be the case with every State. Therefore there should be no apprehensions on the point. I think the plain meaning of articles 268 and 269 makes it certain in this respect. I would, however, like to suggest to Dr. Ambedkar that, if there, is the slightest doubt in the wording, the Drafting Committee should look into it and remove the doubt. It should be made clear that the only security should be the general credit of the whole of India or of a State and not particular resources.

**The Honourable Dr. B. R. Ambedkar** : I do not think, Sir, any reply is called for.

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

The question is :

“That in clause (3) of article 269, the words and figures ‘for the time being specified in Part I of the First Schedule’ be omitted.”

The amendment was adopted.

**Mr. President** : The question is:

“That in clause (1) of article 269, for the words ‘revenues of the State’ the words ‘Consolidated Fund of the State’ be substituted.”

The amendment was adopted.

**Mr. President** : The question is :

“That with reference to amendment No. 2972 of the List of Amendments, for clause (2) of article 269, the following clause be substituted : —

- (2) The Government of India may, subject to such conditions as may be laid down by or under any law made by Parliament, make loans to any State or so long as any limits fixed under article 268 of this Constitution are not exceeded, give guarantees in respect of loans raised by any State, and any sums required for the purpose of making such loans shall be charged on the Consolidated Fund of India.”

The amendment was adopted.

**Mr. President :** The question is:

“That in clause (3) of article 269, the words and figures ‘for the time being specified in Part I or Part III of the First Schedule’ be omitted.”

The amendment was adopted.

**Mr. President :** The question is:

“That article 269, as amended, stand part of the Constitution.”

The motion was adopted.

Article 269, as amended, was added to the Constitution.

### Articles 5 and 6

**Mr. President :** We have now to take up articles 5 and 6 of the original draft. I find there is a veritable jungle, of amendments, something like 130 or 140 amendments, to these two articles. I suggest that the best course will be for Dr. Ambedkar to move the articles in the form in which he has finally framed them and I shall then take up the amendments to this amended draft. Both 5 and 6 go together I think. Dr. Ambedkar.

**Prof. K. T. Shah :** May I know what happens to the amendments in the Printed List? They have all been tabled as amendments to the original draft. I do not quite understand your suggestion as to the process in which the amendments would now be taken up.

**Mr. President :** If there is any amendment which is of a substantial nature, which touches any of the amended drafts as proposed by the Drafting Committee, I shall certainly take it up, but I leave it to the Members to point out to me which particular amendment they wish to move.

**Dr. P. S. Deshmukh :** If the original draft is not moved, all the amendments tabled to that draft go by the wind.

**Mr. President :** We do not move the original draft, but it will be taken as moved and then the other amendments come in.

Members will find that Dr. Ambedkar has given notice of certain amendments which have been circulated to Members. The first is No. 1 in List I.

**The Honourable Dr. B. R. Ambedkar :** Sir, May I give the references? The amendments of which notice has been given about the citizenship clause are spread over various lists, and I propose to give in the beginning to Members the references to the various lists. The first amendment is No. 1 of List I. Then come amendments Nos. 128, 129, 130, 131, 132 and 133 of List IV. These are the various proposals of the Drafting Committee with regard to this article. I feel that the House may not be in a position to get a clear and complete idea if these amendments were moved bit by bit, separately. Therefore what I propose to do is this that I will move a consolidated amendment, so to say, which I have prepared, consisting of amendments Nos. 1, 128, 129, 130 and 133. My Friend, Mr. T. T. Krishnamachari, will subsequently move the other two amendments which are Nos. 131 and 132 in List IV. In amendment No. 129, it should read “of the proposed article 5A” instead of “of the proposed article 5”. It is a printing error. With these preliminary observations, so to say, I move my amendment:

“That for articles 5 and 6, the following articles be substituted:—

- “5. At the date of commencement of this Constitution, every person who has his domicile in the territory in India and—
- |   |   |
|---|---|
| Citizenship at the date of<br>Commencement of this<br>Constitution. | (a) who was born in the territory of India : or<br>(b) either of whose parents was born in the territory of India; or<br>(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding the date of such commencement, |
|---|---|

[The Honourable Dr. B. R. Ambedkar]

shall be a citizen of India, provided that he has not voluntarily acquired the citizenship of any foreign State.

