

Shri H. V. Kamath : My point was that the notice of my motion was to the President and not to the Secretariat.

Mr. President : The action has been taken under my instructions by the Secretariat.

We shall now take up entry 74. There are certain amendments to this. Dr. Ambedkar may move his first.

DRAFT CONSTITUTION—(*Contd.*)

Seventh Schedule—(*Contd.*)

List I : Entry 74

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

‘That for entry 74 of List I, the following entry be substituted :—

‘74. The regulation and development of inter-State rivers and river-valleys to the extent to which such Regulation or development under the control of the Union is declared by Parliament by law to be expedient in the public interest.’

Shri Brajeshwar Prasad : (Bihar: General) : Mr. President, may I with your permission, say one word before I move my amendment? Somehow, due to my fault perhaps, one word is missing from this amendment. I want the inclusion of the word “regulation”. Sir, I beg to move :

That in amendment 3562 of the List of Amendments, for the proposed entry 74 of List I, the following be substituted :—

“74. The regulation and development of inter-State rivers and inter-State waterways, including flood control, irrigation navigation and hydroelectric power and for other purposes, where such development under the control of the Union is declared by Parliament by law to be necessary or expedient in the public interest.’ ”

Sir, I have only one comment to offer, that this amendment of mine is more comprehensive than the amendment moved by Dr. Ambedkar.

Mr. President : There is an amendment of which notice has been given by Shri Kala Venkata Rao that this entry should be dropped altogether. It is only a motion for deletion and he need not move it as an amendment.

The Honourable Dr. B. R. Ambedkar : Sir, all that I would like to say is that whatever Shri Brajeshwar Prasad wants is included in my amendment and it is therefore unnecessary to accept it.

Shri Brajeshwar Prasad : I beg leave to withdraw my amendment. The amendment was, by leave of the Assembly, withdrawn.

Mr. President : I put the amendment in the form in which it has been moved by Dr. Ambedkar.

The question is:

“That for entry 74 of List I, the following entry be substituted:—

‘74. The regulation and development of inter-State rivers and river-valleys to the extent to which such regulation or development under the control of the Union is declared by Parliament by law to be expedient in the public interest.’ ”

The amendment was adopted.

Entry 74, as amended, was added to the Union List.

Entry 75

Mr. President : There are two additional entries 74-A and 74-B. I think, were covered by amendments which were moved yesterday and which were rejected. So they do not arise now. Then I come to entry 75.

Mr. Naziruddin Ahmad : (West Bengal: Muslim) : Mr. President, Sir, I beg to move:

“That in entry 75 of List I, the Words ‘beyond territorial waters’ be deleted.”

Item No. 75 runs thus, “fishing and fisheries beyond territorial waters”. Sometime ago this House accepted an article—I cannot put my finger immediately on it—but it is a well-known article, that the Centre will have fishing or some other right on the seas. A question was raised in the House at that time as to whether the Centre should have any right over the territorial waters. The implication of that article was that the Centre would have fishing and other rights in all seas, whether high seas or in territorial waters.

Mr. President : It is article 271-A.

Mr. Naziruddin Ahmad : Then, entry 75 as it stands now will curtail the right of the Centre purported to be given to it by article 271-A. I feel that entry 75 has not been revised to bring it into conformity with article 271-A. I wanted only to have a clarification, and if it is necessary to bring it up-to-date I think the amendment should be accepted.

The Honourable Dr. B. R Ambedkar : No, Sir, I cannot accept the amendment.

Mr. President : Then, we will have to put the amendment to vote. The question is :

“That in entry 75 of List-I, the words ‘beyond territorial waters’ be deleted.”

The amendment was negatived.

Mr. President : Then I put the entry as moved in the original form. The question is:

“That the proposed entry No. 75 stand part of List I.”

The motion was adopted.

Entry No. 75, as amended, was added to the Union List.

Entry 76

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

“That for entry 76 of List I, the following entry be substituted:—

‘76. Manufacture, supply and distribution of salt by Union agencies; regulation and control of manufacture, supply and distribution of salt by other agencies.’”

Mr. President : There is no amendment to this; so I put this entry to vote. The question is :

“That for entry 76 of List I, the following be substituted :—

‘76. Manufacture, supply and distribution of salt by Union agencies; regulation and control of manufacture, supply and distribution of salt by other agencies.’ ”

The amendment was adopted.

Entry 76, as amended, was added to the Union List.

Shri Mahavir Tyagi : (United Provinces: General) : Sir, when you put the question to vote, Dr. Ambedkar says “Ayes” beyond the mike; with the result that the Ayes have an undue volume of their voice.

Mr. President : Unfortunately Dr. Ambedkar is unwell today; that is why he is having the mike before him. But I hope the mike will not be used for voting purposes.

Entry 77

Shri Brajeshwar Prasad : Sir, entry 77 vests in the Union Government, the power to deal with grave emergencies in any part of the territory of India. These powers are not restricted to the provisions made in the Constitution. My interpretation is that over and above the powers granted to the Centre by the articles of this Constitution, this entry vests the Union Legislature with additional powers to deal with grave emergencies affecting any part of the country. If we delete this entry it will mean that the powers of the Union Government will be restricted by the articles of the Constitution. This is a mighty power which is rightly being conferred. Therefore, I strongly oppose the motion to delete this entry from List I.

Mr. President : The question is:

“That entry 77 of List I be omitted.”

The motion was adopted.

Entry 77 was deleted from List I

Entry 78

Entry 78 was added to the Union List

Entry 79

The Honourable Dr. B. R. Ambedkar : Sir, with regard to entry 79, I have to make one observation. Some Members of the House are under the impression that if entry 79 remained in List I it would be opened also to the Centre to appropriate the proceeds of any taxes that may be levied on the Stock Exchanges and futures market and taxes other than stamp duties on transactions therein. I would like to make it clear that in putting Stock Exchanges and futures market in List I, there is no intention on the part of the Drafting Committee that the Centre should have any right to appropriate the proceed of any taxes that might be levied under this entry. Consequently, the Drafting Committee proposes, in order to remove all sorts of doubt, to amend article 250 which requires the proceeds of certain taxes to be distributed among the provinces. What we propose to do is, as a consequential provision, to add to article 250 which contains clauses (a) to (d) enumerating the taxes to be distributed, ‘proceeds of any taxes on Stock Exchanges and futures market’, so that they too will be subject to distribution among the provinces. That would, I am sure, remove all doubts that certain Members have that this entry if it remains in List I would give power to the Centre to appropriate the taxes. That is not the intention. The entry there is purely legislative. It would have no financial implications at all.

Pandit Hirday Nath Kunzru : (United Provinces: General): May I ask Dr. Ambedkar whether he intends also to bring in a modification of article 277 in this connection ?

The Honourable Dr. B. R. Ambedkar : Well, I shall consider any consequential provision necessary to bring in to make the matter consistent.

Mr. President : Sardar Hukam Singh and Shri Brajeshwar Prasad are not moving their amendments.

Mr. Naziruddin Ahmad : Sir, the original item 79 deals with stock exchanges and futures market and taxes other than stamp duties on transactions therein. Stamp duties are leviable by the Province on sales within their jurisdiction. The shares and stocks and securities are also liable to the payment of stamp duties on their sale price. As all stamp duties on sales are realised by the Provinces, any sales effected in the Stock Exchanges should also be levied directly by the States. The result of removing that condition from this entry will be to allow the Centre to levy this stamp duty although it would be credited to a certain fund. This will also enable the Central Government to distribute it to any State they think fit and not to the State in which the sale was effected and the stamp duty levied. I submit that the stamp duties should be exempted from the purview of the Centre.

Mr. President : Is not that the effect of the provision as it is ?

Mr. Naziruddin Ahmad : I believe there was an amendment moved.

Mr. President : That amendment was not moved by Sardar Hukam Singh.

Mr. Naziruddin Ahmad : In that case I am sorry. I need not have made, these observations. But, Sir, things are proceeding so fast that I was not able to fully follow the debate. I regret my mistake.

Mr. President : Now I will put entry 79 to vote. Mr. Naziruddin Ahmad made certain remarks under a misapprehension. He has withdrawn them. The question is :

“That entry 79 be added to List I.”

The motion was adopted.

Entry 79 was added to the Union List.

Entry 80

Mr. President : There are no amendments to entry 80.

Entry 80 was added to the Union List.

Entry 81

Shri Brajeshwar Prasad : Mr. President, Sir, I beg to move:

“That for amendment No. 3572 of the List of amendments, the following be substituted:-

That for entry 81 of List I the following be substituted :—

‘81. Duties in respect of succession to property including agricultural land.’ ”

The amendment that I have moved is with the view that there should be no financial autonomy in the hands of the provinces. While discussing the financial provisions of the Constitution, I had already referred to the fact that I was only in favour of a limited character of provincial autonomy being conferred upon the provinces. I think that most of us seem to ignore the realities of our political life. Provincial autonomy has led to inequality between man and man, between one province and another. I think, Sir, that an equitable system of financial distribution can only be achieved if the Centre is vested with all powers in this matter. It is not only dangerous but it is almost tragic that we should go on extending the powers of the provinces. I was under the impression that a proper lesson would be drawn from the experiences of the past. The

[Shri Brajeshwar Prasad]

effect of partition and uprooting of millions of homes compels us to draw a proper conclusion. We must make the Centre strong. We are centuries behind the advanced nations of the world. Various forces are menacing us from many sides and in order to meet those forces, it is necessary to make an all-out effort. Provincial autonomy comes as a stumbling block and we must uproot it. We have got centuries of development to accomplish. Centuries will have to be compressed into moments. It is only under the leadership of one government in India that we can do this. Sir, powers must be vested in the hands of those who desire to serve the people. Powers must be vested in the hands of those who have got the ability to serve. If it is the desire of the provincial governments to serve the people, they must seek the co-operation of the Central Government in this matter. If they want to help the people in the provinces, they must welcome the co-operation of the Centre. If they oppose this, then it gives rise to suspicion. It raises some doubt in our minds. Sir, there is that over Centralisation will lead to dominance. I do not understand, what people mean by dominance. Is it the contention that the Government of India will exploit the people living in the provinces ? The point has been made that it is not possible for the Government of India to govern the whole country from Delhi, so far away and so remote from the other parts of the country. I am definitely of opinion that the developments of science, the developments in the means of communication have annihilated distance, time and space. After all, India is not so big as it was before. Partition has made the country smaller. The development of science has made even the world very small. The world has become a small place now, and I feel that the whole world can be governed by one Government. We all owe allegiance to the ideal of a world State. So, I do not see how the Government at the Centre cannot function efficiently. I am not opposed to delegation of powers. I am only opposed to the distribution of powers, to the division of powers to the extent.....

Shri R. K. Sidhwa : How is all this relevant to the entry under consideration, Sir ?

Mr. President : We have heard these arguments before from the honourable Member. He has used the same arguments all along the line, in connection with so many amendments. Therefore it is not necessary to repeat the same arguments.

Dr. P. S. Deshmukh : (C.P. & Berar: General) : We can take his arguments for granted.

Mr. President : We cannot go back on all the decisions taken so far, by altering one entry in this List.

Shri Brajeshwar Prasad : I do not want to reopen the provisions on which agreement has been reached in the House. I am only asking that this particular entry should be amended on the lines suggested by me. If it is your ruling that I should not continue my speech, I am quite willing to abide by your decision, Sir.

(Prof. Shibban Lal Saxena rose to speak.)

Mr. President : I hope it is not just for contradicting what Mr. Brajeshwar Prasad said.

