

The question, therefore, may be asked as to why is it that we are now, giving the power to the Governor-General. The difficulty, if I may say so, is this. Somehow when the Government of India Act, 1935, came to be adapted after the Independence Act, there was, in my judgment, at any rate, a slip that took place and that slip was this, that this power which originally vested in His Majesty in Council, logically speaking, ought to have been transferred to the Governor-General, because the Governor-General under the Dominion law stepped into the shoes of His Majesty in Council. But, unfortunately, as I said, what happened was this that in adapting this Section 291, the power which we are now giving to the Governor-General was given to the local Legislature, I will read that adapted Section 291. I ask my friends who have been agitating over this to read the section as adapted. This is how it reads :

“In so far as provision with respect to matters herein mentioned is not made in this Act in relation to any Provincial Legislature, provision may be made by Act of that Legislature with respect to those matters or any of them, etc.. etc.”

It has now been discovered that that was an error, that really speaking, when the section was adapted at that stage, the Governor-General should have been endowed with those powers, because those powers under the provisions of Section 291 were vested in His Majesty in Council and not in any local legislature what we are doing by this Bill is merely to restore the old position as it existed under the unadapted Section 291. I, therefore, want to submit that any criticism which has been levelled by any Member of the Assembly that there was some kind of a deep-laid game in order to upset the constitution for political motives is absolutely unwarranted. All that we are trying to do is to correct a slip that had taken place then.

I come to the next point, namely, the addition of the words “the composition of the Chamber or Chambers of the legislature.” I quite agree.....*

Dr. P. S. Deshmukh : May I ask one question, Sir? Does not the alteration of the words “in so far as provision with respect to matters hereinafter mentioned is not made by this Act”, the omission of these words and making of these provisions applicable to.....

The Honourable Dr. B. R. Ambedkar : That is what exactly I am explaining. As I said, the only difference that will now be found between the original article 291 as unadapted and the proposed new clause is this that it is proposed by this new article to give power to the Governor-General to alter the provisions with regard to the composition of the Legislature. I admit that that is a change.

*Dots indicate interruption.

Dr. P. S. Deshmukh : Which includes schedules 5 and 6.

The Honourable Dr. B. R. Ambedkar : Oh, yes ; that is quite true. I admit without any kind of reservation that that is a change which is being made. Now the question is why should we make that change. The reason why we have to make the change in order to give the Governor-General the power even to alter the composition is to be found in the situation in which we find ourselves. Honourable Members will remember that there has been a considerable shifting of the population on account of partition. The population of East Punjab is surely not in any stereotyped condition. Refugees are coming and going. On the 1st April the population numbered so much ; six months thereafter it may number something quite different from what it was then. Similarly with regard to West Bengal and many other provinces where refugees have been taken by the Government of India under their scheme of rehabilitation or the refugees themselves have voluntarily travelled from one area to another. Obviously you cannot allow the provisions contained in the Fifth and Sixth Schedules with regard to the numbers in the legislature to remain what they were when we know as a matter of fact that the population has lost all relation to the numbers then prescribed in the Schedules. It is therefore in order to take into account the shifting of the population that power is given to the Governor-General to alter even the Schedules which deal with the composition of the legislature.

I hope my honourable Friends will now understand that in giving this additional power of making an order with regard to the composition of the Chamber or Chambers the intention is to permit the Governor-General to make an order which will bring the strength of the different legislatures in the provinces affected to suit the numbers in those provinces. There is no nefarious purpose.

Dr. P. S. Deshmukh : You had two full years to rectify this position.

The Honourable Dr. B. R. Ambedkar : That is a different matter. I am only explaining why these provisions are being introduced by this new clause.

I have said that the other provisions are merely reproductions of what is contained in the original Section 291. This power is not being taken for a wanton or an unnecessary purpose nor is it intended to be used for anything other than a *bona fide* purpose. Therefore having regard to these circumstances my submission is that clause 4 is a perfectly justifiable proposal, both from the point of view of conferring these powers, which originally vested in His Majesty in Council, to be vested

in the Governor-General who is his successor and to give him additional power to alter the composition, because the pattern of the numbers in the different provinces have changed from the 15th August 1947. I quite realise that there has been an error in the Statement of Objects and Reasons where unfortunately a particular reference has been made to West Bengal. I should like to assert that this clause has been intended as a general provision which may be used by the Governor-General for rectifying any of the matters with regard to any province, not particularly West Bengal; and I think that was against somehow a slip which ought not to have taken place. Members of the House have picked up that particular wording of that particular clause where a pointed reference has been made to West Bengal in order to charge the Government with *malafide*, with having some kind of a bad motive towards the legislature in West Bengal. As I said, it is nothing of the kind. These clauses are general; they may be used if a situation arises : which calls for their use in West Bengal. They may be used for my province of Bombay where probably today, at any rate, no such circumstance appears. Therefore from that unfortunate statement—if I may say so—no conclusion ought to be drawn that there is any kind of underhand dealing so far as this clause is concerned.

Shri Suresh Chandra Majumdar (West Bengal : General) : Is it not possible to drop the words “West Bengal” ?

