

is wanton, arbitrary and unauthorised by law. Therefore, in order to make it quite clear that articles 278 and 278-A are not to be deemed as a wanton invasion by the Centre upon the authority of the province, we propose to introduce article 277-A. As Members will see, article 277-A says that it shall be the duty of the Union to protect every unit, and also to maintain the Constitution. So far as such obligation is concerned, it will be found that it is not our Constitution alone which is going to create this duty and this obligation. Similar clauses appear in the American Constitution. They also occur in the Australian Constitution, where the constitution, in express terms, provides that it shall be the duty of the Central Government to protect the units or the States from external aggression or internal commotion. All that we propose to do is to add one more clause to the principle enunciated in the American and Australian Constitutions, namely, that it shall also be the duty of the Union to maintain the Constitution in the provinces as enacted by this law there is nothing new in this and as I said, in view of the fact that we are endowing the provinces with plenary powers and making them sovereign within their own field, it is necessary to provide that if any invasion of the provincial field is done by the Centre it is in virtue of this obligation. It will be an act in fulfilment of the duty and the obligation and it cannot be treated, so far as the Constitution is concerned, as a wanton, arbitrary, unauthorised act. That is the reason why we have introduced article 277-A.

With regard to articles 278 and 278-A although they appear as two separate clauses, they are merely divisions of the original article 278. 278 has something like seven clauses. The first four clauses are embodied in the new article 278. Clause (4) onwards are put in article 278-A. The reason for making this partition, so to say, is because otherwise the whole article 278 would have been such a mouthful that probably it would have been difficult for Members to follow the various provisions contained therein. It is to break the ice, so to say, that this division has been made.

With regard to article 278, the first change that is to be noted is that the President is to act on a report from the Governor or otherwise. The original article 188 merely provided that the President should act on the report made by the Governor. The word "otherwise" was not there. Now it is felt that in view of the fact that article 277-A, which precedes

article 278, imposes a duty and an obligations upon the Centre, it would not be proper to restrict and confine the action of the President, which undoubtedly will be taken in fulfilment of the duty, to the report made by the Governor of the province. It may be that the Governor does not make a report. None-the-less, the facts are such that the President feels that his intervention is necessary and imminent. I think as a necessary consequence to the introduction of article 277-A, we must also give liberty to the President to act even when there is no report by the Governor and when the President has got certain facts within his knowledge on which he thinks he ought to act in the fulfilment of his duty.

The second change which article 278 makes is this : that originally the authority and powers of the legislature were exercisable only by Parliament. It is now provided that this authority may be exercisable by anybody to whom Parliament may delegate its authority. It may be too much of a burden on Parliament to take factual and *de facto* possession of legislative powers of the provincial legislatures which may be suspended because Parliament may have already so much work that it may not be possible for it to deal with the legislation necessary for the provinces whose legislature has been suspended under the Proclamation. In order, therefore, to facilitate legislation, it is now provided that Parliament may do it itself or Parliament may authorise, under certain conditions and terms and restraints, some other authority to carry on the legislation.

Another very important change that is made is that the Proclamation will cease to be in operation at the expiration of two months, unless before the expiration of that period Parliament by resolution approves its further continuance. Originally, the provision was that it will continue in operation for six months, unless extended by Parliament. In the present draft, the period is restricted to only two months. After that, if the Proclamation is to be continued, it has to be ratified by Parliament by a Resolution.

The second change that is made is this, that in the original article, if Parliament had once ratified the Proclamation, that Proclamation could run automatically without further ratification for twelve months. That position again has been altered. The twelve months is now divided into two periods of six months each and after the first ratification, the

Proclamation could run for six months and then it shall have to be ratified by Parliament again. After Parliament has ratified, it will again run for six months only. There will be further ratification by Parliament, so that six months is the period which is permitted for a Proclamation after it has been ratified by Parliament. Further continuance would require further ratification and we have put an outside limit of three years. At the end of three years, neither Parliament nor the President can continue the state of affairs in existence in the province under which this Proclamation has taken effect.

Then I come to article 278-A. Sub-clause (a) which provides for Parliament to delegate power to make laws for the State to the President or any other authority specified by him in that behalf is a new one.

Sub-clause (b) of the article is merely a consequential change, consequential upon sub-clause (a) of clause (1) of article 278-A. It says that authority may be conferred upon anybody, either upon the officers of the Government of India or officers of even Provincial Governments to carry into effect any law that may be made by Parliament or by any agency appointed by Parliament in this behalf.

Sub-clause (c) of clause (I) of article 278-A is a new clause. It provides for the sanctioning of the budget. In the original draft article 278 no provision was made as to how to sanction and prepare the Budget of a province whose legislature has been suspended. That matter is now made clear by the introduction of sub-clause (c) of clause (1) to article 278-A which expressly provides that the President may authorise, when the House of the People is not in session, expenditure from the Consolidated Fund of the State, pending the sanction of such expenditure by Parliament.

Sub-clause (d) makes it quite clear—which probably was already implicit in the article—that the President also can exercise his powers conferred upon him by article 102 to issue Ordinances with regard to the running of the administration of any particular province which has been taken over when both the Houses are not in session. The original article 102 was confined to Ordinances to be issued with regard to the Central Government. We now make it clear by sub-clause (d) that this power will also be exercised by the President with regard to any Ordinance that may be necessary to be passed for the conduct of the administration of a province which has been taken up.

