

**Friday, 19th August, 1949**

**Volume IX**

**30-7-1949  
to  
18-9-1949**



# **CONSTITUENT ASSEMBLY DEBATES**

## **OFFICIAL REPORT**

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THE CONSTITUENT ASSEMBLY OF INDIA

*President:*

THE HONOURABLE DR. RAJENDRA PRASAD.

*Vice-President:*

DR. H.C. MOOKHERJEE.

*Constitutional Adviser:*

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*Joint Secretary:*

MR. S.N. MUKHERJEE.

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*Marshal:*

SUBEDAR MAJOR HARBANS LAL JAIDKA.

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## CONSTITUENT ASSEMBLY OF INDIA

*Friday, the 19th August 1949*

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock. Mr. Vice-President (Shri T. T. Krishnamachari) in the Chair.

### DRAFT CONSTITUTION—(Contd.)

#### Article 150—(Contd.)

**Mr. Vice-President (Shri T. T. Krishnamachari) :** Today we begin, with article 150. The House will remember that there was a debate on this article as it originally stood and after three amendments were moved, the article was recommitted to the Drafting Committee. Dr. Ambedkar has now given notice of a new article. I request him to move that article, amendment No. 1 of list I (Fourth Week).

**Mr. Naziruddin Ahmad** (West Bengal: Muslim): Sir, I have a point of Order. Shall I move it just now or after the amendment is moved?

**Mr. Vice-President :** You may move it just now.

**Mr. Naziruddin Ahmad :** Mr. Vice-President, Sir, as I have been observing for some time that the Drafting Committee has been springing surprise after surprise on the Members. I do not blame the eminent members of the Drafting Committee for this attitude. I know that their hands are tied. I speak with deep respect for the Drafting Committee and when I offer any comments about them, it is because we have to look to the Drafting Committee for the praise or blame that must attach to the amendments. Every day new amendments of a sweeping character are being sent in by the Drafting Committee. They come in all of a sudden like Air Raids.

**The Honourable Dr. B. R. Ambedkar** (Bombay: General): Where is the point of order?

**Mr. Vice-President :** May I remind the honourable Member that this amendment has been brought before the House by Dr. Ambedkar and the Drafting Committee in response to the desire universally expressed in the House. For this reason, I rule out this point of Order. I now ask Dr. Ambedkar to move his amendment.

**The Honourable Dr. B. R. Ambedkar :** Mr. Vice-President, Sir, I move:

“That for article 150, the following be substituted :—

‘150. (1) The total number of members in the Legislative Council of a State having such a Council shall not exceed one-fourth of the total number of members in the Assembly of that State :  
Composition of the Legislative Councils.

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament may by law otherwise provide, the composition of the Legislative Council of a State shall be as provided in clause (3) of this article.

(3) Of the total number of members in the Legislative Council of a State—

[The Honourable Dr. B. R. Ambedkar]

- (a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities as Parliament may by law specify;
- (b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years graduates of any university in the State and persons possessing for at least three years qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;
- (c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;
- (d) as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;
- (e) the remainder shall be nominated by the Governor in the manner provided in clause (5) of this article.

(4) The members to be elected under sub-clauses (a), (b) and (c) of clause (3) of this article shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the elections under the said sub-clauses and under subclause (d) of the said clause shall be in accordance with the system of proportional representation by means of the single transferable vote.

(5) The members to be nominated by the Governor under sub-clause (e) of clause (3) of this article shall consist of persons having special Knowledge or practical experience in respect of such matters as the following, namely :

Literature, science, art, co-operative movement and social services.' "

As you have said, Sir, this article in a different form was before the House last time. The article as it then stood, merely said that the composition of the Chamber shall be as may be prescribed by law made by Parliament. The House thought that that was not the proper way of dealing with an important part of the constitutional structure of a provincial legislature, and that there shall be something concrete and specific in the matter of the constitution of the Upper Chamber. The President of the Constituent Assembly said that he shared the feelings of those Members of the House who took that view, and suggested that the matter may be further considered by the Drafting Committee with a view to presenting a draft which might be more acceptable to those Members who had taken that line of criticism. As honourable Members will see, the draft presented here is a compromise between the two points of view. This draft sets out in concrete terms the composition of the Upper Chamber in the different provinces. The only thing it does is that it also provides that Parliament may by law alter at any time the composition laid down in this new article 150. I hope that this compromise will be acceptable to the House and that the House will be in a position to accept this amendment.

**Mr. Vice President :** Amendment No. 3. Mr. Kamath.

**Shri H. V. Kamath** (C.P. & Berar: General): I have moved it already.

**Mr. Vice-President :** Amendment No. 66, List II (Fourth Week).

**Shri H. V. Kamath :** What about the amendments in the Printed List of Amendments, Vol. I, Sir?

**Mr. Vice President :** After finishing these, those in Vol. I will be taken up.

(Amendment Nos. 66, 67 and 68 were not moved.)

**Dr. Monmohon Das** (West Bengal: General) : As Vice-President, Sir, I move:

“That in amendment No. 1 of List I (Fourth Week) of Amendments to Amendments, in sub-clause (b) of clause (3) of the proposed article 150, the words ‘for at least three years’ wherever they occur, be deleted.”

