

Provided that it shall be competent for the President in the case of services and posts in connection with the affairs of the Union and for the Governor or, as the case may be, the Ruler of a State in the case of services and posts in connection with the affairs of the State to make rules regulating the recruitment and the conditions of service of persons appointed to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

282-A. (1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor or, as the case may be, the Ruler of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor or Ruler of the State, any contract under which a person, not being a member of a defence service or of an All-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or, the Governor or the Ruler, as the case may be deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation if before the expiration of an agreed period that post is abolished or he is for reasons not connected with any misconduct on his part, required to vacate that post.

282-B. (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this cause shall not apply—

- (a) where a person is dismissed, or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;
- (b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause;
- (c) where the President or Governor or Ruler, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity.

- (3) If any question arises whether it is reasonably practicable to give notice to any person under clause (b) of the proviso to clause (2) of this article, the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final.

282-C. (1) Notwithstanding anything in Part IX of this Constitution, if the Council of States has declared by resolution supported by All-India Services: not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do. Parliament may by law provide for the creation of one or more All-India Services common to the Union and the States, and subject to the other provisions of this Chapter, regulate the recruitment and the conditions of service of persons appointed to any such service.

- (2) The services known on the date of commencement of this Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article.' ”

Sir, I do not propose, at this stage, to say anything on the amendment I have moved, because the article themselves are quite clear. There are several amendments which may raise some points of criticism, and I shall then be in a position to give the House the explanations that may be necessary in order to dispose of those amendments.

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***The Honourable Dr. B. R. Ambedkar:** I think my friend has said enough on the point and he need not continue. We have understood his point. We must get through today at least one article.

Dr. Monomohan Das : If that is the case, I shall stop.

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†**Mr. President:** The honourable Member (Mr. Kamath) has exceeded his time-limit. Does Dr. Ambedkar like to speak?

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

[All amendments were negatived.]

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ARTICLE 282-B

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‡**Shri R. K. Sidhva:** We are prepared to sit and finish. We can sit for seven or eight hours.

Mr. President: That is not possible. We cannot sit for eight hours. After all we work like human beings. We cannot work like machines. So

*CAD, Vol. IX, 7th September 1949, p. 1088.

†*Ibid.*, p. 1090.

‡*Ibid.*, p. 1094.

I do not think it will be possible. What do you say, Dr. Ambedkar, is it possible to have an afternoon sitting today?

The Honourable Dr. B. R. Ambedkar : I expect to be back from the Cabinet meeting at about half past five. If the House is prepared to sit for two hours after that, I am quite prepared, but we have a Drafting Committee meeting from half past five onwards, because unless we are ready with the articles which have already been held up, it will be difficult to proceed. We have to go to another place to obtain a decision and then to come here. If the House so wishes, we can change the sitting of the Drafting Committee to some other time.

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***Mr. Naziruddin Ahmad :** ... There are various offences like assault, trespass, technical defamation and similar things which are compendiously described as offences not involving moral turpitude. In all such cases if the office master tries to drive him off, all that we ask for is that he should be given an opportunity to show cause.

The Honourable Dr. B. R. Ambedkar (Bombay : General): There is no amendment to delete clause (3). Your amendment is only to delete sub-clause (b).

Mr. Naziruddin Ahmad : Yes, I have given notice of this amendment too. See amendment No. 246.

The Honourable Dr. B. R. Ambedkar : There is an amendment by Mr. Jaspat Roy Kapoor to delete clause (3) of 282B.

Mr. President: There is an amendment by the Honourable Member (Mr. Naziruddin Ahmad) also.

The Honourable Dr. B. R. Ambedkar: He can go on; I merely wanted to draw his attention.

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†Mr. President: I shall now put the amendments to vote Dr. Ambedkar, do you wish to say anything?

The Honourable Dr. B. R. Ambedkar : I should like to say one or two words, Sir.

