

Sunday, 16th October, 1949

Volume X



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6-10-1949  
to  
17-10-1949

# CONSTITUENT ASSEMBLY DEBATES

## OFFICIAL REPORT

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THE CONSTITUENT ASSEMBLY OF INDIA

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## CONSTITUENT ASSEMBLY OF INDIA

*Sunday, the 16th October 1949*

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

### DRAFT CONSTITUTION—(Contd.)

**Mr. President :** We have got a number of articles on the agenda. Some of them are of a controversial nature and are of great importance. They will probably take a little time in discussion, while the others are more or less of a formal nature. I would like to take up the difficult and controversial articles first, so that we might dispose them of and then we can deal with those which are only consequential amendments and things of that sort. Shall we begin with 264A, Dr. Ambedkar ? Will it suit you ?

**Mr. Naziruddin Ahmad** (West Bengal : Muslim) : May I point out that these amendments were received by us at quarter past nine this morning and I had to read them on my way to the Assembly.

**Mr. President :** Quarter past nine ? They were circulated last night.

**Some Honourable Members. :** We got them at 9 A.M.

**Shri Mahavir Tyagi** (United Provinces : General) : My proposal is that this article may be taken up in the afternoon, Sir.

**Mr. President :** We may not have a session in the afternoon. In this way I do not know what to do.

**Mr. Naziruddin Ahmad :** These are very intricate matters and they are reopening decisions of the House already taken.

**Mr. President :** Article 264A has been there for several days, article 274DD has been there for several days; so also article 302AA.

**Mr. Naziruddin Ahmad :** I am speaking generally of the agenda today. Most of them reopen matters already decided by the House. It is difficult for anyone, even the fastest brain, to follow these changes. No indication is given as to what changes are to be made.

**Mr. President :** No doubt article 280A, I understand, is a new article which has come up today; but the others have been there on the agenda for many days.

**Shri H. J. Khandekar** (C.P. & Berar: General) : 264A is a new article altogether and we got notice of it at about 9 A.M. today. It is impossible to send any amendment to that article. Therefore, I request that it may be taken up in the afternoon or tomorrow.

**Mr. President :** It means that we shall have to prolong the session for two or three days. I do not think that will be right. Let us take up article 264A.

### Article 264A

**The Honourable Dr. B. R. Ambedkar** (Bombay : General) : Sir, I move amendment No. 425.

“That in amendment No. 307 of List XIII (Second Week), for the proposed article 264A, the following be substituted—

‘264A. (1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place—

Restriction as to imposition of tax on sale or purchase of goods.	(a) outside the State; or
	(b) in the course of the import of the goods into, or export of the goods out of the territory of India.

[The Honourable Dr. B. R. Ambedkar]

*Explanation.*—For the purposes of sub-clause (a) of this clause a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State.

- (2) Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase at any goods where such sale or purchase takes place in the course of inter-State trade or commerce :

Provided that the President may order by direct that any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of this Constitution shall, notwithstanding that the imposition of such tax is contrary to the provisions of this clause, continue to be levied until the thirty-first day of March, 1951.

- (3) No law made by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent.' ”

Sir, as everyone knows, the sales tax has created a great deal of difficulty throughout India in the matter of freedom of trade and commerce. It has been found that the very many sales taxes which are levied by the various Provincial Governments either cut into goods which are the subject matter of imports or exports, or cut into what is called inter-State trade or commerce. It is agreed that this kind of chaos ought not to be allowed and that while the provinces may be free to levy the sales tax there ought to be some regulations whereby the sales tax levied by the provinces would be confined within the legitimate limits which are intended to be covered by the sales tax. It is, therefore, felt that there ought to be some specific provisions laying down certain limitations on the power of the provinces to levy sales tax.

The first thing that I would like to point out to the House is that there are certain provisions in this article 264A which are merely reproductions of the different parts of the Constitution. For instance, in sub-clause (1) of article 264A as proposed by me, sub-clause (b) is merely a reproduction of the article contained in the Constitution, the entry in the Legislative List that taxation of imports and exports shall be the exclusive province of the Central Government. Consequently so far as sub-clause (1) (b) is concerned there cannot be any dispute that this is in any sense an invasion of the right of provinces to levy as sales-tax.

Similarly, sub-clause (2) is merely a reproduction of Part XA which we recently passed dealing with provisions regarding inter-State trade and commerce. Therefore so far as sub-clause (2) is concerned there is really nothing new in it. It merely says that if any sales tax is imposed it shall not be in conflict with the provisions of Part XA.

With regard to sub-clause (3) it has also been agreed that there are certain commodities which are so essential for the life of the community throughout India that they should not be subject to sales tax by the province in which they are to be found. Therefore it was felt that if there was any such article which was essential for the life of the community throughout India, then it is necessary that, before the province concerned levies any tax upon such a commodity, the law made by the province should have the assent of the President, so that it would be possible for the President and the Central Government to see that no hardship is created by the particular levy proposed by a particular province.

The proviso to sub-clause (2) is also important and the attention of the House might be drawn to it. It is quite true that some of the sales taxes which have been levied by the provinces do not quite conform to the provisions contained in article 264A. They probably go beyond the provisions. It is therefore felt that when the rule of law as embodied in the Constitution comes into force all laws which are inconsistent with the provisions of the Constitution shall stand abrogated. On the date of the inauguration of the Constitution this might create a certain amount of financial difficulty or embarrassment to the different provinces which have got such taxes and on the proceeds of which their finances to a large extent are based. It is therefore proposed as an explanation to the general provisions of the Constitution that notwithstanding the inconsistently or any sales tax imposed by any province with the provisions of article 264A, such a law will continue in operation until the 31st day of March 1951, that is to say, we practically propose to give the provinces a few months more to make such adjustments as they can and must in order to bring their law into conformity with the provisions of this article.

I do not think any further explanation is necessary so far as my amendment is concerned but if any point is raised I shall be very glad to say something in reply to it when I reply to the debate.

(Amendment Nos. 426 and 427 were not moved).

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

“That in amendment No. 425, in the Explanation to clause (1) of the proposed article 264A, the words ‘for the purpose of consumption in that State’ be deleted, and the following new clause be added at the end :—

- (4) The Union Parliament shall have power to amend the laws in respect of taxes on sale or purchase of goods with a view to bring uniformity in the laws made by the various States of the Union or in the interests of the Union as a whole, provided that no Bill for such amendment shall be moved in Parliament without the prior permission of the President, and the President before giving such permission shall obtain the views of the Governments of the various States concerned.’”

Sir, this amendment No. 425 is in modification of the original amendment No. 307. It is a bit more comprehensive and tries to deal with some of the objections which had been raised against that article. But I feel that the article even as moved by Dr. Ambedkar is very defective and will have the effect of reducing the income of several provinces by some crores of rupees. In fact I am told that the Central Provinces Government will lose about 1 crore and the Bihar Government about 2 crores. Probably the same will happen to other provinces also.

The principles that Dr. Ambedkar has placed before us are simple. First, on imports and exports to sales tax will be levied; secondly, on inter-State trade no sales tax will be levied; and thirdly, on essential articles of life no sales tax will be levied without the approval of the President. But in clause (1) restrictions are to be put on the power of the States to impose sales tax on articles meant for import and export even to the extent of one pice per maund or other small amounts. The result will be that many of the provinces will lose huge amounts of revenue. For example, the Premier of the Central Provinces was telling me that they export manganese and other mineral products from their State. Bihar exports mica and such other things. They impose a small amount like one or two pice per maund as sales tax. That brings to the coffers of the province a crore or so of rupees.

Now we have said that if these goods are meant for consumption in the State then alone this tax can be imposed, otherwise not; and this will result in the depletion of the finances of the provinces to very dangerous extent. I therefore think that these words “for the purpose of consumption in that State” should be removed and to make up for this depletion, I am suggesting, a new clause, which I read just now and which says : “The Union Parliament

[Prof. Shibban Lal Saksena]

shall have power to amend the laws in respect of taxes on sale or purchase of goods with a view to bring uniformity in the laws made by the various States of the Union or in the interests of the Union as a whole.” It may be argued that if this power is not kept here then many States shall levy taxes which would really amount to an excise tax or production tax in a way. What I want is only this, that when there are any such taxes which injure the Centre or which are injurious to trade, then this overall power given in clause (4) shall come into play and I also say that the President shall have the final power, so that the Centre will have the power to intervene, if necessary.

At the same time I do not want that this article 264A should cripple the provinces to such an extent that they will not be able to carry on their nation building activities such as Education etc. Therefore, this amendment of mine that is, removing the words “for the purpose of consumption in that State” and adding clause (4) will not injure the Centre in any way and will also let the State have some income. In fact in our discussions on the financial provisions States like Assam told us that they produce mineral oil, petroleum etc., but that they do not get anything. It was agreed in the Conference of Prime Ministers also that they can impose sales tax up to one pice and thus, they can have some revenue with which they can run their administration. It is only fair that province which produces an article should have at least some portion of that revenue. In fact, in my province, we produce sugar and although sugar is not taxed, we put a cess on sugar-cane and that brings to the province about a crore of rupees.

I do not think that such restrictions will help the Centre. But they will injure their main source of revenue. In fact in some provinces the revenues are much greater. I therefore, think that this article is an important article and it must be suitably amended, and I do not think that the provinces should be treated in such an unjust way as has been done by this article. If my amendment is accepted the Centre and the provinces will both benefit, and by deleting the words “for the purpose of consumption in that State” the Centre will not lose any money in import and export duties. I think that it is never the intention of any Provincial Government to usurp that function, and besides clause (4) will enable the Union Parliament to put limits on the amounts of sales tax they put and that will not affect the imports or exports and if a small tax it levied the Provinces will be able to benefit and it will be so good for them.

It is also unfair to the provinces that produce the main products such as petroleum or tea not to permit them any income there from. Now if Assam is allowed to have a small sales tax at the very beginning of one pice or two pice per maund, it will be able to have a large amount of money for their own province. Similarly, provinces like Bombay will have some money from the sales tax on the things produced therein and if these are uniform all over the country, the provinces will also gain and there will be no difficulty in inter-State trade and export and import. I think my amendments are very fair and something should be done to make provisions for these matters.

**Shri Mahavir Tyagi :** Sir, I beg to move:

“That in amendment No. 425 of List XVIII after clause (1) of article 264A, the following new proviso be inserted :

‘Provided that the sales tax shall not exceed Rs. 3/2 per cent of the sale price.’ ”

Sir, while moving this amendment, I wish to appeal to the sense of justice of this House in the name of the people whose representatives we are. This article from one point of view is extremely important. I deem this Constitution to be a contract between the State and the people. This contract has been given for drafting to the arbitration of the representatives of the people.

We should therefore not be guided, biased or prejudiced by the administrative difficulties, as may be pointed out by the honourable ministers, in various provinces; but we should take notice of the difficulties of the citizens at large. Constitution is a contract between the Citizen and the State; the main terms are, that the citizen shall pay such and such taxes whenever they be required by law to do so. This is the biggest liability which the citizens agree to take on themselves. On the one side, there are the citizens of India and on the other is Dr. Ambedkar, acting on behalf of the second contracting party, the State. He is already representing the State and puts the State's point of view. The state, through this Constitution takes over the responsibility of maintaining peace and enhancing the prosperity of the people. People being absent, I must appeal to the good sense of the representatives of those people, to be loyal to their clients and safeguard their interests in this supreme court of the nation. We are deciding their fate in their absence in this House.

When we allow the Provincial Governments to pick a pie from the private pocket of an individual citizen, we should see to it that it is obtained only willingly, and that every pie that we draw from the pocket of a private individual must ultimately go back to him either in the shape of services rendered to that individual or in the shape of an enhanced sum returned to him. Today in India hundreds of taxes are being realised, and the people do not really get any substantial benefit out of these taxes, either in the shape of additional 'prosperity' which they are told to expect from Government or any other kind of service. Whatever little service the State renders here in India is a further charge on the people. For instance, there are the railways which is an amenity given to people, but then it is run on a commercial basis and people are to pay for it. The telegraphs, the Post Office, the canals and everything else which go as services, we make extra charges for them. The State renders no free service to the people except a few dozes of quinine mixtures mixed with water that the State gives free to some poor people. Otherwise even doctors charge their fees and treat the people on payment. So we see that the State is not actually rendering any free service except that we are giving our citizens a psychological satisfaction to enjoy in their belief that they are a free people. They do not know what is the value of freedom. State justifies taxation on the plea that it defends the borders against wars. Wars never come alone, and when a war comes, it brings an extra tax along.

Now I submit that the taxes we get from the private individuals do not go back to them. If the Provincial Governments are permitted to realize sales tax, it is for them to see that they also enhance the prospects of commerce and bring about general prosperity among those people who are engaged in commerce. Now, what service do they render to the shop-keepers and those persons who, either purchase or sell ? They render no service to them. Have they created any new markets or given any facilities ? What for is this tax ? When various taxes were enumerated in the list of provincial subjects, it was considered that the sales tax was a sort of minor help to the provinces, for their revenues were static and there was no chance for raising them. The provinces mostly depended on their land revenue which is more or less fixed for a number of years. Therefore, with the increased activities of the provincial Governments it was thought better to give them some margin of extra revenue to balance their budgets.

Now, Sir, they got a little margin in the shape of this sales tax. As I see things, within a few years, the situation is totally changed. The sales tax is becoming a major source of revenue, even bigger than what their main sources of revenue used to be. In my province, previous to the war, the total revenue was hardly 13 crores or so; now, it is nearing 55 crores. These other taxes which the provinces have levied, over and above their main source of revenue are also taxes from the same people.



[Shri Mahavir Tyagi]

Now, Sir, the incidence of taxation is the heaviest in India. India had never faced even in times of war, such an incidence of taxation as it is bearing today. And, the Governments are rendering the least service in exchange for these taxes. This House is the highest authority vested with all powers of Sovereignty; we are sitting as the Supreme Court to decide whether we can permit the provincial Governments to go on taxing the people without any ceiling limits. Because there is no ceiling limit on this sales tax, they can go on raising the tax and ultimately there may come a time when the people may not be in a position to give much, and our taxes in the Centre would consequently be adversely affected. If the provincial Governments go on raising their taxes at the present speed, the result would be that total paying capacity of the people would be exploited by provincial Governments and the Central Government would thereby suffer. My point is that if we do not fix a limit, the provincial Governments would go on taxing, and we would be doing sheer injustice to the people who are at our mercy and who will have no right to protest or withhold these taxes. They would only have to draw solace from the fact that they were after all being taxed by the persons for whom they had voted. This is "ballot box democracy," which will tell in that manner on the people. I therefore, submit, Sir, that a limit of six pies per Rupee which comes to Rs. 3-2-0 per cent. should be fixed so that the provinces may not enhance the rate of this tax.

Again, I want to fix a limit also from another point of view. What I say is that in spite of the budgets of the various provinces having been inflated too much they are not rendering more service to the people than what the old Governments used to do. The result is that though they are freely inflating their budgets with the help of this liberty of raising taxes, they are doing nothing to reduce their expenditure, there is no tendency in any province to reduce the expenditure. The expenses today are more than what they used to be during the times of war. I say war was an emergency and they had temporarily to raise the taxes. Sir, it was foreign rule then. But now it is the people's government. Even though war is finished, the provincial governments have not begun to reduce their expenditure. Most of their income is going towards revenue expenditure and no portion of it is devoted towards the capital expenditure which is meant to enrich the people. If the money was spent in capital investments, I could have understood. Very little of the revenue expenditure is going towards capital expenditure. Whenever any money is invested in capital expenditure, it is obtained by borrowing.

Therefore, Sir, they are not only depleting the resources of the provinces, but also encumbering the citizens. I therefore, submit if in this manner, the provinces are given full opportunity to go on encumbering the position of the citizens in the provinces, it will tell upon the prosperity of the country as a whole. Therefore, while we are deciding between the citizens and the States, we must also define the limits to which the taxation of the provinces can go. With these words, I appeal, without any consideration to our party labels and prejudices, to the provincial Governments, that we, sitting as the judges of the nation, must do justice unimpaired, unprejudiced, fair and balanced to the citizens who are not here. They must be given full justice.

There are so many defects in the present system of sales tax. Now, in Delhi, there is no sales tax; in the United Provinces, there is a sales tax on motor cars, radios, on bicycles and other things. Whenever any citizen in Meerut wants a motor car or a bicycle, he does not go to the local shop there. The local agency suffers. He comes to Delhi. I see Dr. Ambedkar beckoning me to keep quiet; he is using undue influence.

**The Honourable Dr. B. R. Ambedkar :** I have followed the point.

**Shri Mahavir Tyagi :** Have you followed it ? Have you also appreciated it ? Are you prepared to accommodate me ? You have got the delegates of the People behind you. Dr. Ambedkar, I can assure you, if you are just, if you recognise justice, you might become later on the Supreme Judge of India in your life, if you do justice to the citizen. I submit, Sir, this is the manner in which this tax is being levied. In one State there is a tax of two annas per Rupee in another State there is a tax of two pies per Rupee. In one State the sale is taken at one point only; in another State it is taken at so many points wherever there is a sale. Like the gamblers' den, whoever is playing, he has something to pay to the gamblers' pool. In this manner, the provinces are running after every sale. This is something which is tending to become a blind law.

I submit that this is a very serious matter. It would be better if Dr. Ambedkar would reconsider the whole article and make it a 'uniform tax' and put it in the hands of the Central Government. The best thing would have been for the Central Government to enact a law so that the provinces would have a uniform pattern of taxation and the tax would be realised at one single point and in relation to one single commodity. A commodity should not be taxed at every point whenever it is put up for sale. With these words, Sir, I hope the House, 'not caring for the mandates or labels (लेबल) that they might have received from their houses, will please do justice and speak freely and vote freely in the matter and guard the rights of the citizens.

**Mr. President :** There are some more amendments which relate to the article as it was originally proposed. I do not know if all the amendments arise; but there is one which certainly can be moved. Amendment No. 385, Mr. Ajit Prasad Jain.

**Shri Amiyo Kumar Ghosh (Bihar : General) :** I have got amendment No. 383, standing in my name.

**Mr. President :** Let me see first amendment No. 385.

(Amendment 385 was not moved).

**Mr. President :** Do you want to move amendment No. 383 ?

**Shri Amiyo Kumar Ghosh :** Yes, Sir.

**Mr. President :** Just show how it fits in with this now.

**Shri Amiyo Kumar Ghosh :** Mr. President, Sir, of course my amendment No. 383 was tabled against amendment No. 307, that is to say, to article 264-A as it originally stood but today another amendment to that amendment has been moved which does not change the original position in the least except that an explanation has been added to the previous article, to clear certain minor points. So it fits in with the amendment moved just now by Dr. Ambedkar. So I move my amendment:

"That in amendment No. 307 of List XIII (Second Week) clause (2) of the proposed new article 264A be deleted."

What I want by this amendment is this, that clause (2) which deals with inter-State trade and commerce and gives an exemption to such transactions from sales tax, should be deleted. As a matter of fact, my clear impression is that this Constitution though in form is Federal, is in essence a Unitary Constitution. In this Constitution all powers and all sources of finance have been taken away by the Centre and the provinces have been left without any resources of their own. As a matter of fact the Union has been so much over-loaded that it may break at its own weight. It is said that we have got provincial autonomy, I assert that the provincial autonomy we have under this Constitution is worse than what it was in 1935 Act. Coming to the

[Shri Amiyo Kumar Ghosh]

question the only source of taxation which the provinces have in this Constitution is the sales tax. But that power has been taken away by this new article 264A to a great extent.