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***Mr. President :** I find that there are many other speakers and the House has already taken five hours over this debate. I think we should now close the discussion and I do not think that any fresh arguments will be advanced. If honourable Members have not made up their minds after hearing the arguments so far advanced, they are not likely to do so after hearing a few more speeches. I would like to know whether the House would like to close the discussion.

Several Honourable Members : The question be put, the question be put.

Mr. President : Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, although these articles have given rise to a debate which has lasted for nearly five hours, I do not think that there is anything which has emerged from this debate which requires me to modify my attitude towards the principles that are embodied in these articles. I will therefore not detain the House much longer with a detailed reply of any kind.

I would first of all like to touch for a minute on the amendment suggested by my Friend Mr. Kamath in article 277-A. His amendment was that the word “and” should be substituted by the word “or”. I do not think that that is necessary because the word “and” in the context in which it is placed is both conjunctive as well as disjunctive, which can be read in both ways, “and” or “or”, as the occasion may require. I, therefore, do not think that it is necessary for me to accept that amendment, although I appreciate his intention in making the amendment.

The second amendment to which I should like to refer is that moved by my Friend Prof. Saksena, in which he has proposed that one of the things which the President may do under the Proclamation is to dissolve the legislature. I think that is his amendment in substance. I entirely agree that that is one of the things which should be provided for, because the people of the province ought to be given an opportunity to set matters right by reference to the legislature. But I find that that is already covered by sub-clause (a) of clause (1) of article 278 because sub-clause (a) proposes that the President may assume to himself the powers exercisable by the Governor or the ruler. One of the powers which is vested and which is exercisable by the Governor is to dissolve the House. Consequently, when the President issues a Proclamation and assumes

* CAD, Vol. IX, dated 4th August 1949, p. 175.

these powers under sub-clause (a), that power of dissolving the legislature and holding a new election will be automatically transferred to the President—which powers no doubt the President will exercise on the advice of his Ministers. Consequently my submission is that the proposition enunciated by my Friend Prof. Saksena is already covered by sub-clause (a), it is implicit in it and there is therefore no necessity for making any express provision of that character.

Now I come to the remarks made by my Friend Pandit Kunzru. The first point, if I remember correctly, which was raised by him was that the power to take over the administration when the constitutional machinery fails is a new thing which is not to be found in any constitution. I beg to differ from him and I would like to draw his attention to the article contained in the American Constitution where the duty of the United States is definitely expressed to be to maintain the Republican form of the Constitution. When we say that the Constitution must be maintained in accordance with the provisions contained in this Constitution we practically mean what the American Constitution means, namely that the form of the constitution prescribed in this Constitution must be maintained. Therefore, so far as that point is concerned we do not think that the Drafting Committee has made any departure from an established principle.

The other point of criticism was that articles 278 and 278-A were unnecessary of view of the fact that there are already in the Constitution articles 275 and 276. With all respect I must submit that he (Pandit Kunzru) has altogether misunderstood the purposes and intentions which underlie article 275 and the present article 278. His argument was that after all what you want is the right to legislate on provincial subjects. That right you get by the terms of article 276, because under that article the Centre gets the power, once the Proclamation is issued, to legislate on all subjects mentioned in List II. I think that is a very limited understanding of the provisions contained either in article 275 and 276 or in articles 278 and 278-A.

I should like first of all to draw the attention of the House to the fact that the occasions on which the two sets of articles will come into operation are quite different. Article 275 limits the intervention of the Centre to a state of affairs when there is war or aggression, internal or external. Article 278 refers to the failure of the machinery by reasons

other than war or aggression. Consequently the operative clauses, as I said, are quite different. For instance, when a proclamation of war has been issued under article 275, you get no authority to suspend the provincial constitution. The provincial constitution would continue in operation. The legislature will continue to function and possess the powers which the constitution gives it; the executive will retain its executive power and continue to administer the province in accordance with the law of the province. All that happens under -article 276 is that the Centre also gets concurrent power of legislation and concurrent power of administration. That is what happens under article 276. But when article 278 comes into operation, the situation would be totally different. There will be no legislature in the province, because the legislature would have been suspended. There will be practically no executive authority in the province unless any is left by the proclamation by the President or by Parliament or by the Governor. The two situations are quite different. I think it is essential that we ought to keep the demarcation which we have made by component words of article 275 and article 278. I think mixing the two things up would cause a great deal of confusion.

Pandit Hirday Nath Kunzru (United Provinces : General) : May I ask my honourable Friend to make one point clear ? Is it the purpose of articles 278 and 278-A to enable the Central Government to intervene in provincial affairs for the sake of good government of the provinces ?

The Honourable Dr. B. R. Ambedkar : No, no. The Centre is not given that authority.

Pandit Hirday Nath Kunzru : Or only when there is such misgovernment in the province as to endanger the public peace ?

The Honourable Dr. B. R. Ambedkar : Only when the government is not carried on in consonance with the provisions laid down for the constitutional government of the provinces. Whether there is good government or not in the province is for the Centre to determine. I am quite clear on the point.

Pandit Hirday Nath Kunzru : What is the meaning exactly of "the provisions of the Constitution" taken as a whole ? The House is entitled to know from the honourable Member what is his idea of the meaning of the phrase 'in accordance with the provisions of the Constitution.'

