

Thursday, 8th September, 1949

Volume IX

**30-7-1949
to
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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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THE CONSTITUENT ASSEMBLY OF INDIA

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Marshal:

SUBEDAR MAJOR HARBANS LAL JAIDKA.

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CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 8th September 1949

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

DRAFT CONSTITUTION—(Contd.)

Article 282- B

Mr. President : We shall take article 282- B

Shri Brajeshwar Prasad (Bihar: General): Sir, this amendment No. 8 fits in with article 282- B clause (1). The last line of that clause is 'by an authority subordinate to that by which he was appointed'. I want to substitute the words by 'except by an order of the Union Public Service Commission, or, as the case may be, by the State Public Service Commission'. May I move this amendment ?

Mr. President : Yes.

Shri Brajeshwar Prasad : Mr. President, Sir, I beg to move:

"That in Article 282 B clause (1), for the words by an authority subordinate to that by which he was appointed' the words 'except by an order of the Union Public Service Commission, or, as the case may be, by the State Public Service Commission' be substituted."

The purpose of my amendment is obvious. The power of dismissal, removal or reduction in rank of persons employed in several capacities under the Union or State should be in the hands of the Public Service Commission. I want that disciplinary matters should not rest in the hands of the Ministers, either Central or Provincial. Sir, I am not in any way suggesting a course of action which has got no precedent in any part of the world. In Great Britain, in Canada, in Australia and in South Africa in all these countries the public servants are not under the Ministers, and there has been no conflict or no confusion of authority. In the circumstances in which we are placed to-day, I am quite clear in my own mind that if the foundations of our civil service are to be laid on sound and scientific basis they must be removed from the control of the Ministers. The independence of the bureaucracy from the control of the Ministers is as important, if not more, than the independence of the judiciary from executive interference. 'The role of the public servants, according to my humble judgment, is more important than that of Ministers. "Men may come and men may go, but I go on for ever", The Public servants remain, though Ministers may come in and go out of the cabinet with bewildering rapidity. The foundations of our national life can be secured if the public servants are assured of their security, if they get the conviction that there will be no ministerial interference. For no fault of theirs, if they do not find favour with the Ministers, they are transferred to some unknown regions in some God forsaken districts. This creates a sense of insecurity. I am quite clear in my mind that there is need for administrative unification of the country. Sir, I am of opinion that all the civil servants should be brought under the control of the Union Public Service Commission. As a matter of concession I am prepared to agree that some control should also be vested in the hands of the

[Shri Brajeshwar Prasad]

State Public Service Commissions. I stand for the proposition that the civil servants of India, whether Central or Provincial, should be under the Central Public Service Commission. We are passing through a very difficult period, Sir. The whole of our society is passing through a period of decadence and decay and if we want that the birth-pangs of the new social order should not be prolonged, we should lay the foundations of our civil services on safe and secure basis.

Mr. President : You do not move to clause (3) ?

Shri Brajeshwar Prasad : Yes, Sir. I move:

“That in paragraph (b) of the proviso to clause (3), for the words ‘where an authority empowered to dismiss a person or remove or reduce him in rank’ the words ‘if the Union Public Service Commission, or, as the case may be, the State Public Service Commission’ be substituted.”

I have got only one word to say about this amendment. In this proviso the authority to dismiss, remove or reduce in rank has been vested in the hands of three authorities, Superior Officers, Governor and the President. Sir, I am opposed to this procedure. I am convinced that there should be some authority in the State to dismiss a public servant if a civil servant is found guilty, if the authority is convinced that he is a fifth columnist and that it is not desirable to keep him in service. But there should not be so many authorities vested with this power. I feel that the President alone should be empowered with this power. It is not right vesting this power in the hands of a large number of officers. If you do so, it will give no security to officers.

Mr. President : Amendment No. 10—Mr. Jaspat Roy Kapoor.

Shri Jaspat Roy Kapoor (United Provinces: General) : Sir, I beg to move:

“That in the proposed article 282 B, sub-clause (b) of clause (2) thereof be deleted, and clause (3) also of the said article be deleted, and thereafter sub-clause (c) be relettered as sub-clause (b)”.

Clause (2) of the proposed article 282- B reads thus

“(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:”

and to this substantial portion of clause (2) there are three provisos, of which proviso (b) reads thus :—

“where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause;”

and it is this sub-clause (b) that I seek to delete.

And then the other clause which I seek to delete is clause (3) which reads thus—

“(3) If any question arises whether it is reasonably practicable to give notice to any person under clause (b) of the proviso to clause (2) of this article, the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final.”

It will be clear that deletion of clause (3) is consequential and is necessary in the event of sub-clause (b) of clause (2) being deleted.

Sir, the object of article 282- B is obviously to give security and protection to Government servants so that these government servants may feel that they shall not be punished in any way whatsoever, unless and until a reasonable opportunity has been given to them to show cause why any order punishing

them in any way whatsoever may not be passed. But, Sir, while the object of this article is to give this sense of security and protection to these government servants, unfortunately this article is so worded that what is provided in the substantive portion of clause (2) is being taken away by the subsequent long and detailed provisos which follow. So, what has been conceded in the substantive portion of this clause is being taken away by the provisos which follow. This article has been framed on the model of section 240 of the old Government of India Act. In fact, that section 240 of the Government of India Act has been bodily taken over from there and incorporated here, but with two additions both of which go against the interests of the Government servants. The two portions of this proposed article which have been added to section 240 of the Government of India Act are sub-clause (c) of clause (2) and clause (3) of this article. My submission is that it is the inherent, fundamental and elementary right of every person not to be condemned unheard. We should not take away this inherent and fundamental right in the case of government servants. It is true that this right has been recognised, in this article, but as I have submitted, merely to recognise the right at one place and take it away substantially, though not altogether, in another, by providing various provisos that have been mentioned herein, does not appear to be fair.

Let us see what these provisos are. The first proviso says :

“Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge”.

no opportunity need be given to the government servant to show cause why an order of dismissal or removal or reduction should not be passed against him. This sub-clause (a) of clause (2) as it stands is much too wide. It says that if a person is convicted of any offence, howsoever trivial it may be (for that is the natural implication), he may be dismissed, etc., and he need not be given an opportunity to show cause why such an order may not be passed against him. This is much too wide and it is, therefore, necessary, I think, that some clause may be added to the effect that the criminal charge of which the person is convicted is one which involves moral turpitude.

It may be said that even if the sub-clause is not there, no superior officer is going to act in such a foolish and stupid manner as to dismiss or reduce a government servant for any trifling offence of which he may have been convicted. True, this clause was there in its present form in the old Government of India Act and it may be said that government servants never felt that because of this clause being there, they were unduly harassed or punished in a manner the hardship of which was felt by them. But when we are going to start on a clean slate, when we are going to have a fresh constitution there seems to be no reason why these lacunae need not be provided for.....

Mr. President : I would ask the honourable Member to be short. The amendment is clear and Members are able to follow the effect of it.

Shri Jaspat Roy Kapoor : Not only do I wish to be short but for that reason I have not moved an amendment to this clause, and I will say nothing further on the subject.

The second proviso for the deletion of which I have moved my amendment reads :

“Where an authority empowered to dismiss or remove a person or to reduce him rank is satisfied that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause;”

In that case no such opportunity need be given to the person concerned. I cannot conceive of any circumstances under which it cannot be reasonably

[Shri Jaspat Roy Kapoor]

practicable to give such an opportunity to any government servant. If a person is absconding how will it be possible for such a person to be given an opportunity, it may be asked. My simple answer is that the notice may be served at the place where he last resided or at the place the address of which he had given to his employer. That would certainly be considered as the man having been given a reasonable opportunity. Such a thing always happens in a court of law or under the company law. If a shareholder is served with a notice at the registered place of his residence it is supposed to be enough. So I submit that I cannot possibly conceive of any difficulty in regard to the government servant being served with a notice if an adverse order is to be passed against him.

Clause (3) which I seek to delete must necessarily be deleted if my amendment seeking deletion of proviso (b) is accepted.

Besides, clause (3) is very drastic, for it seeks to make final the decision of the authority dismissing or otherwise punishing a government servant; on the question as to whether it is reasonably practicable or not to give notice. There is to be no appeal even against this decision. This makes the implications of sub-clause (b) of clause, (2) worse still.

One word more with regard to proviso (c). The implication of this is that whenever the President, the Governor or the Ruler is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity, no such opportunity need be given. Even in the case of political offenders, where a person is deprived of his liberty, the Government, as we know very well by our own experience, does inform the person who is being detained as to under what circumstances and for what reason he is detained. An opportunity is given to him to show cause why such an order should not be passed or confirmed. But under this sub-clause, if a government servant is dismissed, removed or reduced no such opportunity need be given to him. I do not see any reason why the government servant should be deprived of this elementary right of his. If we want our government servants to work efficiently, if we want our government servants to remain happy and contented, if we want them to work with a sense of security, it is absolutely necessary that we must provide that no order will be passed against them unless a reasonable opportunity has been given to them to show cause why they should not be punished or Penalised.

Mr. President : I desire to tell honourable Members that I propose to finish at least up to article 245 in the course of this day, that is before lunch, and I would therefore seek the co-operation of honourable Members. The amendments are more or less obvious and their effect is perfectly clear. So, long speeches are not required either in favour or against the amendments. I would therefore ask honourable Members to confine themselves to moving the amendments and not to speak for more than two minutes, if they at all wish to speak.

Pandit Thakur Das Bhargava (East Punjab: General) : Sir, I may be permitted to move my amendment Nos. 239, 244 and 245.

I beg to move

“That in sub-clause (a) of the proviso to clause (2) of the proposed new article 282 B, after the word ‘conduct’ the words ‘involving moral turpitude’ be inserted.”

Or, alternatively.

“That in sub-clause (a) of the proviso to clause (2) of the proposed new article 282 B, after the word ‘charge’ the words ‘involving moral turpitude’ be inserted.”

I also beg to move :

“That in sub-clause (b) of the proviso to clause (2) and in clause (3) of the proposed new article 282 B, for the word ‘practicable’ the word ‘possible’ be substituted.”

I further beg to move :

“That in sub-clause (c) of the proviso to clause (2) of the proposed new article 282 B, for the words ‘is satisfied’ the word ‘certifies’ be substituted.”

In regard to these I need not take much of the time of the House. As regards amendment 239, it is obvious that there are many cases in which convictions take place in courts which do not afford sufficient ground for the removal of such persons. If the clause stands as it is, and unless the words I suggest are inserted, every conviction will earn a dismissal or removal of a public servant, and that is not satisfactory. I know that there are cases of persons who are convicted on the basis of conscientious objections, for instance if they do not resort to vaccination. There are cases of negligence. There are many cases in which there is no question of moral turpitude involved. The public conscience will be shocked if on a mere conviction a public servant will be discharged or dismissed. My humble submission is that in regard to these cases, the cases may be decided on merits. I hold that even an acquittal order may be tantamount in a particular case to conviction. A man may be acquitted on a technical ground but on matters of fact the judgment may be one of conviction. Again if it is an order of conviction on technical grounds but as a matter of fact one of acquittal, it is but meet that the person should not be subjected to dismissal or removal. In these circumstances I beg the House to accept my amendment so that honest persons may be saved and dishonest persons may be punished as the occasion arises.

In regard to my amendment No. 244, it is true as my Friend Mr. Jaspat Roy Kapoor has complained before you that what is given by one hand is taken by the other. This is a balanced set of rules and the balance should not be tilted in favour of the employer or the employee, As it stands the provision which is contained in 282 B is quite fair. But at the same time we should see that in practice it does not work any hardship. Therefore I propose that instead of the word “practicable” the word “possible” may be there. In ordinary cases it would happen that whenever it is possible, all attempts should be made to see that the person is served with notice to show cause. Not to allow him to appear before you and show cause is not fair. To prevent abuses of the “practicability” of his being afforded an opportunity to show cause, I have said that where it is reasonable “possible” be should be allowed an opportunity. This would as a matter of fact ensure a proper opportunity for every public servant.

Similarly in regard to amendment 245 I want to submit a word. As it is, the words used here are “is satisfied”. We know how the words “satisfaction” and “satisfied” are interpreted. In fact it is not the satisfaction of the President at all. The satisfaction is generally of the Minister in charge. It is not even of the Minister in charge but of some Secretary or Under Secretary. Therefore, as a measure of precaution I want to substitute the words “is satisfied” by the word “certifies”, so that when the certificate is made fun caution is exercised. Before the certificate is given the mind of the Minister in charge or the President is brought to bear on the question at issue. If the word “certifies” is there the relevant authority would certainly think twice before certifying. But if the word “satisfied” is there and this satisfaction is at the back of the public servant, then the protection afforded to him is obscure and illusory.

Mr. President : In amendment No. 240 by Mr. Naziruddin Ahmad there are three parts. The first part is covered by Pandit Thakur Das Bhargava's amendment 239. The second part is covered by amendment 10 which has been moved by Mr. Jaspat Roy Kapoor. Only the third part which seeks to delete sub-clause (c) is not covered by any of the amendments moved.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Yes, Sir, that exactly is the position. But though the first part of my amendment is identical in purpose with Pandit Thakur Das Bhargava's amendment there is some verbal difference. Therefore, with your permission I shall move the first part also.

Mr. President : Very well.

Mr. Naziruddin Ahmad : Sir, I move:

'That in the proviso to clause (2) of the proposed new article 282- B,—

- (i) in sub-clause (a), for the words "on the ground of conduct which has led to his conviction on a criminal charge" the words "on the ground that he has been convicted of an offence involving moral turpitude" be substituted; and
- (ii) sub-clause (c) be deleted."

As regards my other amendment, No. 246, for the deletion of clause (3), that has already been covered by Mr. Jaspat Roy Kapoor's amendment No. 10 and so I need not move it.

Sir, I submit that this article is very important and it affects the welfare of a large number of government servants. As regards higher government servants I submit that they are more than well protected. They are influential, and they can take care of themselves and any injustice to them will be rare and may be rectified. But with respect to a large number of middle class public servants rotting in the districts and in the sub-divisions, in out of the way Places and also in higher places, the injustice to them might be very great. So I submit that the House should carefully consider the provisions which would affect them and which may result in serious injustice to them.

