

***The Honourable Dr. B. R. Ambedkar :** Sir, I cannot accept Dr. Deshmukh's amendment because the inclusion of the word "land" would also permit the Centre to levy Terminal Tax on goods and passengers carried by "road". Under our scheme Terminal Taxes on goods and passengers carried by road will be a matter which will be exclusively within the jurisdiction of the different States. That is the principal objection why I cannot accept his amendment. You will remember, Sir, that he tried to move a similar amendment on another occasion which had been rejected by the House.

Now with regard to Mr. Sidhva, this matter again was debated last time and I said that although these taxes were leviable by the Centre, the proceeds of all of them would be distributable among the different Provinces. The Centre would not claim any interest. If the Provinces after getting the proceeds want to pass on any part of those proceeds to the local bodies they are free to do so. It is not possible in this Constitution to make a provision for any matter of taxation that may be available to a local authority. That is a matter *inter se* between the State and the local authority and therefore it is not possible now to alter this entry either by way of amending it or by way of transferring it to List No. II.

(Shri R. K. Sidhva and Dr. P. S. Deshmukh withdrew their amendments)

"That in entry 83 of List I, after the word 'railway' a comma and the word 'sea' be inserted."

[The amendment of Dr. Ambedkar was adopted. Entry No. 83, as amended, was added to the Union List.]

ENTRY 86

(Amendment No. 54 was not moved)

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

"That in entry 86 of List I, the words 'non-narcotic drugs' be deleted."

The proposed list put non-narcotic drugs in the concurrent List.

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‡The Honourable Dr. B. R. Ambedkar : It is quite true, Sir, that at present this entry is in the provincial list. But, there are two facts to be recognised. One is that no province has at any time so far levied any tax on these items. Therefore, it has not been exploited by the provinces for their financial purposes. Secondly, even when the matter becomes con-

*CAD, Vol. IX, 1st September 1949, p. 837.

†*Ibid.*, p. 838.

‡*Ibid.*, p. 839.

current, and any legislation is made by the Centre, which has a revenue aspect, the revenue will be liable to be distributable under the provisions of clause (2) of article 253. Consequently, so far as finances are concerned, there is really no loss to the provinces at all. Then, it is necessary that we should have an All-India Drugs Act operating throughout the area. That cannot happen unless non-narcotic drugs are put in the Concurrent List. That also saves the power of the Provinces to make such local legislation as they may like with regard to these drugs.

Mr. President : I put the amendment moved by Dr. Ambedkar. The question is :

[The amendment was adopted. Entry 86, as amended, was added to the Union List.]

ENTRY 86A

***Shri H. V. Kamath :** I do not know if the medical and scientific terminology used in my amendment has been misunderstood. This terminology will be found in any standard book on Pharmacology.

The Honourable Dr. B. R. Ambedkar : We have got the power. It is covered by entry 20 which we are going to put in the Concurrent List.

(The amendment of Shri H. V. Kamath was negatived).

ENTRY 88A

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†**The Honourable Dr. B. R. Ambedkar :** I hope my friends is not going to read that 4-pages printed judgement of the Supreme Court of the United States. It has been circulated to everybody.

Shri Deshbandhu Gupta : It is wrong for my friend to presume that the whole judgement will be read. Of course, if it is necessary to read some extracts I will do so. I am only referring to the parts which are relevant to point raised by me. I wish to point out that exception was taken by those publishers on the ground that the tax violated the Federal Constitution in two particulars (1) that it abridges the freedom of the press in contravention of the due process clause contained in Section 1 of the Fourteenth Amendment; (2) that it denies appellees the equal protection of the laws in contravention of the same amendment.

The Honourable Dr. B. R. Ambedkar : I am also rising on a point of order.

*CAD, Vol. IX, 1st September 1949, p. 840.

†*Ibid.*, p. 841.

Mr. Naziruddin Ahmad : There could not be two points of order at the same time.

The Honourable Dr. B. R. Ambedkar : My point of order is an elementary one whether my friend who is a signatory to this amendment—his name is mentioned here after Shri Sitaram Jajoo—having already given notice of this amendment can he now say that this is not in order?

Shri Deshbandhu Gupta : My friend has amended his own amendments hundred times.

The Honourable Dr. B. R. Ambedkar : If he was to propose an amendment to his amendment, that would be in order.

Shri Deshbandhu Gupta : I have every right to change my opinion just as my friend has done very often.

Mr. President : Even if he has signed the notice, I do not know whether he signed for 88A.

The Honourable Dr. B. R. Ambedkar : His name is Shri Deshbandhu Gupta.