Now I will particularly speak with reference to the province of Bihar because I am not acquainted with the sales tax position prevailing in other provinces. So far as Bihar is concerned, I must emphatically assert that if this new article 264A is allowed to stand, the Province will lose immediately an income of more than 2 crores of rupees. In Bihar the income per capita and consequently its expenditure per capita is the lowest in the whole of India the reason being that hitherto its financial resources were inelastic. It has got fixed income in land revenue. In other provinces like U.P., Madras and Bombay the land revenue is a progressive one but in Bihar, due to Permanent Settlement, the income from this land is rigid, being something less than 2 crores.

Then there is another source of income from excise, but if prohibition is to be carried out, the province is going to lose  $5\frac{1}{2}$  crores out of its present revenue and there is no other source of revenue left to Bihar except sales tax to implement the loss that the province will sustain by the introduction of prohibition. This sales tax was the only elastic taxation left in the hands of the States to increase their revenue but that too is now taken away. Bihar has great resources but in spite of her holding rich position, she is one of the poorest province in India. Today 75 percent. of the coal and iron consumption of India is supplied by Bihar. Besides these, there are other commodities like sugar, cement, chillies, tobacco etc. which go out of Bihar; but if this provision is allowed to stand, the result will be that Bihar will not be entitled to any tax on these commodities at all, and will not derive any benefit from her own wealth. This article also closes the door of future implementation of the income for all times.

It is therefore only fair that Bihar which produced iron, coal etc. with the labour of the province and has to spend lots of money over maintaining law and order in those industrial areas—should be allowed to have an income out of them. It is understandable if some such clause is put into the effect that a uniform taxation will be levied on all such commodities that go out of any province and a position of such taxation will go to the province which produce them and the balance to the province where it is consumed. Under the present article 264A all the coal, iron and other commodities will leave the boundaries of Bihar, the Province will have no hand to tax them at all—a position which is very unfair to the Province. This will tell very heavily upon the financial resources of the province.

The State Governments are primarily responsible to the people and morally obliged to carry out so many social welfare programmes. They are to maintain law and order which requires huge expenditure. They are to eradicate want, ignorance, disease and unemployment. How to discharge these obligations? All these works require spending and doing. But where from to spend if there is no income ?

So, I submit that this is a clause which falls very heavily upon all provinces, particularly Bihar, and I would request the Drafting Committee to reconsider the subject over again. Everyday Provinces are being saddled with new responsibilities and if they have to discharge them, it will require

large money more money. The situation in the country is such that expenses on police and other administrative matters are mounting. Where from can these be met if we have no financial resources of our own ?

So, I oppose this Article 264A and I submit that so far as inter-State trade and commerce are concerned, they should not be exempted from sales tax and altogether deprive a province from such an important source of income. The benefit of this article goes wholly to the big businessmen who always evade paying taxes but is of no relief to the petty-businessmen and the consumers. If the power of imposing sales tax is abrogated in such a manner then it is better to liquidate the States altogether. If you want to maintain the States, you should not reduce them to the position of orphans with a begging bowl in hand approaching the Union Government for money and help. They must be given to stand on their own legs and must be allowed some resources where from they can implement their various plans into action. A healthy State means a strong Union.

Then, Sir, in this new article, it is said—

No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place—

- (b) in the course of the import of the goods into, or export of the goods out of the territory of India.

Now, this gives a great loop-hole to the business-men to escape taxation. In all cases of export, there are various transactions before the commodity is actually exported from the country. But under this clause, all these transactions—the intermediate transactions which take place—are exempted from sales-tax. I could have understood the position if it was that at the point of export, that is to say, the last transaction, where from it is actually exported, the sales-tax will not be realisable at that point. But this clause as it stands means that all transactions that take place in the course of sending the goods outside the territory of India will be exempted from sales-tax. Now, how can you check the nature of these transactions ? A buys a commodity saying that he will export it. But he does not export it, but, sells to B, and B purchases it saying that he will export it, and in this manner the commodity passes on from one hand to other and from one province to another without payment of any tax, and it may be that in the end it is not exported at all. How can you check up this process ? There will be a lot of difficulty and confusion, if this clause is passed as it stands. So my humble submission is that there, export and import should be clearly defined, and we must say that export means the last transaction and import means the first transaction, and only at the point of these two transactions commodities will be exempted from sales tax, and at no other point.

With these words, Sir, I commend my amendment for the acceptance of the House.

**Mr. President :** Dr. Kunzru, do you want to move an amendment to this article ?

**Pandit Hirday Nath Kunzru** (United Provinces : General) Yes, Sir, but my amendment is being typed and I hope it will be ready very soon. I hope you will kindly give me a little time to.....

**Mr. President :** Well, you may move it later and in the meantime we may have some discussion.

Shri Jagat Narain Lal.

**Shri Jagat Narain Lal :** (Bihar : General) Sir, I have tabled no amendment, nor do I purpose to press for the support of any amendment that has been moved here. But all the same, I do want to make a suggestion to the Mover of this article 264A, to take into consideration certain views which are strongly held and which are being felt by a fairly large section of the House, for reasons many of which have already been expressed here.

There is no disagreement on the question of not allowing the States to tax imports or exports as such. But it has been already said by the some previous Members, and I have got to repeat it, that unless the words are properly clarified, the words “in the course of” which occur in sub-clause (b) of clause (1) are bound to create a good deal of confusion. It has been pointed out that the Supreme Court of the U.S.A. had arrived at certain decisions with regard to this question which have clarified the position. We want for various reasons that these words should go.’ I would suggest that they be replaced by the words “at the initial stage of import into” and “at the ultimate stage of export out of India”. I suggest that these words that I have suggested may be kept, for the simple reason, firstly, that that will eliminate confusion, and secondly, the difficulties which would be felt in taxing the goods which pass from hand to hand until a part of them is exported out of this country, would be eliminated. Otherwise, there will be a good deal of confusion and a good deal of difficulty.

Some of the previous speakers have already pointed out the difficulties which will be felt by Provinces like Bihar, and C.P. if the words “for the purpose of consumption in that State” in sub-clause (1) are retained, and I do not want to repeat those arguments. But I do want to point out that in the absence of certain very important sources of revenue which we do want, on account of the programmes which the Congress has chalked out—say for prohibition and so on—and sales tax is a very important source of revenue and an expanding source of revenue. While the Centre is in no way hit and is in no way affected, there is no point in saying that the Provinces where big manufactures go on, and very large-scale production goes on, like iron, sugar, coal, cement and so on should not tax the sale of those commodities in or outside the province. So I want that the words “for the purpose of consumption in that State” should go out. Otherwise, the proviso which has been provided to sub-clause (2) where it is said that they may continue to be levied for one year, should go, and they should continue to be levied as before.

These are the few suggestions which I want to make to the Mover of this article. I do not want it to be pressed in the form of an amendment, but I leave it to the good sense of the Mover. There is neither the desire that the Centre should be crippled, that the Federal Government should be crippled by being deprived of taxes or the power to tax, nor should there be any desire on the part of the Federal Government—and I hope there is none—that the States should be crippled. Both should work harmoniously. Both are inter-related, as on the safety and welfare of the Federal Government and of the States, the safety and welfare of the entire country rests. Therefore, Sir, I appeal to the Mover of this article to take into consideration these two suggestions and to make such alterations or modifications as may be acceptable to the entire House and there may be no feeling of resentment or the feeling that the difficulties of the States have not been fully taken into consideration. I do not want to add more to what has already been said.

**Pandit Hirday Nath Kunzru** : Mr. President, Sir, I beg to move:—

“That after clause (1) of article 264A, the following new clauses be inserted:—

- ‘(1a). No law of a State shall impose or authorise the imposition of a tax on the sale or purchase of goods within a State except where such sale or purchase is made to or by a consumer.
- (1b) Parliament may, by law, fix the maximum rate at which a sale tax may be levied by a State on the sale or purchase of goods.’ ”

Sir, the amendment placed before the House by Dr. Ambedkar prevents a State from levying sales taxes on imports and exports. It thus protects the interests of the Central Government. The amendment also prevents the State from imposing sales taxes on goods bought or purchased in the course of inter-State trading. It thus protects also the interests of the State in which the goods are ultimately to be sold. But except in a limited way, it does not protect the interests of the consumers. Clause (3) of the amendment moved by Dr. Ambedkar says, that no tax on the sale or purchase of any essential goods declared by the Central Government to be essential for the life of the community, shall be levied by a Legislature, unless the law imposing the tax has been reserved for the consideration of the President and has received his assent.

This amendment protects the interests of the consumers too, but only in respect of those articles that are declared by the Central Government to be essential to the life of the community. It will depend on the Central Government what goods it will include in this category from time to time. It is therefore desirable that something more should be done to protect the interests of the consumer.

In many provinces, Sir, the sales taxes are levied only when the goods pass to the consumer. But it is not so in all provinces, nor is there a limit to the rate of the tax. I think it is desirable in the interests of the public at large that the Constitution should take account of these points.

The first part of my amendment requires that a tax on the sale or purchase of goods should be levied only when the sale or purchase is made to or by a consumer. The second part of my amendment authorises Parliament to fix the maximum rate at which such a tax may be levied. It may be said that the general economic condition of the people will impose a limit on the power of the Government of any State to fix the rate of the sales tax. It is very difficult in the first place to determine what the economic rate should be. In the second place, if the rate is to be determined only by experience, that is by following the method of trial and error, the proceeds of a tax may be large in the case of a particular commodity, but, on the other hand the sale of some other commodity might go down. The matter cannot therefore be left to be judged entirely by the Finance Minister of a State. It is important enough to require to be dealt with at this stage.

In some of the countries, there are multiple-point sales taxes. Perhaps the economic condition of those countries permits of the imposition of such taxes. But, in India, particularly at the present time when prices are high, obviously it is undesirable that each of the processes that has to be gone through before the manufactured goods reach the hands of a consumer should be subjected to the payment of a tax on the sale or purchase of goods. I think it will be generally agreed that it is desirable that some restriction should be placed on the power of a State in this respect. And even where such a restriction has been imposed, it is desirable that the Parliament should have the power to prescribe the upper limit of the tax.

[Pandit Hirday Nath Kunzru]

Several speakers have complained of the burdensome character of the sales taxes that have to be paid at present. That shows that the Governments concerned have not been able to adjust the rates in such a way as to create a sense of contentment among the consumers. Something more is, therefore, obviously required to be done. All that need be done in this connection is that Parliament should be given the power of fixing the upper limit where this may be necessary. It may not do so in every case. It may not do so in the case of luxury goods; but it may have to do so in the case of goods which, though not absolutely necessary for the satisfaction of our primary needs, are nevertheless in such general demand that it will be a hardship to the people to go without them.

Sir, I think that what I have said sufficiently explains the purpose of my amendment and shows that the amendment is such as to meet with the approval of the House. As I have already said, the amendment placed by Dr. Ambedkar before the House fully protects the interests of the Central Government and the interests of the State in which the goods purchased in another State are to be sold. But it only protects partially the interests of the consumer. My amendment seeks only to give as full protection to the consumer as Dr. Ambedkar's amendment has given to the interests of the Central Government and those of the State in which the goods purchased are ultimately to be sold.

**Shri B. M. Gupte** (Bombay : General) : Mr. President, Sir, I am sorry I have to express my dissatisfaction at clause (2) as it stands just now. My grievance is that it does not take into adequate account the difficulties of the provincial governments. Ours is a welfare State and it is bound to be more and more so as time rolls on, but most of the welfare work falls to the share of the provinces and the local bodies. The lower we go down the units of administration, the closer they come into contact with the daily needs of the people, and even today the Provincial Governments are hard put to it to meet their responsibilities with regard to what are called nation-building activities. And in the case of some of the provinces their difficulties are accentuated by the merger of States.

Take, for instance, the case of the province to which I have the honour to belong, *viz.*, Bombay. Today Bombay is facing the prospect of heavy deficits in its budgets for some years to come at least; and at such a time, instead of affording more sources of revenue to them we are clamping restrictions on the sources already available to them. Now, the sales tax is the most important and perhaps the most elastic source of revenue, and if we affect the income from that source, how will they meet their deficits? The provincial governments proposed that the provinces and the Centre should sit round a table, take stock of the whole situation and arrive at some arrangement for a more equitable distribution of the financial resources of the country and if there was not enough to go round, for a more equitable sharing of the financial difficulties.

The report of the Expert Finance Committee appointed by you, Sir, was an admirable opportunity for that purpose; but the Drafting Committee shelved the consideration of that report, maintained the *status quo* and provided for the appointment of a Finance Commission within two years of the commencement of the Constitution. There may be very good reason for that. I do not challenge that, but my point is that those good reasons should apply equally to the imposition of these restrictions. If the financial adjustment could wait, then certainly the imposition of these restrictions also could wait. After all, the question is not whether these restrictions are proper—they may be proper—but whether we are justified in imposing these restrictions without

making any compensatory sources available to the provinces. In the absence of such sources of revenue, what will the provinces do ? They will always look to the Centre for grants and we will be making the provincial Finance Ministers a crowd of unfortunate beggars on the doorsteps of the Central Finance Minister. I do not think this is a very desirable position.

I am glad one concession is made in the provision. That concession is that the present arrangement might continue up to the 31st March 1951 My point is that it would have been better if this period had been extended up to the time when the First Finance Commission will have made the necessary adjustments in the financial relations between the provinces and the Centre. We could certainly have waited till then. That would be only three years instead of one and a half years, which is a very small matter. Otherwise, I feel that there is bound to be a dislocation in the financial structure of the provinces. It must be remembered that the Centre cannot remain unaffected by the effects of that dislocation.

After all, the Centre and the Provinces are parts of one integrated whole. Take, for instance, the case of sugar at present. The Central Government passed a freezing order at Delhi, but the looting and shooting took place in Calcutta and Bombay. Let us therefore remember that any discontent arising out of the financial difficulties of the provinces would ultimately detract from the strength of the Centre, however strong that Centre may be. And as I have once said, a strong Centre cannot be sustained on weak units.

**Shri Prabhu Dayal Himatsingka** (West Bengal : General) : Sir, I beg to support the amendment moved by Dr. Ambedkar for the incorporation of article 264A. The article is framed to meet a number of difficulties and in the circumstances appears to be the best. I personally would have liked if the Centre had been authorised to impose the tax, collect it at the source,—at the import or the production centres,—and distribute the collections to the provinces. That would have reduced the number of points where expenditure has to be incurred in keeping books of account, but as the provincial governments did not agree to the Centre imposing the tax and then distributing it, the article as now proposed is the best. It seeks to do away with certain anomalies, which exist in the legislation of certain provinces where tax is imposed on sale, even though the article is delivered or consumed in another province. Similarly, it will do away with the tax on certain articles which are produced in one province but are sent to other provinces, that is to say in the course of inter-State transactions. At the present moment, Sir, I know of two cases where taxes have been imposed in Bengal to the extent of 25 lakhs of rupees on a mill which is situated in Orissa. Even though the goods were sold in provinces other than Bengal, still Bengal imposed an amount of twenty-five lakhs of rupees as taxes, simply because the company's head quarters happens, to be in Bengal. The present section will do away and remove such taxes being levied in such cases where the sales take place outside the province.

So far as the suggestion made by Pandit Hirday Nath Kunzru is concerned Bengal has met the difficulty already because it has introduced what is called registered dealers. When a sale takes place between two registered dealers, no sales tax is realised. When a sale takes place to a person who is not a registered dealer, then and then only is the tax realised; and therefore it is presumed that a man who is not a registered dealer is taking it for purposes of consumption. So, Bengal has met this difficulty by making registration necessary in the case of those who do not want to pay any taxes on their purchases.



[Shri Prabhu Dayal Himatsingka]

I support the article as moved by Dr. Ambedkar. Certain apprehensions have been expressed by different provinces, but I do not see that there is any justification for the same. They ought to know that they will be safe because there are a number of articles produced in each province which are exported for consumption in other provinces. Similarly, they ought to know that there are a number of things which come to the different provinces for consumption. Take, for instance, the case of cloth from Bombay. When cloth goes out from Bombay, they are prevented from imposing any sales tax, and Bihar which is importing a lot of cloth from Bombay will be able to realise the tax from such cloth. Therefore, ultimately, they will adjust in such a manner that all the provinces will practically get what they have been getting now. The thing will adjust itself in the course of a year or two, and none of the provinces will stand to lose anything but at the same time, the whole procedure will be simplified. I therefore support the article as moved by Dr. Ambedkar.

**Shri Gopal Narain** (United Provinces : General) : Mr. President, Sir, I have risen to support the amendment of my Friend Shri Mahavir Tyagi. He has struck the right note. In levying a tax or in introducing a measure of taxation the first consideration should be whether it is in the interests of the people. We have to see when we introduce a tax that it will be spent in the interests of the people, the masses. It is argued that we have introduced prohibition and so this new tax is required to make up the deficit in that direction. In my own Province only in eight districts we have introduced prohibition and that too is not successful. This is not prohibition in any sense.

Why do we need such taxation ? I may say, Sir, that it is due to the top-heavy expenditure that we are introducing new measures of taxation. We are not economising in that direction in the Centre and in the Provinces. We find that Economy Committees have been established and have submitted their reports. In my own Province they have submitted a report that we should lessen our expenditure by Rs. 6 crores, and out of that six crores I found that four crores are from the capital expenditure for roads and buildings and two crores from other directions. This is not sufficient. Before levying this new taxation we should have an economy drive in the Centre and in the Provinces. We are not doing any good to the masses but are burdening them with taxation. My Friend Mr. Tyagi has drawn the attention of the House in this very direction. He has said that we must see if this taxation will do any good to the people at large. I think they are being burdened unnecessarily on account of the huge expenditure in the administration of the Government. We should curtail it first and then we should think of introducing this taxation.

I will say one thing more. As for the amendment of Dr. Ambedkar, there is some discrimination in it. Some provinces will suffer by that. The U.P., Bihar and the C.P. will be the greatest sufferers by that amendment. I think there should be no discrimination as between Province and Province. All the Provinces, if they have to suffer, should suffer equally. It may not be beneficial to one Province while the other Province have to suffer, I would appeal to Dr. Ambedkar to accept the amendment of Mr. Tyagi.

With these few words, I support the amendment moved by Shri Mahavir Tyagi.

**Shri Yudhisthir Mirsa** (Orissa States) : Sir, the question be now put.

**Several Honourable Members** : No, no.

**Shri Mahavir Tyagi** : You kindly exercise your discretion, Sir, the matter is very important.

**Mr. President :** You have already spoken and you will have, no chance again. I have to put the closure motion to vote.

The question is :

“That the question be now put.”

The motion was adopted.

**The Honourable Dr. B. R. Ambedkar :** Sir, there are three amendments before the House. The first is the amendment of my Friend Prof. Shibban Lal Saxena. According to his amendment, what he proposes is that the power practically to levy sales tax should be with the Parliament. There are two fundamental objections to this proposal. In the first place, this matter was canvassed at various times between the Provincial Premiers and the Finance Department of the Government of India in which the proposal was made that in order to remove the difficulties that arise in the levy of the sales tax it would be better if the tax was levied and collected by the Centre and distributed among the Provinces either according to some accepted principles or on the basis of a report made by some Commission. Fortunately or unfortunately, the Provincial Premiers were to a man opposed to this principle and I think, Sir, that their decision was right from my point of view.