5-A. Notwithstanding anything contained in article 5 of this Constitution, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the date of commencement of this Constitution if-

- (a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and
- (b) (i) in the case where such person has so migrated before the nineteenth day of July 1948, he has ordinarily resided within the territory of India since the date of his migration; and
- (ii) in the case where such person has so migrated on or after the nineteenth day of July 1948 he has been registered as a citizen of India by an officer appointed in this behalf by the Government of the Dominion of India on an application made by him therefore to such officer before the date of commencement of this Constitution in the form prescribed for the purpose by that Government:

Provided that no such registration shall be made unless the person making the application has resided in the territory of India for at least six months before the date of his application.

5-AA. Notwithstanding anything contained in articles 5 and 5-A of this Constitution a person who has after the first day of March 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India :

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of article 5-A of this Constitution be deemed to have migrated to the territory of India after the nineteenth day of July 1948.

**Shri Jaspal Roy Kapoor** (United Provinces : General): This, you, had said, would be moved by Mr. T. T. Krishnamachari.

**The Honourable Dr. B. R. Ambedker** : I have been considering that, but I ted article as I am proposing to accept the amendment which will be moved by him.

5-B. Notwithstanding anything contained in article 5 and 5-A of this Constitution, any person who or either of whose parents or any of whose grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted) and who is ordinarily residing in any territory outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form prescribed for the purpose by the Government of the Dominion of India or the Government of India.

5-C. Every person who is a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

6. Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship."

Sir, I would reserve my remarks after the amendments to my draft are moved by Mr. T. T. Krishnamachari and that will complete the thing.

**Mr. Naziruddin Ahmad** (West Bengal: Muslim): Sir, the amendment that has been moved is a last-minute consolidated amendment taken from several

amendments in the printed amendments. Though in the profession of law for a very long time, I find it a bit confusing to follow how the scattered amendments have been consolidated and whether any departure has been made in the process. In trying to consolidate a large number of amendments and redrafting them, unconscious departures often happen. It is again extremely difficult for us to consider our own amendments as to whether they are accepted or whether they are rejected in the consolidated draft or if they are to be moved, if they are to be moved in an altered form just as a consequential measure.

I submit that substantially in amendment No. 1 in List I and in some other amendments in other Lists which are now consolidated there has been a great deal of departure from the Draft Constitution and the point that I took the other day is more applicable today than at any other time. There are absolutely new clauses, which purport to be amendments of articles 5 and 6, for instance proposed new articles 5A, 5B, 5C; then there are other articles like 5AA; then there is a new proviso in amendment No. 131 and amendment No. 130 is entirely new. Then in amendment No. 133 there is a new redraft of article 6. I submit, Sir, these amendments or this consolidated amendment amounts largely to an amendment in the Constitution itself or rather a large number of new amendments to the Constitution itself. As I submitted the other day there was a time fixed by you for submitting regular amendments and then it was ruled by you, and it was applied in many cases, that amendments to amendments alone would be submitted; but then this present amendment or a consolidated amendment, consisting of a large number of amendments, consists of amendments of the Constitution itself and that is creating a considerable amount of difficulty. We are departing from the Draft Constitution every day and today the departure is still more complete. I hope that there will be some limit to this migration from the original Draft Constitution. I ask you, Sir, to consider whether these amendments introducing absolutely new clauses which amount to amending of the Constitution itself should be allowed at this stage, and if they are to be allowed whether it would not be proper to give us a consolidated amended draft which could be considered by the Members in order to see whether their own amendments really fit in into it or they require readjustment or fresh amendments. Sir, I ask you to consider the practical difficulties of the procedure. Clause 5 has been before the House for some time and amendments to amendments alone would now be regular, but every day new amendments and new ideas are coming in. Articles 5A, 5B and 5C are new. Article 5AA has been brought today and its proviso has come in by a different amendment. The explanation to article 5 is deleted today. These have been all put together in our *ex tempore* amendment. I do wish that the Constitution should be finished as quickly as possible; otherwise this taste for new changes would go on unabated. I ask you, Sir, to give us a ruling and to suggest a convenient method by which we can deal with the situation.

