

The Honourable Dr. B. R. Ambedkar : I do not think there is any substance in this particular point made by Mr. Kamath.

With regard to the question of the amount of salaries there have been a variety of views expressed in the House. My Friend Mr. Shibban Lal Saksena went to the length of saying that the President ought not to get more than one rupee. Well, I suppose, on that remuneration no one would be available to function as the President, except a wandering Sanyasi, and I have no doubt that a wandering Sanyasi would be the most unfit person to be the President of the Union, whatever may be his other virtues.

With regard to the judges' salary two questions have been raised. There are some here in this House who have said that the judges' salaries should be at a higher level than what is fixed in the Schedule. There are others who have said that the standard of salary we have fixed has no relation to the capacity of the country to pay. In my judgement, the slogan that anything that we could fix in this country should have relation to the income of the people is a good piece of political slogan, but I am not prepared to say that it is practical politics. Salaries in this country, as well as in every other country, most depend upon the law of supply and demand. Unfortunately or fortunately, there are many number of people who can be found suitable to function as Members of the Legislature, consequently we fix their salaries at a much lower level. Fortunately or unfortunately, the supply of persons who can function as judges is very limited. I do not propose to say that it is a rarity. But certainly it is a very difficult commodity to obtain and consequently we are required to pay the market price. I am sure that in my judgment the salary fixed in this Schedule conforms to what might be called the market price. Therefore, I do not think that there can be any serious quarrel on the level of salary that we have fixed.

Then I come to the amendment moved by my Friend, Mr. Himatsingka. I should like to say that he and I have the same case in mind and I have the greatest sympathy for the case he has in mind. But what he wants to do is to ask me to accept a general proposition, that is to say, a proposition saying "any judge appointed in any territory mentioned in Part I". I think it is not desirable to introduce in these clauses an amendment in general terms, for the simple reason that after the 31st October 1948, having regard to the provisions of our Constitution, there can be no distinction in the salary of judges on a provincial basis. All judges have been placed on the same basis irrespective of the High Court of the area within which that High Court is situated. Therefore, a general provision to remove any anomaly is not necessary because such an anomaly is not likely to recur.

The anomaly exists because in the Government of India Act certain provisions with regard to the salary of judges did make a distinction between province and province. What I would like to tell my Friend is this; that the Drafting Committee hopes that this particular case will be provided for in another manner. If that happened there would be no necessity of adopting this particular amendment and the individual affected thereby would also be benefited. But if the Drafting Committee finds that does not happen, then the Drafting Committee will reserve to itself the right of bringing in a specific amendment to remove the grievance of the specific individual we have in mind.

Before I close, I would like to ask your permission to introduce one or two phrases in the clause which have been inadvertently omitted. I refer to Part IV, paragraph 11 of sub-paragraph (2). I would like to introduce after the word “shall” in the seventh line the following words :

“In addition to the salaries specified in sub-paragraph (1) of this paragraph.”

I have also another amendment in sub-paragraph 3 of paragraph 11.1 I would omit the first “such” and after the word “judge” I would add :

“of the High Court.”

Shri H. V. Kamath : That is my amendment.

The Honourable Dr. B. R. Ambedkar : I accept it, and I now hope the House will accept the Schedule as amended.

Shri R. K. Sidhva : What about my amendment regarding the salaries and allowances of the President and the Governor ?

The Honourable Dr. B. R. Ambedkar : That will be decided by Parliament.

Mr. President : I shall now put the amendments to the Schedule according to the Parts. We are now on Part I of the Schedule.

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Mr. President : The third part to amendment 270 was the one accepted by Dr. Ambedkar. As it is, the third part reads :

“In sub-paragraph (2) of paragraph 11 in proposed Part IV of the schedule, after the words ‘specified in sub-paragraph 4(1) of this paragraph, shall’ add the words in addition to the salary specified in sub-paragraph (1) of this paragraph.”

The Honourable Dr. B. R. Ambedkar : I would like to have my own words.

†[*All the amendments of Dr. Ambedkar were adopted. The second Schedule as amended, was added to the Constitution.*]

*CAD, Vol. X, 12th October 1949, p. 148.

† *Ibid.*,

The Assembly re-assembled after Lunch at Four of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PART VI-A

***Mr. President :** We shall now take up Part VI-A.

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

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

PART VI-A

THE STATES IN PART III OF THE FIRST SCHEDULE

211 A. The provisions of Part VI Of this Constitution shall apply in relation to

Application of provisions
of Part VI to States in
Part III of the First
Schedule.

the States for the time being specified in Part III of
the First Schedule as they apply in relation to the
States for the time being specified in Part I of that
Schedule subject to the following modifications
and omissions, namely :—

- (1) For the word “Governor” wherever it occurs in the said Part VI, except where it occurs for the second time in clause (b) of article 209, the word “Rajpramukh” shall be substituted.
- (2) In article 128, for the word and figure “Part I” the word and figure “Part III” shall be substituted.
- (3) Articles 131, 132 and 134 shall be omitted.
- (4) In article 135,—
 - (a) in clause (1), for the words, “be appointed” the word “becomes” shall be substituted;
 - (b) for clause (3), the following clause shall be substituted, namely :—

“(3) The Rajpramukh shall be entitled without payment of rent to the use of his residences, and there shall be paid to the Rajpramukh such allowances as the President may, by general or special order, determine”;
 - (c) in clause (4), the words ‘emoluments and’ shall be omitted.
- (5) In article 136, after the words “senior-most judge of that court available” the words ‘or in such other manner as may be prescribed in this behalf by the President’ shall be inserted.
- (6) In article 144, the proviso to clause (1) shall be omitted.
- (7) In article 148, for clause (1) the following clause shall be substituted, namely :—

“(1) For every State there shall be a Legislature which shall consist of the Rajpramukh and—

 - (a) in the State of Mysore, two Houses;
 - (b) in other States, one House.”
- (8) In article 163, for the words “as are specified in the Second Schedule” the words “as the Rajpramukh may determine” shall be substituted.