Although I am prepared to say that the financial system which has been laid down in the scheme of the Draft Constitution is better than any other financial system that I know of. I think it must be said that it suffers from one defect. That defect is that the Provinces are very largely dependent for their resources upon the grants made to them by the Centre. As well as know, one of the methods by which a responsible Government works in the power vested in the Legislature to throw out a Money Bill. Under the scheme that we have proposed; a Money Bill in the Province must be of a very meagre sort. The taxes that they could directly levy are of a very minor character and the Legislature may not be in a position to use this usual method of recording its “no confidence” in the Government by refusing taxes. I think, therefore, that while a large number of resources on which the Provinces depend have been concentrated in the Centre, it is from the point of view of constitutional government desirable at least to leave one important source of revenue with the Provinces. Therefore, I think that the proposal to leave the sales tax in the hands of the Provinces, from that point of view, is a very Justifiable thing. That being so, I think the amendment of my Friend Prof. Shibban Lal Saxena falls to the ground.

With regard to the amendment of my Friend Mr. Tyagi, I would like to say that I am in great sympathy with what he has said. There is no doubt about it that the sales tax when it began in 1937 was an insignificant source of revenue I have examined the figures so far as Bombay and Madras are concerned. The tax in the year 1937 in Madras was somewhere about Rs. 2.35 crores. Today it is very nearly Rs. 14 crores. With regard to Bombay the same is the situation, namely, that the tax about Rs. 3.5 crores in 1937 and today it is somewhere in the neighbourhood of Rs. 14 crores. This must be admitted as a very enormous increase and I do not think that it is desirable to play with the sales tax for the purpose of raising revenue for the simple reason that a taxation system can be altered on the basis, so far as I know, of two principles. One is the largest equity between the different classes. If one class is taxed more than another class it is justifiable to employ the taxation system to equalise the burden.

The second important principle, which, I think, is accepted all over the world is that no taxation system should be so manipulated as to lower the standard of living of the people, and I have not the slightest doubt in my mind that the sales tax has a very intimate connection with the standard of living

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of the people of the province. But, with all the sympathy that I have with my friend, I again find that if his amendment was accepted it would mean that the power of the provinces to levy the sales tax would not be free and unfettered. It would be subject to a ceiling fixed by Parliament. It seems to me that if we permit the sales tax to be levied by the provinces, then the provinces must be free to adjust the rate of the sales tax to the changing situation of the province, and, therefore, a ceiling from the Centre would be a great handicap in the working of the sales tax. I have no doubt that my Friend Mr. Tyagi, if he goes into the Provincial Legislature, will carry his ideas through by telling the Provincial Governments that the sales tax has an important effect on the standard of living of the people, and therefore, they ought to be very careful as to where they fix the pitch.

**Shri Mahavir Tyagi :** Have I become so inconvenient to you?

**The Honourable Dr. B. R. Ambedkar :** Not at all. If I were a Premier, I would have taken the same attitude as you have taken.

Now, coming to the amendment of my honourable Friend Pandit Kunzru, I am inclined to think that the purpose of his amendment is practically carried out in the explanation to sub-clause (1) where also we have emphasised the fact that the sales tax in its fundamental character must be a tax on consumption and I do not think that his amendment is going to improve matters very much.

There is only one point, I think, about which I should like to say a word. There after I know, some friends who do not like the phraseology in sub-clause (1), in so far as it applies, "in the course of export and in the course of import". Now, the Drafting Committee has spent a great deal of time in order to choose the exact phraseology. So far as they are concerned, they are satisfied that the phraseology is as good as could be invented. But I am prepared to say that the Drafting Committee will further examine this particular phraseology in order to see whether some other phraseology could not be substituted, so as to remove the point of criticism which has been levelled against this part of the article. Sir, I hope the House will now accept the amendment.

**Mr. President :** Before putting the proposition moved by Dr. Ambedkar to vote, I desire to say a few words, particularly because I see in front of me the Honourable the Finance Minister. I do not wish to say anything either in support of or in opposition to the article which has been moved, but I desire to point out that there is a considerable feeling in the provinces that their sources of revenue have been curtailed a great deal, and also, particularly among the provinces, which are poor, that the distribution of the income-tax is not such as to give them satisfaction. I desire to ask the Finance Minister to bear this in mind when he comes to consider the question of the distribution of the income-tax, so that it may not be said that the policy of the Government of India is such as to give more to those who have much and to take away the little from those who have little.

I shall now put the various amendments to vote.

The question is :

"That in amendment No. 307 of List XIII (Second Week), clause (2) of the proposed new article 264A be deleted".

The amendment was negatived.

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

“That in amendment No. 425, in the Explanation to clause (1) of the proposed article 264A, the words ‘for the purpose of consumption in that State’ be deleted, and the following new clause be added at the end :—

- ‘(4) The Union Parliament shall have power to amend the laws in respect of taxes on sale or purchase of goods with a view to bring uniformity in the laws made by the various States of the Union or in the interests of the Union as a whole, provided that no Bill for such amendment shall be moved in Parliament without the prior permission of the President, and the President before giving such permission shall obtain the views of the Governments of the various States concerned.’ ”

The amendment was negatived.

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

“That in amendment No. 425 of List XVIII after clause (1) of article 264A, the following new proviso be inserted —

- ‘Provided that the sales tax shall not exceed Rs. 3/2/- per cent of the sale price.’ ”

The amendment was negatived.

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

“That after clause (1) of article 264, the following new clauses be inserted:—

- ‘(1a) No law of a State shall impose or authorise the imposition of a tax on the sale or purchase of goods within a State except where such sale or purchase is made to or by a consumer.  
(1b) Parliament may, by law, fix the maximum rate at which a sale tax may be levied by a State on the sale or purchase of goods.’ ”

The amendment was negatived.

**Mr. President :** Then I put the original proposition moved by Dr. Ambedkar. The question is :

“That in amendment No. 307 of List XIII (Second Week), for the proposed article 264A, the following be substituted—

‘264-A. (1) No law of a State shall impose or authorise the imposition of, a tax on the sale or purchase Restrictions as to imposition of goods where such sale or purchase takes place—  
of tax on the sale or purchase  
of goods.

- (a) outside the State; or  
(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

*Explanation.*—For the purposes of sub-clause (a) of this clause a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State.

- (2) Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise, the imposition of, a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce.

Provided that the President may by order direct that any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of this Constitution shall, notwithstanding that the imposition of such tax is contrary to the provisions of this clause, continue to be levied until the thirty-first day of March, 1951.

- (3) No law made by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent.’ “

The amendment was adopted.

Article 264-A, as amended, was added to the Constitution.

**The Honourable Dr. B. R. Ambedkar :** I would like you to take up article 280-A.

**Pandit Hirday Nath Kunzru :** I strongly object to that article being taken up today. I received the amendment only this morning. The matter with which it deals is a very important one and we should be allowed some time to consider it and to put forward amendments, if we want to do so.

**Mr. Naziruddin Ahmad :** In addition, this article proposes to introduce a new kind of emergency unknown in any system.

**The Honourable Dr. B. R. Ambedkar :** Sir, I hope you will not allow these technicalities to stand in the way of the business of the House. Now, even if the honourable Member got the amendment at nine o'clock, from nine to twelve he had time. I do not think there is anything obscure in this amendment. A man of much less intelligence than my honourable Friend Pandit Kunzru could understand it on first reading. I have no doubt about it.

**Pandit Hirday Nath Kunzru :** Sir, it is a very important matter and Dr. Ambedkar's impatience and rudeness should not be allowed to override the rights of the Members—rights which they clearly enjoy under the rules. I demand, Sir, that we should be given more time to consider this amendment notwithstanding the obvious desire of Dr. Ambedkar to rush the amendment through the House.

**Mr. President :** I would suggest that we go in the order in which it is on the agenda and take up article 274DD.

**The Honourable Dr. B. R. Ambedkar :** I am prepared to do that, Sir, but I must say that we are so much pressed for time that I do not think that these technicalities ought to be given more importance than they deserve.

**Pandit Hirday Nath Kunzru :** It is a pity that the Chairman of the Drafting, Committee, who by virtue of his position may be supposed to appreciate the rights of others, makes light of them.

#### Article 274-DD

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

“That with reference to amendment No. 400 of List XVII (Second Week), after article 274D, the following article be inserted :—

‘274DD. Notwithstanding anything contained in the foregoing provisions of this Part or in any other provisions of this Constitution, any State which before the commencement of Power of certain States in Part III of the First schedule in impose restrictions on trade and commerce by the levy of certain taxes and duties on the import of goods into or the export of goods from such States. this Constitution, any State which before the commencement of this Constitution was levying any tax or duty on the import of goods into the State from other States or on the export of goods from the State to other States may, if an agreement in that behalf has been entered into between the Government of India and the Government of that State, continue to levy and collect such tax or duty subject to the terms of such agreement and for such period not exceeding ten years from the commencement of this Constitution as may be specified in the agreement :

Provided that the President may at any time after the expiration of five years from such commencement terminate or modify any such agreement if, after consideration of the report of the Finance Commission constituted under article 260 of this Constitution, he thinks it necessary to do so.’ ”

Sir, this new article is a mere consequential amendment to article 258, which the House has already accepted, whereby the power is given to the Government of India to enter into agreement with States in Part III for the purposes of making certain financial adjustments during a temporary period.

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

That in amendment No. 428, in the proviso to the proposed article 274DD, for the word 'President', the word 'Parliament' be substituted, and for the words 'he thinks', the words 'it thinks' be substituted."

I only want that in matters of financial agreement with the States the Parliament should be the authority and not the President.

**Shri T. T. Krishnamachari** (Madras: General): Sir, with regard to the only objection that has been put forward by Prof. Shibban Lal Saksena I would like to say that we have followed the scheme of article 258 already passed by the House, where it is the President that enters into an agreement and not the Parliament. Actually if we bring in Parliament for the purpose of making an agreement with the ruler of a State or the executive of a State, we are diminishing the status of Parliament which has supremacy over the States. Parliament cannot be a party to an agreement with the States: it is a matter of executive arrangement and the arrangement follows the scheme recommended by the V. T. Krishnamanhari Committee Report. That Committee's Report in its scheme for financial integration has practically done away with the system of land customs levied in various States. Only two exceptions have been made and one singular exception happens to be Rajasthan where on an examination of the internal financial structure of the Union they have found that the Government of India will have to pay an enormous amount by way of subvention or a large amount of money by way of a grant if the State is to balance its budget. Therefore, they have for a period of five years to start with—perhaps it may be ten years in the ultimate—allowed them to levy land customs. This is a matter between one executive authority and another and if Mr. Saksena's amendment is accepted it will be taking away from the supreme position that the Parliament would enjoy in relation not merely to the executive at the Centre but also in relation to the executive of the States as well. This is a transitory provision and follows the scheme that has been recommended by a Committee which has gone thoroughly into the scheme of State finances and has prescribed ways and means by which complete integration can be secured at the earliest possible moment. I do feel that no possible objection can be taken which can be sustained with respect to the article in question.

**The Honourable Shri K. Santhanam** (Madras: General): Sir, I am glad that the draft of this article has been considerably improved and I certainly approve of the principle and the objective of the article. But there is one point which has to be examined in connection with this. It says: "any State which before the commencement of this Constitution was levying any tax or duty on the import of goods into the State from other States or on the export of goods from the State to other States". Suppose some articles come to Bombay port and go straight to Rajasthan and there they are liable to land customs. Will it come under the definition of import of goods from other States into Rajasthan? It will be from outside India into Rajasthan. I think the present agreements include land customs even on such articles. Therefore I do not know if the words "to other States" and similarly "from other States" are necessary. They seem to be wholly unnecessary. We are only concerned with land customs on goods coming into the State or going out of the State. Where they go or where they come from, I do not think, are matters of importance so far as this particular object is concerned and as every thing is defined meticulously in the actual agreement I do not think we should put in words which are likely to give merchants room for evasion. Because things come from Bombay they will argue that they do not come from any State in India and that they come from outside and therefore they ought not to be assessable to land customs under the agreement. I want the Drafting Committee to look into the point and see they do not give any loophole for evasion. I hope I have made

[The Honourable Shri K. Santhanam]

myself clear. My objection is to the words "from other States" and "to other States", which are wholly unnecessary for the purpose of this clause and may be deleted and thereby close one loophole for litigation and evasion.

**Shri T. T. Krishnamachari :** It takes into account existing States where they do levy customs duty on goods that come into the States, whether they are goods from outside or inside and it is merely.....

**The Honourable Shri K. Santhanam :** This clause will mean that if applies to goods coming from some State of India into another State and if the goods come from outside and enter a State this clause will not apply and therefore the State concerned will not be able to levy land customs on them. it is not intended to prevent the State from levying land customs and therefore this point may be looked into.

**Shri T. T. Krishnamachari :** After all it is only an enabling agreement.

**The Honourable Shri K. Santhanam :** It is limited by the clause of the Constitution. If the clause prevents the imposition of a duty then no agreement can prevail against the clause. That is why I suggest that we should widen the clause and leave the agreement to operate.

**The Honourable Dr. B. R. Ambedkar :** We will look into it.

**Shri Raj Bahadur** (United State of Matsya): I have sought this opportunity, to take a few minutes of this House while this article is under consideration to give vent to the feeling of the common people in the States' Unions about these customs, duties and taxation. As a matter of fact, ever since political awakening dawned upon the people of the Indian States customs taxes have been a particular target of political opposition. It was not without reason that the people of the Indian States and their movements were set against the imposition of customs duties on both imports and exports. It was because of a particular feeling amongst the people that this opposition was there. We have felt all through that all our trade, our industries have been crippled because of these Customs Duties. Even today we are not going to be benefited by it. Somehow or other, because these States were not viable units and they had to balance their budget the customs taxation was resorted to. Apart from that it was also supposed to be a part of the sovereign rights of the States. But so far as the interests of the people were concerned, they were not served by the imposition of these customs duties.

Even when this article is being retained here in this Constitution. I may at once give expression to my feeling and to the feeling of the large majority of the people in the Indian States that they are not at all happy about these customs duties being imposed in their States. As a matter of fact even the exports of buffaloes, bullocks, camels and donkeys are not being spared from these customs duties. In Rajasthan if you want to export a donkey, you will have to pay Rs. 7 per donkey. If you want to export a bullock you will have to pay Rs. 15 and in the case of a camel Rs. 25. The extra or surplus cattle that we have got we cannot easily export. Even the donkeys that we have got cannot be exported unless something is paid as customs duty on them. As far as cottage and, other industries and trades are concerned, they are crippled by the imposition of these customs duties.

I would, therefore, urge, while this article is under discussion that the Centre should come to our help. We do not want these customs duties to continue. In view of the fact that our province is a deficit province and the standards are very low, the sooner these customs duties and the Customs Department are done away with, the better for us. Even today the inter-State commerce and trade is being affected by such restrictions. Our trade with other provinces is obviously much

more affected. The price of the ordinary consumer goods that we want in our province is higher than if obtains in other provinces on account of the customs duties levied on such goods. All these considerations are there and the common man in the street or in the villages feels the pinch of this tax in his every day life. With these words, Sir, I would request the leaders and the Central Government to consider this point and come to the aid of our new Union, so that we may be rid of this scourge as early as practicable.

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

“That in amendment No. 428, in the proviso to the proposed article 274DD, for the word ‘President’, the word ‘Parliament’ be substituted, and for the words ‘he thinks’ the words ‘it thinks’ be substituted.”

The amendment was negatived.

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

“That with reference to amendment No. 400 of List XVII (Second Week), after article 274D, the following article be inserted:—

274DD. Notwithstanding anything contained in the foregoing provision of this Part or in any other provisions of this Constitution, any State which before the commencement of this Constitution was levying any tax or duty on the import of goods into the State from other States or on the export of goods from the State to other States may if an agreement in that behalf has been entered into between the Government of India and the Government of that State, continue to levy and collect such tax or duty subject to the terms of such agreement and for such period not exceeding ten years from the commencement of this Constitution as may be specified in the agreement:

Power of certain States in Part III of the First Schedule to impose restrictions on trade and commerce by the levy of certain taxes and duties on the import of goods into or the export of goods from such States.

Provided that the President may at any time after the expiration of five years from such commencement terminate or modify any such agreement if, after consideration of the report of the Finance Commission constituted under article 260 of this Constitution, he thinks it necessary to do so.’ ”

The amendment was adopted.

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

“That proposed article 274DD stand part of the Constitution.”

The motion was adopted.

Article 274DD was added to the Constitution.

**The Honourable Dr. B. R. Ambedkar :** If my honourable Friend Pandit Kunzru has now no objection we may proceed with the new article 280A. He has had another half an hour.

**Mr. President :** I think we had better take it up a little later.

### Article 302AA

**Shri T. T. Krishnamachari :** Sir, I move:

“That after article 302A, the following article be inserted:—

302-AA. (1) Notwithstanding anything contained in this Constitution and subject to the provisions of article 119 thereof, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into by any Ruler of an Indian State and to which the Government of the Dominion of

Bar of jurisdiction of courts with respect to certain treaties, agreements, etc.



[Shri T.T. Krishnamachari]

India or any of its predecessor Governments was a party and which has or has been continued in operation after the date of commencement of this constitution, or in any dispute in respect of any right accruing under any of the provisions of this Constitution relating to any such treaty, agreement, covenant engagement, *sanad* or other similar instrument.

(2) In this article—

- (a) 'Indian State' means any territory recognised by His Majesty or the Government of the Dominion of India as being such a State; and
- (b) 'Ruler' includes, the Prince, Chief or other person recognised by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State.' "

Sir, so far as the article itself is concerned, it is self-explanatory. The idea is to bar the jurisdiction of the courts including the Supreme Court in regard to adjudicating in respect of any disputes that might arise out of any treaty agreement, covenant, engagement, sanad or other similar instruments that might have been entered into by the Government of the Dominion of India or by any predecessor Government . . . . .

**An Honourable Member :** Who will decide?

**Shri T. T. Krishnamachari :** The idea is that the court shall not decide in this particular matter. It is subject only to the provisions of article 119 by which the President may refer the matter to the Supreme Court and ask for its opinion and the Supreme Court would be bound to communicate its opinion to the President on any matter so referred by him. The House will also remember that there are a few articles in the Constitution specifically, 302A and 267A where there are references to these agreements, covenants, sanads, etc. and even these are precluded from adjudication by any court. The House will recognize that it is very necessary that matters like these should not be made a matter of dispute that goes before a court and one which would well nigh probably upset certain arrangements that have been recommended and agreed to by the Government of India in determining the relation between the rulers of States and the Government of India in the transitory period. After the Constitution is passed, the position will be clear. Practically all the States have come within the scope of Part VIA and they will be governed by the provisions of this Constitution and, excepting so far as certain commitments are positively mentioned in the Constitution, and as I said the two articles 267A and 302A, the covenants will by and large not affect the working of the Constitution; and it is therefore necessary in view of the vast powers that have been conceded in this Constitution to the judiciary that anything that has occurred before the passing of this Constitution and which might incidentally be operateable after the passing of the Constitution must not be a subject-matter of a dispute in a court of law. I think that Members of this House will understand that it is a very necessary provision so as to save unnecessary disputes by people who might feel that they have been affected or injured and who would rush to a court to make the court recognize such rights and other similar matters which have been paractically extinguished by the provisions of this Constitution excepting in so far as certain articles of the Constitution preserve them. Sir, I hope the House will pass the article without any demur.