**Mr. President :** I have considerable sympathy with the honourable Member's objection that in this amendment new ideas have been brought in, but Members will remember that when this Constitution was taken up for discussion during the winter Session, these articles were over for further consideration and I suppose it was accepted that fresh amendments would be brought in. All those articles and those which were reached but not considered were held over to enable the Drafting Committee to reconsider the original draft and propose new drafts where necessary.

In that view, the Drafting Committee has considered that draft and has proposed new drafts, and they have suggested certain amendments to their

[Mr. President]

own draft. What Dr. Ambedkar has done is to put together all the amendments which they have proposed and he has read out a consolidated amendment. But I can fully appreciate the difficulties of Members when these various amendments are spread over a number of pages and a number of lists, and I would ask the Office to circulate to Members the consolidated amendment as proposed by Dr. Ambedkar. We can take up the discussion of the consolidated amendment which has been moved by Dr. Ambedkar tomorrow morning, and the Members will have time by then to study the amendments in the consolidated form. In the meantime, I do not like to waste even the half hour that we have, and if Members have any other amendments to move, they might move them today so that we might take up the consideration of the amendments as well as the draft as moved by Dr. Ambedkar tomorrow morning.

**Prof. Shibban Lal Saksena :** May we have Dr. Ambedkar's speech today?

**Mr. President :** Yes, I would ask Dr. Ambedkar to explain his amendment.

**Mr. Naziruddin Ahmad :** Amendment Nos. 130 and 131 have been circulated only this morning and we have had no opportunity of considering them. Then if we are to get the consolidated amendment today, there will be no time to suggest amendments which will be in time before the House.

**Mr. President :** If there is any reasonable grievance on that account, I will take that into consideration.

**Shri T. T. Krishnamachari :** I move amendment No. 131 of List IV. I move :

“That in amendment No. 130 above, to the proposed article 5-AA the following proviso be added:—

‘Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of law and every such person shall for the purposes of clause (b) of article 5-A of this constitution be deemed to have migrated to the territory of India after the nineteenth day of July 1948.’ ”

There is one other formal amendment which I have to move. It is No. 132.

I move :

“That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed article 5-B, the words ‘and subject to the provisions of any law made by Parliament’ be omitted.”

Sir, I shall not explain these amendments. If necessary, Dr. Ambedkar will explain them.

**Shri Jaspal Roy Kapoor :** May I suggest that all the amendments which are on the list may also be formally moved today.

**Mr. President :** First, let Dr. Ambedkar explain his viewpoint and then the other amendments may be moved.

**Shri Jaspal Roy Kapoor :** I venture to make that suggestion because if all the other amendments are also moved, Dr. Ambedkar will have an opportunity of saying something with reference to those amendments also. The other amendments may simply be moved but no speeches may be made on them, so that the House may be in possession of all the amendments.

**Mr. President :** If we take up all the other amendments, I think there will not be any end to them. First, let Dr. Ambedkar explain his proposition and then the other amendments may be moved.

**The Honourable Dr. B. R. Ambedkar :** Mr. President, Sir, except one other article in the Draft Constitution, I do not think that any other article has given the Drafting Committee such a headache as this particular article. I do not know how many drafts were prepared and how many were destroyed as being inadequate to cover all the cases which it was thought necessary and desirable to cover. I think it is a piece of good fortune for the Drafting Committee to have ultimately agreed upon the draft which I have moved, because I feel that this is the draft which satisfies most people, if not all.