- As will be seen, the underlying idea of this Part is that Part VI of this Constitution which deals with the Constitution of the States will now automatically apply under the provisions of article 211-A to States in Part III. But it is realized that in applying Part VI to the Indian States

which will be in Part III there are special circumstances for which it is necessary to make some provision and the purpose of this particular amendment 217 is to indicate those particular articles in which these amendments are necessary to be made in order to deal with the special circumstances of the States in Part III. Otherwise the States in Part III so far as their internal constitution is concerned will be on a par with the States in Part I.

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***Prof. Shibban Lal Saksena :** The amendment that I am moving is 288 of List XII.

Mr. President : I have just received it. You can move it.

Shri T. T. Krishnamachari : But that has not been moved.

The Honourable Dr. B. R. Ambedkar : How can you move it ?

Prof. Shibban Lal Saksena : I am not moving the amendment which the President read out. I am moving No. 288 of List XII.

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The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PART VI-A—(contd.)

†**Mr. President :** I think it would be better to take the other articles which are sought to be amended in connection with the States and take all the amendments, and then have the general discussion. I do not think it is necessary for Dr. Ambedkar to read the whole thing.

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

“That article 224 be omitted.”

“That article 225 be omitted.”

“That after article 235, the following new article be inserted, namely :—

‘235A. (1) Notwithstanding anything contained in this Constitution, a
 Armed forces in State for the time being specified in Part III of the
 States in part III of First Schedule having any armed force immediately
 the First Schedule. before the commencement of this Constitution may,
 until Parliament by law otherwise provides, continue
 to maintain the said force after such commencement
 subject to such general or special orders as the President may from time
 to time issue in this behalf.

(2) Any such armed force as is referred to in clause (1) of this article shall form part of the forces of the Union.’”

*CAD, Vol. X, 12th October 1949, p. 158.

†*Ibid*, pp. 175-177.

“That for article 236, the following article be substituted, namely :—

<p>236. The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake executive, legislative or judicial functions in relation to any territory not being part of the territory of India.</p>	<p>any territory not being part of the territory of India undertake any executive, legislative or judicial functions vested in the Government of such territory, but every such agreement shall be subject to and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force.”</p>
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“That article 237 be omitted.”

“That after article 274D, the following new articles be inserted, namely :—

<p>‘274DD. Notwithstanding anything contained in the foregoing provisions Power of certain States in Part III of the First Schedule to impose restrictions on trade and commerce by the levy of certain taxes and duties on goods imported into or exported from such States.</p>	<p>of this Part, the President may enter into an agreement with a State for time being specified in Part III of the First impose restrictions Schedule with respect to the levy and collection of any tax or duty leviable by the State on goods imported into the State from other States or on goods exported from the State to other States, and any agreement entered into under this article shall continue in force for such period not exceeding ten years from the commencement of this Constitution as may be</p>
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specified in the agreement:

Provided that the President may at any time after the expiration of five years from such commencement terminate or modify any such agreement if after consideration of the report of the Finance Commission constituted under article 260 of this Constitution he thinks it necessary to do so.

<p>‘274DDD. Nothing in articles 274A and 274C of this Constitution shall affect Effect of articles 274A and 274C on existing laws.</p>	<p>the provisions of any existing law except in so far as the President may by order otherwise provide.</p>
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“That after article 302, the following new article be inserted, namely :—

<p>‘302A. In the exercise of the power of Parliament or of the Legislature of Rights and privileges of Rulers of Indian States.</p>	<p>a State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in article 267A* of this Constitution with respect to the personal rights, privileges and dignities of the Ruler of an Indian State.”</p>
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“That after article 306, the following new articles be inserted :—

<p>“306B. Notwithstanding anything contained in this Constitution, during Temporary provisions with respect to States in Part III of the First Schedule.</p>	<p>a period of ten years from the commencement thereof, or during such longer or shorter period as Parliament may by law Provide in respect of any State, the Government of every State for the time being specified in Part III of the First Schedule shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given by the President, and any failure to comply with such directions shall be deemed to be a failure to carry out the Government of the State in accordance with the provisions of this Constitution :</p>
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“Provided that the President may by order direct that the provisions of this article shall not apply to any State specified in the order.”