Sir, in clause 3 (b) of the proposed article 150 as moved by our Honourable Dr. Ambedkar, it has been suggested that for the election of one-twelfth of the total members of the Upper Chamber, the electorate will consist of persons who have been for at least three years graduates of any university in the State and persons possessing for at least three years qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university. For registration as a voter under this clause, two conditions have been imposed : one, educational qualification of the standard of a graduate, and second, this educational qualification should be at least of three years standing. If the sponsors of this article intend that for being registered in the voters’ list the minimum educational qualification of a graduateship should be there, I do not find any reason for imposing another condition that the graduateship should be at least of three years standing. I fail to understand what difference there will be between a graduate who has taken a degree yesterday or a few days back and a graduate of three years standing. If the sponsors of this article think that for maturity of the educational qualifications, an experience of at least three years should be there, I think three years experience will be insufficient and inadequate. There should be at least five years experience for the maturity of the qualification of graduateship. My amendment suggests that this imposition of three years standing for being registered in the voters’ list under this clause 3 (b) should be deleted. I think the House will accept the amendment and revise the clause accordingly.

**Shri V. I. Muniswamy Pillay** (Madras : General): Mr. Vice-President, Sir, I beg to move the amendment that I have given notice of:

“That in amendment No. 1 of List I (Fourth Week) of Amendments to Amendments, in sub-clause (d) of clause (3) of the proposed article 150, after the word, ‘one-third’ the words ‘including seats reserved for Scheduled Castes as may be prescribed’ be inserted.”

Sir, the object of my moving this amendment is to get representation for the Scheduled Castes in the Upper Chamber. This House has been good enough to reserve seats for the Scheduled Castes in all the legislatures; but I fail to see any mention of representation for Scheduled Castes in the amendment so ably moved by the Honourable Dr. Ambedkar. It is true that members of the Scheduled Castes that are sent to the Lower Chamber, in the popular House, will have a chance of voting for representatives to come to the Upper Chamber. But, unless seats are reserved in the Upper House, I fail to see how it will be possible for the members of the Scheduled Castes in the Lower House to get a number of seats of adequate representation in the Upper House. Moreover, it has been said an account of the system of proportional representation by means of the single transferable vote, it will be possible for the minority community, especially the Scheduled Caste to get adequate representation in the Upper Chamber. I feel, Sir, it must be statutorily made possible, and whatever representation has been accepted by this August Assembly must be provided in the amendment so that the fear of the Scheduled Castes may not be there. This is the chief object with which I move this amendment and I hope the Honourable Dr. Ambedkar will accept it.

**Mr. Vice-President** : Amendment 71 is not moved. There are amendments in the printed lists. I do not know whether any Member would like to move any of those amendments.



**Shri R. K. Sidhwa** (C.P. & Berar: General): Those were disposed of last time.

**Mr. Vice-President** : They relate to the article as it stood and it is likely, some of the Members may like to move amendments standing in their names. The best thing is for me to read them out one by one.

(Amendment Nos. 2265 to 2268 were not moved.)

2269—Professor Shah.

**Prof. K. T. Shah** (Bihar : General): Sir, there are several amendments in my name which I would like to seek your guidance on. Under the new scheme suggested by Dr. Ambedkar, all these amendments would seem to be irrelevant. Thus the entire scheme being different, my amendments have been laid down according to the original scheme.

**Mr. Vice-President** : As a matter of fact all the amendments beginning from 2274 relate to the panels as proposed in the original draft, and they have no application—generally speaking to the new draft.

**Prof. K. T. Shah** : I feel it would create confusion in the House if one went on speaking on them.

**Mr. Vice-President** : It would be very good if Members who have got amendments to propose to the panel *i.e.*, the deletion of any of the classes mentioned in clause (5) or the insertion of new categories in clause (5) moved those heads for inclusion in or deletion from clause (5)—in other words as amendments to the new clause (5).

**Prof. K. T. Shah** : I submit that my earlier amendments relate to the proportions *e.g.*, one-fifth instead of one-third. These proportions are different under the compromise new draft. It would be better both from the point of saving the time of the House, as well as for clarifying issues if at the time of general discussion on the article these points are brought out, and not by amendments because if the amendments are moved there will be confusion.

**Mr. Vice-President** : Certainly. The amendments do not fit in with the new article.

**Prof. K. T. Shah** : In that case I would beg your leave not to move these, and reserve my points for the general discussion.

**Mr. Vice-President** : Certainly. That applies to all these amendments in the Printed List?

**Prof. K. T. Shah** : Yes, as far as I am concerned.

**Mr. Vice-President** : Does any other Member wish to move any of the amendments in the Printed List.

**Shri H. V. Kamath** : Sir, I have given notice of amendments to the amendment of Dr. Ambedkar.

**Mr. Vice-President** : I am prepared to permit you to move the amendments you have just handed in to me. In that case I presume you are not going to move any of the amendments on the Printed List.

**Shri H. V. Kamath** : No, Sir.

**Mr. Naziruddin Ahmad** : I have to move 2284 and 2287.

**Mr. Vice President** : You may move 'them. You will move them for insertion in clause (5) of the article.

**Mr. Naziruddin Ahmad :** Yes. These should be taken as amendments to clause (5) of the new draft. I beg to move:

“That in sub-clause (a) of clause (3) of article 150, after the word ‘art’ the word ‘medicine’ be inserted.”

I also beg to move:

“That in sub-clause (c) of clause (3) of article 150, before the word ‘engineering’ the word ‘Commerce’ be added.”

**Vice-President :** Unfortunately there is no ‘engineering’ in clause (5). Would you like to move that “engineering and commerce” be inserted ? Please move that as amendment to clause (5).

**Mr. Naziruddin Ahmad :** Sir, I beg to move:

‘That ‘medicine, engineering and commerce’ be inserted in clause (5).”

**Shri S. Nagappa (Madras: General):** I want to move amendments 66 to 68 to article 150.

**Mr. Vice-President :** You were not in your place when these amendments called. Provided you move them quickly without taking up much time of the House, you may move them.

