

Friday, 9th 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:

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CONTENTS

Volume IX—30th July to 18th September 1949

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

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

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

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 9th 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.)

Shri Yudhisthir Misra (Orissa States): Before we begin today's proceedings, may I draw your attention, Sir, to a pamphlet which has been issued yesterday about international numerals and which was circulated from the Office of the Constituent Assembly. The pamphlet has been issued by the Hindi Sahitya Sammelan and contains certain offensive paragraphs, and for your information I will read one or two sentences from it. First may I know, Sir, whether this pamphlet can be issued from the office of the Constituent Assembly, as it contains certain offensive remarks against the Prime Minister and also against some other Members ?

Mr. President : It is not issued by the Office of the Constituent Assembly.

Shri Yudhisthir Misra : It was in the dak which was circulated from the office to the Members.

Mr. President : It should not have been done by the office. I was not aware of it. I received a complaint about the distribution of another pamphlet by another Member, but that was not to the Members of the House, but it was in the Press Gallery. As it was in the Press Gallery, I did not take any notice of it, but this has been distributed from the officer. I am really sorry; it should not have been done.

We shall begin with article 264 now. Amendment No. 270.

Article 264

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

"That for article 264, the following article be substituted :—

Exemption of property of the
Union from State Taxation.

"264. (1) The property of the Union shall be exempt from all taxes imposed
by a State or by any authority within a State.

- (2) Nothing in clause (1) of this article shall, until Parliament by law otherwise provides, prevent any local authority within a State from imposing any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable so long as that tax continues to be levied in that State."

I will speak after the amendments have been moved, if there is any debate.

Mr. President : Amendment No. 303 of which notice has been given by Mr. Brajeshwar Prasad, but that relates to the original article. Do you wish to move it ?

Shri R. K. Sidhwa (C.P. & Berar: General): There are amendments Nos. 208 and 209 on page 28 of the printed list standing in my name. I had given notice of these amendments long ago in conformity with the rules of procedure. There is also another amendment, No. 435 in List IX Seventh Week to that effect standing in my name.

Mr. President : We will come to that.

Shri Brajeshwar Prasad (Bihar: General) : Sir, I move my amendment No. 303.

Mr. President : Your amendment does not fit in with this article.

Shri Brajeshwar Prasad : May I move (b), Sir ?

Shri T. T. Krishnamachari (Madras: General): Nor does that fit in the proviso, Sir.

Mr. President : There is no proviso in this and therefore (b) does not fit in.

Shri R. K. Sidhwa : I do not think that amendments that came late should be given preference over the amendments which I have given notice of according to rules of procedure.

Mr. President : I think this list was circulated several days ago.

(Amendment No. 304 was not moved.)

Shri R. K. Sidhwa : Sir, I beg to move :

“That in amendment No. 270 of List IV (Seventh Week), for the proposed article 264, the following be substituted :—

‘264. The property of the Union shall, save in so far as the Parliament may by law otherwise provide, be as much liable to all taxes imposed by any local authority within a State as any property of an individual’.”

Sir, this amendment is of very vital importance as far as the taxes of the Union properties are concerned. The Union properties in the territory of India are the Posts and Telegraphs, the Customs House, the Excise, the Auditor General and the most important is the railway properties. These properties are sought to be exempted from the payment of taxes by the local bodies. This contentious subject has been a bone of contention between the Provincial Governments and the Union Government for the last 25 years. The local authorities render service to these properties and therefore tax them. So I do not see any reason why the Union property should be exempted and invidious distinction should be made. Because the Union is the supreme Government, it does not mean that taxes which are due to be paid to the local bodies, which are weaker bodies in the matter of finances, should not even take their legitimate taxes to which they are entitled. As regards the buildings which I stated of Customs, and Posts and Telegraphs, in many towns they are in rented buildings and there the question does not arise but as regards the properties of the Union themselves the question of taxes arise. In almost each town and each village there is railway property and railway properties have been sought to be exempted by this article Under section 35 of the Railway Act which is known as the Railway Local Authority Taxation Act, 1941 if any local authority seeks for the levy of the tax a notification has to be issued by the railway authorities. Not only that, Sir, the local authority has to prove to the officials that the tax is due. Secondly, it is stated that the onus of proof lies with the authorities, although it is apparent to everyone that the local authority render service for sanitation, hygiene, conservancy, roads, lighting, fire-brigade; all these are maintained in the railway buildings, yet when they are asked to pay and which they are entitled, in many cases these dues are not paid. I will quote instances where the railway authorities in spite of the local authorities complying with their requests have not paid their dues which they are supposed to pay. In this respect almost all the provincial ministers have unanimously resolved that this tax should be paid. I will quote you presently the opinion of various Governments in regard to the payment of taxes on these Union buildings from which it will be seen that not one Provincial Government has stated that there should be exemption.

In Bengal in Rishra-Konnagar a notification for declaring liability for holding and conservancy rates was published in 1916. On 16th January 1944 the area was split up into two Municipalities and the Railways suddenly stopped payment on 1st April 1946 on the ground that fresh notification was necessary. Such a notification was issued only on 25th August 1948. Moreover, although liability to pay lighting tax was declared in 1945 by the Government of India, the railway administration held up payment on one pretext or another and then the Railway Board agreed, and yet the Board later on stated that these liabilities are not due and they should not be paid. In Kanchrapara Municipality, prolonged correspondence has failed to elicit the Railway Board's consent to pay conservancy rate, the Railway Board replying on 2nd November 1948 that it did not get any drainage service from the Municipality in spite of the fact that all these requests were complied with.

On account of this controversy, Sir, a conference was held in Delhi of the various ministers from the Provinces in August 1948 and the opinion of Ministers who assembled there was that they unequivocally and unanimously supported that the Union property should be taxed. The Minister from Madras.....

Mr. President : Mr. Sidhwa, the unfortunate fact is that there are many Premiers of provinces who are Members of this Assembly and not one of them has thought fit to send in an amendment to this article and to which you have given your amendment.

Shri R. K. Sidhwa : Sir, that does not matter. I represent all the provinces, as far this matter is concerned. I am speaking in my capacity as the President of the Local Authorities Union and on the initiation of the local authorities a conference was called.....

Mr. President : I may draw attention to the fact that you cannot draw any inference from what they said at conferences when they have not themselves thought fit to say anything in this Assembly.

Shri R. K. Sidhwa : Though they have not sent amendments, they have reliance on me as an authoritative speaker and they have left the matter entirely to me. Sir, what I was stating was that this income is one of the major incomes of the local bodies. No Member, I can assure you, Sir, who is interested in the local bodies will say that these taxes should not be levied.

Mr. President : I am not saying anything on the merits. I am only saying.....

Shri R. K. Sidhwa : I say, Sir, any Member who is interested in the local bodies; there are many Members who have no interest....

Mr. President : You cannot rely upon the authority of what the Ministers said elsewhere when they are not repeating the same thing here in this House.

Shri R. K. Sidhwa : I am quoting from the records to state what is happening in the province, so far as these taxes are concerned. The Madras Minister was of the opinion that the general principle of taxation applicable to private property and those belonging to provincial Governments should be followed in regard to taxation of railway property as well. I do not want to quote the speech at length. The Bombay Government has very strongly stated that the railways are commercial undertakings run for profit, and there is no equitable reason for giving them a privileged position in respect of local taxation, especially as the residents of the railway colonies take advantage of the road and other amenities which are provided by the local authorities. In the province of Bombay, Sir, no exemption is admissible even to the provincial Government in respect of property used for purposes of profit, and local taxes have to be paid in respect of property and there is no reason why the railway administration should not be treated exactly like other commercial undertakings

[Shri R. K. Sidhwa]

whether private or State. The Assam Government's view is that the Central Government railway property should be liable to local taxation like provincial Government property. The Central Provinces and Berar Government are of the view that the railways are commercial undertakings making large profits and it would only be just and proper that they should like other commercial undertakings contribute towards the cost and maintenance of sanitation, and other amenities in the municipal areas in which the properties are located. The United Provinces Government have very strongly stated that this exemption has no justification and that there is no reason why the Dominion Government property should enjoy such privileges while enjoying the amenities provided by the local bodies by virtue of such properties being situated within the jurisdiction of local bodies. These are the opinions of some of the Governments. From these it will be seen how keen the provincial Governments are to support the local bodies in getting these taxes, because this is a major source of income. I can give you, Sir, one illustration. The Howrah Municipality has represented to the Government that if these taxes are exempted, it will lose to the extent of Rs. 206,000. You can understand, Sir, a small Municipality like the Howrah Municipality losing such a large amount.

Mr. President : This article does not cause that loss. The second paragraph saves that.

Shri R. K. Sidhwa : I quite admit that, Sir. I am only just quoting what is happening despite the second paragraph which is more or less existing in the present Act. Further, this question has been before the Legislative Assembly and discussed many times, and many Members have taken great exception in this matter in protesting against the Government for making a discriminatory law exempting the Union Government from payment of these taxes.

The result of this would be that the economic strain to the local bodies would be great and they are likely to suffer as they are even at present suffering. I may assure you, Sir, that the terminal taxes and taxes on property are main sources of income of the local bodies. After all, we must not forget that the Central Government is our own Government; the provincial Governments are our own Governments and the local bodies are our own Governments. The local bodies are the bodies which should be supported to a large extent. These are the bodies where our future Members in the legislature take their first training.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Terminal taxes are not affected by this article.

Shri R. K. Sidhwa : I was only mentioning that. Those members of the legislature who have been in the local bodies, have been very useful really. That is the training ground. The local bodies require to flourish and they should be supported by the Central Government and the provincial Governments. They are crippled from all sides from the financial point of view. They are asked to levy their taxes; but their sources are very limited. If you go to foreign countries the local bodies are given great assistance and lump grants are made by the Central Government. They are given grants for all their departments. In England, one-fourth of the taxes on State property are given to the local bodies. Similarly in the United States also because they feel that the local bodies are the pivot of the whole national Government.

I feel that this matter has been lightly treated by this House and by some of the honourable Members. I am sure that those Members who have taken an interest in local bodies are very keen in this matter. I am sorry that the Honourable Pandit Govind Ballabh Pant who has given notice of an amendment is not here to move it. He has actually fought with cudgels on this matter I do not see why against the unanimous opinion of the provincial Ministers,

the Finance Minister or the Railway Minister should come in the way; that is my difficulty. If you do not care to listen to the unanimous opinion of all the provincial Governments and only depend upon one Minister in the Centre, then I can tell you, the local bodies and the provincial Governments cannot function satisfactorily. These are creatures of our own Constitution. If you are not prepared to listen to these bodies who express their view unanimously, as I have quoted just now, I do know what more proof could be produced to show that these bodies require help.

Having gone into this question, I might mention that the Railways feel, as they generally feel and complain, that they are not legitimately taxed or that they are likely to be taxed heavily. The Madras Government have made a suggestion : appoint a committee consisting of some members of the Central Government, some members of the provincial Government and some members of local bodies and find out a solution and fix the amount which is legitimately due. My honourable Friend Dr. Ambedkar has not made any speech while moving his amendment. I do not know therefore what his objections are. But, if he feels, as I anticipate rightly, that the Union Government is the supreme Government, and the Union Government having no voice in the local bodies, no taxes could be levied on the Union Government, I say, Sir, if that analogy is accepted, there are commercial and industrial interests which are not represented in the local bodies and the local bodies cannot levy any taxes on them. Moreover, he would say no taxation without representation, therefore no representation being given to the local bodies by the Union Government, it is not proper that they should be taxed. I can tell my Friend Dr. Ambedkar that the power of levying taxes by local bodies is not absolute. It is subject to the sanction of the provincial Government and the Central Government. I can cite the Municipal laws, Borough Municipal laws, District Municipality laws, Corporation laws where it is laid down that any tax, big or small which is levied by the local bodies shall be subject to the sanction of the provincial Government and the Union Government.

That being so my Friend Dr. Ambedkar cannot come and say that because there is no representation given to them, therefore they cannot levy the tax. If any tax is levied the matter will finally come to Central Government for approval. The Central Government can reject that. They have rejected in the past. Several municipal corporations have passed certain taxes' and the Central Government have turned them down. Therefore that argument does not stand to reason for one moment. I wish he had given his reason while moving the amendment and I would like to know why his Committee is adamant, in not acceding to the unanimous opinion of the Ministers of Provincial Governments. My friend may say that this article was framed probably after consultation with the Premiers of all the provinces. I have no access to that. I am prepared to believe what he says, but I do not know. If I were there, I would have faced those Premiers with the opinions of their own Provincial Local Self Government Ministers who attended this Conference and gave their opinions.

The Local Finance Committee which was appointed at the instance of the Health Minister of the Government of India met as early as 11th June 1949 to consider this subject when the Constitution was being framed because they felt that if they did not consider this matter, their question will go by default. I quote to you the unanimous resolution of all the Provincial Ministers who were present in the Committee meeting.

“As regards Union properties (except the railways), the same basis of local taxation, viz., the basis applicable to Provincial Government properties, should be applied and the same method of assessment, is suggested above (*i.e.*, in Resolution No. 1) should also apply.”

Resolution No. 1 is in connection with railway property.

[Shri R. K. Sidhwa]

“After holding discussions with the representatives of the Central Government, the committee is of the opinion that railway property should be held liable for the payment of local taxes in the same way as Provincial Government properties are. As regards the assessment of railway property, the Committee feels that there should be an independent machinery consisting of representatives of the railway authorities, provincial governments and local bodies in order to ensure a proper assessment.”

You can see from this that any kind of excess levy, although they do not levy, they cannot levy, still a *via media* has been found out to meet the wishes of the Railway Ministry and despite this, this resolution was communicated to the Drafting Committee; I do not know whether Dr. Ambedkar took this into consideration or not. He owes an explanation to this Committee because this Committee was appointed by the Government of India; to facilitate the finances of the local bodies this Committee was appointed, and despite all these facts, the opinion of the Ministers and the opinion of this Committee have not been taken into consideration, and we are told that either the Railway Minister or the Finance Minister are not prepared to accept the unanimous decision of this Committee. Why are you throttling the opinion unanimously expressed by this Committee? This is not a hypothetical question. If the argument is that there can be no taxation without representation, then I have given him the answer that that argument cannot stand for one moment. Many interests are taxed by local bodies but they have no representation there. Even if it is taxed they have no absolute right to tax and they have to go to Central Government for approval finally. Why do you come in the way of local bodies doing some good work? The Central Government say we do not recognise them. Is the object of this Constitution to throw out these small bodies? Our aim is that these small bodies should be brought up to that level where they could be happy and prosperous. The Central Government are not prepared to give the necessary amount to these bodies. Some of the provincial Governments are doing their best from their money. The Central Government takes the terminal tax. The other day I broke my head with the Drafting Committee for the terminal tax. They have stopped asking the provincial government to levy terminal tax. Everybody wants money. I am a member of the Central Legislature, I am as keen as my friend that the Centre should be strong. At the same time I do not want the local bodies' finances to be jeopardised by this method.