The Honorable Dr. B. R. Ambedkar : I have been telling my honourable Friends that the Statement of Objects and Reasons is not a part of the Act and therefore there can be no amendment moved to the deletion of any word or clause or sentence in the Statement of Objects and Reasons. As soon as this Bill becomes an Act, that Statement of Objects and Reasons will be thrown into the dustbin. It is different from a Preamble and I want Members of the House to concentrate on the Preamble where there is no such reference to West Bengal. Therefore my submission is that there is really nothing to quarrel with in this particular clause. In the first place it restores the original provision as it existed in the Government of India Act, 1935, in its unadapted condition, and secondly it proposes to give power which it has become necessary to give because of the altered position in the provinces.

An Honourable Member : Sir, I move that the question be now put.

Shri H. V. Kamath : Sir, on a point of order, Dr. Ambedkar has raised fresh points which we wish to discuss and under rule 33 of our Rules you may hold that there has not been sufficient debate, and so refuse to accept this motion for closure.

Dr. P. S. Deshmukh : But Dr. Ambedkar is not the Minister in charge.

Mr. Vice-President : Yes, that is so ; and the Honourable Member Mr. Kamath has had ample opportunity to speak on this clause. I therefore accept the motion for closure.

The question is :

“That the question be now put.”

The motion was adopted.

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ARTICLE 150 (*Contd.*)

***Mr. Vice-President:** (Shri V. T. Krishnamachari): Today we begin with article 150. The House will remember that there was a debate on this article as it originally stood and after three amendments were moved, the article was recommitted to the Drafting Committee. Dr. Ambedkar has now given notice of a new article. I request him to move that article, amendment No. 1 of List I (Fourth Week).

Mr. Naziruddin Ahmad (West Bengal; Muslim): Sir, I have a point of Order. Shall I move it just now or after the amendment is moved ?

Mr. Vice-President : You may move it just now.

Mr. Naziruddin Ahmad : Mr. Vice-President, Sir, as I have been observing for some time that the Drafting Committee has been springing surprise after surprise on the Members. Every day new amendments of a sweeping character are being sent in by the Drafting Committee. They come in all of a sudden like Air Raids.

The Honourable Dr. B. R. Ambedkar (Bombay : General): Where is the point of Order ?

Mr. Vice-President: May I remind the honourable Member that this amendment has been brought before the House by Dr. Ambedkar and the Drafting Committee in response to the desire universally expressed in the House. For this reason, I rule out this point of Order. I now ask Dr. Ambedkar to move his amendment.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I move :

“That for article 150, the following be substituted:—

Composition of the
Legislative Council.

150. (1) The total number of members in the
Legislative Council of a State having such a Council
shall not exceed one-fourth of the total number of members in the Assembly
of that State ;

Provided that the total number of members in the Legislative Council of a
State shall in no case be less than forty.

(2) Until Parliament may by law otherwise provide, the composition of the Legislative Council of a State shall be as provided in, clause (3) of this article.

(3) Of the total number of members in the Legislative Council of a State—

(a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities as Parliament may by law specify ;

(b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years graduates of any university in the State and persons possessing for at least three years qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university ;

(c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school as may be prescribed by or under any law made by Parliament;

(d) as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly ;

(e) the remainder shall be nominated by the Governor in the manner provided in clause (5) of this article.

(4) The members to be elected under sub-clauses (a), (b) and (c) of clause (3) of this article shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the elections under the said sub-clauses and under sub-clause (d) of the said clause shall be in accordance with the system of proportional representation by means of the single transferable vote.

(5) The members to be nominated by the Governor under sub-clause (e) of clause (3) of this article shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely :—
literature, science, art, co-operative movement and social services.”

As you have said, Sir, this article in a different form was before the House last time. The article as it then stood, merely said that the composition of the Upper Chamber shall be as may be prescribed by law made by Parliament. The House thought that that was not the proper way of dealing with an important part of the constitutional structure of a provincial legislature, and that there shall be something concrete and specific in the matter of the constitution of the Upper Chamber. The President of the Constituent Assembly said that he shared the feelings of those Members of the House who took that view, and suggested that the matter may be further considered by the Drafting Committee with a view to presenting a draft which might be more acceptable to those Members who had taken that line of criticism. As honourable Members will see, the draft presented here is a compromise between the two points of view. This draft sets out in concrete terms

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With regard to the other points of criticisms I do not know that those who have indulged in high-flown phraseology in denouncing this particular article have done any service either to themselves or to the House. This is a matter which has been debated more than once. Whether there should be a Second Chamber in the province or not was a matter which was debated and the proposition has been accepted that those provinces who want Second Chambers should be permitted to have them. I do not know that any good purpose is served by repeating the same arguments which were urged by those Members at the time when that matter was discussed.

With regard to the merits of the proposition which has been tabled before the House, I have not seen any single constructive suggestion on the part of any Member who has taken part in this debate as to what should be the alternative constitution of the Second Chamber. Here and

* CAD, Vol. IX, dated 19th August 1949, pp. 490-91.

there bits have been taken and denunciations have been indulged in to point out either that that is a useful provision or a dangerous provision. Well, I am prepared to say that this is a matter where there can be two opinions and I am not prepared to say that the opinion I hold or the opinion of the Drafting Committee is the only correct one in this matter. We have to provide some kind of constitution and I am prepared to say that the constitution provided is as reasonable and as practicable as can be thought of in the present circumstances.