Clause (2) of this article says that no officer shall be removed or reduced or dismissed until an opportunity has been given to him to show cause against any proposed order. Then comes the proviso. The proviso, I submit, takes away literally all the safeguards which are purported to have been given in the body of clause (2). The first proviso is that no opportunity need 'be given to show cause if the man has been discharged or dismissed on account of a criminal conviction. My honourable Friend Pandit Thakur Das Bhargava has already clearly explained that the conviction should be a conviction for an offence involving moral turpitude. There are various offences like assault, trespass, technical defamation and similar things which are compendiously described as offences not involving moral turpitude. In all such cases if the office master tries to drive him off, all that we ask for is that he should be given an opportunity to show cause.

The Honourable Dr. B. R. Ambedkar (Bombay: General) : There is no amendment to delete clause (3). Your amendment is only to delete subclause (b).

Mr. Naziruddin Ahmad : Yes, I have given notice of this amendment too. *See* amendment No. 246.

The Honourable Dr. B. R. Ambedkar : There is an amendment by Mr. Jaspat Roy Kapoor to delete clause (3) of 282 B

Mr. President : There is an amendment by the Honourable Member (Mr. Naziruddin Ahmad) also.

The Honourable Dr. B. R. Ambedkar : He can go on; I merely wanted to draw his attention.

Mr. Naziruddin Ahmad : I have given notice of an amendment to delete clause (3) but I did not move it because that has already been moved by Mr. Jaspat Roy Kapoor. Dr. Ambedkar was probably engaged in more interesting conversation than listening to the point I made as to why I was not moving it.

Sir, the proposal has already been made for the deletion of clause (3). It was made by my friend Mr. Jaspat Roy Kapoor. He has already moved it and as you referred to the matter and gave me directions I did not seek to move it because it was unnecessary.

This proviso is extremely important. With regard to proviso (a) the condition is that the officer or public servant need not be given any opportunity to show cause if he is removed, discharged or reduced in rank on account of a conviction in a criminal case. But a conviction in a criminal case does not necessarily involve moral turpitude. There is many an important man who would assault people on provocation; on almost a justifiable cause, but he may be convicted; that does not in the least affect his moral or intellectual qualities or in the least make him unfit for Government service. In a case where he is convicted of an offence involving moral turpitude, of course the usual safeguard of giving him an opportunity need not be provided. But I wish to restrict myself to the proviso (a) dispensing with the necessity of giving opportunity to show cause to be confined to offences involving moral turpitude where the conviction will be conclusive and no explanation need be taken.

Mr. Jaspat Roy Kapoor has clearly explained why opportunities should always be given. What is the meaning of the expression, "it is not reasonably practicable to give" him notice? In fact, a man in office can easily be available for serving the notice. If he runs away, he would be dismissed on that ground alone. If he is on leave, he has a notified address and the notice can be sent to that address. All that I want is that an opportunity should be given. An opportunity is a great thing and sometimes an explanation might reveal strong points in the delinquent's case and might help him. To refuse to give an opportunity is to refuse justice.

Then, Sir, my amendment which is not already covered by other amendments is the deletion of clause (c) of this proviso. This I consider to be very important. Clause (c) runs thus :—

"where the President or Governor or Ruler, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give to that person Such an opportunity".

The expression "security of the State" which is so dear to the heart of everyone is a much exploited expression and has been needlessly over-emphasised in proviso (c). I quite concede the need for ensuring the security of the State. But I utterly fail to see how, when a Government officer is reduced or dismissed, any opportunity given to him to show cause why he should not be dismissed or otherwise dealt with is really going to affect the "security of the State". All that I want is that he should be, given an opportunity. If an officer is very undesirable and undermines the security of the State—if his activities are dangerously undesirable in this respect—he may be kept in detention; even then it cannot affect the security of the State to give him an opportunity to explain; if his conduct is otherwise bad and affects the security of the state, there are ample powers to deal with him, but that could be no justifiable or reasonable cause for refusing to give him an opportunity to explain. I think, Sir, the expression "security of the State" is fantastically out of the question in a matter like this. Security of the State can never be affected by giving, anyone an opportunity. If the man is in detention you can send him a notice in the prison and he can send the explanation and no harm would be caused in considering the explanation. What is the harm in doing him justice? He may

[Mr. Naziruddin Ahmad]

be dangerous to the security of the State—for that adequate provisions have been made and he can be adequately dealt with. But we are concerned with the security of the services. We are considering whether opportunity should be given to them. If we say that it is the opinion of the Governor or the President that the man is so dangerous that he should be dismissed on that ground, it is a different matter. But when he is being dismissed or reduced in rank not on the ground that he is a danger to the security of the State, then the security of the State is attempted to be made a ground for refusing to give him an opportunity to explain his alleged misconduct or shortcoming.

I think no purpose will be gained by introducing this imposing expression “security of the State”. At this expression everyone will jump up and cry out—“security of State, security of State, security of State”. I submit that if the security of India would be seriously affected by giving an officer opportunity to show cause, if the security of India is based on this, I think there is no security in India must be dangerously insecure if her security is based upon a refusal to give an opportunity to an humble officer. What happens in such cases is that men are dismissed by higher officers on insufficient cause, sometimes on bias and not always with a sense of impartiality. We hear of these things; these things are not published in the Press nor are they subject matters of Council questions, but these things happen, in fact they are very widespread. An opportunity to show cause would place on record the delinquent’s version; nothing will be lost but much will be gained by allowing him to put on record his reason. An officer who dismissed him may be biased, but a superior officer may read his explanation and do him justice. It is provided that the decision of the officer dismissing him would be final. Nothing could be more improper than giving the higher officer an arbitrary power. In fact, the officer himself is the complainant, he is the judge and he is the final appellate authority. There is no point in questioning his authority. Clauses (a) and (b) of this proviso were taken from the proviso to section 240 of the Government of India Act, 1935. In those settings this was highly proper; there was the imperialistic Government, they would dismiss anyone they liked and any opportunity to explain would be refused. But we are living in a free India. We must take care to safeguard the rights and liberties of our poor, humble officers; they are the middle classes and they require protection. So, whatever may be the justification for retaining these clauses (a) and (b) in the Government of India Act, in free India there cannot be any such a thing. We should be more open to conviction, we should give more opportunities to show cause we are bound to give them an opportunity to show cause. If reasonable opportunity is not given, I think there is no sense of security.

Sir, these amendments should be taken into consideration carefully as they will affect these officers who would be entirely at the mercy of their dissatisfied superiors; they require Sufficient protection. All the protection is merely nominal, it is merely psychological. You must give an opportunity to show cause. These clauses of the proviso cannot be given effect to and they should be deleted. With regard to proviso (a) it should be seriously modified so as to reduce it to cover offences involving moral turpitude.

Sir, I have taken a little more time than I should have but I bow down to your ruling that we should cut down our speeches to the minimum and I give my assurance that I shall cut down my speeches to the minimum.

Mr. President : Amendment No. 241. Mr. Shibban Lal Saksena. Both 241 and 242 are covered by amendments already moved.

Prof. Shibban Lal Saksena (United Provinces: General): I want to speak, Sir.

Mr. President : Not now. Then, amendment, No. 243, Mr. Kamath. Your amendment also is covered by the one already moved.

Shri H. V. Kamath (C.P. & Berar: General): Not the whole of it. The alternative is not covered.

Mr. President : All right. I want to be strict in regard to the time-limit on speeches.

Shri H. V. Kamath : But in view of the importance of the subject some latitude may be shown. If I am found to repeat myself you may pull me up.

Mr. President : The honourable Member need not read out his alternative to amendment No. 243.

Shri H. V. Kamath : My amendment runs:

“(a) That in the proposed new article 282 B, in sub-clause (b) of the proviso to clause (2), for the words ‘that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause’ the words, on grounds to be recorded in writing, that the whereabouts of that person are unknown’ be substituted;

(b) That in the proposed new article 282 B, sub-clause (c) of the proviso to clause (2) be deleted;

(c) That in the proposed new article 282 B, clause (3) be deleted.”

May I humbly add my feeble voice to the protest that has been raised in the House by several honourable Members against the injustice that has been sought to be embodied in this article ? We have proclaimed in the Preamble to the Constitution that Justice shall be the Pole Star or the lode-star of our Constitution. We have given pride of place in the Preamble to our ideal that Justice, social, political and economic, shall be meted out to all. I hope we shall not deny any class of people, public servants or others, the fundamental justice that is their due. I was wondering whether, after all, these articles 282 A, 282 B and 282 C are at all necessary to be embodied in our Constitution. I was wondering whether in this House are sitting as mere lawyers framing Fundamental Rules for civil servants or a Civil Service Manual, or whether we as a free people, after the attainment of freedom, are busy drafting a Constitution for a free people—a Constitution illumined by the ideals of liberty, equality, and justice. These articles are reminiscent or redolent of the Civil Service Manual. There is no need for these articles in the Constitution. No Constitution any where in the world includes such rules. Our Drafting Committee has taken the Government of India Act, 1935, as a guide, to draft a Constitution for a free country. I am sorry for it. My friend Mr. Naziruddin Ahmad pointed out how iniquitous it is to copy in our Constitution the provisions of the Government of India Act with regard to the Civil Services. This, to say the least, is a blot on our escutcheon and denial of the Justice which we have proclaimed to the world in the Preamble of our Constitution. I would only say that if we adopt this article as it is, I warn the House that the services will have no heart in their work; they will get demoralised and they will not be efficient. There will always be, hanging over their heads, this sword of Damocles. When will it fall, when will a whimsical or a vindictive Minister let it fall?

Mr. President : The honourable Member has taken more than three minutes already.

Shri H. V. Kamath : I will not take more than five minutes. I am not speaking on any other article today.

Mr. President : Finish your peroration.

Shri H. V. Kamath : It is no peroration, Sir, If however you deem it so, I have nothing to say.

Sir, I was saying that the public services, with this sword hanging over their head, will not put their heart into their work. A capricious Minister might any day dismiss or remove a civil servant without serving a notice asking him to show cause. Of course the article mentions the President or Governor; but it means the Minister or the Council of Ministers. A Minister might take it into his head to inform a public servant, thus : “In the interests of the security of the State, I hereby take action against you. You are removed from service”. This is most unfair to anybody, not to say a civil servant.

About sub-clause (b) I think the attention of the House has been drawn by Pandit Thakur Das Bhargava or Mr. Naziruddin Ahmad that the only circumstance in which it will not be possible to serve a notice upon a public servant asking him to show cause is when his whereabouts are unknown. As that is the case, I have moved my alternative amendment (a) to the effect that for the words “that for some reason to be recorded by that authority in writing, it is not reasonably practicable etc., etc.” the words ‘on grounds to be recorded in writing, that the whereabouts of that person are unknown’ be substituted. This is the only circumstance when it would not be possible to serve a notice on a public servant. The two lacunae in this article are, firstly, that a person, according to (b) and (c) could be summarily removed without any opportunity being given him to show cause. If it is not practicable, I would like the authority to record in writing that the whereabouts are unknown. If otherwise it is obligatory on the State to ask him to show cause, (c) must be deleted. It is grossly unfair to summarily dismiss any man without giving him an opportunity to explain. Even detenus in jails, during the last war you will remember, Sir, were informed of the grounds of detention and given an opportunity to make their representations in writing. This has been proposed to be denied to Government servants who form an important part of the machinery of the State.

There is another point on which I would say a few words. There is no right of appeal specifically mentioned in the article.. I feel that every public servant before he is removed must be given not only an opportunity to show cause why he should not be removed, but also the right of appeal against any such order before he is finally removed.

Mr. President : The honourable Member has taken eight minutes.

Shri H. V. Kamath : Unfortunately, Sir, . . .

Mr. President : He should not take advantage of my indulgence.

Shri H. V. Kamath : I am concluding my speech. If unfortunately this article is adopted without amendment, I feel that public servants, whether of the Union or of the States, who are so important to an efficient administration will be reduced to the position of virtual slaves or serfs. I for one shudder to think what will happen to our administration if that situation develops. I commend my amendments. Sir . . .

Mr. President : Amendment No. 247.

Shri H. V. Kamath : I am concluding, Sir.

Mr. President : I have already called upon the mover of the next amendment to move it.

Shri H. V. Kamath : I am sorry you are, over-strict today.

Mr. President : I am sorry you are taking advantage of my leniency. Amendment No. 247, Shri Munavalli.

Shri B. N. Munavalli (Bombay States) : Sir, I move:

“That in clause (3) of the proposed new article 282B, for the word ‘If’, the words ‘if, on the application of the person, so affected,’ be substituted.

(2) That in amendment No. 2 of list 1, 7th week, in clause (3) of the proposed new article 282 B, for the words ‘any person’ the word ‘him’ be substituted.”

If this is not done, the question may be raised by the relatives of the person to whom a notice has not been given under 282 B (2) (b), or his friends may raise the question or, if any organisation of employees is in existence, it will raise that question. So according to this clause there is Wide scope. The purpose of my amendment is to restrict that scope to the person who has been affected. It is only that person that should raise this question so that it may be dealt with according to law. The general principles embodied in this article can be seen to exist in the laws of the various nations. Even in the U.S.A. it has been established that there should be permanency of tenure. In Great Britain also by tradition the permanency of tenure has become so firmly entrenched that it is not possible for any new Ministry to assail it. All these provisions have been substantially embodied in this article. Some of the honourable Members said that what has been provided in this article has been taken away by the proviso. Sir, it is not so. To my mind it seems that the proviso is applicable only in the case of those civil servants whose loyalty is very doubtful. There are civil servants whose political affiliations are open to criticism and whose loyalty to the existing government is doubtful. Under those circumstances there is no other course but to deal with them according to this proviso. Such laws can be traced in the history of other nations also. For example in 1933 when the National Socialists came to power in Germany they promulgated a Civil Service Law whereby it was provided that those civil servants whose political affiliations were questionable and open to criticism could be discharged or reduced in rank. So also those that came out openly in an aggressive manner against the existing government were severely dealt with. Similarly in our country also, for dealing with those civil servants whose loyalty is questionable and who come out openly in an aggressive manner against the government, there must be some proviso, so that the heads of departments could properly deal with them. Therefore I am of opinion that this proviso should exist and I support the provisions of this article wholeheartedly.