**Shri. S. Nagappa :** I beg to move:

“That in amendment No. 1 of List I (Fourth Week) of Amendments to Amendments, in the proviso to clause (1) of the proposed article 150, for the word ‘forty’ the word ‘forty-five’ be substituted.

That in amendment No. 1 of List I (Fourth Week) of Amendments to Amendments, in sub-clause (b) and (c) of clause (3) of the proposed article 150, for the word ‘one-twelfth’, wherever it occurs, the word ‘one-fifteenth’ be substituted.

That in amendment No. 1 of List I (Fourth Week) of Amendments to Amendments, in sub-clauses (a), (b), (c) and (d) of clause (3) of the proposed article 150, the words ‘as nearly as may be’, wherever they occur, be deleted.”

Sir, my intention in moving those amendments is that in clause (1) it has been stated that :

“Provided that the total number of members in the Legislative Council of a State shall in case be less than forty.”

Now, by dividing, how will the representation be given to each section of the electorate? You cannot divide 40 by 12. Because 4 will remain. If you make it 45 and if you enhance this twelve to fifteen, forty-five will be easily divisible by fifteen. That will be very easy mathematically. One-third of fifteen will be five, and in place of one-twelfth, I want that we should substitute one-fifteenth. If there are forty seats to be divided, and if you mean to take only one-twelfth, then four still remain. On the other hand, if the number is to be forty-five and the proportion is to be one-fifteenth, then it will mean that three members will be selected.

I am glad that you have now given representation to the teachers. Teachers of our land have been the silent sufferers all these years. They are, I think, the lowest paid. The teachers of our country are the lowest paid in the whole world, and I am glad that at last you have recognised their right to be represented in the legislative council.

You have also been good enough to give representation to local bodies like the district boards and municipalities. In this, I feel you have gone a long way in the direction of progress. But this progress will not be complete unless and until you give sufficient representation to labour. Sir, labour is one of the most important

[Shri S. Nagappa]

sections of our society and it also forms the bulk of our population. They are responsible for increasing the production in our country and for the well-being of our country. If the rights of labour are not recognised in this connection, I am afraid you are ignoring the bulk of our population.

71. "That in amendment No. 1 of List I (Fourth Week) of Amendments to Amendments after sub-clause (d) of clause (3) of the proposed article 150, the following new sub-clause be inserted :—

“(dd) one-fifteenth shall be elected by Agriculture labour from amongst the labours classes.”,

**Mr. Vice-President :** Are you moving your amendment No. 71 now ?

**Shri S. Nagappa :** Yes, Sir. They are all connected.

**Mr. Vice-President :** Have you finished?

**Shri S. Nagappa :** Not yet. In order to facilitate the giving of one-third to the local boards, one-third to the graduates and one-fifteenth to labour, you must have the number as 45. The rights of labour should be recognised without the co-operation of labour the country cannot progress one inch. It is their right to be represented in the Upper Chamber. They have been ignored and so I have had to bring in these amendments, so that you, may not disturb your distribution of the seats or the quotas to the various sections. If you accept my amendments, the problem of distribution is automatically solved, from the view-point of labour, of the teachers the graduates and the local bodies. It is also in line with your wish that each section of the population of this country should be given representation. I hope the Honourable Ambedkar will not hesitate to accept my amendments as they are so reasonable and equitable. I would also request honourable Members to see the point in my amendments and also appreciate the importance of labour in our country. You should give encouragement to labour so that it may produce more and more so that the country may progress further and further. I hope the honourable Members will accept these simple amendments without any hesitation. I thank you very much.

**Mr. Vice-President :** I now call on Mr. Kamath. He has given notice of some amendments which I have permitted him to move.

**Shri H. V. Kamath :** Mr. Vice-President, at the outset I crave the pardon of the House for having given notice of my amendments only this morning, as a consequence of which, Honourable Members have not been supplied with copies of my amendments. This was partly due to the fact that the Drafting Committee's draft article 150 did not reach me—I do not know whether that was the case with all—the draft did not reach me till late on Wednesday night, and so there was hardly any time to set out my amendments before this morning. I shall, however, read the amendments of which I have given notice.

I have given notice of four amendments which I will read out one by one.

The first is :

“That in amendment 1 of List I, Fourth Week, (that is to say, the amendment now under consideration moved by Dr. Ambedkar), the proviso to clause (1) of the proposed article 150, be deleted.”

That is the proviso which says :

“Provided that the total number of members for the legislative council of a state shall in no case be less than forty.”

The second amendment is :

“That in amendment 1 of List I of Fourth Week, in clause (2) of the proposed 150, the words ‘Unless Parliament by law otherwise provides’ be deleted.” (That is to say, the first portion of clause (2) be deleted.)

My third amendment is :

“That in amendment 1, List I (Fourth Week), in clause (5) of the proposed article 150, the words (they are in the last clause of the proposed article)—‘Co-operative movement’ be deleted.”

And the last amendment of mine is to the effect :

“That in amendment 1 of List I (Fourth Week), in clause (5) of the proposed article 150, before the word ‘literature’, the words ‘religion, philosophy’ be inserted.”

That is to say, the list would read :

“religion, philosophy, literature, science, art and social services.”

I hope, Sir, that I have read out the amendments very audibly and clearly to the House so that they have an idea of the scope of my amendments. I propose now to take these amendments, one by one. May I speak now, Sir ?

