it would be better if the matter was brought before Parliament and sanction of Parliament was obtained and that is the reason why the Bill has been brought forward.

Now, with regard to the Rehabilitation Finance Corporation there can be no manner of doubt that this thing applies only to office of profit under the Government whether it is the Central Government or the State Government. It does not apply in office of profit under say, for instance the Sindri Corporation, or the Damodar Valley Corporation, or various other Corporations which have been created by Government.

Shri Sondhi: Sindri is not a Corporation.

Dr. Ambedkar : I was only quoting it by way of illustration. I am only making a general proposition that so far as office of profit under a corporation is concerned, a person is not affected by anything that is said or done under Article 102 of the Constitution. Consequently it was unnecessary to make any reference or provision in this Bill with regard to those Members of Parliament who may be holding office of profit under Rehabilitation Finance or various other corporations to which reference has been made.

My hon. friend Pandit Thakur Das Bhargava said that the Government of India has been acting in a somewhat erratic, if not ridiculous, manner—asking members to return the money and then again requesting them to receive it back. Well, I suppose whoever the officer was who was responsible for this kind of thing was undoubtedly under the impression that the office of profit was an office of profit, whether it was under the Government of India or under a Corporation. That mistake was discovered and I think rectification was made and I am sure about it that such a mistake would not be repeated hereafter. That is the reason why no reference has been made in the Bill with regard to the Rehabilitation Finance or other Corporations.

With regard to the long list which my hon. friend. Mr. Sidhva has given in his amendment, I should like to say that there again the same thing applies. The advice which the Law Ministry received was that the allowances paid to

these members were not such as to include profit or something more than actual expenses. On the view that we have taken that they are not office of profit, we do not think it desirable to enlarge the list by including in that category persons or officers to whom Mr. Sidhva refers in the amendment that he has given.

Pandit Kunzru: May I point out one thing—that is that the allowances which these members received exceeded the limit which I understand has now been fixed by the Finance Ministery.

Dr. Ambedkar: It might be so. But when the Bill says that according to it members of certain committees have incurred a disability and that disability shall be removed, the proper construction to put upon that clause would be that no other member of the Committee was disqualified and therefore, the Bill made no reference to it.

Then with regard to the general proposition which my friend Mr. Sidhva was enunciated in his second amendment.....

Pandit Kunzru : Will my hon. Friend kindly explain what are the special reasons that made the members of the committees referred to in the Bill liable to disqualification ?

Dr. Ambedkar: Because there is an element of profit in the payment that was made to them.

Pandit Kunzru: That is the allowance they received exceeded Rs. 20 ?

Dr. Ambedkar: We thought that there was a certain amount of doubt in their case and the Bill seeks to remove that doubt.

With regard to the general proposition which my friend Mr. Sidhva has enunciated, in amendment No. 2, that we should have a general rule and let the general rule apply so that there may be no more necessity for Bills of this kind. I think it is too tall an order for me to accept, for the simple reason that although for the monent and for the purposes of this Bill we have accepted a certain basis of remuneration—

and it is on that basis of remuneration we have come to the conclusion as to which particular committee requires exemption, which does not require exemption—it is perfectly possible for Parliament or for Government to change the basis of that remuneration. And if they change the basis of the remuneration the general proposition would create so many difficulties for us, because the general proposition would be at variance with the actualities of the case. It is therefore proper, as I have always stated, for Parliament to retain this power in its hands. After all, the Government cannot declare that so and so is disqualified. Nobody has a right to go to the Supreme Court to say that a certain Member is disqualified. The whole matter, ultimately, is in the hands of Parliament, and we want to leave the matter in the hands of Parliament, so that whenever a case arises Parliament may decide. whether this is a case which comes under disqualification or this is a case which, if it does come under disqualification, should be indemnified. I think it is much better that the matter should be left in the way in which I wish to leave it, rather than to tighten it up so that nobody at an opportune moment may loosen the knot.

Shri Kamath : Is it not ultimately a question of privilege of the House ?