Mr. Mahboob Ali Baig (Madras: Muslim): Mr. President, Sir, it is to be regretted that this important question which involves millions of public servants should have been brought before us when we are very much pressed for time. Anyway, the President has been kind enough to allow us to move amendments in this regard. Sir, I move.

“That in clause (2) of the proposed new article 282 B, after the words ‘aforesaid shall be’ the word ‘suspended’ be inserted.”

“That in sub-clause (a) of the proviso to clause (2) of the, proposed now article 282 B, the following be added:—

“for offences of bribery, corruption or treason, or offences involving moral delinquency.”

Then 325.

Mr. President : That is already covered.

Mr. Mahboob Ali Baig : Amendment Nos. 325, 326 and 327 have already been moved, but I will comment on them. Then amendment No. 328. Sir, I move :

“That the following new clause be added at the end of the proposed new article 282 B :—

“The Parliament, in the case of Union services, and the Legislature of the State, in the case of State services, shall lay down rules and regulations in this behalf to be followed by the appropriate authority.”

Under article 282A a public servant holds his office during the pleasure of the President or the Governor as the case may be. The legal implication is that a public servant when he has been dismissed or removed, cannot claim to be restored through a court. That is the legal implication. So, it has become very necessary for us to provide safeguards which must be, adequate, fair and just, in order that the services may feel secure in their tenure of office, on which depends the welfare of the State and of the administration which is so necessary. Now, Sir, this article 282 B seeks to provide such safeguards. Let us see whether they are adequate, fair and just. That is the question before us when we are discussing this 282B. My first amendment, No. 323, proposes that a public servant cannot be suspended without being given an opportunity to show cause why he should not be suspended. The punishment of suspension is a severe one and a serious one. That is my proposal, Sir, as far as 323 is concerned.

My amendment No. 324 refers to sub-clause (a) of the proviso to clause (2). What I propose is that where a person is dismissed, removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge, then no opportunity need be given to the public servant for showing cause why he should not be dismissed or removed. It has already been argued by many honourable Friends who came before me that a man may be convicted and sentenced for offences which do not involve either a dereliction of duty as a public servant or for any offence involving moral turpitude or moral delinquency and such cases have been cited also. But I have added two or three instances also such as “for offences of bribery, corruption, or treason or offences involving moral delinquency”. The circumstances in which a public servant may have been convicted or sentenced in these cases are of a very serious nature and when he has been so convicted, he should not be given an opportunity. That seems to be fair; but if you state that he was convicted for any offence before a criminal court, then he need not be given any opportunity, it is too sweeping a circumstance and therefore, Sir, I submit that the amendment, as drafted by the Drafting Committee may be amended as I have suggested.

I have purposely added the word “treason” for this reason. Clause (c) perhaps contemplates all cases where a person may be suspected of being disloyal and that a public servant is disloyal cannot be proved, it may be argued. It may also be true that there may be mere allegations against him. I submit that either you give an opportunity to him to prove that he is not disloyal or if he is tried by a court of law and found to be treasonable or disloyal, then he need not be given an opportunity. Beyond that it is not fair that he should not be given an opportunity to prove that he is disloyal and therefore he should be dismissed.

Now, Sir, with regard to clause (b) it has been argued by my honourable friends that we cannot conceive of cases where you cannot serve a notice upon him and a reasonable opportunity cannot be given to him. I do not know why such a clause has been introduced unless it be to facilitate the work of the inquiring officer when a delinquent has absconded and is not to be found anywhere. For that there is the, procedure which can be easily followed. I do

not see any reason why this clause should be there. With regard to (c), it is very unfortunate that this clause has been introduced. Even the Government of India Act, section 240, does not mention any provision of this kind. Where a foreign Government, a bureaucratic Government has not found it necessary.

Mr. President : The honourable Member is only repeating what has been said by more than one member. He can confine himself to amendment No. 328.

Mr. Mahboob Ali Baig : I consider that sub clause (c) is not only unnecessary but it is retrograde, and ought to be deleted.

Now with regard to clause (3) also I might mention that such a clause also does not find a place in section 240 of the Government of India Act. The reason for this may be that clause (b) states as follows :—"Where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied". This itself was quite enough. So perhaps it is not necessary to have introduced clause (3) here.

Then my amendment No. 328, I submit, is very necessary. The reason is that, as we know, these rules and regulations are framed not by the legislature but by the Government. I want that these rules and regulations should be framed by the legislature and not by the Governments concerned. The safeguards that you can provide.

Shri T. T. Krishnamachari (Madras : General) : If the honourable Member refers to article 282, he will find what he wants there.

Mr. Mahboob Ali Baig : So what I want is that in the absence of the help of the court in the case of persons sought to be removed you must provide very adequate, fair and just safeguards and those safeguards must be very clear and they must be made by the Parliament or the legislature to be followed by the appropriate authority. The words "reasonable opportunity" have no meaning at all. We have known many cases where the Government servants go to a court after being removed and they are told by the court that it has no jurisdiction at all because they are holding service during the pleasure of the Crown. The only way in which the Court can safeguard the rights of the person who goes to a court is to see what is a "reasonable opportunity" whether the procedure laid down by the Government, laid down by the legislature has been followed satisfactorily by the appropriate authority before dismissing him. It is only in those circumstances the Court can say whether the "reasonable opportunity" has been given to the person aggrieved and then come to his rescue. Even then he cannot be rescued or restored at all, but compensation only can be, granted to him. I am not only referring to the remedy that he may have before the court; but in order that he may feel secure, that he might have confidence in his office, it is necessary that these rules should be framed and the authorities concerned should follow them strictly. Though it is stated "if any question arises whether it is reasonably practicable to give notice to any person under clause (b)", you have not provided in clause (3) any appellate authority to find out whether the reasons given by the appropriate authority, that he is satisfied that it is not reasonably practicable to give notice are sound. It is the person who dismisses the Government servant who has to decide whether it is reasonably practicable to, give notice or not. You have not provided that some appellate authority should examine the matter and come to the conclusion that the appropriate authority who refused to give a reasonable opportunity is really right in having dismissed a Government servant without notice. If you say that the legislature might provide, for that, you might make it clear even now when we are dealing with this matter.

Therefore, Sir, my submission is that while the article makes an attempt to provide safeguards, in my considered view they are not adequate, fair and just

[Mr. Mahboob Ali Baig]

and it is necessary that in order to safeguard the interests of these millions of Government servants on whose efficiency and honesty our administration depends, these amendments of mine should be accepted.

(Amendment No. 367 was not moved.)

Prof. Shibban Lal Saksena : Mr. President, Sir, while carefully listening to the debate, I have been wondering whether the removal of this article from this Constitution would not be better than putting it in this form. In fact there is the fundamental principle that no man shall be condemned unheard. What we are laying down here is that some persons can be condemned unheard. If this article is removed, at least everybody could go to a court of law and say "I will be heard before I am punished." I know Dr. Ambedkar has introduced this article, not because of the provisos, but because of the fundamental principle involved in it that he wants to guarantee to the people in Government service that they shall not be removed from service or punished unless they are heard. But I say, Sir, that the provisos have ruined the whole thing. In fact under clause (a) even Pandit Jawaharlal Nehru, yourself and probably half of the House would all be liable to be dismissed because of our conviction on criminal charges during Satyagrah movement which did involve moral turpitude. I hope, Sir, the amendment of Pandit Thakur Dass Bhargava, of which he has given notice, will be accepted.

About clauses (b) and (c), I cannot see how the mere giving of an occasion or an opportunity to show cause would be dangerous. You are not giving anybody an assurance that that explanation will be accepted. What I want is that these sub-clauses (b) and (c) must be removed. It is said that there are Communists in service whom it is necessary to remove and therefore this clause is necessary. It is said that it will be difficult to give an opportunity to show cause. I say, Sir, that by putting this clause in the Constitution, you are going to make the services a communist nest. I am not afraid of communism or their philosophy. By this clause, you are only making the people labour under a sense of injustice and grievance that they have not been heard. That is the feeling which in fact infects the people with disaffection and disloyalty. I therefore think that for the sake of seeing that the services are satisfied, you must give them an opportunity to be heard. I do not say that you must always accept their explanation; but they must have an opportunity to explain. I hope Dr. Ambedkar will accept the amendment.

Shri T. T. Krishnamachari : I move, Sir, that the question be now put.

Mr. President : Closure has been moved. The question is:

"That the question be now put."

The motion was adopted.

Mr. President : I shall now put the amendments to vote. Dr. Ambedkar, do you wish to say anything ?

The Honourable Dr. B. R. Ambedkar : I should like to say one or two words, Sir.

As I listened to the criticisms made by the various speakers who have moved their amendments, I have come to the conclusion that they have not succeeded in making a clear distinction between two matters which are absolutely distinct and separate : these matters are grounds for dismissal and grounds for not giving notice. This article 282-B does not deal with the grounds of dismissal. That matter will be dealt with by the law that will be made by the appropriate legislature under the provisions of article 282. In what cases a person appointed to the civil service should be dismissed from service would be a matter that would be regulated by law made by Parliament. It is not the purpose of this article 282-B to deal with that matter.

This article 282-B merely deals with, as I stated, the grounds for not giving notice before dismissal so that a person may have an opportunity of showing cause against the action proposed to be taken against him. The purport of this clause is to lay down a general proposition that in every case notice shall be given, but in three cases which have been mentioned in sub-clauses (a), (b) and (c), notice need not be given. That is all what the article says. It has been, in my judgment, a very wrong criticism which has been made by my honourable Friend Mr. Kamath that this article is a disgrace or a shame or a blot on the Constitution.

Shri H. V. Kamath : (*interruption*)

The Honourable Dr. B. R. Ambedkar : I should have thought that that was probably the best provision that we have for the safety and security of the civil service, because it contains a fundamental limitation upon the authority to dismiss. It says that no man shall be, dismissed unless he has been given an opportunity to explain why he should not be dismissed. If such a provision is a matter of disgrace, then I must differ from my honourable Friend, Mr. Kamath in his sense of propriety.

Shri H. V. Kamath : I am referring to the provisos to the article.

The Honourable Dr. B. R. Ambedkar : I am coming to the provisos.

So far as clause (2) is concerned, I have no doubt in my mind that everybody who has got commonsense would agree that this is the best proviso that could have been devised for the protection of the persons engaged in the civil service of the State. The question has been raised that any person who has been convicted in any criminal case need not be given notice. There, again, I must submit that there has been a mistake, because, the regulations made by a State may well provide that although a person is convicted of a criminal offence, if that offence does not involve moral turpitude, he need not be dismissed from the State service. It is perfectly open to Parliament to so legislate. It is not in every criminal charge, for instance, under the motoring law or under some trivial law made by Parliament or by a State making a certain act an offence that that would necessarily be a ground for dismissal. It would be open to Parliament to say in what cases there need not be any dismissal. It would be perfectly open to Parliament to exclude political offences. This clause in so many words merely deals with the question of giving notice. Parliament may exempt punishment for offences of a political character, exempt offences which do not involve moral turpitude. That liberty of the Parliament is not touched or restricted by sub-clause (a). I want to make this clear.

With regard to sub-clause (b), this has been bodily taken from section 240 of the Government of India Act. I think it will be agreed that the object of introducing, section 240 of the Government of India Act was to give protection to the services. Even the British people who were, very keen on giving protection to the civil services, thought it necessary to introduce it proviso like Sub-clause (b). We have therefore not introduced a new thing which had not existed before. With regard to sub-clause (c), it has been felt that there may be certain cases where the mere disclosure of a charge might affect the security of the State. Therefore it is Provided that under sub-clause (c) the President may say that in certain cases a notice shall not be served. I think that is a very salutary provision and notwithstanding the obvious criticism that may be made that it opens a wide door to the President to abrogate the Provisions contained in sub-clause (2). I am inclined to think that in the better interests of the State, it ought to be retained.

[The Honourable Dr. B. R. Ambedkar]

Coming to clause (3), this has been deliberately introduced. Suppose, this clause (3) was not there, what would be the position ? The position would be that any person, who has not been given notice under sub-Clauses (a) or (b) or (c), would be entitled to go to a court of law and say that he has been dismissed without giving him an opportunity to show cause. Now, courts have taken two different views with regard to the word 'satisfaction' : is it a subjective state of mind of the officer himself or an objective state, that is to say, depending upon circumstances ? It has been felt in a matter of this sort, it is better to oust the jurisdiction of the court and to make the decision of the officer final. That is the reason why this clause (3) had to be introduced that no Court shall be able, to call in question if the officer feels that it is impracticable to give reasonable notice or the President thinks that under certain circumstances notice need not be given.

Now, another misapprehension which I should like to clear is this. Some people think that under the provisions regarding civil service which I have introduced the Government has an absolute unfettered right to dismiss any civil servant and that this power is aggravated by the introduction of sub-clauses (a), (b) and (c) of clause (2). I submit that again is a misapprehension because under the provisions relating to Public Service Commission which we have passed already there is a provision that every civil servant who is aggrieved by any action taken by any officer relating to the conditions of service will have a right of appeal to the Public Service Commission. Therefore, even in cases where the Government has not given the officer an opportunity to show cause, even such an officer will have the right to go to the Public Service Commission and to file an appeal that he has been wrongfully dismissed contrary to the provisions contained in the rules made relating to his service. I, therefore, think that the apprehensions which have been expressed by honourable Members with regard to the provisions contained in this article are entirely misfounded and are due to misunderstanding of the provisions of this Act, the provisions of article 282 and the provisions relating to Public Service Commission.

Mr. President : The question is:

"That in the proposed new Article 282-B clause (1), for the words 'by an authority subordinate to that by which he was appointed' the words 'except by an order of the Union Public Service Commission, or, as the case may be, by the State Public Service Commission' be substituted."

The amendment was negatived.

