

## CONSTITUENT ASSEMBLY OF INDIA

*Friday, the 9th September 1949*

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

### DRAFT CONSTITUTION—(Contd.)

**Shri Yudhisthir Misra** (Orissa States): Before we begin today's proceedings, may I draw your attention, Sir, to a pamphlet which has been issued yesterday about international numerals and which was circulated from the Office of the Constituent Assembly. The pamphlet has been issued by the Hindi Sahitya Sammelan and contains certain offensive paragraphs, and for your information I will read one or two sentences from it. First may I know, Sir, whether this pamphlet can be issued from the office of the Constituent Assembly, as it contains certain offensive remarks against the Prime Minister and also against some other Members ?

**Mr. President** : It is not issued by the Office of the Constituent Assembly.

**Shri Yudhisthir Misra** : It was in the dak which was circulated from the office to the Members.

**Mr. President** : It should not have been done by the office. I was not aware of it. I received a complaint about the distribution of another pamphlet by another Member, but that was not to the Members of the House, but it was in the Press Gallery. As it was in the Press Gallery, I did not take any notice of it, but this has been distributed from the officer. I am really sorry; it should not have been done.

We shall begin with article 264 now. Amendment No. 270.

### Article 264

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

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

Exemption of property of the  
Union from State Taxation.

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

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

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

**Mr. President** : Amendment No. 303 of which notice has been given by Mr. Brajeshwar Prasad, but that relates to the original article. Do you wish to move it ?

**Shri R. K. Sidhwa** (C.P. & Berar: General): There are amendments Nos. 208 and 209 on page 28 of the printed list standing in my name. I had given notice of these amendments long ago in conformity with the rules of procedure. There is also another amendment, No. 435 in List IX Seventh Week to that effect standing in my name.

**Mr. President** : We will come to that.

**Shri Brajeshwar Prasad** (Bihar: General) : Sir, I move my amendment No. 303.

**Mr. President** : Your amendment does not fit in with this article.

**Shri Brajeshwar Prasad** : May I move (b), Sir ?

**Shri T. T. Krishnamachari** (Madras: General): Nor does that fit in the proviso, Sir.

**Mr. President** : There is no proviso in this and therefore (b) does not fit in.

**Shri R. K. Sidhwa** : I do not think that amendments that came late should be given preference over the amendments which I have given notice of according to rules of procedure.

**Mr. President** : I think this list was circulated several days ago.

(Amendment No. 304 was not moved.)

**Shri R. K. Sidhwa** : Sir, I beg to move :

“That in amendment No. 270 of List IV (Seventh Week), for the proposed article 264, the following be substituted :—

‘264. The property of the Union shall, save in so far as the Parliament may by law otherwise provide, be as much liable to all taxes imposed by any local authority within a State as any property of an individual’.”

Sir, this amendment is of very vital importance as far as the taxes of the Union properties are concerned. The Union properties in the territory of India are the Posts and Telegraphs, the Customs House, the Excise, the Auditor General and the most important is the railway properties. These properties are sought to be exempted from the payment of taxes by the local bodies. This contentious subject has been a bone of contention between the Provincial Governments and the Union Government for the last 25 years. The local authorities render service to these properties and therefore tax them. So I do not see any reason why the Union property should be exempted and invidious distinction should be made. Because the Union is the supreme Government, it does not mean that taxes which are due to be paid to the local bodies, which are weaker bodies in the matter of finances, should not even take their legitimate taxes to which they are entitled. As regards the buildings which I stated of Customs, and Posts and Telegraphs, in many towns they are in rented buildings and there the question does not arise but as regards the properties of the Union themselves the question of taxes arise. In almost each town and each village there is railway property and railway properties have been sought to be exempted by this article Under section 35 of the Railway Act which is known as the Railway Local Authority Taxation Act, 1941 if any local authority seeks for the levy of the tax a notification has to be issued by the railway authorities. Not only that, Sir, the local authority has to prove to the officials that the tax is due. Secondly, it is stated that the onus of proof lies with the authorities, although it is apparent to everyone that the local authority render service for sanitation, hygiene, conservancy, roads, lighting, fire-brigade; all these are maintained in the railway buildings, yet when they are asked to pay and which they are entitled, in many cases these dues are not paid. I will quote instances where the railway authorities in spite of the local authorities complying with their requests have not paid their dues which they are supposed to pay. In this respect almost all the provincial ministers have unanimously resolved that this tax should be paid. I will quote you presently the opinion of various Governments in regard to the payment of taxes on these Union buildings from which it will be seen that not one Provincial Government has stated that there should be exemption.