Dr. Ambedkar: I do not want to come to that, whether it is a privilege or not. But it is certainly a Constitutional provision which Parliament is required to obey, and Parliament will be doing a great deal of wrong to the Constitution if it does not follow the provisions of Article 102 when ultimately, as I say, the Government, and the Bill, is prepared and wants as a matter of fact to leave the whole matter in the hands of Parliament to decide each particular case. Mr. Sidhva had some amendment. But can anybody in this House tell me right now what are the likely offices or committees which the Government might hereafter create ? I cannot imagine such a thing right now if somebody were to ask me a question "Tell me what are the committees". If you want to enter all these in the Bill, you must know and define them. Nobody can anticipate what committees are likely to be appointed.

Therefore, when Parliament appoints a committee, or when Government proposes that a certain Member of Parliament be appointed to a certain committee, it is then that the Member concerned may rise and ask the Prime Minister or the Minister in charge of the Ministry who is appointing the Committee to let him know right then what is going to be his position, whether he will be disqualified or not, and he can demand from the Minister an assurance or a contemporary resolution to be accepted by Parliament that "in this particular case any Member appointed to the committee shall not be deemed to be disqualified".

Shri Sondhi: If it is a Government committee ?

Dr. Ambedkar: Even then Members of Parliament must protect themselves and a Member of Parliament can protect himself by asking for an assurance from the Government that whatever be the other matters he shall not be deemed to be disqualified. When such an assurance is given, obviously Government cannot go behind such an assurance.

Pandit Thakur Das Bhargava: Only under Article 102 a law must be passed by Parliament declaring that office to be not one of profit.

Dr. Ambedkar: We are dealing with specific case. As regards Parliament passing a general law, I do not know what that general law can do. It can, so far as I can imagine, say that whenever a Member of Parliament is appointed to a committee the members whereof receive an allowance which may be described as profit—in that very case Parliament can state as they do in England—that the appointment of the Member shall not be deemed to be an office of profit.

Shri Kamath : Can we not lay down a uniform procedure ?

Dr. Ambedkar: I cannot, for the simple reason that the basic allowance may change.

Shri Kamath : Still we can lay down a uniform procedure.

Dr. Ambedkar: It is possible for Parliament to do so. I do not know what time we have. But the next Parliament can pass a small Act saying that whenever any Member of

Parliament is appointed to any committee where the allowances may be more than mere remuneration and the appointment may be regarded as an office of profit, then in the case of each appointment the Act of Parliament shall say that "this shall not be regarded as an office of profit". That may be done in a general way.

Shri Sidhva: What about the committees in which Members are now drawing more than Rs. 20 ? There are certain committees.

Dr. Ambedkar: I have no idea.

Shri Sidhva: That is the point to be clarified.

Dr. Ambedkar : If you bring such cases to our notices we will examine them. So far as our Department is concerned we had collected all the information from all the Ministers. We examined them and found that these are the cases where the allowance exceeded the standard that we had fixed and therefore an indemnity was necessary. In other cases we found that the allowances did not offend against the basic rule and consequently no such indemnity was necessary.

Shri Sidhva: What is your information ?

Dr. Ambedkar: You must accept our information. Let the Member who is affected make a representation that "I am drawing more but I am not exempted".

Shri Sidhva: Why not do it here ?

Dr. Ambedkar : I cannot off-hand accept your suggestion. You may accept that your facts are not correct as mine may be. Yours are the labours of a single individual. Here hundreds have examined and surely their information may be taken to be more reliable.

My friend Mr. Kamath asked me something about the Assam Government Pleader. Well, I do not know but I should like to say this. Whether a Government Pleader in a Province is the holder of an office of profit or not is a matter which has been decided long long ago. So far as I remember when the Government of India Act came into operation in the Province in 1937, a ruling was given, I believe in some of the

provinces by their Advocates-General that this was an office of profit. In fact I have a case in mind where a certain Government Pleader had to resign on this account I do not know whether any such case had arisen in Assam. May be it had arisen ; may be it had not arisen. An uncharitable interpretation might suggest that a lawyer who is a Government Pleader ought to have been aware of the position.

Mr. Deputy Speaker: I was informed that the hon. Mr. Wajed Ali himself was the Member and he wanted an opportunity to speak.