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***Mr. President :** I should like to hear the Members on the main question. But before I do that, I would like to know whether the Drafting Committee would reconsider this item...

The Honourable Dr. B. R. Ambedkar : We should like to hear the various points of view as expressed in this House, and then if the House or you, Sir, find that it is not possible to come to any definite conclusion right now, then the matter may be remitted to the Drafting Committee so that the Committee, in view of the various expressions of opinion, might find out some formula acceptable to the House. But I do not think, as it is, it is any use trying to recast it. We have got here very definite amendments. One is by my friend here and there is another by my Friend Mr. Jhunjhunwala—quite definite amendments.

Mr. President : There are really two point to be considered. One is whether the amendment which is proposed to be moved by Mr. Goenka is in order, in view of the previous article which we have already passed. And the second is...

The Honourable Dr. B. R. Ambedkar : Sir, If I may say so, this matter cannot be decided on the basis of whether something will be *ultra vires* or whether something will not be *ultra vires*. This House is not competent to decide that. That is a judicial matter. All that the House must decide is whether we want to give protection to the newspapers from the

*CAD, Vol. IX, 1st September 1949, pp. 843-844.

various entries which are included, either in List I, List II or List III; and if we want to give them any exemption from these entries, then to what extent we should give sure about. We cannot give any assurance to any newspaperman here and now that we have made a case which is fool-proof and knave-proof. We cannot give that assurance. So we had better decide the particular question whether we do want to give protection to newspapers from the operation of the various entries. That is the main question.

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***Mr. President :** You should also consider the question whether it does not offend against Article 13.

The Honourable Dr. B. R. Ambedkar : On that we have some views and if you are prepared to hear, I will submit them.

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†**The Honourable Dr. B. R. Ambedkar :** Sir, I should like at the outset to state what the point of order is, or how I have understood it, because I should like to be corrected at the outset, if I am wrong. The point of order seems to be this that in view of the fact that this Assembly has passed article 13 which is a part of the Fundamental Rights and which says that all citizens shall have the right to freedom of speech or expression,—in view of this, as it open to this House to pass an article which would curtail the fundamental right given by article 13 ? I take it that is the point that we have now to consider.

In support of the proposition that this House is now debarred from considering any proposal which would have the effect of limiting freedom of speech, there has been cited a judgement of the Supreme Court of the United States in which—I have not read the whole thing, but only parts— it has been said that any tax levied on the press is *ultra vires*, in view of the fact—I am using the language of the United States—that it abridges the freedom of the press.

Shri Deshbandhu Gupta : Barring income-tax. It is stated in the judgement itself.

The Honourable Dr. B. R. Ambedkar : Now, Sir, it is not clear from the statement of fact of that particular case what the nature of the particular tax was which was called in question, nor is it clear as to the severity of that particular tax which was called in

*CAD, Vol. IX, 1st September 1949, p. 845.

†*Ibid.*, pp. 848-851.

question. In my judgement, apart from the levy of the tax, the severity of the tax also would be an element in considering whether the tax was *ultra vires* or not. As I said, there is no reference to this important fact in this judgement. I am therefore not prepared to go by that judgement.

I am proceeding along other lines of arguments which I think are substantial and are not open to any criticism. The first point I want to submit is this: that, notwithstanding the fact that the constitutional guarantees which were given in the Constitution of the United States, the United States Supreme Court itself has held that these fundamental rights guaranteed by the Constitution are not absolute and that the Congress of the United States has, notwithstanding the language used in the Constitution, the right to impose reasonable restrictions on those fundamental rights. In fact I may remind the House that, in the opening speech which I made in support of the motion that this House do proceed to take into consideration the Draft Constitution, I devoted a considerable part to the consideration of this matter, because I had noticed some criticisms in papers and by others, to whom I was bound to pay a certain amount of respect and attention, that our fundamental rights were of no value at all, as they were subjected to various limitations which were enumerated in propositions that follow article 13, namely clauses (2), (3), (4) and (5).

In order to meet those criticisms, I took some trouble to examine the decisions of the Supreme Court on this matter. I did so because at one time I felt that in view of the fact that the constitutional guarantees which were called fundamental rights were enunciated in the Constitution of the United States in absolute terms without any qualifications, it may not have been open to the Supreme Court of the United States to limit those provision. But to my great surprise I found that the United States Supreme Court had taken the very same attitude that we have taken in the framing of the Constitution, namely that fundamental rights, however fundamental they may be, could not be absolute rights. They must be subject to certain limitations.

Now, if the House will permit me I shall quote only one passage from my speech. This is what I said.