In Bengal in Rishra-Konnagar a notification for declaring liability for holding and conservancy rates was published in 1916. On 16th January 1944 the area was split up into two Municipalities and the Railways suddenly stopped payment on 1st April 1946 on the ground that fresh notification was necessary. Such a notification was issued only on 25th August 1948. Moreover, although liability to pay lighting tax was declared in 1945 by the Government of India, the railway administration held up payment on one pretext or another and then the Railway Board agreed, and yet the Board later on stated that these liabilities are not due and they should not be paid. In Kanchrapara Municipality, prolonged correspondence has failed to elicit the Railway Board's consent to pay conservancy rate, the Railway Board replying on 2nd November 1948 that it did not get any drainage service from the Municipality in spite of the fact that all these requests were complied with.

On account of this controversy, Sir, a conference was held in Delhi of the various ministers from the Provinces in August 1948 and the opinion of Ministers who assembled there was that they unequivocally and unanimously supported that the Union property should be taxed. The Minister from Madras.....

**Mr. President :** Mr. Sidhwa, the unfortunate fact is that there are many Premiers of provinces who are Members of this Assembly and not one of them has thought fit to send in an amendment to this article and to which you have given your amendment.

**Shri R. K. Sidhwa :** Sir, that does not matter. I represent all the provinces, as far this matter is concerned. I am speaking in my capacity as the President of the Local Authorities Union and on the initiation of the local authorities a conference was called.....

**Mr. President :** I may draw attention to the fact that you cannot draw any inference from what they said at conferences when they have not themselves thought fit to say anything in this Assembly.

**Shri R. K. Sidhwa :** Though they have not sent amendments, they have reliance on me as an authoritative speaker and they have left the matter entirely to me. Sir, what I was stating was that this income is one of the major incomes of the local bodies. No Member, I can assure you, Sir, who is interested in the local bodies will say that these taxes should not be levied.

**Mr. President :** I am not saying anything on the merits. I am only saying.....

**Shri R. K. Sidhwa :** I say, Sir, any Member who is interested in the local bodies; there are many Members who have no interest....

**Mr. President :** You cannot rely upon the authority of what the Ministers said elsewhere when they are not repeating the same thing here in this House.

**Shri R. K. Sidhwa :** I am quoting from the records to state what is happening in the province, so far as these taxes are concerned. The Madras Minister was of the opinion that the general principle of taxation applicable to private property and those belonging to provincial Governments should be followed in regard to taxation of railway property as well. I do not want to quote the speech at length. The Bombay Government has very strongly stated that the railways are commercial undertakings run for profit, and there is no equitable reason for giving them a privileged position in respect of local taxation, especially as the residents of the railway colonies take advantage of the road and other amenities which are provided by the local authorities. In the province of Bombay, Sir, no exemption is admissible even to the provincial Government in respect of property used for purposes of profit, and local taxes have to be paid in respect of property and there is no reason why the railway administration should not be treated exactly like other commercial undertakings

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whether private or State. The Assam Government's view is that the Central Government railway property should be liable to local taxation like provincial Government property. The Central Provinces and Berar Government are of the view that the railways are commercial undertakings making large profits and it would only be just and proper that they should like other commercial undertakings contribute towards the cost and maintenance of sanitation, and other amenities in the municipal areas in which the properties are located. The United Provinces Government have very strongly stated that this exemption has no justification and that there is no reason why the Dominion Government property should enjoy such privileges while enjoying the amenities provided by the local bodies by virtue of such properties being situated within the jurisdiction of local bodies. These are the opinions of some of the Governments. From these it will be seen how keen the provincial Governments are to support the local bodies in getting these taxes, because this is a major source of income. I can give you, Sir, one illustration. The Howrah Municipality has represented to the Government that if these taxes are exempted, it will lose to the extent of Rs. 206,000. You can understand, Sir, a small Municipality like the Howrah Municipality losing such a large amount.