Dr. Ambedkar: If he speaks then I won't speak. But he one day came to me—I forget the day—and asked me whether he was disqualified. I think he will agree with me that I told him he was disqualified, that that was my view, and that any Member of Parliament who is a Government Advocate in a Province was disqualified. I told him that. He said that he was very sorry and that he did not know that. Thereupon I said that there may be provision for condonation and so on and so on and told him "You better make a representation to the proper quarters". I think he represented the matter to the Speaker, if I remember correctly, and the Speaker referred the matter to me that in view of the fact that the Member has stated definitely that he was not aware of this ruling and had continued to hold that office the Government might consider his case also for indemnity.

On that basis we did include his case. That is all I have to say.

Shri Kamath: The Coal Inquiry Committee was constituted after March, 1950, after the Constitution came into force. Why was this aspect of disqualification not considered at the time the Committee was constituted ?

Dr. Ambedkar: Mr. Kamath, these are all very good and very nice points but as I feel Government was not very particular or very meticulous in applying Article 102 because we were working on an *ad hoc* basis. The whole trouble was created by the fact that so far as the Constituent Assembly

was concerned, we had abrogated this rule and we had allowed the Constituent Assembly to function also as a Legislature. There was a certain amount of mix up and confusion and consequently the Government's attention was so to say not attracted towards this particular proposition but when the matter was brought to their notice they thought that this was the best thing that they could do in the circumstances and I hope the House will accord its support to this Bill.

Dr. Pattabhi (Madras)**:** May I invite the attention of the House to a somewhat interesting view taken by the Madras Government in regard to the question as to whether a Public Prosecutor or Government Pleader is or is not a Government servant for purpose of legislative elections. Mr. Yahia Ali, Public Prosecutor of Nellore was considered a public servant so far as election to the Legislature was concerned and the method adopted was this. He was to resign his office of Public Prosecutor so as to contest the legislative election, become a Member of the Assembly and then he was appointed by the Government to the public prosecutorship. He has done this three or four times and ultimately his troubles were put an end to by being transferred to the High Court Bench.

Shri Syamnandan Sahaya: Sir, may I have one information ? In part (d) you have included the office of Members of the Railway Local Advisory Committees up to 1951. Perhaps you will propose an amendment to make it 1952. My difficulty is will you bring such motions year after year in order to include annually 1952, 1953 and 1954 or you will lay down that membership of Railway Local Advisory Committees will not act as a disqualification.

The other point is having now had all these different committees definitely laid down in this Bill does it not really place the President in an embarrassing position. He will now feel difficulty as the Parliament has only made mention of certain committees which will not be construed as offices of profit. If any matter is referred to him he may have a difficulty and he may have to call the Parliament even if the case is justifiable and within his competence to decide.

Dr. Ambedkar: I do not think my hon. friend need worry about the President. We make use of him for a variety of things and we have Article 392 whereby he can issue an order and we do not propose to take advantage of that in spite of the transitory situation.

Mr. Deputy Speaker: We are starting another discussion after the discussion is over. I will put the motion to the House. There are other clauses and hon. Members have got ample opportunity.

The question is :

"That the Bill to declare certain offices of profit not to disqualify their holders for being Members of Parliament, be taken into consideration."

The motion was adopted.

Clause 2.—(*Prevention of disqualification etc.*)

Amendment made :

In page 1, (i) in line 23, *omit* "and"; and

(ii) *after* line 2, *add:*

"(*f*) the office of members of the Enquiry Commission appointed by the Government of Assam or by the Government of West Bengal in pursuance of the Agreement made between India and Pakistan on the 8th April 1950, for any period not extending beyond the 31st day of December, 1950 ; and

(*g*) the office of member of the Bombay Revenue Tribunal for any period not extending beyond the 1st day of April 1951."

— *Dr. Ambedkar*

Mr. Deputy Speaker: We shall go to the other amendments.

Shri Kamath: As the Minister has explained the position, I am not moving 2 and 3, but No. 1 will come later on.

Pandit Thakur Das Bhargava: In view of the statement made by Hon. Dr. Ambedkar, I do not think my amendment is necessary.

***Dr. Ambedkar:** I may explain, with your permission, the point raised by hon. friend. Actually, when the Resolution was issued by the particular department concerned when they formed the Foodgrains Investigation Committee, the allowance mentioned was Rs. 20, and possibly the information supplied to the Law Ministry for the purpose of clarifying this position was that Resolution. We have acted on that Resolution. But I do now hear that the Food Ministry have changed that rule and have allowed the members to draw something more. But, the basis of our action is the Resolution.