Then there were two points that were made, one of them by my Friend Mr. Nagappa. He wanted that a provision should be made for there presentation of agricultural labour. I do not know that any such provision is necessary for the representation of agricultural labour in the Upper Chamber, because the Lower Chamber will be in my judgment having a very large representation of agricultural labour in view of the fact that the suffrage on which the Lower Chamber would be elected would be adult suffrage and I do not know.....

Shri S. Nagappa : If that is the case, all other sections also to whom you are giving will also get representation in the Lower Chamber.

The Honourable Dr. B. R. Ambedkar : They are provided for very different reasons but agricultural labour would be amply provided in the Lower Chamber.

My friend Shri Muniswami Pillai by an amendment raised the question that there should be special representation for the Scheduled Castes in the Upper Chamber. Now, I should like to point out to Mm that so far as the Drafting Committee is concerned, it is governed by the report of the Advisory Committee which dealt with this matter. In the report of the Advisory Committee which was placed before the House during August 1947 the following provision finds a place :—

“(c) There shall be reservation of seats for the Muslims in the Lower House of the Central and Provincial Legislatures on the basis of their population.”

“3. (a) The section of Hindu community referred to as scheduled caste and defined in scheduled to the Government of India Act 1935 shall have the same rights and benefits which are herein provided for etc., etc., “which means that the representation to be guaranteed to the Scheduled Castes shall be guaranteed only in the Lower Houses of the Central and Provincial Legislatures. That being the decision of the Constituent Assbmely, I do not think it is competent for the Drafting Committee to adopt any proposition which I do not want to injure anybody’s feeling, that if any one was vociferously in favour of this decision, it was my Friend Mr. Muniswamy Pillay and I think he ought to be content with what he agreed to abide by then.”

Mr. Vice-President : Dr. Ambedkar you have to formally withdraw amendment No. 2.

The Honourable Dr. B. R. Ambedkar : Yes, I have to withdraw it. The amendment was, by leave of the Assembly, withdraw.

[6 amendments were negatived and five including the one by Dr. Ambedkar were withdrawn.]

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***Mr. Vice-President :** I now put Mr. Sarwate's amendment to the House. The question is :

“That in sub-clause (b) of clause (3) of the proposed article 150, after words ‘consisting of persons’ the words ‘resident in the State’ be added, and for the words ‘in the State’ the words ‘in the territory of India’ be substituted.”

The amendment was adopted.

[Article 150, as amended, was added to the Court.]

PART VIII-A

ARTICLE 215-A

†**The Honourable Dr. B. R. Ambedkar :** Sir, I move my amendment No. 6, List 1, Fourth Week.

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

“PART VIII-A

THE SCHEDULED AND TRIBAL AREAS

215-A. In this Constitution—

(a) the expression ‘scheduled areas’ means the areas specified in Parts I to VII of Definitions the Table appended to paragraph 18 of the Fifth Schedule in relation to the States to which those Parts respectively relate subject to any order made under sub-paragraph (2) of that paragraph ;

(b) the expression ‘tribal areas’ means the areas specified in Parts I and II of the Table appended to paragraph 19 of the Sixth Schedule subject to any order made under sub-paragraph (3) of paragraph 1 or clause (b) of sub-paragraph (1) of paragraph 17 of that Schedule.

215B. (1) The provisions of the Fifth Schedule shall apply to the administration and control of the scheduled areas and scheduled tribes in any State for the time being specified in Part I or Part III of the First Schedule other than the State of Assam.

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam. “

Sir, my amendment merely replaces the original articles 189 and 190. The only thing we are doing is that we are transferring the provisions contained in articles 189 and 190 to another and a separate part. It is because of the transposition that it has become necessary to re-number them in order to secure the necessary logical sequence of the new part. Barring minor changes, there are no changes of substance at all, in the new articles proposed by me—article 215 A and article 215B.

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* CAD, Vol. IX, dated 19th August 1949, p. 492.

† *Ibid.*, pp. 492-93.

***The Honourable Dr. B. R. Ambedkar :** I do not think there is any necessity to offer any remarks in reply.

The motion was adopted.

[Part VIIIA and articles 215A and 215B were added to the Constitution]

ARTICLE 250

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

“That in sub-clause (c) of clause (1) of article 250, after the word ‘railway’ a comma and the word ‘sea’ be inserted.”

Sir, I move my next amendment also.

“That in clause (2) of article 250, for the words ‘revenues of India’ the words ‘Consolidated Fund of India’ be substituted.”

Mr. Naziruddin Ahmad : ...At present there is a Bill before the Legislature for charging estate duty. Here we are legislating for a long time. Therefore we should have both estate or succession duty.

The Honourable Dr. B. R. Ambedkar : Succession duty is covered by (a) which says ‘Duties in respect of succession to property’. Why repeat that in (b) ?

Mr. Naziruddin Ahmad : The two might have been combined.

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‡**Mr. Vice-President :** ...Anyway, does Dr. Ambedkar want to say anything ?

The Honourable Dr. B. R. Ambedkar : I do not want to say anything.

Mr. Vice-President : I will not put the amendments to the House.

[Both the amendments of Dr. Ambedkar, mentioned above, were adopted. Other amendments were rejected. Article 250 as amended was added to the Constitution.]