**Mr. Vice-President :** Yes.

**Shri H. V. Kamath :** I take up, Sir, the first amendment, that is to say, the one relating to the proviso to the proposed article 150. The proviso lays down that the total number of members in the Upper Chamber of a State shall in no event be less than forty. During the discussion of this article, on the last occasion, some-days ago, I had the opportunity of pointing out to the House that there are several States in the Indian Union whose population is perhaps not very much more than six or seven million. If that be so, the Lower Chamber in such States will consist of sixty to seventy members, and in a State where the Lower Chamber has not more than sixty to seventy members, it would be most undesirable to have an Upper Chamber consisting of forty members. The original draft of article 150 in the Draft Constitution had no such proviso and it fixed only the upper limit, which was to the effect that it should not exceed one-fourth of the total strength of the Lower Chamber. I submit that that would be adequate to our needs. If in any State the Lower Chamber consists of only 40, 50 or 60 members, you may have, if the State wants it, an Upper Chamber, but I do hope such States will not in practice desire the luxury of a Second Chamber. But if they do opt or vote for one, then I feel that they should be content with having an Upper Chamber of twenty to twenty-five or thereabouts. Today, I know that in Coorg the Council consists of twenty members. I feel and I urge upon this House that we should not countenance the setting, up, in tiny States of less than ten million population, of a Second Chamber with a strength of forty members. It will not only be a luxury but an unnecessary drag upon the Lower House, and if we once provide in this article that the minimum shall be forty, then every tiny State in our Indian Union will be encouraged, and instigated if I may use the word, to ask for a Second Chamber. If we lay down definitely that we shall not have more than one-fourth of the Lower Chamber in the Upper Chamber, then many tiny States will not vote for a Second Chamber in their States. Besides, we have already passed an article in this House that Parliament may by law provide for the setting up of a Second Chamber in a State where there is none if the Legislature of that State asks for one; and this proviso under reference will act as an encouragement to tiny States of five million and six million population to ask for a Second Chamber, because they will be guaranteed a strength of forty in the Upper Chamber. I think this situation should not be countenanced and we should delete the proviso because in bigger States which have more than fifteen and sixteen million population, it will be forty *ipso facto* as the Lower Chamber will consist of more than members; but tiny States should not be encouraged to have a Second Chamber in their own States.

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The second amendment is with regard to clause (2) of the proposed article. I seek deletion of the first part of this clause which vests in the future Parliament power to alter the constitution of the Upper Chambers in the States. I feel that so far as the composition of Upper Chamber—or Lower Chambers for the matter of that—is concerned, it should be more or less sacrosanct and open to change only by means of an amendment to the Constitution and not by a law of Parliament.

In clause (3) we have vested power in Parliament as regards certain matters relating to the determination of Local Authorities which might vote in this connection and the qualification for graduates. All that I am content to leave to Parliament. But the composition of the Upper Chamber or both Chambers, should be alterable only by an amendment to the constitution and not by a simple majority in Parliament. Yesterday, I remember that Dr. Deshmukh pointed out to Section 61 of the Government of India Act, which puts the composition of the Chambers of the Legislatures on a different footing from subjects connected with franchise and other cognate matters. Even the Government of India Act, which we regarded as reactionary, gave a separate and more important and sacrosanct place in the Act to the composition of the Chambers.

So, I feel that so far as the composition is concerned, we, should lay down specifically that that can be altered only by an amendment to the Constitution and not by a law made by Parliament. With regard to the other matters mentioned in clause (3), there is no harm if they are left to determination by Parliament by law, but in my judgment, the composition of the Chambers is so important that Parliament should have no hand in changing it except by an amendment to the Constitution.

Next, I come to amendment 3. I might however take amendments 3 and 4 together. Clause (5) provides that the nominees of the Governor in the Upper Chamber shall be persons having special knowledge or practical experience in respect of literature, science, art, co-operative movement and social services. Through my amendment, I seek a change in these various categories. I wish to provide that the nominees of the Governor shall be persons who will have special knowledge in the fields of religion, philosophy, literature, science, art and social services. It passes my comprehension why the category of “co-operative movement” has been included specifically in this clause and why so much importance has been attached thereto. I am all for co-operation everywhere, in the House and outside the House. Without co-operation we will get nowhere. No nation can get anywhere without co-operation. But to specify the cooperative movement in this clause seems to me to be wholly unnecessary, and if at all it is necessary—and if the wise men of the Drafting Committee feel that they must find a place for men and women eminent in the cooperative movement in the Upper Chambers there is the category of social services. I suppose the term ‘social service’ if understood in a wider sense does include the co-operative movement. It is not a political service, or educational service : the co-operative movement is a social service. And when social service is provided for, I do not see why we should specifically provide for the co-operative movement. I do not know who has suggested this particular category to be included. It is, if at all, a sub-category and it should find no place as such in this clause.

Coming to the suggestion of two new categories, that is to say, religion and philosophy, I should like to plead with the House that in spite of repeated