I am very strong in the matter because I have been fighting for this for the last twenty years. Not only myself but the provincial Governments and everybody has been fighting for this. I am prepared to prove by facts. It is for Dr. Ambedkar to disprove these. If he is prepared to prove that, I am subject to any enquiry to show that the Provincial Government are absolutely in favour of allowing the Union property to be taxed. If not, let me have his views. With these words I move this amendment.

Pandit Lakshmi Kanta Maitra : Mr. President, Sir, I feel myself called upon to make certain observations in connection with this article. In my opinion this article raises certain very important issues. The question is, whether the property of the Union should be subject to the taxation in the States or whether there should be an absolute exemption from such taxation. I am not going to examine or controvert the theory that State properties should not be taxed. But I am placing certain observations in the light of what has actually been the practice in this country with regard to taxation of the Union property.

I think most of the Members of this House are not aware that this question came up for consideration in the shape of a Bill in 1941. I am not going to give any details from the proceedings of the Central Legislative Assembly of 1941 when this Bill was discussed and passed, but I will make a passing reference to some pages and I invite the attention of the House to the proceedings reported in Volume IV of 1941 November Session of the Legislative Assembly

in 1941. The Bill that came up for consideration and was eventually passed was 'The Railways Local Authorities Taxation Bill'. In that Bill—I give the gist of it—it was contended that the railway property as such would not be subject to any form of local taxes unless the local bodies rendered specific services to the railways. I may tell you at once that I stoutly resisted that proposition and throughout the discussion of this Bill I put up a stiff fight on behalf of local authorities as I felt that such a condition would act very disastrously on the finances of local self-governing institutions of the country. However, there was a settlement, a compromise. All the Mayors of the different corporations in India were called together, a conference was held in which I was a participant, and eventually a formula was evolved which somehow was acceptable to us.

Now the point that has to be considered in connection with this, is this. Are we in a position now to exempt all the Union property from local taxes ? Look at the equity of it, apart from the theory involved in it, from the practical aspect. In all municipalities there are certain types of taxes imposed on holdings, and holdings are defined in municipal laws in different ways. Generally a particular plot of land with, certain boundaries is a holding. Now, municipalities have got different forms of rates. They have holding rates, conservancy rates, lighting rate, education rates, water rates and other rates. It so happens that no property situated within the limits of the municipal jurisdiction is exempt in any way from any of these items of taxation. Even if there is a fallow piece of land in a municipality and practically the municipality renders no service to it, even then this fallow land is a holding and as such is subject to all these forms of taxation : no question arises of services rendered by the municipality. Similarly in big cities like Calcutta, Bombay, Madras, Allahabad, Moghulsarai, look at the vast amount of railway property that is there. The railway workshops at Kanchrapara, Lilooah, Jamalpur, Moghulsarai and other places the staff quarters, the railway colonies, railway sidings, railway lines and so on. There was a perpetual controversy between the corporations and the government with regard to local taxation of these railways. And in order to avoid the taxes the railways in many cases later on had their own sources of water-supply, electricity and conservancy arrangements and things like that, and then they contended, "We have provided our own arrangements, and government properties will therefore not be liable to taxation". I submit that this is a very questionable proposition. As I said, there is absolutely no consideration shown to any private person for granting immunity on the grounds that I have stated. I agree that the Drafting Committee's latest amendment is a great improvement on the original draft. It provides that for the period immediately following the commencement of the Constitution, such taxes as were leviable on the Union property would continue to be levied, unless and until Parliament prescribed otherwise. This certainly is an improvement. But it is necessary for me to place on record for future reference by the Indian Parliament that this is a very vital issue. It is not a question of railway property alone, though that forms the bulk of the Union property in the States. According to the Act of 1941, if there is a notification to that effect by the Government local taxes in respect of them, could be collected. But the taxes would be in a modified form. There the criterion is services rendered.

The Honourable Dr. B. R. Ambedkar : You have taken more than five minutes.

Pandit Lakshmi Kanta Maitra : It does not matter. Nobody is going to speak after me. This is a very vital issue and I have been fighting for the protection of municipalities and all other local bodies, and I feel it my duty to warn future parliamentarians to proceed very slowly and very cautiously in this matter and that they should not be guided by mere theory. The taxes from

[Pandit Lakshmi Kanta Maitra]

railway properties is an important source of revenue to the corporations, municipalities, district boards and union boards. Let this fact not be forgotten that grant of exemption will be a serious encroachment on the finances of these local self-governing institutions. That is one side. Now there is the other side. You have provided in the article—and of course, theoretically it is an right—you have provided in article 264 that Union property shall not be taxed. And in article 266 you have provided that income of the State shall not be taxed by Central Government. Of course, here is the principle of reciprocity which in vulgar language means, “You scratch my back, and I win scratch yours”. And in between these two arrangements the local self-governing institutions have to suffer. That is the whole point for consideration. In municipalities even the humanitarian and public institutions like orphanages, dispensaries, schools, temples, mosques, dharmisalas etc.—bodies that are not profit-earning institutions—are not exempt from local taxes. And as I said, no discrimination is shown in their favour even when they have not utilised any of the services offered by the municipality in any way. That is no consideration either for reduction of tax or exemption from it. That being so, it becomes a very dangerous thing to prescribe that Union property as such shall not be subject to taxes.

But it is not railway property alone : Government of India has got a lot of other varieties of property. Take for instance the fertilizer factory at Sindhri. Do you mean to say that the local body there, whatever it be, say, the local board or Union board there would not be entitled to levy any local taxes thereon ? Then there is the Mint, the Currency Offices, Post and Telegraph and Telephone office buildings in different places; the Reserve Bank Offices. Numerous other central institutions are springing up all over the country and if you make a sort of general provision that no Union property shall be subjected to local taxes, it will be very difficult for us to accept it, in view of the very delicate nature of the finances of the local self-governing institutions at present and the reaction it will inevitably have on them, if these provisions are literally put into effect. But the only salient feature about the Provision is that at least from the date of the commencement of this Constitution, these institutions will be entitled to levy these taxes as before, and I am thankful to the Drafting Committee for conceding that much. But I would have very much liked that this kind of statutory exemption for all forms of Union property, were not embodied in the Constitution. It could have been left out, it should not have found a place in the Constitution. The whole matter could have been left to the Parliament for decision one way or the other. But as the Drafting Committee is closely following the Government of India Act, 1935, as a model, I have no quarrel. I would only sound a note of warning; let not the authority, in the future lightly deal with this question, because it affects the well-being and the very existence of local self-governing institutions, such as corporations, municipalities, district boards, local boards, union boards etc. The fate of all these is inextricably bound up with the provisions contained here. If their taxation is allowed to be continued, it is all right. It will leave them some modicum of wherewithal to carry on. If this is withdrawn, it will mean nothing but disaster to the self-governing institutions. This is all that I have to say. Thank you, Sir.

Shri Chimanlal Chakubhai Shah (Saurashtra): Mr. President, Sir, article 264 has to be read with article 266 which I suppose will be moved presently under amendment 272. The two articles embody a principle of mutuality, namely, the property of the Union shall not be subject to tax by the State and the property of the State shall not be subject to tax by the Union. That is a principle which I accept. But when the property of the Union is exempted from taxation by the State it also means exemption from taxation by any

authority within the State. I also agree that should be so, because if the local authorities were left free to tax the property of the Union as they like, it will be easy for the State merely to assign the tax to the local authority which will enable the local authority to tax Union property which the State itself could not tax. I have, therefore no quarrel with the principle embodied in articles 264 and 266. There are, however, two points on which I wish to draw the attention of the House.

Speaking on behalf of the local authority with which I have been associated, namely, the Bombay Municipal Corporation, the Bombay Municipal Corporation has been carrying on a controversy with the Bombay Government since many years to augment its sources of revenue. That controversy is still not at an end. Only recently the Bombay Government appointed a committee with Mr. A. D. Shroff as President to consider the question of giving additional sources of revenue to the Corporation. After all, the sources of revenue of a local body are very limited and also very inelastic. The local body has merely to tax within the four corners of the Act which enables it to tax. The Centre can tax to an unlimited degree. The liabilities and responsibilities of local authorities are increasing and also their expenditure. The Bombay Municipal Corporation, though it is supposed to be one of the richest Corporations, is finding it difficult to make both ends meet. Last year the Bombay Government was pleased to give Rs. 50 lakhs as a grant to meet its deficit and similarly this year also they gave Rs. 50 lakhs. That is Possible because the Congress Government in the province is sympathetic and the Congress Party is in majority in the Corporation and each of them work in co-operation. But I submit that the local authority should not be left in the position of having to beg every time. Nothing should therefore be done to deprive the local authorities of their legitimate sources of revenue. I am sure it is not the intention of article 264 to starve the local authorities and I would be glad if the Honourable Finance Minister can give an assurance on that point.

In article 266 it is said that the property and income of a State shall be exempt from Union taxation. Will that necessarily mean that the property and income of any local authority within the State will also be exempt? If it means that, I should be happy. Secondly, clauses (2) and (3) of article 266 empower the Parliament to tax any trade or business which may be carried on by the State. Should there not be a corresponding provision in article 264 also ? Because, with the policy of nationalisation on which we are embarking it is possible that the Union will acquire large undertakings and will own considerable property. These may be within the limits of the State. Would you not permit the State and the local authority to tax those properties of the Union which the Union owns for business ? For instance, several local authorities are taking over transport services, public utility concerns, electricity undertakings, etc. I should like an assurance that the income of the local authorities from such transport services and public utility services will be exempt from taxation of the Union, particularly income-tax. The Bombay Municipal Corporation has, for example, recently taken over the Tramway, Bus and Electricity undertakings. It will be a considerable additional source of revenue for them. If these are liable to tax, particularly income-tax, it will reduce their sources of revenue. I would therefore request Dr. Ambedkar to consider these two points, namely, (1) whether in article 266 it is not necessary....

The Honourable Dr. B. R. Ambedkar : We are for the moment considering 264 and not 266. That may be dealt with when we come to article 266.

Shri Chimanlal Chakubhai Shah : If you do not want me to say anything on that at the present moment, I will not. But I think the two articles are correlated and the one has to be read with the other. That is the only reason

[Shri Chimanlal Chakubhai Shah]

why local bodies are not being permitted to tax the Union property, because under 266 you are also exempting the State property and income from State property from Union taxation. These are the two points to which I wanted to draw the attention of the House.

Shri B. M. Gupte (Bombay: General): Sir, I rise to support the amendment of Mr. Sidhva. Exemption of Central Government property from taxes of local bodies has been a long standing grievance and it is a pity the Drafting Committee did not see its way to remove it. The present position is defended on certain principles and theoretically, I am prepared to concede, that they are correct; but I am afraid that in practical application they are not so.

One of the principles on which it is defended is that the Central Government has no representation in local bodies and has no means, of controlling the taxation and it is argued that the power to tax is almost a power to destroy. Naturally therefore, the Central Government cannot give blindly such power to the local bodies. In theory, it is correct, but in practice it is not; because after all local bodies are subordinate to the State and the States are subordinate to the Central Government.

Shri T. T. Krishnamachari : It is not so.

Shri B. M. Gupte : Although in the Constitution we are framing for the country, we call it a Federal State, still the picture that is emerging is not a picture of a Federal State. I would rather describe it to be a decentralized form of unitary government. Under this Constitution, not only the local body but even a State cannot afford to defy or be recalcitrant to the Union. Therefore, it is no use saying that the centre has no control over the local body. In other ways also, there are practical limits to the taxation. The local body cannot put a higher rate of tax on Union property than that they can impose on ordinary persons. If there is an exorbitant rate, the rate payers will rise in revolt. And if the rate is not exorbitant, there is no reason why the same rate should not apply to the Union property. Then even judicial appeals are allowed to the District Judge or the City Magistrate. Therefore, it is no use saying that the Centre has got no control over the taxing power of the local body and on that ground therefore the present position cannot be defended.

Then there is another principle which is urged; and that is that local bodies are after all subordinate units of the Government itself; the Central Government, the States and local bodies together form the entire Government and one part of the Government cannot tax another part of the Government. This argument also is not valid. I will give you another example. Take two departments of the same government. If one department of the Central Government sends a telegram to another department, naturally it has to pay the telegraph charges. One department debits it and another credits it. Therefore, I submit that in this matter it is more a question of convenience and of comparative need than of absolute principle or a hard and fast rule.

With regard to comparative need, I will put it to Dr. Ambedkar whether the need of the local body for finance is greater than the need of the Union property for exemption. The local bodies come into daily contact with the people : their activities touch the daily life of the people and naturally therefore their responsibilities are great. Their financial condition is already very straightened today. The Central Government gives them no grant. So if the Central Government gives them no grant, why should not they at least pay taxes to the local bodies on their properties ? These taxes will increase the efficiency of the local bodies and to that extent the Central Government properties that are situated there and the persons who take advantage of those properties would

be benefited by the increased efficiency of the local bodies. Then a difference is made by the Union Government. It is prepared to pay the service taxes I know a distinction is made between service taxes and non-service taxes but that distinction is made simply for the sake of the principle that the local bodies should not make any profit from service taxes. A service tax should be strictly limited to that amount which is necessary for the purpose of that service. That was the intention in devising that classification service and non-service taxes. That does not mean that non-service taxes do not confer any benefit. There is indirect benefit that is derived from the amenities provided by the local bodies. Suppose a very large office is maintained in a city by the Central Government and there is access to that office from the road. That road is built, lighted and swept by the local body. You will say that you derive no direct benefit and therefore you are not bound to pay the non-service taxes, but you do derive benefit from the general service of the local body maintained by those non-service taxes. Therefore this distinction should not be taken advantage of in this connection. The local bodies have to be maintained and they cannot function without grants either from the State or the Centre. There is no question of principle in the matter : the article itself contains an exception and therefore there should be no objection to accepting the amendment.

It must be admitted that the Centre must be strong but a strong Centre cannot be sustained on weak units or weak sub-units. These local bodies are the sub-units which come into intimate contact with the people and unless they function efficiently and are strong, their inefficiency and weakness are bound to recoil on the Union Government itself. I therefore support the amendment.

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

Mr. President : The question is:

“That the question be now put”.

The motion was adopted.