Prof. Shibban Lal Saxena : (United Provinces: General) : No, Sir, I am supporting him. Mr. Brajeshwar Prasad has given his reasons. I personally feel that there is some substance in his amendment from another point of view. I want that there should be uniformity of taxation in this matter also. Let the duties be collected by the Centre and distributed to the provinces, so that

the duties can be on a uniform scale. The duties should not vary from province to province. I am therefore glad that the amendment of Mr. Brajeshwar Prasad seeks to vest this power in the Centre. The Centre can make the laws and collect the duties and then whatever is obtained may be handed over to the provinces.

The Honourable Dr. B. R. Ambedkar : I may mention, Sir, that this matter was considered at the conference with the Provincial Premiers. They were of opinion that, although the principle might be sound, they were at the present moment not prepared to make this radical change.

Mr. President : I will put amendment No. 49 to the vote.

Mr. Brajeshwar Prasad : I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is:

“That entry 84 stand part of List I.”

The motion was adopted.

Entry 81 was added to the Union List.

Entry 82

Mr. President : There is a similar amendment, by Mr. Brajeshwar Prasad.

Shri Brajeshwar Prasad : I will not deliver any speech. I would only move the amendment.

Shri R. K. Sidhwa : There is no difference between this amendment and the previous amendment except that it reads ‘Estate duty in respect of’ instead of “Duties in respect of succession to”.

Shri Brajeshwar Prasad: Sir, I move:

“That for amendment No. 3574 of the List of Amendments, the following be substituted :—

That for entry 82 of List I, the following be substituted:—

‘82. Estate Duty in respect of property including agriculture land.’ ”

If you will permit, Sir, I would advance different arguments as to why provincial autonomy should be modified. If you do not want me, to proceed, Sir. I will go back to my seat.

Mr. President : It is not necessary to discuss provincial autonomy any further. I will put the amendment to the vote.

Shri Brajeshwar Prasad : I withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is:

“That entry 82 stand part of List T.”

The motion was adopted.

Entry 82 was added to the Union List.

Entry 83

Mr. President : There are two amendments to this.

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

“That in entry 83 of List I, after the word ‘railway’ a comma and the word ‘sea’ be inserted.”

The intention is to complete the entry by the addition of the word “sea” which was inadvertently omitted.

(Amendment No. 51 was not moved.)

Mr. President : There are certain other amendments to this. No. 228 by Dr Deshmukh.

Dr. P. S. Deshmukh : Mr. President, Sir, I do not propose to move item No. 228 but I beg to move item No. 230 which is the proper amendment to item 52.

“That with reference to amendment No. 52 of List I (Sixth Week) in entry 83 of List I, for the word ‘railway’ the words ‘land, sea’ be substituted.”

I believe that yesterday I was not properly understood when I said passengers and goods traffic on the roads, especially those between more than one State, should be within the cognizance and jurisdiction of the Union. I have no intention of taking away the right of the States so far as their jurisdiction is confined to the territories under those States, but what will happen so far as traffic from one State to another is concerned and wherever more than one State comes into play? I have not been able to see any objection, if “sea and air” are to be included, why inasmuch as we are going to have national highways the word “land” also should not be included. I, therefore, move that the words “land, sea” may be added, unless Dr. Ambedkar has any special reason or there is any other ground on which this would be not proper.

Shri H. V. Kamath : My amendment No. 229 is a merely verbal amendment and I leave it to the Drafting Committee.

Shri R. K. Sidhwa : Mr. President, Sir, my amendment No. 3576 on page 387 of Second Volume of printed amendments reads as under :

“That in entry 83 in List I, the following words be deleted :—

‘Terminal Tax on goods or passengers carried by rail or air’.”

Just now you called upon the Honourable Pandit Pant to move the amendment which he has sent in. But he is not in the House. That amendment of his is identical to mine. From this you can realize what great importance he attaches to this entry being deleted from here and put in the Provincial List. I have always said that Terminal Tax is a Provincial subject and that Terminal Tax is levied by the local bodies. We have passed the other day that the Terminal Tax should be collected by the Centre and the proceeds distributed to the provinces. I quite appreciate that. But despite that I say that if this is passed a consequential change can be made in that article. I strongly feel that the Terminal Tax is entirely in the region of the Provincial Government and the Local Bodies and they have been levying it throughout the century and it will be wrong for the Centre to take away this item. Pandit Pant feels very strongly about it, but unfortunately he is not present. I am sure he would have moved and the amendment would have been carried. I, therefore, request that the Drafting Committee will kindly consider about this entry and see that it is removed from here and taken to the Provincial List. It may be said that in view of the article that we have passed, it may not be possible to accept my amendment, but I will remind the House that Dr. Ambedkar had said : “It you pass anything here, a consequential change may be made in the article which we have already passed”. Under these circumstances, I hope the Drafting Committee will have no objection.

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

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

Shri R. K. Sidhwa : Sir, I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Dr. P. S. Deshmukh : I also withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

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

The amendment was adopted.

Entry No. 83, as amended, was added to the Union List.

Entry 84

Mr. President : Item 53 stands in the name of Mr. Brajeshwar Prasad. Is it worth while to move that amendment?

Shri Brajeshwar Prasad : As you permit me, Sir. I would like to move this amendment without delivering any speech.

Mr. President : I take it that you have moved it.

Shri Brajeshwar Prasad : All right, Sir.

(Amendment Nos. 3577, 3578 and 3579 were not moved.)

Mr. President : The question is:

"That entry 84 stand part of List I."

The motion was adopted.

Entry 84 was added to the Union List.

Entry 85

Entry No. 85 was added to the Union List.

Entry 86

(Amendment No. 54 was not moved.)

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

“That in entry 86 of List I, the words non-narcotic drugs’ be deleted.”

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

Mr. President : There is one other amendment of which we have notice from the honourable Shri K. Santhanam, but I take it that it is not moved.

Mr. Naziruddin Ahmad : Mr. President, Sir, the deletion of the words non-alcoholic drugs.

Mr. President : Non-narcotic drugs.

Mr. Naziruddin Ahmad : Non-narcotic drugs would entirely change the meaning of entry 86. The entry is to this effect : “Duties of excise on tobacco and other goods manufactured or produced in India except certain things including non-narcotic drugs”.

Now, Sir, Dr. Ambedkar wants to delete the words ‘non-narcotic drugs’. The effect of this will be not as simple as it looks. Non-narcotic drugs were excepted from the central subject in the original entry. They were therefore Provincial subjects under the original article. If we delete these words, we delete these words from the exception. By this deletion of non-narcotic drugs from the exception, they will automatically be included within the body of the entry. By a simple deletion of, these words, the effect would be that instead of this being a States subject, it will at once become a Central subject. I submit that these entries were accepted by the House after considerable deliberation. The removal of these words would rob the Provinces of a subject and unnecessarily burden the already overloaded duties of the Centre. I think this matter should be pointed out and though I know that my opposition will have no effect in this House, still I deem it necessary to voice my protest. If the Provinces are to be robbed one by one of their powers, political, financial and others, it would be far better for us to say here and now that Provincial Autonomy must go and there must be Unitary Government. I would rather welcome the attempt of Mr. Brajeshwar Prasad to scrap Provincial Autonomy at once. The effect of the present arrangement as we are changing from day to day is to kill Provincial Autonomy altogether. I can well understand that Provincial Autonomy should be abolished at once. This is a thing which I can understand. Rather than reducing the Provinces to a state of importance—a state resembling the District Boards and Municipalities, I think it would be far better to abolish the provinces altogether, and...

Shri R. K. Sidhwa : It is a larger issue, Sir, to suggest that Provincial Autonomy should be abolished.

Mr. Naziruddin Ahmad : That is what we are doing. I merely say that instead of doing it bit by bit and taking away from the powers of the Provinces in slices indirectly, it would have been far better to do so directly and say that there shall be no Provincial Autonomy except to the extent the Centre pleases. That would have been better. This removal of the words ‘non-narcotic drugs’ is a dangerous chance as many other dangerous changes have been made.

The Honourable Dr. B. R. Ambedkar : It is quite true, Sir, that at present this entry is in the provincial list. But, there are two facts to be recognised. One is that no province has at any time so far levied any tax on these items. Therefore, it has not been exploited by the provinces for their financial purposes. Secondly, even when the matter becomes concurrent, and any legislation is made by the Centre, which has a revenue aspect, the revenue will be liable to be distributable under the provisions of clause (2) of article 253. Consequently, so far as finances are concerned, there is really no loss to the provinces at all. Then, it is necessary that we should have an All-India Drug Act operating throughout the area. That cannot happen unless non-narcotic drugs are put in the Concurrent List. That also saves the power of the Provinces to make such local legislation as they may like with regard to these drugs.

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

“That in entry 86 of List I, the words ‘non-narcotic drugs’ be deleted.”

The amendment was adopted.

Mr. President : The question is:

“That entry 86, as amended, stand part of List I.”

The motion was adopted.

Entry 86, as amended, was added to the Union List.

Entry 86-A

Mr. President : There is an amendment by Mr. Kamath for adding entry 86-A.

Shri H. V. Kamath : Mr. President, Sir, I move:

“That with reference to amendment No. 55 of List I (Sixth Week), after entry 86 of List I, the following new entry be added:—

‘86-A. Prescription and maintenance of standards for drugs, medicines and other pharmaceutical products’.”

It is a notorious fact that in this country, as perhaps in some other countries of the world, all sorts of cheap drugs and quack medicines are put for sale on the market without any effective control by Central or Provincial Governments. It is a very serious matter inasmuch as it imperils the health of the nation which is already at a somewhat low ebb. It has been held by many medical authorities in this country that if some effective control is not exercised by Government in this regard, it would be difficult to raise the standard of health of the people when they are exposed to all sorts of dangerous quack remedies in the market. I do not find in Lists I, II or III any specific provision in this regard. There is entry 40 in List II which refers only to intoxicating liquors, and narcotic drugs. There is entry 20 in the Concurrent List, ‘Poisons and dangerous drugs. I do not think that these two entries cover the subject-matter of my amendment. There is of course the omnibus entry in List II, No. 15, Public Health and Sanitation. But, I feel that this matter is far too important to be relegated to a general entry, Public Health. We are talking so much about raising the standard of health of the nation and this is one of the important matters with which the State will have to deal. In the last Budget session, the Health Minister, in reply to one of the questions, said that the whole matter of drug standards was under the active consideration of Government.

Mr. President : Will you refer to entry No. 20 of List III as amended by amendment No. 129?

“20. Drugs and poisons, subject to the provisions in entry 62 of List I with respect to opium.”

Shri H. V. Kamath : Perhaps, it provides to some extent, but my amendment is specifically with regard to the maintenance of standards which is not mentioned in the entry which you have just quoted. I would therefore suggest, having regard to the vital question of the health of the nation and bearing in mind the reply given by the Health Minister in the last budget session that this whole matter of drugs and similar provisions regarding the prescription of standards were under the active consideration of Government, that the Centre and not the provinces must have exclusive legislative power in this regard, because it is such a vital matter. I move amendment 231 of List III (VI Week) and commend it to the House for acceptance.

Shri Mahavir Tyagi : Why you want to prescribe the medicine ?

Shri H. V. Kamath : It is prescribing of standard.

Mr. Naziruddin Ahmad : Very ambiguous.

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

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

Mr. President : The question is :

“That with reference to amendment No. 55 of List I (Sixth Week), after entry 86 of List I, the following new entry be added:—

86- A, Prescription and maintenance of standards for drugs, medicines and other pharmaceutical products’.”

The amendment was negatived.

Entry 87

Mr. President : Entry No. 87. There is no amendment.

Entry No. 87 was added to the Union List.

Entry 88

Mr. President : Entry 88.

Shri Brajeshwar Prasad : Sir, I move:

“That for amendment No. 3583 of the List of Amendments, the following be substituted:—

“That for entry 88 of List I the following substituted :—

‘88. Taxes on the capital value of the assets, inclusive of agricultural land, of individuals and companies; taxes on the capital of companies’.”