ARTICLE 277

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

“That article 277 be re-numbered as clause (1) of article 277, and to the said article as so re-numbered the following clause be added :—

‘(2) Every order made under clause (1) of this article shall, as soon as may be after it is made, be laid before each House of Parliament.’”

This article 277 is a consequential article. It lays down what shall be the financial consequences of the issue of an emergency proclamation by the President. Clause (1) of the article says that provisions relating to financial arrangements between provinces and the Centre may be

* CAD, Vol. IX, dated 19th August 1949, p. 495.

† *Ibid.*, pp. 499-500.

‡ *Ibid.*, p. 504.

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Now, what does my Friend Pandit Kunzru propose to do by his amendment ? If I have understood him correctly, he does not differ from the Drafting Committee in leaving with the President complete discretion to modify two of the three items to winch I have made reference, that

* CAD, Vol. IX, dated 20th August 1949, pp. 520-23.

is to say, he is prepared to leave with the President full and complete discretion to modify any allocation made to the provinces by the Centre out of the proceeds of the excise duty and the grants made by the Centre under article 255. If I understood him correctly, he would have no difficulty if the President, by order, completely wiped off any share that the Centre was bound to give in normal times to the provinces out of the proceeds of the excise duties and the grants made by the Centre.

Pandit Hirday Nath Kunzru (United Provinces : General) : I never said any such thing.

The Honourable Dr. B. R. Ambedkar : Your amendment is limited only to the income-tax. That is what I am trying to point out. You do not by your amendment, in any way suggest that there should be any different method of dealing with the proceeds of the excise duties or the grants made by the Centre under article 255.

Pandit Hirday Nath Kunzru : The reason why I cast my amendment in that form is this. In so far as the distribution of the proceeds of any taxes depends on a statute passed by Parliament that power cannot be taken away from Parliament but it does not belong to the President. But so far as income-tax is concerned, the Government of India Act, 1935, envisaged the transfer of the full share of the provinces to them within a certain period and allowed the Governor-General, in case there was an emergency, to delay the transfer to the provinces and thus lengthen the total period in which the provinces were to get their full share. That was the only reason ; the inference drawn by my honourable Friend is completely unjustified.

The Honourable Dr. B. R. Ambedkar : I am entitled to draw the most natural inference from the amendment as tabled.

Pandit Hirday Nath Kunzru : The Honourable Member is completely misunderstanding me. Under my amendment the President will have no power to alter the distribution of the proceeds of the Union excise duties.

The Honourable Dr. B. R. Ambedkar : I am sorry the honourable Member did not make the matter clear in his amendment. And if he wants to put a new construction now and make a fundamental change the amendment should have been such as to give me perfect notice as to what was intended. There is nothing in the amendment to suggest that the honourable Member wants to alter the provisions of articles 253 and 255. It may be an after thought but I cannot deal with after thoughts ; I have to deal with the amendment as it is tabled. Therefore, as I read the amendment, my construction is very natural.

Pandit Hirday Nath Kunzru : The honourable Member is utterly unjustified.

The Honourable Dr. B. R. Ambedkar : That is the honourable Member's opinion. My reading is that something new is being put forward now.

Pandit Hirday Nath Kunzru : The honourable Member is misrepresenting me and knows that he is doing so.

The Honourable Dr. B. R. Ambedkar : The Honourable Member is misrepresenting his own thoughts. Therefore, as I understand it, there is no question of my honourable Friend suggesting any alteration in the system of modifying the proceeds of the excise duty and the grant. The only question that he raised is the question of the modification of the allocation of income-tax during an emergency. Even so what do I find ? If I again read his amendment correctly, he is: not altogether taking away the discretion which is left to the President in the matter of the modification of the allocation of the income-tax. All that he is doing is that if the President was to make a modification of the allocation of the income-tax as contained in the previous order, then the President should proceed in a certain manner which he has stated in his amendment. In other words, the only difference between the draft clause as put by me and the amendment of my honourable Friend Pandit Kunzru is this that, so far as the discretion of the President is concerned, it should not be left unregulated, that it should be regulated in the manner which he suggests.

My reply to that is this : Where is the reason to believe that in modifying or exercising the power of the President to modify the provisions relating to the distribution of the income-tax he will act so arbitrarily as to take away altogether the proceeds of the income-tax ? Where is the ground for believing that the President will not even adopt the suggestion made by my honourable Friend. Pandit Kunzru, in the amendment as he has put it ? There is no reason to suppose or to make such an arbitrary suggestion that the President is going to wipe out altogether the total proceeds which the provinces are entitled to receive under the allocation. After all the President will be a reasonable man ; he will know that to a very considerable extent the proceeds of the income-tax do form part of the revenues of the provinces ; and he will also know that, notwithstanding the fact that there is an emergency, it is as much necessary to help the Centre as it is necessary to keep the provinces going.

Therefore in my judgment there is no necessity to tie down the hands of the President to act in a particular manner in the way suggested by the amendment of my Friend Pandit Kunzru. It might be that the President on consultation with the provinces or on consultation with the Finance Commission or any other expert authority might find some other method of dealing with the proceeds of the income-tax in an emergency, and the suggestion that he might have then might prove far better than what my Friend Pandit Kunzru is suggesting. I therefore think that it would be very wrong to tie down the hands of the President to act in a particular manner and not leave him the liberty or discretion to act in many other ways that might suggest themselves to him. I suggest that it is better to leave the draft as elastic as it is proposed to be done by the Drafting Committee; no advantage will be gained by accepting the amendment of my Friend Pandit Kunzru.