**Mr. President :** This article does not cause that loss. The second paragraph saves that.

**Shri R. K. Sidhwa :** I quite admit that, Sir. I am only just quoting what is happening despite the second paragraph which is more or less existing in the present Act. Further, this question has been before the Legislative Assembly and discussed many times, and many Members have taken great exception in this matter in protesting against the Government for making a discriminatory law exempting the Union Government from payment of these taxes.

The result of this would be that the economic strain to the local bodies would be great and they are likely to suffer as they are even at present suffering. I may assure you, Sir, that the terminal taxes and taxes on property are main sources of income of the local bodies. After all, we must not forget that the Central Government is our own Government; the provincial Governments are our own Governments and the local bodies are our own Governments. The local bodies are the bodies which should be supported to a large extent. These are the bodies where our future Members in the legislature take their first training.

**Pandit Lakshmi Kanta Maitra** (West Bengal: General): Terminal taxes are not affected by this article.

**Shri R. K. Sidhwa :** I was only mentioning that. Those members of the legislature who have been in the local bodies, have been very useful really. That is the training ground. The local bodies require to flourish and they should be supported by the Central Government and the provincial Governments. They are crippled from all sides from the financial point of view. They are asked to levy their taxes; but their sources are very limited. If you go to foreign countries the local bodies are given great assistance and lump grants are made by the Central Government. They are given grants for all their departments. In England, one-fourth of the taxes on State property are given to the local bodies. Similarly in the United States also because they feel that the local bodies are the pivot of the whole national Government.

I feel that this matter has been lightly treated by this House and by some of the honourable Members. I am sure that those Members who have taken an interest in local bodies are very keen in this matter. I am sorry that the Honourable Pandit Govind Ballabh Pant who has given notice of an amendment is not here to move it. He has actually fought with cudgels on this matter I do not see why against the unanimous opinion of the provincial Ministers,

the Finance Minister or the Railway Minister should come in the way; that is my difficulty. If you do not care to listen to the unanimous opinion of all the provincial Governments and only depend upon one Minister in the Centre, then I can tell you, the local bodies and the provincial Governments cannot function satisfactorily. These are creatures of our own Constitution. If you are not prepared to listen to these bodies who express their view unanimously, as I have quoted just now, I do know what more proof could be produced to show that these bodies require help.

Having gone into this question, I might mention that the Railways feel, as they generally feel and complain, that they are not legitimately taxed or that they are likely to be taxed heavily. The Madras Government have made a suggestion : appoint a committee consisting of some members of the Central Government, some members of the provincial Government and some members of local bodies and find out a solution and fix the amount which is legitimately due. My honourable Friend Dr. Ambedkar has not made any speech while moving his amendment. I do not know therefore what his objections are. But, if he feels, as I anticipate rightly, that the Union Government is the supreme Government, and the Union Government having no voice in the local bodies, no taxes could be levied on the Union Government, I say, Sir, if that analogy is accepted, there are commercial and industrial interests which are not represented in the local bodies and the local bodies cannot levy any taxes on them. Moreover, he would say no taxation without representation, therefore no representation being given to the local bodies by the Union Government, it is not proper that they should be taxed. I can tell my Friend Dr. Ambedkar that the power of levying taxes by local bodies is not absolute. It is subject to the sanction of the provincial Government and the Central Government. I can cite the Municipal laws, Borough Municipal laws, District Municipality laws, Corporation laws where it is laid down that any tax, big or small which is levied by the local bodies shall be subject to the sanction of the provincial Government and the Union Government.

That being so my Friend Dr. Ambedkar cannot come and say that because there is no representation given to them, therefore they cannot levy the tax. If any tax is levied the matter will finally come to Central Government for approval. The Central Government can reject that. They have rejected in the past. Several municipal corporations have passed certain taxes' and the Central Government have turned them down. Therefore that argument does not stand to reason for one moment. I wish he had given his reason while moving the amendment and I would like to know why his Committee is adamant, in not acceding to the unanimous opinion of the Ministers of Provincial Governments. My friend may say that this article was framed probably after consultation with the Premiers of all the provinces. I have no access to that. I am prepared to believe what he says, but I do not know. If I were there, I would have faced those Premiers with the opinions of their own Provincial Local Self Government Ministers who attended this Conference and gave their opinions.