Shri R. K. Sidhwa : In view of the unanimous views of the Members who have spoken, will the Honourable Dr. Ambedkar kindly reconsider the position ?

Babu Ramnarayan Singh (Bihar: General) : Sir, this is a very important article and the discussion should not be closed so quickly.

Mr. President : The view points have been placed before the House. Dr. Ambedkar will now reply to the debate.

The Honourable Dr. B. R. Ambedkar : Sir, I will first refer to the provisions contained in clause (2) of the proposed article 264. I think it would be agreed that the intention of this clause (2) is to maintain the *status quo*. Consequently under the provisions of clause (2) those municipalities which are levying any particular tax on the properties of the Union immediately before the commencement of the Constitution or on such property as is liable or treated as liable for the levy of these taxes, will continue to levy those taxes. All that clause (2) does is that Parliament should have the authority to examine the nature of the taxes that are being imposed at present. There is nothing more in clause (2), except the saving clause, viz., “until Parliament by law otherwise provides”. Until Parliament otherwise provides the existing local authorities, whether they are municipalities or local boards, will continue to levy the taxes on the properties of the Centre. Therefore, so far as the *status quo* is concerned, there can be no quarrel with the provisions contained in article 264.

The only question that can arise is whether the right given by clause (2) should be absolute or should be subject to the proviso contained therein, until

[The Honourable Dr. B. R. Ambedkar]

Parliament otherwise provides. In another place where this matter was discussed I submitted certain arguments for the consideration of the House.

Pandit Hirday Nath Kunzru (United Provinces : General) : Which is the other place that my honourable Friend is referring to ? Is there any other Chamber of the Assembly?

The Honourable Dr. B. R. Ambedkar : It is unmentionable and therefore I am saying "another place". Because the arguments that I presented there have been reproduced in a garbled fashion I think they have not succeeded in impressing the House with their importance and therefore, I should like to repeat my arguments because they are my own, and I should like to repeat them in the way I should like the House to understand them.

I said then that it was difficult to give a *carte blanche* to the local authority to levy taxes on the properties of the Union without any kind of limitation or condition and the arguments were two-fold. First of all, I said and I say right now here that it is impossible theoretically, to conceive of any property of a person who is not represented or whose interests are not represented in any particular organisation,—to allow that Organisation a right *ad infinitum* to levy any tax upon the property of such persons. It is a principle contrary to the principles of natural justice and I said that so far as the local authorities are concerned, whether they are municipalities or local or district boards, there is practically no representative of the Central Government in those bodies. I said the same thing elsewhere. Secondly, I said that the taxing authority of a local body is derived from a law made by the local legislature, the legislature of the State. It is quit impossible for the Centre to know what particular source of taxation, which has been made over by the Constitution to the State legislature, will be transferred by such State legislature to the local authority. After all, the taxing power of the local authority will be derived from a law made by the State Legislature. It is quite impossible at present to know what particular tax a local body may be authorised by the State Legislature to tax the property of the Central Government. Consequently not knowing what is to be the nature of the tax, what is to be the extent of the tax, it is really quite impossible to expect the Central Government to surrender without knowing the nature of the tax, the nature of the extent of the tax, to submit itself to the authority of the local body.

That is the reason why in clause (2) it is proposed to make this reservation that parliament should have an opportunity to examine the taxing power of the local authority, the amount of tax that the propose to levy, before parliament will submit itself to allow its property to be taxed by the local authority. As I said, there is not the slightest intention on the part of the parliament or on the part of those who have proposed this article, that parliament when it exercises this authority which is given to it by clause (2) will exempt itself completely from the taxation levied by the local authority. The only reason why this proviso is introduced is to allow Parliament an opportunity to examine the taxation proposals before it is called upon to submit itself to that taxation. I do not think that there is any inequity so far as clause (2) is concerned. Secondly, clause (2) does not take away anything by way of the financial resources now possessed by the local authorities from what they are getting now.

There is, however, one point which I have discovered now, that is a sort of lacuna in clause (1) which I am prepared to rectify. Clause (2) deals with the cases of those municipalities or local authorities which have been levying that tax. We also think that it is desirable that this right should not be confined to those municipalities or local authorities which have been exercising that right, but Parliament may also extend that privilege of taxing the property of the Centre to those municipalities and local boards which have not so far

exercised that power or failed to do that. Therefore, I am prepared to, introduce these words in clause (1) :

“After the words ‘The property of the Union shall’ the words ‘save in so far as Parliament may by law otherwise provide’, be added.”

That is to say, it would permit Parliament to confer power or to recognise taxation by other municipalities and other local boards which are so far not recognised. I think that is a lacuna which I am prepared to make good so that there may be no discrimination between local authorities which have been taxing and those which have not been taxing. It would be open to Parliament, even after the passing of the Constitution, to make a law permitting those municipalities and local authorities which have not so far levied a tax to levy a tax. Beyond that I am not prepared to go.

Shri Syamanandan Sahaya (Bihar: General): Even under the existing Government of India Act, 1935, municipalities were not allowed to tax buildings belonging to the Government of India.

The Honourable Dr. B. R. Ambedkar : That is what I have said. I could have elaborated the argument a great deal but I do not want to do it because I have accepted that the *status quo* should be maintained. Purely from the constitutional point of view, I would have tremendous objection to clause (2) and I would not allow it, but we are not having a clean slate; we are having so much written on it and therefore I do not want to wipe off what is written. That is the reason why I will have clause (2) and also modify clause (1) to permit Parliament to enable those municipalities which have not been taxing Central property to tax them.

Babu Ramnarayan Singh : Dr. Ambedkar said Parliament will consider the respective claims of the local bodies later on. I want to know what will be the immediate effect of the passing of this Constitution. For instance, in my Province of Bihar certain district boards, especially the District Board of Hazaribagh, always gets a large amount of money from the Government colliery as road cess. May I know whether that payment will be stopped as soon as this Constitution is passed or will it continue to be paid till it is decided upon by the Parliament ?

The Honourable Dr. B. R. Ambedkar : Sir, I cannot express any opinion upon individual taxes that are being levied, but the general proposition is quite clear that if any municipality or local board, has been levying a tax that tax will continue to be levied against the property of the Centre and against such other property as will be held liable to taxation. There will be no change in the position of those municipalities which are levying those taxes.

Shri R. K. Sidhwa : At present under the Indian Railways Taxation Act, a notification has to be issued in the event of local bodies demanding payment of tax. May I know whether Dr. Ambedkar is prepared to consider that section to be amended ? Of course it cannot be amended here but is there any assurance from the Railway Minister that it is going to be amended in Parliament ?

The Honourable Dr. B. R. Ambedkar : Sir, I wish my Friend Mr. Sidhwa drew a proper lesson from the Railway Taxation Act. Parliament voluntarily submitted itself by passing an Act to allow the properties of the Railways to be taxed by the local authorities. Any Parliament can voluntarily submit its properties to be taxed by local authorities and there is no reason to suspect that Parliament will not volunteer to allow its other properties also to be taxed in the same manner. If the Railway Property Taxation Act is not properly carried out or if there is any lacuna, it would be open to Parliament to amend it, and I suppose it would be also open to Mr. Sidhwa to go to a court of law

[The Honourable Dr. B. R. Ambedkar]

and have the money paid if it becomes payable and due under the Railway Property Taxation Act.

Mr. President : I will now put the amendments to vote. No. 435, Mr. Sidhwa.

Shri R. K. Sidhwa : Sir, in view of the improvement that he has made in clause (I), I do not press it.

The amendment was by leave of the Assembly, withdrawn.

Mr. President : Then I will put the proposed article to vote as modified by Dr. Ambedkar's amendment to clause (1)

The question is :

"That proposed article, 264, as amended, stand part of the Constitution."

The motion was adopted.

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

Article 265

Mr. President : Article 265. There is an amendment, notice of which has been given by Pandit Govind Ballabh Pant; to have an article 264-A, but he is not here. Then we come to article 265, amendment No. 306.

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

"That in article 265, for the words 'a Union railway', wherever they occur, the words 'any railway' be substituted."

This is mainly consequential upon the changes we have made in List I of Schedule VII.

Shri Brajeshwar Prasad : I beg to move:

"That with reference to amendment No. 2953 of the List of Amendments, in article 265—

- (a) the words 'save in so far as Parliament may, by law, otherwise provide be deleted;
- (b) the words beginning with 'and any such law imposing' and ending with 'a substantial quantity of electricity' be deleted."

Mr. President : As there is no other amendment to be moved to this article, if no Member wishes to speak on it, I shall put the question to vote. The question is :

"That in article 265, for the words 'a Union railway', wherever they occur, the words 'any railway' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That with reference to amendment No. 2953 of the List of Amendments, in article 265—

- (a) the words 'save in so far as Parliament may, by law, otherwise provide' be deleted;
- (b) the words beginning with 'and any such law imposing' and ending with 'a substantial quantity of electricity' be deleted."

The amendment was negatived.

Mr. President : The question is :

"That article 265, as amended stand part of the Constitution."

The motion was adopted.

Article 265, as amended, was added to the Constitution.

New Article 265-A

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

“That after article 265, the following article be inserted :—

‘265A. (1) Save in so far as the President may by order otherwise provide, no law, of a State in force immediately before the commencement of this Constitution shall impose, or authorise the imposition of, a tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority established by any existing law or any law made by Parliament for regulating or developing any inter-State river or river-valley.

Exemption from taxation by States in respect of water or electricity in case of certain authorities.

Explanation.—In this clause, the expression “law in force” has the same meaning as in article 307 of this Constitution’.”

In the following paragraph of the article, I wish to introduce some new words with your permission and move it with those words.

“(2) The Legislature of a State may by law impose, or authorise the imposition of, any such tax as is mentioned in clause (1) of this article but no such law shall have any effect unless it has, after having been reserved for the consideration of the President, received his assent; and if any such law provides for the fixation of the rates and other incidents of such tax by means of rules or orders to be made under the law by any authority, the law shall provide for the previous consent of the President being obtained to the making of any such rule or order.”

Mr. President : Mr. Naziruddin Ahmad is not moving amendment No. 308. As there is no other amendment to this motion, I will put it to vote. The question is :

“That new article 265-A, as moved in the amended form, stand part of the Constitution.”

The motion was adopted.

New article 265-A was added to the Constitution

Article 266

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

“That for article 266 the following article be substituted :—

‘266. (1) The property and income of a State shall be exempt from Union taxation.

(2) Nothing in clause (1) of this article shall prevent the Union from imposing or authorizing the imposition of any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any property used or occupied for the purposes thereof, or any income accruing or arising therefrom.

Exemption of the Governments of States in respect of Union taxation.

(3) Nothing in clause (2) of this article shall apply to any trade or business, or to any class of trade or business, which Parliament, may, by law declare as being incidental to the ordinary functions of Government’.”

Mr. Naziruddin Ahmad (West Bengal: Muslim): I am not moving amendment No. 309.

Shri P. T. Chacko (United State of Travancore and Cochin): I beg to move:

“That in amendment No. 272 of List TV (Seventh Week), in clause (2) of the proposed article 266, after the words ‘trade or business of any kind carried on’ the words ‘beyond he limits’ be inserted.”

The purpose of my amendment is to exempt all properties and income of a State from Union taxation, even when the State is carrying on a business or trade within its own limits. The Union will have no power to tax properties or income of a State in one case where the State carried on a business

[Shri P. T. Chacko]

or trade outside its limits. This principle of immunity from inter-governmental taxation was accepted by this House when it accepted article 264 where it is provided that the properties of the Union shall be exempt from taxation by a State. I only want that this principle should be extended and applied in the case of the States as well. In the United States Constitution there is no provision exempting the Union properties or State properties from reciprocal taxation. But, in interpreting the Constitution the Supreme Court has very clearly laid down this principle of immunity from reciprocal taxation. Power to tax was held to involve power to destroy. Until recently, even the income of an officer of a State was exempted from the taxation of the Union. Later on, however, in applying this principle the Supreme Court began to draw a sharp line of distinction between the governmental and traditional functions of a government on one side and the business or trade carried on by a State merely for the purpose of profit on the other. Immunity was denied in cases where the State carried on a business or trade as distinct from a governmental function. But to define 'governmental function' is not easy. What might have been deemed in earlier days as a dangerous expansion of State activities may today be deemed to be an indispensable function of the Government. The State Government does not exist for its own sake. It enters the field of private enterprise, not with profit motive alone. It is no doubt the duty of a State to nationalise public utility services and also the key industries. The modern concept of a State is such that the conduct of a business or trade within its own limit very often becomes a function of a State. There is an express provision in the Constitution of the Commonwealth of Australia granting immunity from reciprocal taxation. Section 114 of the Constitution reads :

"A State shall not without the consent of the Parliament of the Commonwealth raise or maintain any naval or military force or impose any tax on property of any kind belonging to the Commonwealth, nor shall the Commonwealth impose any tax on property of any kind belonging to a State."

The provision is imperative and properties of all kinds belonging to a State are exempted.

Secondly, Sir, this power, if vested in the Union, to tax the properties of a State indiscriminately, would hamper the progress of the State. Taxation is always a double-edged weapon and it has a tremendous power to regulate the subject of taxation. Any tax on industries conducted by a State serves the purpose of discouraging the State from running any industry. The result would be to discourage the State from nationalising public utility services and other industries. Some progressive States may have a well-defined scheme of social programme. You are destroying such social programme by adding one more obstacle to the innumerable obstacles already in existence.

In short, this taxation would prevent the State from carrying on its social functions and would in effect reduce the capacity of the State to serve its own people. A State cannot be looked upon just like an individual who is conducting business. In the case of an individual, the profit goes to his own pocket, resulting in concentration of wealth in his hands and thereby giving him more economic power, which may be utilised for the further exploitation of his own fellow-beings. His income is taxed purposely to prevent the concentration of wealth in the hands of the private individual. In the case of a State, the profit obtained by the State obviously enables the State to serve its own people better.

I would also like to point out that the proposed taxation would even prevent the expansion of industrialisation, which is so much needed for us. Take for example a State like my own, Travancore. It is a State which is thickly populated. It is one of the most thickly populated States not only in India but probably in the whole world. The majority of the people are agriculturists

Land suitable for cultivation is limited there. Whereas, in other places the problem is to obtain the labour force for cultivating the available land, the problem in Travancore is to obtain land to utilise the available labour force. In such a State, there was only one salvation for the people, that is, industrialising the State, and the State came forward with a steady policy of Industrialisation and invested a large amount of money, four to five crores of rupees. The State has succeeded to a very large extent in its venture to industrialise. The effect of the proposed taxation is definitely to discourage a State like from investing any further amount of money in industries.

