

to the provinces because if the House would agree to carry my amendment No. 374, the provinces will get such portion of any tax on the sale of newspapers as they may have raised and now receive, under the amendment No. 374. In making these proposals, we have taken into consideration as I said the general proposition that newspapers having been connected, with fundamental rights, ought to come under the jurisdiction of the Centre, and that any financial gain which the provinces would have got should not be lost sight of. Both these considerations have prevailed with the Drafting Committee in making these changes.

I submit, notwithstanding the declarations of my honourable Friend Mr. Sidhva which I can understand, because he is smarting under a great injury which he suffered in another place, I say that there can be no objection to the entries that we have proposed.

Shri R. K. Sidhva : Sir, I take exception to Dr. Ambedkar's remarks when he said that I am smarting under some injury. I shall pay him in his own coins unless you ask him to withdraw those remarks.

The Honourable Dr. B. R. Ambedkar : I am quite prepared to withdraw them, Sir. But, I know it very well.

Mr. President : That settles the matter.

[The original amendment of Dr. Ambedkar, as shown above, was adopted and other amendments were rejected. Entries 58 and 58-A, as amended, were added to the State List of the Seventh Schedule.]

ARTICLE 250

***Shri T. T. Krishnamachari :** Dr. Ambedkar has already moved it. It is only a formal matter and it can be put to vote.

Mr. President : Does any one wish to say anything about amendment No. 374 moved by Dr. Ambedkar?

(No Member rose)

The Honourable Dr. B. R. Ambedkar : It is only a consequential thing, Sir.

Mr. President : There is no amendment to this. I shall put this to vote. The question is :

"That in clause (I) 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'."

(The amendment was adopted.)

*CAD, Vol. IX, 9th September 1949, p. 1184.

†*Ibid.*, pp. 1184-1185.

ARTICLE 202

Mr. President : Article 202.

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

“That in clause (1) of article 202, after the words ‘to issue’ the words ‘to any person or authority including in appropriate cases any Government within those territories,’ be inserted.”

I said when moving an amendment to article 302 that a consequential amendment would be necessary in article 202. I am therefore moving this Article 202 as amended will now read as follows :—

“Notwithstanding anything contained in article 25 of this Constitution, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority including in appropriate cases any Government within those territories directions or orders in the nature of writs of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, for the enforcement of any of the rights conferred by Part III of this Constitution for any other purposes.”

It is just consequential.

Pandit Thakur Das Bhargava : (East Punjab : General) : Why do you say in appropriate cases?

The Honourable Dr. B. R. Ambedkar : Because appropriate cases will be laid down by law of Parliament.

[The amendment was adopted.]

ARTICLE 234-A

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

“That after article 234, the following new article be inserted : —

‘234-A. (1) The executive power of the Union shall also extend to the giving of direction to a State to the measures to be taken for the protection as respects protection of railways, of the railways within the State.

Control of the Union over States as respects protection of Railways	to be taken for the protection as respects protection of railways, of the railways within the State.
---	--

(2) Where by virtue of any direction given to a State under clause (1) of this article costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given there shall be paid by the Government of India to the State such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in respect of the extra costs so incurred by the State.’”

Sir, all police first of all are in the Provincial list. Consequential the protection of railway property also lies within the field of Provincial Government. It was felt that in particular cases the Centre might desire that the property of the railway should be protected by taking special measures by the province and for that purpose the Centre now seeks to be endowed with power to give directions in their behalf. It is possible

*CAD, Vol. IX, 9th September 1949, pp. 1185-1186.

that by reason of the special directions given by the Centre some extra cost above the normal may be incurred by the provinces. In that event what that extra cost is, may either be determined by agreement or if there is no agreement, by an arbitrator chosen by the Chief Justice of India. The second clause is analogous to many of the clauses that we have passed in the Constitution for settling the disputes between the Centre and the Provinces so far as extra cost is concerned.

Dr. P. S. Deshmukh : Mr. President, I do not feel convinced about the necessity of this provision which refers only to railway property....

Shri Brajeshwar Prasad : Mr. President, Sir, I rise to extend my hearty support to clause (1) of this article, but I am thoroughly opposed to clause (2). ...Therefore I want that if there is any conflict between the Centre and the provinces as far as the costs are concerned, the matter may be left entirely in the hands of the president.