**An Honourable Member :** Question.

**The Honourable Dr. B. R. Ambedkar :** Now, Sir, this article refers to, citizenship not in any general sense but to citizenship on the date of the commencement of this Constitution. It is not the object of this particular article to lay down a permanent law of citizenship for this country. The business of laying down a permanent law of citizenship has been left to Parliament, and as Members will see from the wording of article 6 as I have moved the entire matter regarding citizenship has been left to Parliament to determine by any law that it may deem fit. The article reads—

“Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.”

The effect of article 6 is this, that Parliament may not only take away citizenship from those who are declared to be citizens on the date of the commencement of this Constitution by the provisions of article 5 and those that follow, but Parliament may make altogether a new law embodying new principles. That is the first proposition that has to be borne in mind by who will participate in the debate on these articles. They must not understand that the provisions that we are making for citizenship on the date of the commencement of this Constitution are going to be permanent or unalterable. All that we are doing is to decide *ad hoc* for the time being.

Having said that, I would like to draw the attention of the Members to the fact that in conferring citizenship on the date of the commencement of this Constitution, the Drafting Committee has provided for five different classes of people who can, provided they satisfy the terms and conditions which are laid down in this article, become citizens on the date on which the Constitution commences.

These five categories are :

- (1) Persons domiciled in India and born in India : In other words, who form the bulk of the population of India as defined by this Constitution;
- (2) Persons who are domiciled in India but who are not born in India but who have resided in India. For instance persons who are the subjects of the Portuguese Settlements in India or the French Settlements in India like Chandernagore, Pondicherry, or the Iranians for the matter of that who have come from Persia and although they are not born here, they have resided for a long time and undoubtedly have the intention of becoming the citizens of India.

The three other categories of people whom the Drafting Committee to bring within the ambit of this article are :

- (3) Persons who are residents in India but who have migrated to Pakistan;
- (4) Persons resident in Pakistan and who have migrated to India: and
- (5) Persons who or whose parents are born in India but are residing outside India.

These are the five categories of people who are covered by the provisions of this article. Now the first category of people *viz.*, persons who are domiciled in the territory of India and who are born in the territory of India or whose parents were born in the territory of India are dealt with in article, 5 Clauses (a) and (b). They will be citizens under those provisions if they satisfy the conditions laid down there.



[The Honourable Dr. B. R. Ambedkar]

The second class of people to whom I referred, *viz.*, persons who have resided in India but who are not born in India are covered by clause (c) of article 5, who have been ordinarily resident in the territory of India for not less than five years immediately preceding the date of such commencement. The condition that it imposes is this that he must be a resident of India for five years. All these classes are subject to a general limitation, *viz.*, that they have not voluntarily acquired the citizenship of any foreign State.

With regard to the last class, *viz.*, persons who are residing abroad but who or whose parents were born in India, they are covered by my article 5-B which refers to persons who or whose parents or whose grand-parents were born in India as defined in the Government of India Act, 1935, who are ordinarily residing in any territory outside India—they are called Indians abroad. The only limitation that has been imposed upon them is that they shall make an application if they want to be citizens of India before the commencement of the Constitution to the Consular Officer or to the Diplomatic Representative of the Government of India in the form which is prescribed for the purpose by the Government of India and they must be registered as citizens. Two conditions are laid down for them—one is an application and secondly, registration of such an applicant by the Consular or the Diplomatic representative of India in the country in which he is staying. These are as I said very simple matters.

We now come to the two categories of persons who were residents in India who have migrated to Pakistan and those who were resident in Pakistan but have migrated to India. The case of those who have migrated to India from Pakistan is dealt with in my article 5-A. The provisions of article 5-A are these—

Those persons who have come to India from Pakistan are divided into two categories—

- (a) those who have come before the 19th day of July 1948, and
- (b) those who have come from Pakistan to India after the 19th July 1948.