Now, in a State like this, industrialisation is a vital problem, a problem of life and death for the seven million inhabitants of the State. The industrialisation of the State becomes a governmental function there. To give the Centre the power to tax the properties of the State and the industries conducted by the State will be to discourage the State from investing any further amount in industries. Again it would be impossible for private enterprise to exploit certain resources of a State. In such cases where private capital refuses to venture, it is the duty of the State to invest capital for that purpose. This tax would prevent, would discourage the State from investing any amount to exploit such resources.

Finally, Sir, the proposed tax may cripple or obstruct the ordinary governmental functions of a State. As Chief Justice Marshall put it, the power to tax involves the power to destroy also. If power to tax is conceded, the State will have no voice in fixing the extent of taxation. As a matter of right, if a State can be taxed lightly it can also be taxed heavily. If it can be taxed justly, it can also probably be taxed oppressively. Generally, the business or trade carried on beyond the limits of the State may be assessed as something distinct from a purely Governmental function. The State may have only a profit motive in conducting business outside the limits of that State, a just reason why the business or trade carried on by a State beyond its own limits could be taxed by the Union. I only point out, Sir, that the principle underlying the proposed article is not sound. The power proposed to be invested in the Union will necessarily retard the progress of a State. It will act as a check to social programmes of a State. It will check the expansion industrialisation and finally it may cripple the State itself. I request the House to consider its repercussions on the States and their social programmes.

Shri S. P. Nataraja Pillai (United State of Travancore & Cochin): Mr. President, Sir, I beg to move :

“That in amendment No. 272 of List IV (Seventh Week), the following proviso be added to clause (2) of the proposed article 266 :—

‘Provided that the trade or business which was carried on by or on behalf of the Government of a State before the commencement of this Constitution and any income accruing or rising therefrom shall not be liable to Union taxation.’ ”

Sir, my amendment has only a limited scope. I want to exclude from Union taxation the existing trade or business in a State or any income accruing therefrom in this connection, I would like to submit before the House that if this article as it stand is given effect to immediately it will have the effect of paralysing the finances of the State, probably leading to a financial breakdown. I am sure it will be the case in some of the South Indian States at least. For example, Sir, in Mysore and Travancore, for the last two decades and more, an active policy of industrialisation was adopted and followed and crores of rupees have been invested in industries. If we take the case of Travancore alone, nearly five to six crores of rupees have been invested in industries and annually there is a net revenue of fifty to sixty lakhs of rupees to the State from this source. The policy of industrialization

[Shri S.P. Nataraja Pillai]

was adopted not only to improve the material condition of the people but also as a method to find funds to meet the progressive needs of the Government. This attempt was successful. Now as a result of the financial integration scheme which has now been adopted as a result of the Federation that is being hammered out here, according to the present estimate Travancore State is expected to lose at least 40 per cent. of its revenues. Curiously enough in Travancore 40 per cent. of its revenue is being budgeted for expenditure on education, public health and public works. If, in addition to the gap which is expected to occur as a result of this financial integration, this Union tax is to be enforced immediately on the income which the State derives from trade and industries, that will widen the gap still further and will result in a financial breakdown as it were.

But when I say this, Sir, I do not for a moment forget the tremendous responsibilities of the Union and the absolute necessity of providing financial resources to discharge its activities. But at the same time, Sir, the Centre has also to see that if the States are to shoulder their responsibilities and discharge their duties, financial resources must be available to them too. I have heard it said here, Sir, that the authority of the Centre is all prevailing and pervasive and their demands are paramount; but I feel that that approach is not quite correct. As far as the States and the Centre are concerned, they are only discharging two different and distinct functions of the Union Government. The inefficiency or ineffectiveness of one is sure to react on the efficiency and the effectiveness of the other.

In these circumstances, it is absolutely necessary that the State finances should not in any manner be affected so as to prevent the State from functioning with efficiency. At this time of transition as I pointed out before, when this State stands the chance of losing at least 40 per cent. of its revenue as a result of the financial integration scheme that is being worked out, this provision to tax the income from trade or business in the State should not be given effect to.

The Government of India appointed a Committee known as Indian States Finances Enquiry Committee and they have published a very valuable report after carefully going into the question of State finances. In page 47 of Vol. I of that report they refer to article 266 of the Draft Constitution, that is about this identical article, and the following words occur :

“We cannot however, overlook the fact that if it should be enacted in its present form (that is, in the form of giving the right to the Centre to tax the State trade) it will have adverse consequences upon the finances of Indian States, to the extent that they are now dependent upon the tax-free income from those enterprises; in some States such income is considerable. We recommend, therefore, that should article 266 be enacted in its present form, the existing State owned and operated enterprises should be exempted from federal taxes on income to the extent to which they now enjoy such immunity.....”

I have only put this idea in my amendment and my object is only to exempt the existing State-owned and operated enterprises from the Union taxation. That will give relief to the State when the State is faced with a difficult financial situation on account of the new Constitution that comes into force immediately. And when its revenues stand to lose a good portion of it we should not enact a provision by which it will be reduced still further Clause (2) of the proposed article vests the authority with the Parliament to tax the business or trade or income accruing therefrom in future in the States. So when that is being done, I completely agree with the general principle since tax on income being an item of the federal finance, the Union may have the right and necessity to tax the income to meet its demand. But when the State has been enjoying a particular amount of revenue on an investment

they have made and when on the basis of that a financial system has been evolved and when their administrative structure has been based on that, it will be unwise to immediately enforce this taxation and dislocate it. It will paralyse the Government's activities and at the same time lower the efficiency of that administration.

I therefore, very earnestly request the Drafting Committee to consider whether this exemption could not be granted as recommended by the Indian States Finances Enquiry Committee and accept my amendment which I feel will substantially help the State in its present situation. Travancore situated as it is, having to face grave problems of over-population and re-organization schemes, having adopted compulsory primary education, having enforced prohibition as the next step and having introduced reforms in the land revenue assessment and taxation to a basic tax, I think it is only fair that such a State as that should be given all facilities to carry on that administration without lowering its present standards.

Shri S. V. Krishnamoorthy Rao (Mysore State): Mr. President, Sir, I have tabled two amendments Nos. 312 and 436. I will move both of them; they apply to the same question.

Sir, I move :

"That in amendment No. 272 of List IV (Seventh Week) for clause (3) of the propose article 266, the following be substituted :—

'(3) Nothing in clause (2) shall apply to—

- (a) any trade or business, or to any class of trade or business which the Government of a State was carrying on as an ordinary function of such Government, at the commencement of this Constitution.' "

Sir, I do not move clause (b) as it is already there.

Sir, I also move:

"That in amendment No. 312 of List V (Seventh Week), in sub-clause (a) of the proposed clause (3) of article 266, after the words 'at the commencement of this Constitution' the words 'and such programmes of their development and expansion the preparations for which are complete' be inserted."

Sir, article 266 clause (1) gives general immunity to the income and property of a State.....

Mr. President : You are not moving clause (b) of amendment No. 312 ?

Shri S. V. Krishnamoorthy Rao : Clause (b) is already there in the present clause (3) of article 266; therefore I am not moving this. It is already there.

Clause (1) gives a general immunity to the property and income of the State. Clause (2) gives power to Parliament to tax any trade or business carried on by a State. Clause (3) gives exemption to clause (2), so that Parliament may declare by law any trade or business as being incidental to the ordinary functions of Government. My submission is that clause (3) will seriously affect the finances of a State like Mysore or Travancore, as already submitted by my honourable Friends, Mr. Chacko and Mr. Nataraja Pillai. The Mysore Government have, during the past fifty years, by a judicious policy of state enterprise and state aid, developed a number of industries. According to the proposal of financial integration as recommended by the States Finances Enquiry Committee, a number of central taxes will go to the Centre. In fact, at page 30, paragraph 32 of their report, they say that present dependence of Mysore on federal sources of revenue is indeed considerable and the immediate scope for developing provincial taxes is rather limited. By these proposals Mysore stands to lose nearly 321.59 lakhs of Rupees. Of course the Central Government proposes to make good sixty per cent. of this loss during the course of fifteen years. But what remains will be a few indus-

[Shri S. V. Krishnamoorthy Rao]

trial concerns and public utility concerns like Hydro-electric works, industrial and other works, the Iron and Steel works. The Mysore Government have already invested nearly fifteen crores of Rupees as reported at page 31 of the States Finances Enquiry Committee report on Hydro-electric works, industrial works, Iron and Steel works. They are running nearly twelve items of Industries like the Central Industrial works soap factory, Porcelain factory, silk Weaving factory, Electric factory, the Mysore Implements factory. The Mysore Chromate factory, Silk and filature factory, Iron and steel works, Nationalised Motor Transport, the Sandalwood oil factory, etc. If all these industries which were started and developed during a period when there were no central taxes, were now to be taxed as a result of article 266, my submission to this House is that the finances of the State will be very greatly crippled. Mysore has got vast schemes of electrification of every village with a population of 1,000 and more, within the course of next two or three years. We have got a scheme for introducing electric trolley buses in the Bangalore city. We have got schemes of rural development and spread of education. With the taking over of the central resources of revenue, the financial position of Mysore will be greatly jeopardised. If additional taxes also were to be introduced on the trade and business that are being carried on by the Government as part of the Government—these are industries which are being carried by the Industries, Department of the Government of Mysore—it will greatly hamper the financial position and further development of educational and other facilities that the State intends to give to the people.

My respectful submission is that the financial policy of the Government of India should be to help the States and not to hamper their development. In fact, I learn that such an assurance was given in the Finance Ministers' Conference. Dr. John Matthai, our Finance Minister, is here and if an assurance were to be given by him that those industries which have been already started and are being run by the State as an ordinary function of the Government, will not be taxed, I am not going to press the amendments. In fact, the supply of electricity is the cheapest in Mysore. Industrial concerns are supplied from six to two pies per unit for the development of industries. For irrigation purposes, we supply electricity at half an anna per unit. I think nowhere in India is electricity supplied—so cheap. If we are to continue this policy of industrialisation my submission is that the central taxes should not fall on the industries and trade which are already being carried on by the Government. Of course, clause (3) says that Parliament may by law declare. I too accept this proposition so far as future industries that are to be started by the State are concerned. Some States may, in order to avoid central taxes, take over certain industries and certain private trade and business and run them as a department of State. Such things should be prevented; but that would apply to future industries future trade and business. Trade and business, and industries which have already been started by the Government as part of their routine, I submit, should not be taxed and this clause, should not act as a hindrance for the development of the State. My respectful submission is that these amendments should be accepted or if the Honourable Dr. Ambedkar is not willing to accept them, if an assurance is given, I do not propose to press these amendments.

Mr. President : There are four amendments of which notice has been given by Mr. Brajeshwar Prasad. As they all relate to the other amendment.....

Shri Brajeshwar Prasad : There are five amendments, the fifth amendment is number 338 in List VI which I want to move.

Mr. President : You may move that; the others do not arise.

Shri Brajeshwar Prasad : Sir, I move :

“That in amendment No. 272 of List IV (Seventh Week), in clause (1) of the proposed article 266, for the words ‘exempt from’ the words ‘subject to’ be substituted.”

Sir, the only constitutional justification which may be urged in support of this provision is that such a provision finds a place in the Canadian or in the Australian Constitution. I am convinced that the analogy does not hold good in our case. The constituent units in India, the Indian States and the provinces are not on a par with the constituent units of Canada and Australia. The facts of Indian history cannot be ignored. These provinces and the Indian States have never been sovereign in any sense of the term. They have been servants and agents of the Government of India. I think that the scope must be widened for union taxation; nothing is lost by restricting the sphere of union taxation.

It is not only on constitutional grounds, but also on political grounds that I am opposed to this article. It is risky, it is dangerous to give wider autonomy to the provinces. I am convinced that the only reason why we are making provision for this article in our Constitution is that the majority of Members of this House are champions of State rights. The fact is that all the provinces and the Indian States, whatever constitutional status we may confer on them, are the agents and servants of the Government of India. Let us not blink at these facts. There is one party ruling in this country and there is not the slightest possibility of any other party coming into power or of the provinces becoming autonomous. They are all knit together under the aegis under the leadership of the Congress Party. There is neither historical nor constitutional justification for vesting this power of taxation into the hands of the States. A realistic approach of the situation would entitle us to subject the property and income of a State to Union taxation.

Shri Alladi Krishnaswami Ayyar (Madras: General) : Mr. President, with my intimate acquaintance for over twenty years with conditions in Mysore and also with my acquaintance with condition at present in Travancore, I may at once say, my sympathy is in favour of certain observations made by the Mysore and Travancore representatives, so ably presented to this House. At the same time we will have to look at the matter in the large perspective of Indian industry and Indian advancement.

So far as any exemption is called for in regard to Mysore and Travancore industries which have been going on for some time, I do not believe that there would be any controversy in that regard. I am sure the Government of India and the Parliament of India will take a very favourable view of the situation and will extend the necessary encouragement to those industries which have been thriving for such a long time. It is unnecessary to say that under the able Dewanship of Sir M. Seshadri Iyer, Sir M. Viswesvarayya and other talented Dewans of Mysore; Mysore has made a very rapid progress in this regard, and I think we on this side of India are equally interested in the progress of Mysore. We are not anxious that Mysore should live on mere subsidies from the Government of India, as is necessarily apt to for some time until the finances are in proper order—upto fifteen years. That is so far as these particular States are concerned; you have an express provision that Parliament may exempt. It is a permissive power that is given to Parliament under the section. There is no duty cast upon Parliament to, levy a tax and I am sure in the larger interest of trade and industry, Parliament will certainly not go to the length of taxing these industries which have been thriving.

With regard to the other Parts of India, the question will have to be viewed somewhat differently. For various reasons under the British regime no socialisation of industries began. The provinces were functioning practically as

[Shri Alladi Krishnaswami Ayyar]

police states and not interesting themselves in the large schemes of industry excepting in regard to Pykara scheme and similar projects when Sir C. P. Ramaswamy Iyer was Member of the Madras Government. There is the danger on the part of the provinces to start a number of industries which may not be financially successful but at the same time they may kill private enterprise. Our objective may be towards socialisation of key industries, but if that objective is to fructify and to yield excellent results, it has to be necessarily a little slow. As we advance there is no doubt that the time will come when most of the key industries will be taken up by the State. That is the object of the provision to the effect that if trade is started, it shall be open to the Centre to levy a tax.