Dr. P. S. Deshmukh : I beg to move :

“That is amendment No. 56 of List I (Sixth Week), in the proposed entry 88 of List I, for the word ‘inclusive’ the word ‘exclusive’ be substituted.”

My amendment is an amendment to that of Mr. Brajeshwar Prasad. Actually it is negation of the proposed entry 88. Otherwise I am content with the entry as it stands.

Mr. President : I put Mr. Brajeshwar Prasad’s amendment to vote.

Shri Brajeshwar Prasad : I beg leave to withdraw it, Sir.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is:

“That Entry 88 stand part of List I.”

The motion was adopted.

Entry 88 was added to the Union List.

Entry 88-A

Mr. President : I have notice from a large number of members for addition of an entry 88 A. Shri Goenka.

Shri Ram Nath Goenka : (Madras: General) : Mr. President, I beg to move.

Shri Deshbandhu Gupta : (Delhi) : I rise on a point of Order, Sir. The amendment which stands in the name of Mr. Goenka offends against the Fundamental Right guaranteed in clause 13-A which refers to freedom of speech and expression and as such cannot be considered. In this connection I wish to refer to the Supreme Court Judgment of the United States which was given recently in the famous Louisiana case. The facts of the case are that a 2 per cent. licensing tax was levied on the newspapers in that State. Nine publishers opposed that and questioned the validity of the tax on the ground.....

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

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

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

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

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

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

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

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

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

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

Mr. President : Any way I do not think we could prevent him from Speaking now.

Shri Deshbandhu Gupta: I am glad that you have held that I am perfectly in order in raising this point of order. I was pointing out that the ground for appeal was that it violated the Federal Constitution in two respects, *viz.*, freedom of press and expression. The Honourable Justice Sutherland of the Supreme Court accepted the point of appeal and held that the measure which was in question did offend against the liberty of the press granted by the U.S. Constitution. They traced the history of this tax and the struggle that has been going on in England for over a century on this point. The important observation they made was :

“That conclusion there stated is that the object of the constitutional provision was to prevent previous restraints on publication, and the Court was careful not to limit the protection of the right to any particular way of abridging it. Liberty of the Press within the meaning of the constitutional provision, it was broadly said, meant principally although not exclusively, immunity from previous restraints or (from) censorship.”

Justice Cooley said :

“The evils to be prevented were not the censorship of the press merely but any action of the government by means of which it might prevent such free and general discussion of public matters as seems absolutely essential to prepare the people for an intelligent exercise of their rights as citizens.”

In the light of this test the Supreme Court held :

“The predominant purpose of the grant of immunity here invoked was to preserve an untrammelled press as a vital source of public information. The newspapers, magazines and other journals of the country, it is safe to say, have shed and continue to shed, more light on the public and business affairs of the nation than any other instrumentality of publicity; and since informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgment of the publicity afforded by a free press cannot be regarded otherwise than with grave concern.”

And at the end, they say :

“The tax here involved is bad not because it takes money from the pockets of the appellees. If that were all, a wholly different question would be presented. It is bad because, in the light of its history and of its present setting, it is seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guarantees. A free press stands as one of the grant interpreters between the government and the people. To allow it to be fettered is to fetter ourselves.”

Sir.....

Shri S. Nagappa : (Madras: General) : Sir, on a point of order. Is the honourable Member raising a point of order or making a speech ? He has already taken some fifteen minutes.

Mr. President : He has mentioned his point of order and he is now arguing the point.

Shri Deshbandhu Gupta : My point is this. In the light of this important judgment of the Supreme Court of U.S.A. the amendment which my Friend Shri Goenka seeks to move offends against the fundamental right guaranteed in article 13 A and as such is *ultra vires*. I therefore suggest that this matter may be held over and referred back to the Drafting Committee to be examined in the light of the judgment of the Supreme Court of the U.S.A., and also in the light of the point of order that I have raised. I do not want to obstruct the proceedings of the House and only urge that this matter being an important matter, and concerns the fourth estate, it is a very vital question, and therefore, nothing would be lost if the Drafting Committee is asked to re-examine the whole question from this point of view. I hope the House will agree with me and that this matter will be held over.

Shri R. K. Sidhwa : May I know whether a judgment of the Supreme Court, of the U.S.A, is binding, upon us? What is the point of order raised please?

Mr. President : The point of order is that the amendment proposed offends against article 13 which we have already passed.

Pandit Thakur Das Bhargava (East Punjab: General) : Sir, the point of order which has been raised and in respect of which certain extracts have been read out to the House from the decision of the Supreme Court of the United States of America, is further strengthened by a reference to article 13 we have already passed. In article 13, we have already said :

“All citizens shall have the right to freedom of speech and expression.”

and this right is only circumscribed by clause (2) of the same article, which says :

“Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law in so far as it relates to or prevent the State from making any law relating to, libel, slander, defamation or any matter which offends against decency or morality or which undermines the security of or tends to overthrow, the State.”

This provision is only a safeguard in the hands of the Government against the unrestricted use of the right of freedom of expression. Now, when a State seeks to tax the press, as such, it certainly seeks to tamper with the right of the freedom of speech. It is, of course, an accepted principle of law that what cannot be done, directly by the law cannot be done indirectly by it. When we are incompetent to pass any law to restrict the freedom of speech unless it comes within clause (2) of article 13, it stands to reason that we cannot indirectly take away the right of freedom of speech.

Then again, Sir, if you will kindly refer to article 8, you will see that it lays down that :

“All laws in force immediately before the commencement of this Constitution in the territory of India, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency be void.”

And further :

“The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.”

Sir, my contention is that any law which restricts the freedom of speech of an individual, or freedom of expression of the Press—because the freedom of the Press is only an extension of the principle of the freedom of speech of an individual—any law that abridges that right, is inconsistent with article 8, and is void. As it is, we by one provision in the Constitution guarantee the right of freedom of speech, and by another take away the same Provision by another subterfuge. I do not want at this stage, to stress the point whether this is a tax on knowledge, whether it is opposed to the fundamental law as in America or England. But so far as our own Constitution is concerned, my contention is that this provision is opposed to the spirit and the letter of article 13. Therefore, this amendment is out of order.

Mr. President : I should like to bear the Members on the main question. But before I do that, I would like to know whether the Drafting Committee would reconsider this item. In that case I shall be saved the trouble of going into the question. In any case I shall not be able to give a decision just now; I have to take some time to consider it.

The Honourable Dr. B. R. Ambedkar : We should like to hear the various points of view as expressed in this House, and if the House or you, Sir, find that it is not possible to come to any definite conclusion right now, then the matter may be remitted to the, Drafting Committee so that the Committee, in view of the various expressions of opinion, might find out some formula

[The Honourable Dr. B. R. Ambedkar]

acceptable to the House. But I do not think, as it is, it is any use trying to recast it. We have got here very definite amendments. One is by my friend here and there is another by my friend Mr. Jhunjhunwala—quite definite amendments.

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

The Honourable Dr. B. R. Ambedkar : Sir, If I may say so, this matter I cannot be decided on the basis of whether something will be *ultra vires* or whether something will not be *ultra vires*. This House is not competent to decide that. That is a judicial matter. All that the House must decide is whether we want to give protection to the newspapers from the various entries which are included, either in List I, List II or List III; and if we want to give them any exemption from these entries then to what extent we should give this exemption. What the court will decide is a matter of which we cannot be sure about. We cannot give any assurance to any newspaperman here and now that we have made a case which is fool-proof and knave-proof. We cannot give that assurance. So we had better decide the particular question, whether we do want to give protection to newspapers from the operation of the various entries. That is the main question.

(Shri R. K. Sidhwa, Pandit Thakur Das Bhargava, Shri Mahavir Tyagi and other Members began talking all together.)

Mr. President : One at a time please.

Shri R. K. Sidhwa : If I have understood Mr. Gupta.....

Mr. President : Are you going to argue the point?

Shri R. K. Sidhwa : Yes, Sir.

Mr. President : Please wait. There are two points involved. One is the Point of order which has been raised, whether the amendment which is sought to be moved by Mr. Goenka is in order or not, in view of the article which we have already passed. And the second point is whether on the merits, the amendment of Mr. Goenka should be accepted in its present form or in any other form.

Shri Alladi Krishnaswami Ayyar (Madras: General) : On the first point, I should like to say a few words.

Mr. President : I was just asking if there was any chance of deciding the question on its merits, then the question of point of order might be done away with, and I would not be required to go into the question. If I am required to go into that question, I shall in any case take a little time to consider it and I will not be able to give my decision right away just now. Therefore, I am asking if it is to be held over, whether the Drafting Committee might consider it and then let us know what the position is, and if they think that this must remain there, then in that case, I would have to give my decision, of my ruling.

Shri T. T. Krishnamachari (Madras: General) : Sir, it is for you to decide. If you remit anything to the Drafting Committee, the Committee has got to consider it. If that is your decision, then the Drafting Committee has nothing more to do, except to reconsider the matter and submit its report to you.

Mr. President : If that is so, I would rather suggest that in order to save time the Drafting Committee reconsider this matter and if they think.....

Shri Alladi Krishnaswami Ayyar : In the view, at any rate, of some of the members of the Drafting Committee, there is no substance in this point of order. They are quite clear and they are able to convince you. If even then you feel any doubt, by all means refer it to the Drafting Committee. We will be prepared to reconsider the whole situation. I do think that what exactly are the points of view must be presented to the House and to you, Sir, because ultimately the duty falls on you to decide whether there is any substance in this point of order or not. All that the Drafting Committee or any individual Members can do is to assist you in arriving at a conclusion with regard to the point of order. It is not a matter of voting. Therefore, all that we can do is to assist you to come to a conclusion whether there is any substance in this point of order or not. So far as I am concerned, it may be that I may be open to conviction and if really you think also that there is some doubt over the matter, we will consider it when it is referred to the Drafting Committee; but so far as this point of order is concerned, I have very, very clear and definite views. If you will permit me to say a few words on, this point of order at any stage you think fit, I can convince you. A point of order simply because it is raised by any Honourable Member, cannot at once be referred to the Drafting Committee. It is not as if there is substance in every point of order. But this one is of very great and fundamental importance. Therefore, I would ask you to consider it and then rule on the question whether it is a matter worth or fit for consideration.

Shri Jagat Narain Lal (Bihar: General) : Sir, all the while, the point of order is being discussed. As I understood you to say was this : that if the matter is such as could, on merits, be considered by the Drafting Committee, the point of order may not arise and it may not be discussed. But I find that that matter has not received consideration. I suggest that the point of order may be held in abeyance and the views of the House on the merits of the question, if necessary, may be taken.

Mr. President : That is the difficulty. If it is not out of order, then in that case the views of the House will have to be taken, but if it is out of order, then.....

Shri Alladi Krishnaswami Ayyar : The Drafting Committee considered the question as to whether it can be transferred to the Central List. My friend the Honourable Dr. Ambedkar, President, will bear out that we came to the conclusion that we can support the transfer to the Central list. We have given our best consideration and we have come to the conclusion that having regard to the wide circulation of newspapers, having regard to the fact that newspapers are inter-provincial in their character, we can agree to the matter being put on the Central list. So far as that point is concerned, we have decided clearly.

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

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

Shri Jagat Narain Lal : Before Dr. Ambedkar is called upon to submit his point of view, we should be allowed to support the point of order raised by Mr. Deshbandhu Gupta.

Shri R.K. Sidhwa : Not necessarily the views in support! There may be opposition also.

Mr. President : That is the whole point—whether we should have a full dress debate on this question or whether one or two speeches should be allowed. Messrs. Deshbandhu Gupta and Bhargava have put their point of view before us. I would like to hear the, other point of view.