As I have said, I have made another amendment in the original draft which left the matter entirely and completely to the discretion of the President and Parliament had no say in the matter. By the new amendment I have proposed it is now possible for Parliament to consider any order that the President may make with regard to the allocation of the revenues; and therefore if the President is doing something which is likely to be very deleterious or injurious to the interests of the provinces, surely many representatives in Parliament who would be drawn from the provinces and who would undoubtedly not forget the interests of the provinces would be in a position to set matters right. I therefore think that the original arrangement should be maintained by virtue of the fact that it is far more elastic than what is suggested by my honourable Friend Pandit Kunzru.

[Amendment of Dr. Ambedkar was adopted and that of Pandit Kunzru was negatived. Article 277, as amended was added to the Constitution.]

ARTICLE 280

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

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

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

Suspension of the rights guaranteed by article 25 of the Constitution during emergencies.

* CAD, Vol. IX, dated 19th August 1949, p. 523.

(2) An order made as aforesaid may extend to the whole or any part of the territory of India.

(3) Every order made under clause (1) of this article shall as soon as may be after it is made be laid before each House of Parliament.' ”

Sir, the House will realise that clauses (2) and (3) are additions to the old article. In the old article there was a provision that while a Proclamation of Emergency was in force the President may suspend the provisions for the rights contained in Part III throughout India. Now, it is held that, notwithstanding the fact that there may be emergency, it may be quite possible to keep the enforcement of the rights given by Part III in certain areas intact and there need not be a universal suspension throughout India merely by reason of the proclamation. Consequently clause (2) has been introduced into the draft article to make that provision.

Thirdly, the original article did not contain any provision permitting Parliament to have a say in the matter of any order issued under clause (1). It was the desire of the House that the order of suspension should not be left absolutely unfettered in the hands of the President and consequently it is now provided that such an order should be placed before Parliament, no doubt with the consequential provision that Parliament will be free to take such action as it likes.

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***The Honourable Dr. B. R. Ambedkar:** Sir, I am not at all surprised at the strong sentiments which have been expressed by some speakers who have taken part in the debate on this article against the provisions contained in the clause as I have put forward. The article deals with fundamental matters—and with vital matters relating to rights of the people and it is therefore proper that we should approach a subject of this sort not only with caution but—I am also prepared to say—with some emotion. We have passed certain fundamental rights already and when we are trying to reduce them or to suspend them we should be very careful as to the ways and means we adopt in curtailing or suspending them.

* CAD, Vol. IX, dated 20th August 1949, pp. 548-51.

Therefore my friends who have spoken against that article will, I hope, understand that I am in no sense an opponent of what they have said. In fact I respect their sentiments very much. All the same I am sorry to say that I do not find it possible to accept either any of the amendments which they have moved or the suggestions that they have made. I remain, if I may say so, quite unconvinced. At the same time, I may say that I am no less fond of the fundamental rights than they are.

I propose to deal in the course of my reply with some general questions. It is of course not possible for me to go into all the detailed points that have been urged by the various speakers. The first question is whether in an emergency there should be suspension of the fundamental rights or there should be no suspension at all; in other words, whether our fundamental rights should be absolute, never to be varied, suspended or abrogated, or whether our fundamental rights must be made subject to some emergencies. I think I am right in saying that a large majority of the House realises the necessity of suspending these rights during an emergency ; the only question is about the ways and means of doing it.

Now if it is agreed that it is necessary to provide for the suspension of these rights during an emergency, the next question that legitimately arises for consideration is whether the power to suspend them should be vested absolutely in the President or whether they should be left to be determined by Parliament. Now having regard to what is being done in other countries—and I am sure every one in this House will agree that we must draw upon the experience and the provisions contained in the constitutions of other countries—the position is this. As to the suspension of the right of what is called *habeas corpus* the matter under the English law must of course be dealt with by law. It is not open to the executive to suspend the right of *habeas corpus*. That is the position in Great Britain. Coming next to the position in the United States, we find that while the Congress has power to deal with what are called constitutional guarantees including the suspension of the writ of *habeas corpus* the President is not altogether left without any power to deal with the matter. I do not want to go into the detailed history of the

matter. But I think I am right in saying that while the power is left with the Congress, the President is also vested with what may be called the *ad interim* power to suspend the writ. My friends shake their heads. But I think if they referred to a standard authority Corwin's book on 'the President', they will find that that is the position.

Pandit Hirday Nath Kunzru : Will you let me interrupt him, Sir? I am sure he is familiar with Ogg's Government of America. Perhaps he will regard that book as a standard book.

The Honourable Dr. B. R. Ambedkar : Yes. That is not the only book. There are one hundred books on the American Constitution. I am certainly familiar with some fifty of them.

Pandit Hirday Nath Kunzru : It is stated there that the best legal opinion is that the right to suspend the privilege of the writ of *habeas corpus* vests in the Congress and that the President may exercise it only where, as Commander-in-Chief of the Armed Forces he considers it necessary for the security of the military operations.