(Amendment 403 was not moved.)

**Mr. President :** There is no amendment to this. Does any Member wish to say anything about this article? I will put this straightaway to vote.

The question is :

“That after article 302A, the following article be inserted:—

‘302AA. (1) Notwithstanding anything contained in this Constitution and subject to the provisions of article 119 thereof, neither do Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after the date of commencement of this Constitution, or in any dispute in respect of any right accruing under any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, sanad or other similar instrument.

(2) In this article—

- (a) “Indian State” means any territory recognised by His Majesty or the Government of the Dominion of India as being such a State; and
- (b) “Ruler” includes the Prince, Chief or other person recognised by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State.’ ”

The motion was adopted.

Article 302AA was added to the Constitution.

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*Schedule III*

**Mr. President :** We might take up the other articles and Schedule III. They are minor things.

**Shri T. T. Krishnamachari :** Schedule III and the other articles involve reopening of articles and schedule already passed. We have to take the permission of the House.

**Mr. President :** You will ask for leave reopen.

**Shri T. T. Krishnamachari :** Mr. President, in the Order Paper today, beginning from item 1, article 13 to the Third Schedule, with the exception of the items relating to article 264-A, 274DD, 302AA which have been passed and 280A which has been held over, all the other items are for re-opening the articles or Schedules that have been passed. I would therefore request that you put to the House the proposition whether they are willing to allow these articles to be re-opened.

**Mr. President :** I take it that the House gives leave to re-open these articles.

**The Honourable Members :** Yes.

**Mr. President :** We shall take up Schedule III.

**Shri H. V. Kamath (C. P. & Berar: General):** What about article Mr. President: Let us finish first this Schedule.

**Shri T. T. Krishnamachari :** Sir, I move amendments 401 and 402 together:

“That in item IV of the Form of Oath, in the Third Schedule, after the words ‘judges of the Supreme Court’ the, words ‘and the Comptroller and Auditor-General of India’ be inserted.”

“That in item IV of the Form of Oath, in the Third Schedule, after the words ‘Supreme Court of India’, the brackets and words ‘(or Comptroller and Auditor-General of India)’ be inserted.”

This is merely an omission which we seek now to rectify. The form of oath that has been prescribed for the Judges of the Supreme Court will be prescribed, if it is accepted by the House to the Comptroller and Auditor-General of India.

**Mr. President :** There is no amendment to this amendment to the Schedule III.

The question is:

“That in item IV of the Form of Oath, in the Third Schedule, after the words ‘judges of the Supreme Court’, the words ‘and the Comptroller and Auditor-General of India’ be inserted.”

“That in item IV of the Form of Oath, in the Third Schedule, after the words ‘Supreme Court of India’, the brackets and words ‘(or Comptroller and Auditor-General of India)’ be inserted.”

The amendments were adopted.

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### Article 13

**Mr. President :** Let us take up article 13.

**Shri T. T. Krishnamachari :** May I request, Sir.....

**Shri H. V. Kamath:** With regard to this amendment, Sir.....

**Shri T. T. Krishnamachari :** May I request, Sir, that you take up the first item afterwards, at the end?

**Mr. President :** We shall take up item I later. Let us begin with article 16.

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### Article 16

**Shri T. T. Krishnamachari :** Sir, I move amendment No. 393 Which reads thus:

“That article 16 be omitted.”

The reason is that we have taken article 16 from the Fundamental Rights Chapter and put it in Part XA, in the Chapter entitled Trade, Commerce and Intercourse within the territory of India. The article now finds place in a different form under article 274-A which reads thus:

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

The difference between this and the article as it appears in article 16 is only in the phraseology of the articles which says that subject to the powers of Parliament, trade, commerce and intercourse etc. shall be free. Having taken it over to Part X-A, there is no meaning in keeping article 16 in the Fundamental Rights, and that is why I have moved this amendment.

May I also explain, Sir, to the Members of this House, who, I believe, are aware of the substance of my explanation, that the original idea of putting the article which confers a very restricted right under fundamental rights has got a history behind it. That was because at the time when we framed the Fundamental Rights we felt that the picture of the Constitution would be different. Even so, the right that is conferred is limited by any law made by Parliament. The appropriate place, therefore, for an article of this nature, which is in reality not a fundamental right, in the sense that other, articles, are fundamental rights, is in the chapter relating to trade and commerce. I think the House will have no objection to deleting what is now more or less a surplus article in the articles on fundamental rights.

(Amendment No. 416 was not moved.)

**Pandit Thakur Das Bhargava** (East Punjab: General) : May I ask a question of Mr. T. T. Krishnamachari? According to him, article 274A now takes the place of article 16. May I just know if article 25 shall apply to article 274A?

**Shri T. T. Krishnamachari :** My honourable Friend, if he waits for some time, will find that I shall be bringing forward another amendment to indicate that article 25 shall not apply to article 274-A and for eliminating its application to article 16. The normal processes of law, the normal powers that are conferred under this Constitution on the Supreme Court to see that every provision of this Constitution is observed will operate so far as all the articles 274-A to 274-E are concerned. Any special provision that might have operated will be very restricted in so far as article 16, as it now stands, permits. If Parliament had abridged that right by law, what could article 25 do by way of conferring any special right because what could be taken to the Supreme Court under article 16 could be only what Parliament chooses to allow people to take to the Supreme Court?

**Shri B. Das (Orissa: General):** Sir, as I understood article 16, it confers freedom of trade and commerce and intercourse throughout the territory of India. I listened most attentively to my honourable Friend Mr. T. T. Krishnamachari and I feel that though we have given certain powers under article 274-A or any other article I do not very much understand the idea that the articles on Fundamental Rights which we had discussed so thoroughly in this House on two or three occasions should be tinkered with. Supposing by article 274-A you have conferred equal freedom as is contemplated by article 16, let article 16 also remain. Of course, I heard Mr. T. T. Krishnamachari's argument that there is no need for going to the Supreme Court and to argue that the Fundamental Rights have not been interfered with. But, I am not clear in my mind, whether the subsequent articles do complete justice as was contemplated in article 16. I do not wish at the fag-end of our Constitution-making stage to tinker with the Fundamental Rights that we passed after so much thought, consideration and deliberation.

**Shri Brajeshwar Prasad (Bihar: General):** Mr. President, I would like to say a word or two.

I am really sorry, Sir, that this article has been deleted from the Fundamental Rights. I hold the opinion that there should be complete freedom of trade and commerce and that neither the provincial Legislatures nor the Parliament should have the right to curtail this fundamental right. I am really sorry that this article has been partly incorporated in article 274-A. I wish that the members of the Drafting Committee had given an amendment deleting article 274-A and not article 16.

**Pandit Thakur Das Bhargava :** Sir, article 16 constitutes one of the provisions which are under the purview of article 25 and this was a very important Fundamental Right possessed by the citizens that intercourse throughout the territory of India shall be free. It ensures that provincial boundaries shall not hamper any kind of movement and every person shall be able to enjoy the full fruits of the citizenship of the Republic of India. But now since we have passed certain provisions contained in part 10-A, it is true that to a certain extent this freedom has been curtailed and I had occasion to say when these articles were being considered how this right was being taken away, but all the same article 16 was allowed to remain where it was. We value this right because it is one of those rights which could be enforced under article 25 by the Supreme Court by appropriate proceedings though we have not decided how these proceedings will be worked out because the Fundamental Rights constitute new provisions; but all the same we were under the impression that some method will be found by virtue of which we will be able to see that the citizens of this Republic get cheap and easy relief under article 25.

[Pandit Thakur Das Bhargava]

Now this article is being taken away from the Fundamental Rights and 274-A takes its place. My apprehension is that we are being deprived in an unjust manner of the cheap remedies which were secured to us by article 16. This is not the only section, in which attempt is being made in this House at the fag-end of the Session to take away rights or remedies. We have an amendment to article 13 also. We have also seen how under article 307 all the rights are being taken by the Government under the garb of adaptation and modification and sought to be moulded in such manner as the Government considers proper.

I am sorry that I do not agree that article 16 should be taken away from this place of Fundamental Right because after all the appropriate proceedings secured by the Supreme Court may be easier and cheaper in the manner of implementation. I would like that this article 16 is not deleted.

**The Honourable Shri K. Santhanam :** Mr. President, I am afraid my Friend Pandit Thakur Das Bhargava is mistaken in his defence of article 16 as against 274-A because if he looks up article 304 relating to amendment of the Constitution, he will find that the process of amendment of 16 is the same as the process of amendment of 274-A. While on the one hand 274-A can be tempered with by Parliament ordinarily, article 16 gives Parliament the power to make any law limiting the freedom of commerce and intercourse throughout the territory of India. At least 274-A ensures the freedom of commerce subject to amendment of the Constitution, while 16 gives the Parliament freedom. You cannot have 16 and 274-A together as they are inconsistent. One of the other must go. Therefore he must choose whether 274-A must go or 16 must go.

**Pandit Thakur Das Bhargava :** 274-A is a pious declaration. A declaration decree may not be executable. The remedy under article 25 is cheaper and easier.

**The Honourable Shri K. Santhanam :** 274-A says it shall be free and there is the usual remedy. Anyone is entitled to go to the Supreme Court for enforcing any article of the Constitution, not only the Fundamental Rights. The Supreme Court is the guardian of every article of the Constitution. While 16 is a mere pious declaration leaving to Parliament all powers article 274-A says subject to amendment of the Constitution, trade shall be free, and the only limitations will be those specifically provided the following clauses. Therefore, it is necessary in the interest of consistency and for the freedom of the trade that article 16 should go.

**Shri Kuladhar Chaliha (Assam: General):** Sir, I have heard Mr. Santhanam with great care, but I find difficulty in following him or accepting his views. It is necessary that rights of intercourse throughout the territory shall be free. Such rights should always be incorporated in the Statute and if we take it away, probably we will be depriving ourselves of a great right which afterwards will be tinkered with or whittled down somehow or other and wiped out in the process of amendment. We have seen how it has been tinkered slowly and gradually by one section, then by another and then by the third. We have seen that process. If it is taken away, probably we will not be able to talk even here that we have such a right. Therefore these Fundamental Rights should be incorporated in some way, I, therefore, protest against the deletion of it.

**Mr. Naziruddin Ahmad :** Mr. President, with great respect I would also submit that I could not follow the reasoning of Mr. Santhanam in this regard. Article 16 was inserted as a part of Fundamental Right, that trade shall be free. Then somehow or other it struck the Drafting Committee to introduce an identical provision, article 274-A perhaps absolutely forgetting the existence of

article 16. If they knew of it or remembered it then of course article 16 should have been repealed at the time when 274-A was passed. But subsequently they found that there is an overlapping between 274-A and 16. I submit it is now a question of whether article 16 or 274-A should go. Personally speaking, article 274-A must go because 16 is more favourably situated in the Constitution than article 274-A, Article 16 is subject to the provisions of article 25 making this right justiciable. What justification is there to remove it from the justiciable part of the rights to article 274-A is a thing which is not made quite clear. I therefore, submit that it is not clear as to whether article 274-A should be justiciable. It is very doubtful and it will perhaps tax the intelligence of many constitutional lawyers and the Supreme Court to say whether it is justiciable or not. If this is justiciable there is no reason to remove article 16 and enact it here. I submit that article 274-A must go and 16 must remain in order to make it clearly and obviously justiciable.

**Pandit Thakur Das Bhargava :** It will be justiciable by appropriate proceedings and not necessarily by a declaratory suit.

**Shri Alladi Krishnaswami Ayyar** (Madras: General): Mr. President, the objection to the amendment moved by my Friend Mr. Krishnamachari proceeds on an entire misapprehension. As has already been pointed out by Mr. Santhanam the mere fact that a provision finds a place in the Chapter on Fundamental Rights does not carry with it any particular sanctity or any special sanction regard being had to the saving in article 16 itself—“subject to any law made by Parliament”.

Article 16 as it found place in the Fundamental Rights ran in these terms:

“Subject to any law made by Parliament, trade, commerce and intercourse throughout the territory of India shall be free”.

The article therefore gave a *carte blanche* to Parliament though the subject matter dealt with is styled a Fundamental Right. It is a right which can be invaded and encroached upon by Parliament in any manner it likes. That is the effect of article 16 of the Constitution as it stood.

The idea of transposing this provision to the Chapter relating to inter-State trade requires explanation. When the Constituent Assembly started its work in pursuance of the Cabinet Mission proposals, it was felt that unless we were in a position to bring inter-State provision as a Fundamental Right there was no scope for even freedom of trade. In the circumstances in which we were then placed it was thought desirable to put the freedom of trade clause in the Chapter on Fundamental Rights having regard to the circumscribed scope of the powers of the Constituent Assembly at the time when the Constituent Assembly started on its work. That is how the provision came to find a place in the Chapter on Fundamental Rights.

The House will remember that the Fundamental Rights Committee was constituted before the later developments in regard to the position of India and to the wider range of the powers of the Constituent Assembly. There is no question now of the Constituent Assembly being in any way restricted in the exercise of its functions and we are in a position to frame any constitution we like for a free and independent India. It is in this setting that the new articles relating to the freedom of trade beginning from article 274-A have been framed. We have, provided in article 274-A that trade and commerce throughout the territory of India shall be free subject to the other provisions in that part. Therefore, any legislation by Parliament affecting freedom of trade will be subject to the inhibitions contained in that Chapter.

The mere fact that a provision in regard to freedom of trade finds a place either in one part of the Constitution or in another part of the Constitution does not alter or affect the nature of the right. Articles 274B, 274C and 274D

[Shri Alladi Krishnaswami Ayyar]

contain the necessary exception and limitations to freedom of trade. There is one other thing also which you may notice in this connection. Article 274-C, far from abridging or restricting the scope of the right to freedom of trade, enlarges the scope of the Fundamental Right.

It says—

“Notwithstanding anything contained in article 274-B of the Constitution, neither Parliament nor the Legislature of a State shall have the power to make any law giving or authorising the giving of preference to one State over another or making any discrimination or authorising the making of any discrimination....”

This provision by restricting the power of the State Government and the Central Government enlarges the scope of the Fundamental Right, if you choose to call freedom of trade a fundamental right within the meaning of the Constitution.

Whether a particular provision is called a fundamental right or not, in regard to the point as to justiciability raised by my Friend Pandit Bhargava, it does not depend upon a particular provision finding a place in the Chapter on Fundamental Right or in other parts of the Constitution. So far as the jurisdiction of the Supreme Court is concerned, it has plenary jurisdiction with regard to the interpretation of the Constitution. The Supreme Court can be called upon to decide in every case whether a particular Statute or any law is in conformity with the terms of the Constitution or not.

I, therefore, submit there is no particular virtue in the article finding a place in the Chapter on Fundamental Rights. I think, when article 274 was before the House, my Friend Dr. Ambedkar pointed out the advantages of all the provisions relating to trade and commerce finding a place in a single chapter. On these grounds I submit there is absolutely no force in the objection to the proposition as moved by my Friend Mr. T. T. Krishnamachari.

**Mr. President :** Does Mr. Krishnamachari want to say anything?

**Shri T. T. Krishnamachari :** No, Sir. Mr. Krishnaswami Ayyar has answered all the points.

**Mr. President :** I shall then put it to vote. I mean amendment No. 393 asking for the deletion of article 16. The question is:

“That article 16 be omitted.”

The motion was adopted.

Article 16 was deleted from the Constitution.

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#### Article 27

**Mr. President :** Then we take amendment No. 417.

**Shri T. T. Krishnamachari :** Sir, I would like to move amendments Nos. 394 and 417 together, because they both relate to article 27. I will first move No. 394:

“That in clause (a) of article 27, the word and figures ‘article 16’ be omitted.”

This is a consequence of the acceptance by the House of the previous amendment 393 to delete article 16.

**Mr. President :** Let us dispose of it now.

**Shri T. T. Krishnamachari :** Yes Sir.

**Mr. President :** This amendment follows upon the decision which has just been taken. The question is:

“That in clause (a) of article 27, the word and figures ‘article 16’ be omitted.”

The amendment was adopted.

**Shri T. T. Krishnamachari :** Mr. President, Sir, I move my amendment No. 417 which reads thus:

“That in the proviso to article 27, after the words ‘subject to the terms thereof’ the word ‘and to any adaptations and modifications that may be made therein under article 307 of this Constitution’ be inserted.”

Sir, this has become necessary because of the wording of article 307(2) which we have passed in which we have given power to the President to adapt and modify existing laws so as to fit them in with the provisions of the Constitution, as also the Fundamental Rights that we have passed.

**Mr. President :** There is no amendment to this. Does anyone wish to say anything about it?

**Mr. Naziruddin Ahmad :** There is no time for amendments at all.

**Mr. President :** Well, this has been there from the 15th inst.

**Prof. Shibban Lal Saksena :** No, we got it this morning.

**Mr. Naziruddin Ahmad :** At nine o’clock.

**Mr. President :** I think it is more or less a consequential amendment.

**Mr. Naziruddin Ahmad :** The effect of this amendment it is impossible to measure, unless one has the genius of Dr. Ambedkar.

**Mr. President :** I will put it to vote. The question is:

“That in the proviso to article 27, after the words ‘subject to the terms thereof’ the words ‘to any adaptations and modifications that may be made therein under article 307 of this Constitution’ be inserted.”

The amendment was adopted.

#### Article 42

**Shri T. T. Krishnamachari :** Mr. President, Sir, I beg to move:

“That in clause (1) of article 42, for the words ‘may be exercised by him’ the words ‘shall be exercised by him either directly or through officers subordinate to him’ be substituted.”

Sir, clause (1) of article 42, as amended, would read thus;

“The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution and the law.”

Sir, this has been found necessary, and it does not involve any serious variation. It is fairly.....

**The Honourable Shri K. Santhanam :** Sir, does it mean that a Bill passed by a Legislature could be signed by an officer subordinate to the President?

**Shri T. T. Krishnamachari :** The clause says, “in accordance with the Constitution and the law.” If the Constitution and the law permit that Bills could be authenticated by somebody else, appointed by the President, well, that will be possible.

**The Honourable Shri K. Santhanam :** The amendment permits such a thing. You are making the Constitution permitting the President to discharge his function through officers subordinate to him.

**Mr. President :** It relates to the executive powers and not the legislative powers. Signing of Bills, I suppose comes under legislative powers.



**Shri T. T. Krishnamachari :** Yes, this relates to executive powers. I am grateful to you, Sir.

**The Honourable Shri K. Santhanam :** If you want another instance, there is the question of the declaration of war. Can it be done by the Commander in-Chief? Can this power be delegated? I do not think that in the absence of this amendment the executive head loses the power to do certain things through his officers. I do not think this is necessary. I do not think in any other Constitution a similar provision is to be found.

**Mr. President :** Mr. Kamath has given notice of an amendment to that effect.

**Shri H. V. Kamath :** I move:

“That in the proposed clause (1) of article 42 in amendment No. 418 of List XVIII, the words ‘either directly or through officers subordinate to him’ be deleted.”

I have no quarrel with the change of the word ‘may’ to ‘shall’. It is necessary and right. (An Honourable Member: What is the number of your amendment?) My amendment has no number, because I gave notice only this morning. I got List XVIII only last night and so could give notice of my amendment to it only this morning.