As I listened to the criticisms made by the various speakers who have moved their amendments I have come to the conclusion that they have not succeeded in making a clear distinction between two matters which are absolutely distinct and separate: these matters are grounds for dismissal and grounds for not giving notice. This article 282-B does not deal

*CAD, Vol. IX, 8th September 1949, p. 1104.

†*Ibid.*, pp. 1112-1114.

with the grounds of dismissal. The matter will be dealt with by the law that will be made by the appropriate legislature under the provisions of article 282. In what cases a person appointed to the civil service should be dismissed from service would be a matter that would be regulated by law made by Parliament. It is not the purpose of this article 282-B to deal with that matter.

This article is 282-B merely deals with, as I stated, the grounds for not giving notice before dismissal so that a person may have an opportunity of showing cause against the action proposed to be taken against him. The purport of this clause is to lay down a general proposition that in every case notice shall be given, but in three cases which have been mentioned in sub-clauses (a), (b) and (c), notice need not be given. 'That is all what the article says. It has been, in my judgement, a very wrong criticism which has been made by my honourable Friend Mr. Kamath that this article is a disgrace or a shame or a blot on the Constitution.

Shri H. V. Kamath : (Interruption)...

The Honourable Dr. B. R. Ambedkar : I should have thought that that was probably the best provision that we have for the safety and security of the civil service, because it contains a fundamental limitation upon the authority to dismiss. It says that no man shall be dismissed unless he has been given an opportunity to explain why he should not be dismissed. If such a provision is a matter of disgrace, then I must differ from my honourable Friend Mr. Kamath in his sense of propriety.

Shri H. V. Kamath : I am referring to the provisos to the article.

The Honourable Dr. B. R. Ambedkar : I am coming to the provisos. So far as clause (2) is concerned, I have no doubt in my mind that everybody who has got common sense would agree that this is the best proviso that could have been devised for the protection of the persons engaged in the civil service of the State. The question has been raised that any person who has been convicted in any criminal case need not be given notice. There, again, I must submit that there has been a mistake, because, the regulations made by a State may well provide that although a person is convicted of a criminal offence, if that offence does not involve moral turpitude, he need not be dismissed from the State service. It is perfectly open for Parliament to so legislate. It is not in every criminal charge, for instance, under the motoring law or under some trivial law made by Parliament or by a State making a certain act an offence, that that would necessarily be a ground for dismissal. It would be open to Parliament to say in what cases there need not be any dismissal. It would be perfectly

open to Parliament to exclude political offences. This clause in so many words merely deals with the question of giving notice. Parliament may exempt punishment for offences of a political character, exempt offences which do not involve moral turpitude. That liberty of the Parliament is not touched or restricted by sub-clause (a). I want to make this clear.

With regard to sub-clause (b), this has been bodily taken from section 240 of the Government of India Act. I think it will be agreed that the object of introducing section 240 of the Government of India Act was to give protection to the services. Even the British people, who were very keen on giving protection to the civil services, thought it necessary to introduce a proviso like sub-clause (b). We have therefore not introduced a new thing which had not existed before. With regard to sub-clause (c), it has been felt that there may be certain cases where the mere disclosure of a charge might affect the security of the State. Therefore it is provided that under sub-clause (c) the President may say that in certain cases a notice shall not be served. I think that is a very salutary provision and notwithstanding the obvious criticism that may be made that it open a wide door to the President to abrogate the provisions contained in sub-clause (2), I am inclined to think that in the better interests of the State, it ought to be retained.

Coming to clause (3), this has been deliberately introduced. Suppose, this clause (3) was not there, what would be the position? The position would be that any person, who has not been given notice under sub-clause (a) or (b) or (c), would be entitled to go to a court of law and say that he has been dismissed without giving him an opportunity to show cause. Now, courts have taken two different views with regard to the word 'satisfaction': is it a subjective state of mind of the officer himself or an objection state, that is to say, depending upon circumstances? It has been felt in a matter of this sort, it is better to oust the jurisdiction of the court and to make the decision of the officer final. That is the reason why this clause (3) had to be introduced that no Court shall be able to call in question if the officer feels that it is impracticable to give reasonable notice or the President thinks that under certain circumstances notice need not be given.