The Local Finance Committee which was appointed at the instance of the Health Minister of the Government of India met as early as 11th June 1949 to consider this subject when the Constitution was being framed because they felt that if they did not consider this matter, their question will go by default. I quote to you the unanimous resolution of all the Provincial Ministers who were present in the Committee meeting.

“As regards Union properties (except the railways), the same basis of local taxation, viz., the basis applicable to Provincial Government properties, should be applied and the same method of assessment, is suggested above (*i.e.*, in Resolution No. 1) should also apply.”

Resolution No. 1 is in connection with railway property.

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“After holding discussions with the representatives of the Central Government, the committee is of the opinion that railway property should be held liable for the payment of local taxes in the same way as Provincial Government properties are. As regards the assessment of railway property, the Committee feels that there should be an independent machinery consisting of representatives of the railway authorities, provincial governments and local bodies in order to ensure a proper assessment.”

You can see from this that any kind of excess levy, although they do not levy, they cannot levy, still a *via media* has been found out to meet the wishes of the Railway Ministry and despite this, this resolution was communicated to the Drafting Committee; I do not know whether Dr. Ambedkar took this into consideration or not. He owes an explanation to this Committee because this Committee was appointed by the Government of India; to facilitate the finances of the local bodies this Committee was appointed, and despite all these facts, the opinion of the Ministers and the opinion of this Committee have not been taken into consideration, and we are told that either the Railway Minister or the Finance Minister are not prepared to accept the unanimous decision of this Committee. Why are you throttling the opinion unanimously expressed by this Committee? This is not a hypothetical question. If the argument is that there can be no taxation without representation, then I have given him the answer that that argument cannot stand for one moment. Many interests are taxed by local bodies but they have no representation there. Even if it is taxed they have no absolute right to tax and they have to go to Central Government for approval finally. Why do you come in the way of local bodies doing some good work? The Central Government say we do not recognise them. Is the object of this Constitution to throw out these small bodies? Our aim is that these small bodies should be brought up to that level where they could be happy and prosperous. The Central Government are not prepared to give the necessary amount to these bodies. Some of the provincial Governments are doing their best from their money. The Central Government takes the terminal tax. The other day I broke my head with the Drafting Committee for the terminal tax. They have stopped asking the provincial government to levy terminal tax. Everybody wants money. I am a member of the Central Legislature, I am as keen as my friend that the Centre should be strong. At the same time I do not want the local bodies' finances to be jeopardised by this method.

I am very strong in the matter because I have been fighting for this for the last twenty years. Not only myself but the provincial Governments and everybody has been fighting for this. I am prepared to prove by facts. It is for Dr. Ambedkar to disprove these. If he is prepared to prove that, I am subject to any enquiry to show that the Provincial Government are absolutely in favour of allowing the Union property to be taxed. If not, let me have his views. With these words I move this amendment.

**Pandit Lakshmi Kanta Maitra :** Mr. President, Sir, I feel myself called upon to make certain observations in connection with this article. In my opinion this article raises certain very important issues. The question is, whether the property of the Union should be subject to the taxation in the States or whether there should be an absolute exemption from such taxation. I am not going to examine or controvert the theory that State properties should not be taxed. But I am placing certain observations in the light of what has actually been the practice in this country with regard to taxation of the Union property.

I think most of the Members of this House are not aware that this question came up for consideration in the shape of a Bill in 1941. I am not going to give any details from the proceedings of the Central Legislative Assembly of 1941 when this Bill was discussed and passed, but I will make a passing reference to some pages and I invite the attention of the House to the proceedings reported in Volume IV of 1941 November Session of the Legislative Assembly

in 1941. The Bill that came up for consideration and was eventually passed was 'The Railways Local Authorities Taxation Bill'. In that Bill—I give the gist of it—it was contended that the railway property as such would not be subject to any form of local taxes unless the local bodies rendered specific services to the railways. I may tell you at once that I stoutly resisted that proposition and throughout the discussion of this Bill I put up a stiff fight on behalf of local authorities as I felt that such a condition would act very disastrously on the finances of local self-governing institutions of the country. However, there was a settlement, a compromise. All the Mayors of the different corporations in India were called together, a conference was held in which I was a participant, and eventually a formula was evolved which somehow was acceptable to us.