The Honourable Dr. B. R. Ambedkar : It would take me very long now to get into a detailed examination of the whole thing and, referring to each article, say, this is the principle which is established in it and say, if any Government or any legislature of a province does not act in accordance with it, that would act as a failure of machinery. The expression “failure of machinery”, I find has been used in the Government of India Act, 1935. Everybody must be quite familiar therefore with its *de facto* and *de jure* meaning. I do not think any further explanation is necessary.

Shri H. V. Kamath (C. P. & Berar : General): What about the other amendments moved by Professor Saksena and myself? Is not Dr. Ambedkar replying to them ?

The Honourable Dr. B. R. Ambedkar : I do not accept them. I was only replying or referring to those amendments which I thought had any substance in them. I cannot go on discussing every amendment moved.

Shri H. V. Kamath : Dr. Ambedkar is answering only verbal amendments moved. Should he not reply to all the amendments moved ?

Mr. President : I cannot force Dr. Ambedkar to reply in any particular way. He is entitled to give his reply in his own way.

The Honourable Dr. B. R. Ambedkar : In regard to the general debate which has taken place in which it has been suggested that these articles are liable to be abused, I may say that I do not altogether deny that there is a possibility of these articles being abused or employed for political purposes. But that objection applies to every part of the Constitution which gives power to the Centre to override the Provinces. In fact I share the sentiments expressed by my honourable Friend Mr. Gupte yesterday that the proper tiling we ought to expect is that such articles will never be called into operation and that they would remain a dead letter. If at all they are brought into operation, I hope the President, who is endowed with these powers, will take proper precautions before actually suspending the administration of the provinces. I hope the first thing he will do would be to issue a mere warning to a province that has erred, that things were not happening in the way in which they were intended to happen in the Constitution. If that warning fails, the second thing for him to do will be to order an election allowing the people of the province to settle matters by themselves. It is only when these

two remedies fail that he would resort to this article. It is only in those circumstances he would resort to this article. I do not think we could then say that these articles were imported in vain or that the President had acted wantonly.

Shri H. V. Kamath : Is Dr. Ambedkar in a position to assure the House that article 143 will now be suitably amended ?

The Honourable Dr. B. R. Ambedkar : I have said so and I say now that when the Drafting Committee meets after the Second Reading, it will look into the provisions as a whole and article 143 will be suitably amended if necessary.

Mr. President : I will now put the amendment to vote one after another.

The question is :

“The article 188 be deleted.”

The motion was adopted.

Article 188 was deleted from the Constitution.

ARTICLE 279

***The Honourable Dr. B. R. Ambedkar :** Mr. President, I think there are only two points which have been raised which require a reply. The amendment which has been moved by my Friend Professor Saksena was to the effect that any change in the Fundamental Right should be made by Parliament and not by the State during emergency. Now if my friend were to refer to the provisions of article 13, he himself will find that we have permitted both the Centre and the Provinces to make any changes which may affect the Fundamental Rights provided the changes made by them are reasonable. Therefore under normal circumstances, the authority to make laws affecting Fundamental rights is vested in both and there is no reason why, for instance, this normal right which the State possesses should be taken away during emergency.

Prof. Shibban Lal Saksena : But they will be suspended during emergency.

The Honourable Dr. B. R. Ambedkar : Suspension comes in another article. This article merely says that power may be exercised by the State—meaning both Parliament as well as the provinces—notwithstanding whatever is said in article 13.

* CAD, Vol. IX, dated 4th August 1949, p. 185.

Prof. Shibban Lal Saksena : During emergency ?

The Honourable Dr. B. R. Ambedkar : Yes. Because that is a normal power even in other cases. When there is no emergency both have got power to legislate on the subject. I see therefore no reason why that power should be taken away during emergency. On the other hand I should have thought that emergency was one of the reasons why such a power should be given to the State.

Then with regard to my Friend Mr. Kamath's criticism that the next article 280, was enough for the purpose, I think that is a misunderstanding of the whole situation, because unless power is given to modify, the suspension has no consequence at all. Therefore article 280 deals with quite a separate matter and has nothing to do with this article. This article should be accepted in the form in which it is proposed.

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

[3 amendments were negatived. Article 279 was added to the Constitution.]

ARTICLE 280

***Mr. President :** Then we take up article 280.

Amendment No. 3028—Dr. Ambedkar.

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

“That for the existing article 280, the following article be substituted :—

‘280. Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of the rights conferred by Part III of this Constitution and all proceedings pending in any court for the enforcement of any right so conferred shall remain suspended for the period during which the Proclamation is in operation or for such shorter period as may be specified in the order.’”

The House will see that this article 280 is really an improvement on the original article 280. The original article 280 provided that the order of the President suspending the operation of article 25 should continue for a period of six months after the proclamation has ceased to be in operation. That is to say, that the guarantee such as *habeas corpus*, writs and so on, would continue to be suspended even though the necessity for suspension had expired. It has been felt that there is no reason why this suspension of the guarantee should continue beyond the necessities of the case. In fact the situation may so improve that the guarantees may become operative even though the Proclamation has not ceased to be in operation. In order, therefore, to permit that the suspension order shall not continue beyond the Proclamation, and may even come to an end much before the time the Proclamation has ceased

* CAD, Vol. IX, date 4th August 1949, p. 186.

to be in force, this new draft has been presented to this Assembly, and I hope the Assembly will have no difficulty in accepting this.