Sir, while this article was under discussion, it was made clear that the President would not exercise his executive power personally or directly, but certainly only in accordance with the Constitution. The President is only the symbol of executive authority. It does not mean that he will sit in Delhi and order the arrest of so and so and things like that. The Ministers or officers working with him or under him will exercise the executive power in accordance with the Constitution and the law. I fail to see why my honourable Friends Dr. Ambedkar and Shri T. T. Krishnamachari, with the acumen that they possess, still feel it necessary to bring in an amendment of this nature. This is redundant and I submit to the House that the words beginning with “either” and ending with “him” may be deleted, so that the article will read as follows:—

“The executive power of the union shall be vested in the President and shall be exercised by him in accordance with the Constitution and the law.”

That is sufficient for our purpose.

**Mr. Naziruddin Ahmad :** I submit that this amendment is not only hasty, but absolutely purposeless also. It has been introduced without enough consideration. I will draw the attention of the House to article 130(1) where the executive power of the State is vested in the Governor and may be exercised by him in accordance with the Constitution and the law. While we make a change here in article 42 we forget to make the same change in article 130 (1).

**Mr. President :** There is an amendment to that effect lower down the Order Paper.

**Mr. Naziruddin Ahmad :** All right, Sir. It should be obvious that the executive power of the Union, when it vests in the President, may be exercised by him in accordance with the Constitution. This obviously means that he may exercise that power in accordance with the Constitution, *i.e.*, with the help of agents. In fact there are a large number of departments of the Governments for the purpose such as the Courts, the Police, the Jails and so on. Is it to be supposed that unless we make it clear that the President shall exercise his powers through agents he has to act on his own initiative and personally? It is absurd to suppose so. This attempt to clarify things is grossly exaggerating the idea of going into details. I submit that when we vest the power in the Government or the President, we allow his executive to work in his name. It shows that the President and the Governors are merely legal entities and ornamental figureheads. Everything is done in the

name of the President. This is the purport of article 42(1) that the executive power may be exercised by the President in accordance, with the Constitution. That is the obvious significance. Then what is the object of changing the word ‘may’ into shall? The use of the word ‘may’ is very apt.

**Shri H. V. Kamath:** I think the word ‘shall’ refers to the constitutional exercise of that power.

**Mr. Naziruddin Ahmad :** The word ‘may’ is enough for the purpose. The exercise of this power is optional, and if it is exercised it must be in accordance with the Constitution. The President may not exercise it at all; and if he exercises it he shall do so in accordance with the Constitution. The word ‘may’ is enough for the purpose. It is difficult on the spur of the moment to see the weakness of this last-minute amendment. I ask, when is the Drafting Committee to finish its labours in order to give us some amount of rest and contentment? We want to go home as early as possible. But the Drafting Committee will not let us do so. As I have repeatedly submitted, they should make tip their minds and give to the House a complete picture of their drafts and not come here every day with fresh amendments of this sort. It is extremely tiresome and irksome for Members to work under these conditions.

**Mr. President :** I was going to call upon Shri Alladi Krishnaswami Ayyar to explain the position. But before doing so, I want to put him one question which strikes me also. It is said, ‘through officers subordinate to him’. Does it mean that it is contemplated that the President will have officers in the provinces on behalf of the Union, or does it mean that there will be only provincial officers who will act as subordinates to the President? Is it contemplated, as in America, to have two separate sets of officers, one belonging to the Union and the other belonging to the provinces?

**Shri Alladi Krishnaswami Ayyar :** In regard to purely federal subjects you can have purely federal official agency; but in regard to concurrent subjects you can utilise the provincial agencies. If the Federal Government is not satisfied with the provincial agencies, the Constitution provides that the Federal Government may have its own agency in regard to concurrent subjects. It is only in regard to provincial subjects that the entire provincial agency is entrusted with the task. There you use the officers subordinate to you, though they may not be directly subordinate. There is power of intervention even when the provincial agency is utilised. Inasmuch as it is for the enforcement of the Federal subjects, he will have the right to utilise the provincial agency.

I want to say something later about the general point raised.

**Shri Brajeshwar Prasad :** Mr. President, Sir, I rise to oppose the amendment which has been moved by my Friend, Mr. T. T. Krishnamachari. I hold the opinion that the amendment is not merely thoughtless as my Friend, Mr. Naziruddin Ahmad characterised it, but it is dangerous. The executive power of the President must vest in his hands and in his hands alone, because he has to perform under the Constitution certain functions; he has to use certain powers. I do not think unlike my Friend, Mr. Naziruddin Ahmad, that the President is merely an ornamental head. Had he been so, I would have no difficulty in accepting the amendment moved by Mr. T. T. Krishnamachari, but my reading of the Constitution is that the President has very large powers. I therefore hold the opinion, Sir, that it is dangerous, it is risky—it is in my opinion not merely thoughtless—to empower the President to delegate his powers under the Constitution into the hands of executive officers.

**Pandit Thakur Das Bhargava :** Mr. President Sir, with reference to this amendment, I am not satisfied whether this amendment is necessary. As a matter of fact, when we speak of the exercise of the powers of the President under article 42 and the use of the words “may be exercised by him,” we understand that these

[Pandit Thakur Das Bhargava]

powers are being exercised by the President in an almost impersonal manner. So far as the executive power of the Union is concerned, it is exercised by the President or by the Governor or by the Prime Minister or by many other officials. It is not that the President must exercise it in a personal manner. There are certain rules and regulations by virtue of which many officials have to exercise the executive power of the Union. If these words are there, it would give rise to the argument that the powers should either be personally exercised by him or by officers subordinate to him. When these officers so exercise these powers in many cases the President does not even know that these powers are being exercised in his name. Therefore, my submission is that the words "by him" do mean that either the President himself could exercise them or he could delegate those powers.

The second question may arise that the powers delegated by him can be exercised only by people to whom they are delegated because of a certain maxim that delegated powers cannot be delegated further. It would raise many other difficulties if we regard that the exercise by him of these powers is either personal or it is only through officers subordinate to him. Therefore my submission is that the words as they stand are quite sufficient and do not give rise to any sort of ambiguity. Moreover, Sir, I do not agree that the use of the word "shall" is necessary. In a particular context this word "may" does mean "shall".

So far as the question raised by Mr. Kamath is concerned that the powers shall be exercised in accordance with the Constitution and the law, the word "may" does not relate in any manner to the words "in accordance with the Constitution and the law". My submission is that the words that we have passed already are enough and they answer all the purposes they are intended to answer and no change need be made.

**Prof. Shibban Lal Saksena :** Sir, the question is, if this amendment is not, made, what harm would accrue? If I see it from that point of view, I think that this amendment is not only redundant, but it is positively injurious. In fact, nobody thought so far that this article 42 was incomplete. It says that the executive power of the Union shall be vested in the President and may be exercised by him in accordance with the Constitution and the law. Now the amendment says that that power shall be exercised by him either directly or through officers subordinate to him. Is it necessary? Does not the Constitution and the law say that the President shall use officers provided for him for carrying out his purpose. In fact, the clause says "in accordance with the Constitution and the law". As the Constitution and the law prescribe how the President shall exercise his powers either himself or through officers, I think these words are absolutely unnecessary. I do not think any amendment is necessary.

**The Honourable Shri N. Gopaldaswami Ayyangar** (Madras: General): Sir, I feel some difficulty in appreciating the objection which has been raised to this particular amendment. Article 42 says that the executive power of the Union shall be vested in the President. We all know or lots of powers which are vested in the President but actually he does not exercise those powers. He simply exercise them at the dictation of other people who are responsible to the legislature. That is point number One which I should like the House to appreciate.

The Second thing is that the Constitution itself contemplates that executive action, which is really the exercise of executive power, cannot as a matter of fact be done by the President directly. Look at article 64(1). It says:

"All executive action of the Government of India shall be expressed to be taken in the name of the President."

So, the actualities of the case require that in innumerable matters the Constitution or the law vests the power in the President, but the actual exercise of it is to be left to other people who are held to be responsible to him. No doubt, he takes the responsibility for action taken by these officers. It is impossible as a matter of practical administration for the President to exercise all the powers that are vested in him by the Constitution. Take, for instance, even the powers which relate to the exercise of his functions in relation to legislation. On a number of matters, for instance, the power of summoning the Assembly, dissolving the Assembly and so on, he takes action, but the exercise of that power is on the advice of his constitutional advisers. And in the ordinary course he cannot really exercise all the powers that are vested in him. What is the objection to his asking officers subordinate to him, who owe responsibility to him, to exercise such powers? As it is absolutely unnecessary for him even to look at them before those orders issue, we ought to give him the latitude to select such officers in whom he can have confidence and who may be trusted to exercise this power.

I have no doubt noticed the objection: what is he to do in regard to giving assent to Bills when passed by the Legislature? True, ordinarily we expect the President to sign those Bills in token of his assent to express his assent on them. Naturally in a case of that sort he would not ordinarily ask other officers to sign for him, but assuming that circumstances arise in which he is unable to append his signature to an assent of that sort, it may be necessary for him to ask that somebody else should sign the assent in his name. I do not see anything which is legally improper, or even from a constitutional point of view improper, for somebody to sign even an assent to a Bill passed by the Legislature if the President is unable to do so or thinks in particular circumstances other people might sign in his name. I think that in order to obviate difficulties which would actually arise, the addition of these words is very necessary.

**Shri H. V. Kamath:** Is not the purpose that my Friend Mr. Gopaldaswami Ayyangar has in view sufficiently met by the phrase "in accordance with the Constitution and the law?" Whatever is delegated to other persons or agents will be done by the President in accordance with the Constitution and the Law.

**The Honourable Shri N. Gopaldaswami Ayyangar :** In that case we shall have to go to Parliament for a law in every case he wants to authorise an officer to do so. But if Parliament can authorise it, why not the Constitution do so?

**Shri Alladi Krishnaswami Ayyar :** Sir, some of the points I wanted to urge have been anticipated by my Friend Mr. Gopaldaswami Ayyangar. There is nothing novel in trying to bring the present provision in line with Section 7 of the Government of India Act, 1935. Though Mr. Naziruddin Ahmad, in the plenitude of his literary wisdom, has chastised the Drafting Committee as being careless, I would invite his attention to the language used by the Parliamentary draftsmen in Section 7 of the Government of India Act. I am reading the Section:—

"Subject to the provisions of this Act, the executive authority of the Federation shall be exercised on behalf of His Majesty by the Governor either directly or through officers sub-ordinate to him....."

Therefore, there is nothing novel or fantastic in making an express provision to the effect that the executive authority can be exercised through official agencies.

So far as the general executive power is concerned, it is vested in the

[Shri Alladi Krishnaswami Ayyar]

President. So far as the responsibility for carrying on the executive administration is concerned it is vested in the Ministers. So far as the question of utilisation of official agencies is concerned, it is implicit in the very foundation of the Constitution. I should think that even under a provision as it stands without the amendment, it would be perfectly competent for the President to institute any official agency, though the ultimate responsibility for the acts of any official agency, would be that of the President advised by his Cabinet. As a matter of fact, when the original article was drafted it was on the lines of article 12 of the Irish Constitution. That article runs thus:—

“There shall be a President..... who shall exercise and perform the powers and functions conferred on the President by this Constitution and by law.”

**Shri H. V. Kamath :** That is an argument against your view.

**Shri Alladi Krishnaswami Ayyar :** The present amendment says that the President may exercise the power either directly or through officers subordinate to him.

**Shri H. V. Kamath:** I have got a copy of the Irish Constitution with me here. Officers are not at all mentioned there.

**Shri Alladi Krishnaswami Ayyar :** If only you have the courtesy to listen to me you would not have raised the objection. I pointed out that even without an express provision like that it would be competent for the President to have or to institute any official agency, and there are Constitutions in which express provision is not made, and I referred to article 12 of the Irish Constitution which to some extent will support Mr. Kamath's point of view. There are some counsel who, even when the opposite side makes a concession in favour of one's contention, would oppose the opposite side. That seems to be the attitude of my friend Mr. Kamath. What I pointed out was that it is merely a question of drafting and making the provision clear. The Parliamentary draftsmen in Section 7 of the Government of India Act made express reference to officials. In the Irish Constitution there is no reference to officials. Even without a reference to officials it would be perfectly competent for the President to utilise official agency for the purposes of carrying on executive function, though ultimately the responsibility will rest upon the President and the executive in regard to the discharge of any function vested in the executive whether under any statute or whether under the general principles of the Constitution in regard to the functions of the executive.

Therefore, I submit, Sir, that in making quite clear what is implicit, there is nothing wrong. “Official” is the word used there, whatever objection you may have in regard to the Government of India Act of 1935, generally, there can be no objection to adopting this wording here. I would also go further and urge the necessity for such a provision from a constitutional point of view. The question as to the exact extent to which the President can delegate his function has been debated in America. If, for example a power is vested in the President, questions might arise as to whether it is possible at all to delegate his authority or whether in every case issue should come up before the President. We are told that in fact nearly 2,000 signatures have to be obtained from the President almost every day so far as the presidential system is concerned. That has been pointed out recently in a book published in regard to the American Constitution as to the necessity of Presidential signature in regard to very many Acts of which he may know nothing.

Therefore, we have to divorce these two questions: the question of the, ultimate responsibility and the question of the particular agency which may be employed in the working of any governmental institution or any structure. Therefore a statute might provide that a particular agency may carry out orders.

Even there it does not mean that the Government of the country is not responsible for the proper functioning of the statutory agency. The agency may be a statutory agency or it may be an administrative agency. In all these cases there is nothing to prevent the executive from employing any particular official agency; by putting in the word "officers" all the theory of delegation which has loomed large in the American Constitution will be set at rest.

It is possible that having regard to the fact that our system is founded mainly on British ideas, even without such a provision an official agency might be employed. In the other Dominion Constitutions, a general provision is incorporated to the effect that the power is vested in the Queen. The Australian and the Canadian Constitutions say so. It is merely the employment of a particular language and I see absolutely no objection to that: The average layman need not go into the question as to the American law or Constitution or to the provisions of Dominion Constitutions. To make it clear to the laymen in this country that an official agency can be employed. this provision is a salutary one.

**Shri H. V. Kamath:** On a point of clarification, Sir, may I ask my Friend Mr. Alladi Krishnaswami whether any other Constitution in the world makes such a reference to subordinate officers of the executive head of the State in this context.

**Mr. President :** He read out a Section from the Government of India Act.

**Shri H. V. Kamath:** The Government of India Act is no Constitution of a free State.

**Shri Alladi Krishnaswami Ayyar :** This question has nothing to do with freedom.

**Shri H. V. Kamath:** It is a stupid provision.

**Mr. President :** I will put this to vote. Mr. Kamath's amendment is really a negative of this.

**Shri H. V. Kamath :** No, Sir.

**Mr. President :** Very well, I will put yours to vote first. The question is :

"That in amendment No. 418, in the proposed clause 1 of article 42, the words either directly or through officers subordinate to him be deleted."

The amendment was negatived.

**Mr. President :** Then I will put the proposition moved by Mr. Krishnamachari. The question is:

That in clause (1) of article 42, for the words 'may be exercised by him' the words 'shall be exercised by him either directly or through officers subordinate to him be substituted.'

The amendment was adopted

**Mr. President :** I think it is one o'clock now and we shall adjourn. I desire to point out to Members that we shall take up the other, articles, of which notice is given in today's agenda at 4.30 this afternoon.

**Pandit Hirday Nath Kunzru :** When we agreed to a session being held today it was, I think, understood that the session would be held only in the morning. I do not think anybody was prepared for an afternoon session. I should earnestly request you, therefore, to hold another session tomorrow morning. We have engagements this afternoon which were made because in the normal course the Assembly does not meet in the afternoons.

**Mr. President :** I did not understand, at any rate, that we would not sit in the afternoon today. It was left open and it is for us to decide now whether we shall sit in the afternoon or not. In view of the fact that many Members are anxious to complete the Second Reading stage and many of them are anxious to go away on account of Dipawali, I think we should sit in the afternoon today. If we do not sit this afternoon, it may be that we may not be able to finish even tomorrow.

**The Honourable Shri N. Gopaldaswami Ayyangar :** As a matter of fact sir, we and several others have accepted invitations to a party at the Government House at 5 P.M. today. If we start at 4.30, I do not think we can do any business.

**The Honourable Dr. B. R. Ambedkar :** In that case we may meet at 4.

**Mr. President :** This House has the first claim upon its Members. I therefore fix 4.30 this evening. The House stands adjourned till 4.30 p.m.

*The Assembly then adjourned for Lunch till Half-past Four of the Clock.*

## DRAFT CONSTITUTION

*The Assembly reassembled after Lunch at Half Past Four of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.*

### Article 280A

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

“That after article 280, the following new article be inserted :

‘280-A. (1) If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a proclamation make a declaration to that effect.

- (2) The provisions of clause (2) of article 275 of this Constitution shall apply in relation to a proclamation issued under clause (1) of this article as they apply in relation to a Proclamation of Emergency issued under clause (1) of the said article 275.
- (3) During the period any such proclamation as is mentioned in clause (1) of this article is in operation, the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose.
- (4) Notwithstanding anything contained in this Constitution—
  - (a) any such direction may include—
    - (i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State;
    - (ii) a provision requiring all Money Bills or other Bills to which the provisions of article 182 of this Constitution apply to be reserved for the consideration of the President after they are passed by the Legislature of the state ;
  - (b) it shall be competent for the President during the period any proclamation issued under clause (1) of this article is in operation to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the judges of the Supreme Court and the High Courts.
- (5) Any failure to comply with any directions given under clause (3) of this article shall be deemed to be a failure to carry on the Government of the State in accordance with the provisions of this Constitution.’”

Sir, having regard to the present economic and financial situation in this country there can hardly be any Member of this Assembly who would dispute the necessity of some such provision as is embodied in this new article 280A and I therefore, do not propose to spend any time in giving any justification for the inclusion of this article in our Draft Constitution. All that I propose to say is this, that this article more or less follows the pattern of what is called the National Recovery Act of the United States passed in the year 1930 or thereabouts, which gave the power to the President to make similar provisions in order to remove the difficulties, both economic and financial, that had overtaken the American People as a result of the great depression from which they were suffering. The reason why, for instance, We have thought it necessary to include such a provision in the Constitution is because we know that under the American Constitution within a very short time the legislation passed by the President was challenged in the Supreme Court and the Supreme Court declared the whole of that legislation to be unconstitutional, with the result that after that declaration of the Supreme Court, the President can hardly do anything which he wanted to do under the provisions of the National Recovery Act. A similar fate perhaps might overwhelm our President if he were to grapple with a similar financial and economic emergency. In order to prevent any such difficulty we thought it was much better to make an express provision in the Constitution itself and that is the reason why this article has been brought forth.



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

“That in amendment No. 429 of List XVIII (Second Week), in clause (1) of the proposed new article 280A, for the words ‘has arisen’ the words ‘is imminent’ be substituted.”

The article if my amendment is accepted will read thus :

“If the President is satisfied that a situation is imminent whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a proclamation make a declaration to that effect.”

My reason for this amendment is this that after the situation has arisen, it might lead to much disturbance and people might lose confidence in the country’s credit. The article says that if a situation has already arisen and there is chaos, people will lose confidence in the credit of the State. I want instead of the words “has arisen”, the words, “is imminent” to be substituted.