admonitions to us that ours is and will remain a secular State, I am convinced that the secularity of the State cannot act as a bar to men of religion or philosophy. After all the only argument that may be advanced against my amendment is that a secular State does not necessitate the presence of men and women of religion or philosophy in our legislatures. That to my mind is a wholly erroneous conception. The conception of a secular State is in my humble judgment not a State which has discarded religion or philosophy in the highest sense but a State which is in the highest degree spiritual, and in the light of that highest spirituality or highest religion, regards all religions as one and makes no distinction between one religion and another. Is it necessary, I ask, to plead with my honourable colleagues here that the presence of men and women who have devoted or dedicated their lives to the cause of the highest religion and the highest philosophy—spirituality—will lend colour and dignity to the House? Have we not felt on many occasions the presence of my friends, who today are not here, Dr. Radhakrishnan and Rev. Father D' Souza, through eloquent speeches here having contributed to the weight of our debate? Have we gone so far in our interpretation of a secular State that we consider that there is no place in our legislatures for men of philosophy and religion? I for one will shudder to think if we lay down a constitutional bar to the admission or the entrance of men of philosophy and religion in our legislatures. After all, we in India have always stood for certain fundamental spiritual values. Even if other legislatures have not provided for and not given a place to such men of religion and philosophy—I think I am not quite right in saying that, because in the British Parliament we have the Lords Temporal and the Lords Spiritual; some other countries too have similarly provided, I suppose the Irish Parliament and other countries—but even if they have not, it does not act as a precedent to me. We framing the Constitution for our country, should not give the go-by to the finest traditions of our race, country and nation. We should not in any way make the world feel that the men of religion and philosophy have no place in our legislatures. It was only a few months ago that this Assembly accepted an amendment of mine providing for an invocation of God in the oaths to be administered to the President and to the Governors. I say it will be wholly in conformity with the spirit in which this House accepted that amendment invoking the name of God Almighty, if we provide that in the Upper Chambers—this clause only deals with that—we give in honoured place to Hindu, Muslim, Parsi, Sikh and other divines. I would welcome the divines of every religion in the Upper Chamber so that it will conduce not merely to the dignity of the Chamber and to the raising of its level, but also conduce to harmony in the House.

As regards the amendment moved by my Friend Mr. Naziruddin Ahmad that medicine should be given a place I feel that medicine is comprised in science and so there is no need for a special amendment as regards medicine. It may be argued against this amendment of mine that literature or art or science or altogether, may comprise philosophy. Science of course in the highest science according to the Greek *scio* meaning 'to know', that is, knowledge—does connote the highest knowledge—*paravidya* and *aparavidya*—but science as it is currently known and as it is in vogue today does not connote philosophy and religion. As a matter of fact all the eminent scientists today are agreed on this point that where science ends, religion begins. I agree that the day may come when the thin partition between science and philosophy may vanish and the highest science and the highest philosophy may be used into one whole. But that is not so now and we are legislating for this particular period when there is science and art on the one hand and religion and philosophy on the other. I, therefore, urge that the categories mentioned in clause (5) be widened or increased so as to include representatives of philosophy and religion. And I hope that in the future Parliament of this country the Upper Chamber will include men who have dedicated

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their whole lives not merely to literature, science and art but also the highest philosophy and the highest religion.

I move, Sir, my various amendments and commend them to the acceptance of the House.

**Mr. Vice-President :** I should like to remind Members that we have had a long discussion on this article on a previous occasion. I hope they will confine themselves to new points and make them briefly.

**Shri Brajeshwar Prasad** (Bihar: General): Sir, I rise to oppose article 150 as moved by Dr. Ambedkar. In clause (1) it is mentioned that the total number of Members in the Legislative Council of a State having such a Council shall not exceed one-fourth of the total number of Members of the Assembly of that State. I do not see why the membership should be limited to one-fourth of the total. Secondly, in clause (2), the words, "as Parliament by law prescribe" still find a place. I had hoped that after our discussion of this article last time this nasty business of Parliament interfering with the composition of the Legislative Council will be averted. It is my impression—I am open to correction, I hope that my suspicions are unfounded, but this is my impression—that the Members of the Drafting Committee have now changed their minds, they have now come to the conclusion that it is not desirable to have a second Chamber in the Provinces, therefore they are now resorting to these methods so that it may not be possible to have second Chambers at all in the Provinces. In the article it is not mentioned when the Parliament should decide the composition of the Legislative Council; the whole question may be left undecided. The Government of India on the plea of want of time may not come before the House to decide the question of the composition of the Legislative Councils. The result will be that on the commencement of the Constitution there will be no Legislative Councils in the Provinces.

Sir, I am a keen supporter of second Chambers in the Provinces. I feel that we are taking a grand leap in the dark. Adult franchise will release forces of violence and of disorder on a scale of which probably we have got no idea at present. Therefore, I feel that there should be some Organisation in the country which may act as a brake on the vagaries of adult franchise. Secondly, in all the sub-clauses of clause (3) Parliament comes in. It is for the Constituent Assembly to decide and not for Parliament, as to what should be the other local authorities over and above the Municipalities and the District Boards which should form the electorate of the Legislative Councils. Again in sub-clause (b) it has been left for Parliament to prescribe the qualifications which shall be equivalent to that of a graduate. Again, in sub-clause (c) it has been left for Parliament to decide the electorate and in clause (4) it has been mentioned that the Members to be elected under sub-clauses (a) to (c) of clause (3) of this article shall be chosen in such a manner, in such territorial constituencies as may be prescribed by or under any law made by Parliament.

So, I am definitely of the opinion that there has been a fundamental change in article 150. The article which finds its place in the Draft Constitution is of an entirely different character where Parliament has not been empowered to interfere with the composition of the House. But somehow or other, for reasons best known to the Members of the Drafting Committee—probably they may not be responsible, they may not be free agents in this matter—somehow or other this thing has been foisted. I do not see how the future Parliament of India shall be in a better position to come to a decision on the question of the composition of the Legislative Councils. We have been sitting here since the last thirty-three months. If we are not in a position to decide the composition of the Legislative Councils, I do not see any reason why the future Parliament of India will be in

a better position to decide this question. It is no use postponing the evil day. It is far better that we sit here and decide the composition of the Legislative Councils, or let us frankly say that there is no need for Legislative Council in the States. Probably most of the Members will agree and abide by the decision on higher bodies and authorities.