Now the point that has to be considered in connection with this, is this. Are we in a position now to exempt all the Union property from local taxes ? Look at the equity of it, apart from the theory involved in it, from the practical aspect. In all municipalities there are certain types of taxes imposed on holdings, and holdings are defined in municipal laws in different ways. Generally a particular plot of land with, certain boundaries is a holding. Now, municipalities have got different forms of rates. They have holding rates, conservancy rates, lighting rate, education rates, water rates and other rates. It so happens that no property situated within the limits of the municipal jurisdiction is exempt in any way from any of these items of taxation. Even if there is a fallow piece of land in a municipality and practically the municipality renders no service to it, even then this fallow land is a holding and as such is subject to all these forms of taxation : no question arises of services rendered by the municipality. Similarly in big cities like Calcutta, Bombay, Madras, Allahabad, Moghulsarai, look at the vast amount of railway property that is there. The railway workshops at Kanchrapara, Lilooah, Jamalpur, Moghulsarai and other places the staff quarters, the railway colonies, railway sidings, railway lines and so on. There was a perpetual controversy between the corporations and the government with regard to local taxation of these railways. And in order to avoid the taxes the railways in many cases later on had their own sources of water-supply, electricity and conservancy arrangements and things like that, and then they contended, "We have provided our own arrangements, and government properties will therefore not be liable to taxation". I submit that this is a very questionable proposition. As I said, there is absolutely no consideration shown to any private person for granting immunity on the grounds that I have stated. I agree that the Drafting Committee's latest amendment is a great improvement on the original draft. It provides that for the period immediately following the commencement of the Constitution, such taxes as were leviable on the Union property would continue to be levied, unless and until Parliament prescribed otherwise. This certainly is an improvement. But it is necessary for me to place on record for future reference by the Indian Parliament that this is a very vital issue. It is not a question of railway property alone, though that forms the bulk of the Union property in the States. According to the Act of 1941, if there is a notification to that effect by the Government local taxes in respect of them, could be collected. But the taxes would be in a modified form. There the criterion is services rendered.

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

**Pandit Lakshmi Kanta Maitra :** It does not matter. Nobody is going to speak after me. This is a very vital issue and I have been fighting for the protection of municipalities and all other local bodies, and I feel it my duty to warn future parliamentarians to proceed very slowly and very cautiously in this matter and that they should not be guided by mere theory. The taxes from

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railway properties is an important source of revenue to the corporations, municipalities, district boards and union boards. Let this fact not be forgotten that grant of exemption will be a serious encroachment on the finances of these local self-governing institutions. That is one side. Now there is the other side. You have provided in the article—and of course, theoretically it is an right—you have provided in article 264 that Union property shall not be taxed. And in article 266 you have provided that income of the State shall not be taxed by Central Government. Of course, here is the principle of reciprocity which in vulgar language means, “You scratch my back, and I win scratch yours”. And in between these two arrangements the local self-governing institutions have to suffer. That is the whole point for consideration. In municipalities even the humanitarian and public institutions like orphanages, dispensaries, schools, temples, mosques, dharmisalas etc.—bodies that are not profit-earning institutions—are not exempt from local taxes. And as I said, no discrimination is shown in their favour even when they have not utilised any of the services offered by the municipality in any way. That is no consideration either for reduction of tax or exemption from it. That being so, it becomes a very dangerous thing to prescribe that Union property as such shall not be subject to taxes.

But it is not railway property alone : Government of India has got a lot of other varieties of property. Take for instance the fertilizer factory at Sindhri. Do you mean to say that the local body there, whatever it be, say, the local board or Union board there would not be entitled to levy any local taxes thereon ? Then there is the Mint, the Currency Offices, Post and Telegraph and Telephone office buildings in different places; the Reserve Bank Offices. Numerous other central institutions are springing up all over the country and if you make a sort of general provision that no Union property shall be subjected to local taxes, it will be very difficult for us to accept it, in view of the very delicate nature of the finances of the local self-governing institutions at present and the reaction it will inevitably have on them, if these provisions are literally put into effect. But the only salient feature about the Provision is that at least from the date of the commencement of this Constitution, these institutions will be entitled to levy these taxes as before, and I am thankful to the Drafting Committee for conceding that much. But I would have very much liked that this kind of statutory exemption for all forms of Union property, were not embodied in the Constitution. It could have been left out, it should not have found a place in the Constitution. The whole matter could have been left to the Parliament for decision one way or the other. But as the Drafting Committee is closely following the Government of India Act, 1935, as a model, I have no quarrel. I would only sound a note of warning; let not the authority, in the future lightly deal with this question, because it affects the well-being and the very existence of local self-governing institutions, such as corporations, municipalities, district boards, local boards, union boards etc. The fate of all these is inextricably bound up with the provisions contained here. If their taxation is allowed to be continued, it is all right. It will leave them some modicum of wherewithal to carry on. If this is withdrawn, it will mean nothing but disaster to the self-governing institutions. This is all that I have to say. Thank you, Sir.

