

ARTICLE 255

***Mr. President :** We go to article 255.

(Amendment No. 83 was not moved.)

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

“That in article 255, for the words ‘revenues of India’, wherever they occur, the words ‘Consolidated Fund of India’ be substituted.

“That in the first proviso to article 255, the words and figures ‘for the time being specified in Part I of the First Schedule’ be omitted.

“That in clause (a) of the second proviso to article 255, for the words ‘three years’ the words ‘two years’ be substituted.”

The first two amendments are just formal.....

Mr. Naziruddin Ahmad : On a point of Order. No. 86 is entirely new and not related to anything. It is not a formal matter. It is a serious matter.

The Honourable Dr. B. R. Ambedkar : That is what I am trying to explain.

Mr. Naziruddin Ahmad : It is not an amendment to an amendment. It is an amendment to the Constitution.

The Honourable Dr. B. R. Ambedkar : I move it with the permission of the Chair.

Mr. Naziruddin Ahmad : I wanted Dr. Ambedkar to be forced to take the permission of the Chair to move it.

The Honourable Dr. B. R. Ambedkar : I have taken his permission. The President can give his permission before or after moving it.

This matter refers to grants and the provision in the original article itself is that an average of three years should be paid to Assam. It was represented to us that if the average of three years is taken, the Assam Government will get very little because in the first year they did not spend anything but if we took the average of two years, they would get more. It is to meet this difficulty that the Drafting Committee has introduced the words two years instead of three years.

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ARTICLE 255 (*Contd.*)

†The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. President, Sir, I can at once say that I am prepared to accept the

* CAD, Vol. IX, dated 8th August 1949, pp. 264-65.

†*Ibid.*, dated 9th August 1949, pp. 293-94.

amendment moved by my Friend, Mr. Nichols Roy. The draft of this article does seem to give the impression that until Parliament determines each year what the grants are to be, the President will have no power to do so. That certainly is not the intention of the Drafting Committee. The Drafting Committee would like the President to exercise his powers of making grants under article 255 even before Parliament has made any determination of this matter. And in order to make this position quite clear, I am, as I said before, prered to accept the amendment moved by Mr. Nichols Roy. I would, however, at this stage, like to say that I have not yet had sufficient time to examine the exact language he has put in his amendment; and therefore, subject to the reservation that the Drafting Committee would have the liberty to change the language in order to suit the text as it stands in article 255, I am prepared to accept his amendment.

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

[All the amendments of Dr. Ambedkar, as given above, were adopted.]

Mr. President : And then I put Rev. Nichols Roy's amendment. The question is :

"That in article 255,—

(a) after the words 'Parliament may by law provide 'the words 'or until Parliament thus provides, as may be prescribed by the President' be inserted ;

(b) after the words 'Parliament may determine' the words 'or until Parliament determines as the President may determine' be inserted ; and

(c) the following Explanation be added at the end of the article :—

"Explanation.—The word "prescribed "has the same meaning as in article 251 (4)(b)."

The amendment was adopted.

[Article 255, as amended, was added to the Constitution.]

ARTICLE 256

***Mr. President:** We now take up article 256. Amendment No. 2925 by Dr. Ambedkar, in Vol. II, of the printed list.

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

"That for clause (1) of article 256 the following-clause be substituted:—

'(1) Notwithstanding anything in article 217 of this Constitution, no law of the legislature of a State relating to taxes for the benefit of the State or of a municipality, district borad, local board or other local authority therein, in respect

* CAD, Vol. IX, dated 9th August 1949, p. 301.

of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income.' ”

Sir, it is proposed in a subsequent article to permit local authorities to levy certain taxes on professions, trades callings and employments up to a certain limit. It is feared that such a tax, if levied by the State, might be called in question on the ground that it amounts to a tax on income and being within the exclusive authority of the Centre. It is to prevent any such challenge to any law made for the purposes mentioned in sub-clause (1) that this provision has been deemed by the Drafting Committee to be very necessary, and accordingly I move this amendment.