The Honourable Dr. R. R. Ambedkar : Yes. My submission is that in the *United States* while the Congress has the power, the President also, as the Executive Head of the State, has the *ad interim* power to suspend.

Now, in framing our Constitution, we have more or less followed the American precedent. By the amendment which I have made, Parliament has been now vested with power to deal with this matter. We also propose to give the President an *ad interim* power to take such action as he thinks is necessary in the matter of the constitutional guarantee.

Therefore, comparing the draft article and comparing the position as you find in the *United States*, there is certainly not very great difference between the two. Here also the President does not take action in his personal capacity. We have a further safeguard which the American Constitution does not have, namely, our President will be guided by the advice of the executive and, our executive would be subject to the authority of Parliament. Therefore, so far as the question of vesting all the power to suspend the guarantees is concerned, my submission is

that ours is not altogether a novel proposal which is made without either reference to any precedent or made in a wanton planner without caring to what happens to the fundamental rights.

Now, having dealt with that question, I come to amendment No. 74 of Mr. Bhargava. I think that is an important matter and should therefore explain what exactly the provision is. His amendment really refers to article 279, although he has put it as an amendment to article 280. What he wants in that, any action taken by the State under the authority conferred upon it by the emergency provisions to suspend the fundamental rights should automatically cease with the ceasing of the Proclamation. I think that is what he wants so far as amendment No. 74 is concerned. My submission is that if the article is read properly, that is exactly what it means. I would like to draw his attention to article 279. He will see that that article does not save anything done under any law made under the powers given by the emergency. In order that the matter may be clear to him I would like again to draw his attention to article 227. If he compares the two, he will see that there is a fundamental difference between the two articles. Article 227 is also an article which gives power to the Centre to pass certain laws in an emergency even affecting the State List. I would draw his attention to clause (2) of article 227. He will find at the end of it that all acts cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate except as respect things done or omitted to be done before the expiration of the same period. This clause does not occur in article 279. Therefore, not only any law that will be made under the provisions of article 279 will vanish, but anything done will also cease to be validly done. Thus, a person who was arrested under the provisions of any law made under article 279, would when the law has ceased to be in force not be governed by it merely because it has been done under any law made under that article. Under this article 279, not only the law goes, but the act done also goes.

Then I would draw attention to clause (2) of article 8. That again is an important article which must be read with article 279. Article 8 is an exception to the general provisions contained in this Constitution

that the existing law will continue to operate. What article 8 says is that any existing law which is inconsistent with any of fundamental rights will be inoperative. Article 8 clause (1) deals with the existing law and clause (2) deals with future laws. Thus, 'any law made under article 279' would be a future law. When the emergency ceases any law made under article 279 will come under clause (2) of article 8 so that if it becomes inconsistent with the fundamental rights it would automatically cease.

Therefore my submission is that, so far as amendment 74 is concerned the fears expressed are groundless. There is ample provision in the existing law which would cover all the cases my honourable Friend Pandit Thakur Das Bhargava has in mind.

Pandit Thakur Das Bhargava : In article 277 (2) the reference is to a law made by Parliament. It has no reference to any action taken by the executive. Secondly, it speaks of law made by Parliament whereas under article 13 we have reference to a law made by a State as defined therein.

The Honourable Dr. B. R. Ambedkar : The State there means both, because the word 'State' used in article 279 is used in the same sense in which it is used in Part III where it means both the Centre, the provinces and even the municipalities.

Pandit Thakur Das Bhargava : Whereas in 227 (1) the reference is only to Parliament.

The Honourable Dr. B. R. Ambedkar : That is what I say. 279 will also be governed by 8. Therefore any law which is inconsistent with the fundamental rights granted will cease to operate.

Now, I proceed to deal with amendment No. 78 of Pandit Bhargava. In that amendment he has stated that the order issued by the President suspending the provisions of any of these fundamental rights shall be expressly ratified. He says that there must be express ratification by Parliament of an order issued by the President. The draft article proposed by the Drafting Committee provides that the ratification may be presumed unless Parliament by a positive action cancels the order of the President. That is the real difference between his amendment and the article as I have formulated.

Pandit Thakur Das Bhargava : But it is a very fundamental difference.

The Honourable Dr. B. R. Ambedkar : That is a very fundamental thing. In a sense it is fundamental and in a sense it is not fundamental because we have provided that the Proclamation shall be placed before Parliament. That obligation I have now imposed. Obviously if the Parliament is called and the Proclamation is placed before it, it would be a stupid thing if the people who come into the Parliament do not take positive action and such a Parliament would be an unnecessary thing and not wanted.

Pandit Thakur Das Bhargava : Is it not necessary to say that the law will only be applicable for the period of the emergency and not for shorter period and not for six months after the proclamation ?

The Honourable Dr. B. R. Ambedkar : I am coming to that, but so far as this question is concerned, it is a matter of mere detail whether the Parliament should by an express resolution say that we want the President to withdraw it, or we want the President to continue it, or we want the President to continue it in a modified form. Once Parliament is called and Parliament has become seized of the matter, is it not proper that the matter should be left to Parliament and its consent presumed to have been given unless it has decided otherwise ? Where is the difficulty ? I do not see anything with regard to the amendment.