**Shri Chimanlal Chakubhai Shah** (Saurashtra): Mr. President, Sir, article 264 has to be read with article 266 which I suppose will be moved presently under amendment 272. The two articles embody a principle of mutuality, namely, the property of the Union shall not be subject to tax by the State and the property of the State shall not be subject to tax by the Union. That is a principle which I accept. But when the property of the Union is exempted from taxation by the State it also means exemption from taxation by any



authority within the State. I also agree that should be so, because if the local authorities were left free to tax the property of the Union as they like, it will be easy for the State merely to assign the tax to the local authority which will enable the local authority to tax Union property which the State itself could not tax. I have, therefore no quarrel with the principle embodied in articles 264 and 266. There are, however, two points on which I wish to draw the attention of the House.

Speaking on behalf of the local authority with which I have been associated, namely, the Bombay Municipal Corporation, the Bombay Municipal Corporation has been carrying on a controversy with the Bombay Government since many years to augment its sources of revenue. That controversy is still not at an end. Only recently the Bombay Government appointed a committee with Mr. A. D. Shroff as President to consider the question of giving additional sources of revenue to the Corporation. After all, the sources of revenue of a local body are very limited and also very inelastic. The local body has merely to tax within the four corners of the Act which enables it to tax. The Centre can tax to an unlimited degree. The liabilities and responsibilities of local authorities are increasing and also their expenditure. The Bombay Municipal Corporation, though it is supposed to be one of the richest Corporations, is finding it difficult to make both ends meet. Last year the Bombay Government was pleased to give Rs. 50 lakhs as a grant to meet its deficit and similarly this year also they gave Rs. 50 lakhs. That is Possible because the Congress Government in the province is sympathetic and the Congress Party is in majority in the Corporation and each of them work in co-operation. But I submit that the local authority should not be left in the position of having to beg every time. Nothing should therefore be done to deprive the local authorities of their legitimate sources of revenue. I am sure it is not the intention of article 264 to starve the local authorities and I would be glad if the Honourable Finance Minister can give an assurance on that point.

In article 266 it is said that the property and income of a State shall be exempt from Union taxation. Will that necessarily mean that the property and income of any local authority within the State will also be exempt? If it means that, I should be happy. Secondly, clauses (2) and (3) of article 266 empower the Parliament to tax any trade or business which may be carried on by the State. Should there not be a corresponding provision in article 264 also ? Because, with the policy of nationalisation on which we are embarking it is possible that the Union will acquire large undertakings and will own considerable property. These may be within the limits of the State. Would you not permit the State and the local authority to tax those properties of the Union which the Union owns for business ? For instance, several local authorities are taking over transport services, public utility concerns, electricity undertakings, etc. I should like an assurance that the income of the local authorities from such transport services and public utility services will be exempt from taxation of the Union, particularly income-tax. The Bombay Municipal Corporation has, for example, recently taken over the Tramway, Bus and Electricity undertakings. It will be a considerable additional source of revenue for them. If these are liable to tax, particularly income-tax, it will reduce their sources of revenue. I would therefore request Dr. Ambedkar to consider these two points, namely, (1) whether in article 266 it is not necessary....

**The Honourable Dr. B. R. Ambedkar :** We are for the moment considering 264 and not 266. That may be dealt with when we come to article 266.

**Shri Chimanlal Chakubhai Shah :** If you do not want me to say anything on that at the present moment, I will not. But I think the two articles are correlated and the one has to be read with the other. That is the only reason

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why local bodies are not being permitted to tax the Union property, because under 266 you are also exempting the State property and income from State property from Union taxation. These are the two points to which I wanted to draw the attention of the House.