Mr. President : The, question is :

"That in the proposed new article 282- B, in paragraph (b) of the proviso to clause (3) for the words 'Where an authority empowered to dismiss a person or remove or reduce him in rank' the words 'If the Union Public Service Commission, or, as the case may be, the State Public Service Commission, be substituted.'"

The amendment was negatived.

Mr. President : The question is:

"That sub-clause (b) of clause (2) of the proposed new article 282-B be deleted."

The amendment was negatived.

Mr. President : The question is:

"That clause (3) of the proposed new article 282-B be deleted."

The amendment was negatived.

Mr. President : The question is:

“That in sub-clause (a) of the proviso to clause (2) of the proposed new article 282-B, after word ‘conduct’ the words ‘involving moral turpitude’ be inserted.”

The amendment was negatived.

Mr. President : The question is:

“That in sub-clause (a) of the proviso to clause (2) of the proposed new article 282-B, after the word ‘charge’ the words ‘involving moral turpitude’ be inserted.”

The amendment was negatived.

Mr. President : The question is :

“That in the proviso to clause (2) of the proposed new article 282-B, sub-clause (c) be deleted.”

The amendment was negatived.

Mr. President : The question is :

“That in the proposed new article 282-B in sub-clause (b) of the proviso to clause (2) for the words ‘that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause’ the words ‘on grounds to be recorded in writing, that the whereabouts of that person are unknown’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in sub-clause (b) of the proviso to clause (2) and in clause (3) of the proposed new article 282-B for the word ‘practicable’ the word ‘possible’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That in sub-clause (c) of the proviso to clause (2) of the proposed new article 282 B, for the words ‘is satisfied’ the word ‘certifies’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That in clause (3) of the proposed new article 282 B, for the word ‘If’, the words ‘if on the application of the person, so affected,’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in clause (3) of the proposed new article 282 B for the words ‘any person’ the word ‘him’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in clause (2) of the proposed new article 282 B, after the words ‘aforesaid shall be’ the Word ‘suspended’ be inserted.”

The amendment was negatived.

Mr. President : The question is :

“That sub-clause (a) of the proviso to clause (2) of the proposed new article 282-B. The following be added —

‘for offences of bribery, corruption or treason or offences involving moral delinquency’.”

The amendment was negatived.

Mr. President : The question is :

“That the following new clause be added at the end of the proposed new article 282 B :-

“That Parliament, in the case of Union services, and the Legislature of the State, in the case of State services, shall lay down rules and regulations in this behalf to be followed by the appropriate authority.”

The amendment was negatived.

Mr. President : I put the original amendment of Dr. Ambedkar-Article 282- B

The question is:

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

The motion was adopted.

Article 282- B was added to the Constitution.

Article 282- C

Mr. President : We go to 282- C

Shri Brajeshwar Prasad : Sir, I move:

“That in clause (1) of the proposed article 282 C the words ‘if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do’ be deleted and after the words ‘other provisions of this Chapter’, the words ‘the Union Public Service Commission shall’ be inserted.”

The whole aim of Article 282 C is to protect the Federal foundations of this Constitution. Therefore this power has been given to the Upper Chamber. They have the right to take the initiative in the matter and the Lower House has no power in this respect. Secondly, not only they have this power of moving this resolution but something like a veto power has been given to them. A resolution must be passed by two-third members of the House. I do not see any reason why the Federal foundations of this Constitution should be protected. Our constitution is not merely federal in character but it is also unitary in character. There is no reason why the unitary foundations of this Constitution should not be protected. Federal Government tends towards unitary type of Government. It would be wrong on our part to put the hands of the clock back. I am in favour that all services in the country should be centralised and I am convinced that there are no classes of persons in this country who are champions of Federal rights.

Let me place my ideas in this connection. Who are the people in this country who want to protect the federal sentiments ? I come to the industrial workers in this land. Sir, Karl Marx had the vision to see that the industrial workers are international minded. Circumstanced as they are today in this world there is no course left open to them but to become champions of internationalism. Therefore these industrial workers are not at all in any way champions of local rights.

Mr. President : All this is quite irrelevant to the amendment.

Shri Brajeshwar Prasad : The whole aim of this article is to protect the Federal Constitution or else there is no meaning in giving this power. I want to deal with the theoretical foundations of this Constitution. If you want me to speak only on the provisions and not to deal with the philosophical background I am quite prepared to do so.

Mr. President : I think you had better confine yourself to the amendment tabled by you instead of talking of the background.

Shri Brajeshwar Prasad : Well, Sir, there is no danger if this power is vested in the hands of Parliament instead of vesting this power in the Upper Chamber because thereby you give the power to the Central Ministry, and no Ministry in its senses would resort to a process of centralisation of services unless a need has been felt for it and unless it has developed the technical resources for that purpose. The other part of the amendment says that the power to regulate recruitment and conditions of service should be placed in the hands of Parliament. I have suggested that this power should be vested in the Union Public Service Commission.

I had more to say, but since you Sir, do not want that I should deal with the theoretical foundations of this article, I stop here.

Mr. President : Yes, because that is merely speculation. Then we come to No. 249 of Dr. Deshmukh. But that is a drafting amendment, I think. Then No. 250.

Dr. P. S. Deshmukh (C. P. & Berar: General) : They are, of a Drafting nature, and I am prepared to leave them to the drafting Committee.

Mr. President : No. 251 also is of a drafting nature.

Dr. P. S. Deshmukh; But I should like to speak on the amendments.

Mr. President : Very well, after I have finished with these. No. 368 Mr. Muniswamy Pillay.

Shri V. I. Muniswamy Pillay (Madras : General) : Sir, with your permission I move the amendment standing in my name :

“That in amendment No. 2 if List I (Seventh Week), in clause (1) of the proposed new article 282 C, after the words ‘Union and the States’ the words ‘giving equal opportunities to all unrepresented communities’ be inserted.”

This clause envisages giving power to Parliament to make laws for the creation of more all-India services coming under the Union and the States, regulate recruitment and so on, I feel it my duty to bring to the notice of the House the paucity of members of the backward communities in the services, both at the Centre and in the Provinces. Sir, due to the influences that have been exercised by some privileged communities, it was not possible for these backward communities to get their adequate share in the services. Since this clause wants to make laws for the rules and regulation of recruitment, I feel that accurate statistics must be obtained before any law is made, so as to find out the number of persons serving, belonging to the various communities in the provinces and in the Union, and to make such laws so that those people who are being left out from the services may get equal opportunities with the rest, in all the services.

Mr. President : Mr. Muniswamy Pillay, there is another provision which directly provides for that. Is it necessary to bring this here, in this roundabout fashion?

Shri V. I. Muniswamy Pillay: There is one impediment in the way. Some of my friends who spoke yesterday were referring to the knowledge of the official language. I think, Sir, since we have a clause coming later, about the language, it is not advisable that any “stick to”—should be made about the official language. But I feel that the language which at present is adopted in all the provinces should be the order of the day, until Parliament by law at a later date affirms what the language in the province and the State should be. With these words, I strongly support the amendment that has been brought forward by Dr. Ambedkar.

Mr. President : There is no other amendment to this article. You wanted to speak, Dr. Deshmukh.

Dr. P. S. Deshmukh : Sir, I support the amendment moved by my Friend Shri Brajeshwar Prasad in regard to the omission of the words:

“If the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do.”

I had intended to move a similar amendment, No. 250, but I do not propose to move it now since an identical amendment has been moved. I have been unable to understand this provision. Nowhere has the initiative, in any important matter been left to any other House except the House of the People in the Central Parliament. But here for the first time, according to my knowledge and information, we give the initiative to the Council of States. Sir, either the central services are desirable or they are undesirable. If they are desirable, then they should not be cramped with so many impediments created in the way of their being started. If they are undesirable, then there should not have been any provision whatsoever. I think, more and more there will be the tendency to have all-India services, and therefore in my opinion there was no point in making their introduction so difficult. Why should the proposal have the support of not less than two-thirds of the members present and voting of the Council of States? I think these words are absolutely unnecessary, unless they are intended to clothe the useless House of the Council of States with some dignity or some function. I think that appears to be the only anxiety at the root of this brain-wave, of giving the initiation of such an important matter to the Council of States. I see, no purpose for these words and therefore move that they be omitted.

Mr. President : Dr. Ambedkar, would you like to say anything?

The Honourable Dr. B. R. Ambedkar : Just one word. I think neither Mr. Brajeshwar Prasad nor my friend Dr. Deshmukh, the one in moving the amendment and the other in supporting it, seems to have read carefully the provisions of article 282. Article 282 proceeds by laying down the proposition that the Centre will have the authority to recruit for services which are under the Centre and each State shall be free to make recruitment and lay down conditions of service for persons who are to be under the State service. We have, therefore, by article 282 provided complete jurisdiction. 282 C to some extent takes away the autonomy given to the State by article 282, and obviously if this autonomy is subsequently to be invaded, there must be some authority conferred upon the Centre to do so, and the only method of providing authority to the Centre to run into, so to say, article 282 is to secure the consent of two-thirds of the members, of the Upper Chamber. The Upper Chamber is the only body mentioned in article 282. *Ex-hypothesi* the Upper Chamber represents the States and therefore their resolution would be tantamount to an authority given by the States. That is the reason why these words are introduced in article 282 C.

Mr. President : I put Shri Brajeshwar Prasad's amendment in two parts. The first part is this. The question is :

“That in clause (1) of the proposed article 282 C, the words ‘if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do’ be deleted.”

The amendment was negatived.

Mr. President : Then the second part. The question is:

“That in clause (1) of the proposed article 282 C after the words ‘other provisions of Chapter’ the words ‘the Union Public Service Commission shall’ be inserted.”

The amendment was negatived.

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

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

The amendment was by leave of the Assembly, withdrawn.

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

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

The motion was adopted.

Article 282 C was added to the Constitution.

Article 283

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

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

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

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

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

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

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

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

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

(No Member rose to speak.)

Then I put article 283.

The question is :

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

The motion was adopted.

Article 283 was added to the Constitution.

Article 302

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

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

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

[The Honourable Dr. B. R. Ambedkar]

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

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

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

“That in clause (4) of article 302—

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

An Honourable Member : What about 13, Sir

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Shri Alladi Krishnaswami Ayyar]

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

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

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

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

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

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

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

Mr. President : You may not accept the explanation.

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

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

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

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

Mr. President : The question is:

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

The amendment was negatived.

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

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

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

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

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

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

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

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

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

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

The amendments were adopted.

Mr. President : The question is :

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

The motion was adopted.

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

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

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

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

Mr. President : The, question is

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

The motion was adopted.

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

PART XA

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

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

“Part XA

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

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

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

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

[The Honourable Dr. B. R. Ambedkar]

(2) Nothing in clause (1) of this article shall prevent Parliament from making any law giving any preference or making any discrimination as aforesaid if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India.

274 D. Notwithstanding anything contained in article 274 A or article 274 C of this Constitution, the Restrictions on trade, commerce and legislature of a State may, by law—
intercourse among State.

- (a) impose on goods which have been imported from other States any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and
- (b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest.

Provided that no Bill or amendment for the purpose of clause (b) of this article shall be introduced or moved in the legislature of the State nor shall any Ordinance be promulgated for the purpose by the Governor or Ruler of the State without the Previous sanction of the President.

274 E. Parliament may by law appoint such authority as it considers appropriate for carrying out the purposes of articles 274 A, 274 B, 274 C and 274 D. of this Constitution, and confer on the authority so appointed such powers and such duties as it thinks necessary.' "

Appointment of authority to carry out the provisions of article 274A to 274D.

Sir, all that I need do at this stage is to inform the House that originally the articles dealing with freedom of trade and commerce were scattered in different parts of the Draft Constitution. One article found its place in the list of Fundamental Rights, namely, article 16, which said that trade and commerce, subject to any law made by Parliament, shall be free throughout the territory of India. The other articles, namely, 243, 244 and 245 were included in some other part of the Draft Constitution. It was found in the course of discussion that a large number of members of the House were not in a position to understand the implications of articles 243, 244 and 245, because these articles were dissociated from article 16. In order, therefore, to give the House a complete picture of all the provisions relating to freedom of trade and commerce the Drafting Committee felt that it was much better to assemble all these different articles scattered in the different parts of the Draft Constitution into one single part and to set them out seriatim, so that at one glance it would be possible to know what are the provisions with regard to the freedom of trade and commerce throughout India. I should also like, to say that according to the provisions contained in this part it is not the intention to make trade and commerce absolutely free, that is to say, deprive both Parliament as well as the States of any power to depart from the fundamental provision that trade and commerce shall be free throughout India. The freedom of trade and commerce has been made subject to certain limitations which may be imposed by Parliament or which may be imposed by the Legislatures of various States, subject to the fact that—the limitation contained in the power of Parliament to invade the freedom of trade and commerce is confined to cases arising from scarcity of goods in any part of the territory of India and in the case of, the States it must be justified on the ground of public interest. The action of the States in invading the freedom of trade and commerce in the public interest is also made subject to a condition that any Bill affecting the freedom of trade and commerce shall have the previous sanction of the President; otherwise, the State would not be in a position to undertake such legislation. Article 274- E is merely an article which would enable Parliament to establish an authority such as the Inter-State Commission as it exists in the United States. Without specifically mentioning any such authority it is thought desirable to leave the matter in a fluid state so as to leave Parliament freedom to establish any kind of authority that it may think fit.

If any further points are raised in the course of the debate. I shall be glad to offer the necessary explanation.

Mr. President : We shall have to take up the amendments one by one. The first amendment is with regard to the heading—that is by Pandit Thakur Das Bhargava (No. 339).

Pandit Thakur Das Bhargava : Before I move this amendment, I would humbly submit that I may be permitted to move all the amendments together. Sir, I move :

“That in amendment No. 269 of List IV (Seventh Week) in the heading of the proposed new Part X-A, for the words ‘Trade, Commerce and Intercourse’ the words ‘Trade and Commerce’ be substituted.”

“That in amendment No. 269 of List IV (Seventh Week), in the proposed new article 274 A for the word ‘Part’ the word ‘Constitution’ be substituted.”