Shri R. K. Sidhwa : The point of order raised by Messrs. Deshbandhu Gupta and Bhargava is that this offends against article 13 and therefore is out of order. They have quoted 13 (a) relating to freedom of speech and expression. Now the amendment says “taxes on newspapers”. Surely, newspapers pay tax on income. It does not mean that because the expression “freedom of speech and expression” is there, they are not going to pay any taxes or anything of that kind. With due deference to my friends, there are taxes on newspapers. They have to pay income-tax on the profit they make. If there are any further taxes to be levied, surely this article does not offend article 13. If you go to that extent in interpreting freedom of speech and expression, there will be a chaos. It does not mean that we are going to tax the articles or editorials appearing in a newspaper. That is a very narrow conception of that interpretation. I do not know where that will lead us. If there is any exemption from any tax today on the proprietors of newspapers, I can understand it; but may I know whether newspaper proprietors pay taxes today or not ? They do pay taxes. Therefore, I contend that the objection does not stand for one moment.

Shri Jagat Narain Lal : As representing the Press, some of us claim to be heard by this House. Sir, freedom of speech and expression are terms which we have imported from the English and American Constitutions and we are trying to forge a Constitution at present which shall be ahead of these Constitutions. If we are forging a constitution which instead of being ahead of these constitutions goes backward, I should say that we cannot be proud of such a constitution. I have heard Mr. Sidhwa: His interpretation seems to be too narrow. Dr. Ambedkar shuddered at the idea of the whole judgment of the Supreme Court being read. I do not propose to read the entire judgment. I will confine myself only to a few passages. I would like him as an eminent jurist to go through them. It is not simply a judgment to be merely casually read but it embodies the public opinion both from England and American constitutions; and I should say that at this stage and in this century it is becoming for us, as an advanced country, to guarantee full freedom of speech and expression. I will read only a few passages :

“In 1712 in response to a message from Queen Anne (Hansard’s Parliamentary History of England Vol. 6 p. 1063) Parliament imposed a tax upon all newspapers and upon advertisements. Collect, Vol. I, pp.8-10. That the main purpose of these taxes was to suppress the publication of comments and criticisms objectionable to the Crown does not admit of doubt. Stewart. Lennox and the Taxes on Knowledge, 15 Scottish Historical Review, 322-327. There followed more than a century of resistance to, and evasion of, the taxes, and of agitation for their repeal. In the article last referred to (p. 326), which was written in 1918, it was pointed out that these taxes constituted one of the factors that aroused the American Colonists to protest against taxation for the purposes of the home government; and that the Revolution really began when, in 1765, that government sent stamps for newspaper duties to the American Colonists.”

Then I will read the rest of the portion. It says:

“It is idle to suppose that so many of the best men of England would for a century of time have waged, as they did, stubborn and often precarious warfare against these taxes if a mere matter of taxation had been involved.”

The aim of this struggle was not simply to relieve the Press of the burden of taxation but to establish and preserve the right of the English people to full information in respect of the doings or misdoings of their Government. If words so telling as this could be in as an intention to evade taxation it is very unfortunate indeed.

I do not want to read more of this passage. What I want to say is this that if it is the intention to create unnecessary commotion in this country, it is very unnecessary and undesirable indeed. Therefore, Sir, I think that the point of order raised by Shri Deshbandhu Gupta is very timely.

Mr. Naziruddin Ahmad : Mr. President, Sir, this point of order, I submit, raises an important constitutional question. The point sought to be made is that under article 13 we have guaranteed freedom of opinion and freedom of expression to all people and also to newspapers. Under clause (2) of article 13, there are certain powers given to curtail this right.

The question really turns upon whether the imposition of a tax on newspapers is really an attempt to affect the freedom of opinion and freedom of expression of a newspaper. It may be argued that the tax does not affect the freedom of expression and freedom of opinion, but is merely a realisation of some taxes from the press. This was, as I find, the exact situation which arose before the United States Court and the opinion expressed by the, United States Court in this respect, so far as it is relevant, consists of two or three sentences. There the question was raised that it was merely a tax and did not directly affect the expression of opinion and therefore, did not go against the constitutional guarantee. But the reply of the United States Supreme Court was to the effect that the tax would curtail the right of freedom of opinion and expression. I shall just read only two or three sentences from the judgment:

“The tax is a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the Constitutional guarantee.”

Mr. President : Do you read that in favour of the view that it is *ultra vires* ?

Mr. Naziruddin Ahmad : I submit that lie judgment has pronounced against the validity of the tax.

Mr. President : If the motive is to curtail circulation.

Mr. Naziruddin Ahmad : The verdict of the Supreme Court was that it was really in the guise of a tax to control and stop circulation and expression of opinion.

Mr. President : But supposing there is no intention to control or curtail the expression of opinion. Then that would not be *ultra vires*.

Mr. Naziruddin Ahmad : The matter would really depend not upon the intention, because, that is a matter which cannot be understood, ascertained or measured except from the words of the statute. It can only be judged by the terms of the Act and by the effect that it may produce. The main argument of the American Court was to the effect that though it is a mere, tax and apparently not in derogation of freedom of opinion and freedom of expression, still it will have the effect of reducing the circulation of many newspapers. We cannot therefore, go into the intention, whether it is good or whether it is bad, because that is a matter which cannot be ascertained otherwise than through the wording. We are to consider the tax mainly by its effect. There is no doubt that the tax will have the effect of suppressing many newspapers; in that way it will curtail freedom of expression and of opinion if the tax has the effect of reducing the circulation however slightly. It is well known, Sir, that a free press stand as an interpreter between the Government and the people. To allow it to be fettered is to fetter ourselves.

Then, if course, there is the question of merit; but that is a different, matter But as we have guaranteed the freedom of expression and opinion by article 13, clause (1), and also taken some power to curtail the right under clause (2) in specified directions, there should be no further attempt to curtail these rights I submit that this is a matter which has to be carefully considered.

[Mr. Naziruddin Ahmad]

I readily admit the fact that there is no question of intention involved. We cannot attribute any bad intention to the legislature at all. But under the guise of a tax freedom of opinion will be curtailed consciously or unconsciously.

Sir, one of the elements which ensure freedom in a democratic country is the Press. It is called the Fourth Estate of the Realm, the other three being the Legislature, the Judiciary and the Executive. Any attempt in any way to curtail the liberty of the press should, therefore be carefully considered by us.

Mr. President : I would like to hear Dr. Ambedkar and Shri Alladi Krishnaswami Ayyar on this point of order. I do not think it is necessary to have any more speeches in favour of the point of order.

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

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

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

The Honourable Dr. B.R. Ambedkar : Now, Sir, it is not clear from the statement of fact of that particular case what the nature of the particular tax was which was called in question, nor is it clear as to the severity of that particular tax which was called in question. In my judgment, apart from the levy of the tax, the severity of the tax also would be an element in considering whether the tax was *ultra vires* or not. As I said, there is no reference to this important fact in this judgment. I am therefore not prepared to go by that judgment.

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

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

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

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

“It is a fundamental principle, long established, that the freedom of speech and of the press, which is secured by the Constitution, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled licence that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom.”

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

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

Now I come to the other question. It is quite true that, in view of certain circumstances which have come to the surface in certain provinces, it may be necessary to transfer this particular entry regarding newspapers from List I to List II or place it in List III. That, is a matter not of constitutional law. That is a matter of policy and a matter of confidence; whether you are prepared to put more confidence in the Centre or whether you are prepared to put more confidence in the provinces or whether you are prepared to put confidence in the provinces but would like to reserve to the Centre a certain amount of liberty and power to correct any wrong that a province might do is a matter which of course is open for discussion. That is what we have been discussing; whether any particular entry should remain in List I or part in List I and part in List II or in List III.

[The Honourable Dr. B.R. Ambedkar]

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

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

The second amendment moved by my friend, Mr. Jhunjhunwala, does what ? He thinks that, although newspapers may be transferred to List I, newspapers as, goods open to sale, will still remain in List II because the entry in that list is a very broad entry and would cover newspapers as goods and therefore he feels that there is no purpose served by merely accepting the amendment of Mr. Goenka because they would be liable to be taxed by the provinces under the entry relating to taxes on sale of goods. Therefore he has moved his amendment to get the newspapers out of the Sales Tax Act.

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

Therefore these are the difficulties that are involved in these amendments. Now I do not know if you transfer the entry on newspapers to the Union List, the Centre may levy a tax on newspapers as manufacturers, because the Centre is entitled to put an excise duty on any goods manufactured in any part of India. It seems to me therefore that it would be difficult for the newspapers to escape taxation. All these things have to be taken into consideration. That is to say, these are extraneous matters to which I have given expression at this stage because I think that every Member who wants to take part in the debate, ought to know what the difficulties are. All that I am interested in at the moment is this that there is no bar to the House considering any kind of

limitation, notwithstanding that we have passed article 13. The proposition which is being sought to be placed before the House for its acceptance is in my judgment a very dangerous proposition. It would eliminate even taxation absolutely. Even article 24 could not be there. Many other complications would arise. If you say that because fundamental rights are guaranteed therefore the taxation power should also not be exercised because that would result in the limitation or the destruction of the fundamental rights, it is too large a proposition and I do not think that anybody will ever accept this.

Shri Alladi Krishnaswami Ayyar : Mr. President, Sir, I do not want to travel the same ground so ably covered by my friend, the Honourable Dr. Ambedkar, but I should like to add a few words in regard to certain points which were not touched by him. Reliance, has been placed on article 13. If as a result of the interpretation of article 13 none of the subjects referred to in that article ought to be the subject of any taxation, what we are leading up to, the Rouse may realise. Freedom of the press may be taken as included in freedom of speech and expression, though as in other Constitutions, there is no special clause relating to the freedom of the press. If you refer to 13 (f) (“to acquire, hold and dispose of property”), a man has got a right to hold property. Therefore if this argument were sound no succession duty can be levied; his heir is entitled to hold the property; no estate duty can be levied. No kind of tax including capital levy will operate on that property, because you have guaranteed in the Constitution the right to acquire, hold and dispose of property. This Will be a most dangerous doctrine to lay down, and I do not think that any court will be so foolish as to put that meaning on the expression “to acquire, hold and dispose of property”. Proposals are on the anvil for the abolition of zamindari property. A zamindar has got the right to acquire, hold and dispose of property. Therefore you cannot have any kind of legislation with regard to the abolition of zamindari property. Then again take the right to practise any profession the lawyer’s profession or any other profession. That right is there and therefore a professional tax cannot be levied according to the argument of the other side. We have already passed an article to the effect that professional taxes can be levied. Then take the expression “carry on any occupation, trade or business.” The right is there and therefore you cannot levy any tax on any trade; you cannot levy any tax on any business or on any occupation. The result of this doctrine, of this mixing up a taxation provision with the provisions guaranteeing fundamental rights under article 13 would be to tie the hands of the State in such a way that no progress can be made. No State can function on that basis. It will be impossible to subscribe to a proposition of that description. It is unnecessary for me to go over other clauses, similarly in the chapter on Fundamental Rights, because I am not arguing before a Court of Law to reinforce this particular point.

Then reference has been made to the United States Supreme Court. I hope I will not be guilty of advertising myself if I refer to the fact that it was I that gave a reference to this case to the gentleman who was sponsoring the cause of newspapers of this country and my honourable Friend, Mr. Goenka will bear me out.....

Shri Deshbandhu Gupta : We are thankful to you.