**Shri B. M. Gupte** (Bombay: General): Sir, I rise to support the amendment of Mr. Sidhva. Exemption of Central Government property from taxes of local bodies has been a long standing grievance and it is a pity the Drafting Committee did not see its way to remove it. The present position is defended on certain principles and theoretically, I am prepared to concede, that they are correct; but I am afraid that in practical application they are not so.

One of the principles on which it is defended is that the Central Government has no representation in local bodies and has no means, of controlling the taxation and it is argued that the power to tax is almost a power to destroy. Naturally therefore, the Central Government cannot give blindly such power to the local bodies. In theory, it is correct, but in practice it is not; because after all local bodies are subordinate to the State and the States are subordinate to the Central Government.

**Shri T. T. Krishnamachari** : It is not so.

**Shri B. M. Gupte** : Although in the Constitution we are framing for the country, we call it a Federal State, still the picture that is emerging is not a picture of a Federal State. I would rather describe it to be a decentralized form of unitary government. Under this Constitution, not only the local body but even a State cannot afford to defy or be recalcitrant to the Union. Therefore, it is no use saying that the centre has no control over the local body. In other ways also, there are practical limits to the taxation. The local body cannot put a higher rate of tax on Union property than that they can impose on ordinary persons. If there is an exorbitant rate, the rate payers will rise in revolt. And if the rate is not exorbitant, there is no reason why the same rate should not apply to the Union property. Then even judicial appeals are allowed to the District Judge or the City Magistrate. Therefore, it is no use saying that the Centre has got no control over the taxing power of the local body and on that ground therefore the present position cannot be defended.

Then there is another principle which is urged; and that is that local bodies are after all subordinate units of the Government itself; the Central Government, the States and local bodies together form the entire Government and one part of the Government cannot tax another part of the Government. This argument also is not valid. I will give you another example. Take two departments of the same government. If one department of the Central Government sends a telegram to another department, naturally it has to pay the telegraph charges. One department debits it and another credits it. Therefore, I submit that in this matter it is more a question of convenience and of comparative need than of absolute principle or a hard and fast rule.

With regard to comparative need, I will put it to Dr. Ambedkar whether the need of the local body for finance is greater than the need of the Union property for exemption. The local bodies come into daily contact with the people : their activities touch the daily life of the people and naturally therefore their responsibilities are great. Their financial condition is already very straightened today. The Central Government gives them no grant. So if the Central Government gives them no grant, why should not they at least pay taxes to the local bodies on their properties ? These taxes will increase the efficiency of the local bodies and to that extent the Central Government properties that are situated there and the persons who take advantage of those properties would

be benefited by the increased efficiency of the local bodies. Then a difference is made by the Union Government. It is prepared to pay the service taxes I know a distinction is made between service taxes and non-service taxes but that distinction is made simply for the sake of the principle that the local bodies should not make any profit from service taxes. A service tax should be strictly limited to that amount which is necessary for the purpose of that service. That was the intention in devising that classification service and non-service taxes. That does not mean that non-service taxes do not confer any benefit. There is indirect benefit that is derived from the amenities provided by the local bodies. Suppose a very large office is maintained in a city by the Central Government and there is access to that office from the road. That road is built, lighted and swept by the local body. You will say that you derive no direct benefit and therefore you are not bound to pay the non-service taxes, but you do derive benefit from the general service of the local body maintained by those non-service taxes. Therefore this distinction should not be taken advantage of in this connection. The local bodies have to be maintained and they cannot function without grants either from the State or the Centre. There is no question of principle in the matter : the article itself contains an exception and therefore there should be no objection to accepting the amendment.

It must be admitted that the Centre must be strong but a strong Centre cannot be sustained on weak units or weak sub-units. These local bodies are the sub-units which come into intimate contact with the people and unless they function efficiently and are strong, their inefficiency and weakness are bound to recoil on the Union Government itself. I therefore support the amendment.

**Shri T. T. Krishnamachari** : Sir, the question be now put.

**Mr. President** : The question is:

“That the question be now put”.

The motion was adopted.