I would like to reiterate once again my stand on this question of the Legislative Councils. I want that these bodies should be nominated bodies. A Legislative Council should be nominated by the Governor in his discretion, or by the President. The Members should be nominated for life and all the Members must have some educational qualifications. It is no use sending a Member who does not know how to sign his own name. I have no objection if a Member is elected by a municipality or a district board, let the municipal commissioner go to the Legislative Council but such a municipal commissioner must be a graduate. I have no objection to a school teacher going to the Legislative Council, but such a school teacher must be a graduate. I have no objection to a Member of the Provincial Assembly going to the Legislative Council, but such a Member must be a graduate. I have no objection to the Governor nominating persons to the Legislative Councils but I want that he should nominate only graduate Members. There is no use sending illiterate persons to the Legislative Councils.

**Shrimati Purnima Banerji** (United Provinces : General): Mr. President, Sir, article 150 had come up for discussion before this House on a previous occasion and the question of who should form the Upper House was discussed at that stage. As the amendment now proposed as to who should elect these Members—municipal boards or the Provincial Assemblies—the electorate was mentioned but not the qualifications of those who are eligible for membership of the Upper House.

If we look into the reason why an Upper House is constituted, we all feel that the necessity of such an Upper House was that it should be a revising body, it should give the Assemblies an opportunity to include any small amendments or useful amendments and also that the Lower House should have the benefit of such Members of the society who could not stand for election in the adult franchise electorate—such useful members of society should be associated in the work of legislation and government at some stage or the other. Therefore, Sir, I feel that, keeping this object in view, a certain kind of qualification for Members should have been laid down even for those two categories, that is those who are to be elected by municipalities and district boards and those who are to be elected by Provincial Assemblies.

There is another point. I am glad that the teaching profession has also been associated. I would only emphasise that not only teachers of schools but also voluntary teachers, should be included. In the new set up, if education is to make any great advancement, I am sure we shall need the help of able and qualified persons who will act as voluntary teachers. I would therefore suggest that in the teaching profession one should include voluntary teachers also. From time to time our Ministers have been appealing to the public to come and help in this great work. I, therefore, feel that their association should be sought.

Thirdly, where you have asked for nomination of Members by Governors, the words used are “social services”. In this connection, I had given notice of an amendment to the effect that “social service” should include “voluntary social service”. The object with which I tabled that amendment was that by social services as we all know, or as the House is now passing the article, I am sure they have in mind voluntary social service or social service done by such useful bodies as the Harijan Sevak Sangh, the Kasturba Memorial or any other similar



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organisations where the workers are paid undoubtedly but it is hardly a payment but more or less a stipend, and they give most of their time to this work. I emphasise the words 'voluntary social service', because lately provincial and other Governments have opened branches of studies in the subject and are giving diplomas for attending the social service camps which are organised. For women workers who wish to do such social service the provinces have not provided opportunities for opening such camps. Facilities are lacking for opening such social service institutions. Therefore, when I say that voluntary social service should be included I mean that women's organisations which are in the field and whose members are eligible for such nominations should not be left out by a narrow interpretation of the words 'social services'.

Another suggestion that I want to make is that a certain form of labour which is, unorganised and which is not formed into a constituency may, as labour is allowed representation in the Lower House, be allowed representation also in the Upper House and the co-operation of those Useful members of society secured.

**Shri V. S. Sarwate** (Madhya Bharat) : Sir, in the proposed article 150, it may be noted that clause (3) gives representation to University graduates. The wording of the clause as it is, raises some difficulty. The expression "consisting of persons who have been for at least three years graduates of any university in the State" means that for graduates to be electors two conditions are necessary : that they must be firstly graduates of three year's standing and secondly the university must be in the State. It may be seen that this would cause much difficulty. For instance in Central India there is no university located. Therefore any university graduate in Central India may not be able to vote under this clause. The other difficulty is that before 1904 there was no University Act prescribing territorial Jurisdiction to the universities. Therefore any person who was desirous to appear for a university examination was able to appear for examinations of universities outside his province. For instance, a Bombay student was allowed to appear for the examinations held by the Calcutta University. So there may be now in Bombay many persons who are graduates of the Calcutta University. It may also happen that persons who were first residents of Calcutta and have become Calcutta graduates may have migrated to other provinces and become residents there. Such persons, being graduates of a university located outside the State *i.e.*, the province may not be able to vote in that province or State. To avoid this difficulty, I beg permission to move two amendments which bring out the intention of the Mover in a more consistent way. I hope Dr. Ambedkar would accept them. The first amendment that I propose is this. : In clause (b) in the second line, after the word 'persons' add the words "who are habitually residing in the State and."

My second amendment is that, for the words "in the State" which occur after the words "any University", substitute the words "in the territory of India". So the clause as amended would run thus : "as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who are habitually residing in the State and who are graduates of any university in the territory of India". I trust these amendments will bring out the intention more clearly and will be acceptable to the honourable Mover.

**Dr. P. S. Deshmukh** (C.P. & Berar: General) : Mr. Vice-President, Sir, it was at the instance of the Honourable the President that we have here an outline of the composition of the Second Chambers in the Provinces being determined in this Constitution and not being left to Parliament as was suggested earlier. I say it is an outline, because, as honourable Members will be pleased to

see, in almost every clause there is something that will have to be decided by Parliament. Every clause contains the words 'as Parliament may by law specify, or as may be, prescribed by law.' This shows that the whole structure of the Second Chambers is presented here in a bare outline, specifying merely the numbers which will approximately represent the various interests mentioned herein.