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***The Honourable Dr. B. R. Ambedkar :** May I say a word ? In view of the point that has been made as to whether the suspension of the proceedings should take place by the order of the President which of course means on the advice of the Executive, which of course also means that the Executive has the confidence of the Legislature, there is no doubt a difference of opinion as to whether suspension should take place by an act of the Executive or by law made by Parliament. I should like therefore that this article may be held over to provide the Drafting Committee opportunity to consider the matter. We might take up the other articles.

Mr. President : This article may be held over.

Then we shall go to article 247.

ARTICLE 247

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

“That for the heading to the articles commencing with article 247, the following heading be substituted :—

‘General’”

Mr. President : I do not suppose any discussion of that is required. The question is :

“That for the heading to the articles commencing with article 247, the following heading be substituted :—

‘General’”

The motion was adopted.

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Mr. President : Does anyone wish to speak ?

The Honourable Dr. B. R. Ambedkar : All that I need say is that those words are included by way of ‘abundant caution’. It may be they may be unnecessary, but it may be they may be found necessary. We want to retain those words.

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Article 247 was added to the Constitution.

ARTICLE 248

‡Mr. President : Then we take up article 248.

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

Taxes not to be
imposed save by
authority of Law.

“That for article 248, the following articles be substituted :—
“248. No tax shall be levied or collected except by authority
of law.

* CAD, Vol. IX, dated 4th August 1949, p. 198.

† *Ibid.* pp. 198-99.

‡ *Ibid.*, p. 199.

248-A. (1) Subject 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 or public moneys raised or received by the Government of India shall form one Consolidated Fund to be entitled "the Consolidated Fund of India", and all revenues or public moneys raised or received by the Government of a State shall form one Consolidated Fund to be entitled "the Consolidated Fund of the State."

(2) 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."

These amendments are only consequential to what we have already accepted previously.

[The Article as amended by the above amendment was adopted and added to the Constitution.]

ARTICLE 249

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***Mr. President :** Any one else who wishes to speak ? (No Member rose.)
Dr. Ambedkar, do you wish to say anything ?

The Honourable Dr. B. R. Ambedkar (Bombay : General): There is nothing to be said.

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

The question is :

"That in clause (2) of article 249, the words 'in that year' be deleted."

The amendment was adopted.

Mr. President : The question is :

"That in clause (1) of article 249, after the words 'such stamp duties' the words 'as are imposed under any law made by Parliament' be inserted."

The amendment was adopted.

Mr. President : The question is :

"That in clause (2) of article 249, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That article 249, as amended, stand part of the Constitution."

The motion was adopted.

(Article 249 as amended, was added to the Constitution.)

ARTICLE 250

†Mr. President : The motion is :

"That article 250, form part of the Constitution."

(Amendments Nos. 2842 to 2850 were not moved.)

Shri R. K. Sidhva (C. P. & Berar: General): Mr. President, I move :

"That at the end of article 250, the following be added :

"The net proceeds of said distribution shall be assigned by the States to the local authorities in the jurisdiction'."

* CAD, Vol. IX, dated 4th August 1949, p. 208.

† *Ibid.*, p. 209.

[Mr. Sidhwa moved another amendment which was followed by his speech.]

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***The Honourable Dr. B. R. Ambedkar :** I am very sorry, Sir. I should have requested you at the very outset to allow this article to stand over.

Mr. President : It is suggested that this article be held over.

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ARTICLE 251

†The Honourable Dr. R. R. Ambedkar : Sir, I beg to move :

“That in clause (2) of article 251, for the words ‘revenues of India’ the words ‘Consolidated Fund of India’ be substituted.”

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‡The Honourable Dr. B. R. Ambedkar : Sir, I can explain the tiling now. Before I do that, I will take up the other amendments.

There is an amendment by Mr. Barman and there is another amendment by Prof. Saksena. I am sorry to say that I cannot accept either of the amendments.

This question whether the percentage of revenue collected by way of Income-tax should be prescribed in the Constitution itself either as sixty per cent, or any other percentage or should be left to the President to decide is a matter over which considerable thought has been bestowed both by the Central Government as well as by the provincial Governments in the Conference which took place the other day to discuss this matter. It was agreed that the best thing would be to leave the matter to be prescribed by the President and that no proportion should be fixed in the Constitution itself.

With regard to the other question raised by Prof. Sakesna, that instead of the word “prescribed”, the wording should be “prescribed by Parliament”, again I am sorry to say that I cannot accept the amendment. Our schemes is to allow the President to prescribe the proportion in the first instance by himself and in the second instance after a consideration of the recommendations of the Finance Commission. We do not propose to bring the Parliament in. Because, in that case, there would be a great deal of wrangle between the representatives of the different provinces and great injustice may be done by reason of the fact that certain provinces may have a very large majority in the Parliament and certain other provinces may have a small representation. Consequently, to leave the matter to Parliament practically means leaving it to the voice of those provinces who happen to have a larger

* CAD, Vol. IX, dated 5th August 1949, p. 209.

†*Ibid.*, p. 211.

‡*Ibid.*, pp. 221-23.

representation at the Centre, and that I think would cut at the root of the justice which you want to be done to the various provinces.

Now, Sir, coming to the difficulty that you have raised, the words “States within which that tax is leviable in that year” are necessary.