The Honourable Dr. B. R. Ambedkar : Sir, this clause is very necessary. My Friend Mr. Deshmukh when he said, that there were adequate provisions in the existing article we have passed—I am sorry to say—he is fundamentally mistaken. Railway Police is a subject within the authority of the State. Police as an entry does not find a place in List I. Consequently the Centre has no authority to make a law with regard to any police matter at all, nor, not having the legal authority, has it any executive authority. Therefore so far as protection of the railway property is concerned, the matter is entirely within the executive authority of the State. That being so, there are only two methods of doing it. Either the Centre should be endowed with police authority for the purpose of protecting their own property in which case an article such as the one which I have moved is unnecessary or we should have the provision which I have suggested *viz.*, to give directions. Supposing the Centre has a police to protect railways, that police may come in conflict with the police authority of the State. Therefore the double jurisdiction has been avoided by the scheme which has been suggested *viz.*, that the Centre should have the authority to give directions that more police may be posted on the railways, better precautions may be taken, so that there will not be any conflict, and should more expenditure be incurred the Centre should be ready to bear it. I cannot see what difficulty there can be. Dr. Deshmukh's premise that this matter is already covered is hopelessly wrong.

Dr. P. S. Deshmukh : What is the reason, why we do not need any protection so far as the rest of the property of the Union is concerned? How do you distinguish between railway property and others?

The Honourable Dr. B. R. Ambedkar : Because we find the railway property needs more attention. The safety of passengers is there.

[The motion of Dr. Ambedkar was adopted. New Article 234-A was added to the Constitution.]

NEW ARTICLE 242-A

***Mr. President :** Dr. Ambedkar, you may move amendment No. 372-A, regarding the heading.

Shri T. T. Krishnamachari : If No. 373 is passed, then the deletion of heading is consequential.

The Honourable Dr. B. R. Ambedkar : Sir, I move amendment No. 373 :

“That after article 242, the following new article be inserted : —

‘242-A. (1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

Adjudication of disputes relating to waters of inter state rivers or river valleys.

(2) Notwithstanding anything contained in this Constitution, Parliament may, by law, provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1) of this article.’ ”

Sir, originally this article provided for Presidential action. It was thought that these disputes regarding water and so on may be very rare, and consequently they may be disposed of by some kind of special machinery that might be appointed. But in view of the fact that we are now creating various corporations and these corporations will be endowed with power of taking possession of property and other things, very many disputes may arise and consequently it would be necessary to appoint one permanent body to deal with these questions. Consequently it has been felt that the original draft or proposal was too hide-bound or too stereotyped to allow any elastic action that may be necessary to be taken for meeting with these problems. Consequently I am now proposing this new article which leaves it to Parliament to make laws for the settlement of these disputes.

Shri R. K. Sidhva : Article 242 is proposed to be deleted, and so how does this new article 242-A come up alter article 242?

The Honourable Dr. B. R. Ambedkar : This one only indicates the position.

[Motion was adopted, New article 242-A was added to the constitution.]

*

*

*

*

*

***Mr. President :** Amendment No. 372-A.

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

“That the heading above article 239, and articles 239, 240, 241 and 242 be deleted.”

These are covered by article 242-A and therefore are unnecessary.

Mr. President : Does anyone wish to say anything about this amendment? There is no amendments. I then put it to the house.

(The motion was adopted.)

The heading above article 239, and articles 239, 240, 241, and 242 were deleted.

ARTICLES 248-A, 263 AND 263-A

†**The Honourable Dr. B. R. Ambedkar :** Sir, I should like to move the three amendments 380, 381 and 382 introducing three new articles, and I begin with amendment No. 382 because the rest are consequential.

Mr. President : All right.

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

“That after article 263, the following new article be inserted : —

‘263-A. All moneys received by or deposited with—

- (a) any officer employed in connection with the affairs of the Union or
Custody of suitor’s deposits of a State in his capacity as such, other
and other moneys received than revenues or public moneys raised or
by public servants and received by the Government of India or the
courts. Government of a State, as case may be, or
- (b) any court within the territory of India to the credit of any cause, matter,
account or persons shall be paid into the public account of India or of
the State, as the case may be.’ ”

Sir, if you permit me, I shall move the other amendments also and then offer some general observations to enable Members to understand the changes that we propose to make.