Now, another misapprehension which I should like to clear is this. Some people think that under the provisions regarding civil service which I have introduced the Government has an absolute unfettered right to dismiss any civil servant and that this power is aggravated by the introduction of sub-clauses (a), (b) and (c) of clause (2). I submit that

again is a misapprehension because under the provisions relating to Public Service Commission which we have passed already there is a provision that every civil servant who is aggrieved by any action taken by an officer relating to the conditions of service will have a right of appeal to the Public Service Commission. Therefore, even in cases where the Government has not given the officer an opportunity to show cause, even such an officer will have the right to go to the Public Service Commission and to file an appeal that he has been wrongfully dismissed contrary to the provisions contained in the rules made relating to his service. I, therefore, think that the apprehensions which have been expressed by honourable Members with regard to the provisions contained in this article are entirely misfounded and are due to misunderstanding of the provisions of this Act, the provisions of article 282 and the provision relating to Public Service Commission.

[In all 15 amendments were negatived. The original amendment of Dr. Ambedkar—Article 282-B was adopted, and added to the Constitution.]

ARTICLE 282-C

***Mr. President:** There is no other amendment to this article. You wanted to speak, Dr. Deshmukh.

Dr. P. S. Deshmukh : Sir, I support the amendment moved by my Friend Shri Brajeshwar Prasad in regard to the omission of the words :

“If the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do.”

I had intended to move a similar amendment, No. 250, but I do not propose to move it now since an identical amendment has been moved. I have been unable to understand this provision. Nowhere has the initiative in any important matter been left to any other House except the House of the People in the Central Parliament. But here for the first time, according to my knowledge and information, we give the initiative to the Council of States. Sir, either the central services are desirable or they are undesirable. If they are desirable, then they should not be cramped with so many impediments, created in the way of their being started. If they are undesirable, then there should not have been any provision whatsoever. I think, more and more there will be the tendency to have all-India services, and therefore in my opinion there was no point in making their introduction so difficult. Why should the proposal have the support of not less than two-thirds of the members present and voting of the Council of

*CAD, Vol. X, 8th September 1949, p. 1118.

States? I think these words are absolutely unnecessary, unless they are intended to clothe the useless House of the Council of States with some dignity or some function. I think that appears to be the only anxiety at the root of this brain-wave, of giving the initiation of such an important matter to the Council of States. I see no purpose for these words and therefore move that they be omitted.

Mr. President : Dr. Ambedkar, would you like to say anything?

The Honourable Dr. B. R. Ambedkar : Just one word. I think neither Mr. Brajeshwar Prasad nor my friend Dr. Deshmukh, the one in moving the amendment and the other in supporting it, seems to have read carefully the provisions of article 282. Article 282 proceeds by laying down the proposition that the Centre will have the authority to recruit for services which are under the Centre and each State shall be free to make recruitment and lay down conditions of service for persons who are to be under the State service. We have, therefore, by article 282 provided complete jurisdiction. 282C to some extent takes away the autonomy given to the States by article 282, and obviously if this autonomy is subsequently to be invaded, there must be some authority conferred upon the Centre to do so, and the only method of providing authority to the Centre to run into, so to say, article 282 is to secure the consent of two thirds of the members of the Upper Chamber. The Upper Chamber is the only body mentioned in article 282. *Ex-hypothesi* the Upper Chamber represents the States and therefore their resolution would be tantamount to an authority given by the States. That is the reason why these words are introduced in article 282C.

[The motion of Dr. Ambedkar was adopted. Amendment by Brijeshwar Prasad was rejected. Article 282-C was added to the Constitution.]

ARTICLE 283

***Mr. President :** Then we come to article 283. Dr. Ambedkar.

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

“That for amendment No. 3037 of the List of Amendments (Volume II), the following be substituted :—

“That for article 283 the following article be substituted :—

283. Until other provisions is made in this behalf under this Constitution, all the laws in force immediately before the commencement of this Constitution and applicable to any public service or any Transitional post which continues to exist after the commencement of this Constitution, as an All-India service or as service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution’.”