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Mr. President : Then Nos. 89 and 90 in the name of Mr. P.D. Himatsingka. He is not moving them. No. 91 in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I do not wish to move it.

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The Honourable Dr. B. R. Ambedkar : Sir, I do not think that any very detailed reply is called for. The position is simply this, that in every Constitution the taxing resources of a State are generally distributed between the Centre and the States. The question of distributing the resources between the States and the local authorities is left to be done by law made by the State, because the local authority is purely a creation of the State. It has no plenary jurisdiction ; it is created for certain purposes ; it can be wound up by the State if those purposes are not properly carried out. This article, which I am proposing, is really an exception to the general rule that there ought to be no provision in a Constitution dealing with the financial resources of what are called local authorities which are subordinate to the State. But having regard to the fact that there are at present certain local authorities and their administration is dependent upon certain taxes which they have been levying and although those taxes have been contrary to the spirit of the Income-tax law, the Drafting Committee, having taken into consideration the existing circumstances, is prepared to allow the existing state of affairs to continue. In fact exception was taken to the limit fixed by the Expert Committee which was Rs. 250. The proposal was that

* CAD, Vol. IX, dated 9th August 1949, p. 301.

it ought to be brought down to Rs. 150. The Drafting Committee on reconsideration decided that that need not be done and under the present state of affairs may be continued up to the limit and within the scope that it occupies today. I therefore say that this is a pure exception, and on principle I am definitely opposed to it and I am therefore not prepared to accept any amendment that may have been moved by any honourable Friend.

[Amendment of Dr. Ambedkar, as given earlier was adopted and the Article 256, as amended was added to the Constitution.]

ARTICLE 257

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

“That the words ‘by law’ be added at the end of article 257.”

It is a little inadvertent omission.

Mr. President : There are two other amendments which do not arise after the amendment of Dr. Ambedkar.

The amendment as above was adopted.

Article 257 as amended, was added to the Constitution.

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ARTICLE 259

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

“That in clause (1) of article 259, for the word ‘Auditor-General’ the words ‘Comptroller and Auditor General’ be substituted.”

This is done in order to bring the same nomenclature in article 259 which has been given to this officer in the previous article this Assembly has passed.

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The amendment was adopted.

Article 259, as amended, was added to the Constitution.

ARTICLE 260

‡Mr. President : Then we go to article 260.

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

“That for amendment No. 2943 of the List of Amendments the following be substituted : —

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

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

* CAD, Vol. IX, dated 9th August 1949, p. 302.

†*Ibid.*, p. 302.

‡*Ibid.*, p. 303.

Sir, the point of this amendment is this. Originally, as the article stood, it stated that the Commission shall be appointed at the end of five years. It is felt that it is necessary to permit the President to appoint the Commission much earlier and consequently we are now providing that it should be appointed within two years from the commencement of the Constitution.

Mr. President : You may move amendment No. 96 also.

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

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

This is a formal one.

Mr. President : There are amendments to this article, which have been printed in the Book.

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Pandit Hirday Nath Kunzru : ...This article shows that the framers of the Constitution feel that under the provisions of article.....

The Honourable Dr. B. R. Ambedkar : It has not been passed yet.

Pandit Hirday Nath Kunzru : That is why I am referring to it now otherwise there would have been no point in referring to it.

The Honourable Dr. B. R. Ambedkar : I have a right to withdraw it.

Pandit Hirday Nath Kunzru : Dr. Ambedkar says he has a right to withdraw it. I hope he will be wise enough to withdraw it.

The Honourable Dr. B. R. Ambedkar : No, it might be modified.