Shri Sidhva: What will happen to that member ?

Dr. Ambedkar: My friend Mr. Sidhva does not seem to understand the point. Unless the President issues an order that a member is disqualified, the Member can sit in the House and function.

Shri Sidhva: I know that.

Dr. Ambedkar: Therefore, as I said, we have been supplied with the various Resolutions passed by the Ministries constituting the committees and we have found on the basis of the Resolutions that those committees did not offend the basic rule. If further information is supplied showing that there were such cases where Members in fact drew more, it would be perfectly possible to regularise the position. Where is the difficulty ? I do not understand.

Shri Himatsingka: Why not do it in a general form ?

Dr. Ambedkar: I cannot do it. I must make further enquiries as to what exactly is the position. Nothing is going to be lost if this Bill is passed and another Bill brought into cover cases which actually are necessary to be covered.

Shri Sidhva: How can that be ?

Dr. Ambedkar: Why? I do not understand.

Mr. Deputy Speaker: This can be definitely looked into. It does not matter if this stands over till tomorrow.

Some Hon. Members: Yes, Sir.

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*E. D., Vol. 14, Part II, 7th August 1951, pp. 73-79.

Mr. Deputy Speaker: But, if before tomorrow these matters cannot be settled, then, we can proceed with the Bill immediately. The President must, first of all say that a Member is disqualified. That is clear. Clause (1) (a) of Article 102 says: "if he holds any office of profit under the Government of India other than an office declared by Parliament by law not to disqualify its holder." Independently of the procedure under Article 103, without a question arising and the matter being referred to the President, Parliament can say that an office shall not be deemed to be an office of profit where it is clear that the remuneration is what is thought to be a fair compensation. Without bringing another Bill, if it can be disposed of by a suitable amendment herein, the Hon. Law Minister may consider that matter. There is a list of all these committees, and Mr. Sidhva's amendment will stand over. I will put the other amendment to the House which seems to be not opposed. That stands in the name of Shri Sri Narayan Mahtha.

Dr. Ambedkar: That I am accepting.

Mr. Deputy Speaker: I shall put it to the House. Barring that, the other things given notice of by Mr. Sidhva may be looked into next day.

Dr. Ambedkar: He can give me the actual resolutions ; I can verify.

Mr. Deputy Speaker: This will be the first matter

tomorrow. He need not bring any amendment. This will stand over so far as Mr. Sidhva's amendments are concerned.

Shri Himatsingka: May I suggest this for the consideration of the Hon. Law Minister? If he puts the proposition in a general form that membership of any committee where the payment does not exceed a certain amount, in the past, will not be regarded as an office of profit, that would cover.

Mr. Deputy Speaker: The Hon. Law Minister has already said that such a general proposition...

Shri Himatsingka: That is only with respect to the past.

Mr. Deputy Speaker: With respect to the past, there have been varying amounts paid: Rs. 40, 50, etc.

Shri Sondhi: Forty rupees is the maximum.

Mr. Deputy Speaker: If the hon. Member brings these matters to the notice of the Law Minister, he will go into them instead of throwing open the floodgates and making it appear that we are trying to bring in the immunity to a vast number of members. Let us not lay ourselves open to that kind of accusation.

An Hon. Member: That is only for the past.

Mr. Deputy Speaker: If any particular categories are there, they may be brought to the notice of the Law Minister and he will look into them.

Dr. Ambedkar: In this case, the resolution mentioned Rs. 20.

Pandit Kunzru: Before the discussion is adjourned till tomorrow, I might make a suggestion. The whole trouble has arisen because the Finance Ministry has decided that if any member receives a daily allowance of more than Rs. 20 for serving on a committee, he shall be regarded as holding an office of profit. If the Ministry decides that the limit should be increased from Rs. 20 to Rs. 40 which is the daily allowance drawn by a Member of Parliament for attending the meetings of Parliament, these troubles will disappear. I suppose that if this view had been accepted by the Finance Ministry, the Bill now brought forward by Dr. Ambedkar would not have been necessary. This Bill has been made necessary by the low limit fixed by the Finance Ministry. The Finance Ministry can do away with all this trouble and set the minds of hon. Members at ease by simply announcing that if a member receives an allowance not exceeding the daily allowance to which a Member of Parliament is entitled for attending the meetings of Parliament, he will not be regarded as holding an office of profit. No doubts will arise and no Bill will be necessary.