*CAD, Vol. IX, 8th September 1949, p. 1119.

This is a purely transitional provision.

[The motion was adopted. Article 283 was added to the Constitution.]

ARTICLE 302

Mr. President: Then we take up article 302. Dr. Ambedkar.

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

“That in clause (1) of article 302, after the words ‘Governor’ the words ‘or Ruler’ be inserted.”

“That in the second proviso to clause (1) of article 302, for the words and figures ‘bring against the Government of India or the Government of a State such proceedings as are mentioned in Chapter III of Part X of this Constitution’ the words ‘bring appropriate proceedings against the Government of India or the Government of a State’ be substituted.”

“That in clause (2) of article 302, after the word ‘Governor’ the word ‘Ruler’ be inserted.”

“That in clause (3) of article 302, after the word ‘Governor’ the words ‘or Ruler’ be inserted.”

“That in clause (4) of article 302—

- (a) after the word ‘Governor’ in the first place where it occurs, the words ‘or Ruler’ be inserted;
- (b) for the word ‘Governor’ in the second place where it occurs, the words ‘as Governor or Ruler’ be substituted; and
- (c) after the word ‘Governor’ in the third place where it occurs, the words ‘or the Ruler’ be inserted.”

An Honourable Member: What about 13, Sir?

Mr. President: It is not in the Order paper. It is held over.

The Honourable Dr. B. R. Ambedkar : Amendments 14, 16, 17 and 18 are purely drafting amendments. The only amendment perhaps which requires an explanation is No. 15. The reason for bringing in this amendment is that reference to Chapter III really means reference to article 274. Article 274 deals with the right of suit against Government and that article is divided into two parts. One part deals with the right of suit as exists on the date of the commencement of the Constitution. The other part is regarding the power of Parliament to make further provision with regard to the right of suit against Government. If the words as there remain, it would only mean that the right of suit against Government would be in terms of 274 as it would be on the date of commencement of the Act. The substitution of the words “appropriate proceedings” is intended to cover not only the right of suit as it would exist on the date of commencement of the Act, but also as to subsequent proceedings which Parliament may by law provide against the Government of the day. That is the reason for this amendment.

I might also mention to the House that I find that if this amendment is carried, I shall also have to bring in a small consequential amendment in article 202 where there has been a sort of omission.

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***Mr. President:** Dr. Ambedkar, there is an amendment moved by Mr. Kamath that in clause (1) of article 302, for the word “duties” the word “functions” be substituted.

The Honourable Dr. B. R. Ambedkar : The word “functions” is a large word and it includes both powers and duties. We have said powers and duties which include all the functions that we can have. It is unnecessary to have any kind of amendment like that.

Mr. President: The question is :

“That is clause (1) of article 302 for the word ‘duties’ the word ‘functions’ be substituted.”

The amendment was negatived.

Mr. President: That is the only amendment that has been moved. I shall now put the amendment put by Dr. Ambedkar.

Shri T. T. Krishnamachari : The whole lot can be put together.

Mr. President: If the Members want that, I shall put them separately. Very well. I shall put them together.

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

“That the heading above article 243, and article 243, 244 and 245 be omitted.”

That might be put, so that the others may be taken separately. It is an independent thing.

(The motion was adopted.)

The heading above article 243, and articles 243, 244 and 245 were deleted.

PART XA

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

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

“PART XA

Trade, Commerce and Intercourse within the territory of India.

274-A. Subject to the other provisions of this Part, trade, commerce	and intercourse throughout the territory of
Freedom of trade	India shall be free.
commerce and intercourse	
throughout the territory.	

*CAD, Vol. IX, 8th September 1949, p. 1122.

†*Ibid.*, p. 1123.

‡*Ibid.*, pp. 1123-1124.

274-B. Parliament may, by law enacted by virtue of powers conferred by this Constitution, impose such restrictions on the Power of Parliament to impose restrictions on trade, commerce or intercourse between one State and another or within any part of the territory law of India as may be required in the public interest.