“In *Gitlow vs. New York*, in which the issue was the constitutionality of a New York, ‘criminal anarchy’ law which purported to punish utterances calculated to bring about violent change, the Supreme Court said :

“It is a fundamental principle, long established that the freedom of speech and of the press, which is secured by the Constitution, does not confer an absolute right

to speak or publish, without responsibility whatever one may choose, or an unrestricted and unbridled licence that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom'."

And I quoted many other cases. My whole point is this: that even in the United States itself, it is an acknowledged proposition that there must be some limitations upon the fundamental rights. On that there can be no question at all, in my judgement. Therefore, in so far as our entry—I am not going into the amendments for the moment—deals with tax on advertisements, my submission is that that entry could not be questioned as an entry which is *ultra vires* of this House, because it is going to put some kind of limitation upon the freedom of the press if it is acted upon by the provincial Governments. I entirely refuse to accept that interpretation that any tax levied under the head 'Advertisements' would be *ultra vires* because it would infringe article 13.

The proposition which I submit could be enunciated and which is plausible and which may be accepted is this: that any imposition upon a newspaper of a tax of a severe nature which will result in wiping it out altogether, such an exercise of the taxation power, would be *ultra vires*, because it would completely wipe out the freedom of speech which has been guaranteed by article 13. In so far as the taxation imposed upon advertisements is not of a reasonable nature and is discriminatory, that is to say, it is merely confined to newspapers and all other forms of advertisements are exempted, then I can understand that that would violate article 15 under which we propose to give equal protection to all. Therefore my submission is that any argument which goes to the length of saying that anything which affects newspapers and the freedom of speech or writing in a newspaper would be *ultra vires*, I take the liberty to say, is not an argument which I am prepared to accept and which. I hope, this House will not accept.

Now I come to the other question. It is quite true that, in view of certain circumstances which have come to the surface in certain provinces, it may be necessary to transfer this particular entry regarding newspapers from List I to List II or place it in List III. That is a matter not of constitutional law. That is a matter of policy and a matter of confidence; whether you are prepared to put more confidence in the Centre or whether you are prepared to put more confidence in the provinces or whether you are prepared to put confidence in

the provinces but would like to reserve to the Centre a certain amount of liberty and power to correct any wrong that a province might do is a matter which of course is open for discussion. That is what we have been discussing; whether any particular entry should remain in List I or part in List I and part in List II or in List III.

On that the House has got perfect liberty to decide, because it is a matter on which the House has got complete freedom, and nobody is going to suggest that the House has its hands tied down by reason of article 13 and that it cannot do anything to impose any kind of limitation upon the newspapers. I repudiate that argument absolutely.

Now, Sir, I should like to deal with the various amendments. If you will permit me, I would like to deal with them because those who may follow me may criticise what I am saying. It seems to me that the friends who are interested in newspapers are really trying to get complete immunity, so to say, from any kind of taxation that may be levied by the provinces. The first amendment moved by my Friend, Mr. Goenka, and several others—there are some fifty or sixty names—is that it should be transferred to the Union List, List I. In doing that, they have done something which we ourselves had not done. Our newspaper entry is not connected with taxation. Those members who have closely watched the arrangement in List I and List II will realise that we have separated the entries in to two parts, entries which are purely legislative and entries which are taxational. You will remember that newspapers, although they are mentioned in List III, they are mentioned only among the legislative entries. Now, the amendment moved by my Friend Mr. Goenka, has done the worst from his point of view, viz., he has put the newspapers in that part of List I which deals with taxation. It means that it would be open now for the Centre to levy a tax on newspapers. (*Hear, hear.*) I do not like newspapers and I am not interested in either injuring them or in protecting them. I am prepared to place the whole matter in the hands of the House to do what it likes.

The second amendment moved by my friend, Mr. Jhunhunwala, does what? He thinks that, although newspapers may be transferred to List I, newspapers as goods open to sale, will still remain in List II because the entry in that list is a very broad entry and would cover newspapers as goods and therefore he feels that there is no

purpose served by merely accepting the amendment of Mr. Goenka because they would be liable to be taxed by the provinces under the entry relating to taxes on sale of goods. Therefore he has moved his amendment to get the newspapers out of the Sales Tax Act.

Now, the question to be considered is whether the provinces would agree that so important a part of what I may call the base of their taxation as constituted by the newspapers should be altogether eliminated from the field of provincial taxation. It is a matter which has to be considered. Sir, being a financial matter, I do not think that the Drafting Committee would be prepared to take the responsibility on its own shoulders without consultation either with the Finance Ministry or with the Finance Ministers of the Provinces. We have been taking a great deal of responsibility so far as purely legislative entries are concerned. When the question of finance is concerned, we have a sort of standing convention that we should always consult the Central Finance Ministry as well as the Finance Ministers of the various provinces.