“That for clause (1) of article 258, the following clause be substituted :—

‘(1) Notwithstanding anything contained in this Chapter, the Government of India may, subject to the provisions of clause (2) of this article, enter into an agreement with the Government of a State for the time being specified in Part III of the First Schedule with respect to—

(a) the levy and collection of any tax or duty leviable by the Government of India in such State and for the distribution of the proceeds thereof otherwise than in accordance with the provisions of this Chapter;

(b) the grant of any financial assistance by the Government of India to such State in consequence of the loss of any revenue which that State used to derive from any tax or duty leviable under this Constitution by the Government of India or from any other sources;

(c) the contribution by such State in respect of any payment made by the Government of India under clause (1) of article 267A of this Constitution, and when an agreement is so entered into, the provisions of this Chapter shall in relation to such State have effect subject to the terms of such agreement.’ ”

“That in chapter I of Part IX, after article 267, the following new article shall be inserted, namely :—

‘267A. (1) Where under any covenant or agreement entered into by the Ruler of any Indian State before the commencement of this Constitution, the payment of any sums, free of tax, Privy purse sums of Rulers. has been guaranteed or assured by the Government of the Dominion of India to any Ruler of such State as Privy Purse—

(a) such sums shall be charged on, and paid out of, the Consolidated Fund of India; and

(b) the sums so paid to any Ruler shall be exempt from all taxes on income.

(2) Where the territories of any such Indian State as aforesaid are comprised within a State specified in Part I or Part III of the First Schedule there shall be charged on, and paid out of, the Consolidated Fund of that State such contribution, if any, in respect of the payments made by the Government of India under clause (1) of this article and for such period as may, subject to any agreement entered into in that behalf under clause (1) of article 258 of this Constitution, be determined by order of the President.’ ”

“That after article 270, the following new article be inserted :—

‘270A. (1) As from the commencement of this Constitution—

(a) all assets relating to any of the matters enumerated in the Union List Succession to property assets, liabilities and obligations of Indian States. vested immediately before such commencement, in any Indian State corresponding to any State for the time obligations of being specified in Part III of the First Schedule shall be vested in the Government of India, and

(b) all liabilities relating to any of the said matters of the Government of any Indian State corresponding to any State for the time being specified in Part III of the First Schedule shall be the liabilities of the Government of India, subject to any agreement entered into in that behalf by the Government of India with the Government of that State.

(2) As from the commencement of this Constitution the Government of each State for the time being specified in Part III of the First Schedule shall be the successor of the Government of the corresponding Indian State as regards all property, assets, liabilities and obligations other than the assets and liabilities referred to in clause (1) of this article.’ ”

Shri Brajeshwar Prasad (Bihar : General) : Sir, I would like to suggest that these two amendments No. 218 and 219 relating to articles 224 and 225 should be disposed of first, or the amendments standing in the name of honourable Members to these articles will also have to be moved.

Mr. President : They have to be deleted. It does not take any time to dispose them of.

[Article 224 was deleted from the Constitution.]

ARTICLE 306B

***Mr. President** : Amendment No. 222 : Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : I have already moved that.

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The Assembly re-assembled after Lunch at Four of the Clock, Mr. President (the Honourable Dr. Rajendra Prasad) in the Chair. (13th October 1949).

ARTICLE 3

(REOPENED)

†Mr. President : We shall now take up those consequential amendments No. 226 etc.

The Honourable Dr. B. R. Ambedkar : I would ask Mr. T. T. Krishnamachari to move the amendments on my behalf.

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ARTICLE 296

‡Mr. President : We shall now take up article 296; amendment No. 15. We have got a large number of amendments. Some of the amendments are amendments to the amendment to be moved on behalf of the Drafting Committee. Some are amendments to other amendments which are to be moved by other Members. Many of them overlap. Therefore, I think Members will themselves exercise a certain amount of discretion in not insisting upon amendments which are only overlapping and which are covered by other amendments.

Shri H. V. Kamath (C. P. & Berar: General): We shall abide by your ruling, Sir.

Mr. President : I do not want to give any ruling if I can help it.

*CAD, Vol. X, 13th October 1949, p. 183.

†*Ibid.*, p. 210.

‡*Ibid.*, 14th October 1949, p. 229.

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

“That with reference to amendment No. 3163 of the List of amendments for article 296 the following article be substituted:—

‘296. The claims of the Claims of Scheduled Castes and Scheduled Tribes to services and posts	members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.’ ”
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***Mr. President** :... The next amendment which purpoorts to substitute is No.23, which stands in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : I do not propose to move it.

Mr. President : Then No. 24.

The Honourable Dr. B. R. Ambedkar : Not being moved.

[The amendment of Dr. Ambedkar mentioned above was adopted Article 296, as amended, was added to the Constitution.]

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ARTICLE 299

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†**Sardar Hukam Singh** : My question has not been answered. Have these four Sikh Classes been included in the Scheduled Castes.

The Honourable Dr. B. R. Ambedkar : Of course, they will be.

Shri K. M. Munshi : The President is empowered to issue, under article 300-A, a list of Scheduled Castes. In that, these Scheduled Castes will find a place.

Sardar Hukam Singh : Where is the guarantee that the President will include these people in that list ? We have given up all safeguards to secure this in the Constitution. That has not been done.

Shri K. M. Munshi : The President has that power. The President is sure to keep to the pledge which has been given. This decision finds a place in the Advisory Committee’s Report that the Sikh Scheduled Castes will form part of the Scheduled Castes and provided with the safeguards under article 296 which we have already passed. There is no question of going back upon that pledge, you may take it from me. I repeat the Sikh Scheduled Castes will be included in the list of Scheduled Castes and Scheduled Tribes in the Punjab.

[Article 299, as amended, was added to the Constitution.]

*CAD, Vol. X, 14th October 1949, pp. 236-237.

†*Ibid.*, p. 262.