Dr. Ambedkar: I would just like to say one word of correction to what my hon. friend has said. What the Finance

Ministry—I should not bring in the Finance Ministry—what the Government now says is this. For non-official members of a committee, certain allowances have been fixed, as I said, so much for travelling by air, so much for travelling by train, so much for living allowances, Rs. 15 for Calcutta and Bombay and Rs. 12-8-0 elsewhere. That is the standard which the Government accepts as the standard of payment in which no profit element is involved. I believe my hon. friend has omitted to take that into account. If we are to have a mixed committee consisting partly of Members of Parliament and partly of members who are not Members of Parliament, obviously, we cannot prescribe different standards of payment. The standard of payment that we must adopt for a mixed committee of this kind is the standard which has been laid down for payment for members who are not Members of Parliament and consequently that standard becomes the ruling standard.

Shri Sondhi: I would like to make one submission, Sir. There is a Committee from the Agriculture Department, the Central Arecanut committee. The daily allowance is Rs. 12-8-0 and not Rs. 12. Are we disqualified ? There are four members here.

Pandit Thakur Das Bhargava: I have heard Dr. Ambedkar with great attention and respect, but I must very humbly point out that he is an entirely wrong way of looking at the question. Article 102 of the Constitution makes it quite clear that the President is the final authority, that he has the final power of deciding about a particular case. And, in the alternative it is Parliament which can decide whether certain offices, if held would not amount to disqualification. The Finance Ministry or the Government as such has absolutely no power whatsoever in this connection. They cannot fix any standard whatsoever. Suppose there is a committee the membership of which carries an allowance of only Rs. 10 or even Rs. 5 but still the committee may be of such importance that its membership may be considered an honur and many would like to serve on the committee, in which case it will be perfectly open to Government to exercise its patronage in appointing the members to such a committee, exactly the thing which Dr. Ambedkar and we all

want to avoid. Therefore I say, it is no business of the Government to decide whether an office held is an office of profit or not. That is something for the President or for Parliament to decide.

Dr. Ambedkar: That is why the Bill has been brought before Parliament.

Pandit Thakur Das Bhargava: For Government to arrogate this power to themselves is certainly wrong. If they say that they have got the President in the hollow of their hand and they can fix a standard of profit I do say thay are wrong. In certain cases it is the President in consultation with Election Commission who has to decide whether an office is an office of profit or not and in other cases Parliament decides. I do not think that the Finance Ministry or the Government can decide this matter at all.

Shri Sidhva : Shall we not agree that whatever allowance is drawn up to the limit of the allowance of a Member of Parliament shall not be considered a disqualification ? House should decide this matter and not Dr. Ambedkar.

Mr. Deputy Speaker: Having heard the discussion, I can only say at this stage that there is nothing to prevent us from adding a clause here to the Bill itself to say that notwithstanding anything contained so far, if a Member of Parliament is on any committee and does not draw an allowance more than that drawn by him as a Member of Parliament, he shall not be deemed to be disqualified. That is just a suggestion. In that case it would not be open to the objection that Government is placing allurements before Members, because nothing more than Rs. 40 will be paid. But there is this difficulty that if an official is appointed on a committee he will continue to draw a different rate of allowance, probably according to the salary he draws. But this matter may be considered. I would therefore allow this to stand over till to-morrow and get through with Mr. Narayan Mahtha's amendment.

Shri Kamath: Sir, last year this House decided that the offices of the Minister of State and the Deputy Minister would

not amount to disqualification under this Article. Therefore the present Ministers of State and Deputy Ministers do not incur any disability. But what about the newly born Parliamentary Secretaries ?

Mr. Deputy Speaker : They are also included in the Act.

Dr. Ambedkar: Sir, with reference to the suggestion made by you that this may be taken up to-morrow may I point out that it may not be possible for me to undertake that this matter will be taken up to-morrow. This is a matter which I have to refer back to the Ministries and that may take time. " So if it is kept over, it may be taken up on any convenient date.

Mr. Deputy Speaker: Is it the wish of the Hon. Law Minister that we may get through the other amendments ?