Shri Alladi Krishnaswami Ayyar : Having regard to the infancy of newspaper industry or whatever you call it in this country, the need for inter-provincial circulation, the possibility and the hardship of differential and different taxes being levied by different provinces, I felt the justice of the particular claim, namely, that it is much better whatever might be the form the tax may ultimately take, that power should adhere in the Centre. I was of that opinion and I still adhere to that opinion and I am not holding any view against that, but to hold

[Shri Alladi Krishnaswami Ayyar]

that opinion is not to give a *carte blanche* to newspapers or to say that every profession in India, every kind, of income, every kind of industry, every kind of business can be taxed, but not newspapers or advertisements in newspapers. We have to some extent to count upon the wisdom of Parliament. It may be that under certain circumstances no tax ought to be levied at all and under other circumstances a tax may be levied at a low rate.

I should like to say a few words about advertising. A cinema girl is advertized in a newspaper and the newspaper is making plenty of money out of it. The marriage proposal between two parties is advertized or sometimes referred to in a newspaper. Let us realize the gravity of the step which you want to take. Under these circumstances to say that because it is a newspaper it is to be exempted from taxes, I submit is not a proposition which will either commend itself to this House from a Constitutional point of view or from what may be called a public point of view. At this stage of the discussion I am purely on the Constitutional point of view. Some reference has been made to the American Constitution. It was unfortunate that instead of taking all the articles into consideration one should take, hold of a judgment, read a passage here or read a passage there, take hold of some rules in a text book and then to lead or mislead the House and sometimes the public.

An Honourable Member : That is what the lawyers always do.

Shri Alladi Krishnaswami Ayyar : There are two articles in the American Constitution, articles 5 and 14 referring to due process of law. The House may remember that at a particular stage in the proceedings of this House, I took strong exception to that expression 'due process' being borrowed into our Constitution. Yesterday in some other meeting somebody said that I was in favour of imprisoning all people. I do not favour such a preposterous proposition. I cannot bear a prison and I can sympathize with people who are sent to prison. The only question is whether in the larger interests of the State What exactly are the limitations to be put on the rights guaranteed under the constitution including the right to property.

I will give you one instance. There is a provision in the United States Constitution to the effect that judges shall get a fixed salary and their salary shall not be diminished during the term of office. In the very early stages of the history of the United States Supreme Court the view was taken by the judges themselves that their salaries were exempt from taxation. Fortunately in the later years the United States Supreme Court has gone back upon that view and the Court itself has said that a fixed salary does not mean that the judges are immune from the ordinary liabilities incidental to citizenship. Therefore you will have to take in all these cases. Supposing you put in a licence fee in respect of certain kinds of meetings, then you are interfering with the freedom of speech. If the tax is so oppressive as to strike at the very foundation of the right, it may be that the Court may well say that that law is invalid. That is what the honourable Dr. B. R. Ambedkar was alluding to. In the case of written Constitution, when you are dealing with the question whether the Legislature is acting within the terms of its power under a particular provision or not, the Courts are called upon to decide whether the legislature is keeping to the terms and spirit of the particular provision which clothes the Legislature with that particular power. If in acting under one provision the legislature misuses or abuses the power contained in the provision or invades the field entrusted to another legislature the Court may very well come to the conclusion that that provisions invalid. For example relying upon the maxim of Chief Justice Marshall that the power to tax is the power to destroy, you so tax as to practically destroy the freedom of the Press, certainly the arm of the Court will be long enough to protect that.

Under those circumstances the House will be taking a dangerous step and a step which is fraught with serious evil to this country if it is said that particular people are exempt from taxation. It is another thing whether that power is within the term and within the spirit of the Constitution. In regard to other matters I have nothing to add to what the Honourable Dr. Ambedkar has said, but I venture to state' Sir, in all humility that there is absolutely no substance in the points of law raised, whatever might be the amendments that may be brought in order to see that newspapers do not suffer, that there is free circulation, that there, is freedom of the press, that the power to tax is not so used as to destroy the foundation of free speech and opportunity of expression.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Entry 89

Mr. President : I do not find any amendment to entry 89.

Entry 89 was added to the Union List.

[Mr. President]

Entry 90

Entry 90 was added to the Union List.

Entry 91

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

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

Sardar Hukum Singh (East Punjab : Sikh): Mr. President, Sir, I beg to move :

“That in entry 91 of List I, the word ‘other’ be deleted.”

I have another amendment also that was submitted along with this, but that has been numbered and placed at 171 “That entries 1 to 90 of List I be deleted.” This has been put separately. I wanted to move them together. That opportunity was not given. My idea is, Sir.....

Mr. President : You are moving amendment number 234?

Sardar Hukum Singh : Yes, Sir. My only submission is that I put these two things together, amendments 234 and 171; but they have been split from each other and they appear in different places. No. 171 was not called. Perhaps it was considered too late or it may be called at the end, I cannot say. They were complete when read together and I would deal with both of them if I am permitted.

Mr. President : We have already passed all these entries.

Shri T. T. Krishnamachari : How could entries which we have passed be deleted ?

Sardar Hukum Singh : This is what I am submitting. This amendment. I was not permitted to move then. That has been put separately. I will now deal with amendment No. 234.

My difficulty, Sir, is that after dealing with all these entries from 1, to 90 and after discussing all those details, and even considering interplanetary travels and those journeys from one satellite to another, from the moon to earth and from earth to moon, we have at last come to the conclusion that they are not complete and there might be others that might be required to be included in this List. The object of this entry 91 is, whatever is not included in Lists II and III must be deemed to have been included in this List. I feel that it could be said in very simple words, if the word ‘other’ were omitted, and then there would be no need for this list absolutely. Ultimately, it comes to this that whatever is not covered by Lists II and III is all embraced in the Union List. This could be, said in very simple words and we need not ‘have taken all this trouble which we have taken.

Shri Mahavir Tyagi : On a point of order, Sir, I beg to submit that the second part of the amendment which my honourable Friend Sardar Hukam Singh has moved, is out of order. It is not an amendment of entry No. 91. It is an amendment to entries from 1 to 90, which we have already passed. If the amendment were to be moved, it could be moved only when entry 1 was under consideration or entry 2 was under consideration.

Mr. President : He is not moving it; he is moving amendment 234,—that in entry 91 of List I, the word “other” be deleted.

Shri Mahavir Tyagi : The second he is not moving?

Mr. President : He is moving only the other one.

Shri Mahavir Tyagi : I beg your pardon, Sir.

Sardar Hukum Singh : My submission was that the omission of the word 'other' from this entry would have served the whole purpose of putting this long list. I fear there might not be some servile mentality exhibited here because the Act of 1935 had about 320 articles and ten schedules, and then the seventh schedule had three lists and that has been followed in this Draft as well. Otherwise, we need not have gone into these details. I am reminded of a short story. A gentleman asked his expert friend, what was the best method of catching a crane. The expert friend replied, just go when it is dark, put some wax on the head of the crane, when the Sun would rise afterwards, it would melt the wax which is sure to fall into its eyes. The bird would be blind and you can catch it. The gentleman asked, then why not catch it at the very beginning when you go to put the wax? He replied, if it were done so easily, then where was the master's feat, *i.e.*, ustad ki ustadi

I fail to understand, Sir, why all this procedure should have been gone through. When we come to entry 91, we have to put, this residuary power. It could have been more easily done by paying more attention to Lists II and III and simply saying any matters not enumerated in Lists II or III including any tax not mentioned in either of those lists. That would give us the same effect without bothering about all these details. With these words, I move my amendment.

Mr. Naziruddin Ahmad : Mr. President, Sir, I do not wish to oppose entry 91. It is too late to do it, but I should submit that the moment we adopted entry 91, it would involve serious redrafting of certain articles and entries. Under article 217 we have stated in substance that entries in List I will belong to Union List II to States and List III common to both. That was the original arrangement under which we started. We took the scheme from the Government of India Act. When an entry like 91 was considered at an earlier stage we agreed that the residuary power should be with the Centre. This was an innovation, as there was nothing like it in the Government of India Act. As soon as we accept entry No. 91, article, 217 and a few other articles would require redrafting and entries 1 to 90 would be redundant. In fact all the previous entries—from 1 to 90 would be rendered absolutely unnecessary. I fail to see the point now retaining entries 1 to 90. If every subject which is, not mentioned in Lists II and III is to go to the Centre what is the point in enumerating entries 1 to 90 of list I? That would amount to absolutely needless, cumbersome detail. All complications could be avoided and matters simplified by redrafting article 217 to say that all matters enumerated in List. 11 must belong to the States, and all matters enumerated in List III are assigned to the Centre and the States concurrently and that every other conceivable subject must come within the purview of the Centre. There was nothing more simple or logical than that. Instead, a long elaborate List has been needlessly incorporated. This was because List I was prepared in advance and entry No. 91 was inserted by way of after thought. As soon as entry 91 was accepted, the drafting should have been altered accordingly. Article 217 should have been re-written on the above lines and matters would have been simplified. May I suggest even at this late stage that these needless entries be scrapped and article 217 be re-written and things made simple? That an amendment to that effect but I did not move it because I know that any reasons behind an amendment would not be deemed fit for consideration by the House.

Prof. Shibban Lal Saksena : Sir, to-day is a great day that we are passing this entry almost without discussion. This matter has been the subject of

[Prof. Shibban Lal Saksena]

discussion in this country for several years for about two decades. Today it is being allowed to be passed without any discussion. The point of view of Mr. Naziruddin Ahmad is not correct. In fact Dr. Ambedkar has said that if there is anything left, it will be included in this item 91. I therefore think that it is a very important entry. There should not be any deletion of items 1 to 90. I know this entry will include everything that is already contained in the first 90 entries as well as whatever is left. This entry will strengthen the Centre and weld our nation into one single nation behind a strong Centre. Throughout the last decade the fight was that provincial autonomy should be so complete that the Centre should not be able to interfere with the provinces, but now the times are changed. We are now for a Strong Centre. In fact some friends would like to do away with provincial autonomy and would like a unitary Government. This entry gives power to the Centre to have legislation on any subject which has escaped the scrutiny of the House. I support this entry.

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

“anything not included in Lists II or III shall be deemed to fall in list I”.

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

I may also say that there is nothing very ridiculous about this, so far as our Constitution is concerned, for the simple reason that it has been the practice of all federal constitutions to enumerate the powers of the Centre, even those federations which have got residuary powers given to the Centre. Take for instance the Canadian constitution. Like the Indian Constitution, the Canadian constitution also gives what are called residuary powers to the Canadian Parliament. Certain specified and enumerated Powers are given to the Provinces. Notwithstanding this fact, the Canadian constitution. I think in article 99, proceeds to enumerate certain categories and certain entries on which the Parliament of Canada can legislate. That again was done in order

to allay the fears of the French Provinces which were going to be part and parcel of the Canadian Federation. Similarly also in the Government of India Act; the same scheme has been laid down there and section 104 of the Government of India Act, 1935 is similar to article 223 here. It also lays down the proposition that the Central Government will have residuary powers. Notwithstanding that, it had its List I. Therefore, there is no reason, no ground to be over critical about this matter. In doing this we have only followed as I said, the requirements of the various Provinces to know specifically what these residuary powers are, and also we have followed well-known conventions which have been followed in any other federal constitutions. I hope the House will not accept either the amendment of my Friend Sardar Hukam Singh nor take very seriously the utterings of my Friend Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Never.

Mr. President : I shall put the amendment moved by Sardar Hukam Singh, to vote. The question is :

“That in entry 91 of List I, the word “other” be deleted.”

The amendment was negatived.

Mr. President : Then I put the entry 91. The question is:

“That entry 91 stand part of List I”.

The motion was adopted.

Entry 91 was added to the Union List.

Prof. Shibban Lal Saksena : Sir, I have got three amendments which you said could be taken up at the end.

Mr. President : Yes, I remember.

I will now take up a number of new amendments which are sought to be proposed. I will take the first amendment—in the Printed List. There are three new entries suggested. One is in amendment No. 3586 in the names of Pandit Lakshmi Kanta Maitra, Shri Sures Chandra Majumdar and Shri Mihirlal Chattopadhyay; the next one is in No. 3587 in the name of Shri Arun Chandra Guha. I take it these are not moved. And then there is amendment No. 3588 in the names of Shri M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and Shri Sures Chandra Majumdar. That is also not moved.