Therefore these are the difficulties that are involved in these amendments. Now I do not know if you transfer the entry on newspapers to the Union List, the Centre may levy a tax on newspapers as manufacturers, because the Centre is entitled to put an excise duty on any goods manufactured in any part of India. It seems to me therefore that it would be difficult for the newspapers to escape taxation. All these things have to be taken into consideration. That is to say, these are extraneous matters to which I have given expression at this stage because I think that every Member who wants to take part in the debate, ought to know what the difficulties are. All that I am interested in at the moment is this that there is no bar to the House considering any kind of limitation, notwithstanding that we have passed article 13. The proposition which is being sought to be placed before the House for its acceptance is in my judgement a very dangerous proposition. It would eliminate even taxation absolutely. Even article 24 could not be there. Many other complications would arise. If you say that because fundamental rights are guaranteed therefore the taxation power should also not be exercised because that would result in the limitation or the destruction of the fundamental rights, it is too large a proposition and I do not think that anybody will ever accept this.

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Pandit Thakur Das Bhargava : Supposing there is not complete destruction of this right, but there is material curtailment or abridgement, will it not be covered by this?

The Honourable Dr. B. R. Ambedkar : What is reasonable the Court will decide.

Shri Alladi Krishnaswami Ayyar : I have nothing to add to my speech.

(At this stage Shri Deshbandhu Gupta rose to speak.)

Mr. President : I do not think there is any right of reply in a matter like this.

Shri Deshbandhu Gupta : On a point of order, I want to clear one or two points which seems to have created confusion.

Mr. President : No. It is a question whether you have the right to reply or not.

An honourable Member : The President has already said that the honourable Member has no right of reply.

Shri Deshbandhu Gupta : Sir, as some points have been raised and I would request you to explain these points particularly as no speaker from this side has spoken after Shri Alladi Krishnaswami Ayyar raised the points.

Mr. President : I think a larger number of people spoke from your side and from your point of view.

I have understood the point of order that has been raised. I shall have to consider it and I will give my ruling later, but in the meantime I would ask Dr. Ambedkar to consider the other point which he himself has raised, supposing I rule that it is in order, then in that case I would expect him to be ready with the answer on the merits also as to whether you will have it in the form in which it is sought to be moved by Mr. Goenka or sought to be amended by Mr. Jhunjhunwala.

The Honourable Dr. B. R. Ambedkar : In that case, they should withdraw the amendment.

Shri Deshbandhu Gupta : The amendment has not been moved. I took exception to the moving of the amendment.

Mr. President : I shall give my ruling later. We shall take up the other items now. Certain new items have been proposed. Some are in the printed list. Before we go to that, let us go through the other entries.

ENTRY 91

***Mr. Naziruddi Ahmad :** I shall not move the amendment; but I shall speak on the entry itself.

The Honourable Dr. B. R. Ambedkar : Why not present the baby with the song? Why the song only? You may move the amendment and make a speech.

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†**The Honourable Dr. B. R. Ambedkar :** Mr. President, I propose to deal with the objection raised by my friend Sardar Hukam Singh. I do not think he has realised what is the purpose of entry 91 and I should therefore like to state very clearly what the purpose of 91 in List I is. It is really to define a limit or scope of List I and I think we could have dealt with this matter, viz., of the definition of and scope of Lists II and III by adding an entry such as 67 which would read :

“Anything not included in List II or III shall be deemed to fall in List I.”

That is really the purpose of it. It could have been served in two different ways, either having an entry such as the one 91 included in List I or to have an entry such as the one which I have suggested— ‘that anything not included in List II or III shall fall in List I’. That is the purpose of it. But such an entry is necessary and there can be no question about it. Now I come to the other objection which has been repeated if not openly at least whispered as to why we are having these 91 entries in List I when as a matter of fact we have an article such as 223 which is called residuary article which is “Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List”. Theoretically I quite accept the proposition that when anything which is not included in List II or List III is by a specific article of the Constitution handed over to the Centre, it is unnecessary to enumerate these categories which we have specified in List I. The reason why this is done is this. Many States people, and particularly the Indian States at the beginning of the labours of the Constituent Assembly, were very particular to know what are the legislative powers of the Centre. They wanted to know categorically and particularly; they were not going to be satisfied by saying that the Centre will

*CAD, Vol. IX, 1st September 1949, p. 854.

†*Ibid.*, pp. 856-857.

have only residuary powers. Just to allay the fears of the Provinces and the fears of the Indian States, we had to particularise what is included in the symbolic phrase “residuary powers”. That is the reason why we had to undergo this labour, notwithstanding the fact that we had article 223.