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***The Honourable Dr. B. R. Ambedkar :** Sir, the House must have realised that my honourable Friend Dr. Kunzru’s amendment referred to clause (3) of article 260 where the functions of the Finance Commission are laid down. But, in order to understand the exact significance of the amendments he has moved, I personally feel that it is desirable to know the method of allocation of revenues already provided for in the two articles we have already passed, namely 251 and 253. It will be realised that the Draft Constitution separates the distribution and allocation of the income-tax from the distribution and allocation of central duties of excise. With regard to income-tax the distribution and allocation of the proceeds is a matter which is left to the President to decide. That will follow from reading article 251(2)

* CAD, Vol. IX, dated 9th August 1949, p. 311.

with clause (4) (b) (i) and (ii). On the other hand with regard to the distribution and allocation of the proceeds of the central duties of excise the matter is left entirely to be determined by law made by Parliament, which you will find set out cleanly in article 253.

As it is one O'clock I will continue my speech tomorrow.

The Assembly then adjourned till 9 of the clock on Wednesday, the 10th August 1949.

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ARTICLE 260 (*Contd.*)

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

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

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

The next point to bear in mind are the provisions contained in article 260 which deals with the Finance Commission. Under clause (3) of article 260, it is provided that the Finance Commission is to advise and make recommendations with regard to the distribution and allocation, not merely of the taxes which are made distributable by law made by Parliament, but also with regard to the distribution and allocation of the income-tax. Now, what my Friend, Pandit Kunzru, wants to do, if I have understood him correctly, is that he wants to take out the collection, allocation and distribution of income-tax from the purview, so to say of the Finance Commission. His point was this that while the President may well take the advice of the Finance Commission in making the allocations of Central duties of excise, he should be, so to say, made independent of the Finance Commission with regard to the income-tax. The only qualification that he wants to urge is this that so far as the initial distribution of the income-tax is concerned, the

* CAD, Vol. IX, dated 10th August 1949, pp. 313-15.

President may well consult the Finance Commission and act in accordance with or after taking into consideration the recommendations made by the Finance Commission, but any subsequent variation of the income-tax allocation may be left to be done by the President independently of any recommendations that may be made by the Finance Commission. I think I am right in interpreting what he intends to do by his own amendment. The question, therefore, is a very simple and small one. Should the President be left altogether independent of any recommendations of the Finance Commission in varying the distribution of the income-tax between the provinces and the Centre and the allocation of the proceeds of the income-tax so set apart between the different provinces? The draft amendment as I have moved provides that the President shall take into consideration the recommendations of the Finance Commission in making any variations that he may want to do with regard to the distribution and allocation of the income-tax. I quite appreciate his point of view that, if this was left to be decided by the President on the recommendations of the Finance Commission, the hands of the President may be so tied that he may have to yield to the recommendations of the Finance Commission or to the clamour that may be made by the provinces with the result that he may be forced to do injury to the Central finances. I share his feelings that the Centre should be made as independent as one can make it so far as finance is concerned, because in my mind there can be no doubt that we must not do anything in the Constitution which would jeopardise either the political or the financial existence of the Central Government, but there is also the other side to the matter, *viz.*, supposing there was a clamour made by all the provinces, which is perfectly possible to imagine because it is their common interest, urging the President to allocate more revenue to the provinces, would it not be placing the President at the mercy of the provinces? If, on the other hand, there was a report of the Commission containing recommendations that the Centre should not give more revenue under the income-tax to the provinces, it would, in my judgment, strengthen the hands of the President in refusing to accede to such a clamour from the provinces. If I may use the language with which we are now familiar under the Government of India Act, the difference between the draft article as it stands now and the amendment proposed is that according to Pandit Kunzru, the President should be

free to act in his discretion, while the draft as proposed by me says that he should act in his individual judgment which means.....

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

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

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

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

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

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

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

The Honourable Dr. B. R. Ambedkar : I do not know. The position is quite clear whether the President is to be left in his complete discretion

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

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

[Dr. Ambedkar's amendment was adopted. Article 260, as amended, was added to the Constitution.]

ARTICLE 261

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

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

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

* CAD, Vol. IX, dated 10th August 1949, p. 315.

†*Ibid.*, Pp. 328-29.