Dr. Ambedkar: The amendments may be moved. I accept Shri Narayan Mahtha's amendment.

Shri S. N. Mahtha (Bihar)**:** Sir, I beg to move:

In page 1, line 23, *after* "March 1951" *insert:*

"or for the year ending on the 31st day of March 1952".

Shri Sidhva : But, Sir, we have not received notice of this amendment at all. It has not been circulated among us.

Dr. Ambedkar: It is just a small amendment.

Shri Sidhva: It may be small according to the Law Minister, but it may be a very important one.

Mr. Deputy Speaker: Then does the hon. Member want this also to stand over ? It is just a small amendment extending the period from March, 1951 to March, 1952.

Shri Sondhi: Let this also be considered along with the whole Bill later on.

Mr. Deputy Speaker: It is a simple amendment extending the period up to March, 1952. There need not be any speeches on it and I shall place it before the House.

Amendment moved:

In page 1, line 23, *after* "March, 1951" *insert*:

"or for the year ending on the 31st day of March 1952".

Shri Sidhva: Sir, these local advisory committees are permanent committees elected by the Railway Standing Committee. Therefore, I would like to know whether every year amendments like this will have to be brought into remove the disqualification ? Will it not be better to consider this matter in greater detail and devise some proposition under which this annual performance may not be necessary ?

Mr. Deputy Speaker : As the hon. Member will see, this relates to the sitting Members. The year 1951-1952 has already started and to remove the disqualification from the whole period, the date has to be extended to 31st March 1952.

Dr. Pattabhi: But we are sitting in April, 1952 also.

Mr. Deputy Speaker: If it is not extended, Members who have agreed to serve on committees would be obliged to resign straightaway. Therefore the period is being extended to 31st of March 1952. We are in the middle of the year 1951-52 and therefore, this amendment is necessary. As to whether this amendment should be effected now or hereafter, it is for the Law Minister and the House to consider and decide. We are not bringing in a legislation to remove disqualifications under various categories.

Shri Sidhva : Sir, what you state is perfectly correct. But these Advisory Committees are very important bodies. My point is—and I may add that I am not a member of an Advisory Committee—my point is, as Members of Parliament we are interested in the carriage of passengers and goods by the railways and just because as a member of the committee a person draws an allowance of Rs. 30 or so, he should not be debarred from being a Member of Parliament. In this matter the Railway Finance Committee and the Advisory Committee have to be consulted. So this question of changing the date from March, 1951 to March, 1952 may also be postponed and considered along with the other provisions of the Bill when the Bill comes next to us.

Dr. Pattabhi: Why not say "during the tenure of the present Parliament." ?

Dr. Ambedkar: I thought that the amendment was a very simple one. The reason why the Bill originally did not mention the words that are now sought to be introduced by the amendment was because the Bill was expected to be passed much earlier. That did not happen. Members have continued to sit. If you want to completely exonerate them from the application of this office of profit rule it is necessary to continue the period. With regard to the future I understand that the allowances have been reduced, so that no disqualification should be incurred.

An Hon. Member : By how much ?

Dr. Ambedkar : The same Rs. 20.

The Minister of State for Transport and Railways (Shri Santhanam): I shall give the information on the next day.

Mr. Deputy Speaker: It has been so reduced as not to impose this disqualification. This only applies to existing members.

The question is :

In page 1, line 23, *after* "March, 1951" *insert:*

"or for the year ending on the 31st day of March 1952".

The motion was adopted.

Mr. Deputy Speaker: The rest of the Bill will stand over to such other day as the Hon. Law Minister may find convenient to bring it before the House.

Pandit Kunzru: As the Hon. Law Minister has been given time to think over the matter I hope he will arrive at a correct decision.

Dr. Ambedkar : I should like to say that I would be very much dependent upon the advice of my hon. friend.

(36)

*ASSAM (ALTERATION OF BOUNDARIES) BILL

Mr. Deputy Speaker : The House will now proceed with the further consideration of the motion that the Bill to alter the boundaries of the State of Assam consequent on the cession of a strip of territory comprised in that State to the Government of Bhutan, be taken into consideration.