I may also say that there is nothing very ridiculous about this, so far as our Constitution is concerned, for the simple reason that it has been the practice of all federal constitutions to enumerate the powers of the Centre, even those federations which have got residuary powers given to the Centre. Take for instance the Canadian constitution. Like the Indian constitution, the Canadian constitution also gives what are called residuary powers to the Canadian Parliament. Certain specified and enumerated powers are given to the Provinces. Notwithstanding this fact, the Canadian constitution, I think in article 99, proceeds to enumerate certain categories and certain entries on which the Parliament of Canada can legislate. That again was done in order to allay the fears of the French Provinces which were going to be part and parcel of the Canadian Federation. Similarly also in the Government of India Act; the same scheme has been laid down there and section 104 of the Government of India, Act, 1935 is similar to article 223 here. It also lays down the proposition that the Central Government will have residuary powers. Notwithstanding that, it had its List I. Therefore, there is no reason, no ground to be over critical about this matter. In doing this we have only followed as I said, the requirements of the various Provinces to know specifically what these residuary powers are, and also we have followed well-known conventions which have been followed in any other federal constitutions. I hope the House will not accept either the amendment of my Friend Sardar Hukam Singh nor take very seriously the utterings of my Friend Mr. Naziruddin Ahmad.

[All amendments were negatived. Entry 91 was added to the Union List.]

***Mr. President :** I think it is not necessary to have any further discussion on this point. However, if Dr. Ambedkar has anything to say about it, I would hear him; but otherwise I do not think any discussion is necessary on a point like this.

The Honourable Dr. B. R. Ambedkar : No discussion is necessary. I do not wish to say anything.

*CAD, Vol. IX, 1st September 1949, p. 859.

Shri Brajeshwar Prasad : I would like to withdraw my amendment.

[The amendment of Shri Brajeshwar Prasad was not allowed to be withdrawn. It was put to vote and negatived.]

ENTRY 70-A

LIST I

***Mr. President :** Has Dr. Ambedkar anything to say on this?

The Honourable Dr. B. R. Ambedkar : No, Sir, I have nothing to say in reply. Young men and young women are capable of taking care of themselves. Why bother about them?

[The amendment was negatived. Similar amendment by Prof. S. L. Saksena was also negatived.]

ENTRY 59

‡**Shri Raj Bahadur :** ...We have got to realise the seriousness of the problem. As I said, I would not move any of the other amendments, because I feel somewhat discouraged to see that the Honourable Chairman of the Drafting Committee is not even taking the trouble to reply to most of the amendments moved by other members suggesting new entries.

Shri T. T. Krishnamachari : He is engaged in studying the amendment moved by you.

Shri Raj Bahadur : I would be very fortunate if I get a reply to my motion.

The Honourable Dr. B. R. Ambedkar : Sir, as my friend expects a reply from me, I would just say one or two words.

The question of control and eradication of beggary is a matter which has been already provided for in List III in entry 24 'Vagrancy' which includes beggary. The only point is whether it should remain there or should be brought in List I. I think it will be better to leave it in List III so that both the Provinces and the Centre could operate upon that entry.

[The amendment of Shri Raj Bahadur was withdrawn.]

LIST II

ENTRY I

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‡**Mr. President :** Do you want to say anything, Dr. Ambedkar ?

*CAD, Vol. IX, 1st September 1949, pp. 860-861.

†*Ibid.*, p. 863.

‡*Ibid.*, p. 865.

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

Shri Brajeshwar Prasad : I withdraw my amendment.

Mr. President : The House evidently is not in a mood to give permission for this amendment to be withdrawn. I will put it to the vote. The question is:

“That entry I of list II be transferred to List I as new entry 2A”.

(The amendment was negatived.)

Mr. President : There is an amendment by Dr. Ambedkar, amendment No. 63.

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

“That in entry I of List II, the following words be deleted :

‘preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention.’ ”

It is proposed that this entry should be put in List III. That is the reason why I propose that these words be deleted.

Sardar Hukam Singh : Sir, I move :

“That in entry I of List II, after the words “naval, military or air forces” the words “or any other armed forces of the Union” be inserted.”

My purpose in moving this amendment is that I feel that it is a lacuna, an omission on the part of the Drafting Committee. If I am told that it has been deliberately omitted...

The Honourable Dr. B. R. Ambedkar : I am prepared to accept this amendment.

[The amendment was adopted. Entry 1, as amended was added to the State List.]