Now, the other matter which is covered by article 261 relates to the distribution of the revenue collected from Centrally levied excise duties. It is also clear from the article that we have passed that this matter shall be governed by the law made by Parliament. The President cannot do it himself. Therefore the words "shall put before Parliament a memorandum stating the action that has been taken" merely means this that the President shall say, as he is bound to say, that a Bill shall be introduced before Parliament to regularise or sanction the proceeds of the excise duties and the manner in which they are to be allocated. Consequently, if my Friend, Prof. Shibban Lai Saksena will read article 261 in relation to the other articles that we have passed, he will realise that so far as the distribution of the excise duties is concerned, the result will be the same as what he proposes to bring about by his amendment therefore I think that his amendment is quite unnecessary.

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

[Articles 261, as amended by Dr. Ambedkar's amendment was adopted and added to the Constitution.]

ARTICLE 263

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

"That for article 263 the following be substituted :—

‘263. (1) The custody of the Consolidated Fund of India, the payments of moneys into such Fund, the withdrawal of moneys therefrom and all other matters connected with or ancillary to the 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.

Custody of Consolidated Funds, the payment of moneys into and withdrawal of moneys from such funds.

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

I do not think any explanation is necessary.

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

"That in the amendment just moved by Dr. Ambedkar, after the words 'Consolidated Fund', wherever they occur, the words 'and the Contingency Fund' be inserted ; and for the words 'such Fund', wherever they occur, the words 'such Funds' be substituted."

* CAD, Vol. IX, dated 10th August 1949, p. 330.

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

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

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

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

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ARTICLE 267

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

“That in article 267—

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

(ii) for the words ‘revenues of India’ wherever they occur, the words ‘Consolidated Fund of India’ be substituted ;

(iii) for the words ‘revenues of a State’ wherever they occur, the words ‘Consolidated Fund of the State’ be substituted ;

(iv) the words and figure ‘for the time being specified in Part I of the First Schedule’ be omitted ; and

(v) for the words ‘revenues of the State’, the words ‘Consolidated Fund of the State’ be substituted.”

It is just consequential.

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

Mr. President: I put the amendments to vote.

[Dr. Ambedkar's amendment was adopted. All other amendments moved by Prof. S. L. Saksena, H. V. Kamath and Dr. P. S. Deshmukh were rejected. Article 267, as amended, was added to the Constitution]

ARTICLE 268

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†**The Honourable Dr. B. R. Ambedkar:** Sir, except for the last oration of my Friend Prof. K. T. Shah in which he suggested that we should introduce a clause putting limitation upon the authority of Parliament to sanction loans, I was really quite unable to understand the dissent which has been expressed by other speakers with regard to the provision contained in article 268. It is admitted that it is the executive alone which can pledge the credit of the country for borrowing purposes,

* CAD, Vol. IX, dated 10th August 1949, pp. 330-34.

†*Ibid.*, pp. 339-40.

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

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

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

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

Article 268, as amended, was added to the Constitution.

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ARTICLE 269

***Mr. President :** There are some amendments which are printed in the II Volume of the printed amendments on page 313. Then we shall take up amendment No. 107 by Dr. Ambedkar.

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

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

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

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

‘(2) The Government of India may, subject to such conditions as may be laid down by or under any law made by Parliament, make loans to any State or, so long as any limits fixed under article 26S of this Constitution are not exceeded, give guarantees in respect of loans raised by any State, and any sums required for the purpose of making such loans shall be charged on the Consolidated Fund of India.’ ”

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

Sir, I move :

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

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

[Article 269, as amended by Dr. Ambedkar’s amendment was adopted and added to the Constitution]

ARTICLES 5 AND 6

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

Prof. K. T. Shah : May I know what happens to the amendments in the Printed List 7 They have all been tabled as amendments to the

* CAD, Vol. IX, dated 10th August 1949, pp. 340-42.

†*Ibid.*, pp. 343-44.

original draft. I do not quite understand your suggestion as to the process in which the amendments would now be taken up.

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

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

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

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

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

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

"5. At the date of commencement of this Constitution, every person who has his domicile the territory in India and—

Citizenship at the date of Commencement this Constitution.	<p>(a) who was born in the territory of India; or</p> <p>(b) either of whose parents was born in the territory of India; or</p> <p>(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding the date of such commencement.</p>
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shall be a citizen of India, provided that he has not voluntarily acquired the citizenship of any foreign State.