An Honourable Member : It is one o'clock now.

Mr. Vice-President : We are going to finish this article.

The Honourable Dr. B. R. Ambedkar : Mr. Gupte has moved an amendment which is an amendment to the amendment of Pandit Bhargava, No. 78. He wants that a definite period should be mentioned, that the Proclamation should be placed before Parliament within two months. Pandit Bhargava's amendment was one month, I think, if I mistake not and my original proposal is "as soon as possible". Well I do not know whether anybody wants to make this a matter of conscience and if this matter was not guaranteed, we are going to fast unto death. I think "as soon as possible" may be worked in such a manner that the matter may be placed before Parliament within one month, within two months or may be even a fortnight. It is a most elastic phrase and therefore, I submit that the provision as contained in the draft is the best under the circumstances and I hope the House will accept it.

Mr. Vice-President : I now place the amendments before the House.

[All amendments except that of Dr. Ambedkar were either withdrawn or rejected. Article 280 as amended was added to the Contributed.]

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

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

284. (1) Subject to the provisions of this article, there shall be a Public Service Commissions for the Service Commission for the Union and a Union and for the State. Public Service Commission for each State.

(2) Two or more States may agree that there shall be one Public Service Commission for that group of states, and if a resolution to that effect is passed by the House or, where there are two Houses, by each House of the Legislature of each of those States Parliament may by law provide for the appointment of a Joint Public Service Commission (referred to in this Chapter as Joint Commission) to serve the needs of those States.

(2a) Any such law as aforesaid may contain such incidental and consquential provisions as may appear necessary or desirable for giving effect to the purposes of clause (2) of this article.

The Public Service Commission for the Union, if requested so to do by the governor or Ruler of a State, may with the approval of the President agree to serve all or any of the needs of the State.

(4) References in this Constitution to the Union Public Service Commission or a State Public Service Commission shall, unless the context otherwise requires, be construed as references to the Commission serving the needs of the Union or, as the case may be, the State as respects the particular matter in question.”

The article is self-explanatory and I do not think that any observations are necessary to clear up any point in this article. I will therefore reserve my remarks to the stage when I may be called upon to reply to any criticism that may be made.

Shri Lakshminarayan Sahu (Orissa : General) : May I know, Sir, why the provision as to any such law by Parliament is introduced and also why mention has been made of Ruler in these provisions ?

The Honourable Dr. B. R. Ambedkar : If I understand my friend Mr. Sahu correctly, he wants to know why we have introduced the provision for Parliament to make law. He will understand that the basic principle is that each State should have its own Public Service Commission. But, if, for administrative purposes or for financial purposes it is not possible for each State to have a Public Service Commission of its own, power is left open for two States by a resolution to confer power upon the centre to make provision for a joint Regional Commission to serve the needs of two such States which, as I have said, either for administrative or for financial reasons are not in a position to have a separate independent Commission for themselves. Obviously, when such a power is conferred upon the Centre, it must be that the power so conferred must be regulated by law made by Parliament and it should not be open to the President either to constitute a Joint Commission for two States by purely executive

order. It is for that purpose that power is given to Parliament to regulate the composition of any Commission which is to serve two States.

Shri Lakshminarayan Sahu : The other point as to why the ‘Ruler’ has been mentioned ?

The Honourable Dr. B. R. Ambedkar : Because it may be that even a State in Part III may find it unnecessary to have an independent Public Service Commission for itself. Consequently, the door again there should not be closed to a State in Part III if that State were to agree to any State in Part I jointly to make a request to the President that a Joint Commission may be appointed. That is the reason why ‘Rule’ is included in the provisions of this article.

Shri R. K. Sidhva (C. P. & Berar : General): I want one clarification. In clause (3) it is stated “with the approval of the President, agree to serve all or any of the needs of the State.” May I know if any local body wants to utilise the services of the Service Commission, will that be allowed ?

The Honourable Dr. B. R. Ambedkar : Yes. There is a separate article for that making provision that if a local authority wants its needs to be served by the Public Service Commission, it will be possible for Parliament to confer such authority upon the Public Service Commission also to serve the needs of such local authority.

(Amendment No. 2 was not moved)

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

The Honourable Dr. B. R. Ambedkar : I do not think there is anything that I need say.

[All amendments except that of Dr. Ambedkar were rejected Article 284 as amended was added to the Constitution.]

ARTICLE 285

Mr. Naziruddin Ahmad : ...I think it is difficult for anyone to try to follow these changes. I therefore object not only on the ground of their being in breach of the rules but also on the ground they are in a form not readily intelligible and they should have been expressed as amendments to the Constitution itself.

The Honourable Dr. B. R. Ambedkar : This is not the first time when my friend has raised a point of Order. You have been good enough to allow the Drafting Committee to depart from the technicalities of the Rules of Procedure and I therefore submit that in this case also you will be pleased to allow us to proceed.

*CAD, Vol. IX, 22nd August 1949, p. 571.

Ibid., p. 572.

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†**Mr. President :** ...Dr. Ambedkar may explain how the separate articles came into being. You move them together and we may take them separately at the time of voting.

The Honourable Dr. B. R. Ambedkar : Yes, they may be put separately.