ENTRY 2

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

“That for entry 2 of List II, the following entry be substituted :—

‘2, The administration of justice, constitution and organisation of all courts except the Supreme Court and the High Courts; fees taken in all courts except the Supreme Court.’ ”

The only change made is that the High Courts have been brought in because as I explained yesterday so far as the constitution and organization of High Courts are concerned, they are completely under the control of the Centre.

[Entry 2 as amended, was added to the State list.]

ENTRY 4

†**Shri Brajeshwar Prasad :** I will move my amendment without offering any comment, *i.e.*, I will not deliver any speech. Sir, I move:

*CAD, Vol. IX, 1st September 1949, p. 866.

†*Ibid.*, pp. 867-868.

“That for amendment No. 3589 of the List of Amendments, the following be substituted :—

‘That entry 4 in List II be omitted from that List and be included in List I.’ ”

Sir, I may with your permission say that instead of List I the entry should be included in List III. It will meet the objection of Mr. T. T. Krishnamachari. Sir, I regard “Police” as a vital subject and I think it should be included in the concurrent powers and thus brought under the Centre.

Shrimati Purnima Banerji (United Provinces : General): I want to ask whether you are satisfied that ‘Police’ includes the Home Guards and the Pranthiya Raksha Dal.

The Honourable Dr. B. R. Ambedkar : That depends upon any legislation made by the province. If under the Police Act they enrol a certain person, he is a police for that purpose or if they enrol under some other Act and they are given the powers of the Police, that will also be police.

Shri Mahavir Tyagi : May I ask whether the Home Guards and the Pranthiya Raksha Dal go under the residuary powers of the Government of India or be controlled by the local Government? Where will they go?

The Honourable Dr. B. R. Ambedkar : If it is not Police, then it will go under the Central government. “Police” is used in contradiction to “Army”. Anything which is not “army” is Police.

Shri Mahavir Tyagi : Let that go down as your ruling within questions.

Pandit Hirday Nath Kunzru : If Dr. Ambedkars’ interpretation is correct, then a province can raise an army without calling it by that name.

The Honourable Dr. B. R. Ambedkar : No, I do not think they can do it.

Dr. P. S. Deshmukh : That is what is happening already.

The Honourable Dr. B. R. Ambedkar : An army is enrolled under the Indian Army Act 1911 and there are stringent conditions laid down as to enrolment in that Act. A province has no right to legislate on that entry at all.

Pandit Hirday Nath Kunzru : A province will not legislate with regard to the creation of an army at all. But, it can raise a force and give it military training without calling it an army.

Shri T. T. Krishnamachari : I might mention, Sir, that there are special armed police in the provinces. They are recruited under the powers given under the Police Act. They are considered to be a police force even though they are on a *quasi* military basis.

Shri Mahavir Tyagi : Why don't you add the word home Guard and make it clear?

The Honourable Dr. B. R. Ambedkar : There are armed police; there are unarmed police.

Mr. President : The question put by Pandit Kunzru is whether a province will be able to raise an army, without calling it an army, but calling it police.

The Honourable Dr. B. R. Ambedkar : I am sure if a province is going to play a fraud on the Constitution, the Centre will be strong enough to see that that fraud is not perpetrated.

[Amendment of Mr. Brijeshwar Prasad was withdrawn. Entry 4 was added to the State List.]

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ENTRY 7A

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

“That after entry 7 of List II, the following entry be inserted :—

‘7-A. State pensions, that is to say, pensions payable by the State or out of the Consolidated Fund of the State.’”

This is merely a corresponding entry to what we have already done so far as List I is concerned.

(List 7-A was added to the State List)

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ENTRY 9

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

“That for entry 9 of List II, the following entry be substituted :—

‘9. Acquisition or requisitioning of property except for the purposes of the Union, subject to the provisions of entry 35 of List III.’”

The only change is that the underlined words are now put in the Concurrent List and it is therefore necessary to omit them from this entry. This is also what we have done with regard to a similar entry in List I.

[Dr. Ambedkar's motion was adopted Entry 9, as amended, was added to the State List.]

ENTRY 10A

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

“That after entry 10 of List II, the following entry be inserted :—

‘10-A. Ancient and Historical Monuments other than those specified in entry 60 of List I.’”

*CAD, Vol. IX, 1st September 1949, p. 869.

‡*Ibid.*, pp. 869-870.

‡*Ibid.*, p. 871.

We have distributed this entry, kept apart in List I and the other part is now placed in List II.

(Entry 10-A was added to the State List)

ENTRY 12

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

“That for entry 12 of List II, the following entries be substituted:—

‘12. The salaries and allowances of Ministers for the State, of the Speaker and Deputy Speaker of the Legislative Assembly, and if there is a Legislative Council, Council of the Chairman and Deputy Chairman thereof; the salaries and allowances of the members of the Legislature of the State.’