The Minister of Law (Dr. Ambedkar): I am sorry I was not present in the House when a certain point was raised by certain Members that Parliament had no power to pass this Bill, in view of the fact that the Bill proposed, although indirectly, to cede certain portions of territory which belonged to the Indian Union, to Bhutan. I heard that my hon. Friend Mr. Sri Prakasa also made certain submissions to the House on this point in justification of the stand taken by the Government. But, I was told that the House expects me to say something on the point.

The point seems to be very easy. I think, in order to under stand the matter fairly, it is better to begin by a reference to List I contained in the Seventh Schedule, which defines the legislative powers of this Parliament. I would refer to List-I, Entry No. 14 and Entry No. 15. Entry No. 14 relates to the making of treaties and entry No. 15 refers to war and peace. The question that has been raised very largely hinges upon the interpretation of the words 'treaty making' and 'war and peace' What do these items include ? This matter was debated at great length in the United States when the question arose for the first time for interpretation. In order to cut short the matter, I should like to state that in the United States it has been accepted that treaty making does include the power to cede territory.

*P. D., Vol. 14, Part II, 8th August 1951, pp. 103-118.

Pandit M. B. Bhargava (Ajmer)**:** Is there any prohibition there ?

Dr. Ambedkar : I shall quote the authorities if my friend wants. I have got plenty of them. I do not want to weary the House : I am only going to give the gist.

Treaty making does include cession of territory. In the same way, apart from that particular Entry, the Entry relating to war and peace must necessarily include cession of territory because it cannot be denied that it may sometimes become necessary for a State which is at war with another foreign State, in order to establish peace, to cede a part of its territory as one of the terms and conditions of a treaty of peace. Nobody, I am sure, can challenge or deny that interpretation of the Entry relating to war and peace. Now, if in certain circumstances the Entry relating to war and peace and the Entry relating to treaty making must necessarily include cession of territory, it is quite obvious that the content of these Entries must be deemed to include cession of territory. Therefore, as against the mere fact that in the rest of the body of the Constitution, there is no specific Article conferring specific powers on Parliament to cede territory my contention is that Entries 14 and 15 are quite sufficient....

Shri Kamath (Madhya Pradesh)**:** No, no.

Dr. Ambedkar: ..... to endow Parliament with the power to cede territory. My hon. friends, some of them, are shaking their heads saying that that is not correct. But, still, I hold to my view.....

Shri Kamath: We also will hold to ours.

Dr. Ambedkar: ..... that what I am submitting is a point which has been accepted by all great constitutional lawyers, and by the Supreme Court of the United States where also a similar power exists.

Shri Sidhva (Madhya Pradesh)**:** What about our Supreme Court?

Dr. Ambedkar: Therefore, the first point that I want to submit to the House is that so far as Entries 14 and 15 in List-I are concerned, there is the greatest amplitude of power conferred upon Parliament for the purpose of ceding territory.

In view of the fact that certain Members of Parliament seem to be rather unconvinced or not prepared to accept the submission that I am making. I would like to elaborate the point a little further. Hon. Members will remember that the Constitution of the United States is, in a sense a very difficult Constitution, for the simple reason that the States in the United States are much more independent and sovereign than the States which are constituent elements of the Indian Union, in the sense that the powers of the Congress are derived from such powers as have been delegated to it by the States composing the United States. It is a Government of what are called not merely delegated powers, but enumerated powers. There is no such thing as residuary power in the Central Government of the United States such as we have in our Constitution. Taking advantage of this position, namely, that the States in the United States are masters of their territory and the United States Central Government has no authority so far as the territory of the States is concerned, except with regard to certain limited matters handed over to the Central Government, there was a stage in the interpretation of this particular document under which it was contended that although the treaty-making power of the United States Government may include within it the power to cede territory, it could not include the power to cede territory which belonged *to* the State. In other words, the treaty-making power of the United States was subject to what was called the doctrine of the inherent rights of the States. It may transfer such other territory which it may have, which it may have conquered which are regarded in the United States as territories of the United States, but not as constituent parts of the United States. That doctrine, as I said, was urged for a long number of years in the United States. But ultimately the position taken by the Supreme Court of the United States was that

the treaty-making power was so unlimted that even a whole State may be transferred and ceded by the United States, if it felt necessary, under the war and peace entry or under the treaty-making power.

Shri Kamath: Which particular State was ceded like that ?