They occur in the Government of India Act, 1935. The reason why these words were then introduced was because Income-tax was not to be levied in the Indian States which were to come within the Indian Union. In lieu of the Income-tax, the Indian States were required to make certain contributions, therefore, if the tax was not to be levied in that State, that State would not be entitled to obtain a share. We do not know what is going to be the procedure under the present Constitution. This matter is being examined by a Committee which has been appointed to investigate into the finances of the Indian States. If the recommendation of that Committee is that Income-tax should be leviable in all the States whether they originally constituted Indian Provinces or Indian States, then naturally these words would have to be altered. While moving this article, I retain liberty to the Drafting Committee to suggest to some amendment in that respect when the report of that Committee comes before us. That is the reason why these words are here.

Mr. President : Just one thing more. May I take it that it is not intended to cover cases within what used to be British India ?

The Honourable Dr. B. R. Ambedkar : No, no ; States in Part III.

Shri B. Das : Dr. Ambedkar has referred to decisions of a Conference of Prime Ministers of Provinces and the Drafting Committee. Tins House has no knowledge of what passed between them and what the result of their discussions is. Unless a Minute of those discussions is laid on the table of the House in the form of a note or otherwise, we are not in a position to come to any conclusion as to the action of the Drafting Committee.

Mr. President : I take it, if there had been any question raised by any of the Premiers of the Provinces, they would be here to raise them if they did not agree with the draft. Therefore I take the draft as now placed before the House has the concurrence or the consent of the Premiers.

Shri B. Das : The House is not bound by what the Premiers and Finance Ministers did outside this House. If any decision was taken, it is the privilege and prerogative of this House to have copies of those documents.

Mr. President : No one is bound here by any decision taken by the Premiers and the Drafting Committee. The House is free to cast its vote in any way it likes.

Pandit Lakshmi Kanta Maitra : I would like to ask for clarification from Dr. Ambedkar on one point. The point is this. This article provides that the revenue shall be distributed among the States in such a manner and from such time as may be prescribed. ... Will the interim allocation be decided on the recommendations of the Finance Committee ? It is not clear as to what is going to happen with regard to the period immediately following the coming into operation of the Constitution, and before the appointment of the Commission envisaged in a subsequent period.

***The Honourable Dr. B. R. Ambedkar :** Sir, the explanation is very simple. If we wanted that there should be no interim enquiry before the President made an order of allocation, we would have merely said that such allocation as existed before the commencement of the Constitution shall continue until they are re-determined by the President on the recommendation of the Commission. We have not said that, and we have not said that deliberately, because we want that an enquiry should be made and on the basis of the enquiry the President may prescribe by order. That is the reason for the difference in language.

Pandit Lakshmi Kanta Maitra : That is to say, the interim Commission will be appointed straightaway now and on the recommendation of that Commission the President will prescribe by order ?

The Honourable Dr. B. R. Ambedkar : Yes. Otherwise we would have merely said that the existing allocation will continue until the President issued the new order.

Mr. President : I will now put the various amendments to vote. I will first put amendment No. 2858, moved by Shri Upendra Nath Barman.

Shri Upendra Nath Barman : Sir, in view of the statement of Dr. B. R. Ambedkar, I wish to withdraw my amendment.

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

Mr. President : Then I put amendment No. 76, moved by Dr. Ambeddkar. That is a verbal amendment.

The question is :

“That in clause (2) of article 251, for the words ‘revenues of India’ the words ‘Consolidated Fund of India’ be substituted.”

The amendment was adopted.

Mr. President : Then there is the amendment of Shri T.T. Krishnamachari.

* CAD, Vol. IX. date 5th August 1949, pp. 222-23.

The question is :

“That in sub-clause (c) of clause (4) of article 251, for the words ‘revenues of India’ the words ‘Consolidated Fund of India’ be substituted.”

The amendment was adopted.

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[Prof. Saksena’s amendment was negatived.]

Article 251, as amended, was added to the Constitution.

ARTICLE 253

***Mr. President :** Then we take up article 253.

(Amendments Nos. 2883 and 2884 were not moved.)

Mr. President : What about amendment No. 2885 ? Do you wish to move it, Dr. Ambedkar ?

The Honourable Dr. B. R. Ambedkar : No ; Mr. Tyagi will move Ins amendment.

(Amendments Nos. 2886 to 2896 were not moved.)

Mr. President : Do you move, your amendment No. 2897, Mr. Bardoloi ?

The Honourable Shri Gopinath Bardoloi (Assam : General) : I do not want to move the amendment, but I would like to speak on the article.

(Amendments Nos. 2898 to 2902 were not moved.)

Shri Mahavir Tyagi (United Provinces : General) : Sir, I had an amendment.

Mr. President : I have not finished all the amendments. I am taking them in order and will come to your amendment later. Amendment No. 81.

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

“That in clause (2) of article 253. for the words ‘revenues of India’ the words ‘Consolidated Fund of India’ be substituted.”

Mr. President : Then amendment No. 214, in the name of Shri Mahavir Tyagi.

Shri Mahavir Tyagi : Sir, I move:

“That with reference to amendment No. 2886 of the List of Amendments, clause (1) of article 253 he deleted.”

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†**Mr. President :** Dr. Ambedkar, do you wish to say anything ?

The Honourable Dr. B. R. Ambedkar : Sir, I am prepared to accept the amendment moved by Mr. Tyagi, and I think it is necessary that

* CAD, Vol. IX, dated 5th August 1949, p. 224.

†*Ibid.*, pp. 238-39.

I should offer some explanation on behalf of the Drafting Committee as to why it has proposed to accept this amendment.