My second amendment is No. 441 which reads as follows:—

“That in amendment No. 429 of List XVIII (Second Week), in clause (3) of the proposed now article 280A, after the word ‘operation’ the words ‘Parliament shall have power to make laws in respect of subjects contained in the State List as if they were subjects in the Concurrent list, and’ be inserted.”

If my amendment is accepted, the article will read as under:—

“During the period any such proclamation as is mentioned in clause (1) of this article is in operation Parliament shall have power to make laws in respect of subjects contained in the State List as if they were Subjects in the Concurrent List, and the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose.”

Sir, these amendments of mine are only intended to cover two lacunae in the article. Although the article is an extraordinary one and provides for financial emergency, in the present state of our country, I think it is necessary that the power should be with the executive. I have only tried to compare it with article 275. What I wanted is this: First of all, by changing the words “has arisen” into “is imminent” in clause (1), we would be able to take measures before the situation becomes grave. Therefore as soon as a financial emergency is imminent, we can take the necessary measures if we substitute the words “is imminent” for the words “has arisen”.

Then the President should have the power to treat all State Subjects as if they were subjects in the Concurrent List and Parliament should be able to legislate about them. It is quite possible that the State may be forced by some legislation of their own, by their own laws to act in a particular manner and may not have the legal authority to carry out the directions of the President. What I want is that the Parliament should have power to alter those laws of the States and therefore I want that during that period Parliament shall have power to pass laws even on subjects contained in. List No. 2 as if they were in the Concurrent List, so that the necessary financial measures will be taken in order to meet the emergency. I think that unless that is done, a mere order will not enable the President to pass orders or to have them carried out because they may conflict with the laws of the States and it may not be possible for the President to get those laws changed. Further the Provinces may not be agreeable to them. So what I want is that Parliament should be given this power that in those matters laws may be made by Parliament.

I think, Sir, that these amendments are necessary. We want this power. May I also say that this article does not take away any powers of the legislatures also and I think it is necessary in the interests of the State especially when we are in the midst of financial distress.

**Shri H. V. Kamath:** Sir, may I ask your permission for a verbal change in this amendment No. 438? I propose to use the word “breakdown” instead of the word “chaos”.

**Mr. President :** Yes. (*Interruption.*)

**Shri H. V. Kamath:** I have got the President’s permission to change the word “chaos” to “breakdown”. Sir I move amendments Nos. 438, 442 and 444 of List No. XIX. Amendment No. 438 is to the effect.

“That in clause (1) of the proposed new article 280A. for the words ‘whereby the stability or credit of India or of any part of the territory thereof is threatened, the words ‘which threatens India or any part thereof with financial breakdown or economic disaster,’ be substituted.”

Amendment No. 442 is to the effect:

“That in amendment No. 429 of the same List, clause (4) of the proposed new article 280A be deleted.”

Amendment No. 444 is to the effect:

“That in amendment No. 429 of the same List, clause (5) of the proposed new article 280A be deleted.”

This new article 280-A invests the President of the Union with further emergency powers, powers in excess of what have been conferred on him by the Constitution under articles 275, 276 and subsequent articles upto 280. This article envisages a contingency or a situation where the financial stability or credit of India or any part thereof may be threatened. I feel that this contingency or danger to economic stability or credit of India or any part thereof ought not to be regarded as an adequate ground for the proclamation of an emergency. An emergency proclamation can be justified only under more dire circumstances, that is, only in the event of or only when there is danger of a financial breakdown or economic disaster. To invest the President with such wide powers in the event of the financial stability or the credit of India or of a province or State thereof, being threatened is going much too far.

This morning, you rightly observed, Sir that many provinces are complaining about or have already complained about the ill distribution of the Income-tax proceeds, and that a new inroad upon their revenues was made this morning, as some honourable Members felt, by the article on Salas Tax adopted by this House. Some provinces like Madras, and partially the Central Provinces too, have inaugurated prohibition. That has eaten into the revenues of the provinces, and has further put them to extra expenditure on prohibition staff and ancillary paraphernalia.

Suppose, under these circumstances, the situation in future worsens. The world economic situation may worsen may aggravate. We shall try our best to see that our economic conditions improve, but what with devaluation all over the world including the devaluation of our own Rupee, no one would be Such a rash prophet as to say that we will be better off in the near future. Suppose, if the worst comes to the worst, the economic situation worsens further and the provinces, on account of the loss in revenue on account of prohibition and on account of other factors besides, cannot put into effect the constructive schemes which they have in mind, and suppose they are hard put even to make both ends meet, and their budgets are deficit budgets, imagine, it is not an improbable situations series of deficit budgets—may not be large deficits even small deficits every year—such a situation may be construed by the President as one where the financial stability or credit of the particular province or State is threatened. May I ask, will that be adequate ground for the President to assume to himself the powers which will be his once a proclamation of emergency is

[Shri H. V. Kamath]

made? I say, Sir, if we really want to implement the scheme of provincial autonomy, in spirit as well as letter, this is not the way to treat our constituent units. Certainly see to it that financially, economically, we are sound. But, on the slightest pretext of the administration not being able to put through their schemes, and not being able to produce surplus budgets, on these pretexts, it will—I will not use any strong words—it will not be wise for the President to proclaim an emergency and assume to himself all the extraordinary powers that will accrue to him once such proclamation is made.

I agree, I admit freely, that this course must be adopted if there is imminent danger of a financial breakdown,—that is certainly a much worse situation potentially a much more dangerous situation than economic instability. Economic stability may mean nothing to anybody or all things to all men. If there is any danger of financial breakdown or economic disaster, then certainly I can agree to vest certain emergency powers in the President, but not otherwise; not on the mere threat to economic stability or financial stability of a province. That may mean, as I said, many things. I cannot agree to vest emergency powers in the President for this reason of any threat to economic stability. My submission to House is that if there is danger of a breakdown or a disaster, then only the President may be invested with emergency powers.

I am afraid, looking to the paucity of attendance in the House today, that we are very likely to pass this article without mature care and attention being bestowed on it. It is an unfortunate circumstance that Deepawali is so close. Honourable Friends are more keen on illuminating their homes during Diwali than on illuminating the darkness that seems to have overtaken the House at the fag-end. I hope, in spite of the paucity of attendance, those Members who are Present here will carefully consider this matter as to whether it would be necessary to invest the President with such powers when the financial stability or credit is merely threatened.

I come now to amendments 442 and 444 which seek to delete clause 4 (a)—it ought to be 4(a); It has been wrongly typed here; I sent amendment No. 442 as referring to clause 4(a) of the proposed new clause, not the whole of clause (4)—and clause 5 of the proposed new article. The House will see that clause (3) gives the President ample powers in the event of a Proclamation of Emergency under these circumstances. The last part of clause (3) reads thus: “and to the giving of such other directions as the President may deem necessary and adequate for the purpose.” This omnibus provision enables him to do practically what he likes so long as when he passes the order he says, “I am satisfied that it is necessary and adequate for the purpose.” He can do whatever he likes and nobody can question his acts or decrees or ordinances in a court of law or anywhere else on earth. In the face of this, I personally feel that there is no necessity for incorporating clause 4(a) in this article, because clause 4(a) refers to the reduction of salaries and allowances and some provisions about Money Bills which are matters which could come within the scope of the provision embodied in the second part of clause (3). So, this can be safely deleted without any detraction from the meaning that is attached to clause (a) and without derogating from any of the powers that this clause confers on the President in the event of a financial emergency.

Clause (5) is a mere consequential provision. Why it is put in here at all. I do not understand. I fail to see any *raison d'être* for this clause. If the House will turn to article 277A and 278 which this House adopted a few months ago my honourable Colleagues will see that this contingency when the Government of any State cannot be carried on in accordance with the provisions of this Constitution is clearly, unambiguously visualized in these articles 277A and 278. Now,

Sir, the Governor of the State must decide as to whether the Government of that State can or cannot be carried on in accordance with the provisions of this Constitution and the Governor makes a report. The first clause of 278 says—

“If the President, on receipt of a proclamation issued by the Governor of a State under article 188 of this Constitution, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, he may by proclamation etc. etc.”

This is very clear. After the issue of directions by the President under this new article 280A when he visualizes a financial emergency in India or any part thereof, what is the need for this clause (5)? The Governor is on the spot and he can and will, if he is a conscientious and diligent Governor, he is bound to report to the President from time to time as to how these directions are being implemented. What are we doing here by incorporating all sorts of jumble—I would not use stronger words—and absolutely unnecessary verbiage? We have adopted articles where we have provided for emergency powers, and if the Governor feels and is satisfied that the Government of the State cannot be carried on in accordance with the Constitution, he will report to the President, why should we say ‘Any failure to comply with the directions given etc.’? Who will judge? That is the crux of the matter referred to in clause (5). Who will judge—will it be the President or Governor or some other authority? Make it clear and do not leave it vague. If the President is satisfied it is a failure, then make it clear that if the President is satisfied that it is a failure, then it means the State Government has failed. Otherwise say that the Governor of the State will report to the President about the failure or otherwise.

But clause (5) in the first place is unnecessary, redundant, and secondly, it is very vague. The authority or the person to judge where there is a failure or not is nowhere defined and it is dangerous to leave it so vague as this. Make it clear beyond any shadow of doubt that the President will judge as to whether it is a failure or not. If it is left vague, it will reflect on our own wisdom. I hope that Dr. Ambedkar’s learning is not so completely divorced from good sense and wisdom that he cannot see the force of my contention. He is learned I agree, but I hope his learning is not completely divorced from other components of human wisdom; and I hope he will bestow sufficient attention upon the amendments I have moved. I commend them with all my heart to the House for the consideration.

**Shri Brajeshwar Prasad :** Mr. President, Sir I move amendments 439, 440 and 443. They read as follows:

“That in amendment No. 429 of List XVIII (Second Week), in clause (1) of the proposed new article 280A after the words “threatened” the words “or is likely to be threatened” be inserted.”

“That in amendment No. 429 of List XVIII (Second Week), for clause (2) of the proposed new article 280A, the following be substituted:—

‘(2) The proclamation issued under clause (1) of this article shall continue till such time it is revoked by the President.’ ”

“That in amendment No. 429 of List XVIII (Second Week), for paragraph (ii) of sub-clause (a) of clause (4) of the proposed new article 280A, the following be substituted:—

‘(ii) a provision requiring all Bills to be reserved for the consideration of the President after they are passed by the Legislature of the State.’ ”

I would make a few comments in connection with the amendments which I have moved. Sir, I am of opinion that when there is a period of financial crisis, provincial autonomy must completely be suspended till such time as the emergency lasts. There should be no hesitation, there should be no qualms of conscience on this account. I am of opinion that the period of emergency should

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last till such time as the President in his discretion may consider to be necessary. This proclamation should last till the emergency lasts. There is no sense in going to Parliament and seeking its approval whether the period should be extended or not. The President and the President alone is the best person to judge whether the emergency is over or not. Do not distrust the President—he is the first citizen of the State. He represents the people of India in a more true sense than any member of Parliament. He is elected by the representatives of the Legislatures of the Centre and the Provinces. He is not elected by a particular constituency. Therefore it is in the fitness of things that power should be vested in the hands of the President alone.

I am of opinion that by doing so we will not be violating any Constitutional convention because the essence of Federal Constitution is the separation of powers. Under the new Constitution our Parliament is not going to be a sovereign body. I cite the case of the American President. He has a large number of powers. Nobody can say that he is a dictator or autocrat or that by vesting powers there has been any violation of the principle of federalism. Therefore, I am of opinion that power must be vested in his hands to deal with any situation that may arise in the future as a result of financial instability or crisis.

We have achieved our freedom only a few years ago. Is it right or proper that we should jeopardise our freedom at the altar of some newfangled notion or concept? Our State has become free at a time when the political horizon is full of anxiety. The political and economic situation not only of this country, but of all parts of the world is on the brink of disaster.

Therefore, our Constitution must take these factors into account.

Sir, there is another factor which must be borne in mind. This institution of Parliamentary Government is quite alien to the genius of our people. Our ancient law givers were Saints and Seers and not Parliamentarians. Therefore, I have more faith in a President than in a Parliament elected on the basis of adult franchise in a country where there is no literacy, where the standard of living is very low and where the people are the victims of communal passions. Therefore, I am of opinion that we must not jeopardise the interest of the State at the altar of Parliamentarism or of any ideology. Ideologies are mere concepts. They may be cloudy, hazy and nebulous. But the State is a solid reality, and we cannot jeopardise the interests, of the State at the altar of some newfangled notions. In the words of the German philosopher Hegel—“The State is God on earth”. I am, therefore, of opinion that if vital questions are left to be decided by Parliament, it will mean the end of the State. It is only in a very highly developed community that Parliament plays an effective part. In a country like India it is bound to occupy a secondary role. For a long time to come, the executive and the executive alone will play a dominant part in our national life. If our Constitution does not recognise this fact, it will break down and plunge the country into chaos and anarchy.

**Mr. President :** Did you move amendment No. 443?

**Shri Brajeshwar Prasad :** Yes, Sir, all the three amendments.

**Mr. President :** All the amendments are moved and the article are now open for discussion.

**Shri R. K. Sidhwa (C.P. & Berar: General):** Mr. President, Sir, yesterday, when my Friend Mr. Krishnamachari told me that a clause regarding financial emergency was to come up, I felt that probably there was going to be some another cut upon the right and privileges of the legislature. But when I received this article last night, I must admit that I found that this article is justified; and

under the conditions that exist now, and that may exist, I do feel that if this article had not been there, our Constitution would not have been complete. I give credit to the Drafting Committee for even at this last moment, to have realised that such a situation might arise, and therefore, the President must be empowered with these extraordinary powers. My Friend Mr. Kamath has been having unnecessary apprehensions of the President misusing these powers. Mr. Kamath said that even if there is a deficit budget, the President might declare that there is an emergency in the financial stability of the country. If we have a President who really declares, because of a deficit budget that there is financial emergency, then I must say that that President is not worthy of occupying the high place that he would occupy, and I may add that it is the House and the persons who will be electing the President who would be responsible for it. But I am quite confident that both Houses will elect a really able and eminent, just and right type of person who will exercise his powers rightly and who will judiciously interpret the provisions of this article. I have no apprehensions on that, whosoever may be the President of the Indian Union.

Sir, what does the clause say ? It says—

“If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a proclamation make a declaration to that effect.”

Now, we know from our experience of our two and a half years of independence, that the political freedom that we are enjoying is absolute, but as far as our economic conditions is concerned, we have to depend upon other countries finances: as, we have not stabilised our finances yet. I do not mean, therefore, that there is an emergency now. I can only say, here is the economic picture before us; and whatever may have been the reasons that have led to it, they are not of our making. But the circumstances under which we were living and were governed, and the world situation, have led to the present economic condition. This is not an emergency. But a real emergency might arise whereby the financial stability may be affected, and we will be perfectly justified if we have an article like this, and I have no doubt at all in my mind that this article then would be very helpful.

Mr. Kamath made capital out of clause (4), but I welcome that article. What does it say? It says that the President shall have the power to reduce the salaries and allowances of the staff when necessary.

**Shri H. V. Kamath:** My only difficulty was that this power was not vested under clause (3).

**Shri R. K. Sidhwa :** But clause (4) says—

“Notwithstanding anything contained in this Constitution—

‘any such direction may include (i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State.’ ”

Today we know very well how our staff is not only heavily paid but how they are excessive in numbers. But that apart, this is a very happy provision, and we should all welcome that the President is vested with this power, because we know that in the Constitution, we have provided for the salary of the Judges and that it may not be reduced in times of emergency. We have been clamouring over the high salaries of the Judges, and when the Drafting Committee comes with a provision that in the event of a financial instability. The President will have the right even to cut down the salary, we say that it is not proper. I am very sorry to hear this. I must, on the other hand, give credit to the Drafting Committee. I am a man to give credit where credit is due, though I give a bit

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of my mind where that is necessary. About the judges also, in (b) we have said that the President can reduce the salaries of the judges of the Supreme Court and the High Courts. I welcome this article. It did not strike me at all that such a provision is necessary, but after reading it, and after seeing what is surrounding us, and what is going to happen, I feel that it is very necessary. Let us foresee things. We must also foresee what may happen in future. We cannot always be content with confining our ideas to the present. A Statesman is he who foresees things. A politician is he who foresees what is going to happen.

We know we have achieved our political freedom, but unless our economies are fully stabilised, then the political freedom which we have won will always be in such a position that we will not be able to render the service to humanity as we would like to. 'Today we know we passed so many laws and I know there was a little fear in the minds of several Members in connection with the article relating to the Sales Tax. And I do feel that they were justified in feeling that they would have to cut down their finances and so would not be able to introduce so many of their development schemes. But still I supported the article, because it is in the greater interests of the country. And at any time when there is a question of cutting down the powers of the Legislature or of the President comes up, we should look at the merits of it, and looking at the merits of the present question. I feel the article is perfectly justified and I am confident that the President, whosoever he may be, he will exercise his power rightly, and interpret this article in the right sense and in the right manner and for the benefit of the country and the benefit of the people of this country. With these words, I support the amendment that has been moved by Dr. Ambedkar, article 280A.

I do not want to say anything more. But if you were to look at the article and at the provisions of sub-clause (ii) of clause (4), you will see that it relates to even money Bills. Power is given to the President to see that if he feels that the provisions of article 174 combined with those of 182 are likely to jeopardise the financial stability of the country, he will certainly use his power, and apply the brakes in applying this article 280A. But as the preamble of the article states, it comes up only when there is an emergent situation as far as the financial stability is concerned. I have no apprehension that this article will be misused by the President, and with these words, I commend it to the House.

**Pandit Hirday Nath Kunzru :** Mr. President, the Mover of the amendment excused himself for not justifying the amendment by saying that it was certain that every Member understood its need. That was a very easy way for him of getting rid of his responsibility. He made a show of defending the amendment by referring to the American National Recovery Act. Now, the American National Recovery Act was meant to enable the American nation to tide over the great economic depression that had overcome the United States of America along with the other countries of the world in the thirties. Is there anything in this amendment that will enable the Government of India to deal with an economic depression when it comes in the same way in which President Roosevelt tried to deal with it? The whole object of the amendment seems to be to reduce expenditure and to prevent the provincial Governments from giving up any of their existing sources of revenue. Can an amendment with this purpose be said by any stretch of language to resemble even remotely the National Recovery Act of the United States?

Sir, every Member of this House I am sure will admit that the power that is being conferred on the Central Government is a drastic power. It is necessary therefore for us to understand why article 280A is proposed to be inserted

in the Constitution at the fag-end of the debate on the Second Reading of the Constitution. This matter, if it is of cardinal importance, could have been dealt with along with the other financial provisions contained in the Constitution. But the fact that this was not done shows that there was no general need felt at the time the financial articles were considered for enabling the Central Government to- exercise complete budgetary control over the provinces. What has occurred since then to justify this amendment? Sir, clause (4) of the amendment refers to certain matters that may be included in the directions given by the President when a Proclamation has been issued declaring that the financial stability or credit of India or of any part of it is threatened. The President will have the power to direct any state to observe such 'canons of financial propriety' as may be specified in the directions given by him. Clause (4) is illustrative of the directions that the President may issue. Sub-clause (a) of this clause empowers the President to require a State to reduce the salaries and allowances of all or any class of public servants. Sir, we had to go through a serious economic crisis not many years ago. It affected not merely the Central Government, but also the provinces. Were the provinces backward then in reducing their expenditure? Did they show any reluctance to reduce the salaries of their public servants or were they only too glad to follow the example of the Central Government and reduce the salaries of all classes of public functionaries? Why has it been necessary, with this experience before us, to propose such an amendment to this House? Is there any reason why, disregarding all past experience, we should show complete distrust of the provinces and treat them as though they were children and the President a village school master?