“That in amendment No. 269 of List IV (Seventh Week), in the proposed new article 274 B before the word ‘restrictions’ the word ‘reasonable’ be inserted.”

“That in amendment No. 269 of List IV (Seventh Week), in the proposed new article 274 B, for the words ‘trade, commerce or intercourse’ the words ‘trade or commerce’ be substituted.”

“That in amendment No. 269 of List IV (Seventh Week), in the proposed new article 274 B, for the words ‘public interest’ the words ‘interests of the general public’ be substituted.”

“That in amendment No. 269 of List IV (Seventh Week), the proposed new article 274 C be deleted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (1) of the proposed new article 274C, for the words ‘to one State over another’ the words ‘to any State as against any other State in the Union or to any part within that State’ be substituted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (1) of the proposed new article 274C, for the words ‘between one State and another’ the words ‘between any State and another State of the Union or between any parts within that State’ be substituted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (1) of the proposed new article 274 C, the words ‘by virtue of any entry relating to trade or commerce in any of the Lists in the Seventh Schedule’ be deleted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274 C, for the words ‘a situation’ the words ‘any emergent situation’ be substituted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274 C, before the word ‘scarcity’ the word ‘temporary’ be inserted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274 C, the words ‘for the period of the, emergency’ be added at the end.”

“That in amendment No. 269 of List IV (Seventh Week), the proposed new article 274 D. be deleted.”

“That in amendment No. 269 of List IV (Seventh Week), clause (b) of the proposed new article 274 D. be deleted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article 274 D, the words ‘or intercourse’ be deleted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article 274 D, the words “with or” be deleted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article 274 D, for the words ‘in the public interest’ the words ‘in the interests of the general public and are not inconsistent with the provisions of article 13’ be substituted”

“That in amendment No. 269 of List IV (Seventh Week). in clause (b) of the proposed new article, 274 D, for the words ‘public interest’ the words ‘interests of the general Public’ be substituted.”

[Pandit Thakur Das Bhargava]

“That in amendment No. 269 of List IV (Seventh Week) in clause (b) of the proposed new article 274 D, the words “during any period of emergency arising from scarcity of goods within the State for the period of such emergency be added at the end.”

“That in amendment No. 269 of List IV (Seventh Week), in the proposed new article 274 D, the following new clause be added at the end :—

‘The President shall be competent to revoke such sanction when he considers it expedient to do so in the interest of the general public and on such revocation being made the law of the State imposing restrictions shall become void.’ ”

“That in amendment No. 269 of List IV (Seventh Week), the proposed new article 274 E. be deleted.”

“That in amendment No. 269 of List IV (Seventh Week), after the proposed new article 274 E, the following new article be added :—

‘274 F. Notwithstanding anything contained in this Constitution, any citizen or State shall have the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by article 13 or Part X-A of the Constitution.’ ”

or alternatively,

“That in article 16, after the word ‘Parliament’ the words and figures ‘under article: 282 B and 274C’ be inserted.”

Now, in regard to these amendments my submission is that the way in which I look at the subject is different from the way in which Dr. Ambedkar look at it. According to me, these rights of trade and commerce and intercourse should be absolute and only circumscribed by provisions relating to emergencies while in his view, the power of the Central Government as well as of the provincial Governments should be there, and these rights should be qualified We have already passed article 16 which runs thus :

“Subject to the provisions of article 244 of this Constitution and of any law made by Parliament, trade, commerce and intercourse throughout the territory of India shall be free.”

This article yet stands as it is. There has so far been no amendment that it stands abrogated. The existence of this article in the Chapter on Guaranteed Rights assures us that this is a fundamental right. The nature of this fundamental right has been, I know, curtailed to a great extent by the use of the words “and of any law made by Parliament”. Subject to this, this fundamental right has been guaranteed to the citizens of India by the Constitution we have already passed. Along with this I would ask you to consider the effect of article 13, the relevant portion of which says :

“All citizens shall have the right (d) to move freely throughout the territory of India, (e) to visit and settle in any part of the territory of India, (f) to acquire, hold and dispose of property; and (g) to practise any profession, or to carry on any occupation, trade or business.”

Now, I submit that this provision of Dr. Ambedkar comes to a certain extent in collision with the parts (d) to (g) of article 13. According to my understanding of the provisions of article 13, every citizen has got the right to carry on any occupation, trade or business subject of course to article 16 which we have adopted. According to it, only in the general interests of the public some restrictions can be put on the rights of a citizen. Now you will see that the expression ‘public interest’ has been used in the amendment moved by Dr. Ambedkar in several places which I have sought to substitute with the words “the interests of the general public”. I maintain that there is great difference between the two expressions. ‘Public interest’ in regard to a State would only include the interests of the inhabitants of that State at the most though the word ‘public’ includes portions of the public. Therefore, the interests of a part of the inhabitants of a State would also mean ‘public

interest', whereas if you use the words "interests of the general public" they would have reference to the interests, of the. general public of India as a whole. It may be that on many occasions a conflict may arise between the public interest as understood in the amendment of Dr. Ambedkar and 'the interests of the general public' as used in article 13. When that conflict arises it would be encouraging provincialism and the interests of a few as against the general interest if we accept the words 'public interest' in the place of the words "in the interests of the general public".

If it is true that article 16 confers on the citizens a fundamental right which could be enforced by appropriate proceedings through the Supreme Court, it means that the right given is being taken away by these articles if we pass them in their present form. Then there will be no fundamental right of an absolute character conferred by article 16. My submission, therefore, is that we are tampering with the right which has been guaranteed. Therefore, to save that right, I have tabled an amendment which seeks to amend article 16 also. My attempt is to see that, either the amendment relating to article 16 may be accepted or the amendment which runs as follows : 'Notwithstanding anything contained in this Constitution, and citizen or State shall have the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by article 12 or Part X-A of the Constitution'.

Now, the words 'of any law made by Parliament' in article 16 will mean only that they are in conformity with the provisions which are now sought to be put in by this amendment. Articles 282 C and 274 D are laws of that nature which are contemplated in article 16. I cannot think of any other law by means of which the liberties of the citizens of India can be curtailed. These two provisions are more than enough. But in relation to these articles also my humble submission is that if the provinces are allowed to have their own way to impose restrictions upon the citizens of any other State, then this one Nation talk, this unity and this one-Government and one-country talk will mean nothing. It has happened even now. The Government of India exercises some powers and the provinces exercise other powers in relation to the commodities essential for the life of the community. In regard to this, the whole House knows and we of the East Punjab know to our best how these Provisions are being worked. It has happened that while the whole country is suffering from scarcity of food-stuffs and very large quantities of food are being imported from other countries and the grow-more-food campaign is being vigorously pursued, we know that as the- result of the exercise of the powers enjoyed by the Government of India and the Provincial Government, today the position is that food-grains of the value of crores of rupees are being waited in East Punjab on account of the exercise of these powers.

Now, Sir, if you will kindly read the provisions which are to be enacted by virtue of this amendment of Dr. Ambedkar, it follows that each State is authorised to impose reasonable restrictions on the freedom of trade, commerce and intercourse as may be required in the public interest. This means that Bombay can say that in the interests of the Bombay people, they would put some restrictions on the freedom of trade in cloth. Similarly in the East, Punjab, we have enough gram to spare. Well suppose these grams are not allowed to be exported by the policy of the Central Government or the local government it may happen that while gram is selling at Rs. 6 or Rs. 7 in the East Punjab, in parts of Bengal or Madras the same gram may be selling at Rs. 20 or Rs. 22. Neither Madras nor Bombay would be benefited by the existence of surplus gram in the East Punjab, nor the people of the East Punjab would be benefited by the increase in, the prices elsewhere. This is not a picture which is due to my imagination.. This is what is happening and what has happened in the past. I have approached people in the central Government as well as the provincial government and told them the whole story but still they have not moved.

[Pandit Thakur Das Bhargava]

I want, Sir, that so far as this question of freedom of trade, commerce and intercourse is concerned, it should be absolutely free, only subject in times of scarcity or times of national emergencies to such restrictions as may be imposed in the public interest. Otherwise, in normal times no restrictions should be allowed, if we really mean that we all belong to parts of the same country or we are living under the same government. The whole scheme of article 243 is that it speaks of certain kind of preference or discrimination. Now, 274 A give us a proposition which I welcome because it says that trade and commerce shall be free. But what I object to in this is the words "subject to the other provisions of this Part". I want the word "part" to be substituted by the word "Constitution". So far as the Constitution puts restrictions, I am ready to accept them, but this part puts so many restrictions upon this freedom of trade which are irksome and unnecessary. It is the same thing throughout in this Constitution that what is given by one hand is taken away by the other. I want, Sir, that the rights given under article 13 should be restricted only by the restrictions which we have already placed on them, but not to the extent in which they are sought to be restricted now I feel that such restriction will give rise to provincial jealousies, and provincial patriotism will do great injury to India as a whole.

Now, in regard to section 274 B I have submitted that I want before the word "restrictions" the word "reasonable" to be inserted. In article 13 which is justiciable we have used the word "reasonable". The question which arises is whether the rights under this chapter will be justiciable or not. According to my reading, and according to the meaning of the words which Dr. Ambedkar has been pleased to use, I apprehend that he does not want that this should be justiciable. If he says that they are justiciable, then I will take back some of the amendments which I have tabled.

Dr. P. S. Deshmukh : Dr. Ambedkar has already told us that he is going to alter the fundamental rights provided by article 16.

Pandit Thakur Das Bhargava : Sir article 16 is of the fundamental rights and as such justiciable. I know the reply would be that the words used are "subject to any law made by Parliament". But now it is much more restricted because even the States can take away those rights. My whole point is that this fundamental right of the citizen should not be taken away and, I therefore all the amendments that I have moved should be accepted and this right should be made justiciable.

As regards the other amendments which I have read out to the House, I will not take any more time of the House. I will not speak on each of the amendments the words in which they are couched make their meanings quite clear. I will only speak on the principles on which they are based.

Now, speaking about trade and intercourse, Sir, I have taken exception to this : article 13 says that every citizen has got a right to go, reside and settle in any part of India. This is the intercourse which I can understand. I do not know what other meaning is there of the word "intercourse". As regards article 13, we have already provided for reasonable restrictions and we need not make any further restrictions. I do not understand what intercourse can there be between State and State. I can understand it only in relation to individuals. Now, Sir, the difference between this chapter and article 13 is this. The State is not an individual. Between State and State there will be very few occasions for inter-State commerce, trade and intercourse, but very many occasions will arise for that when the interests of individuals are involved if article 13 remains as such, my submission is that it will be difficult to deny this fundamental right to individuals under 274 A.

etc. If I practise a trade or a profession, I want to understand how it is possible for any State to put restrictions on that, so long as my fundamental right under 13 exists. Occasions are bound to arise when there will be conflicts between article 13 and the present article. Therefore I have moved an amendment to the effect that these restrictions should be subject to the provisions of article 13. If this is accepted, this can be made justiciable. My submission is that the prevailing idea in the minds of the mover of the amendment seems to be that the rights under 13 and 16 are too wide and he wants to restrict those rights. I do not think that these rights should be tampered with in this way.

With regard to my amendment relating to 274 C, I have submitted that the last two lines should be taken away. My point is that if you removed the words “by virtue of any entry relating to trade or commerce in any of the Lists in the Seventh Schedule”, this will become fool-proof and no discrimination or preference would be possible anywhere.

Again in 274 C (2) these words have been used “for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India”. In times of famine, etc., by all means let this be used; I have no objection. But that power must be restricted to real emergencies. Otherwise, this right will be abused to the detriment of the general public, though it may be to the advantage of the inhabitants of the particular State.

Similarly Sir, in regard to article 274 D, I have no objection to clause (a); but so far as (b) is concerned, this is the clause to which I object most seriously. I think this is unnecessary because when the powers are given to the Parliament as originally they were given to the Parliament, I have no objection. The Parliament shall have to consider it from the general standpoint, from the standpoint of the whole of India, whereas a State is bound to consider it from a parochial point of view, from the point of view of the State and therefore, this mutual jealousy is bound to arise if we allow these powers to the State. Therefore, the policy of the Government should be that so far as the State is concerned, they should not be allowed to exercise that power unless it be through Parliament. If a State is empowered to use its powers under clause (a) I have no quarrel as it will be a salutary power; but if you allow clause (b) to remain as it is, I do not understand what it may lead to. I can understand that under article 13, considerations of health when epidemic, like plague etc. justify quarantine regulations, intercourse may be ‘restricted’ but if general intercourse in normal times is disallowed or restricted it amounts to passing against the people in general orders under the Safety Acts and placing embargo on their entering any State, which is absolutely wrong. Every person has a right to go into any State and no State has a right to prevent intercourse of people in the rest of India. I consider it is most dangerous to arm a State with this power especially with the words as they stand “as may be required in the public interest.”

Then again, Sir, the safeguard of sanction is provided so that this power may not be abused. After all the safeguard is quite illusory. The only safeguard is that the previous sanction of the President is there. We know how the President’s sanction is given. It only means that some secretary, some Minister, some person who is interested may be able to get the order of the President. In this way sanction could easily be secured. Therefore, this power should not be allowed to remain with the State. If clause (b) is to be retained, then I will propose that the sanction may be such as may be revocable and as soon as Government thinks that this power is being abused, it should be able to withdraw that sanction so that ultimately the powers of the province may be curtailed to that extent.

[Pandit Thakur Das Bhargava]

In regard to all these amendments, the House has to be very careful because this is one of the most important matters which we have so far dealt with, considering that the amendments which are coming in are curtailing the rights of the individual in the whole of India; and therefore the powers given to the State, according to me, should never in any case be allowed, because that would mean that every State shall be able to raise barriers against the rest of India and people living in other States and they will constitute a state of things, which I feel, will not conduce to the unity of the whole of India.

Shri Brajeshwar Prasad : There are a large number of amendments standing in my name. I would like to move one amendment only, that is 295. It has reference to article 274 D.

Mr. President : We shall see when we come to 274 D. I will take the amendments first as they appear on the Order Paper in regard to the new articles.