Sir I move :

“That for article 285, the following articles be substituted :—

285. (1) The Chairman and other members of a Public Service Commission shall	be appointed, in the case of the Union Commission or a
Appointment and term of office of members	Joint Commission, by the President, and in the case of a
	State Commission, by the Governor or Ruler of the State:

Provided that at least one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State, and in computing the said period of ten years any period before the commencement of this Constitution during which a person has held office under the Crown shall be included.

(2) A member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty-five years, and in the case of a State Commission or a Joint Commission, the age of sixty years, whichever is earlier :

Provided that—

- (a) a member of a Public Service Commission may by writing under his hand addressed, in the case of the Union Commission or a Joint Commission, to the President and in the case of a State Commission, to the Governor or Ruler of the State, resign his office;
- (b) a member of a Public Service Commission may be removed from his office in the manner provided in clause (1) or clause (3) of article 285-A of this Constitution.

(3) A person who holds office as a member of a Public Service Commission shall, on the expiration of his term of office, be ineligible for re-appointment to that office.

285A. (1) Subject to the provisions of clause (3) of this article, the Chairman	or any other member of a Public shall only be removed
Removal and suspension of a member of a public Service Commission	from office by order of the President on the ground of
	misbehaviour after the Supreme Court on a reference
	being made to it by the President has, on inquiry held
	in accordance with the procedure prescribed in that behalf under article 121 of
	this Constitution, reported that the Chairman or such other member, as the case
	may be, ought on any such ground be removed.

(2) The President in the case of the Union Commission or a Joint Commission and the Governor or Ruler in the case of a State Commission may suspend from office the Chairman or any other member of the Commission in respect of whom

*CAD, Vol. IX, 22nd August 1949, p. 572.

† *Ibid.*, pp. 573-576.

a reference has been made to the supreme Court under clause (1) of this article until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything contained in clause (1) of this article, the President may, by order, remove from office the Chairman or any other member of a Public Service Commission if the Chairman or, such other member, as the case may be—

- (a) is adjudged as insolvent; or
- (b) engages during his term of office in any paid employment outside the duties of his office; ”

And here I want to add a third one, as (c) :

“(c) is in the opinion of the President unfit to continue in office by reason of infirmity of mind or body.

(4) For the purpose of clause (1) of this article, the Chairman or any other member of a Public Service Commission may be deemed to be guilty of misbehaviour if he is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit from emoluments arising therefrom otherwise than as a member and in common with the other members of any incorporated company.

285-B. In the case of the Union Commission or a Joint Commission, the President Power to make regulations as to and, in the case of a State Commission, conditions of service of members and the Governor or Ruler of the State, may by staff of the Commission regulation—

- (a) determine the number of members of the Commission, and their conditions of service; and
- (b) make provision with respect to the number of members of the staff of the Commission and their conditions of service : Provided that the conditions of service of a member of a Public Service Commission shall not be altered to his disadvantage after his appointment.

285-C. On ceasing to hold office—

Bar to the holding of offices by members of to be such members. (a) the Chairman of the Union Public Service Commissions on ceasing Commission shall be ineligible for further employment either under the Government of India or under the

Government of a State;

- (b) the chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission but not for any other employment either under the Government of India or under the Government of a State;
- (c) a member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission but not for any other employment either under the Government of India or under the Government of a State;
- (d) a member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission, but not for any other employment either Under the Government of India or under the Government of a State.

Sir, these are the clauses which deal with the Public Services Commissions, their tenure of office and qualifications and disqualifications and their removal and suspension. I should very briefly like to explain to the House the matters embodied here, the principal matters that are embodied in these articles.

The first point is with regard to the tenure of the Public Service Commission. That is dealt with in article 285. According to the provisions contained in that article the term of office of a member of the Public Service Commission is fixed at six years or in the case of the Union Commission, until he reaches the age of 65 and in the case of a State Commission until he reaches the age of 60. That is with regard to the term of office.

Then I come to the removal of the members of the Public Service Commission. That matter is dealt with in article 285-A. Under the provisions of that article, a member of the Public Service Commission is liable to be removed by the President on proof of misbehaviour. He is also liable to be removed by reason of automatic disqualification. This automatic disqualification can result in three cases. One is insolvency. The second is engaging in any other employment and the third is that he becomes infirm in mind or body. With regard to misbehaviour, the provision is somewhat peculiar. The honourable House will remember that in the case of the removal of High Court Judges or the Judges of the Supreme Court, it has been provided in the articles we have already passed that they hold their posts during good behaviour, and they shall not be liable to be removed until a resolution in that behalf is passed by both Chambers of Parliament. It is felt that it is unnecessary to provide such a stiff and severe provision for the removal of members of the Public Service Commission. Consequently it has been provided in this article that the provisions contained in the Government of India Act for the removal of the Judges of the High Court would be sufficient to give as much security and as much protection to the members of the Public Service Commission. I think the House will remember that in the provision contained in the Government of India Act, what is necessary for the removal of a Federal Court Judge or a High Court Judge is an enquiry made by the Federal Court in the case of the High Court Judges or by the Privy Council in the case of the Federal Court Judges, and on a report being made that there has been a case of misbehaviour, it is open to the Governor-General to remove either the Federal Court Judge or the Judge of the High Court. We have adopted the same provision with regard to