Mr. President : Yes.

The Honourable Dr. B. R. Ambedkar : I move amendment No. 380 and amendment No. 381. I move :

“That for article 248-A, the following article be substituted:—

- ‘248A. (1) Subject to the provisions of article 248B of this Constitution and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India and all loans raised by them by the issue of treasury bills, loans or ways and means advances and all moneys received in repayment of loans shall form one consolidated fund to be entitled “The Consolidated Fund of India” and
- | | |
|---|--|
| Consolidated Funds
and Public Accounts
of India and of the
States. | |
|---|--|

*CAD, Vol. IX, 9th September 1949, pp. 1188.

†*Ibid.*, pp. 1188-90.

all revenues received by the Government of a State, loans raised by the Government of a State by the issue of treasury bills, loans or ways and means advances and all moneys received by a State in repayment of loans shall form one consolidated fund to be entitled “The Consolidated Fund of the State.”

- (2) All over public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India, or of the State, as the case may be.
- (3) No moneys out of the Consolidated Fund of India or of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.’”

Amendment No. 381.

“That for article 263, the following article be substituted : —

- ‘263. (1) The custody of the Consolidated Fund and the Contingency Fund of India, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of India, their payment into the public account of India and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by Parliament, and, until provision in that behalf is so made by Parliament, shall be regulated by rules made by the President.
- (2) The custody of the Consolidated Fund and the Contingency Fund of a State, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of a State, their payment into the public account of the State and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by the Legislature of the State, and until provisions in that behalf is so made by the Legislature of the State, shall be regulated by rules made by the Governor of the State.’”

Briefly, the changes are two-fold. In the original article No. 248A as it stood, the scope of the Consolidated Fund was limited. The Consolidated Fund did not specifically refer to the proceeds of loans, treasury bills and ways and means advances. We now propose to make a specific mention of them so that they will form part of the Consolidated Fund.

The second thing is that in drawing the definition of the Consolidated Fund we lumped along with it certain other moneys which were received by the state, but which were not the proceeds of taxes or loans, etc., with the result that public money received by the state otherwise than as part of the revenues or loans also because subject to an Appropriation Act, namely, the provision contained in sub-clause (3) of article 248A. Obviously the withdrawal of money which should strictly not “form part of the

Consolidated Fund of the State cannot be made subject to any Appropriation Act. They will be left open to be drawn upon in such manner, for such purposes and at such times subject to such conditions as may be laid down by Parliament in that behalf specifically. It is, therefore, to enlarge the definition expressly of the Consolidated Fund and to separate the Consolidated Fund from other funds which go necessarily into the public account that these changes are made. There is no other purpose in these changes. The Finance Ministry drew attention to the fact that our provision in regard to the Appropriation Act was also made applicable to other moneys which generally went into the public account and that that was likely to create trouble. It is in order to remove these difficulties that these provisions are now introduced in the original article.

[Motion was adopted. New article 263-A was added to the Constitution.]

ABOLITION OF PRIVY COUNCIL JURISDICTION BILL

***Mr. President :** The first item on the Order Paper today is notice of a motion by Dr. Ambedkar to introduce a Bill to abolish the jurisdiction of His Majesty in Council.

The Honourable Dr. B. R. Ambedkar : (Bombay : General) : Sir, I move for leave to introduce a Bill to abolish the jurisdiction of His Majesty in Council in respect of Indian appeals and petitions.

Mr. President : The question is :

“That leave be granted to introduce a Bill to abolish the jurisdiction of His Majesty in Council in respect of Indian appeals and petitions.”

(The motion was adopted.)

The Honourable Dr. B. R. Ambedkar : Sir, I introduce the Bill.

* * * * *

DRAFT CONSTITUTION

NEW PART XIV-A—(contd.)

†Mr. President : I think these are all the amendments. If I have left out any, the Member who has given notice of the amendments may point out otherwise they may be taken as withdrawn by leave of the Assembly.

I shall now put the amendments moved by Mr. Munshi. But, there is an amendment by Mr. Tyagi to number the paragraphs.

The Honourable Dr. B. R. Ambedkar : That is a matter we will look to later on.

Shri Mahavir Tyagi : It has been accepted, Sir.

*CAD, Vol. IX, 14th September 1949, p. 1425.

†Ibid., p. 1485.