(Amendment Nos. 317, 318, 319 and 320 were not moved.)

Dr. P. S. Deshmukh : Mr. President, Sir, I move:

“That in amendment No. 269 of List IV (Seventh Week), for the proposed new article 274 A, the following be substituted :—

‘274 A. Subject to other provisions made in this Constitution, trade and commerce in any State or territory of India or between any two or more States of the Union, shall be as may be determined by the Parliament from time to time.’ ”

I move :

“That in amendment No. 269 of List IV (Seventh Week), for the proposed new article 274 B, the following be substituted:—

‘274 B. Parliament may by law enacted by virtue of powers conferred by this Constitution impose such restrictions on trade and commerce in or between any parts of India as may be determined by the Parliament from time to time.

I move :

“That in amendment No. 269 of List IV (Seventh Week), for the proposed new article 274 C, the following be substituted :—

‘274 C. (1) Legislature of a State shall not make any law giving or authorizing the giving of preference to one State over another or making any discrimination or authorizing the making of any discrimination between one State and another except with the consent of the Parliament.

(2) Legislature of a State may, however, by law—

- (a) impose on goods imported from other States any tax to which similar goods manufactured or produced in that State are subject so as not to discriminate between goods so imported and goods so manufactured or produced; and
- (b) impose such reasonable restrictions on trade and commerce or inter-commerce with or within that State as may be required in the public interest with the previous approval of the Parliament.’

I move :

“That in amendment No. 269 of List IV (Seventh Week). for the proposed new article 274 D, the following be substituted:—

‘274-D. Parliament may, by law, appoint such authority or delegate its powers to such person or persons and confer on them, such powers and duties as it thinks necessary.’ ”

Mr. President, Sir, I for one, do not regret the fact that we are already finding our fundamental rights cumbersome and impeding our progress, if not the Constitution itself. I have always regarded these fundamental rights as so many ghosts which we are going to place permanently on the chest of the future Parliaments for ever to wage battles; and wars with. I am not therefore

surprised that long before the ink of these articles has dried, we have discovered that some powers and privileges which we thought were indispensable, some fundamental rights which we considered it our solemn duty to promulgate and enunciate are no longer convenient for us to maintain. Dr. Ambedkar has made bold to say that it is impossible to leave the trade and commerce between the various parts of India so free as we contemplated. We gave this article (Article 16) the dignity of a fundamental right, a right moreover which is justiciable; and now before even the second reading is complete, we are going to tell the people, we are going to resolve and decide that the justiciable right shall not be any more justiciable. I wonder if it will remain any right at all. I for one hope that before we make the draft final, we will realize our mistakes in having these fundamental rights. As a matter of fact most of them have not remained as fundamental as we should have liked them to be; and the rest of them which are fundamental in some way or the other, they are also tampered with from time to time. This, as I have already stated, affects the supremacy and sovereignty of the Parliament. So far as my amendments are concerned, I do not wish that we should complicate the whole commercial and trade relations between the various States and fetter the discretion of Parliament for all time.

Trade and commerce are not things which are decided once, for all; they are things that arise and grow from day to day. They may be varied; there may be circumstances and situations when the whole thing will have to be revised. This may arise so far as a particular State is concerned or in respect of more than one State. How pompously did we decide that there shall be “free trade” everywhere. It is not such an easy thing as that and I hope that this is now broadly realized. For instance, we know that the stage, of advancement and progress of the various units of the Union varies considerably. Some of them are backward like Assam or Orissa where there are, very few industries and very little trade is in the hands, at least of the indigenous population. We may have probably to give them some protection in order that they may rapidly come on par with other units. It may be necessary also from time to time to vary our provisions so far as aid and concessions to industries and other things are concerned. I therefore do not think that is right to bar all discrimination, as it is called (in fact it is not), barring all possibility of help to those who are backward and who are unable to compete with the more advanced, and who therefore, stand in need of ‘assistance. From that point of view, my amendment seeks to give Parliament a blank cheque and leave to it entirely the determination of the policy. with regard to trade and commerce not only of the whole Union or in regard to any particular State or States, but so far as all States and their trade and commerce *inter se* is concerned. Therefore, I have proposed a very simple provision as has been embodied in my amendment No. 340.

If we analyse the new articles that have been proposed, it is very difficult to understand them and I think the comment is absolutely justified that this is going to be a lawyers’ constitution, “a Paradise for lawyers” where, there will be so many innumerable loopholes that we will be wasting years and years before we could come to the final and correct interpretation of many clauses. If we read this article 274, you will find, Sir, that this is one of the most wonderful articles in the whole Constitution. This is not the only one; there are many others. If we count the use of the word ‘notwithstanding’ in this Constitution, I am certain that the number of times that word is used will far exceed the use of the word ‘Parliament’ or ‘Constitution’ in the whole Constitution. If you will permit me, Sir, I will describe the situation a little graphically. We first of all provide, and say or declare that a certain person is a man. Then we say, notwithstanding this declaration, you shall wear a *sari* and nothing but a *sari*.

Shri T. T. Krishnamachari : Then is no bar to that.

Dr. P. S. Deshmukh : Then, notwithstanding the fact that you are considered a man, and notwithstanding the fact that you wear nothing else but *saris*, you will wear a Gandhi cap also. Then we have another 'notwithstanding'. Notwithstanding that you are a man, notwithstanding that you shall wear nothing but a *sari*, notwithstanding that you shall also wear a Gandhi cap, you will be at liberty to describe yourself as a woman. (Laughter) Some thing of that sort, as funny and as amusing, is really the situation so far as this article 274 is concerned. If you read through it, you will see that as soon as the first part is over, we start with "notwithstanding whatever is said in the first part, such and such a thing will happen". In the next clause, we say, not only notwithstanding what is contained in the first clause, together with notwithstanding what is contained in the other clauses and then add something more. I think there is a better method of drafting. Even if it is necessary to cope with complex situations and to provide something on the lines proposed, there, should be a simpler and more direct way of drafting and making a provision which is not so ununderstandable that only supermen could read this Constitution, even assuming that only supermen are, to be born in India hereafter. If this Constitution is made for the average man, if it is going to affect the rights and privileges of the ordinary common man, it is necessary that the drafters of this constitution should be more clear and use phraseology which is more easily understandable and simpler.

My honourable Friend, Pandit Thakur Das Bhargava, pointed out, and he for one regretted the fact that not only trade and commerce, but intercourse also, with a hyphen in between, was not going to be free. We are going to interfere also with inter-course. By this means, we are going to fetter the discretion of the future Parliament. I think trade and commerce is a thing which cannot be determined once for all, knowing the varying degree of progress which the various units of the Union have attained. It may become necessary to give protection to several States because they are not, on the mere ground of merit and competition, in a position to compete with the rest. I have studied this question with some care and I can say that there are many issues which are likely to arise. For instance, the question of rationalisation of industries, *i.e.*, deciding in what places there should be new industries started, whether in the places where there are no industries or only where there are. It will be the policy of the Indian Union to encourage starting of new industries. If it is necessary to encourage them, it may be necessary to assist them in more than one way and give them concessions.

There was at one time a complaint that all the industrialists were rushing to the Indian States because they got certain monopolies, privileges and advantages there which were not available to them in British India. Therefore, they had to decide upon a policy of restricting the growth of industries in the Indian States. Just as we have had to restrict the growth of industries in Indian States, it may be necessary on the other hand to encourage them not only by giving them certain concessions and privileges, but also by putting certain handicap on the States which are advanced enough so as not to allow anybody else to compete with them. Such situations are imaginable.

I hope therefore that the whole chapter will be made simpler. Instead of tying the hands of both the States as well as of Parliament, it would be far better not to commit ourselves to any policy, but to leave the whole thing to Parliament. Otherwise, the situation which has arisen already in respect of article 16 may arise in respect of article 274 itself. It is therefore better to have simpler provisions and I have given them the simplest form. I hope

that this will appeal to the drafters of the Constitution and if they accept it, I can tell them that they will be out of much of the trouble. But if they insist upon the draft that they have produced, it will be very difficult for trade and commerce not only to prosper but even to exist.

Shri B. Das (Orissa: General) : Mr. President, I move:

“That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274C, after the words ‘Prevent Parliament from making any law’ the words ‘With previous consultation of the Government and legislature of a State’ be inserted.”

Sir, I welcome this new part XA. It is necessary that the conditions of our trade and commerce and intercourse within the territory of India, between the different States, are all codified at one place so that we know how trade and commerce should be regulated under the new Constitution. I will confine my remarks only to the amendment I have moved. I do not apprehend any interference by Parliament and the Union into the affairs of the States that I heard of from the two previous Speakers. But as regards my own amendment, while article 282 C (1) allows restrictions on the legislative powers of the Union and of the States with regard to trade and commerce, in clause (2) it takes away that power and gives Parliament special power when a situation will arise when there is scarcity of goods in any part of the territory of India. I concede that the Parliament will have such a power but I do want the points would be clarified by acceptance of my amendments and the States which shall be affected, their Governments and Legislatures must have to be, consulted before clause (2) of article 274 C will operate. Mine is not a revolutionary idea to what is contained in the original draft. I only wish the position of the Provincial Legislature and the Provincial Government be clarified and it will be obligatory on the Union Government to consult the State Governments and State Legislatures.

Mr. President : Mr. Brajeshwar Prasad.

Shri B. P. Jhunjunwala (Bihar : General) : There are other amendments also to this article.

Mr. President : We shall see later on.

Shri Brajeshwar Prasad : Amendment 295 fits in with new article 274-D. The old article 244 has now been replaced by 274 D. Sir, I move :

“That in amendment No. 269 of the List of Amendments, for the proposed article 274 D, following be substituted :—

‘It shall not be lawful for any State either to impose any tax on goods imported from any State or to impose any restrictions on the freedom of trade, commerce or intercourse with any State.’ ”

I want that there should not be any obstacle in the way of the development of a feeling of common consciousness of oneness and unity in this country. The doctrine of nationalism has been accepted by each and every citizen. Now to give a loophole in this matter will lead to undesirable consequences. I know this power has been restricted. In spite of that, I feel that it will be better if we conform to the old fundamental principle that we have accepted in the Fundamental Rights. I do not care what will happen to the finances of the Provincial Governments. Constitution or no Constitution, it is the duty of the Government of India to see that there is peace and progress in this country, that there is general prosperity in all parts of the country. I have nothing more to add.

Shri B. P. Jhunjunwala : Sir, I have tabled an amendment to the amendment of Pandit Thakur Das Bhargava. My amendments are amendments to

[Shri B. P. Jhunjhunwala]

the old articles 243, 244, etc. I beg to move

“That in amendment No. 287 above, in clause (b) of the proposed article 244, after the word and figure ‘article 13’ (proposed to be inserted), the words ‘and with the general economic improvement of India as a whole’ be added.”

There is another amendment No. 293 as follows:—

“That in amendment No. 292 above in the proposed clause (c) of the proposed article 244, after the word ‘Constitution’ the words ‘and with the general economic improvement of India as a whole’ be added.”

Now all these articles have been changed and I could not give my amendment to those changed articles, but Pandit Bhargava has given an amendment to all those articles as have been changed which are given as 282 A, 282 B, 282 C, 274 D and 274 E.

The main purpose of my amendment is that whatever a State Legislature or the Parliament may pass any law or order putting any restriction regarding trade and commerce, between one State and another, that should not be inconsistent with articles 13 and 16 of the Constitution and the general economic improvement of India as a whole. Pandit Bhargava has dealt with article 13 and he has said that there is a fundamental right of every citizen to have free trade and commerce. He has also dealt at length on the use of the words “public interest” and shown how it has been misused by the State. He has given example of grams in Eastern Punjab as to how the Punjab Government has muddled this trade by putting queer restrictions. Similarly there are many instances where you will find that the States in making certain law or order have totally forgotten the interest of India as a whole and have acted only on the temporary interest either of their State or of any particular interest. If there is any time when there is necessity to have any check on the passing of such laws and orders, it is at present when we find that our economic condition is deteriorating in such a way. Without any disrespect to provincial or Parliament Legislature I would like to say that these require some check and Pandit Bhargava has tabled his amendment No. 366 which is 274 E. wherein he says—

“Notwithstanding anything contained in this Constitution any citizen of a State shall have the right to move the Supreme Court by appropriate proceedings by the enforcement of the rights conferred by article 13 or part XA of the Constitution.”

To this I want to add that this right of moving the Supreme Court is also open to a citizen or State when the law or order passed by a State legislature or Parliament is inconsistent with the general economic policy improvement of India as a whole.

I am told that article 16 of the Constitution which gives free right of trade will also be taken away and the right to move the Supreme Court will also be taken away by the amendment which Dr. Ambedkar has moved. If that right is taken away, it is very necessary that the amendment of Pandit Bhargava which is given as 274 F, with my addition be accepted. I shall give a few instances as to how the different laws of the Parliament and of the States have acted against the general economic improvement of India as a whole.

If the honourable Members have seen the communique and the comment of a Staff Reporter as to how our export trade has gone down—in which one of the causes he has mentioned is that we have been unable to export our oilseeds to such an extent as we would have been able to do but for some restrictions on the movement of the same by Provincial Governments, thereby raising its price. This has told a great deal upon the economy of India as a whole. The U.P. Government put restrictions on the movement of mustard seeds and did not allow the mustard seeds to move from its province to another place, with the result that the whole thing was confined to U.P. traders to crush

those seeds and sell the, oil at a very high-rate in the U.P. and other Markets and that oil was allowed to be, sent from U.P. to other places so that the mills of other places may not have the advantage of taking that seed and crush it and then sell it at a competitive rate to the people. This year mustard seed is, not available in many of the provinces and even people who crush the seed by country method, that is, by means of *ghani*, they do not get seeds. I got a complaint from the Sadaquat Ashram of Patna which has started various village, industries that they are not in a position to get mustard seeds, as the U.P. Government had put a ban on its export and that some people were getting it by some other means and so on, and they asked me if I could help them to get supplies of these seeds, from persons who are getting their supplies. Of course that was arranged. But my point here is that the U.P. Government in dealing with this thing did not take into consideration the interests and the economic condition of India as a whole and especially of the general masses.