Sir, item (ii) of sub-clause (a) lays down that the President may require that all Money Bills or other Bills to which the provisions of article 182 of the Constitution apply shall be reserved for his consideration after they are passed by the Legislature of the State.

The House knows what the definition of a Money Bill is. A Money Bill is any Bill that provides among other things for the imposition, abolition, remission, alteration or regulation of any tax. I think these words give us a clue to the significance of the amendment that has been placed before us. A Province can by itself hardly do anything that would jeopardise the financial stability or credit of India. It can at the most injure itself. But if we turn to the provincial sources of revenue that are enumerated in the Provincial List, we shall find that there is hardly any source the use of which can be a danger to the financial stability of the Centre or of a province. Even if a province by its foolishness places itself in a difficult financial position, why should it not be allowed to learn by its mistakes ?

Perhaps, Sir, it will interest the House if I enumerate the chief sources of provincial income. They are chiefly land revenue, stamp duties other than those mentioned in the Union List, estate and succession duties on agricultural land, income-tax on agricultural income, excise duties on alcoholic liquors, opium, etc., sales taxes including taxes on the consumption of electricity and taxes on luxuries including taxes on entertainments and amusements.

**Shri T. T. Krishnamachari :** What about vehicles tax?

**Pandit Hriday Nath Kunzru :** I have not mentioned it because vehicles tax, etc. are generally used for the benefit of local bodies. Now, which of these source of revenue can be misused by the provinces? If the policy that has been followed by certain provinces with the approval of the Centre is followed by other provinces, land revenue is bound to go down, and its reduction cannot be a grievance to the Central Government. The provincial governments have so far shown no reluctance to increase the rates of stamp duties, or to make as much use as they can of sales taxes or taxes on agricultural income. The only tax in



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respect of which a serious difference of opinion has arisen between the Central Government and some of the provincial governments is the excise duty on alcoholic liquors and certain narcotics. Some provinces, notwithstanding, I understand, the advice repeatedly given to them by the Government of India, have persisted in following a policy of prohibition, which will lead in course of time to a complete abolition of the revenue from excise duties. The advice given by the Central Government may be perfectly right. The present situation may well in the opinion of students of Indian finance require that the provinces should proceed slowly in respect of the introduction of measures leading to complete prohibition. The Centre and the provinces alike are faced with financial difficulties, and it does not seem to be right that at a time like this any province should try to forego any large source of revenue. It may in theory be desirable to bring about a complete cessation of the use of alcoholic liquors and narcotics, but we cannot have all the good things of the world at once. It will therefore be necessary for the provinces to exercise self-restraint and wait for better times to bring about this reform.

But if they do not listen to the Central Government, is this any reason why so drastic a power as article 280A will confer on the Government of India should be taken so that the provinces may be able to do nothing contrary to the wishes of the Central Government once the President has proclaimed that the financial stability not merely of the whole of India but of any part of it is threatened? Whenever there is serious disagreement between a province and the Central Government, the President can always be persuaded to say that the financial stability or credit of the province is in danger, and then the consequences envisaged by article 280A will follow. The Centre will acquire complete control over the budget of the province and will be able to dictate both to the provincial government and to the provincial legislature what financial policies they should adopt.

This is not a measure for bringing about a better distribution of the resources of India between the Centre and the provinces. This is not meant to enable the Central Government to deal with unemployment relief, or public works, or any of those problems whose solution would lead to economic contentment and add to the wealth of India. The object of this measure is totally different. As the Mover of the amendment has prudently abstained from giving any reasons justifying the amendment, we have to 'think- for ourselves and find out as best we may what may have induced the Central Government to agree to the insertion of such an article into the Constitution. Thinking over the recent financial history of these provinces, I can discover no reason for the anxiety of the Central Government to have the power to exercise financial control over the provinces except the one that I have given.

It is for the House to determine whether the Constitution which our Prime Minister stated in his address before the American House of Representatives and the Senate the other day, followed the principle of federalism which had been borrowed from the American Constitution, should for all practical purposes be converted into a unitary Constitution. Even if the Constitution were unitary, would it be wise for the Central Government to try to curb the financial discretion of the provinces even if their measures were likely to injure them? How is democracy to be established in the provinces, how is a sense of responsibility to be created among the legislators, how are the Ministers to learn by experience unless they are left to face the consequences of their mistakes? If the Centre wants to step in at every turn, if it wants that it should be able to exercise such complete control that nothing that was harmful to the interests of any province or of India might be allotted to be done, then we must say goodbye to democracy. The Centre will certainly be glad to exercise even greater control than is given

to it by this Constitution, if we may judge from the facts that we have before us, if we may judge from past experience. But this will not put it right and I venture to say that the mover has not made out the slightest justification for the acceptance of his amendment,

**Shri K. M. Munshi** (Bombay: General): Mr. President, Sir, I can easily appreciate the feelings of my honourable Friend, Pandit Kunzru, in opposing this 28A but he will also realise the grave situation to which reference has already been made by my Friend, Dr. Ambedkar. The debate in the Parliament, in the other part of the House, a fortnight ago, clearly showed that the country is on the brink of a precipice, and I do not think that the crisis which we are facing now is in any way less important than what faced France in 1937 when it passed the law of June 1937 or a similar measure passed by the United States of America in 1933. If I may read the preamble of the N.R.A. which America adopted:

“A national emergency productive of widespread employment and disorganization to industry which burdens the State and foreign commerce and affects the public welfare and under mines the standard of living of the American people is hereby said to exist.”

If my honourable Friend, Pandit Kunzru reads the speeches made by the Members of this House and the Finance Minister on the devaluation debate, I am sure he will feel convinced that a situation like the one which is before the country may require wider powers in the Centre of the nature of those that are contained in article 280A. His fears that there, will be multiplication of functionaries is not real because the Centre, when it acts under this article 280A, will act through the functionaries of the State itself. It is not going to employ its own machinery in place of the provincial machinery. The other argument that the provinces can do nothing without the permission of the Centre is also not quite correct. In normal circumstances, when the finances of the country are stable, so long as the credit of the country stands, there is no chance of this article being brought into force. It is only when there is a financial emergency that it has to be brought into force and till then the provinces are completely free to do what they like. The attitude is not “school masterly” as suggested. The attitude is that the Centre will step in at the time when there is a breakdown in the financial structure of the country.

This article in the Constitution is the realization of one supreme fact that the economic structure of the country is one and indivisible. If a province breaks financially, it will affect the finances of the Centre: if the Centre suffers, all the provinces will break. Therefore the interdependence of the provinces and the Centre is so great that the whole financial integrity of the country is one and a time might arise when unitary control may be absolutely necessary.

Sir, I may mention that the different articles which this House has passed so far provide that in an emergency, and even in ordinary times, there be a certain amount of integration between the Centre and the provinces. I will only refer to article 226 under which a vote of the Upper House can rule that an item in the State List should be transferred to the Centre. We have the nominated Governors, whom we accepted in place of elected Governors. We have also the emergency sections in articles 275 and 278; when the constitutional structure of a province breaks down the Centre can interfere. When, for instance, internal disturbance threatens any part of the country, the Centre can interfere by emergency legislation. But is it suggested that if there is a financial breakdown of the whole country the Centre must sit idle and do nothing? I submit, therefore, that we have not so far departed from the fabric which we have raised.

Only one word more and I have done, my Friend, Pandit Kunzru, has said that the mover of the article, Dr. Ambedkar, has not explained the object of the measure. I think the object of the measure is patent on the face of it. It is

[Shri K. M. Munshi]

not merely the desire of this Government that they should interfere in the provinces but it should be the desire of every Government in India to see that the financial stability of India is maintained at any cost and under all circumstances. This is the primary consideration before any Government, either this or any, other.

We have in the preamble, which will come before the House tomorrow, said that the sovereign people of India make this Constitution. The sovereign people are not all the people but the sovereign people of India as one unit acting through its supreme organ, the Constituent Assembly, which is creating the Constitution for the country as a whole. There is no provincial-autonomy, there is no federation by or for itself: these are not sacrosanct words. Every Government must satisfy the needs of the sovereign people of India. In a financial emergency there cannot be a greater privilege than that all financial affairs shall be controlled and directed from the Centre, as put forward in 280A. That is the object, and I submit it is an object without which the Constitution would remain incomplete and I invite the House to carry this article unanimously.

**Mr. President :** Have you anything to say?

**The Honourable Dr. B. R. Ambedkar :** If you think it is necessary, I will speak.

**Mr. President :** No, no. I do not say so. Then I will put the amendment to the vote.

**Shri H. V. Kamath :** I suggest that Dr. Ambedkar might consider the change of the wording from "threatened" to "gravely threatened".

**Mr. President :** You did make your suggestion. He will consider whether it is worth considering. I do not think I should allow you to make a second speech in the form of a suggestion to Dr. Ambedkar.

**Shri Rohini Kumar Chaudhuri (Assam : General):** I wanted to make my only speech.

**Mr. President :** But I have already closed the debate.

The question is:

"That in amendment No. 429 of List XVIII (Second Week), in clause (1) of the proposed now article 280A, for the words 'has arisen' the words 'is imminent' be substituted."

The amendment was negatived.

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

"That in amendment No. 429 of List XVIII (Second Week), in clause (1) of the proposed new article 280-A, for the words 'whereby the financial stability or credit of India or of any part of the territory thereof is threatened', the words which threatens India or any part thereof with financial break down or economic disaster', be substituted.

The amendment was negatived.

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

"That in amendment No. 429 of List XVIII (Second Week), in clause (1) of the proposed new article 280-A, after the word 'threatened' the words 'or is likely to be threatened' be inserted."

The amendment was negatived.

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

"That in amendment No. 429 of List XVIII (Second Week), for clause (2) of the proposed new article 280-A, the following be substituted:—

(2) The proclamation issued under clause (1) of this article shall continue till such time it is revoked by the President."

The amendment was negatived.

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

“That in amendment No. 429 of List XVIII (Second Week), in clause (3) of the proposed new article 280-A, after the word ‘operation’ the words ‘Parliament shall have Power to make laws in respect of subjects contained in the State List as if they were subjects in the Concurrent List, and’ be inserted.”

The amendment was negatived.

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

“That in amendment No. 429 of List XVIII (Second Week), clause (4) of the proposed new article 280-A be deleted.”

The amendment was negatived.

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

“That in amendment No. 429 of List XVIII (Second Week), for paragraph (ii) of sub-clause (a) of clause (4) of the proposed new article 280-A, the following be substituted:—

(ii) a provision requiring all Bills to be reserved for the consideration of the President after they are passed by the Legislature of the State.’ ”

The amendment was negatived.

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

“That in amendment No. 429 of List XVIII (Second Week), clause (5) of the proposed new article 280-A be deleted.”

The amendment was negatived.

**Mr. President :** I shall now put the original amendment of Dr. Ambedkar. The question is:

“That after article 280, the following new article be inserted:—

‘280A. (1) If the President is satisfied that a situation has arisen whereby the financial stability or credit Provisions as to financial of India or of any part of the territory thereof is threatened, he may by a proclamation make a declaration to that effect.

(2) The provisions of clause (2) of article 275 of this Constitution shall apply in relation to a proclamation issued under clause (1) of this article as they apply in relation to a Proclamation of Emergency issued under clause (1) of the said article 275.

(3) During the period any such proclamation as is mentioned in clause (1) of this article is in operation, the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose.

(4) Notwithstanding anything contained in this Constitution—

(a) any such direction may include—

(i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State;

(ii) a provision requiring all Money Bills or other Bills to which the provisions of article 182 of this Constitution apply to be reserved for the consideration of the President after they are passed by the Legislature of the State;

(b) it shall be competent for the President during the period any proclamation issued under clause (1) of this article is in operation to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the judges of the Supreme Court and the High Courts.

(5) Any failure to comply with any directions given under clause (3) of this article shall be deemed to be a failure to carry on the Government of the State in accordance with the provisions of this Constitution.’ ”

The motion was adopted.

Article 280A was added to the Constitution.

### Article 85

**Mr. President :** We shall now take up the other items.

**Shri T. T. Krishnamachari :** Sir, I move:

“That for clause (3) of article 85, the following clause be substituted:—

- ‘(3) In other respects, the privileges, immunities and powers of each House of Parliament and of the members and the Committees of each House shall be such as may from time-to-time be defined by Parliament by law, and until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees at the commencement of this Constitution.

The reason for making this change is that the scope of the sub-clause has to be extended as the original clause merely referred to the privileges and immunities of Members only. All that the present clause seeks to do is to apply it to the two Houses to all the Members and to the Committees of each House. This has been necessitated by the reason of the fact that we have provided in entry 69, List I, Schedule VII the legislative power to Parliament in 69A. The legislative power reads:

“The privileges, immunities and powers of each House of Parliament and of the Members and Committee of each House.”

In order to bring sub-clause (3) of article 85 in line with that entry, this amendment has been moved. Honourable Members of the House will please see that it merely seeks to expand the privileges, immunities and powers from the members to the Houses and also to the Committees and it is a matter which will not invoke controversy as it is consequential on the House accepting 69A, List I, Schedule VII.

**The Honourable Shri K. Santhanam :** Clause (4) also provides the same Privileges to Committees as to the Members.

**Mr. President :** This refers to the House also, not only to the Members.

There is one amendment of which notice has been given by Shri Brajeshwar Prasad. But that is covered by another amendment—No. 397. Therefore this does not arise,

**Shri Brajeshwar Prasad :** But there are two parts (a) and (b) on the next page.

**Mr. President :** Yes, there is 3(b). But is this a matter for the Constitution? That the President shall issue a White Paper is not a matter for the Constitution. The President shall issue a White Paper if it is suggested to him or if a resolution, is passed in the Assembly.

**Shri Brajeshwar Prasad :** The whole purpose is to know what are the powers and privileges of the members of the House of Commons.

**Mr. President :** You may ask the President to issue that White Paper but it cannot form part of the Constitution.

**Shri Brajeshwar Prasad :** I can make a verbal change in this amendment.

**Mr. President :** I think we had better leave it alone.

**Shri R. K. Sidhwa :** Sir, when this article was discussed last time we were not certain what were the privileges of the Members of the Commons. I tried to find it out from May's Parliamentary Procedure but I could not. So, let us know something as to what are the privileges of the Members of the House of Commons. Otherwise a conflict may arise in Parliament. Until two or three years after the formation of Parliament these privileges may not be framed because I know that no act of privileges have so far been framed till now although under the Government of India Act, 1935 there is a provision that Members' Privileges may be framed; they have not been framed either in the Centre or in the provinces except in two Provinces.

**The Honourable Dr. B. R. Ambedkar :** Sir, I might with your permission inform my Friend Sidhwa that since the time when the discussion took place I

made a little research and I find that the South African Parliament has passed an Act defining the immunities and privileges. I have got a copy; if he wants. I can transmit it for his study. It might be possible later on for our own Parliament to embody the privileges.

**Shri Brajeshwar Prasad :** Sir, in amendment No. 419 the words “Provincial Parliament” occur. This is a printing mistake. The word is not “Provincial”, but “Provisional”. This is a separate amendment which has not been moved by anybody else. May I move it?

**Mr. President :** I suppose the Provisional Parliament has got all the powers and privileges of the Parliament which will be of a permanent nature. So this does not arise really.

**Shri Mahavir Tyagi :** Could we not leave this power to the Parliament itself to decide?

**Mr. President :** That is exactly what the article says. The Parliament will define the powers and I privileges, but until the Parliament has undertaken the legislation and passes it the privileges and powers of the House of Commons will apply. So, it is only a temporary affair. Of course the Parliament may never legislate on that point and it is therefore for the Members to be vigilant.

**Shri H. V. Kamath:** Will it be open to the Provisional Parliament to define these powers ?

**Mr. President :** Certainly, it will be open to it, if it chooses to do it.

**Shri B. Das :** Sir, in this amendment No. 419, is it the “*Provincial* Parliament” or the “*Provisional* Parliament”?

**Mr. President :** It is a mistake. It ought to be “Provisional Parliament”. When Mr. Brajeshwar Prasad pointed it out I did not follow him. It is a mistake in printing. So, the Provisional Parliament has the same right as the permanent Parliament. Is any discussion necessary? So, I will put this amendment to vote.

The question is:

“That for clause (3) of article 85, the following clause be substituted—

- (3) In other respects, the privileges, immunities and powers of each House of Parliament and of the members and the committees of each House shall be such as may from time to time be defined by Parliament by law, and until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees at the commencement of this Constitution.’ ”

The amendment was adopted.

### Article 111

**Shri T. T. Krishnamachari :** Mr. President, Sir I move:

“That for the proviso to clause (1) of article 111, the following proviso be substituted:—

- ‘Provided that no appeal shall lie to the Supreme Court from the judgment, decree or final order of one judge of a High Court.’ ”

This, in effect, simplifies the position as it now is. The present proviso is a longish one. The present proviso which the amendment seeks to supplant reads thus:—

- “Provided that no appeal shall lie to the Supreme Court from the judgement, decree or order of one judge of a High Court or of one judge of a Division Court thereof, or of two or more judges of a High Court, or of a Division Court constituted by two or more judges of a High Court, where such judges are equally divided in opinion and do not amount in number to a majority of the whole of the judges of the High Court at the time being.”

It is felt that this is not necessary by reason of the fact that this was borrowed from the original Letters Patent, which was amended in 1928. The amended

[Shri T. T. Krishnamachari]

Letters Patent, as it is applied to our courts is simpler than this longish proviso and the purport of it was more or less analogous to the provision that we are now seeking to introduce as a proviso to article 111, instead of the original proviso. I do not think there is any scope for discussion in this particular matter, because what is done by this amendment is to simplify and restrict the limitation that is put in regard to appeals to the Supreme Court. If honourable Members are satisfied with this explanation it can go through. If, on the other hand, they want an elaborate explanation of the whole question of how the powers of benches in the high courts were affected by the Letters Patent, and how much we have borrowed there from. I think my honourable Colleague Mr. Alladi Krishnaswami Ayyar is prepared to satisfy Members on this particular point.

Sir, I move.

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

“That for the proviso to clause (1) of article III, the following proviso be substituted :

‘Provided that no appeal shall lie to the Supreme Court from the judgement, decree or final order of one judge of a High Court.’ ”

The amendment was adopted.

### Article 112

**Shri T. T. Krishnamachari :** Sir, I move:

“That with reference to amendment No. 364 of List XV (Second Week), for article 112, the following article be substituted:-

‘112. (1) The Supreme court may, in its discretion, grant special leave to appeal from any judgement, decree, determination sentence or order in any cause or matter passed or made by any Court or tribunal in the territory of India.

Special leave to appeal by the Supreme Court.