Reference has been made to Australian, Canadian and, American Constitutions. There is no need to go into that. At the time when the Canadian and Australian Constitutions were drafted it was not thought that large schemes of socialisation would be undertaken. Therefore they put it simply in the general language that the property of the State shall not be subject to taxation by the Union or Federal Government and the property of the Union Government shall not be subject to tax at the instance of the Provincial Government. So far as the United States is concerned in the early days though there was no express provision through the medium of the doctrine of Instrumentality, they held that the State cannot tax the Federal Government and the Federal Government cannot tax the State instrumentality because both are parts of a single composite mechanism and if you permit one to tax the other, it may destroy the whole mechanism. Later, the doctrine of instrumentality itself was felt to be not in the large interest of the State, and quite recently the swing of the pendulum is the other way. The other day one of the most enlightened of Supreme Court Judges held in what is known as the *Spring of the State of New York*, in regard to certain springs which were worked by the State of New York—for this part of business they held that there is no immunity of the State from tax. They said ‘You have to draw some line between one kind of activity of a State and another kind of activity. Of course it cannot be a rigid definition. What may be in one sphere may easily pass into another sphere with the progress of the State and with the development of the polity in the particular State’.

But, normally speaking, you cannot regard at the present day under existing conditions the carrying on of trade and business as a normal or ordinary function of the Government. It may develop into ordinary function—certain aspects of it, especially the transport service and certain key industries, may soon become the parts of the State enterprise. The clause runs thus :

“Nothing in clause (1) of this article shall prevent the Union from imposing or authorising the imposition of any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State or any operations or connected therewith, or any property used or occupied for the purposes thereof, or any income accruing or arising therefrom.”

The Parliament will take note of the progressive tendency of the particular times and may at once declare accordingly. It might not have been the ordinary function of Government before. Now it may become an ordinary function. There will be sufficient elasticity in clause (3) to enable the Government to exempt from taxation particular trades or industries which are started as public utility services or declare them as regular State industries. Nobody can question a law made by Parliament because the Parliament has stated that a particular industry is an ordinary function of the State whereas according to the notions of an individual economist A or B it is not an ordinary function of a Government. Parliament will lay down the law of the land and it will be the sole arbiter of the question as to whether it is an ordinary function of Government or not.

Therefore having regard :

- (a) to the plenary power of Parliament to exempt any particular industries, and particular business from the operation of the tax provision,
- (b) having regard to the fact that it is not obligatory on Parliament to levy any tax,
- (c) that the very conception of State industry may change with the further evolution of the State and changing times, and
- (d) to the inter-connection between one State and another.

it will be very difficult to differentiate between particular States, between States which have been working certain industries and other States. But as a matter of administrative policy and as a matter of parliamentary legislation it may exempt States like Mysore and Travancore which have been carrying on trade and business for a very long time and such industries today are as solid and stable footing so as to warrant an exemption, but on the other hand to lay down a general principle of law that even at the present day before the provinces are on their feet every trade or business is exempt from taxation will lead to wild-goose schemes being started by various provinces. They may not take into account the general interests of the trade and industry in the whole country. They may not have regard to the difference between one kind of industry and another. Under those circumstances the particular provision which has been inserted by Dr. Ambedkar is a very salutary one and is consistent with the most advanced principles of democratic and federal policy in all the countries. With these words I support Dr. Ambedkar's amendment.

The Honourable Dr. John Matthai (United Provinces : General) : Sir, I do not propose to go into the details of the various suggestions that have been made in the course of the debate this morning on this subject. But there are certain general observations that I would like to make and which I hope would allay the fears that have been expressed by honourable members who have taken part in the discussion.

My friends from Travancore have been extremely apprehensive as to the sort of use that might be made of this provision by a Travancore who happens to be the Finance Minister of the Centre today, and Travancore's fears appear to be shared by the neighbouring State of Mysore. I want to make this perfectly clear that, speaking for myself and for my colleagues in the Central Government today, there is nothing which we are more anxious to encourage and put through than the industrialisation of the country. And if there is any apprehension that this provision is likely to have the effect of checking the progress of industrialisation in the country, either through private enterprise or through State enterprise. I want this House to take this assurance from me, that is about the last thing we want to do in the use of this particular provision; because if there is the slightest possibility of the operation of his particular provision having the effect of putting some restriction or curb upon the industrialisation of the country, then as far as we in the Centre are concerned, the House may rest assured that the operation of the provision would certainly be adjusted to the requirements of the country in this regard.

There is really no greater problem, for example, the faces me today as the Finance Minister at the Centre than the determination of the precise repercussions upon industrial development, of the present structure of direct taxation in the country. And as far as we are concerned at the centre, we are anxious that consistently with public requirements, the structure of direct taxation in the country should be so modified that all unnecessary handicaps in the way of industrial development are not merely removed, but removed as early as possible. Well, that is the point of view from which the Central

[The Honourable Dr. John Matthai]

Government is looking at the problem of industrialisation. I am justified in asking the House to accept this assurance from me that if this provision should have the slightest effect in checking industrialisation in any of the States concerned, then we would be the last to make of this provision.

There is another matter also in regard to which I should like to make general observation. The speeches this morning, to my mind, seem to be based on the assumption that there is a kind of inevitable conflict between the financial objectives of the Centre and the financial objectives of the States. Nothing could be farther from the truth.

Shri T. T. Krishnamachari : Hear, hear.

The Honourable Dr. John Matthai : As things are shaping today, and as we realise more and more the need for a united structure in the country, both politically and economically, the identity of interests between the Centre and the States is bound to be extremely close. If by the operation of a provision of this kind it is found that the finances of a State are rendered difficult, then it is a problem which will cause anxiety not merely to that State, but to the Centre also. I am faced with that problem in a large number of cases today. Therefore, if the operation of this provision is going to have the effect of causing budgetary difficulties to any State, the House may depend upon it that it would be as much the interest of the Centre as it would be the interest of the State to see that necessary adjustments are made.

Most of the particular industries to which reference has been made by those who have spoken this morning on behalf to Travancore and Cochin and Mysore are industries which belong to the category of what are called public utility undertakings. Now, public utilities are not quite an easy matter to define with the precision required in a court of law. But we all have a general idea of what public utility concerns imply. I would therefore give this assurance not merely on behalf of the Central Government, but I know I can give this assurance also on behalf of the Drafting Committee who are responsible for this provision, that it is not our intention to levy any tax of the kind referred to in this provision, upon industries run by States whose object is to produce services of a public utility character. That, as far as our intentions go, is clearly outside the scope of the provision that is under debate today.

There is another assurance that I would like to give. If it happens that this operation is brought into force in respect of any industrial undertakings owned by a State, and if there happens to be, at the same time, an undertaking owned by the Centre of the same character, it is our intention that the liabilities imposed upon the State should be equally imposed upon the Centre. As the House knows, it is our idea that when the Centre hereafter, promotes undertaking of an industrial character, those undertakings should, as far as possible, be organised and managed on the basis of independent public corporations. These corporations for running industrial undertakings would be treated on exactly the same basis as the States would be treated in respect of similar industrial undertakings. With regard to undertakings run by the Centre directly, departmentally, the analogy of the railways and the Posts and Telegraphs which are expected, if there is any surplus in their budgets to make a certain contribution towards the general revenues of the country, would apply.

So I am able to give this assurance. First of all, public utility undertakings would be outside the scope of taxation under this provision; secondly, there would not be any discrimination between the Centre and the State in regard to the taxation of industrial undertakings, and I hope the House will now find less difficulty in accepting this provision.

There is just one other point to which I would like to make a reference. As regards the question of the budgetary difficulties that might be caused to the States in consequence of taxation imposed under this provision, it is necessary for the House to remember that as in the case of every federal government in the world, so here, we are rapidly making use of the expedient of subsidies or subventions from the Centre for helping the States in promoting essential undertakings of a public utility character, and development projects of national importance. If it happens that the revenue resources of a State are seriously crippled by taxation under this provision, then, assuming that the development projects are projects of national importance, it automatically follows that there is a corresponding obligation which will fall upon the Centre to make up so far as its resources permit such shortfall as might occur in the financial resources of the States. I mention this point only to enforce the suggestion with which I started, that there is today, in the set-up which is gradually growing up and which would be finalised when this Constitution comes into force, a complete identity of interests in respect of financial matters between the Centre and the States. Any objection to this provision on the assumption that there is to be a continuing conflict between the Centre and the Provinces has no justification whatsoever.

The Honourable Dr. B. R. Ambedkar : Sir, the only part of this article which has been subjected to any criticism is clause (3). There has been no comment on any other part of this article. I do not believe that after the reassuring speech which has been made by the Finance Minister there is anybody in the House who will entertain any kind of doubts or fear of Parliament exercising this power without regard to the financial resources of the State. I do not think I need say anything more on that point.

Shri P. T. Chacko : In view of the assurance given by the Honourable Finance Minister I would like to withdraw my amendment.

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

Shri P. S. Nataraja Pillai : I would like to withdraw my amendment also.

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

Shri S. V. Krishnamoorthy Rao : I would like to withdraw my amendment.

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

Mr. President : What about Mr. Brajeshwar Prasad?

Shri Brajeshwar Prasad : I am not withdrawing my amendment.

Mr. President : The question is:

“That is amendment No. 272 of List IV (Seventh Week), in clause (1) of the proposed article 266, for the words ‘exempt from’ the words ‘subject to’ be substitute.”

The amendment was negatived.

Mr. President : The question is:

“That proposed article 266 stand part of the Constitution.”

The motion was adopted.

Article 266 was added to the Constitution.

Article 296 and 299

Mr. President : There are two articles 296 and 299 and some Members have presented to me that they got notice of certain amendments to these too late.

The Honourable Dr. B. R. Ambedkar : I am prepared to hold them over.

Mr. President : So these two articles (296 and 299) will stand over.

Mr. Naziruddin Ahmad : Can have an assurance as to when these are coming up?

Mr. President : Some day next week. I may tell honourable members that we propose to finish all the articles and all schedules except some articles dealing with States and one Schedule and certain other miscellaneous articles two or three—we want to finish all the rest. It depends on the House how soon we shall be able to complete consideration of all the rest of the articles.

The Honourable Shri Ghanashyam Singh Gupta (C. P. & Berar : General) : By the 17th at the latest, I suppose.

Mr. President : I have that in my mind, but it depends on the House.

An Honourable Member : Fix a date.

Mr. President : If we make quick progress I need not fix any date.

I shall now take up the entries in the Seventh Schedule which were left over—88A in List I and 58 and 58A in List II.

Seventh Schedule and Article 250—*Contd.*

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

“That after entry 88 in List I of the Seventh Schedule, the following entry be inserted:—

‘88-A. Taxes on the sale or purchase of newspapers and on advertisements published therein.’ ”

I also move:

“That for entry 58 of List II of the Seventh Schedule, the following entries be substituted:—

‘58. Taxes on the sale or purchase of goods other than newspapers.

58-A. Taxes on advertisements other than advertisements published in newspapers.’ ”

Sir, with your permission I shall move the other amendment—No. 374—to article 250 also as it is really part of this.

I move :

“That in clause (1) of article 250, after sub-clause (d), the following sub-clauses be added:—

(e) taxes other than stamp duties on transactions in stock-exchanges and futures market;

(f) taxes on the sale or purchase of newspapers and on advertisements published therein.’ ”

Shri T. T. Krishnamachari : I would like to mention that the formal permission of the House will have to be obtained to reopen article 250 which it will be necessary to do in respect of amendment No. 374.

Shri R. K. Sidhwa : I raise a point of order that an article which has been completed and passed by the House cannot be reopened.

Mr. President : That is just the point that Mr. Krishnamachari has raised.

Shri R. K. Sidhwa : No, sir. He has moved an amendment to reopen the subject. I am raising a point of order that it cannot be reopened.

The Honourable Dr. B. R. Ambedkar : That the President will decide—whether you are right or he is right.

Mr. Naziruddin Ahmad : There is another matter to which I would like to draw your attention. In regard to the amendment to entry 88-A it is the same amendment as that of Mr. Jhunjhunwala. It has now been stolen by the Drafting Committee and is being passed on as their own. Curiously enough, Dr. Ambedkar’s amendment No. is 379 which is the section of the Indian Penal Code relating to theft. Can this sort of literary piracy be allowed?

Mr. President : You can take credit for having pointed it out.

The Honourable Dr. B. R. Ambedkar : He is quite content with that. He has not lodged a complaint of theft or robbery.

Mr. Naziruddin Ahmad : But theft is a cognizable offence. It is also non-compoundable. It does not depend on the complaint of any one, absence of objection will not excuse it.

Mr. President : We shall deal with the entries first.

The Honourable Dr. B. R. Ambedkar : Sir, when this matter came up last time before the House there was a lot of debate as to what was exactly intended, what the House could do and what I was prepared to accept. You were kind enough to say that the matter might be recommitted to the Drafting committee. The Drafting Committee after consideration of the same has brought forth new proposals. The proposals are that newspapers and taxes on advertisement in newspapers should be put in List I. That is a matter to which the Drafting Committee has now agreed. The second amendment—No. 379—is merely a consequential thing because since newspapers and taxes on the sale of newspapers and advertisements therein has been brought into List I, it is necessary to exclude the taxation on newspapers under the Sales Tax Act and advertisement therein from the jurisdiction of the State Legislature.

Shri R. K. Sidhwa : Sir, I move :

“That is amendment No. 378 of List VIII (Seventh Week), for the proposed new entry 88-A in List I, the following be substituted:—

‘88-A. Taxes on advertisement published in newspapers.’ ”

“That in amendment No. 379 of List VIII (Seventh Week), in the proposed entry 58 of List II, the words ‘other than newspapers’ be deleted.”

Sir, when this subject came up before the House some time back my honourable Friend, Dr. Ambedkar, vehemently opposed the motion that is now sought to be moved by him, or rather moved by him and he made very strong remarks. I wish I could lay my finger on the proceedings and the speech and place them before the House, but unfortunately I could not get them. But I know the House will remember and you, Sir, will remember that he said that under no circumstances shall he allow the sales tax also to be included in List I.

Mr. President : The matter was held over for reconsideration by the Drafting Committee. The Drafting Committee is not prevented from reconsidering and putting forward another amendment.

Shri R. K. Sidhwa : I know that is so. Everyone has a right to change his opinion, but Dr. Ambedkar while moving his amendment should have enlightened the House as to the reasons which necessitated him to change his views.