Now, in spite of the fact that we have this outline before us, I think it is yet correct to say that there is no need as a matter of fact for Second Chambers at all because even now we are not certain as to what particular interests deserve protection and representation in those Houses. We are going by resorting to this amended article to give representation in the Second Chambers in certain provinces to such categories of persons and people as are hardly worthy of it in a stricter sense. If we examine the article from this point of view, we will have to accept the contention that the composition of the Second Chambers is not going to be anything, radically different from the composition of the Legislative Assemblies *i.e.*, the lower Chambers. As many as one-third are going to be chosen by the members of the Legislative Assembly themselves. It is improbable that they would choose anybody unlike themselves. They are likely to choose men of the same qualifications and social status as themselves. Probably economically also those thus selected will be more or less on the same footing as those who have been selected by adult franchise to the Provincial Assemblies. Then, if we look at the other categories such as persons who may be chosen by graduates and; teachers, there is no likelihood that any of the best elements in society will be chosen. They are again likely to be of the same nature as members of the Legislative Assembly. This article also bears the imprint that it has been very hurriedly drafted. There are so many unsatisfactory expressions used in it and so many errors one of which was pointed out by Mr. Sarwate. There is also an element of chance so far as the making of the whole Constitution is concerned, This is borne out by this particular article. I do not think honourable Members will point out that on any occasion at any discussion a secondary school teacher was intended to be a voter for election of members to the Second Chambers. I had never heard of it. I hear for the first time this important privilege being given to the secondary school teacher in the amendment proposed by Dr. Ambedkar. We have graduates of universities. One can understand representation being given to them. I do not see why a secondary school teacher has been brought in for this privileges. And if a secondary school teacher is lucky enough to find a place why not include the primary school teacher also for the grant of this privilege ? I think this is very unfair to the primary school teachers. Secondly, when we are considering a graduate as a qualified person to elect persons to the Second Chambers, and also a secondary school teacher, how will it be possible to keep these people away from politics? Sir, I do not think that the Drafting Committee has paid very careful attention to this side of the question. There is going to be a very large number of persons in the Government services and those persons are likely to be mostly graduates even if the views propounded from time to time by my honourable Friend Mr. Brajeshwar Prasad are not acceptable to this House. Wherever we go, we shall meet with graduates and already thanks to the British Government's attaching disproportionate value to university education and the fetish they made of university degrees with which I completely disagree, we will be having a very large proportion of our graduates in the Government services. On the one hand you will have to deny them the franchise or on the other if we give the franchise, you will have to drag them into and permit them to dabble in the day to day politics. I would like the Honourable Dr. Ambedkar to imagine what will be the condition of the services . Would it be wise to permit the permanent services to take part in politics and to enter elections not probably—at any rate I hope not—as candidates but as

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voters ? And what will be the effect of all this on the whole politics of the country. I leave it to the honourable Members of the Drafting Committee to judge. I have got an instance in point which will show the kind of things the permanent services are capable of doing. A graduate of a particular standing in the Nagpur University can select a certain number of representatives on the Nagpur University Court *i.e.*, lower body in the University and it has been our experience that more than half of these people were permanent Government servants because they had the required influence and the required power to influence by canvassing in direct and indirect ways; they could, sometimes against the wishes of the voter, collect the voting papers from the voters, get their signatures beforehand and post all the voting papers in one bundle to the University so that even before the result was declared the required first preferences having been already securely secured their election was guaranteed and a certainty. Here also we are going to have the same system of proportional presentation for which some members show great admiration and with which they are fascinated. I for one think that this aspect of the question in regard to the franchise we are proposing for representation on the Upper Chamber should be considered with greater care so far to see whether it will be wise to allow the permanent services who are bound to be graduates to interfere in the elections and to take part in politics.

Another point which I would like to emphasise is that the Drafting of this Constitution appears to me to be a veritable lottery. At least two categories of persons who could have never dreamt of getting any representation in the Second Chamber appear to have got the merest chance. I refer to the inclusion of the words "co-operative movement" as selected for nomination by Governor. This has been rightly criticised by my honourable Friend, Mr. Kamath. It was really suggested that all persons who are members of primary co-operative societies should be given votes along with the members of the local boards, municipalities, etc., so that they may take part in the election and be included in sub-clause (i). I cannot understand what particular competence, what special expert knowledge, what special qualification the co-operative movement itself is presumed to possess so that the Governor must choose somebody from that movement. This is an absolutely funny proposal and I do not know what milder words to use. I think this is really something that has just crept into the article without anybody's strong volition. I am at any rate not aware of any demand from any quarter in this regard. The wording is absolutely ununderstandable to me except as a pure accident unless we intend that Rao Sahibs and Rai Bahadurs who have prospered under it should be, helped and promoted. They never contributed a single pie, borrowed anything, they merely took the money from the Government or some one else and gave it to the agriculturists. It is such persons who are supposed to be the great and celebrated cooperators. If it is intended to make a law so that the Governor could nominate such nonentities, such people who have exploited both the agriculturists as well as the Government and give them representation on the Second Chamber, then alone the provision is understandable; otherwise, I am absolutely at loss to understand how the co-operative movement should get a place in this sub-clause (5). I am really very much surprised. The other instance of persons who got representation on the Upper Chamber are the school teachers. On the whole, we find that the totality of the representation we are going to have on the Second Chamber is not going to be very much different from the composition which we are going to have so far as the Provincial Assemblies are concerned and that being so there is no use wasting our energies spending so much time and money on the composition of this House since it is not going to be anything much different. I feel like foretelling that this House will probably