(2) Nothing in clause (1) of this article shall apply to any judgement, determination, sentence or order passed or made by any court of tribunal constituted by or under any law relating to the Armed Forces.’ ”

The amendment to clause (1) of article 112 as it now stands is a very simple one. The words “final order” in the original article are sought to be removed and revised by the insertion of the words “determination, sentence or order” So far as clause (2) is concerned, the amendment must be perfectly clear to honourable Members. It seeks to exclude from the jurisdiction of the Supreme Court (the omnibus jurisdiction which article 112 confers on it) any decision of a court-martial covering matters which relate to the armed forces and matters which are governed by the Army Act. I understand that this follows the practice that now obtains in the U.K. where courts do not interfere with the decisions of the court-martial. I would at once confess that this matter, which escaped our attention at the time this article was framed and put before the House, has now been brought to our notice by the Defence Department, who have convinced us that a provision of this nature which obtains currency in other countries should also find a place in our Constitution.

Sir, if you would permit me I would like to move also another amendment which relates to the same subject, so that discussion on the whole matter might be taken up together.

Sir, I move:

“That to article 203, the following clause be added, namely:—

‘(4) Nothing in this article shall be deemed to extend the powers of superintendence of a High Court over any court or tribunal constituted by or under any law relating to the Armed Forces.’ ”

Clause (4) of article 203 and clause (2) of article 112 deal with the same subject. In the case of article 203 it seeks to prohibit the jurisdiction of the High Courts extending to courts-martial, whereas a similar restriction in regard to the Supreme Court is contemplated under article 112. The reason for introducing these two new amendments is the view expressed by the Defence Ministry that such protection is necessary in respect of the decisions of courts-martial which deal with the Armed Forces and the analogy of what obtains in other countries was brought before us. We therefore felt that there was a case for putting in a provision of this nature in articles 112 and 203.

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

“That in amendment No. 421 of List XVIII (Second Week), clause (2) of the proposed article 112 be deleted.”

I wish to bring a charge of breach of faith against Dr. Ambedkar in this matter. Sometime ago I had tabled an amendment to article 112A in which I had specially desired that provision should be made that persons sentenced to death by courts-martial should be able to appeal to the Supreme Court. Dr. Ambedkar assured me that such persons are covered by article 112 and the Supreme Court can take notice of such persons under its powers under article 112. Probably a report of the discussion in the House appeared in the papers and the Defence Department has tried to strengthen itself against the protection given by this article to persons condemned by courts-martial. And therefore Dr. Ambedkar has been asked to table this amendment. Mr. T. T. Krishnamachari just now said that this was necessary because the Defence Department wants so. Probably they have read the report of the discussion and that is why they have asked for this provision.

I therefore, think, Sir, that this is not fair. I had withdrawn my amendment that day on the assurance that this will be covered by this article and now just the reverse provision is being made and it is going to be accepted. I have seen and heard many Judge-Advocates who deal with these military courts-martial and they say that they are the persons who prepare the prosecution and they are also the persons who hear the cases and then give the judgement and if any Judge-Advocate made frequent decisions against cases prepared by himself, then he is also dismissed by the military authorities. They do not like that these cases should be dismissed. I think, Sir, this is a grave matter. Recently after the War in Britain also a Commission was appointed to study the administration of these military courts-martial and they also recommended that the procedure should be made more civilized and in the name of discipline the people should not be butchered. I have seen that the present procedure of Judge-Advocates is something against all the laws of jurisprudence and I think that at least persons convicted of death should have the right of appeal to the Supreme Court after their judgements. I consider that this provision is not only unfair but is also against the promise given to me by Dr. Ambedkar on a previous occasion.

**Shri R. K. Sidhwa :** Mr. President, Sir, I have my doubts about this clause. I am in entire agreement regarding protection to be given to Armed forces and with the decision that martial law should not be subject to the revision by the Supreme Court. To that extent I am agreeable, but I can show a number of cases where a number of armed forces are involved with a number of the civil population. Sir, there have been many cases of military motor drivers who have met with accidents and killed a number of civilians and those cases are tried by court-martial and in almost 90 per cent of the cases the civilians, poor fellows, had to suffer. They do not get any compensation and nor justice nor is the military driver punished in any way or sentenced. My point, therefore, is that the Drafting Committee in the interests of the civilian population will kindly bear this matter in mind and make some arrangement or provision here that the civilian



[Shri R. K. Sidhwa]

population who suffer from these accidents should be protected. They should not be tried by martial law. I can state a number of cases and if these cases are tried by the civil courts, there would have been fair trial. In the civil and criminal courts they get compensation and also subject to punishment. On account of this lacuna many of the drivers are so rash that they drive rash and kill many civilians. I draw the attention of the Honourable Dr. Ambedkar to this matter. Probably this matter did not come to his notice before, but this is a very important matter and while we want the armed forces to be protected and their appeal should not come to the Supreme Court, the civilians ought equally to be protected.

**Shri B. Das :** I wish Dr. Ambedkar should make it clear whether the tribunal in the territory of India applies to the Income-tax tribunal or the different Railway tribunals that we have. If the power is extended, then the Income-tax tribunal must be dissolved at once. We have got the Income-tax tribunal which is the final authority.

**The Honourable Dr. B. R. Ambedkar :** Are they relevant to this discussion? How does the Income-tax tribunal come here?

**Shri B. Das :** In this article it is stated:—

“The Supreme Court may, in its discretion, grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.”

I only wish to be assured by you that the ‘tribunal’ does not mean the Income-tax tribunal.

**The Honourable Dr. B. R. Ambedkar :** You said other personnel also. So far as my memory goes, this has been amended to make provision for income-tax cases also to be taken up in the Supreme Court. I know that it has been amended.

**Pandit Thakur Das Bhargava :** Sir, in my humble opinion clause (2) seems to be very wide and unnecessary. It reads as follows:

“Nothing in clause (1) of this article shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.”

So far as offences relating to the military personnel and military offences are concerned, they may be immune from the jurisdiction of the Supreme Court; but there are many laws relating to the Armed Forces which countenance the judgments etc. by courts constituted under those Acts and the accused in those cases are the civilian population or military personnel accused of civil offences. In regard to say, the Cantonment Act or in regard to the Territorial Forces Act, there are some offences in which the members of the civil population are accused and there is no reason whatsoever why such sentences should not be subject to the jurisdiction of the Supreme Court. I therefore think that this clause is too widely worded and needs amendment.

**The Honourable Dr. B. R. Ambedkar :** Mr. President Sir, in view of the observations made by my honourable Friend, Prof. Shibban Lal Saksena, it has become incumbent upon me to say something in relation to the proposed article moved by my honourable Friend, Mr. T. T. Krishnamachari. It is quite true that on the occasion when we considered article 112 and the amendment moved by my honourable Friend, Prof. Shibban Lal Saksena. I did say that under article 112 there would be jurisdiction in the Supreme Court to entertain an appeal against any order made by a Court-martial. Theoretically that proposition is still correct and there is no doubt about it in my mind, but what I forgot to say is this: That according to the rulings of our High Courts as well as the rulings of the British courts including those of the Privy Council, it has been a well recognized principle that civil courts, although they have jurisdiction under the statute will not exercise that jurisdiction in order to disturb any finding or decision given or order made by the Court-martial. I do not wish to go into the reason why

the civil courts of superior authority, which notwithstanding the fact that they have this jurisdiction have said that they will not exercise that jurisdiction; but the fact is there and I should have thought that if our courts in India follow the same decision which has been given by British courts—the House of Lords, the King's Bench Division as well as the Privy Council and if I may say so also the decision given by our Federal Court in two or three cases which were adjudicated upon by them—there would be no necessity for clause (2); but unfortunately the Defence Ministry feels that such an important matter ought not be left in a condition of doubt and that there should be a statutory provision declaring that none of the superior civil courts whether it is a High Court or the Supreme Court shall exercise such jurisdiction as against a court or tribunal constituted under any law relating to the Armed Forces.

This question is not merely a theoretical question but is a question of great practical moment because it involves the discipline of the Armed Forces. If there is anything with regard to the armed forces, it is the necessity of maintaining discipline. The Defence Ministry feel that if a member of the armed forces can look up either to the Supreme Court or to the High Court for redress against any decision which has been taken by a court or tribunal constituted for the purpose of maintaining discipline in the armed forces, discipline would vanish. I must say that that is an argument against which there is no reply. That is why clause (2) has been added in article 112 by this particular amendment and a similar provision is made in the provisions relating to the powers of superintendence of the High Courts. That is my justification why it is now proposed to put in clause (2) of article 112.

I should, however, like to say this that clause (2) does not altogether take away the powers of the Supreme Court or the High Court. The law does not leave a member of the armed forces entirely to the mercy of the tribunal constituted under the particular law. For, notwithstanding clause (2) of article 112, it would still be open to the Supreme Court or to the High Court to exercise jurisdiction, if the court martial has exceeded the jurisdiction which has been given to it or the power conferred upon it by the law relating to armed forces. It will be open to the Supreme Court as well as to the High Court to examine the question whether the exercise of jurisdiction is within the ambit of the law which creates and constitutes this court or tribunal. Secondly, if the court-martial were to give a finding without any evidence, then, again, it will be open to the Supreme Court as well as the High Court to entertain an appeal in order to find out whether there is evidence. Of course, it would not be open to the High Court or the Supreme Court to consider whether there has been enough evidence. That is a matter which is outside the jurisdiction of either of these Courts. Whether there is evidence or not, that is a matter which they could entertain. Similarly, if I may say so, it would be open for a member of the armed forces to appeal to the courts for the purpose of issuing prerogative writs in order to examine whether the proceedings of the court martial against him are carried on under any particular law made by Parliament or whether they were arbitrary in character. Therefore, in my opinion, this article, having regard to the difficulties raised by the Defence Ministry, is a necessary article. It really does not do anything more but give a statutory recognition to a rule that is already prevalent and which is recognised by all superior courts.

I am told that some people feel some difficulty with regard to the law relating to the armed forces. It is said that there are many persons in the armed forces who are really not what are called men of the line, men behind the line. It seems to me quite impossible to make distinction between persons who are actually bearing arms and others who are enrolled under the Army Act, because the necessity of discipline in the armed forces is as great as the necessity of

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maintaining discipline among those who are not included among the armed forces.

My honourable Friend Mr. Sidhva raised the question that sometimes when a member of the armed forces commits a certain crime, kills somebody by rash driving or any such act, he is generally tried by court-martial, and there is nothing done so as to bring him to book before the ordinary courts of criminal law. Well, I do not know; but I have no doubt in my mind that so far as a member of the armed forces is concerned, he is subject to double jurisdiction. He is no doubt subject to the jurisdiction of the court which is created under the military law. At the same time, he is not exempt from the ordinary law of the land. If a man, for instance, commits an offence which is an offence under the Indian Penal Code and also under the Army Act, he will be liable to prosecuted under both the Acts. If a member of the army has escaped any such prosecution, it is because people have not pursued the matter. The general theory of the law is that because a man becomes a member of the armed forces, he does not cease to be liable to the ordinary law of the land. He continues to be liable, but in addition to that liability, he takes a further liability under the Act under which he is enrolled.

**Shri Mahavir Tyagi :** Can he have two punishments for one crime?

**The Honourable Dr. B. R. Ambedkar :** Oh, yes.

**Shri R. K. Sidhwa :** Why not make it clear?

**The Honourable Dr. B. R. Ambedkar :** It is quite clear. Section 2 of the Indian Penal Code says: "Every person". "Every person" means high or low, armed or unarmed.

**Mr. President :** Mr. T. T. Krishnamachari, would you like to say anything after this?

**Shri T. T. Krishnamachari :** No, Sir.

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

The question is:

"That in amendment No. 421 of List XVIII (Second Week), clause (2) of the proposed article 112 be deleted."

The amendment was negatived.

**Mr. President :** I shall put article 112 as proposed in amendment No. 421.

"The question is:

"That with reference to amendment No. 364 of List XV (Second Week), for article 112, the following article be substituted:—

'112. (1) The Supreme Court may, in its discretion, grant special leave to appeal from any Special leave to appeal by judgment, decree, determination, sentence or order in any cause or matter the Supreme Court. passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) of this article shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.'

The motion was adopted.

Article 112, as amended, was added to the Constitution.

### Article 203

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

"That to article 203, the following clause be added, namely:—

'(4) Nothing in this article shall be deemed to extend the powers of superintendence of a High Court over any court or tribunal constituted by or under any law relating to the Armed Forces.' "

The amendment was adopted.

**Article 122**

**Shri T. T. Krishnamachari** : Mr. President, Sir, I move.

“That in article 122A, after the words ‘In this Chapter’, the words and figures ‘and in Chapter VII of Part VI of this Constitution’ be inserted.”

This deals with a very simple matter. Article 122A deals with interpretation of the Constitution in so far as the Supreme Court is concerned. What is now sought to be done is that this clause in so far as it refers to interpretation of the constitution in reference to any substantial question of law shall apply to the Chapter relating to High Courts as well. It is a lacuna that was not noticed at the time this article was passed and is not a matter which really involves any substantial change. It is only filling up a lacuna which exists.

**Mr. President** : The question is

“That in article 122A, after the words ‘In this Chapter’ the words and figures ‘and in Chapter VII of Part VI of this Constitution’ be inserted.”

The amendment was adopted.

**Article 130**

**Mr. President** : We proceed to article 130.

**Shri T. T. Krishnamachari** : Sir, I move.

“That in clause (1) of article 130, for the words ‘may be exercised by him’, the words ‘shall be exercised by him either directly or through officers subordinate to him’ be substituted.”

Sir, the House to day passed after some discussion a similar-amendment in respect of article 42 which relates to the President. We have been seeking to import the same wording in respect of the executive powers of the Governor.

**Mr. President** : There was an amendment by Mr. Kamath to the other article. Probably there is similar amendment to this. Is it necessary to have a discussion on this?

**Shri H. V. Kamath** : My views, are that they are simply repeating the mistake I do not move my amendment.

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

“That in clause (1) of article 130, for the words ‘may be exercised by him’ the words ‘shall be exercised by him either directly or through officers, subordinate to him’ be substituted”.

The amendment was adopted.

**Article 169**

**Mr. President** : We take up article 169.

**Shri T. T. Krishnamachari** : Sir, I move

“That for clause (3) of article 169, the following clause be substituted :—

- ‘(3) In other respects, privileges, immunities and powers of a House of the Legislature of a State and of the members and the committees of a House of such Legislature shall be such as may from time to time be defined by the Legislature by law, and until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees at the commencement of this Constitution. ’ ”

This follows the line of similar amendment moved to clause (3) of article 85 and the House has accepted it and this merely seeks to put in the same set of provisions in respect of powers of the Houses of Legislature, the powers and privileges and immunities of members of the Committees of Houses of Legislatures.

**Mr. President :** We have just passed a similar provision with regard to Parliament. This relates to the Legislatures of the States.

The question is :

“That for clause (3) of article 162, the following clause be substituted:—

‘(3) in other respects, privileges, immunities, and powers of a House of the Legislature of a State and of the members and the committees of a House of such Legislature shall be such as may from time to time be defined by the Legislature by law, and until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees at the commencement of this Constitution.’ ”

The amendment was adopted.

#### Article 213-A

**Mr. President :** We go to article 213-A.

**Shri T. T. Krishnamachari :** I move:

“That in clause (1) of article 213-A for the words ‘for the purpose of this Constitution’ the words ‘for all or any of the purposes of this Constitution’ be substituted.”

This amendment relates to High Courts in State in Part II of the First Schedule and the words are merely an amplification of the original phraseology and there can be no objection to such amplification. I am advised that this is necessary by our legal advisers and that is why this amendment is being moved.

**The Honourable Shri K. Santhanam :** I am afraid we are going in for too many superfluous amendments.

**Mr. President :** Does anyone wish to say anything ? Mr. Santhanam thinks it is unnecessary and so does Pandit Bhargava. Mr. Krishnamachari, do you wish to say anything ?

**Shri T. T. Krishnamachari :** In this matter I am afraid we have to be guided by our Advisers.

**The Honourable Shri K. Santhanam :** Even if they have committed any mistake in the original draft, unless it is indispensable no amendment should be brought before us now.

**Shri T. T. Krishnamachari :** I am afraid we have committed another mistake in another article if I should accept the argument of my honourable Friend Mr. Santhanam. We have committed the mistake in 303 clause (1) item (11) sub-item (2). It says in the definition :—

“any other court in the territory of India which may be declared by Parliament by law to be a High Court for all or any of the purposes of this Constitution.”

If we have a definition of the High Court using these words, however, unnecessary it might appeal to some honourable Members of this House, I thought that it is best to bring it into line with the definition which will really be the governing factor in the interpretation of the article of this House.

**An Honourable Member :** If these are absolutely necessary, they can be brought in the Third Reading.

**Mr. President :** I do not think there is any real opposition to this but some Members consider it unnecessary.

The question is :

“That in clause (1) of article 213-A for the words ‘for the purposes of this Constitution’, the words ‘for all or any of the purposes of this Constitution’ be substituted.”

The amendment was adopted.

#### Article 215-A

**Mr. President :** We go to 215-A.

**Shri T. T. Krishnamachari** : I move:

“That article 215-A be deleted.”

This article refers to the Scheduled and Tribal Areas. It reads thus:—

“In this Constitution the expression ‘scheduled areas’ means the areas specified in Parts I to VII of the Table appended to paragraph 18 of the Fifth Schedule in relation to the States to which those parts respectively relate subject to any order made under sub-paragraph (2) of that paragraph.”

Then again there is definition of tribal areas.

Sir, the House has passed the Fifth and Sixth Schedule which completely cover all that is contained in these two clauses of article 215A. It is therefore considered unnecessary,

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

“That article 215-A be deleted.”

The amendment was adopted.

**Shri T. T. Krishnamachari** : There is one item to be dealt with before going to the Preamble.

**Maulana Hasrat Mohani** (United Provinces : Muslim) : Sir, I object to putting here the Preamble at this fag-end of the day.

**Shri T. T. Krishnamachari** : We have not moved the Preamble. I suggest that article 13 be held over till tomorrow.

**Shri R. K. Sidhwa** : Sir, you have not put 445.

**Mr. President** : That is not in today’s agenda. I think this covers all the articles, except article 13, which are in today’s agenda. It is suggested that we might take up article 13 tomorrow as some Members have given notice of amendments and would like to have a little more time for consideration. Mr. Sidhwa did you refer to 302AA ? It is coming up tomorrow. Shall we take up the Preamble tomorrow ?

**Honourable Members** : Tomorrow.

**Mr. President** : The paper which has been circulated today also has some other articles. All this we shall have to dispose of tomorrow including the Preamble.

**The Honourable Shri K. Santhanam** : The Drafting Committee may consider whether any of them are indispensable; otherwise they may come in the Third Reading as consequential amendments. We need not spend much time on consequential amendments.

**Mr. President** : There is not much there with regard to amendments to clauses which have been passed. The others are substantial propositions. Ofcourse the Drafting Committee will naturally consider whether it is worth while pressing those amendments.

**Shri. R. K. Sidhwa** : Do we understand that tomorrow by evening we end the session ?

**Mr. President** : It all depends upon you. The Drafting Committee is not apart from you. It includes everybody in the House.

Then we shall adjourn now till, what time tomorrow ? When do we meet tomorrow?

**The Honourable Members** : Nine o’clock, tomorrow morning.

**Mr. President** : Very well, if that is the wish of the House, I have no objection. We may meet at 9 o’clock so that we may have four hours to finish all this.

The House stands adjourned till nine o’clock tomorrow morning.

The Assembly then adjourned till Nine of the Clock on Monday, the 17th October 1949.