My point is this, that this amendment, as proposed by Dr. Ambedkar, seeks that the sales tax on newspapers which is in the State List should also be brought under List I. Now this is an invidious distinction. Sir, I think that in the list of items on which the provinces levy a sales tax there are hundreds of items. To select one item out of them and to put it in the Union List is, in my opinion, objectionable, invidious and unfair. It might be misunderstood by the people as a whole in the country. They will be suspicious as to what has actuated the Constituent Assembly to select this particular items which is rightly put in List II, and bring it to List I. It may be argued that this done as newspapers have a bearing on the fundamental rights as was urged the other day. As you have rightly held the other day in your ruling. Fundamental Rights relate to speeches and expressions. What have taxes to do with speeches and expressions?

[Shri R.K. Sidhwa]

I, therefore, fail to understand why it is going to be brought in List I. My difficulty is that when a very responsible member as the Chairman of the Drafting Committee held a different view the other day, he should have explained to us what was the object. If I were satisfied, I would not have raised this point. Let all the sales tax go to the Centre. Sales tax, as it is at present levied in the different provinces, have worked havoc on trade and commerce. An article is taxed in Bombay; the same article is sent to C. P. and is taxed over again. Therefore, I certainly desire that the sales tax should come within the purview of the Centre. As at present levied it upsets the whole economy of the country. But why choose this particular item, I fail to understand. It might be misunderstood by the country as an instance of favouritism. The best course in the present circumstances would be to hold this item over till the whole question of the sales tax is decided. Let the Centre take over the sales tax. I am in favour of it.

I was myself a signatory to the amendment that was moved by my Friend, Mr. Goenka. I was very clear in my mind when I put my signature that it related to the advertisement only and not to the sales tax. But my attention was drawn to the fact that the language used covered the sales tax as well. I admit my mistake in signing it. Generally I do not sign anything without reading and understanding its implications. But my intention now is the same as it was before that sales tax should not go into List I.

Now, Sir, it may be that this inclusion in List I is for the purpose of exemption of newspapers from advertisement and sales tax. I have very great regard for the nationalist papers which have fought for the freedom of the country during the days of British imperialism whose main object was to crush nationalist newspapers. I do not dispute for a moment that they deserve all kind of encouragement; there is no question about it. But today I do not know which paper to call nationalist. Having been an editor and proprietor for over twelve years of a newspaper, I know the odds against which they had to struggle in those days. I take my cap off before them. *The Bombay Chronicle* one of the biggest nationalist papers in India was killed twice, but it still survives, thanks to its able editors like Mr. Horniman and Mr. Brelvi. Effort was made to kill the *India Daily Mail* started by a millionaire in Bombay and it was actually killed through the agency of British Imperialism. I appreciate all that the nationalist papers have done, but I want that appreciation to be expressed by the front door in recognition of the services rendered by them. Why do you want this to be put in List I and create complications and doubts in the mind of the public? My point is that if exemption is to be given, I am for it on the grounds I have urged. Never mind if other papers take advantage of it, but this tax is also bad. I know today 80 per cent. of the papers are small ones and they could not afford to bear the proposed tax. Only 15 per cent. of the papers are today rolling in money and it may be asked why should they not pay the tax? My Friend Deshbandhu Gupta—I have great respect for him. From a small man he has risen to a big man. Mr. Suresh Chander Mazumdar another gentleman deserves same compliments. But why should these others who are rolling in wealth in other business—why should they be exempted? Yesterday, I was reading that an American syndicate is going to purchase the "*Civil and Military Gazette*". They are out to purchase important newspapers in India. Is it fair that they should be exempted? I do not want to make any distinction between Indian and foreign newspapers. If *Times of India* can be purchased, on payment of crores of rupees this syndicate can purchase all important newspapers. Why should they be exempted? When you put this tax in the Constitution, you bind down for all times. I submit the case has not been properly placed before the House and my Friend Mr. Goenka will excuse me for saying that he has bungled.

Shri T. T. Krishnamachari : May I tell my honourable Friend that no exemption whatever is contemplated?

Shri R. K. Sidhwa : Well, Mr. Krishnamachari, better leave it to common-sense. You are not the authority to state here that exemption is not contemplated. I know what is contemplated. That is why I am worried. Let us be straightforward. These things should not be brought forward in this manner just to hoodwink. It is hoodwinking the people and nothing else. Let us be straightforward and honest. You cannot humbug the people or hoodwink the House. Dr. Ambedkar may be too clever but he cannot be too clever all the time. We understand what is behind the screen. I do not like this to be brought in this fashion. If this amendment is held over, let us apply our mind and put up a proper amendment. I shall be prepared to move an amendment that papers be exempted from all taxes, if it is agreeable I do realise that the nationalist papers have done service and in recognition of that service, if you want to exempt them, I am prepared for it. I am prepared to go further and exempt all papers. I suggest therefore that instead of accepting the amendment, I humbly suggest to my friends Messrs. Goenka and Gupta : “Let us apply our mind and put in an amendment for exemption, so that our position may not be misunderstood.” I again repeat this august Body, this Constituent Assembly, should not be humbugged. This august Body should not be hoodwinked. I want straightforward manners to be adopted, particularly in our Constitution. I hope, Sir, that you, Mr. President, will also appeal to Dr. Ambedkar and Messrs. Goenka and Gupta not to put in something for which the Constituent Assembly may be ridiculed. This august Body should not be ridiculed. Let there be no criticism that we have somehow or other, for somebody’s benefit, transferred this to List I in the name of Fundamental Rights which I fundamentally oppose. This is not germane to the Fundamental Rights. I again appeal, in the interests of this Constituent Assembly for which I have great respect, to you, Sir, who is the President and Custodian of this Assembly—I submit to you in all humility that you will kindly prevent invidious distinction being caused. I repeat 80 per cent. of the newspapers will suffer by taxes. Only some of the newspapers can afford to pay. After all tax on newspaper advertisements will be borne by those who advertise. The cinema tax—who pays it? The consumers pay. Provincial governments levy it on cinemas, the cinemas levy it on the consumer. Similarly, if there is to be a tax on advertisements, the advertiser has to pay. I do not want to envisage that position. I do not want small news-papers to be killed. If there are ten big newspapers who will be exempted, I do not mind. Let not 80 per cent. be injured. Let us from that point of view try to come to a settlement.

Mr. President : I confess, Mr. Sidhwa, that I have not been impressed by your moral indignation. I have not seen any cause for it. It is a simple amendment moved by the Drafting Committee and I do not see anything wrong in the amendment proposed.

Shri R. K. Sidhwa : Out of all, why is the newspaper singled out?

Mr. President : That is a different matter.

Shri R. K. Sidhwa : That is the point. Why has it been singled out?

An Honourable Member : Wait and see.

Shri Deshbandhu Gupta (Delhi) : Mr. President, Sir, it is a matter of no small satisfaction to me to note that the Drafting Committee has appreciated the point of view urged by my Friend Mr. Goenka and many Members of this House in the amendments which they sought to bring before the House. It is a matter of still greater satisfaction that even Dr. Ambedkar has agreed to these amendments and that these amendments have his wholehearted support. There is much in one point made out by my Friend Mr. Sidhwa. The House

[Shri Deshbandhu Gupta]

is aware that the other day when this matter was discussed on the floor of the House, I did take fundamental objection to the very imposition of taxes on newspapers. No one would be happier than myself and my friends belonging to the press, if the House were to decide today that newspapers will be free from all such taxes. Of course that is what is should be, because in no free country with a democratic Government we have any such taxes as the sales tax or the advertisement tax.

But I fail to understand the argument of my Friend Mr. Sidhva when in one breath he says that he is prepared even to go to the extent of exempting newspapers from all taxes and in the same breath he holds that there should be no distinction between newspapers and other goods so far as the imposition of sales tax is concerned. This is an argument which, I must say, is very difficult for me to understand. I claim that newspapers do deserve a distinctive treatment. They are not an industry in the sense that other industries are. This has been recognised all over the world. They have a mission to perform. And I am glad to say that the newspapers in India have performed that mission of public service very creditably and we have reason to feel proud of it. I would therefore expect this House and my Friend Mr. Sidhva to bear it in mind at the time when God forbid any proposal, comes before the Parliament for taxation. That would be the time for them to oppose it.

Sir, after all, this is an enabling clause. It does not say that there shall be sales and advertisement tax imposed on newspapers. It does not commit the House today to the imposition of a tax on the sales of or a tax on advertisements published in newspapers. All that we have emphasised is that newspapers as such should be taken away from the purview of the provincial Governments and brought to the Central List so that, if at all at any time a tax is to be imposed on newspapers it should be done by the representatives of the whole country realising the full implications of their action. It should not be an isolated act on the part of some Ministry of some Province. That was the fundamental basis of our amendment. When we tried to convince the Drafting Committee and other Members and particularly our Friend Dr. Ambedkar, our main argument in favour of transferring the subject to the Central List was a political one. It should not be taken for granted that I or my friends of the Press of India are in any way committed or agreeable to the imposition of such taxes. Not in the least. We have been all along opposed to it; we must recognise that barring the two provinces of Bombay and Madras all other Provinces have so far stood for the freedom of the Press. They have never exercised the right of taxing newspapers. But, ever since this question came up before the country the whole Press has opposed it vehemently on fundamental grounds, and demanded that if these taxes are to be levied they should be levied by the Centre. While making this demand, are we not aware that the newspapers published from the provinces that have not imposed any such taxes remain untouched today, particularly the newspapers of Delhi which are directly under the Centre and on which there can be no question of a sales tax being imposed unless the Parliament goes to the extent of imposing it? If today all newspapers including those published from Delhi, are opposing the imposition of these taxes with one voice and demanding their inclusion in the Central List, they do so, not because it is a question of saving some money, but because the fundamental question of the liberty of the Press is involved. By advocating their transfer to the Central List we are prepared to run the risk of having these taxes imposed in Delhi, and in other provinces which have not sought to impose such taxes so far. But we do not want to leave it to the provinces so that the liberty of the press remains unimpaired. We have faith in the Parliament; we have faith in the collective wisdom of the country and we have no doubt that when this matter is viewed in the correct perspective, there will be no such taxes imposed on the newspapers, but we have not got that much faith in the

Provincial Ministries. It is in that hope and having a full realisation of the situation that we have agreed, as a matter of compromise, or should I say as a lesser evil, to have these two taxes transferred from the Provincial to the Central List.

I am glad to know that my Friend Mr. Sidhva was also at one time connected with the Press like so many other political leaders who in their career had at one time or other been connected with the Press; and I am sure that if the question of imposing such taxes came up before Parliament, at any time, we will have his fullest support and his voice will be raised against any attempt on the part of parliament to impose taxes on either the sales of or on advertisements in newspapers.

To my mind it appears that in certain quarters there exists a general prejudice against newspapers. As my honourable Friend Mr. Sidhva believes, some newspapers may have given the impression that they are "rolling in wealth", but what is their number? Sir I do not want to take the time of the House in discussing the economy of the newspapers and painting the true picture of the newspapers as to where they stand today as compared with the taxes of other free countries of the world. But, I may point out to Mr. Sidhva and those who think alike, that there may be some big newspapers which can afford to pay taxes and that it may be that it was to hit such newspapers that these taxes were conceived but take it from me that the bulk of the newspapers will be simply crushed and if there is any hope of independent journalism in this country, that can be realised only if we leave the newspapers alone and not impose these distinctive taxes. Otherwise we will be paving the way for the transfer of smaller newspapers which have been struggling all along for existence to the capitalist.

I believe no one knows better than you, Sir as to why the *Searchlight* of which you were the founder has joined a chain. There are other papers which have similarly joined one or the other chain. If you look into the past history of the newspapers you will find that there was not a single nationalist newspaper in India which was not started with the beggar's bowl in the hands of its founder. Sir, who does not know that the late Pandit Madan Mohan Malaviya had to go from house to house begging people to take the shares of one of the biggest papers which Delhi is proud to own today.

Mr. President : I did not want to interrupt the honourable Member. But then here we are concerned only with the entry in the Union List.

Shri Deshbandhu Gupta : Sir, as Mr. Sidhva has raised the question that the newspapers did not deserve a distinctive treatment, I am only trying to remove that prejudice. I am fully conscious of the fact that I must not take more time of the House. But then as this is an important matter I seek your permission to give me a little more time.

The history of many other newspapers will show that they too had a very precarious beginning and that those who started them did not do so with a commercial motive. It is true that during the last few years some newspapers have financially benefited by the last war. But their past history should not be forgotten and we should not ignore the fact that after all newspapers have a mission to perform and that they are essential for the very existence of a democratic form of Government. They are essential for educating the electorate and for running the democratic form of Government in the country on proper lines. In these circumstances any step taken to weaken the Press will be calculated to harm the democratic form of Government, nay, the freedom of the people will be jeopardised as has been rightly pointed out by the U.S. Supreme Court Judges to whose memorable judgment reference was made the other day. According to them "Fettering the press is fettering ourselves." So,

[Shri Deshbandhu Gupta]

in the name of the freedom of the Press and in the name of the future of Indian journalism, I appeal to this House always to bear in mind that newspapers as such to deserve a distinctive treatment. Newspapers are as essential for the Government as for the good of the country and we must always regard them as such.

Sir, I hope most of the Members of the House are well aware that in the freedom movement of 1942 out of the 145 papers, as many as 96 papers voluntarily closed their offices soon after the memorable Resolution of 9th August was adopted. Can you cite another example in the history of the whole world when such a large number of newspapers at a moment's notice closed their shops without caring as to what will happen to them in the future? Most of them were not content with merely closing their shops, their proprietors and editors took active part in the movement and went to jail. Sir, even today there are many nationalist papers which, although struggling for existence, have imposed a voluntary check on themselves and do not publish advertisements of liquor, and foreign cloth? Can one deny, Sir, that these papers have placed an ideal before them and that they have been trying to live up to those ideals? Do not they deserve exemption from such taxes? It may be that even a few rich newspapers will benefit if no such taxes are levied. But such newspapers have been benefiting from the very beginning. They have been enjoying Government patronage in the past in large measure, and perhaps the House will be surprised to learn that there are some papers in this country today which had closed in 1942 voluntarily, and had always been the vanguards of the freedom movement, but are being discriminated against in the matter of placing advertisements by some Governments. In some cases old circulars still continue to be acted upon and these nationalist papers are being discriminated against in the matter of placing Government advertisement.

Mr. President : We are not concerned here with any circular, or any decision for levying a tax. It is only a provision in the Constitution that we are concerned with. When the question of levying a tax arises, all these arguments will arise.

Shri Deshbandhu Gupta : I only wish to say, Sir, that even our Government has recognised the distinctive nature of the Press, in the matter of transport facilities, in the matter of concessions in postal rates, in the matter of so many other concessions. So it is already recognised that newspapers have to be treated distinctly.