Those who have come before 19th July 1948, will automatically become the citizens of India.

With regard to those who have come after the, 19th July 1948, they will also be entitled to citizenship on the date of the commencement of the Constitution, provided a certain procedure is followed, *viz.*, he again will be required to make an application to an officer appointed by the Government of the Dominion of India and if that person is registered by that Officer on an application so made.

The persons coming from Pakistan to India in the matter of their acquisition of citizenship on the date commencement of the Constitution are put into two categories—those who have come before 19th July 1948, and those who have come afterwards. In the case of those who have come before the 19th July 1948 citizenship is automatic. No conditions, no procedure is laid down with regard to them. With regard to those who have come thereafter, certain procedural conditions are laid down and when those conditions are satisfied, they also will become entitled to citizenship under the article we now propose.

Then I come to those who have migrated to Pakistan but who have returned to India after going to Pakistan. There the position is this. I am not as fully versed in this matter as probably the Ministers dealing with the matter are, but the proposal that we have put forth is this if a person who has migrated to Pakistan and, after having gone there, has returned to India on the basis of a permit which was given to him by the Government of

India not merely to enter India but a permit which will entitle him to resettlement or permanent return, it is only such person who will be entitled to become a citizen of India on the commencement of this Constitution. This provision had to be introduced because the Government of India, in dealing with persons who left for Pakistan and who subsequently returned from Pakistan to India, allowed them to come and settle permanently under a system which is called the 'Permit System'. This permit system was introduced from the 19th July 1948. Therefore the provision contained in article 5-B deals with the citizenship of persons who after coming from Pakistan went to Pakistan and returned to India. Provision is made that if a person has come on the basis of a permit issued to him for resettling or permanent return, he alone would be entitled to become a citizen on the date of the commencement of the Constitution.

I may say, Sir, that it is not possible to cover every kind of case for a limited purpose, namely, the purpose of conferring citizenship on the date of the commencement of the Constitution. If there is any category of people who are left out by the provisions contained in this amendment, we have given power to Parliament subsequently to make provision for them. I suggest to the House that the amendments which I have proposed are sufficient for the purpose and for the moment and I hope the House will be able to accept these amendments.

**Shri B. M. Gupte** (Bombay: General): Was the permit system brought in on 19th July 1948 ?

**The Honourable Dr. B. R. Ambedkar** : Yes, on the 19th July '48 there was an ordinance passed that no person shall come in unless he has a permit, and certain rules were framed by the Government of India under that on 19th July 1948, whereby they said a permit may be issued to any person coming from Pakistan to India specifically saying that he is entitled to come in. There are three kinds of permits, Temporary Permit, Permanent Permit and permit for resettlement or permanent return. It is only the last category of persons who have been permitted to come back with the express object of resettlement and permanent return, it is only those persons who are proposed to be included in this article, and no other.

**Mr. President** : I think we shall take up the amendments tomorrow. But before I adjourn, there is one thing about which I would like to take the sense of the House. In the next week, Monday which happens to be the 15th of August, is a holiday, and then Wednesday the 17th is also a holiday on account of *Janamashthmi*. It has been suggested to me that we might not meet on Tuesday so that Members might have a continuous four or five days from Saturday to Wednesday, and we might meet on Thursday; and instead of Tuesday, we might meet on the following Saturday. If that meets the wishes of the House, we can arrange our programme like that.

**Honourable Members** : Yes.

**Mr. Naziruddin Ahmad** : A long adjournment might make us forget everything.

**Mr. President** : I think you will get time again to study. So, we shall sit up to Friday next, and then adjourn till 9 O'clock on Thursday, and we shall sit on the following Saturday also.

Now the House stands adjourned till 9 O'clock tomorrow morning.

The Assembly then adjourned till Nine of the Clock on Thursday, the 11th August 1949.