ARTICLE 48

***Shri H. V. Kamath :** Dr. Ambedkar was quite clear when he gave his answer to me the other day, but now he seems to have some doubt in his own mind, and he has come now with an amendment seeking to provide residences to Governors and the President, without payment of rent. We should, proceed logically, provide rent-free accommodation to Ministers also.

The Honourable Dr. B. R. Ambedkar : Sir, if I may say a word. This amendment is merely consequential or analogous to the provision we have made with regard to the Rajpramukhs. In the clauses that were moved the other day with regard to the residences of Rajpramukhs, we have definitely stated that they will be rent-free. On comparing the similar clauses relating to the Governors, we found that somehow there was a slip and we did not mention rent-free houses. It is to make good that lacuna, and to bring the cases of the Governors and the President on the same footing as the Rajpramukhs that this amendment is needed.

With regard to the question of Ministers, that will be regulated by law made by Parliament. Whether Parliament will be prepared to give them salary with house, and if with house, whether it will be free of rent or with rent, are all matters that will be regulated by Parliament, because the offices of Ministers are political offices dependent upon the goodwill and the confidence of the House, and it seems to me that Mr. Kamath will very easily understand that it would be not proper to remove the Ministers from the purview and jurisdiction of Parliament.

Mr. President: I would like to put it to vote.

The question is :

“That in clause (3) of article 48, for the words ‘The President shall have an official residence, the words ‘The President shall be entitled to the use of the Government House without payment of rent’ be substituted.”

[The amendment was negatived.]

Mr. President : Then I put the amendment moved by Shri T. T. Krishnamachari.

The question is :

“That in clause (3) of article 48, for the words ‘The President shall have an official residence’ the words ‘The President shall be entitled without payment of rent to the use of his official residences’ be substituted.”

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, I move amendment No. 360.

“That clause (5a) of article 62 be omitted.”

The reason for this is, as I told the House the other day on behalf of Dr. Ambedkar, that we do not propose to move Schedule IIIA and also the Schedule which deals with Instructions to Governors. The clause in question reads thus: “(5a) In the choice of his ministers and in the exercise of his other functions under this constitution, the President shall be generally guided by Instructions set out in Schedule IIIA.” Actually, since Schedule IIIA is not moved, this clause becomes superfluous. Therefore I have moved for its omission.

Shri H. V. Kamath : Sir, you might remember that some months ago you raised the important point whether the President would always be bound to accept the advice of his Council of Ministers. Our Constitution is silent on that point. It only says that there shall be a Council of Ministers to aid and advise the President. Dr. Ambedkar at that time undertook to insert some provision somewhere in the Constitution in order to make this point clear. That is my recollection. The President will kindly say whether I am right or wrong. Nowhere in the Draft Constitution has this point been clarified. I hope Dr. Ambedkar will do so, and not leave it vague as at present.

***The Honourable Dr. B. R. Ambedkar :** Sir, I wish I had notice of this, so that I could give the necessary quotations. But I can make a general statement. The point whether there is anything contained in the Constitution which would compel the President to accept the advice of the Ministry is really a very small one as compared with the general question. I propose to say something about the general question.

Every Constitution, so far as it relates to what we call parliamentary democracy, requires three different organs of the State, the executive, the judiciary and the legislature. I have not anywhere found in any Constitution a provision saying that the executive shall obey the legislature, nor have I found anywhere in any Constitution a provision that the executive shall obey the judiciary. Nowhere is such a provision to be found. That is because it is generally understood that the provisions of the Constitution are binding upon the different organs of the State. Consequently, it is to be presumed that those who work the Constitution, those who compose the Legislature and those who compose the executive and the judiciary know their functions, their limitations and their duties. It is therefore to be expected that if the executive is honest in working the Constitution, then the executive is bound to obey the Legislature without any kind of compulsory obligation laid down in the Constitution.

Similarly, if the executive is honest in working the Constitution, it must act in accordance with the judicial decisions given by the Supreme Court.

*CAD, Vol. X, 14th October 1949, pp. 269-70.

Therefore my submission is that this is a matter of one organ of the State acting within its own limitations and obeying the supremacy of the other organs of the State. In so far as the Constitution gives a supremacy to that is a matter of constitutional obligation which is implicit in the Constitution itself.

I remember, Sir, that you raised this question and I looked it up and I had with me two decisions of the King's Bench division which I wanted one day to bring here and refer in the House so as to make the point quite clear. But I am sorry I had no notice today of this point being raised. But this is the answer to the question that has been raised.

No constitutional Government can function in any country unless any particular constitutional authority remembers the fact that its authority is limited by the Constitution and that if there is any authority created by the Constitution which has to decide between that particular authority and any other authority, then the decision of that authority shall be binding upon any other organ. That is the sanction which this Constitution gives in order to see that the President shall follow the advice of his Ministers, that the executive shall not exceed in its executive authority the law made by Parliament and that the executive shall not give its own interpretation of the law which is in conflict with the interpretation of the judicial organ created by the Constitution.

Shri H. V. Kamath : If in any particular case the President does not act upon the advice of his Council of Ministers, will that be tantamount to a violation of the Constitution and will he be liable to impeachment?

The Honourable Dr. B. R. Ambedkar : There is not the slightest doubt about it.