I do not want to elaborate the argument further but I do wish to place before the House one other aspect of the question and the reason why we seek to transfer these subjects to the purview of the Centre. There is a Bill that is pending before the Select Committee in Madras. I wish to make a passing reference to some of the clauses of this Bill. Under the Madras Bill they seek to impose an advertisement tax of 10 per cent. on the gross revenue from advertisements.

Prof. N. G. Ranga (Madras : General) : Only newspapers getting above a minimum revenue.

Shri Ramnath Goenka (Madras : General) : It is not so.

Shri Deshbandhu Gupta : If you refer to the Bill, you will find that it applies to all newspapers. The Madras Government has not only gone to the extent of proposing a tax of 10 per cent. on press advertisement revenues of newspapers; their Bill further seeks to give to the Government the power to exempt certain papers from these taxes. It also seeks to provide the taking of a licence by newspapers before they can start functioning. So this is the respect they show to the newspapers and to the honourable profession of journalism. There is no realisation of the fact that newspapers are the real saviours of democracy, and the fighters of the rights of the common man. The Bombay

Government too has imposed a tax of $6\frac{1}{4}$ per cent., that also on the gross revenue from advertisements. This was an eye-opener to us and a clear indication of the fact that if these taxes were allowed to remain within the purview of the provincial governments, there may come a day when most of the smaller newspapers will have to close down. It was in view of this realisation, by the Press that my Friend, Mr. Goenka and other, suggested as a lesser evil that these taxes should at least be transferred to the Central List so that the country may as a whole decide whether newspapers should be taxed at all and, if to be taxed, to what extent.

One word more and I have done. Sir, although I support the amendment proposed by my Friend, Dr. Ambedkar, I only wish to make it clear that this should not be taken to mean that we agree to the imposition of any such taxes on newspapers in the future. Perhaps the House is aware that the All-India Newspaper Editors' Conference, the Indian and Eastern Newspaper Society and the Indian Languages and Newspapers Association, all these three bodies representing the Press of India met in Delhi last month and passed a unanimous resolution against all such taxes on newspapers—of course I am not referring to income-tax or super-tax, to which no one objects. All these bodies take a very serious view of this question. I hope that in any decision which this House takes now or the Parliament may take in future, they will always bear in mind that the existence of a vigorous and independent press is very essential for the good of the country and that anything done to weaken the press will weaken democracy, weaken the Government and will weaken the strength of the people. With these words, Sir, I extend my support to the amendment moved by Dr. Ambedkar and I thank him once again for having appreciated the point of view of the newspapers.

Prof. N. G. Ranga : Mr. President, Sir, I am glad that this clause has come to be included in the Constitution. It is necessary that the newspapers should come within the purview of Central taxation. It also shows how strong has come to be this fourth estate today. If the newspapers of this country, especially the daily newspapers, had not come to be so powerful, it would not have been possible for these alterations to be made in the lists of taxation that are proposed to be included in this Constitution. This question would not have come up at all for such serious consideration if the Madras Government had not taken the initiative in proposing to tax all advertisement revenues of the daily press and the other presses also. Once the taxation move was made by the Madras Government, my friends of the newspapers opened their eyes and saw that any amount of mischief could be done against themselves and their revenue if ever the provincial governments were to be given this power to tax. Therefore they have raised this matter in this forum and succeeded in including this in the Central List, as an item of Central taxation. Sir, I do not grudge this, but I do wish to maintain that the financial position of the newspapers has considerably altered ever since the last war. Whatever might have been the position of many of the daily papers in this country before the last war ever since this war most of them have come to make huge profits and many of them are not mere independent journals, mere independent newspapers, but many of them have come to be included in a series of chains of proprietors and proprietorships.

Shri Deshbandhu Gupta : May I ask honourable friend, who has been to the Western countries, as to how does the best of the Indian papers compare with those in the Western countries?

Prof. N. G. Ranga : I wish my honourable friend every success in his attempts to gain as much money as the Western proprietors are making. I would not grudge him indeed if his paper were to flower out one of these days like the *New York Times* and produce 60 or 64 pages on every Sunday and

[Prof. N.G. Ranga]

serve its readers; but I do grudge him when he has got all the revenue for himself and he is not prepared to part with a portion of it to the State. That is why I say Sir, that these daily newspapers which make these huge profits anyhow and these newspapers which are making profits over a particular prescribed minimum should not be given any special treatment but should on the other hand be made to pay as any other estate would have to pay upon the revenues that they would be deriving from advertisements.

Shri Ramnath Goenka : They pay income-tax and super-tax.

Prof. N. G. Ranga : In spite of that they make such huge profits. My honourable Friend Mr. Goenka himself must be knowing it, not to his cost, but to his benefit; and these newspapers have got to be made to pay and contribute as well as they could, and I do not see any reason why these concessions should continue to be given, and it is high time that our politicians and our legislators should be able to assert themselves in all their independence and see that these people, powerful as they are, more and more powerful as they threaten to grow in the near future, that they should be expected to make some sort of contribution correspondingly and indeed progressively as any other source of income that we find in our part of the world.

Sir, newspapers, it is true, serve a very useful national interest; otherwise, they would not be here at all. They would be prohibited just as arrack and spirits and all these things are prohibited; merely because they serve a useful purpose they are allowed to carry on their trade. As long as they are allowed to carry on their trade; let them be treated only in the same way as all other trades and let them not ask for any special privilege. My honourable Friend, Mr. Deshbandhu Gupta has grown eloquent about the contribution made by the newspapers during the national struggle. All glory to them and to such of them which had the courage to close down their offices. That is no reasons why the profits they are making today, tomorrow and the day after tomorrow....

Mr. President : I wish to tell Mr. Ranga, that we are not discussing any proposal for taxation today but that we are only discussing an entry in the Constitution.

Prof. N. G. Ranga : I am very glad indeed that this entry is being made in the Constitution. But I would have been gladder if this item had been kept in the Concurrent List so that it would have been a boon to the Provincial Governments as well as the Central Government.

Shri Ramnath Goenka : Have you taxation in the Concurrent List? Have you ever heard of it in our Constitution?

Prof. N. G. Ranga : To the extent that it can possibly be kept there.

Mr. President : Mr. Goenka, I hope you would not go into the history of newspapers. All that we have already done.

Shri Ramnath Goenka : Mr. President, Sir, I did not want to intervene in this debate, but Messrs. Ranga and Sidhva have prompted me to say a few words. So far as I am concerned, I am not proud of the fact that this entry finds a place in the Central List. In fact this taxation had been condemned as far as 150 years back in the advanced democracies of the world. I am really ashamed that such an entry should be found in the Constitution of this country. There is no Constitution in the world where such an entry of taxation of newspapers exists. This is the only country where we have it, not because it is the right thing to do, but because we have Sidhvas and Rangas and therefore it is that we have this entry in this List. I am sure, Sir, when the time comes for the Central Parliament to decide the matter in

regard to the taxation, they will go by—not the revenue which the newspapers make, by circulation, advertisements and such things—but on the basis of the net profits that they make. I am one of those who will say that newspapers are not money-making propositions. I will say that newspapers are there to serve the public and give them a free flow of information. I am one of those who will go the whole hog and say that newspapers should not be allowed to make an considerable sums of money; but you shall not take away the money before they are allowed to serve the public, by taxation on sales and advertisements, whatever their incidence may be.

An Honourable Member : You serve the Public very rarely.

Shri Ramnath Goenka : What I would like to say is this that if any taxation is to be levied on newspapers, it should be levied on the basis of the net profits they make. I am one of those who would say that if any newspaper makes more than 3 per cent. of its capital, the rest of the money should be appropriated by the State but before you allow them to serve, you cannot take away the money from them. So far as the newspaper economy is concerned, you will be amazed to know that the cost of the newsprint used in production of a newspaper is only equal to the net proceeds of the sale of the newspaper. Therefore, the gross revenue is only the advertisement revenue and if you take away 10 per cent., 15 per cent. and 20 per cent. of the gross revenue, what will be its effect on newspaper economy? Do you want your newspapers to compare favourably with the *Manchester Guardian*, the *London Times* and the *New York Times* or would you like your newspapers to be some sort of a rag produced in this country?

Shri R. K. Sidhwa : Produce the balance sheet.

Mr. Naziruddin Ahmad : On a point of order, are we considering the item as in the List or are we considering a proposal for taxation?

Mr. President : You are perfectly justified in raising the point of order. I have myself remained the speaker several times that we are not considering any proposal of taxation but only an entry in the Constitution.

Shri Ramnath Goenka : I will bow to your ruling : but so far as the newspapers are concerned, they are not proud of seeing this entry either in List I or II, but as a matter of compromise we had to agree to it and I say that this taxation which has been condemned in all the advanced democracies of the world 150 years ago, should not have found a place in this Constitution and since we have certain difference of opinion in regard to this matter, we have agreed to this; and I hope, believe and trust that the Central Government will not resort to his taxation.

Mr. President : I do not think any further discussion is necessary.

Shri B. L. Sondhi (East Punjab : General) : Closure, Sir.

Shri Prabhu Dayal Himatsingka (West Bengal : General) : I should like to say just one or two words. I want the sales tax should be put in the Central List. In fact there was an amendment to that effect.

There is so much confusion in the different provinces on account of the sales tax that something must be done to regularize the thing and remove part of the difficulty that is being felt by all under it.

Mr. President : We are not discussing that now.

Dr. P. S. Deshmukh (C.P. & Berar : General) : Closure will save exposure.

The Honourable Dr. B. R. Ambedkar : Sir, in view of what my honourable Friend Mr. Sidhwa said that I have been inconsistent in my attitude towards these entries, I should like to offer one or two observations by way of explanation. Sir, I said in the course of the debate that took place last time over this matter that the newspapers were very intimately connected with article 13 which deals with Fundamental Rights. Therefore in making any provision with regard to newspapers that is a matter which has to be borne in mind.

The second thing is that so far as any regulation of fundamental rights is concerned, under article 27 of the Constitution which we have already passed we have left all matters of legislation regarding fundamental rights to Parliament and we have not left any power with the States. It therefore appeared to me and also to the Drafting Committee that in view of these consideration, namely, that newspapers were coming under fundamental rights, and all laws regarding fundamental rights were being left to Parliament, it was only a natural corollary that newspapers for purposes of taxation should also come under the authority of the Centre.

A third consideration which prevailed with the Drafting Committee as well as with myself was that in view of the fact that newspapers were connected with fundamental rights, namely the freedom of expression and thought, it was desirable that any imposition that was levied upon them should be uniform and not vary from province to province. Such uniformity can be obtained only if the matter was left to Parliament to make laws. These are the three considerations which prevailed with me and prevailed with the Drafting Committee in the view that they have taken.

The only other consideration of importance was that this item was not purely an item dealing with making laws. It also dealt with levying a tax in so far as newspapers were included in the term goods in entry 58 of List II. We therefore thought that in order not to deprive the provinces of such revenue as they might be able to make by imposing a levy upon newspapers under the Sales Tax Act, the proper thing to do was to include the sales tax on newspapers in article 250 which includes many other items and provides that if any taxation was levied upon them, the proceeds shall be distributed among the various provinces.

Therefore, the only question for consideration that arises is whether by making this transfer from List II to List I, we are injuring so to say the finances of the provinces. My answer is that we are not doing any injury to the provinces because if the House would agree to carry my amendment No. 374, the provinces will get such portion of any tax on the sale of newspapers as they may have raised and now receive, under the amendment No. 374. In making these proposals, we have taken into consideration as I said the general proposition that newspapers having been connected with fundamental rights, ought to come under the jurisdiction of the Centre, and that any financial gain which the provinces would have got should not be lost sight of. Both these considerations have prevailed with the Drafting Committee in making these changes.

I submit, notwithstanding the declamations of my honourable Friend Mr. Sidhwa which I can understand, because he is smarting under a great injury which he suffered in another place, I say that there can be no objection to the entries that we have proposed.

Shri R. K. Sidhwa : Sir, I take exception to Dr. Ambedkar's remarks when he said that I am smarting under some injury. I shall pay him in his own coins unless you ask him to withdraw those remarks.

The Honourable Dr. B. R. Ambedkar : I am quite prepared to withdraw them, Sir. But, I know it very well.

Mr. President : That settles the matter. I shall now put the amendments to vote.

The question is :

“That in amendment No. 378 of List VIII (Seventh Week), for the proposed new entry 88-A in List I, the following be substituted:—

‘88-A. Taxes on advertisement published in newspapers.’ ”

I think the Noes have it.

Some Honourable Members : Ayes have it, Sir.

Mr. President : No.

The amendment was negatived.

Mr. President : Then I put the original proposition moved by Dr. Ambedkar :

The question is :

“That after entry 88 in List I of the Seventh Schedule, the following entry be inserted:—

‘88A. Taxes on the sale or purchase of newspapers and on advertisements published therein.’ ”

The motion was adopted.

Entry 88-A was added to the Union List of the Seventh Schedule.

Mr. President : The question is :

“That in amendment No. 379 of List VIII (Seventh Week) in the proposed entry 58 of List II, the words ‘other than newspapers’ be deleted.”

The amendment was negatived.

Mr. President : Then, I put the entry as moved by Dr. Ambedkar.

The question is :

“That for entry 58 of List II of the Seventh Schedule, the following entries be substituted:—

‘58. Taxes on sale or purchase of goods other than newspapers.

58-A. Taxes on advertisements other than advertisements published in newspapers.’ ”

The motion was adopted.

Entries 58 and 58A, as amended, were added to the State List of the Seventh Schedule.

Articles Re-opened

Mr. President : We have got several articles placed in the order paper today which require reconsideration of the articles that have been passed. The first is article 250 which is intimately connected with the amendments which we have just now passed. Under the rules, no question which has once been decided by the Assembly shall be re-opened except with the consent of at least one-fourth of the Members present and voting. I should like to know if the House gives its consent.

Some Honourable Members : Yes.

Shri R. K. Sidhwa : In the second reading stage, Sir, when article by article is being passed, it is not permissible to reopen. If you allow this precedent it will be very bad precedent for the future. You cannot shut out any other Member from moving for a reconsideration of any article. There will be no finality then.

Mr. President : I cannot shut out; it is for the House to shut out. If one-fourth of the members wish a question to be reopened, it can be reopened. I find more than one-fourth of the members are willing to reopen this article 250.

There are other articles also which will have to be reopened which are mentioned in today's Order paper : articles 239-242, 248-A, 263, 202. May I take it that the House gives leave to reopen all these articles?

Shri R. K. Sidhwa : Sir, Members may not have objection to some articles, while they may object to some. The articles may be put one by one.

Mr. President : I shall put them one by one. Articles 239-242. I take it that the House gives leave to reopen then.