**Shri R. K. Sidhwa** : In view of the unanimous views of the Members who have spoken, will the Honourable Dr. Ambedkar kindly reconsider the position ?

**Babu Ramnarayan Singh** (Bihar: General) : Sir, this is a very important article and the discussion should not be closed so quickly.

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

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

The only question that can arise is whether the right given by clause (2) should be absolute or should be subject to the proviso contained therein, until

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Parliament otherwise provides. In another place where this matter was discussed I submitted certain arguments for the consideration of the House.

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

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

I said then that it was difficult to give a *carte blanche* to the local authority to levy taxes on the properties of the Union without any kind of limitation or condition and the arguments were two-fold. First of all, I said and I say right now here that it is impossible theoretically, to conceive of any property of a person who is not represented or whose interests are not represented in any particular organisation,—to allow that Organisation a right *ad infinitum* to levy any tax upon the property of such persons. It is a principle contrary to the principles of natural justice and I said that so far as the local authorities are concerned, whether they are municipalities or local or district boards, there is practically no representative of the Central Government in those bodies. I said the same thing elsewhere. Secondly, I said that the taxing authority of a local body is derived from a law made by the local legislature, the legislature of the State. It is quit impossible for the Centre to know what particular source of taxation, which has been made over by the Constitution to the State legislature, will be transferred by such State legislature to the local authority. After all, the taxing power of the local authority will be derived from a law made by the State Legislature. It is quite impossible at present to know what particular tax a local body may be authorised by the State Legislature to tax the property of the Central Government. Consequently not knowing what is to be the nature of the tax, what is to be the extent of the tax, it is really quite impossible to expect the Central Government to surrender without knowing the nature of the tax, the nature of the extent of the tax, to submit itself to the authority of the local body.

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

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

exercised that power or failed to do that. Therefore, I am prepared to, introduce these words in clause (1) :

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

That is to say, it would permit Parliament to confer power or to recognise taxation by other municipalities and other local boards which are so far not recognised. I think that is a lacuna which I am prepared to make good so that there may be no discrimination between local authorities which have been taxing and those which have not been taxing. It would be open to Parliament, even after the passing of the Constitution, to make a law permitting those municipalities and local authorities which have not so far levied a tax to levy a tax. Beyond that I am not prepared to go.

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

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

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

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

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

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

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and have the money paid if it becomes payable and due under the Railway Property Taxation Act.

**Mr. President** : I will now put the amendments to vote. No. 435, Mr. Sidhwa.

**Shri R. K. Sidhwa** : Sir, in view of the improvement that he has made in clause (I), I do not press it.

The amendment was by leave of the Assembly, withdrawn.

**Mr. President** : Then I will put the proposed article to vote as modified by Dr. Ambedkar's amendment to clause (1)

The question is :

"That proposed article, 264, as amended, stand part of the Constitution."

The motion was adopted.

Article 264, as amended, was added to the Constitution.

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### Article 265

**Mr. President** : Article 265. There is an amendment, notice of which has been given by Pandit Govind Ballabh Pant; to have an article 264-A, but he is not here. Then we come to article 265, amendment No. 306.

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

"That in article 265, for the words 'a Union railway', wherever they occur, the words 'any railway' be substituted."

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

**Shri Brajeshwar Prasad** : I beg to move:

"That with reference to amendment No. 2953 of the List of Amendments, in article 265—

- (a) the words 'save in so far as Parliament may, by law, otherwise provide be deleted;
- (b) the words beginning with 'and any such law imposing' and ending with 'a substantial quantity of electricity' be deleted."

**Mr. President** : As there is no other amendment to be moved to this article, if no Member wishes to speak on it, I shall put the question to vote. The question is :

"That in article 265, for the words 'a Union railway', wherever they occur, the words 'any railway' be substituted."

The amendment was adopted.

**Mr. President** : The question is:

"That with reference to amendment No. 2953 of the List of Amendments, in article 265—

- (a) the words 'save in so far as Parliament may, by law, otherwise provide' be deleted;
- (b) the words beginning with 'and any such law imposing' and ending with 'a substantial quantity of electricity' be deleted."

The amendment was negatived.

**Mr. President** : The question is :

"That article 265, as amended stand part of the Constitution."

The motion was adopted.

Article 265, as amended, was added to the Constitution.