Before I begin with the main points, which justify the acceptance of the amendment. I should like to meet the point of criticism which has been levelled against the Drafting Committee by my Friend Professor Saksena.

Professor Saksena said that it was not proper for the Drafting Committee to have originally put clause (1) in the article and now be ready to accept the amendment moved by Mr. Tyagi. I should like to state that clause (1) which the Drafting Committee put, does not have its origin in the deliberations of the Drafting Committee itself. That clause was suggested, if I remember correctly, in the report of the Union Powers Committee where a decision was taken that there should be no imposition of any salt duty. As the Drafting Committee was bound by the directions and the principles contained in the report of the Union Powers Committee, they had no option except to incorporate that suggestion in the article which deals with this matter. Therefore, there is really no question of vacillation, so to say, on the part of the Drafting Committee.

I now come to the practical difficulties that are likely to arise if that clause was retained. It will be recalled that in List I, we have two entries, entry 86 which permits the levy of excise by the Central Government, we have also entry 85 which permits the levy of a duty of customs. Now, if sub-clause (1) of article 253 remained as part of the Constitution, it is obvious that the Central Government would not be entitled to employ either entry 86 or entry 85 for the purpose of levying an excise or custom on salt. That is quite clear, because clause (1) takes away legislative power with respect to salt duty which was otherwise levied by entry 86, or entry 85. Now, it was represented that while the non-employment of the powers given under entry 86 to levy excise may not cause much difficulty to the country, the embargo, if I may say so, on the utilisation of the powers given under entry 85 to levy a customs duty may cause a great deal of difficulty, because that would permit the importation of foreign salt to be brought into India without the Government of India being in a position to apply any kind of legislative remedy to stop such influx of salt which may practically destroy the Indian salt industry. It was, therefore, felt that the better thing would be to remove the embargo and to leave the matter to the future Parliament, to act in accordance with circumstances that might arise at any particular

moment. That is the reason why the Drafting Committee is prepared to accept the amendment of my Friend Mr. Tyagi.

Shri R. K. Sidhva : May I know why the item of prohibition was entered in the directive policy ? If clause (1) of this article is to be deleted, may I know why the item regarding prohibition was inserted in the Directive Principles of the Government, and may I also know why the wearing of Kirpans was also put in the Fundamental Rights ?

The Honourable Dr. B. R. Ambedkar : Oh, Kirpans stand on quite a different footing.

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***Several Honourable Members :** No speeches now.

Mr. President: Let there be no speeches. If the Members so desire, I may allow the article to be held over for further consideration.

The Honourable Shri K. Santhanam : The article may be held over.

The Honourable Dr. B. R. Ambedkar : The article may be held over.

Shri Mahavir Tyagi : The article may be held over.

Mr. President : This article will stand over.

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ARTICLE 253 (*Contd.*)

† **Mr. President :** We shall take up consideration of article 254, to begin with.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, before we begin discussion of article 254, I would request you to allow consideration of Mr. Tyagi's amendment to article 253, because the Prime Minister wishes to speak on it. Although the debate is closed, I would request you to allow the Prime Minister to make a speech, before you put the amendment to vote.

Mr. President : Yes. Honourable Pandit Jawaharlal Nehru.

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[Article 253, as amended, by Dr. Ambedkar's amendment was added to the Constitution.]

ARTICLE 254

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

“That for article 254, the following be substituted :—

254. (1) There shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of the States of Bengal, Bihar, Assam and Orissa in lieu of assignment of Grants in lieu of export duty any share of the net proceeds in each year of export on Jute and Jute products duty on jute and jute-products to these States such sums as may be prescribed by the President.

* CAD, Vol. IX, dated 5th August 1949, p. 240.

† *Ibid.*, dated 8th August 1949, p. 241.

‡ *Ibid.*, dated 8th August 1949, pp. 242-43.

(2) The sums so prescribed shall continue to be charged on the Consolidated Fund of India so long as export duty on jute or jute-products continues to be levied by the Government of India or until the expiration of ten years, whichever is earlier.

(3) In this article, the expression 'prescribed' 'has the same meaning as in article 251 of this Constitution."

Sir, this amendment makes an important change in the existing system of sharing the export duty on jute and jute-products. Under the Government of India Act, it was provided that certain provinces which are mentioned in this article should be entitled to a certain share in the proceeds of the export duty on jute and jute-products for the reason the jute forms a very important commodity in the economy of the provinces mentioned in this article. The proposal in the amended article is to do away with this right of certain provinces to claim a share in the export duty on jute and jute-products. The reason, if I may say so, is a very simple one. Ordinarily all export and import duties belong to the Central Government and no province has any right to a share in the export duty levied on any particular commodity which, as I said, happens to form an important commodity in the economy of that particular province. In view of the fact, however, that the finances of Bengal, particularly, could not be balanced without a share in the export duty, an exception was made in the Government of India Act, 1935, whereby the Bengal Government and the other Governments were given vested rights, so to say, to claim a share in the export duty which, as I said, was contrary to the general principle that the export and import duties belong to the Central Government. It is now felt that this exception which was made in the Government of India Act, 1935, should not be allowed to be continued hereafter. The reason why it is felt that this vicious principle should be stopped right now is that it is perfectly possible to imagine that other provinces also who have certain commodities grown in their area and exported outside on which the Government of India collects an export duty may also lay claim to a share in the export duty on those products. If that tendency develops it would be a very difficult position for the Government of India. Consequently it has been decided that that principle should now definitely be abrogated.' But it is equally clear that if that principle of sharing in the export duty was withdrawn suddenly it might create a difficulty in balancing the budgets of the several provinces which were

up to now dependent upon a share in the export duty. Therefore a provision is made that instead of giving specifically a share in the export duty an equivalent sum or such other amount as the President might determine may be made over or assigned to those provinces for the period the export duty continues to be levied or until the expiration of ten years, whichever is earlier. The latter is introduced in order to enable those provinces to get sufficient time to develop their resources so that after the period mentioned in this article they would be in a position to balance their budgets.