Then we come to No. 58 in List I (Sixth Week), the amendment of Shri Brajeshwar Prasad. Do you wish to move it?

Shri Brajeshwar Prasad : Yes, Sir. I beg to move:

“That with reference to amendment No. 3588 of the List of Amendments, the following entries be added to List I :—

1. “Scheduled Areas” and “Tribal Areas”.
2. All the entries from 1 to 66 in List II.”

Sir, may I move the other amendments also?

Mr. President : No, we had better take them, one by one.

Shri Brajeshwar Prasad : Sir, I hold the view that if we have got the interest of the tribal people to heart, if we want to do justice to them, then the tribal areas and the scheduled areas must come to the Centre. Sir, forests and minerals lie in these zones, and I regard these subjects as vital subjects. And if these two subjects are to be taken up and be in the hands of

[Shri Brajeshwar Prasad]

the Centre, I feel that the tribal areas must also be taken up by the Government of India. While discussing another article I said that by making the tribal areas centrally administered areas, the tribals will develop a sense of unity and oneness among the tribal people. I feel also that the Provincial Governments, due to the lack of economic resources have not been able to pay much attention to the problems that confront them. So the problem of poverty and illiteracy among these tribal people cannot be solved by the Provinces with the limited financial resources that they have. If we, therefore, want that the tribal people should be brought to the level of the other non-tribal people living in India, then the Central Government should take charge of these tribal areas.

The point was raised the other day that such a course would prevent the assimilation of the tribal people with the general public of our country. Sir, I think that the ideal of assimilation is merely a distant goal. This is not the immediate issue before us. Let us first try to assimilate ourselves before we try to assimilate the tribal people, with ourselves. In spite of the fact that Biharis and Bengalees have lived together for centuries, we have not been able to assimilate ourselves. In spite of the fact that we have had Telugus and Tamils living together for centuries, they have not been able to assimilate themselves. In spite of the fact that there has been a common government at the Centre, the distinctions and the differences between the people of the North and the people of the South have persisted. Let us first solve this problem. It does not indicate a high sense of proportion in us if instead of achieving these goals we talk of assimilating the tribal people.

I also maintain that the question of their assimilation should be decided by the leaders and representatives of the tribal people themselves. Let them decide that question. Our duty is only to provide them with the means of development, to give them the opportunities for their educational, cultural and economic development. If we provide these things for the tribal people, then I would consider that we have done our duty. And then let their own leaders decide whether they should merge with the rest of the population or remain as a separate entity. My own feeling is that this question of assimilation is a very far-fetched question and it has no connection with the problems that confront us today.

As regards the second point, I am not prevented from moving this by any articles of the Constitution that we have already passed. I am suggesting that there should be only two Lists—the Union List and the Concurrent List.

Shri R. K. Sidhwa : Is it in order to make this suggestion now?

Shri Brajeshwar Prasad : If it would not have been in order, the motion would not have been allowed to be moved.

Shri R. K. Sidhwa : Do you want the provinces to be liquidated?

Shri Brajeshwar Prasad : I do not want the provinces to be liquidated. They should have concurrent powers of legislation. I want provincial governments to exist. I hold the view that the social purposes of the age cannot be fulfilled if we do not, with all possible haste, do whatever lies in our power to develop our agricultural, mineral and industrial resources. These developments require to be scientifically planned within the shortest possible time. We cannot afford to have a house divided into a large number of water-tight compartments. The old concept of division of powers or separation of powers does not fit in with the needs of the present century. It was suited to the needs of a bygone age.

Mr. President : I think you are going over the same ground again that there should be no provinces.

Shri Brajeshwar Prasad : No, Sir. The provinces should exist, but they should enjoy only concurrent powers. I am not against provinces. Whatever my own personal feelings in the matter may be, at the present moment I am not advocating that the provinces should be abolished. What I am saying is that they should have only limited powers—concurrent powers.

I know that you are very keen on time, Sir, so in deference to your wishes I will only urge one point more and conclude my speech. I feel that if we are to play our part in foreign politics, we must not have provincial governments vested with a large number of powers. They must not have autonomous powers. They should have only concurrent powers. What is the game of our opponents? The game of Anglo-American powers in Asia has been to prevent the establishment of a United, strong Centre in India. They want the disruption of India. It was with this end in view that they separated Burma from us. It was with this end in view that they divided this country. It was with this end in view that they gave complete independence to the Indian States. Now, are we going to fall in line with the hopes and aspirations of the Anglo-American powers? (*Interruption.*) If we want to frustrate the aims of our enemies, we must have a strong Centre and provinces vested only with concurrent powers. I would have taken more time, but I feel that the temper of the House is not favourable.

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

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

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

Mr. President : I take it the House gives him leave to withdraw.

Prof. Shibban Lal Saksena : No.

Mr. President : You do not give him leave to withdraw. Very well, I will put it to vote. The question is :

“That with reference to amendment No. 3588 of the List of Amendments, the following entries be added to List I :—

1. “Scheduled Areas” and “Tribal Areas”
2. All the entries from I to 66 in List II.”

The amendment was negatived.

Mr. President : There were two amendments of Dr. Deshmukh which I held over yesterday—223 and 224. He may move them.

Dr. P. S. Deshmukh : Sir, I shall move amendment 223. I beg to move:

That after the proposed new entry 70A the following new entry be added :

“70B. Protection of children”

I would beg your pardon and request you to permit me to add the words “and young men” after the word “children”.....and young men ” (*Interruption*)

Mr. President : And not young women?

Dr. P. S. Deshmukh : Man includes woman. It is contained in the article in the Directive Principles.' So "protection of children and young men, their exploitation and abandonment," would be the altered form of my amendment.

Sir, if You refer to the proposed entry in List II, No. 5, you will find that for the States we have the entry "Prisons, reformatorys, Borstal institutions and other institutions of a like nature and persons detained therein". Then, in the Concurrent List, entry 6, we have "marriage, and divorce, infants and minors; adoption".

Shri H. V. Kamath : May I point out to my friend that the word used in Part IV Directive Principles is not "young men" but "youth" ? I refer to article 31.

Dr. P. S. Deshmukh : If that is the word, then I had probably referred to the wording as it stood in the original Draft. I would like to change it to "youth", or whatever there is in article 31 as finally approved. From these two entries I have mentioned, you will find, Sir, that the States have been given power to deal with child delinquents by giving powers of legislation—with regard to reformatorys and Borstal institutions and so that question of child delinquency has been dealt with already or will be dealt with when we discuss List No. II.

So far as entry 6 in List III is concerned, we would be giving concurrent power with regard to marriage and divorce. So far as infants and minors are also mentioned and are to be taken in the same context. It is quite clear that this can refer only to the infants and minors so far as their 'legal status is concerned and by the above entry it would be possible for the State Governments to make legal provisions in so far as they are concerned. But unfortunately there is nothing so far as the welfare and protection of children and youth is concerned, especially their exploitation and abandonment, which has been one of the articles which we have already passed, viz. article 31. By this article we want the Union Government to be responsible for the protection of children and to see that there is no exploitation or abandonment of children and youth. I think it is in the fitness of things that we should have an entry in the Union List so as to empower the Union to legislate in this matter.

I have already answered the view that this entry is unnecessary. If any body were to contend to that effect because there are entries in Lists II and III and therefore say that this entry is not necessary, my submission to the House is that those entries do not cover the case. I have in view. We have very rightly and properly taken pains to have an entry in the article with regard to the exploitation of children and youth in our Directive Principles, and therefore it follows logically that the Union ought to be empowered to pass legislation in this respect. I do not think I need draw the attention of the House as to how children in this country are neglected, how destitute children wander about at the railway junctions and railway stations, near and about the Cinema Theatres and Bus Stands, etc. In our country one easily gets the impression that the children are the Cheapest of articles. If only we analyse our attitude towards them, one gets the impression that even sewage and dirt is more valuable than children. I am glad that we have taken care to include this in our Directive Principles and if we are serious about our Directive Principles, then the Union should have the power to legislate in this matter and to take early steps to remedy the present abominable situation. From this point of view, Sir, I press that this entry be accepted by the House.

So far as the other two entries are concerned, I would beg for your leave to move them when we come to the discussion of the amendment so far as, newspapers are concerned.

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

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

Mr. President : The question is:

“That after the proposed new entry 70A of List I, the following new entry be added:—

‘70B Protection of children and young men their exploitation and abandonment.’ ”

The amendment was negatived.

Mr. President : There were three additional entries which stood in the name of Professor Shibban Lal Saksena. Yesterday when I called them he was not in his seat; I took them as not moved. As he said that he wished to move them I said I would consider the matter.

Prof. Shibban Lal Saksena : Sir, I beg to move:

“That after entry 59 of List I, the following new entry be added:—

‘59A. Labour Legislation, and Legislation for settlement of Industrial disputes.’ ”

“That after the entry 59 of List I, the following new entry be added :—

‘59B. Co-ordination of machinery for settlement of industrial disputes in States and in the Union and the provision of Supreme Industrial Appellate Tribunals.’ ”

“That after entry 59B of List I, the following new entry be added:—

‘59C. Unemployment Insurance.’ ”

Sir, I thank you for having given me an opportunity of moving these amendments and I wish to draw your attention to the importance of these entries. I know that in the Concurrent List we have got items.

26. Welfare of labour; conditions of labour; provident funds; employers’ liability and workmen’s compensation; health insurance, including invalidity pensions; old age pensions.

27. Unemployment and social insurance.

28. Trade Union; industrial and labour disputes.

which means that both the provinces as well as the Centre can pass laws in that connection. In entry No. 59 it is said that industrial disputes concerning Union, employees shall be a Central subject, so that even though industrial disputes are in the Concurrent list, so far as Union employees are concerned, legislation to settle these disputes will be the province of the Union Government. What I want is this : that these items in the Concurrent List may remain as they are, but the items which I have proposed may be added to the Union List. The main purpose, of this amendment is to bring about uniformity in the matter of labour legislation all over the country. At present the position is this. Although the same industry is dispersed all over the country still labour is governed by different laws in different parts of the country, with the result that there is discontent among labour. That, for instance, is the case with regard to the sugar industry. The industry is situated in the U.P., Bihar, Madras and Bombay; but the labour is governed by different laws in different parts of the country. That is also the case with regard to jute textile and other industries. I therefore, want that labour legislation should be uniform all over the country.

My second amendment relates to the co-ordination of machinery for the settlement of industrial disputes. Machinery for this no doubt exists in every province, but there is no co-ordination of these activities of the various provincial Governments. Again there is no appellate tribunal to which all can go. I consider it a very important thing which must be provided for. I understand that the Central Government is intending to bring in a Bill to establish an appellate tribunal. I therefore want that this power should be given to the Centre. Coordination cannot be done by the provinces. Therefore this entry must be in the Union List.

My next amendment runs thus:

“That after entry 59B of List I, the following now entry be added:—

‘59C. Unemployment Insurance.’ ”

[Prof. Shibban Lal Saksena]

It is now in the Concurrent List. The provinces will never be able to enforce this. If you want to make it a reality and to make it uniform throughout India, you must take this on to the Union List. Labour the world over is one and therefore the conditions of labour throughout India must be uniform. There will be discontent and heart burning if in Bombay, for instance, there is the system of doles and elsewhere there is not. In the United Provinces there are labour laws governing the conditions of labour in sugar factories and so on, while in other provinces there are no such laws. This leads to competition among industrialists and the labour suffers. If there are uniform laws labour will be contented.