Dr. Ambedkar: I cannot give you that but I can give the whole volume and the reference too. It is in Willoughby on the Constitution of the United States from page 572 to the end of the volume, I think—it is not very much. It is in Chapter XXXV of the volume, and there you will find all these points discussed. And there is a valuable opinion of Mr. Justice Storey—I think most Members who are interested in constitutional law must be familiar with his name, being one of the greatest authorities on Constitutional law. The chapter begins on page 561, but the particular entries are in paragraphs 311, 312 and the other paragraphs up to paragraph 317.

Therefore, my first submission is this that so far as the point raised yesterday is concerned, that Parliament has no authority, I submit that that point has no foundation in law at all, and that this Parliament has ample power to cede territory and as a consequence of the cession of the territory make adjustments within the boundaries of the States of the Union.

Now, the question that arises for further consideration is whether it is necessary for the President to have brought this matter before Parliament or whether he could dispose it off purely in his executive capacity. Now, on that point, I might also mention incidently, that the same doctrine prevails in England, that the King can cede territory. In fact, it is the prerogative of the King to do so.

Shri Kamath: An un-written one perhaps.

Dr. Ambedkar: Whatever it is, the doctrine is there.

Shri Kamath: England's Constitution is un-written, that is the difficulty.

Dr. Ambedkar: That does not matter at all. I know my hon. friends are relying upon Article 3 of the Constitution.

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Shri Kamath: Articles 2 and 3.

Dr. Ambedkar: I am not touching them at all.

Shri Kamath : Evading them ?

Dr. Ambedkar: I go on a different plane because I am prepared to say that these Articles have no reference to the cession of territory. They do not prohibit, but they have nothing to do with cession. I am prepared to say that in view of the fact that I was concerned with the making of the Constitution, and most Members probably do not know what the intention...

Shri Kamath: All of us were so concerned.

Dr. Ambedkar: They do not probably know what the underlying intention of this Article was. I know it better and I am prepared to say that though it does not prohibit cession, as pointed out by my friend Shri Santhanam, its primary intention was for dealing with the linguistic distribution of the Provinces. That is why I do not refer to the Article of the Constitution, because the Government's case might be considered to be very weak if I relied on Article 3. So I am relying on something much more fundamental and which no Member can deny namely, the power to make under Article 3.....

Shri Kamath : The acquisition of new territories is under Article 2 which does not mention cession.

Dr. Ambedkar: But that does not matter now. The rule that if one thing is expressed and the others are not expressed, then they are excluded, does not apply universally.

I was trying to point that this position, namely, that the State is entitled to cede territory is also the law in England. It is a matter of prerogative for the king to do so and he can do so.

Now I would turn to the second part of the question, namely, whether Parliament need be consulted in a matter of this sort. As you know, in England, the position has varied from time to time. At one time the view that was taken was this, that was a matter which related to the prerogative of the king. And prerogative means what ? Let me define it briefly. Prerogative means the power of the king to do something for which Parliamentary sanction is not necessary. This is the gist of what is called the prerogative right of the king. Therefore the old view was that since cession of territory was the result of the prerogative of the king, it was not necessary to bring the matter before Parliament because the king was supreme, unless Parliament, by specific law took away the prerogative of the king to make treaty and to cede territory. And as Parliament has not done that, the king has got the power. All the same, treaties ceding territory have come before Parliament in England and I will briefly explain the reason why they have come before Parliament. In the first place, the Government in England has felt that it is much better to obtain the sacntion of Parliament to the cession of territory because it was deducting so much territory belonging to sovereignty and over which Parliament exercised supremacy. Therefore, nothing ought to be done without the consent of Parliament. The second reason why it became necessary for the British Government to bring treaties of cession before Parliament was this. It was felt that the transfer of territority was after all, a transfer of the nationality of the people residing in that particular territory. The reason is that when you transfer territory, by virtue of that transfer you also practically transfer the nationality of the people. They became citizens of another State. It was felt that this was too much and it was necessary to consult Parliament whether such a step should be taken, because it was possible that Parliament may insist that the cession should not be in absolute terms but subject to certain conditions. For instance, Parliament may say that although the territory may be transferred, the nationality of the people should not be transferred by virtue of the transfer and that the people may be permitted to maintain their old nationality