Then, Sir, I shall give another instance, and that is about potato seeds. Recently an order was promulgated that potato seeds should not be allowed to be exported from one province to another unless the exporter obtained a certificate from the consignee's agricultural department, I mean from the agricultural department of the consignee's province. This thing was enquired into, as to what they meant by it and when the agricultural department of the consignee's province was approached, it was said that all the seeds in the cold storages established in the province should be consumed first, and after that export from other provinces will be allowed. Here, Sir, there are two disadvantages in this arrangement. The first is that this restriction will increase the price of potato seeds in the province of U.P. because those who had stored the seeds would have the monopoly of it and they will charge higher and higher prices. And the second and most important point is that the Government of the U.P. did not take into consideration when promulgating their order—which order was agreed to by the Government of India, Railway Department—the fact that it is not the seeds grown in the U.P. which will give good result. Seeds of the same place or the same kind of soil are not as suitable for giving good results as the seeds brought from other provinces. Bihar produces very good potato seeds and that province supplies to the whole of India. As such, this order of the U.P. Government, in addition to raising the price of potato seeds in their province will result in less production of potato in their and other provinces.

Sir, the Agricultural Officer had said that he would allow it after the whole cold-storage seeds of this province are used up. But the planting season lasts only for a few days, and what with the red-tapism in Government Departments, and the long delay in getting an order passed, by the time they allow the import of seeds from other provinces, the planting season would be over and the seeds in Bihar would be spoilt and the cultivators they will find their potato seeds all have got rotten and apart from their suffering a great loss the other provinces, will not get seeds in time resulting in less plantation and less contentment production. Sir, after a great deal of difficulty this order was removed.

Then, recently there was another order from the Himachal Pradesh putting an export duty on potato sent out from Himachal Pradesh. We as knows that at present it is essential that the price of foodstuffs should go down as fast as possible. Though potato may be regarded a vegetable it serves more or less as a cereal also. This export duty on potato may yield more revenue to the State. but it will tell upon the price of potato. If they had allowed free export of potato, then the price of potato here would have come down, and people would have got it at a much lower rate, than the price at which they get now.

[Shri B. P. Jhunjhunwala]

There is another instance, to which though it may not be quite relevant here, with your permission I would like to refer. In the year 1940, the Governments of Bihar and U.P. passed an order that as there was surplus of sugar, no more cane should be allowed to be crushed. The industry and the general public tried its best to see that canes were allowed to be crushed so that the poor cultivators may not suffer, but their requests were not heard. The result was that the cane was allowed to dry in the fields, resulting in the, loss of crores of rupees to the poor cultivators. Not only that, subsequently, the U.P. and Bihar Governments brought down the price of cane. In 1940 or 1939- I do not exactly remember, it was 11 or 12 annas and this was suddenly brought down to 4 annas 9 pies in the subsequent year with the result there was a great setback in the sugar industry, due to less plantation of cane; at least the industry in Bihar has not yet recovered from that set-back.

I may give you another one instance, the instance of sugar. At present I find that every day the Government of India is issuing a communique to control the price of sugar. It is right that they should try to stop the price from going higher and higher and whether they will succeed or not is a different question. It was very bad of the syndicate to have allowed the factories to sell the sugar at higher price and charge a premium privately or publicly. Even if the sugar going into the market was being sold at a higher price, the millers and the syndicate should not have indulged in charging premiums as I feel fair play must begin at some source and one should not take to wrong thing by saying that otherwise others will get benefit out of it and thereby create vicious circle. Well, it was pointed out as far back as November 1948 to the Government of India that there would be a shortage of sugar and certain suggestions were made by which the production of sugar could be increased, even with the standing crop of cane. One of the suggestions was that the price of cane should be higher which comes from a long distance and the other suggestion was that if the cane is crushed at a later stage when there is less sucrose in cane, for that sugar some allowance should be made in price of sugar. If those two suggestions had been accepted by the Government of India and they had taken it into their head to understand those suggestions, this situation would not have arisen and we would have had sugar at a cheaper rate. As I said in the beginning, without any disrespect, without any disregard of the State legislature or Parliament or any of the Ministers either in the provinces or in the Centre, I would suggest that the amendment moved by Pandit Thakur Das Bhargava with the addition I have proposed is very essential and this question should be regarded as justiciable of course making exception when such law or order is for temporary emergency purposes; as it will act as a check on them.

Shri Kuladhar Chaliha (Assam: General): Sir, I have not been able to follow Mr. Jhunjhunwala as to why his amendment has been moved. The objectionable provision has already been deleted and Dr. Ambedkar has put in a new article which is a great improvement on the original. Though we have often had to disagreed with the Drafting Committee, in this particular case it could not have been better. I find when textiles are purchased in Bombay, they are taxed there and again it is done in Assam. This discrimination is taken away. We shall have uniformity of law in inter-State trade. If potato seeds are taken from Shillong to Calcutta or Bihar they will not be taxed as before. I do not know why Mr. Jhunjhunwala made such a long speech on his amendment. I find Dr. Ambedkar's amendment is a great improvement on the existing law and I support it whole-heartedly and oppose Mr. Jhunjhunwala's amendment.

Shri Prabhu Dayal Himatsingka (West Bengal : General) : Sir, I beg to support the various amendments moved by the honourable Member, Pandit Bhargava. So far as these articles are concerned the idea should be to put as few restrictions as possible, and trade and commerce should be allowed to be free without any restriction. Restriction should be only when it is absolutely necessary and in the interest of the general public or in a special emergency. Pandit Bhargava's amendments seek to limit the power of the Government to reasonable restrictions and when such restrictions are required in the interest of the general public. He has also suggested certain amendments to article 274 C by introducing the word "temporary" by his amendment No. 353 before the word "scarcity" and also by adding the words "for the period of the emergency which is amendment No. 354. I would request the Drafting Committee to consider whether or not they should accept his amendment No. 343 suggesting the introduction of the word "reasonable" before the word "restriction" in article 282 B, and amendment No. 345 suggesting the substitution of the words "interests of the general public", for the words "public interest". Similarly I would request them to consider accepting amendments Nos. 353 and 354.

As it is intended that article, 16 should be, removed from the present chapter on Fundamental Rights and 274 A is intended in substitution of that, section, I think amendment No. 366, suggested by Pandit Bhargava for adding an additional clause as 274 F has also become absolutely necessary. Otherwise it would be a question of doubt even when we know that certain restrictions and proceedings are invalid as to whether a person is entitled to seek redress in a court of law. Therefore, I support the various amendments moved by Pandit Bhargava and would request the Drafting Committee specially to consider his amendments Nos. 343, 345, 353, 354 and 366. With these words I support the amendments moved by Pandit Thakur Das Bhargava.

Prof. Shibban Lal Saksena : Sir, this new chapter, Part X-A, is a very important one. This article 274 A is what was formerly article 16 in the Constitution as a fundamental right. It would now become an ordinary article of the constitution and in that respect we have lost. But the other articles which have been proposed also need to be carefully amended and I am very glad that Pandit Thakur Das Bhargava has tabled his amendments to these. I myself had tabled an amendment to the former article 244 for the abolition of clause (b) of that article. Now of course that amendment is out of order, because the 'whole thing has been changed and put in a different form. I therefore desire only to support the amendments moved by Pandit Bhargava. Particularly, I do not see that there can be any argument against his amendment No. 343 to article 282 B. In fact even in article 13 on fundamental rights he had succeeded in getting the word "reasonable" introduced before all those restrictions imposed on those fundamental rights. I therefore think that this right of freedom of trade is very essential and if any restrictions are to be imposed upon it they should be "reasonable so that the rights may be justiciable and people may go to a court if Parliament or a State legislature tried to impose any restrictions which are not reasonable.

Mr. Jhunjhunwala dealt at length with the way in which freedom of trade may be interfered with. I could also have gone into such details but I am conscious of the urgency with which you, Sir, are trying to finish the article. so that I will not go into details. But I must say that I was shocked to learn only recently that in East Punjab several crores of maunds of gram had not been moved outside because of the restrictions which the Government had imposed. When India is importing grain from outside and spending crores of rupees, I think it is criminal waste that crores of maunds of gram should have been allowed to be spoilt in that area and reasonable facilities for inter-provincial trades should not have been allowed so that the gram could have been used elsewhere.

[Prof. Shibban Lal Saksena]

I think my amendment which is intended to remove part (2) of 274-C, which has also been sought to be done by Pandit Thakur Das Bhargava, should be accepted, so that there, may not be any discrimination and the Centre may be at liberty at least to restrict the freedom of provinces to keep such grains for themselves. I think the amendment is a very important amendment and I hope Dr. Ambedkar will see the wisdom of accepting it.

Shri T. T. Krishnamachari : Mr. President, Sir, I have no desire to flatter the Drafting Committee, but I do believe that the amendments that have been placed before the House in respect of trade, commerce and intercourse within the territory of India are about as nearly perfect as human ingenuity could possibly make them.

There are two sets of arguments against these articles that this House has had to face. The first is by my honourable Friend, Pandit Thakur Das Bhargava, who has moved a series of amendments, the main purport of them being to whittle down the limited discretion that is given to Parliament, or to the Legislature of a State as the case may be, in respect of these articles. My honourable Friend wants in article 274-B the word “reasonable” to be introduced so that restrictions imposed may be reasonable. I know in another instance we have accepted his amendment, particularly in regard to article 13, and I am also aware how it is going to open up an absolute flood-gate of litigation. My honourable Friend also objects to any power being given to the States in order to put restrictions on trade and commerce to a very limited extent. The other amendments he has suggested are only consequential. It is certainly a matter of opinion whether the wording has to be “in the public interest” or “in the interests of the general public”. Actually the idea seems to be that it must be made as vague as possible.

Let me tell the House that so far as I am concerned I think this is about the maximum amount of liberty that we can give for trade and commerce, the maximum amount of concession that we can give to trade and commerce consistent with the future economic improvement of this country. Even as it was originally suggested, that we should make it a matter of fundamental right, and even without the restriction that have been put in article 16, I am afraid the economic progress of the country will become well-nigh impossible. There is absolutely no use in the honourable Member trying to confuse a matter of civil liberty with a matter of rights in respect of trade and commerce. The world has well-nigh come to a position when trade and commerce cannot be run without control and some kind of direction by the Government. If my honourable friends think that we are in the days of the nineteenth century when the *laissez faire* enthusiast had’ practically the ordering of everything in the world I am afraid they are mistaken.

Let me take one particular amendment of my honourable Friend Pandit Thakur Das Bhargava. He objects to the wording of clause (2) of article 274-C. He says that a situation arising from scarcity of goods must be qualified by the word “temporary”. I am asking my honourable Friend if he can today say that the scarcity of goods in this country which manifests itself in various parts of this country is going to be a temporary affair. Is it not a matter which is going to be more or less permanent, certainly for a period of years, probably decades ?

Pandit Thakur Das Bhargava : Certainly not.

Shri T. T. Krishnamachari : If my honourable Friend holds that opinion I can only agree to differ. I for my part do hold that our present position in the matter of food and certain other essential commodities—the scarcity that is attached to them is a thing which it will be difficult for us to get over even in a

period of a decade and over. If my honourable Friend is an optimist, I have no quarrel with him but I am not one of the category that holds such opinions. I have a right to say that the fundamental purpose of this Constitution is that it should enable the citizen of this country to live. On this fundamental principle there can be no difference of opinion. I do believe that we cannot fetter the right of a State to order the economy of the country in such a way that 'the maximum number of people will be benefited by it.

I would say this in regard to the structure of this Chapter. A certain amount of freedom of trade and commerce has to be permitted. No doubt restrictions by the State have to be prevented so that the particular idiosyncrasy of some people in power or narrow provincial policies of certain States should not be allowed to come into play and affect the general economy of the country. That I think is amply covered by a general statement of the proposition in article 274 A and also by permitting Parliament which I have no doubt will be free from provincial prejudices and would not like to favour one province against another normally, to control the extent of limitation power, trade and commerce. Certain amount of powers in regard to restriction on trade is necessary and has been provided for.

Then again the question arises whether it will be right to allow Parliament to discriminate between one State and another. It may be that the people who are in power—at any rate the majority of them—have got particular leanings, and we have to put a check against any improper discrimination between one State and another. That is provided for by article 274 C. At the same time a certain amount of discrimination would sometimes become necessary and also desirable. I might give an extreme case though it might not altogether fit in with all the contingencies that have been envisaged by my friends. If supposing in ordering the distribution of cloth which is being produced by and large by the Bombay mills the Government of India says that the distribution so far as Madras is concerned must be restricted to a per capita basis of ten yards as against twenty yards to Punjab or twenty-five yards to Punjab and Delhi, having in view the fact that Madras produces a certain amount of handloom goods which ought to be consumed in that area for the benefit of those people, and one of the citizens to whom my honourable Friend, Pandit Thakur Das Bhargava wants to give a right to go to the Supreme Court might feel offended for the reason that he has to pay a much higher price for the handloom cloth. He has, by reason of this restriction of import of mill-made cloth into Madras to purchase more handloom cloth at perhaps relatively higher price and he therefore feels aggrieved and he wants to take it to the Supreme Court. Can such a thing be allowed? There would be plenty of cloth available of a general category. It may be that it is necessary for the general well being of the country as a whole that the Madras consumer is asked to pay a little more in regard to a portion of the cloth that he buys. It is a perfectly reasonable restriction. But if my honourable Friend Pandit Thakur Das Bhargava has his own way, any person who is offended or aggrieved by a decision of the Government of India on these lines could go to the Supreme Court. Sir, the idea of 274 C (2) is merely to allow the Government of India permission to restrict the movement of goods so as to arrange the whole economy in such a manner that the economy of the country will be well-balanced and everybody will be supplied with his necessities. As my honourable Friend Prof. Shibban Lal Saksena said the other day, the primary condition in regard to satisfaction of human needs must be satisfaction of their necessities. And I do feel that if the Government which is going to come into being as a result of this Constitution has stayed put for a long time, has to carry out the directives and purposes of this Constitution, it must be given enough power to control the economy of the country for the benefit of the masses of the country and not for the benefit of a few traders or merchants.