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

Mr. President : I will now put the amendments to the vote of the House. The question is:

“That after entry 59 of List I, the following new entry be added:—

‘59A. Labour legislation, and legislation for settlement of industrial disputes.’ ”

The motion was negatived.

Mr. President : The question is:

“That after entry 59A of List I, the following new entry be added:—

‘59B. Co-ordination of machinery for settlement of industrial disputes in States and in the Union and the provision of Supreme Industrial Appellate Tribunals.’ ”

The motion was negatived.

Mr. President : The question is :

“That after entry 59B of List I, the following new entry be added:—

‘59C. Unemployment Insurance.’ ”

The motion was negatived.

Mr. President : Then there are several new items which Shri Raj Bahadur wants to add.

Shri Raj Bahadur (United State of Matsya) : Sir, from among the items included in amendment No. 267 I am moving only one. I beg to move:

“That after entry 90 of List I, the following new entry be added:—

‘90A. Control and eradication of beggary.’ ”

Sir, I believe, it will be admitted on all hands that no other country in the world suffers from the evil of beggary so much as India. In fact in most countries they have legislation prohibiting beggary; but in our country this evil continues as a stigma on our fair name and reputation. By pressing for the inclusion of the aforesaid entry I want to focus the attention of the future Parliaments to this evil, so that, no matter what party is there in power, action may be taken by the Government to check this evil.

We know, that the problem of beggary is closely inter-linked with the problems of poverty and unemployment. We, know how the slavery of our country in the past and the callous indifference on the part of foreign rulers for the welfare and progress of the people, has resulted in exploitation and abject poverty of the masses of this country.

Apart from that aspect, however, certain psychological conditions also have accounted for the problem of beggary in our country. We have certain notions of charity. They are laudable but have more often been misdirected. In most cases charity is misconceived and misplaced. Instead of seeing to it that our

charity is directed only to such purposes as deserve it, we give alms to undeserving members of society and thus encourage beggary. We give alms purely guided by faulty notions and sentiments. Moreover, our climatic conditions also result in lethargy and laziness in the habits of our people. This has also accounted for this abnormal number of beggars in the land. Some people turn beggars only because they are too lazy to work. They fill their stomach without earning their livelihood by honest work. They simply live on alms and do not work. They are a burden on Society. This sort of lethargy is increased by the existence of illiteracy.

This is, hence, a multifaced problem and ought to be solved not only on a local of municipal basis but on a national basis. I, therefore, seek by means of this amendment to include the control and eradication of beggary in the Union List. It is high time that we removed this blot and blemish from the fair face of our country. I submit that a scientific and systematic treatment of the problem is indispensable. Today if we go anywhere in our country, in towns or villages or every street-corner or by-lane, on the foot-paths, in front of the cinema houses and bus-stands we find swarms of these miserable wretches stretching out their palms for alms. We have got to realise the seriousness of the problem. As I said, I would not move any of the other amendments, because I feel somewhat discouraged to see that the Honourable Chairman of the Drafting Committee is not even taking the trouble to reply to most of the amendments moved by other members suggesting new entries.

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

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

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

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

Shri Raj Bahadur : Vagrancy and beggary are distinct terms. The term 'Vagrancy' connotes somewhat a bad character and all beggars may not be bad characters. 'Vagrancy' may include beggary, but some beggars may not be vagrants at all.

Mr. President : I will now put Mr. Raj Bahadur's amendment to the vote.

Shri Raj Bahadur : If the Honourable Chairman of the Drafting Committee thinks that vagrancy includes beggary, I am prepared to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : There is one more entry proposed by Dr. Deshmukh, amendment No. 235.

Dr. P. S. Deshmukh : I do not want to move it.

Mr. President : Then there is another entry which was left over, by Pandit Thakur Das Bhargava, amendment No. 192.

Pandit Thakur Das Bhargava : I do not propose to move it at this stage, I will subsequently move the subject-matter of this amendment to be taken to the Concurrent List.

List II—(State List)

Mr. President : We will now take up List II, entry 1. I have got notice of an amendment that entries 1 to 66 be transferred to List III, by Mr. Brajeshwar Prasad. I do not think it is necessary to move it.

Shri Brajeshwar Prasad : It may be taken as moved.

Mr. President : Yes, and withdrawn also.

Shri Brajeshwar Prasad : That will come at a later stage, Sir.

Mr. President : I do not think it is necessary to move it. There is another amendment by Mr. Brajeshwar Prasad that entry 1 of List II be transferred 'to List I as new entry 2A.

Shri Brajeshwar Prasad : May I request your permission to move that entry.

Mr. President : Yes, you can move it.

Shri Brajeshwar Prasad : Mr. President, Sir, I beg to move:

"That entry 1 of List II be transferred to List I as new entry 2A".

Sir, this entry refers to public order.

Dr. P. S. Deshmukh : On a point of order, Sir, we have already disposed of the whole of List I. Any entry which was intended to be added to List I ought to have been moved before. So long as Mr. Brajeshwar Prasad did not say then that he wanted this entry to be added there, I do not think it is proper for him to move the amendment now because we have already finalised List I, except in respect of newspapers

Shri Brajeshwar Prasad : I would, submit that so long as List II and List III have not been finally disposed of, it is within our competence to transfer one entry from one List to another. Of course, if it is your ruling, Sir, that the point which has been raised by Dr. Deshmukh is valid, then I am quite prepared to resume my seat. But hereafter no new entry should be permitted to be added to List I.

Dr. P.S. Deshmukh : But you ought to have moved it at an earlier stage.

Shri Brajeshwar Prasad : I have moved it in the stage which I think is the proper stage.

Shri T. T. Krishnamachari : It would have been perfectly proper for the honourable Member to have moved this amendment when we were considering List I.

Mr. President : The point of order is whether any addition can be proposed to List I now.

Shri T. T. Krishnamachari : We have already finalised List I. Now we can only allow transfer from List II to List III, not to List I.

Mr. President : I think it would be much better if we allow him to move it.

Shri Brajeshwar Prasad : Sir, the administration of public order in the provinces has not been of a satisfactory character. They have not the resources to maintain an efficient system of administration. Seventy-two per cent. of the budget of Assam goes in the form of salary bills. The other twenty-eight per cent. is left for managing a large number of subjects. The result has been deterioration in the efficiency of the administration. There are also some States and provinces on the borders of foreign States. Is it the opinion of the House that it is not risky, it is wise to leave the question of public order entirely in the hands of the provincial governments? In a State like Assam and East Punjab, public order....

Shri B. L. Sondhi (East Punjab: General) : What is wrong with East Punjab?

Shri Brajeshwar Prasad : There is nothing wrong about East Punjab I was only saying that these States are on the borders of foreign States. Therefore it is necessary that the power to maintain public order should remain in the hands of the Central Government. With the limited resources at their disposal, it will not be possible for these States to maintain public order.

An Honourable Member : Strengthen them.

Shri Brajeshwar Prasad : The provinces of West Bengal and East Punjab are partitioned provinces. They are suffering from the problem of relief and rehabilitation, from the problem of migration of population, and there has also been infiltration of subversive elements in the services of these two provinces. I do not say that the services of the other provinces are safe; there has been infiltration in the services of the other provinces also; but in the case of these two provinces in particular, there has been considerable infiltration of subversive elements. The result is that the integrity, the efficiency of the provincial administration—my friends from West Bengal will bear me out—has deteriorated. Sir, in other provinces also crimes are on the increase. The machinery of law and order has been considerably weakened. Lawlessness prevails in many provinces. The pursuit of power politics by provincial ministers and the growth of caste feelings have shattered all semblance of civilised administration. I, therefore, strongly feel that public order should become a Central subject. There are dangers within and dangers without, and we cannot depend upon the loyalty of the provincial administration in times of crises. Centrifugal forces have been the bane of our political life since the dawn of history. I therefore urge, Sir, that public order should become a Central subject.

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

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

Shri Brajeshwar Prasad : I withdraw my amendment.

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

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

The amendment was negatived.

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

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

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

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

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

Sardar Hukum Singh : Sir, I move:

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

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

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

Sardar Hukum Singh : Then I need not say anything.

Mr. President : The question is :

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

The amendment was adopted.

Mr. President : The question is:

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

“preventive detention for reasons connected with the maintenance of public order, persons subjected to such detention.”

The amendment was adopted.

Mr. President : The question is :

That entry 1 as amended, stand part of List II.

The motion was adopted.

Entry 1, as amended, was added to the State List.

Entry 2

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

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

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

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

Mr. President : Then there is amendment No. 236. I do not think it could arise now because we have already passed the entry including the High Courts in the first list. The amendment is to the effect that the High Courts should be deleted. So it is out of order. The next amendment is 237, standing in the name of Dr. P. S. Deshmukh. It is also the same thing.

Dr. P S. Deshmukh : Sir, I do not move it.

Sardar Hukum Singh : Sir, I beg to move:

“That in amendment No. 64 of List I (Sixth Week), in the proposed entry 2 of List II after the words ‘and the High Courts the words and persons entitled to practise before the Supreme Court or any High Court be inserted.”

My object in moving this is similar to the one that I moved previously.

Mr. President : This was practically passed yesterday in connection with an entry in List No. 1. So this question cannot be moved. We have already passed an entry in List No. 1 which covers this point.

Shri T. T. Krishnamachari : The idea is that he wants the exclusion of those words expressly.

Sardar Hukum Singh : You have included these persons also in List No. 1. When we exclude the Supreme Court, the High Court, then the persons entitled to practise should also be excluded along with this Supreme Court and the High Court.

Shri T. T. Krishnamachari : It is a specific entry.

The Honourable Dr. B. R. Ambedkar : Yesterday’s entry was a specific entry and therefore his amendment is unnecessary.

Shri Raj Bahadur : Sir, I move:

“That in amendment No. 64 of List I (Sixth Week), in the proposed entry 2 of List II. after the words ‘Supreme Court’ where they occur for the second time, the words ‘and the High Courts’ be inserted.”

Sir, as has been observed by the Honourable Dr. Ambedkar, the supervision, control and organization of the High Courts has been made a subject in the Union List. It is but meet and proper that the fees should be uniform in every High Court. Therefore fees taken not only by the Supreme Court but also fees taken in the High Court should be a subject-matter which should be excluded from the purview of this new entry.

Shri T. T. Krishnamachari : The position really is that entry 52 expressly puts the fees, taken by the Supreme Court in List I and if we accept the amendment of Mr. Raj Bahadur, the power to levy fees by the High Court will be left in the air.

Mr. President : The question is:—

“That in amendment No. 64 of List I (Sixth Week), in the proposed entry 2 of List II, after the words ‘Supreme Court’ where they occur for the second time, the words ‘and the High Courts’ be inserted.”

The amendment was negatived.

Mr. President : The question is :

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

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

The amendment was adopted.

Mr. President : The question is:

That entry 2 as amended, stand part of List II.

The motion was adopted.

Entry 2 as amended, was added to the State List.

Entry 3

Entry 3 was added to List II.

Entry 4

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

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

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

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

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

The Honourable Dr. B. R. Ambedkar : That depends upon any legislation made by the province. If under the Police Act they enroll a certain person,

[The Honourable Dr. B. R. Ambedkar]

he is a police for that purpose or if they enroll under some other Act and they are given the powers of the Police, that will also be police.

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. President : I will put the amendment of Mr. Brajeshwar Prasad to vote.

Shri Brajeshwar Prasad : I beg leave to withdraw it, Sir.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is:

"That entry 4 stand part of List II."

The motion was adopted.

Entry 4 was added to the State List.

Entry 5

Entry 5 was added to the State List.

Entry 5-A

Mr. President : Amendment 3590 has not been moved.

Shri Brajeshwar Prasad : You have always given that latitude; without the amendment being moved, I have already moved many amendments to amendments.

Mr. President : The way in which this amendment is worded, it cannot read, "subject to the supervision, direction and control of the Government of India."