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

(a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and

(b) (i) in the case where such person has so migrated before the nineteenth day of July 1948, he has ordinarily resided within the territory of India since the date of his migration; and

(ii) in the case where such person has so migrated on or after the nineteenth day of July 1948 he has been registered as a citizen of India by an officer appointed in this behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the date of commencement of this Constitution in the form prescribed for the purpose by that Government:

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

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

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

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

The Honourable Dr. B. R. Ambedkar : I have included it in the consolidated article as I am proposing to accept the amendment which will be moved by him.

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

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

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

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

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

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

An Honourable Member : Question.

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

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

The effect of article 6 is this, that Parliament may not only take away citizenship from those who are declared to be citizens on the date of the commencement of this Constitution by the provisions of article 5

* CAD, Vol. IX, dated 10th August 1949, pp. 346-49.

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

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

These five categories are :

(1) Persons domiciled in India and bom in India : In other words, those who form the bulk of the population of India as defined by this Constitution ;

(2) Persons who are domiciled in India but who are not born in India but who have resided in India. For instance persons who are the subjects of the Portuguese Settlements in India or the French Settlements in India like Chandernagore. Pondicherry, or the Iranians for the matter of that who have come from Persia and although they are not born here, they have resided for a long tune and undoubtedly have the intention of becoming the citizens of India.

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

(3) Persons who are residents in India but who have migrated to Pakistan ;

(4) Persons resident in Pakistan and who have migrated to India ;

and

(5) Persons who or whose parents are born in India but are residing outside India.

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

The second class of people to whom I referred, *viz.*, persons who have resided in India but who are not born in India are covered by clause (c) of article 5, who have been ordinarily resident in the territory of India for not less than five years immediately preceding the date of such commencement. The condition that it imposes is this that he must be

a resident of India for five years. All these clauses are subject to a general limitation, *viz.*, that they have not voluntarily acquired the citizenship of any foreign State.

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

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

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

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

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

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

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

Then I come to those who have migrated to Pakistan but who have returned to India after going to Pakistan. There the position is this. I am not as fully versed in this matter as probably the Ministers dealing with the matter are, but the proposal that we have put forth is this if a person who has migrated to Pakistan and, after having gone there, has returned to India on the basis of a permit which was given to him by the Government of India not merely to enter India but a permit which will entitle him to resettlement or permanent return, it is only such person who will be entitled to become a citizen of India on the commencement of this Constitution. This provision had to be introduced because the Government of India, in dealing with persons who left India for Pakistan and who subsequently returned from Pakistan to India, allowed them to come and settle permanently under a system which is called the 'Permit system'. This permit system was introduced from the 19th July 1948. Therefore the provision contained in article 5-B deals with the citizenship of persons who after coming from Pakistan went to Pakistan and returned to India. Provision is made that if a person has come on the basis of a permit issued to him for resettling or permanent return, he alone would be entitled to become a citizen on the date of the commencement of the Constitution.

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

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

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

Mr. President : I think we shall take up the amendments tomorrow.

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***Mr. President** : I do not think any useful purpose will be served by further speeches. The amendments are all there before the Members ; they are free to vote in favour of any amendment they like.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. President. Sir, it has not been possible for me to note down every point that has been made by those who have criticised the draft articles which I have moved. I do not think it is necessary to pursue every line of criticism. It is enough if I take the more substantial points and meet them.

My Friend, Dr. Deshmukh, said that by the draft articles we had made our citizenship a very cheap one. I should have thought that if he was aware of the rules which govern the law of citizenship, he would have realised that our citizenship is no cheaper than would have been made by laws laid down by other countries.

With regard to the point that has been made by my Friend Prof. K. T. Shah that there ought to be positive prohibition in these articles limiting Parliament's authority to make law under article 6 not to give citizenship to the residents of those countries who deny citizenship to Indians resident there, I think that is a matter which might well be left for Parliament to decide in accordance with the circumstances as and when they may arise.