The Honourable Shri K. Santhanam (Madras : General): I may add to Dr. Ambedkar's statement, and point out that there are certain marginal cases in which the President may not accept the advice of the Ministers. When a Ministry wants dissolution it will be open to the President to say that he will instal another Ministry which has the confidence of the majority and continue to run the administration. There are some marginal cases where he may have in the interests of responsible government itself to over-ride the advice of his responsible Ministers.

The Honourable Dr. B. R. Ambedkar : I would only like to say one thing in reply. That was once the position. It has been defined very clearly in Macaulay's History of England what the King can do. But I say that these are matters of convention. In Canada this question arose when Mr. Mackenzie King wanted dissolution. The question was whether the Governor-General was bound to give a decision or whether he was free

to call the leader of the Opposition to form an alternative Ministry. On the advice of the British Government, the Governor-General accepted the advice of Mr. Mackenzie King and dissolved the Parliament.

Shri H. V. Kamath : Instead of Dr. Ambedkar's *obiter dictum* why not have a Constitutional provision ?

The Honourable Dr. B. R. Ambedkar : We cannot discuss this question in this way.

[Amendment No. 360 mentioned earlier of Mr. T. T. Krishnamachari was adopted. Clause (5a) of Article 62 was omitted.]

ARTICLE 303

***The Honourable Shri K. Santhanam :** May I enquire whether a person, who has lost his State by merger in a province continues to be a Ruler or he has become successor ?

Shri T. T. Krishnamachari : The whole difficulty is, this is rather intricate. It is baffling. I admit that a person who has lost his State is nevertheless a Ruler, under the definition in (nn), and also for the purpose of article 267-A.

The Honourable Shri K. Santhanam : Why not his son also be a Ruler ?

Shri T. T. Krishnamachari : Might be.

The Honourable Dr. B. R. Ambedkar : If I may say so, this definition of Ruler is intended only for the limited purpose of making payments out of the privy purse. It has no other reference at all.

The Honourable Shri K. Santhanam : My point is whether it will be so construed as to mean two people at the same time entitled to the allowances. I want to ensure that at a time there will be only one person who will be entitled under the covenant to receive payment.

Mr. President: I think that is just secured by this, because the person recognised as the Ruler alone will be entitled to the payment.

The Honourable Dr. B. R. Ambedkar : That would be governed by the provisions regarding recognition. I am sure the President is not going to recognise two or three or four persons. This expression is deliberately used in order to give the power to the President.

The Honourable Shri K. Santhanam : He might be called the Ruler or successor.

Mr. President : Mr. Santhanam, I think that is quite clear. ...I do not suppose any further discussion is necessary. I shall put it to vote.

[The amendment of Shri T. T. Krishnamachari to substitute sub-clause (nn) of clause (1) of Article 303 was adopted.]

***Mr. President :** We then go to the Schedule. ...

FIRST SCHEDULE

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

“That for the First Schedule the following be substituted :—

“FIRST SCHEDULE”

(ARTICLES 1 AND 4)

THE STATES AND THE TERRITORIES OF INDIA

PART I

<i>Names of States</i>	<i>Names of corresponding Provinces</i>
1. Assam	Assam
2. Bengal	West Bengal
3. Bihar	Bihar
4. Bombay	Bombay
5. Koshal-Vidarbha	Central Provinces and Berar
6. Madras	Madras
7. Orissa	Orissa
8. Punjab	East Punjab
9. United provinces.	United Provinces.

TERRITORIES OF STATES

The territory of the State of Assam shall comprise the territories which immediately before the commencement of this Constitution were comprised in the province of Assam, the Khasi States and the Assam Tribal Areas.

The territory of the State of Bengal shall comprise the territory which immediately before the commencement of this Constitution was comprised in the Province of West Bengal.”

Shri B. Das (Orissa : General) : We wanted Utkal to be the name of ORISSA.

The Honourable Dr. B. R. Ambedkar : You may move an amendment.

“The territory of the State of Bombay shall comprise the territory which immediately before the commencement of this Constitution was comprised in the Province of Bombay and the territories which by virtue of an order made under section 290A of the Government of India Act, 1935, were immediately before such commencement being administered as if they formed part of that Province or which immediately before such commencement were being administered by the Government of that Province under the provisions of the Extra-Provincial Jurisdiction Act, 1947.

The territory of each of the other States shall comprise the territories which immediately before the commencement of this constitution were comprised in the corresponding Province and the territories which, by virtue of an order made under section 290A of the Government of India Act, 1935, were immediately before such commencement being administered as if they formed part of that Province.

*CAD, Vol. X, 14th October 1949, pp. 286-288.

PART II.

Names of States.

1. Ajmer
2. Bhopal
3. Bilaspur
4. Coorg
5. Cooch-Behar
6. Delhi
7. Himachal Pradesh
8. Kutch
9. Manipur
10. Rampur
11. Tripura

TERRITORIES OF STATES

The territory of the State of Ajmer shall comprise the territories which immediately before the commencement of this Constitution were comprised in the Chief Commissioner's Provinces of Ajmer-Merwara and Panth Piploda.

The territory of each of the States of Coorg and Delhi shall comprise the territory which immediately before the commencement of this Constitution was comprised in the Chief Commissioner's Province of the same name.

The territory of each of the other States shall comprise the territories which, by virtue of an order made under section 290 A of the Government of India Act, 1935, were immediately, before the commencement of this Constitution administered as if they were a Chief Commissioner's Province of the same name.

PART III.