Several Honourable Members : Yes.

Mr. President : Article 248-A. I take it that the House gives leave to reopen it.

Several Honourable Members : Yes.

Mr. President : Article 263. I take that the House gives leave to reopen it.

Several Honourable Members : Yes.

Mr. President : Article 202. I take it that the House gives leave to reopen it.

Several Honourable Members : Yes.

Mr. President : Leave is given to reopen all these articles. Article 250 : Dr. Ambedkar.

Article 250

Shri T. T. Krishnamachari : Dr. Ambedkar has already moved it. It is only a formal matter and it can be put to vote.

Mr. President : Does any one wish to say anything about amendment No. 374 moved by Dr. Ambedkar?

(No Member rose.)

The Honourable Dr. B. R. Ambedkar : It is only a consequential thing, Sir.

Mr. President : There is no amendment to this. I shall put this to vote.

The question is :

“That in clause (1) of article 250, after sub-clause (d), the following sub-clauses be added :—

‘(e) taxes other than stamp duties on transactions in stock-exchanges and futures market;

(f) taxes on the sale or purchase of newspapers and on advertisements published therein.’ ”

The amendment was adopted.

Article 202

Mr. President : Article 202.

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

“That in clause (1) of article 202, after the words ‘to issue’ the words ‘to any person or authority including in appropriate cases any Government within those territories,’ be inserted.”

I said when moving an amendment to article 302 that a consequential amendment would be necessary in article 202. I am therefore moving this Article 202 as amended will now read as follows:—

“Notwithstanding anything contained in article 25 of this Constitution, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority including in appropriate cases any Government within those territories directions or orders in the nature of writs of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, for the enforcement of any of the rights conferred by part III of this Constitution for any other purposes.”

It is just consequential.

Pandit Thakur Das Bhargava (East Punjab : General) : Why do you say in appropriate cases’?

The Honourable Dr. B. R. Ambedkar : Because appropriate cases will be laid down by law of Parliament.

Mr. President : The question is :

“That is clause (1) of article 202 after the words ‘to issue’ the words ‘to any person or authority including in appropriate cases any Government within those territories’ be inserted.”

The amendment was adopted.

Article 234-A

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

“That after article 234, the following new article be inserted :—

‘234A. (1) The executive power of the Union shall also extend to the giving of direction Control of the Union over States to a State as to the measures to be taken for the protection as respects protection of railways, of the railways within the State.

- (2) Where by virtue of any direction given to a State under clause (1) of this article costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given there shall be paid by the Government of India to the State such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in respect of the extra costs so incurred by the State.’ ”

Sir, all police first of all are in the Provincial list. Consequential the protection of railway property also lies within the field of Provincial Government. It was felt that in particular cases the Centre might desire that the property of the railway should be protected by taking special measures by the province and for that purpose the Centre now seeks to be endowed with power to give directions in their behalf. It is possible that by reason of the special directions given by the Centre some extra cost above the normal may be incurred by the provinces. In that event what that extra cost is, may either be determined by agreement or if there is no agreement, by an arbitrator chosen by the Chief Justice of India. The second clause is analogous to many of the clauses that we have passed in the Constitution for settling the disputes between the Centre and the Provinces so far as extra cost is concerned.

Dr. P. S. Deshmukh : Mr. President, I do not feel convinced about the necessity of this provision which refers only to railway property. I do not know what cause there is for special apprehension so far as the property belong to railway is concerned. There will be property belonging to the Centre spread over the length and breadth of India; and why should there be a special and specific provision for the protection and for issuing specific directions in this case only? The House is aware that the Centre has got

[Dr. P.S. Deshmukh]

authority for issuing directions in various spheres and giving certain directions which are necessary for the maintenance of law and order, and for protection of their property also the Centre has power of issuing those instructions generally. Therefore, I have not been able to follow why it was necessary to refer to it specifically and make special mention of the railway property and what causes there are which make us apprehensive of the possible damage to railway property only. I do not think it is proper that we should have such apprehensions apart from the general powers. We have already clothed the Centre with more than sufficient powers and this article should not be necessary. In an case the justification given has not convinced me of the necessity of having this article. There is nothing to fear that the States will not carry out directions without such an article being there and that any dispute will arise so far as the cost is concerned. There are matters which may arise in the normal administration and they can be normally settled and there is no necessity of abnormal provisions and abnormal means of settlement.

Shri Brajeshwar Prasad : Mr. President, Sir, I rise to extend my hearty support to clause (1) of this article, but I am thoroughly opposed to clause (2). There is no reason why an arbitrator should be appointed if there is a conflict between the Centre and the States regarding costs that have been incurred in excess of that that which would have been incurred in the ordinary performance of provincial duties. The master and the servant cannot be placed on the same platform. It is wrong to do anything which would bring about any deterioration of the power and position of the Majesty of the Government of India. Therefore I want that if there is any conflict between the Centre and the provinces as far as the costs are concerned, the matter may be left entirely in the hands of the President.

The Honourable Dr. B. R. Ambedkar : Sir this clause is very necessary. My Friend Mr. Deshmukh when he said, that there were adequate provision in the existing article we have passed—I am sorry to say—he is fundamentally mistaken. Railway Police is a subject within the authority of the State. Police as an entry does not find a place in List I. consequently the Centre has no authority to make a law with regard to any police matter at all, nor, not having the legal authority, has it any executive authority. Therefore so far as protection of the railway property is concerned, the matter is entirely within the executive authority of the State. That being so, there are only two methods of doing it. Either the Centre should be endowed with police authority for the purpose of protecting their own property in which case an article such as the one which I have moved is unnecessary or we should have the provision which I have suggested *viz.* to give directions. Supposing the Centre has a police to protect railways, that police may come in conflict with the police authority of the State. Therefore the double jurisdiction has been avoided by the scheme which has been suggested *viz.*, that the Centre should have the authority to give directions that more police may be posted on the railways, better precautions may be taken, so that there will not be any conflict, and should more expenditure be incurred the Centre should be ready to bear it. I cannot see what difficulty there can be. Dr. Deshmukh's premise that this matter is already covered is hopelessly wrong.

Dr. P. S. Deshmukh : What is the reason, why we do not need any protection so far as the rest of the property of the Union is concerned? How do you distinguish between railway property and others?

The Honourable Dr. B. R. Ambedkar : Because we find the railway property needs more attention. The safety of passengers is there.

Mr. President : The question is :

“That after article 234, the following new article be inserted :—

Control of the Union over States as respects protection of railways	‘234A. (1) The executive power of the Union shall also extend to the giving of direction to a State as to the measures to be taken for the protection of the railway within the State.
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- (2) Where by virtue of any direction given to a State under clause (1) of this article costs have been incurred in excess of those which would have been incurred is the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in respect of the extra costs so incurred by the State.”

The motion was adopted.

New article 234A was added to the Constitution.

New Article 242-A

Mr. President : Dr. Ambedkar, you may move amendment No. 372A regarding the heading.

Shri T. T. Krishnamachari : If No. 373 is passed, then the deletion of the heading is consequential.

The Honourable Dr. B. R. Ambedkar : Sir, I move amendment No. 373:

“That after article 242, the following new article be inserted :—

‘242A. (1) Parliament may by law provide for the adjudication of any dispute of complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.	Adjudication of disputes relating to waters of inter state rivers or river valleys.
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- (2) Notwithstanding anything contained in this Constitution, Parliament may, by law, provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1) of this article.’ ”

Sir, originally this article provided for Presidential action. It was thought that these disputes regarding water and so on may be very rare, and consequently they may be disposed of by some kind of special machinery that might be appointed. But in view of the fact that we are now creating various corporations and these corporations will be endowed with power of taking possession of property and other things, very many disputes may arise and consequently it would be necessary to appoint one permanent body to deal with these questions. Consequently it has been felt that the original draft or proposal was too hide-bound or too stereo-typed to allow any elastic action that may be necessary to be taken for meeting with these problems. Consequently I am now proposing this new article which leaves it to Parliament to make laws for the settlement of these disputes.

Shri R. K. Sidhwa : Article 242 is proposed to be deleted, and so how does this new article 242A come up after article 242?

The Honourable Dr. B. R. Ambedkar : This one only indicates the position.

Mr. President : We have passed article 242. Now, does any one want to speak on this new article? There is no amendment to it.

Shri Brajeshwar Prasad : Mr. President, Sir, I support clause (1) of this article, but I feel that there is no necessity for vesting power into the hands of Parliament to make laws for resolving disputes in connection with inter-state river and river valleys. That matter I feel, should have been left in the hands of the President alone.

Mr. President : Now, I put the new article 242-A to vote.

The question is :

“That article 242A stand part of the constitution.”

The motion was adopted.

New article 242A was added to the Constitution.

Mr. President : Amendment No. 372A.

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

“That the heading above article 239, and articles 239, 240, 241 and 242 be deleted.”

These are covered by article 242-A and therefore are unnecessary.

Mr. President : Does anyone wish to say anything about this amendment? There is no amendment. I then put it to the House.

The question is :

“That the heading above article 239, and articles 239, 242, 241 and 242 be deleted.”

The motion was adopted.

The heading above article 239, and articles 239, 240, 241, and 242 were deleted.

Articles 248-A, 263 and 263-A

The Honourable Dr. B. R. Ambedkar : Sir, I should like to move the three amendments 380, 381 and 382 introducing three new articles, and I begin with amendment No. 382 because the rest are consequential.

Mr. President : All right.

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

“That after article 263, the following new article be inserted :—

‘263A. All moneys received by or deposited with—

(a) any officer employed in connection with the affairs of the Union or of a State in his capacity as such, Custody of suitors’ deposits and other moneys received by public servants and courts.	other than revenues or public moneys raised or received by the Government of India or the Government of a State, as the case may be, or
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(b) any court within the territory of India to the credit of any cause, matter, account or persons shall be paid into the public account of India or of the State, as the case may be.’ ”

Sir, if you permit me, I shall move the other amendments also and then offer some general observations to enable Members to understand the changes that we propose to make.

Mr. President : Yes.

The Honourable Dr. B. R. Ambedkar : I move amendment No. 380 and amendment No. 381. I move :

“That for article 248A, the following article be substituted :—

‘248A. (1) Subject to the provisions of article 248B of this Constitution and to the provisions of this Chapter with respect to the assignment of the whole or part of the Consolidated Funds and Public Accounts of India and of the States. net proceeds or certain taxes and duties to States, all revenues received by the Government of India and all loans raised by them by the issue of treasury bills, loans or ways and means advances and all moneys received in repayment of loans shall form one consolidated fund to be entitled “The Consolidated Fund of India” and all revenues received by the Government of a State, loans raised by the Government of a State by the issue of treasury bills, loans or ways and means advances and all moneys received by a State in repayment of loans shall form one consolidated fund to be entitled “The Consolidated Fund of the State.”

- (2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India, or of the State, as the case may be.
- (3) Moneys out of the Consolidated Fund of India or of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.' "

Mr. President : Amendment No. 381.

"That for article 263, the following article be substituted:—

'263. (1) The custody of the Consolidated Fund and the Contingency Fund of India, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of India, their payment into the public account of India and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by Parliament, and, until provision in that behalf is so made by Parliament, shall be regulated by rules made by the President.

- (2) The custody of the Consolidated Fund and the Contingency Fund of a State the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of a State, their payment into the public account of the State and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by the Legislature of the State, and until provisions in that behalf is so made by the Legislature of the State, shall be regulated by rules made by the Governor of the State.' "

Briefly, the changes are two-fold. In the original article No. 248A as it stood, the scope of the Consolidated Fund was limited. The Consolidated Fund did not specifically refer to the proceeds of loans, treasury bills and ways and means advances. We now propose to make a specific mention of them so that they will form part of the Consolidated Fund.

The second thing is that in drawing the definition of the Consolidated Fund we lumped along with it certain other moneys which were received by the state, but which were not the proceeds of taxes or loans, etc., with the result that public money received by the state otherwise than as part of the revenues or loans also became subject to an Appropriation Act, namely the provision contained in sub-clause (3) of article 248A. Obviously the withdrawal of money which should strictly not form part of the Consolidated Fund of the State cannot be made subject to any Appropriation Act. They will be left open to be drawn upon in such manner, for such purposes and at such times subject to such conditions as may be laid down by Parliament in that behalf specifically. It is, therefore, to enlarge the definition expressly of the Consolidated Fund and to separate the Consolidated Fund from other funds which go necessarily into the public account that these changes are made. There is no other purpose in these changes. The Finance Ministry drew attention to the fact that our provision in regard to the Appropriation Act was also made applicable to other moneys which generally went into the public account and that that was likely to create trouble. It is in order to remove these difficulties that these provisions are now introduced in the original article.

Mr. President : The question is :

"That after article 263, the following new article be inserted :—

'263A. All moneys received by or deposited with—

[Mr. President]

- (a) any officer employed in connection with the affairs of the Union or of a State in his capacity as such, other than revenues or public moneys raised or received by the Government of India or the Government of a State, as the case may be, or and other moneys received by Government of India or the Government of a State, as the case may be, or public servants and courts. (b) any court within the territory of India to the credit of any cause, matter, account or persons, shall be paid into the public account of India or of the State, as the case may be.' "

The motion was adopted.

New article 263A was added to the Constitution.

Mr. President : The question is :

"That for article 248A, the following article be substituted :—

'248A. (1) Subject to the provisions of articles 248B of this Constitution and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the government of India and all loans raised by them by the issue of treasury bills, loans or ways and means advances and all moneys

received in repayment of loans shall form one consolidated fund to be entitled. 'The Consolidated Fund of India' and all revenues received by the Government of a State, loans raised by the Government of a State by the issue of treasury bills, loans or ways and means advances and all moneys received by a State in repayment of loans shall form one consolidated fund to be entitled "The Consolidated Fund of the State."

(2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or of the State, as the case may be.

(3) No moneys out of the Consolidated Fund of India or of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.' "

The motion was adopted.

Article 248-A was added to the Constitution.

Mr. President : The question is :

381. "That for article 263, the following article be substituted :—

'263. (1) The custody of the Consolidated Fund and the Contingency Fund of India, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of India, their payment into the public account of India and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by Parliament, and until provision in that behalf is so made by Parliament, shall be regulated by rules made by the President.

(2) The custody of the Consolidated Fund and the Contingency Fund of a State the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of a State, their payment into the public account of the State and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by the Legislature of the State, and until provision in that behalf is so made by the Legislature of the State, shall be regulated by rules made by the Governor of the State.' "

The motion was adopted.

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

The Assembly then adjourned till Nine of the Clock on Saturday, the 10th September 1949.