* CAD, Vol. IX, dated 12th August 1949, pp. 422-24.

The points of criticism with which I am mostly concerned are those which have been levelled against those parts of the articles which relate to immigrants from Pakistan to India and to immigrants from India to Pakistan. With regard to the first part of the provisions which relate to immigrants coming from Pakistan to India, the criticism has mainly come from the representatives of Assam, particularly as voiced by my Friend Mr. Rohini Kumar Chaudhuri. If I understood him correctly, his contention was that these articles relating to immigrants from Pakistan to India have left the gates open both for Bengalis as well as Muslims coming from East Bengal into Assam and either disturbing their economy or disturbing the balance of communal proportions in that Province. I think, Sir, he has entirely misunderstood the purport of the articles which deal with immigrants from Pakistan to India.

If he will read the provisions again, he will find that it is only with regard to those who have entered Assam before 19th July 1948, that they have been declared, automatically so to say, citizens of Assam if they have resided within the territory of India. But with regard to those who have entered Assam, whether they are Hindu Bengalees or whether they are Muslim, after the 19th July 1948, he will find that citizenship is not an automatic business at all. There are three conditions laid down for persons who have entered Assam after the 19th July 1948. The first condition is that such a person must make an application for citizenship. He must prove that he has resided in Assam for six months and, thirdly, there is a very severe condition, namely that he must be registered by an officer appointed by the Government of the Dominion of India. I would like to state very categorically that this registration power is a plenary power. The mere fact that a man has made an application, the mere fact that he has resided for six months in Assam, would not involve any responsibility or duty or obligation on the registering officer to register him. Notwithstanding that there is an application, notwithstanding that he has resided for six months, the officer will still have enough discretion left in him to decide whether he should be registered or he should not be registered. In other words, the officer would be entitled to examine, on such material as he may have before him, the purport for which he has come, such as whether he has come with a *bona fide* motive of becoming a permanent citizen of India or whether he has come with any other purpose. Now, it seems to me that, having regard

to these three limiting conditions which are made applicable to persons who enter Assam after 19th July 1948, any fear such as the one which has been expressed by my Friend Mr. Rohini Kumar Chaudhuri that the flood-gates will be opened to swamp the Assamese people either by Bengalees or by Muslims, seems to me to be utterly unfounded. If he has any objection to those who have entered Bengal before 19th July 1948—in this case on a showing that the man has resided in India, citizenship becomes automatic—no doubt that matter will be dealt with by Parliament under any law that may be made under article 6. If my friends from Assam will be able to convince Parliament that those who have entered Assam before 19th July 1948 should, for any reason that they may have in mind or they may like to put before Parliament, be disqualified, I have no doubt that Parliament will take that matter into consideration. Therefore, so far as the criticism of these articles relating to immigrants from Pakistan to Assam is concerned, I submit it is entirely unfounded.

Then I come to the criticism which has been levelled on the provisions which relate to immigrants from India to Pakistan, I think that those who have criticised these articles have again not clearly understood what exactly it is proposed to be done. I should like, therefore, to re-state what the articles say. According to the provisions which relate to those who are immigrants from India to Pakistan, any one who has left India after the first March 1947, barring one small exception, has been declared not to be citizens of India. That, I think, has got to be understood very carefully. It is a general and universal proposition which we have enunciated. It is necessary to enunciate this proposition, because on the rule of International Law that birth confers domicile, a person has not to acquire what is called domicile of origin by any special effort either by application or by some other method or by some kind of a grace. The origin of domicile goes with birth. It was felt that those persons who left India, but who were born in India notwithstanding that they went to Pakistan, might, on the basis of the rule of International Law, still claim that their domicile of origin is intact. In order that they should not have any such defence, it is thought wise to make it absolutely clear that any one who has gone to Pakistan after the 1st March—you all know that we have taken 1st March very deliberately, because that was the date when the disturbances started and the exodus began and we thought that there would be no violation of any principle of International justice if we presumed that any man who, as a result of the disturbances

went to Pakistan with the intention of residing permanently there, loses his right of citizenship in India. It is to provide for these two things that we converted this natural assumption into a rule of law and laid down that anyone who has gone to Pakistan after 1st March shall not be entitled to say that he still has a domicile in India. According to article 5 where domicile is an essential ingredient in citizenship, those persons having gone to Pakistan lost their domicile and their citizenship.