‘12-A. The privileges, immunities and powers of the Legislative Assembly and of the members and the Committees thereof and if there is a Legislative Council, of that Council and of the members and the Committees thereof.’ ”

This is merely a counterpart of what we have done so far as List I is concerned regarding the Centre.

(Entries 12 and 12-A were added to the State List)

ENTRY 14

†**Mr. President :** Now the question is whether we should have an additional entry as “Regulation and control of Houses and Rents”. Mr. Tyagi, you move it as a separate entry.

The Honourable Dr. B. R. Ambedkar : Yes, he may move it as a separate entry.

Shri Mahavir Tyagi : I am grateful to you and also to Dr. Ambedkar. He has for the first time been generous to me.

Sir, I do submit that it is really embarrassing to move an amendment to the list which has been submitted by the Drafting Committee, for the Drafting Committee is always very resourceful and it is very difficult to struggle with them successfully.

Mr. President : But you are moving an additional entry.

Shri Mahavir Tyagi : Yes, Sir, but the acceptance of the Drafting Committee has to be sought. After all it is primarily they who accept suggestions, and if they accept them, then the House readily agrees to them.

The House has already agreed to one entry which says that all the residuary powers will go to the Centre, all that is not mentioned in List II or List III. I submit that the control of Houses in urban areas and the control of rents of those houses are an important matter today. It was not

*CAD, Vol. IX, 1st September 1949, p. 871.

†*Ibid.*, pp. 873-874.

in the original list of the Government of India Act 1935, because at that time the control over the houses and their rents was not needed and it was not prevalent in India. But...

The Honourable Dr. B. R. Ambedkar : I understand the honourable Member's argument and I could reply to him in a few minutes.

Shri Mahavir Tyagi: Yes, and I therefore only submit that this subject of control of the houses and the control of the rents should be there. I would even go further and say that the control of good grains also should come in. If the House agrees, it may be brought in as an independent item somewhere.

The Honourable Dr. B. R. Ambedkar : Sir, there are, I think three distinct questions, although they have not been stated by Mr. Tyagi in that form. The first question is whether the Provincial legislature should or should not have any power to regulate and control houses and house-rent. I think on that issue, there can be no difference of opinion, that the Provincial Governments must have such power. The question then is whether the Draft Constitution and the entries in the list make any provision for the provincial legislatures to exercise powers for the purpose of regulating and controlling the houses and the rents. Now, my submission is that the specific entry as proposed by Mr. Tyagi is quite unnecessary, because there are two other entries, namely entry 24 of List II which deals with "land, rights in or over land, land tenures including the relation of land-lord and tenant, and the collection of rents, etc." That is one entry. Then there is another entry No. 8 in List III about transfer of property other than agricultural land; registration of deeds and documents. These two entries have been found to be quite sufficient to enable the Provincial Governments to make laws relating to the regulation and control of Houses and rents,—My Friend Mr. Tyagi knows also, that notwithstanding the fact that such an entry does not exist even today, under List II of the Government of India Act, none-the-less, the Provinces have enacted laws in this matter. Therefore entry 24 relating to land and the other entry. No. 8 about transfer of property are quite sufficient to give the power which Mr. Tyagi wants that they should have.

Another difficulty in the way of accepting the amendment of Mr. Tyagi is this. Suppose we were now to include this entry, it would cause a certain amount of doubt on the laws that have already been made by the provinces for the purpose of regulation of houses and the control of rents. It would appear that the legislature itself felt that the entry as it already existed, was not sufficient for the purpose of giving the legislature power

to make laws for this purpose. And therefore it was necessary specifically to give this power. I think we would unnecessarily casting doubts upon the validity of laws already made. Therefore, this is an additional ground against accepting the amendment. In the first place, as I have said it is unnecessary because the provinces have got sufficient power to make such laws and the other is this question of validity of laws made.

Now I come to the third part. My Friend Mr. Tyagi has been struggling to some extent when I was dealing with the question of cantonments to remove the power of allowing cantonments to regulate rents and the premises within their areas. If my friend's intention is that by getting this entry accepted, it would be possible for the provinces to nullify the power which has already been given by the entry in List I, as it has been already passed, then I think, he is completely under a mistake. Not with standing the fact that this entry may become part of the Constitution, the entry which we have already passed would be valid; notwithstanding any power vested in the Provinces, the Cantonments will have the power to make regulations with regard to the premises and the rent of the premises situated in that area. Therefore, I submit to my Friend mr. Tyagi that his purpose is already served and it is unnecessary to have this entry, especially because it would be causing a certain amount of doubt on the validity of the laws already made under these entries as they stand.