Shri Brajeshwar Prasad : I will correct it, Sir, with your permission:

"Provincial Militia subject to the supervision, direction and control of the Government of India. "

This is my amendment. Especially in the United Provinces of Agra and Oudh, this is assuming serious proportions. This is a violation of the spirit of the Constitution. I am afraid it may take a shape which may not be in consonance.

Mr. President : I am afraid this would not do. This additional entry which Mr. Santhanam wanted to move, but which he has not moved, raises a new question altogether, and any amendment to that involves a new question, I do not think I can allow the amendment. Your amendment will have the effect of bringing in a new entry.

Entry 6

Mr. President : We take up entry No. 6. There is no amendment.

Entry 6 was added to the State List

Entry 7

Entry 7 was added to the State List

Entry 7-A

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

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

'7-A. State pensions that is to say, pensions payable by the State or out of the Consolidated Fund of the State.' "

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

(Amendment No. 238 was not moved.)

Mr. President : The question is :

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

'7-A. State pensions, that is to say, pensions payable by the State or out of the Consolidated Fund of the State.' "

The motion was adopted

Entry 7-A was added to the State List.

Entry 8

Entry 8 was added to the State List.

Entry 9

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

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

'9. Acquisition or requisitioning of property except for the purposes of the Union subject to the provisions of entry 35 of List III.' "

[The Honourable Dr. B. R. Ambedkar]

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

(Amendment 239 was not moved.)

Shri Raj Bahadur : Sir, I move :

"That in amendment No. 69 of List I (Sixth Week), in the proposed entry 9 of List II, the words 'subject to the provisions of entry 35 of List III' be deleted."

My reason for moving this amendment is that this entry corresponds to entry No. 43 in the Union List. After the acceptance of the amendment No. 21 moved by the Drafting Committee, that entry stands in the following form now:

"Acquisition or requisitioning of property for the purposes of the Union."

The words, "subject to the provisions of entry 35 of List III" are conspicuous by their absence in that entry. I see no reason why there should be, any difference in the terms or phraseologies of these two similar entries in respect of property acquired by the Union on the one hand and in respect of property acquired by the State on the other hand. These words, 'subject to the provisions of entry 35 of List III' should either be retained in both the places or they should not be kept in either entry. In order to secure consistency, and uniformity in principles therefore, these words should be deleted here.

Apart from that, unless and until we have taken some decision in respect of article 24, we should not accept or take for granted the principle of awarding compensation for property acquired by the Union or by the States in the public interest. On this ground, also it is not proper to put these words, 'subject to the provisions of entry 35 of List III' in this entry. With these words, I commend my amendment for the consideration of the Drafting Committee and the House.

The Honourable Dr. B. R. Ambedkar : It is not a proper amendment, I cannot accept that.

Shri Raj Bahadur : May I know the reason for it?

Mr. President : Are you withdrawing the amendment?

Shri Raj Bahadur : I do not withdraw because I have not been given any reasons.

Mr. President : The question is:

"That in amendment No. 69 of list I (Sixth Week), in the proposed entry 9 of List II, the words 'subject to the provisions of entry 35 of List III' be deleted."

The amendment was negatived.

Mr. President : The question is:

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

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

The amendment was adopted.

Mr. President : The question is:

"That entry No. 9, as amended, stand part of List II."

The motion was adopted.

Entry 9, as amended, was added to the State List.

Entry 10

Entry 10 was added to the State List.

Entry 10-A

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

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

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

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

Mr. President : The question is :

“That Entry 10-A stand part of List II.”

The motion was adopted.

Entry 10-A was added to the State List.

Entry 11

Mr. President : Entry No. 11.

Shri Raj Bahadur : I do not wish to move my amendment.

Entry 11 was added to the State List.

Entry 12

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

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

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

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

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

Dr. P. S. Deshmukh : I do not move my amendment.

Mr. President : The, question is:

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

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

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

The amendment was adopted.

Entries 12 and 12-A were added to the State List.

Entry 13

Mr. President : Entry 13.

Shri Brajeshwar Prasad : I do not move my amendment.

Entry 13 was added to the State List.

Entry 14

Mr. President : Entry 14.

Shri Brajeshwar Prasad : I am not moving my amendments.

Shri Mahavir Tyagi : Mr. President, sometimes it is really embarrassing to move amendments. I had given this amendment with reference to an amendment in the printed list. That amendment has not been moved and now he raises a point that I cannot bring in my amendment.

Mr. President : I think there is some substance in it.

Shri Mahavir Tyagi : Morally it seems he has let me down.

Mr. President : You should not have depended on him. You should have moved as a separate amendment.

Shri R. K. Sidhwa : Since giving notice of my amendments changes have taken place and so I do not move my amendment.

Shri Mahavir Tyagi : The rule of giving notice, I always understood, means that Members are informed as to what subject is to come up for consideration. That purpose having been served in this case, I submit you might at least treat this as an independent amendment and allow me to move it.

Mr. President : Your amendment is something very different from entry 14. Entry 14 lays down :—

“Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.”

Your amendment is ‘regulation and control of houses and rents’. These are two different things.

Shri Mahavir Tyagi : The amendment in the printed list reads:—

“Local self-government in cantonment areas, the regulation of house accommodation in such areas and the delimitation of such areas.”

Therefore my amendment was relevant in relation to the amendment which I sought to amend.

Mr. President : We passed an entry which put the controls.

Shri Mahavir Tyagi : That was about Cantonments in List I. Now it is List II. As the matter is important you may allow this, and it may be numbered as a new entry.

Shri R. K. Sidhwa : He wants to substitute the old entry with this ‘regulation and control of Houses and rents’. I want to ask—regulation by whom ? My amendment was quite different.

Mr. President : These are two different things altogether.

Shri Mahavir Tyagi : Sir, my amendment was in substitution of the amendment in the printed list and after substitution it would read like this:—

“The regulation and control of houses and rents.”

Mr. President : These two are different.

Shri Mahavir Tyagi : Then I would request you to allow me to move it as a separate entry and no member can take objection on the ground that it was not notified. If it is acceptable to the House, a new number can be given to it. It may be 14 or at the end.

Dr. P. S. Deshmukh : You cannot amend something which does not exist.

Mr. President : I cannot allow it to be moved as an amendment of 14. We will dispose of 14 now and then we will consider whether to take it up.

The question is :

“That Entry 14 stand part of List II.

The motion was adopted.

Entry 14 was added to the State List.

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

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

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

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

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

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

The House has already agreed to one entry which says that all the residuary powers will go to the Centre, all that is not mentioned in List II or List III. I submit that the control of Houses in urban areas and the, control of rents of those houses are an important matter today. It was not in the original list of the Government of India Act, 1935, because at that time the control over the houses and their rents was not needed and it was not prevalent in India.

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

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

The Honourable Dr. B. R. Ambedkar : Sir, there are, I think three distinct questions, although they have not been stated by Mr. Tyagi in that form. The first question is whether the Provincial legislature should or should not have any power to regulate and control houses and house-rent. I think on that issue, there can be no difference of opinion, that the Provincial Governments must have such power. The question then is whether the Draft Constitution and the entries in the list make any provision for the provincial legislatures to exercise powers for the purpose of regulating and controlling the houses and the rents. Now, my submission is that the specific entry as proposed by Mr. Tyagi is quite unnecessary, because there are two other entries, namely entry 24 of List II which deals with “land, rights in or over land, land tenures including the relation of land-lord and tenant, and the collection of rents etc. etc.” That is one entry. Then there is another entry No. 8 in List III about transfer of property other than agricultural land; registration of deeds and documents. These two entries have been found to be quite sufficient to enable the Provincial Governments to

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make laws relating to the regulation and control of houses and rents. My Friend Mr. Tyagi knows also, that notwithstanding the fact that such an entry does not exist even today, under List II of the Government of India Act, none-the-less, the Provinces have enacted laws in this matter. Therefore entry 24 relating to land and the other entry No. 8 about transfer of property are quite sufficient to give the power which Mr. Tyagi wants that they should have.

Another difficulty in the way of accepting the amendment of Mr. Tyagi is this. Suppose we were now to include this entry, it would cause a certain amount of doubt on the laws that have already been made by the provinces for the purpose of regulation of houses and the control of rents. It would appear that the legislature itself felt that the entry as it already existed, was not sufficient for the purpose of giving the legislature power to make laws for this purpose. And therefore it was necessary specifically to give this power. I think we would be unnecessarily casting doubts upon the validity of laws already made. Therefore, this is an additional ground against accepting the amendment. In the first place, as I have said it is unnecessary because the provinces have got sufficient power to make such laws and the other is this question of validity of laws made.

Now I come to the third part. My Friend Mr. Tyagi has been struggling to some extent when I was dealing with the question of cantonments to remove the power of allowing cantonments to regulate rents and the premises within their areas. If my friend's intention is that by getting this entry accepted, it would be possible for the provinces to nullify the power which has already been given by the entry in List I, as it has been already passed, then I think, he is completely under a mistake. Notwithstanding the fact that this entry may become part of the Constitution, the entry which we have already passed would be valid; notwithstanding any power vested in the Provinces, the Cantonments will have the power to make regulations with regard to the premises and the rent of the premises situated in that area. Therefore, I submit to my Friend Mr. Tyagi that his purpose is already served and it is unnecessary to have this entry, especially because it would be casting a certain amount of doubt on the validity of the laws already made under these entries as they stand.

Shri Mahavir Tyagi : Sir...

Mr. President : There is no right of reply.

Shri Mahavir Tyagi : I only want to put a question, if you will please permit me.

Mr. President : Put your question.

Shri Mahavir Tyagi : Will Dr. Ambedkar tell us, whether we should be guided by the difficulties which might be experienced by one Government or the other, or whether we should make the law without regard to the previous commitments of the provincial Governments, and authorise the provincial Governments to enact laws to control the rent? We cannot proceed on the basis that because no one has so far objected to an irregularity, everything is all right. Suppose the owner of a house takes objection on the ground that the provincial government has no right to control rents, then what happens ?

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

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

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

New Entry 14-A

Mr. President : I shall put the new entry to vote. The question is:

“That after entry 14, the following new entry be added :

“14-A. The regulation and Control of houses and rents’.”

The motion was negatived.

Shri Mahavir Tyagi : Sir, I had no chance of saying “Aye” because I was actually on my way back to my seat.

Mr. President : No, I gave you the chance, but you did not say “Aye”. Now, we come to entry 15.

Shri R. K. Sidhwa : Sir, about the programme for the present session, I would like to . . .

Mr. President : I shall dispose of this entry and then listen to what you say Dr. Ambedkar.

Entry 15

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

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

This is transferred to the concurrent List.

Mr. President : There is no amendment to this ?

Shri Brajeshwar Prasad : Yes, Sir, there is one from me. But as Dr. Ambedkar has agreed to transfer this entry to List III, I do not move it, and I have nothing more to say.

Mr. President : Then there is amendment No. 280 (Fifth List, Sixth Week) by Mr. Kamath.

Shri H. V. Kamath : It is one o’clock, Sir. Shall I move it?

Mr. President : I think we had better stop here.

Shri R. K. Sidhwa : Sir, before you adjourn the House we would like to have some idea about the programme for this session. There are several important articles remaining, and we do not know when they will be taken up. If you can give us some idea as to when they will be taken up, we can . . .

Mr. Naziruddin Ahmad : And also since they are important articles we should be given some time to consider them and give our amendments.

Mr. President : I think I shall be able to give you tomorrow some idea of the articles with the particular dates on which they will be taken up; and the articles will be circulated in time to enable Members to give any amendments to which they may be entitled.

The House now stand adjourned till nine o’clock tomorrow morning.

The Assembly then adjourned to Nine of the Clock on Friday the 2nd September, 1949.