Now I come to an exception. There are people who, having left India for Pakistan, have subsequently returned to India. Well, there again our rule is that anyone who returns to India is not to be deemed a citizen unless he satisfies certain special circumstances. Going to Pakistan and returning to India does not make any alteration in the general rule we have laid down, namely that such a person shall not be a citizen. The exception is this : as my honourable Friend Shri N. Gopalaswami Ayyangar said, in the course of the negotiations between the two Governments, the Government of India and the Government of Pakistan, they came to some arrangement whereby the Government of India agreed to permit certain persons who went from India to Pakistan to return to India and allowed them to return not merely as temporary travellers or as merchants or for some other purpose of tempoary character to visit a sick relation, but expressly permitted them to return to India and to settle permanently and to remain in India permanently. We have got such persons in India now. The question therefore is whether the rule which I have said we have enunciated in this article, not to permit anyone who has gone from India to Pakistan after the 1st March 1947, should have an exception or not. It was felt and speaking for myself I submit very rightly felt that when a Government has given an undertaking to a person to permit him to return to his old domicile and to settle there permanently, it would not be right to take away from that person the eligibility to become a citizen. As my Friend, Mr. Gopalaswami Ayyangar has said, the class of people covered by this category, having regard to the very large population both of Hindus and Muslims we have, is very small, something between two to three thousand. It would, in my judgement look very invidious, it would in my judgement look a breach of faith if we now said that we should not allow these people whom our-own Government, whether rightly or wrongly, allowed to come away from pakistan for the purpose of permanent residents here, to have this prividege. It would be quite open to this House to bring in a Bill to prevent the Government of India from continuing the permit

system hereafter. That is within the privilege and power of this House, but I do not think that the House will be acting rightly or in accordance with what I call public conscience if it says that these people who, as I said, are so small, who have come on the assurance of our own Government to make their home here, should be denied the right of citizenship. Sir, I do not think therefore that there is any substance in the criticism that has been levelled against these articles and I hope the House will accept them as they are.

SECTION 291

of Government of India Act, 1935 (Amendment) Bill

***The Honourable Dr. B. R. Ambedkar :** Mr. Vice-President, Sir, I find from the speeches to which I have listened so far that there is a great deal of misunderstanding as to what this particular Bill, particularly clause 4 of it, proposes to do. I think it is desirable at the outset to tell the House what exactly is intended to be done by clause 4. In order to put the House in a proper frame of mind—if I may say so without meaning any offence—I should like to draw the attention of the House to the wording of Section 291 of the Government of India Act as it was in operation before it was adapted after the Independence Act. Now I shall read just a few lines of that Section 291.

“In so far as provision with respect to matters hereinafter mentioned is not made by this Act. His Majesty in Council (and I want to emphasise these words His Majesty in Council) may from time to time make provision with respect to those matters or any of them. etc.. etc.”

The first thing that I would like to draw the attention of the House is this that in clause 4 of this Bill the matters which are enumerated from (b) to (j) are exactly the matters which are enumerated in the old Section 291. Therefore, it has to be understood at the outset that this clause, clause 4, is not making any fundamental change in the provisions contained in the original Section 291. The matters for which the Governor-General is going to be given powers by the provisions of the new Section 291, as embodied in this Bill, are the same which were given by the original Section 291 to His Majesty in Council. (An Honourable Member : No.) I hope that this will be now clear to everybody and I do not think there can be any doubt on it, for anyone who compares the different clauses in this Bill and in the original Section 291 will have all his doubts removed.

* CAD. Vol. IX, dated 18th August 1949, pp. 465-68.