So far as 274 D is concerned, my honourable Friend Pandit Thakur Das Bhargava will either wholly amend it in such a way as to completely change its

[Shri T. T. Krishnamachari]

shape or completely eliminate it. I feel that it arises—I have no doubt—from a particular bitter experience of his in which a Provincial Government has not executed its duty towards its people in the proper way. But hard cases do not always mean bad law. There is no reason for us to completely shut out discretion of the States in so far as the Central Government will have enough power not merely to have a uniform fiscal policy but also as far as possible to have a uniform economic policy. And that is provided by the fact that the President's previous sanction is necessary in regard to any legislation undertaken by the State under clause (b) of 274D.

Pandit Thakur Das Bhargava : Is it not exactly the reason why the Provinces and the State Legislatures should not be given the power?

Shri T. T. Krishnamachari : That is exactly the reason why they should be given the power. The State should be given a certain amount of right in this matter and the only reason why the Centre should interfere is to see that the economic and fiscal policy of the Centre is not unduly interfered with, and the extent that it cannot be interfered with the State must be given a reasonable amount of power to order its own affairs.

I would like to say a word more before closing about the details mentioned in this Chapter. The reason for such detailed provision and a balancing of the interests of both the Centre and the Provinces is not one that has arisen because of a very particular whim or wish of either Dr. Ambedkar or the other Members of the Drafting Committee. It is more or less based on the experience of how this restriction on the power of the other Central Legislatures in the other Constitutions—or the conferment of a special power on the Central Legislatures by certain other Constitutions—has operated in practice. My honourable Friend Pandit Thakur Das Bhargava knows the amount of case law that has grown round the commerce clause so far as the United States Constitution is concerned. On the other hand, I do not know if he realises that an omnibus right such as the one that we recognise should not be given so far as freedom of trade and commerce is concerned, which perhaps has an echo in article 92 of the Australian Constitution, which has made the economic position of Australia a very difficult one today. They in Australia find that by reason of the fact that their provisions for amendment of the Constitution are so difficult that they are not able to amend the Constitution, and article 92 stands as a bar to any progressive legislation which they have undertaken. It may be right or it may be wrong—the people of Australia are behind the Government—but when they wanted to nationalise banking, article 92 of the Australian Constitution has been held as a bar to the Government's power to nationalise the banks. There is no point in shutting the hands of the future Government in operating this Constitution.

Dr. P. S. Deshmukh : When was this situation understood and realised for the first time?

Shri T. T. Krishnamachari : If my honourable friend wants me to say that I owe the realisation of this fact to my honourable Friend Dr. Deshmukh, I must deny any such idea. The thing has been realised long ago; any student of constitutions knows that there are similar articles in the various constitutions, and it is only because of the difficulties experienced by the people who work those constitutions that we have taken the liberty of putting forward this balanced and comprehensive chapter in regard to control of trade and commerce before the House. I do suggest, Sir, that the House would do well not to depart from the scheme, as the scheme as I said before is the best that could possibly be forged at the present moment having in view the demands of the future and the well-being of the country which would depend on how this Constitution would work.

Sir, I support the motion made by Dr. Ambedkar.

Shri Alladi Krishnaswami Ayyar : Mr. President, Sir, in the first place, I venture to state that these articles form a very well-thought-out scheme in regard to inter-State trade and commerce. This problem of inter-State trade and commerce has baffled constitutional experts in Australia, in America and in other Federal Constitutions. My Friend Dr. Ambedkar, in the scheme he has evolved, has taken into account the larger interests of India as well as the interests of particular State and the wide geography of this country in which the interests of one region differ from the interests of another region. There is no need to mention that famine may be raging in one part of the country while there is plenty in another part. It may be that manure and other things are required in one part of the country while profiteers from another part of the country may try to transport the goods from the part affected. At the same time, in the interests of the larger economy and the future prosperity of our country, a certain degree of freedom of trade must be guaranteed.

My Friend Mr. Krishnamachari has pointed out that this freedom clause in the Australian Constitution has given rise to considerable trouble and to conflicting decisions of the highest Court. There has been a feeling in those parts of Australia which depend for their well-being on agricultural conditions that their interests are being sacrificed to manufacturing regions, and there has been rivalry between manufacturing and agricultural interests. Therefore, in a federation what you have to do is, first, you will have to take into account the larger interests of India and permit freedom of trade and intercourse as far as possible. Secondly, you cannot ignore altogether regional interests. Thirdly, there must be the power intervention of the Centre in any case of crisis to deal with peculiar problems that might arise in any part of India. All these three factors are taken into account in the scheme that has been placed before you.

Now, let us take the comments that have been made. The scheme is this. Article 274A lays down the general principles of freedom of trade and commerce as the governing principle. Then 274 B deals with certain restrictions, "as may be required in the public interests". I do not want to go into that metaphysical or subtle distinction between "the interests of the public" and "public. interest". I do not think there is any substance in that contention; the 'interest of the public and the public interest are in my view identical. Therefore, instead of leaving the freedom of trade guaranteed under article 274 unfettered, it clothes Parliament with the power to interfere with the freedom in certain cases in 274B, that is, certain restriction may be made in the interests of any part of the territory of India as may be required in public interest. That is the principle of article 274B.

Now about article 282C, I am rather surprised that people should take exception to it while they stand by the original article 16. If anything, it enlarges the freedom of trade which has been guaranteed under article 16. Article 16 gives an omnibus power to Parliament to make any inroad on the rights that are guaranteed under article 16. So far as 274 C is concerned, it further secures freedom of trade by enlarging the freedom trade and putting an embargo upon the Parliament as well as the Legislature of the State, namely that they shall not discriminate. Therefore, the advocates of the freedom of trade throughout the territory of India cannot take exception to an article which far from restricting the freedom of trade enlarges it.

The next comment was, there should be no reference to the power in relation to trade and commerce. It was advisedly put in for the reason that there might be very many powers which may be exercised by the. different States in regard to supply of goods, the internal or indigenous industry, which may trench upon trade and commerce but which may not bear directly upon trade and

[Shri Alladi Krishnaswami Ayyar]

commence. It is not the intention to interfere with these powers of the Provinces or States. Therefore the main article itself provides that by virtue of any power vested in them in regard to trade and commerce, neither Parliament nor the legislature shall enact any discriminatory law.

Then as to the principle, of article 274 C. The situation in the great continent of India may not be the same everywhere; there may be profiteers in one part and entrepreneurs in another and famine and scarcity in a third part—to deal with particular situations a certain course of action may have to be taken. When there is scarcity in one part it need not be accentuated by people from another part of the country exporting articles from profits motives. Parliament should have power to control it. That is the object of this article.

Then I am surprised at exception being taken to the terms of article 274D. It does not give any unfettered power to the States. The, proviso clearly lays down—

“No Bill or amendment for the purposes of clause (b) of this article shall be introduced or moved in the legislature of the State nor shall any Ordinance be promulgated for the purpose by the Governor or Ruler of the State without the previous sanction of the President.”

Therefore, if on account of parochial patriotism or separatism, without consulting the larger interests of India as a whole if any Bill or amendment is introduced, it will be open to the President, namely, the Cabinet of India to withhold sanction. This is therefore a very restricted power that is conferred on the legislature of a State. After all what is the nature of the power given? The power is confined to imposing such reasonable, restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest therefore the President who has to grant sanction will have the opportunity to see that the legislation is in the public interest and that the restriction imposed is reasonable. It is not possible to devise a water-right formula for the purpose of defining these restrictions.

Lastly, I want to say that there is absolutely no substance in the observation that this offends against any fundamental rights guaranteed. If a man has a right to move about the territory of India, how property and so on, under article 13, this does not in any way restrict that right conferred by that article. So far as article 16 is concerned, the substance of the freedom of trade guarantee is preserved. We have prohibited the States and the Centre from passing discriminatory laws.

Shrimati G. Durgabai (Madras : General) : Sir, the question may now be put.

The President : The question is

“That the question be now put.”

The motion was adopted.

The Honourable Dr. B. R. Ambedkar : Mr. President, I do not think I can usefully add anything to what my Friends Shri T. T. Krishnamachari and Shri Alladi Krishnaswami Ayyar have said.

Mr. President : Now I will put the amendments to vote. The first amendment relates to the heading. The question is :

“That in amendment No. 269 of List IV (Seventh Week), in the heading of the proposed new Part X-A, for the words “Trade, Commerce and Inter- could be’ the words “Trade and Commerce” be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That in amendment No. 269 of List IV (Seventh Week), for the proposed now article 274-A, the following be substituted :

‘274A. Subject to other provisions made in this Constitution, trade and commerce in any State or territory of India or between any two or more States of the Union, shall be as may be determined by the Parliament from time to time.’ ”

The amendment was negatived.

Mr. President : The question is :

“That in amendment No. 292 above, in the proposed clause (c) of the proposed article 274 A, for the word ‘Part’ the word ‘Constitution’ be substituted”

The amendment was negatived.

Mr. President : The question is :

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

The motion was adopted.

Article 274-A was added to the Constitution.

Mr. President : The question is:

Pandit Thakur Das Bhargava : You may put all the amendments together to the vote. That will save time. They are all being negatived.

Mr. President : I thought the formality had to be observed. I Will adopt the course suggested. The question is:

“That in amendment No. 269 of List IV (Seventh Week), for the proposed new article 282 B, the following be substituted :—

‘That in amendment No. 269 of List IV (Seventh Week), in the proposed now article 274 B, before the word “restrictions” the word “reasonable” be inserted.’ ”

“That in amendment No. 269 of List IV (Seventh Week), in the proposed new article “ 274 B, for the words ‘trade, commerce or intercourse the words ‘trade or commerce’ be substituted.”

“That in amendment No. 269 of List IV (Seventh Week), in the proposed new article 274 B, for the words ‘public interest the word ‘interests of the general public’ be substituted.”

The amendments were negatived.

Mr. President : The question is:

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

The motion was adopted.

Article 274-B was added to the Constitution.

Mr. President : The question is:

“That in amendment No. 269 of List IV (Seventh Week), the proposed new article, 274-C be deleted.”

“That in amendment No. 269 of List IV (Seventh Week), for the proposed new article 274-C, the following be substituted :—

274-C (1) Legislature of a State shall not make any law giving or authorizing the giving of preference to one State over another or making any discrimination or authorizing the making of any discrimination between one State and another except with the consent of the Parliament.

[Mr. President]

(2) Legislature of a State may, however, by law—

- (a) impose on goods imported from other States any tax to which similar goods manufactured or produced in that State are subject so as not to discriminate between goods so imported and goods so manufactured or produced; and
- (b) impose such reasonable restrictions on trade and commerce or inter-commerce with or within that State as may be required in the public interest with the previous approval of the Parliament.’ ”

“That in amendment No. 269 of List IV (Seventh Week), in clause (1) of the proposed new article 274-C, for the words ‘to one State over another’ the words ‘to any State as against any other State in the Union or to any part within that State’ be substituted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (1) of the proposed new article 274 C, for the words ‘between one State and another’ the words ‘between any State and another State of the Union or between any parts within that State’ be substituted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (1) of the proposed new article 274-C, the words ‘by virtue of any entry relating to trade or commerce in any of the Lists in the Seventh Schedule’ be deleted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274-C, after the words ‘prevent Parliament from making any law’ the words ‘with previous consultation of the Government and Legislature of a State’ be inserted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274-C, for the words ‘a situation’ the words ‘any emergent situation’ be substituted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274-C, before the word ‘scarcity’ the word ‘temporary’ be inserted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed now article 274-C, the words ‘for the period of the emergency’ be added at the end.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274-C, the words ‘for such period as the situation lasts’ be added at the end.”

The amendments were negatived.

Mr. President : The question is :

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

The motion was adopted.

Article 274-C was added to the Constitution.

Mr. President : The question is:

“That in amendment No. 2821 of the List of Amendments, for the proposed article 244, the following be substituted :—

‘244. It shall not be lawful for any State either to impose any tax on goods imported from any State or to impose any restrictions on the freedom of trade, commerce or intercourse with any State.’ ”

“That in amendment No. 269 of List TV (Seventh Week), for the proposed new article 274-D, the following be substituted :—

‘274-D. Parliament may, by law, appoint such authority or delegate its powers to such person or persons and confer on them such powers and duties as it thinks necessary.’ ”

“That in amendment No. 269 of List IV (Seventh Week), clause (b) of the proposed new article 274-D be deleted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article 274-D, the words ‘or inter-course’ be deleted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article 274-D, the words ‘with or’ be deleted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article 274-D, for the words ‘in the public interest’, the words ‘in the interests of the general public and are not inconsistent with the provisions of article 13’ be substituted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article 274-D, for the words ‘public interest’ the words ‘interests of the general public be substituted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article 274-D, the words during any period of emergency arising from scarcity of goods within the State for the period of such emergency’ be added at the end.”

“That in amendment No. 269 of List IV (Seventh Week), in the proposed new article 274-D, the following new clause be added at the end :—

‘The President shall be competent to revoke such sanction when he considers it expedient to do so in the interests of the general public and on such revocation being made the law of the State imposing restrictions shall become void.’

The amendments were negatived.

Mr. President : The question is :

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

The motion was adopted.

Article 274-D was added to the Constitution.

Mr. President : The question is :

“That in amendment No. 269 of List IV (Seventh Week), the proposed new article 274-E be deleted.”

The amendment was negatived.

Mr. President : The question is :

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

The motion was adopted.

Article 274-E was added to the Constitution.

Mr. President : The question is :

“That in amendment No. 269 of List IV (Seventh Week), after the, proposed now article 274-E the following new article be added :—

‘274-F. Notwithstanding anything contained in this Constitution, any citizen or State shall have the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by article 13 or Part X-A of the Constitution.’ ”

The amendment was negatived.

Mr. President : I think these are all the amendments to deal with.

The House will now adjourn till Nine of the Clock tomorrow morning.

The Assembly then adjourned till Nine of the Clock on Friday the 9th September 1949.