274-C. (1) Notwithstanding anything contained in article 274-B of this Constitution neither parliament nor the Legislature of a State shall have power to make any law giving or authorising the giving of preference to one State over another or making any discrimination or authorising the making of any discrimination between one State and another by virtue of any entry relating to trade or commerce in any of the Lists in the Seventh Schedule.

(2) Nothing in clause (1) of this article shall prevent Parliament from making any law giving any preference or making any discrimination as aforesaid if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India.

274-D. Notwithstanding anything contained in article 274 or article 274-C of this Constitution, the legislature of a State may, by law—

(a) impose on goods which have been imported from other States any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest:

Provided that no Bill or amendment for the purpose of clause (b) of this article shall be introduced or moved in the legislature of the State nor shall any Ordinance be promulgated for the purpose by the Governor or Ruler of the State without the previous sanction of the President.

274-E. Parliament may by law appoint such authority as it considers appropriate for carrying out the purposes of articles 274-A, 274-B, 274-C and 274-D of this Constitution, and confer on authority so appointed such powers and such duties as it thinks necessary.”

Sir, all that I need do at this stage is to inform the House that originally the articles dealing with freedom of trade and commerce were scattered in different parts of the Draft Constitution. One article found its place in the list of Fundamental Rights, namely, article 16, which said that trade and commerce, subject to any law made by Parliament, shall be free throughout the territory of India. The other articles, namely, 243, 244 and 245 were included in some other part of the Draft Constitution. It was found in the course of discussion that a large number of members of the House

were not in a position to understand the implications of articles 243, 244 and 245, because these articles were dissociated from article 16. In order, therefore, to give the House a complete picture of all the provisions relating to freedom of trade and commerce the Drafting Committee felt that it was much better to assemble all these different articles scattered in the different parts of the Draft Constitution into one single part and to set them out *seriatim*, so that at one glance it would be possible to know what are the provisions with regard to the freedom of trade and commerce throughout India I should also like to say that according to the provisions contained in this part it is not the intention to make trade and commerce absolutely free, that is to say, deprive both Parliament as well as the States of any power to depart from the fundamental provision that trade and commerce shall be free throughout India. The freedom of trade and commerce has been made subject to certain limitations which may be imposed by Parliament or which may be imposed by the Legislatures of various States, subject to the fact that the limitation contained in the power of Parliament to invade the freedom of trade and commerce is confined to cases arising from scarcity of goods in any part of the territory of India and in the case of the States it must be justified on the ground of public interest. The action of the States in invading the freedom of trade and commerce in the public interest is also made subject to a condition that any Bill affecting the freedom of trade and commerce shall have the previous sanction of the President; otherwise, the State would not be in a position to undertake such legislation. Article 274-E is merely an article which would enable Parliament to establish an authority such as the Inter-State Commission as it exists in the United States. Without specifically mentioning any such authority it is thought desirable to leave the matter in a fluid state so as to leave Parliament freedom to establish any kind of authority that it may think fit.

If any further points are raised in the course of the debate, I shall be glad to offer the necessary explanation.

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ARTICLE 274-A

***The Honourable Dr. B. R. Ambedkar :** Mr. President, I do not think that I can usefully add anything to what my friends Shri T. T. Krishnamachari and Shri Alladi Krishnaswami Ayyar have said.

[All 3 amendments were negatived. Article 274-A was added to the Constitution.— Ed.]

*CAD, Vol. IX, 8th September 1949, p. 1142.

ARTICLE 264

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

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

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

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

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

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‡**Pandit Laxmi Kant Maitra :** ...According to the Act of 1941, if there is a notification to that effect by the Government local taxes in respect of them, could be collected. But the taxes would be in a modified form. There the criterion is services rendered.

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

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‡**Shri Chimanlal Chakubhai Shah :** .. I would therefore request Dr. Ambedkar to consider these two points, namely, (1) whether in article 266 it is not necessary...

The Honourable Dr. B. R. Ambedkar : We are for the moment considering 264 and 266. That may be dealt with when we come to article 266.