I hope, Sir, the salutary principle which is now embodied in this amended article 254 will be acceptable to the House.

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***The Honourable Dr. B. R. Ambedkar** (Bombay : General) :
Mr. President, Sir, in my reply to the debate, I do not propose to go over the many tales of woe that have been sung in this House by Members from different provinces who feel that they have been badly treated in the distribution of revenues that has been ordered under the Government of India Act, 1935. I just propose to take the few more concrete points to reply to.

First of All, I propose to say a word with regard to the amendment moved by my Friend, Professor Shibban Lai Saksena. He wants that the grants, instead of being fixed by the President, should be fixed by Parliament. Now, in the course of the debate on other financial articles that took place last time, I said that it was not the intention to bring Parliament in the matter of the distribution, because we do not want that the distribution of revenue should become a subject matter either of log-rolling between different provinces or wrangling between the representatives of different provinces. We want this matter to be decided by the President or by the President on the advice of the Finance Commission. That is the reason why I am not prepared to accept Professor Saksena's amendment.

Then I come to the point raised by my Friend, Mr. Maitra. His first argument was that he saw no reason why the Drafting Committee should now bring forth an amendment so as to change the original article. I am sure he forgot to refer to the recommendations of the Expert Committee on Finance. If he will refer to that, I think that he will agree with me that it was the Expert Committee who recommended that the

* CAD, Vol. IX, dated 8th August 1949, pp. 259-61.

system of allocation of the jute duty and the duty on jute-products should be altered. It was therefore not a matter of any volition or wish on the part of the Drafting Committee to effect a change in the original article.

Pandit Lakshmi Kanta Maitra: They referred to compensation also.

The Honourable Dr. B. R. Ambedkar: I will come to that. The only tiling which the Drafting Committee did not accept was the allocation suggested by the Expert Committee on Finance, to be given to the different provinces which would be losing their share in the export duty on jute. It was felt by the Drafting Committee that probably the figures suggested by the Expert Committee required further examination. Having regard to the very short time that was at the disposal of the Expert Committee the Drafting Committee did not feel sure that the figures suggested by the Expert Committee could be accepted by them without further examination. It was because of that fear that the Drafting Committee, instead of adopting the figures suggested by the Expert Committee, adopted their own formula which now finds a place in the new article, viz. that the grants-in-aid in lieu of compensation for the loss of the jute duty shall be prescribed by the President. There is therefore, no desire on the part of the Drafting Committee either to take away a legitimate source of revenue from the four provinces which have been mentioned in this particular article, in which, so to say, they have a vested right, nor has the Drafting Committee attempted to make any fundamental alterations in the figures suggested by the Expert Committee. All that they have done is to leave the matter to the President.

Now, my Friend, Pandit Hirday Nath Kunzru, pointed out that the Drafting Committee was wrong in inserting a definition of the word “prescribe” in the article now before the House. He went further to say that even in the last article which we passed, which is 260, the word “prescribed” ought not to be there. Now, it seems to me somewhat difficult, whatever may be the merits of the proposition that he has urged, to avoide the definition of the word “prescribed”. We have said in the main part of article 254 that the grants-in-aid shall be such as may be prescribed. Now, any lawyer would want to know what the word “prescribed” means. Either we would have to have a special definition of the word “prescribed” which would be confined to or circumscribed by the provisions of article 254 or we would have to alter the provisions contained in article 260 where the word “prescribed” has been defined.

Mr. President : Probably you refer to 251.

The Honourable Dr. B. R. Ambedkar : I am sorry. I stand corrected. It is 251. It seems to me that so far as prescription of allocation is concerned, the Drafting Committee has suggested two different definitions of the word “prescribed”. One definition of “prescribed” means prescribed by the President when there is no report before him of the Finance Commission and the second definition of “prescribed” is prescribed when the President has got before him the recommendations of the Finance Commission. The reason why the Drafting Committee has been required to give two different definitions or interpretations of the word “prescribed” is this. It is quite clear that the Provinces want that the existing allocation not merely of the jute duty but the allocation of other sources of revenue provided under other articles of the Constitution must not be the same as are now existing, because their complaint is that the amounts now given to them are neither adequate nor just and that some revision of the allocation is necessary. Obviously, if the allocation is to take place immediately so that the new allocation would commence on the commencement of the Constitution, it is obvious that such allocation can be made only by the President without waiting for the recommendations of the Finance Commission because it is inconceivable that no matter what amount of hurry the Central Government was prepared for, it will not be possible to appoint a Commission to have its report, before the Constitution commences. Consequently, we had to devise this double definition of the word “prescribed”. In the first place the prescription will be by the President without the recommendation of the Finance Commission. That, of course, does not mean that the President will act arbitrarily. That does not mean that the President would act merely on the advice of his Cabinet, which might be interested in safeguarding and securing the position of the Centre *vis-a-vis* the Provinces. It is, I think, in the contemplation of the Central Government and I should like to make that matter quite clear that the Central Government does propose to appoint some Committee, which will be an Expert Committee or some expert officer, which would of course not be a Commission within the meaning of this Constitution, for going into the question and finding out whether the existing allocation, not merely of the jute duty and duty on jute-products, but other allocations of other sources of revenue require to