Names of States.

1. Hyderabad
2. Jammu and Kashmir
3. Madhya Bharat
4. Mysore
5. Patiala & East Punjab States Union
6. Rajasthan
7. Saurashtra
8. Travancore-Cochin
9. Vindhya Pradesh

TERRITORIES OF STATES

The territory of the State of Rajasthan shall comprise the territories which immediately before the commencement of this Constitution were comprised in the United State of Rajasthan and the territories which immediately before such commencement were being administered by the Government of that State under the provisions of the Extra-Provincial Jurisdiction Act, 1947.

The territory of the State of Saurashtra shall comprise the territories which immediately before the commencement of this Constitution were comprised in the United States of Kathiawar (Saurashtra) and the territories which immediately before such commencement were being administered by the Government of that State under the provisions of the Extra-Provincial Jurisdiction Act, 1947.

The territory of each of the other states shall comprise the territory which immediately before the commencement of this Constitution was comprised in the corresponding Indian State.

PART IV

The Andaman and Nicobar Islands.”

Sir, I do not think the amendment which I have moved calls for any explanation.

Shri Jainarain Vyas : I would like to know if Sirohi State has been put in anywhere.

The Honourable Dr. B. R. Ambedkar : Sirohi, I understand is administered under the Extra-Provincial Jurisdiction Act, 1947, partly by Bombay and partly by Rajasthan. That is the reason why it has not been separately mentioned.

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ARTICLE 264A

***The Honourable Dr. B. R. Ambedkar (Bombay: General) :** Sir, I move amendment No. 425.

“That in amendment No. 307 of List XIII (Second Week), for the proposed article 264A the following be substituted :—

‘264A. (1) No law of a State shall impose, or authorise the imposition of a Restriction as to imposition of tax on Sale or purchase of goods. tax on the sale or purchase of goods where such sale or purchase takes place—

(a) outside the State; or
(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

Explanation.—For the purposes of sub-clause (a) of this clause a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State.

(2) Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce :

Provided that the President may by order direct that any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of this Constitution shall, notwithstanding that the imposition of such tax is contrary to the provisions of this clause, continue to be levied until the thirty-first day of March, 1951.

(3) No law made by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent.’ ”

*CAD, Vol. X, 16th October 1949, pp. 325-327.

Sir, as everyone knows, the sales tax has created a great deal of difficulty throughout India in the matter of freedom of trade and commerce. It has been found that the very many sales taxes which are levied by the various Provincial Governments either cut into goods which are the subject matter of imports or exports, or cut into what is called inter-State trade or commerce. It is agreed that this kind of chaos ought not to be allowed and that while the provinces may be free to levy the sales tax there ought to be some regulations whereby the sales tax levied by the provinces would be confined within the legitimate limits which are intended to be covered by the sales tax. It is, therefore, felt that there ought to be some specific provisions laying down certain limitations on the power of the provinces to levy sales tax.

The first thing that I would like to point out to the House is that there are certain provisions in this article 264A which are merely reproductions of the different parts of the Constitution. For instance, in sub-clause (1) of article 264A as proposed by me, sub-clause (b) is merely a reproduction of the article contained in the Constitution, the entry in the Legislative List that taxation of imports and exports shall be the exclusive province of the Central Government. Consequently so far as sub-clause (1)(b) is concerned there cannot be any dispute that this is in any sense an invasion of the right of provinces to levy as sales tax.

Similarly, sub-clause (2) is merely a reproduction of Part XA which we recently passed dealing with provisions regarding inter-State trade and commerce. Therefore so far as sub-clause (2) is concerned there is really nothing new in it. It merely says that if any sales tax is imposed it shall not be in conflict with the provisions of Part XA.

With regard to sub-clause (3) it has also been agreed that there are certain commodities which are so essential for the life of the community throughout India that they should not be subject to sales tax by the province in which they are to be found. Therefore it was felt that if there was any such article which was essential for the life of the community throughout India, then it is necessary that, before the province concerned levies any tax upon such a commodity, the law made by the province should have the assent of the President so that it would be possible for the President and the Central Government to see that no hardship is created by the particular levy proposed by a particular province.

The proviso to sub-clause (2) is also important and the attention of the House might be drawn to it. It is quite true that some of the sales taxes which have been levied by the provinces do not quite conform to the

provisions contained in article 264A. They probably go beyond the provisions. It is therefore felt that when the rule of law as embodied in the Constitution comes into force all laws which are inconsistent with the provisions of the Constitution shall stand abrogated. On the date of the inauguration of the Constitution this might create a certain amount of financial difficulty or embarrassment to the different provinces which have got such taxes and on the proceeds of which their finances to a large extent are based. It is therefore proposed as an explanation to the general provisions of the Constitution that notwithstanding the inconsistency or any sales tax imposed by any province with the provisions of article 264A, such a law will continue in operation until the 31st day of March 1951, that is to say, we practically propose to give the provinces a few months more to make such adjustments as they can and must in order to bring their law into conformity with the provisions of this article.

I do not think any further explanation is necessary so far as my amendment is concerned but if any point is raised I shall be very glad to say something in reply to it when I reply to the debate.

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***Shri Mahavir Tyagi :** ...There are so many defects in the present system of sales tax. Now, in Delhi, there is no sales tax; in the United Provinces, there is a sales tax on motor car, radios, on bicycles and other things. Whenever any citizen in Meerut wants a motor car or a bicycle, he does not go to the local shop there. The local agency suffers. He comes to Delhi. I see Dr. Ambedkar beckoning me to keep quite; he is using undue influence.