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

The Honourable Dr. B. R. Ambedkar : Sir, I will first refer to the provisions contained in clause (2) of the proposed article 264. I think it would be agreed that the intention of this clause (2) is to maintain the *status quo*. Consequently under the provisions of clause (2) those municipi-

*CAD, Vol. IX, 9th September 1949, p. 1147.

†*Ibid.*, p. 1153.

‡*Ibid.*, p. 1155.

#*Ibid.*, pp. 1157-1160.

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

The only question that can arise is whether the right given by clause (2) should be absolute or should be subject to the proviso contained therein, until Parliament otherwise provides. In another place where this matter was discussed I submitted certain arguments for the consideration of the House.

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

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

I said then that it was difficult to give a *carte blanche* to the local authority to levy taxes on the properties of the Union without any kind of limitation or condition and the arguments were two-fold. First of all, I said and I say right now here that it is impossible theoretically to conceive of any property of a person who is not represented or whose interests are not represented in any particular organisation,—to allow that organisation a right *ad infinitum* to levy any tax upon the property of such persons. It is a principle contrary to the principles of natural justice and I said that so far as the local authorities are concerned, whether they are municipalities or local or district boards, there is practically no representative of the Central Government in those bodies. I said the same thing elsewhere. Secondly, I said that the taxing authority of a local body is derived from a law made by the local legislature, the legislature of the

State. It is quite impossible for the Centre to know what particular source of taxation, which has been made over by the Constitution to the State legislature, will be transferred by such State legislature to the local authority. After all, the taxing power of the local authority will be derived from a law made by the State Legislature. It is quite impossible at present to know what particular tax a local body may be authorised by the State Legislature to tax the property of the Central Government. Consequently, not knowing what is to be the nature of the tax, what is to be the extent of the tax, it is really quite impossible to expect the Central Government to surrender without knowing the nature of the tax, the nature of the extent of the tax, to submit itself to the authority of the local body.

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

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

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

That is to say, it would permit Parliament to confer power or to recognise taxation by other municipalities and other local boards which are so far not recognised. I think that is a lacuna which I am prepared to

make good so that there may be no discrimination between local authorities which have been taxing and those which have not been taxing. It would be open to Parliament, even after the passing of the Constitution, to make a law permitting those municipalities and local authorities which have not so far levied a tax to levy a tax. Beyond that I am not prepared to go.

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

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

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

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

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

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

[Mr. Sidhva withdrew his amendment. Article 264, as modified by Dr. Ambedkar's amendment was adopted and added to the Constitution.]

ARTICLE 265

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

“That in article 265, for the words ‘a Union railway’, wherever they occur, the words ‘any railway’, be substituted.”

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

[The amendment was adopted. Article 265, as amended, was added to the Constitution.]

NEW ARTICLE 265-A

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

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

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

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

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

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

“(2) The Legislature of a State may by law impose, or authorise the imposition of, any such tax as is mentioned in clause (1) of this article but no such law shall have any effect unless it has after having been

*CAD, Vol. IX, 9th September 1949, p. 1160.

†*Ibid.*, p. 1161.

reserved for the consideration of the President, received his assent; and if any such law provides for the fixation of the rates and other incidents of such tax by means of rules or orders to be made under the law by any authority, the law shall provide for the previous consent of the President being obtained to the making of any such rule or order.”

[New Article 265-A was added to the Constitution.]

ARTICLE 266

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

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

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

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

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

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SEVENTH SCHEDULE

ARTICLE 250—(contd.)

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

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

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

I also move:

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

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

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

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

I move:

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

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

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

*CAD, Vol. IX, 9th September 1949, p. 1161.

†*Ibid.*, pp. 1172-1173.

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

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

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

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

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

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

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

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

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

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

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

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ENTRY 58

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

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

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

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

Therefore, the only question for consideration that arises is whether by making this transfer from List II to List I, we are injuring so to say the finances of the provinces. My answer is that we are not doing any injury

*CAD, Vol. IX, 9th September 1949, p. 1182-1183.