be so revised as to do justice between province and province and between the Centre and the provinces. Consequently, when the first order of the President would be issued, it would not be issued, as I said, arbitrarily by the President or merely on the advice of the Executive at the Centre, but he would have some independent, some expert opinion by which he would be guided. After that when the further question arises of revising the orders, the question that will arise is this, whether the President should act on the advice of Parliament or whether he should act on his own advice or whether he should act on the advice and recommendation of the Finance Commission which is to be appointed under the Constitution. As I said, there are three different alternatives which we could adopt. I know my honourable Friend, Pandit Kunzru with the best of motives, suggests that the President should act independently and not be guided by the recommendations of the Finance Commission. There is a section of opinion represented by my honourable Friend, Professor Saksena, that no allocation should be made by the President even upon the recommendation of the Finance Commission unless Parliament gives sanction to it. As I have said there are defects in both these positions. I do not think that it is right for the President, after having appointed a Commission to recommend the allocation, that he should altogether disregard the recommendations of that Commission, pursue his own point of view and make the allocation. That I think would be showing disrespect to the Commission. As I have said, the third alternative of leaving the matter to Parliament seems to me to be full of danger, involving provincial controversies, and provincial jealousies. Therefore, the Drafting Committee has adopted, if I may say so, the middle way, namely, that although the matter may be debated in Parliament, in the action taken by the President, he should be guided by the recommendations made by the Fiscal Commission and should not act arbitrarily. I hope the House will accept this. This is the most reasonable compromise of the three methods and it is the best way of dealing with this matter.

[The amendment of Dr. Ambedkar as mentioned earlier was adopted.]

Article 254 was added to the Constitution.

NEW ARTICLE 254-A

***Mr. President :** Then we shall take up 254-A.

Mr. Naziruddin Ahmad : I have a point of order. Sir, the point of order is that amendment No. 82 seeking to introduce a new article 254-A is entirely a new matter. We have already decided in the House that amendments to the Constitution should be presented by a certain date. We have presented our amendments. No further amendments to the Constitution could be allowed according to the rules. The only amendments which are admissible today would be amendments to the original amendments as well as amendments to regular amendments. I submit that the present amendment is not related to any amendment at all... It says that "after article 254 the following article be substituted". There is here no attempt or even a pretence of it being with reference to or related to or being in connection with any amendment. I submit, Sir, that this article cannot be inserted in this way.

The Honourable Dr. B. R. Ambedkar : No doubt the point raised by my honourable Friend is quite valid, but I submit that you have infinite discretion in this matter to allow any amendment if it is an amendment of importance.

Mr. President: I think on previous occasions also we have allowed new articles to be inserted and this is a new article which is sought to be inserted after article 254.

Shri T. T. Krishnamachari : When you have allowed the Drafting Committee to function, it will be its duty continually to examine the Draft Constitution and if they find that there is a lacuna, because of the fact that the Committee is in existence, it has got to take steps to till in this lacuna. The present amendment arises out of that necessity.

Mr. President: On previous occasions I have allowed fresh articles to be introduced, and this is a new article which is sought to be introduced after article 254 and so I allow this.

Dr. Ambedkar, you may move the amendment.

* CAD, Vol. IX, dated 8th August 1949, pp. 261-64.

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

“That after article 254 the following article be inserted :—

254-A. (1) No Bill or amendment which imposes or varies any tax or duty in which States are interested, or which varies the meaning of the expression ‘agricultural income’ as defined for the purpose of the enactments relating to Indian Income-tax or which affects the principles on which under any of the foregoing provisions of this Chapter moneys are or may be distributable to States, or which imposes any such surcharge for the purposes of the Union as is mentioned in the foregoing provisions of this Chapter, shall be introduced or moved in either House of Parliament except on the recommendation of the President.

Prior recommendation of President required to Bills affecting taxation in which States are interested.

(2) In this article the expression ‘tax or duty in which States are interested’ means—

(a) a tax or duty the whole or part of the net proceeds whereof are assigned to any State ; or

(b) a tax or duty by reference to the net proceeds whereof sums are for the time being payable out of the Consolidated Fund of India to any State.”

Sir, I might mention one or two reasons why we felt that at the fag end, so to say, this new article be inserted in the Constitution. A similar provision exists in the Government of India Act. The Drafting Committee considered the matter. They did not think it necessary to incorporate and transfer that article into the new Constitution. However, when a Conference of Premiers was held, it was suggested that such an article would be useful and perhaps necessary, because, once an allocation has been made by Parliament between the provinces and the States, such an allocation should not be liable to be disturbed by any attempt made by any private member to bring in a Bill to make alteration in matters in which the provinces become interested by reason of the allocation. It is because of this that the Drafting Committee has now brought forth this amendment in order to give an assurance to the provinces that no change will be made in the system of allocation unless a Bill to that effect is recommended by the President.

Mr. President : There is no amendment to this article.

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Mr. President : Do you wish to speak, Dr. Ambedkar ?

The Honourable Dr. B. R. Ambedkar : I do not think any reply is necessary.

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Article 254-A was added to the Constitution.