The Honourable Dr. B. R. Ambedkar : I have followed the point.

Shri Mahavir Tyagi : Have you followed it? Have you also appreciated it? Are you prepared to accommodate me? You have got the delegates of the People behind you. Dr. Ambedkar, I can assure you, if you are just, if you recognise justice, you might become later on the Supreme Judge of India in your life, if you do justice to the citizen. I submit, Sir, this is the manner in which that tax is being levied....

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†The Honourable Dr. B. R. Ambedkar : Sir, there are three amendments before the House. The first is the amendment of my Friend Prof. Shibban Lal Saxena. According to his amendment, what he proposes is that the power practically to levy sales tax should be with the Parliament.

*CAD, Vol. X, 16th October 1949, pp. 330-331.

†*Ibid.*, pp. 339-340.

There are two fundamental objections to this proposal. In the first place, this matter was canvassed at various times between the Provincial Premiers and the Finance Department of the Government of India in which the proposal was made that in order to remove the difficulties that arise in the levy of the sales tax it would be better if the tax was levied and collected by the Centre and distributed among the Provinces either according to some accepted principles or on the basis of a report made by some Commission. Fortunately or unfortunately, the Provincial premisers were to a man opposed to this principle and I think, Sir, that their decision was right from my point of view.

Although I am prepared to say that the financial system which has been laid down in the scheme of the Draft Constitution is better than any other special system that I know of. I think it must be said that it suffers from one defect. That defect is that the Provinces are very largely dependent for their resources upon the grants made to them by the Centre. As well as know, one of the methods by which a responsible Government works is the power vested in the Legislature to throw out a Money Bill. Under the scheme that we have proposed; a Money Bill in the Province must be of a very meagre sort. The taxes that they could directly levy are of a very minor character and the Legislature may not be in a position to use this usual method of recording its "no confidence" in the Government by refusing taxes. I think, therefore, that while a large number of resources on which the Provinces depend have been concentrated in the Centre, it is from the point of view of constitutional government desirable at least to leave one important source of revenue with the Provinces. Therefore, I think that the proposal to leave the sales tax in the hands of the Provinces, from that point of view, is a very justifiable thing. That being so, I think the amendment of my Friend Prof. Shibban Lal Saxena falls to the ground.

With regard to the amendment of my Friend Mr. Tyagi, I would like to say that I am in great sympathy with what he has said. There is no doubt about it that the sales tax when it began in 1937 was an insignificant source of revenue. I have examined the figures so far as Bombay and Madras are concerned. The tax in the year 1937 in Madras was somewhere about Rs. 2.35 crores. Today it is very nearly Rs. 14 crores. With regard to Bombay the same is the situation, namely, that the tax about Rs. 3.5 crores in 1937 and today it is somewhere in the neighbourhood of Rs. 14 crores. This must be admitted as a very enormous increase and I do not think that it is desirable to play with the sales tax for the purpose of

raising revenue for the simple reason that a taxation system can be altered on the basis, so far as I know, of two principles. One is the largest equity between the different classes. If one class is taxed more than another class it is justifiable to employ the taxation system to equalise the burden.

The second important principle which, I think, is accepted all over the world is that no taxation system should be so manipulated as to lower the standard of living of the people, and I have not the slightest doubt in my mind that the sales tax has a very intimate connection with the standard of living of the people of the province. But, with all the sympathy that I have with my friend, I again find that if his amendment was accepted it would mean that the power of the provinces to levy the sales tax would not be free and unfettered. It would be subject to a ceiling fixed by Parliament. It seems to me that if we permit the sales tax to be levied by the provinces, then the provinces must be free to adjust the rate of the sales tax to the changing situation of the province, and, therefore, a ceiling from the Centre would be a great handicap in the working of the sales tax. I have, no doubt that my Friend Mr. Tyagi, if he goes into the Provincial legislature, will carry his ideas through by telling the Provincial Governments that the sales tax has an important effect on the standard of living of the people, and therefore, they ought to be very careful as to where they fix the pitch.

Shri Mahavir Tyagi : Have I become so inconvenient to you ?

The Honourable Dr. B. R. Ambedkar : Not at all. If I were a Premier, I would have taken the same attitude as you have taken.

Now, coming to the amendment of my honourable Friend Pandit Kunzru, I am inclined to think that the purpose of his amendment is practically carried out in the explanation to sub-clause (1) where also we have emphasised the fact that the sales tax in its fundamental character must be a tax on consumption and I do not think that his amendment is going to improve matters very much.

There is only one point, I think, about which I should like to say a word. There are, I know, some friends who do not like the phraseology in sub-clause (1), in so far as it applies, "in the course of export and in the course of import." Now, the Drafting Committee has spent a great deal of time in order to choose the exact phraseology. So far as they are concerned, they are satisfied that the phraseology is as good as could be invented. But I am prepared to say that the Drafting Committee will further examine this particular phraseology in order to see whether some other phraseology could not be substituted, so as to remove the point of

criticism which has been levelled against this part of the article. Sir, I hope the House will now accept the amendment.