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***Shri Mahavir Tyagi :**Suppose the owner of a house takes objection on the ground that the provincial government has no right to control rents, then what happens?

The Honourable Dr. B. R. Ambedkar : No, he cannot because under the General Clauses Act, land includes the buildings.

Shri Mahavir Tyagi : It is a new interpretation of the law, that land includes the building.

The Honourable Dr. B. R. Ambedkar : It is new because law is not the profession of Mr. Tyagi.

ENTRY 15

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

“That in entry 15 of List II, the words ‘registration of births and deaths’ be deleted.”

This is transferred to the concurrent list.

*CAD, Vol. IX, 1st September 1949, pp. 874-875.

†*Ibid.*, p. 875.

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***The Honourable Dr. B. R. Ambedkar :** I do not accept any of the amendments moved.

[Amendments by Shri Kamath and Brijeshwar Prasad were rejected. The motion of Dr. Ambedkar was adopted. Entry 15, as amended, was added to the State List.]

ENTRY 18

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

“That for entry 18 of List II, the following entry be substituted :—

‘18. Education including universities, subject to the provisions of entries 40, 40-A, 57 and 57-A of List I and entry 17-A of List III.’ ”

[All amendments to Entry 24 were rejected by Dr. Ambedkar and were negatived by the House. Entry 24 was added to the State List.]

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Sardar Hukam Singh (East Punjab : Sikh): Sir, Now, that Pandit Bhargava has moved this amendment that this entry should be transferred to the Concurrent List there is no need for me to move my amendment and I wholeheartedly support Pandit Bhargava’s amendment.

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‡The Honourable Dr. B. R. Ambedkar : Sir, I am prepared to accept this amendment (of Pandit Bhargava as below):

“That with reference to amendment No. 3626 of the List of Amendments, entry 43 in List II be transferred to List III as entry 9-A.”

(The motion was adopted.)

Entry 43 of List II was transferred to the Concurrent List.

ENTRY 45

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#The Honourable Dr. B. R. Ambedkar : Sir, I am very much afraid that both my friends, Mr. Shibban Lal and Mr. Sahu, have entirely misunderstood the purport of this entry 45 and they are further under a great misapprehension that if this entry was omitted, there would be no betting or gambling in the country at all. I should like to submit to them that if this entry was omitted, there would be absolutely no control of betting and gambling at all, because if entry 45 was there it may either be used for the purpose of permitting betting and gambling or it may be used for the purpose of prohibiting them. If this entry is not there, the provincial governments would be absolutely helpless in the matter.

*CAD, Vol. IX, 2nd September 1949, p. 880.

†*Ibid.*, p. 881.

‡*Ibid.*, p. 914.

#*Ibid.*, pp. 917-918.

I hope that they will realise what they are doing. If this entry was omitted, the other consequence would be that this subject will be automatically transferred to List I under entry 91. The result will be the same, viz., the Central Government may either permit gambling or prohibit gambling. The question therefore that arises is this whether this entry should remain here or should be omitted here and go specifically as a specified item in list I or be deemed to be included in entry 91. If my friends are keen that there should be no betting and gambling, then the proper thing would be to introduce an article in the Constitution itself making betting and gambling a crime, not to be tolerated by the State. As it is, it is a preventive thing and the State will have full power to prohibit gambling. I hope that with this explanation they will withdraw their objection to this entry.

[The motion was adopted. Entry 45 was added to the State List.]

ENTRY 38—(contd.)

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***The Honourable Dr. B. R. Ambedkar:** May I request you to go back to entry 38 and to amendment No. 311 standing in the name of Pandit Lakshmi Kanta Maitra? I heard, Sir, that you were pleased to direct Mr. T. T. Krishnamachari to have this entry held back, but I am prepared to accept the amendment suggested by my honourable Friend, Pandit Maitra.

Mr. President: Very well. The question is :

“That entry 38 of List II be transferred to List III.”

(The amendment was adopted.)

Entry 38 was transferred to the Concurrent List.

ENTRY 46

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†The Honourable Dr. B. R. Ambedkar : I cannot accept this amendment. As our system of revenue assessment is at present regulated, it would upset the whole of the provincial administration. The matter may, at a subsequent stage be investigated either by Parliament or by the different provinces, and if they come to some kind of an arrangement as to the levy of land revenue and adopt the principles which are adopted in the levy of income-tax, the entry may be altered later on but today it is quite impossible. The matter was considered at great length in the

*CAD, Vol. IX, 2nd September 1949, p. 918.

†*Ibid.*, p. 919.