Mr. President: Before putting the proposition moved by Dr. Ambedkar to vote, I desire to say a few words, particularly because I see in front of me the Honourable the Finance Minister. I do not wish to say anything either in support of or in opposition to the article which has been moved, but I desire to point out that there is a considerable feeling in the provinces that their sources of revenue have been curtailed a great deal, and also, particularly among the provinces, which are poor, that the distribution of the income-tax is not such as to give them satisfaction. I desire to ask the Finance Minister to bear this in mind when he comes to consider the question of the distribution of the income-tax, so that it may not be said that the policy of the Government of India is such as to give more to those who have much and to take away the little from those who have little.

I shall now put the various amendments to vote.

All amendments were negatived.

[Original proposition moved by Dr. Ambedkar was adopted. Article 264-A, as amended, was added to the constitution.]

***The Honourable Dr. B. R. Ambedkar :** I would like you to take up article 280-A.

Pandit Hirday Nath Kunzru : I strongly object to that article being taken up today. I received the amendment only this morning. The matter with which it deals is a very important one and we should be allowed some time to consider it and to put forward amendments, if we want to do so.

Mr. Naziruddin Ahmad : In addition, this article proposes to introduce a new kind of emergency unknown in any system.

The Honourable Dr. B. R. Ambedkar : Sir, I hope you will not allow these technicalities to stand in the way of the business of the House. Now, even if the honourable Member got the amendment at nine o'clock, from nine to twelve he had time. I do not think there is anything obscure in this amendment. A man of much less intelligence than my honourable Friend Pandit Kunzru could understand it on first reading. I have no doubt about it.

Pandit Hirday Nath Kunzru : Sir, it is a very important matter and Dr. Ambedkar's impatience and rudeness should not be allowed to override the rights of the Members—rights which they clearly enjoy under the rules. I demand, Sir, that we should be given more time to consider

this amendment notwithstanding the obvious desire of Dr. Ambedkar to rush the amendment through the House.

Mr. President : I would suggest that we go in the order in which it is on the agenda and take up article 274-DD.

The Honourable Dr. B. R. Ambedkar : I am prepared to do that, Sir, but I must say that we are so much pressed for time that I do not think that these technicalities ought to be given more importance than they deserve.

Pandit Hirday Nath Kunzru : It is a pity that the Chairman of the Drafting Committee, who, by virtue of his position may be supposed to appreciate the rights of others, makes light of them.

ARTICLE 274-DD.

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

“That with reference to amendment No. 400 of List XVII (Second Week), after article 274D, the following article be inserted :—

‘274DD. Notwithstanding anything contained in the foregoing provisions of this Part or in any other provisions of this Constitution, any State which before the commencement of institution was levying any tax or duty on the import of goods into the State from other States or on the export of goods from the State to other States may, if an agreement in that behalf has been entered into between the Government of India and Government of that State, continue to levy and collect such tax of duty subject to the terms of such agreement and for such period not exceeding ten years from the commencement of this Constitution as may be specified in the agreement :	Power of certain States in Part III of the First Schedule in impose restrictions on trade and commerce by the levy of certain taxes and duties on the import of goods into or the export of goods from such States.
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Provided that the President may at any time after the expiration of five years from such commencement terminate or modify any such agreement if, after consideration of the report of the Finance Commission constituted under article 260 of this Constitution, he thinks it necessary to do so.’ ”

Sir, this new article is a mere consequential amendment to article 258, which the House has already accepted, whereby the power is given to the Government of India to enter into agreement with States in Part III for the purposes of making certain financial adjustments during a temporary period.

[Article 274DD was adopted and added to the constitution.]

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*CAD, Vol. X, 16th October 1949, p. 342.

†*Ibid.*,

***The Honourable Dr. B. R. Ambedkar :** If my honourable Friend Pandit Kunzru has now no objection we may proceed with the new article 280A. He has had another half an hour.

Mr. President : I think we had better take it up a little later.

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ARTICLE 280A

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

“That after article 280, the following new article be inserted :

‘280-A. (1) If the President is satisfied that a situation has arisen whereby the Provisions as financial stability or credit of India or of any part of the to financial territory thereof is threatened, he may by a proclamation emergency. make a declaration to that effect.

(2) The provisions of clause (2) of article 275 of this constitution shall apply in relation to a proclamation issued under clause (1) of this article as they apply in relation to a Proclamation of Emergency issued under clause (1) of the said article 275.

(3) during the period any such proclamation as is mentioned in clause (1) of this article is in operation, the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may be necessary and adequate for the purpose.

(4) Notwithstanding anything contained in this Constitution—

(a) any such direction may include—

(i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State;

(ii) a provision requiring all money bills or other bills to which the provisions of article 182 of this Constitution apply to be reserved for the consideration of the President after they are passed by the Legislature of the State;

(b) it shall be competent for the President during the period any proclamation issued under clause (1) of this article is in operation to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the judges of the Supreme Court and the High Courts.

(5) Any failure to comply with any directions given under clause (3) of this article shall be deemed to be a failure to carry on the Government of the State in accordance with the provisions of this Constitution.’”

Sir, having regard to the present economic and financial situation in this country there can hardly be any Member of this Assembly who would dispute the anxiety of some such provision as is embodied in this new article 280A and I therefore, do not propose to spend any time in giving any justification for the inclusion of this article in our Draft Constitution. All that I propose to say is this, that this article more or less follows the pattern

*CAD, Vol. X, 16th October 1949, p. 345.

†*Ibid.*, p. 361.