be more reactionary than even the Provincial Assembly. The only justification for a Second Chamber is that a State should have for the purposes of stability and as a check on hasty and harmful legislation a Chamber consisting of such persons who are not likely to take part in the day to day politics and to fight elections and spend the money that elections need. Their experience, their nature judgment and their position in the society and country are such that they do not want to take the trouble of going through an ordinary election. But at the same time they constitute the more sober elements in the society and it is a national loss if their experience cannot be availed of or placed at the service of the State. It is for these purposes that Second Chambers are provided for. Is there any room except the nomination by the Governor for such persons to come to the Second Chamber? There is none. Almost every one else is going to be of the same position as the members of the Provincial Assembly and therefore the whole paraphernalia is going to be completely unnecessary and burdensome and it is not likely to serve the purpose which is intended by the Drafting Committee. I think this House will be committing an error in accepting this article as it stands and to have a Chamber like this which will be absolutely useless and will not serve any purpose which such chambers are calculated to serve. I would therefore like to suggest, Sir, that the whole structure of the Second Chamber should be completely modified or that the whole thing ought to be dropped.

**Shri T. T. Krishnamachari** (Madras: General): The question be now put.

**Mr. Vice-President** : Closure has been moved. I am going to place.....

**Prof. K. T. Shah**: I already said I will reserve my remarks for a general discussion.

**Mr. Vice-President** : Prof. Shah may now speak. After he speaks, I will put the closure.

**Prof. K. T. Shah**: At the time when this amendment came to be discussed, the amendments which we originally tabled became overlapping, or mutually inconsistent: and in the desire to save the time of the House, as well as to maintain the clarity of the issues to be discussed, I offered to withhold those amendments. I am afraid, however, that the compromise draft that the Honourable the Chairman of the Drafting Committee has placed before the House, is not even not satisfactory to the sections of the House interested in such matters; it makes matters worse than even the original article to which this amendment has been presented. I would, however, confine my remarks to the new article proposed by Dr. Ambedkar, and would like to point out that in almost every respect the new draft does not make any improvement over the original article.

On the previous occasion when we had a discussion on the subject Dr. Ambedkar himself reminded the House of the classic remark of Abbe Sieyes who said that if the Second Chamber agreed with the first House—the lower House, it was superfluous; and if it disagreed, it was dangerous. I am afraid that, true to his own learning, he has made a presentation of a Second Chamber which is going to be both superfluous and dangerous and which would not make it at all suitable for the carrying out of the real function that the Second Chamber may usefully or harmlessly discharge?

In this case, as it has already been pointed out, the limitation on the total strength may become incongruous, in view of the strength of the population in the different States; and the actual of a Second Chamber in a State may be such as to be perhaps incompatible with or unworkable along with the Lower Chamber.

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But, leaving that matter aside as a mere matter of detail, I would invite attention to another point which relates to the elective principle and the nominating principle that are both attempted to be combined in this Draft. Certain elements of the Second Chamber as here proposed are to be elected; and the constituencies or electorates are to be framed in accordance with the laws made by Parliament : I take it, that it means the Central legislature, the central lawmaking body. That is to say, the local legislatures or the local authorities would not have any initial say in the composition of that body, so far at any rate as these electorates are concerned.

At the same time, in a later clause of this article, nomination is brought in by the Governor, who is primarily, exclusively a local authority. The combination of these two authorities plus the election by the local legislature, the local Lower Chamber, makes a hotch-potch, I think, of the various interests or authorities entitled under this amendment to send their nominees or representatives to the Second Chamber.

The purpose of the Second Chamber, as has been laid down in the different parts of the Constitution, would be to join in the legislation, have a sort of watch or supervision over the administration though not equal authority over the finances and sometimes to delay what might be called hasty legislation. If that is to be the purpose or function of the Second Chamber as conceived in this Constitution, the provisions here made for its constitution would, I am afraid, not at all serve that purpose.

In the first place, its total strength is too small, it will not be more than one-fourth of the First Chamber, and consequently will not ever be in a position effectively to influence opinion as formed by the majority of the Lower Chamber, unless, of course, that majority is a very chancy or a slight majority.

Secondly, there are to be in the Second Chamber elements representing to the extent of one-third plus one-sixth, that is, five-sixths, that would be really in one way or another nominees of the Lower Chamber. The Governor nominates about 2/6ths. He will act presumably on the advice of the party in power. Therefore, these would be up to at least five-sixths creatures of the Lower House or of the Governor acting on the advice of the party in power in the Lower House. As such, it will only be a duplicating or complicating machinery without making it more useful. A suggestion has been thrown out, not as an amendment, but as a remark in the course of the debate, which would make some elements in this House or a section of the House as life appointees. Being myself against the Second Chambers on principle altogether, I do not look upon it as an improvement to make a life tenure for some of the members. In any case, the composition, whether by nomination or election by the Lower House and nomination by the Governor, would be, to some extent, confusing, I think, with the general electoral principle as determined by central legislation enacted by Parliament.

Then, again with regard to the various elements which are sought to be brought into the Second Chamber such as representatives of graduates and teachers. I really do not see what purpose they would be peculiarly qualified to serve, that the members elected by the local bodies or elected by the lower Chamber will not be able to serve. It seems to me that these other bodies, particularly, the graduates and teachers, one-twelfth each, will be really helping, if at all, to confuse the issues so as to make the discussion more difficult and bewildering and progress more hampered rather than serve any useful purpose. Dr. Deshmukh and other speakers have pointed out the way in which graduates, for instance, have been acting in their own nearer interests of the University elections. I may quote my own experience of the working of the graduates electro-

rate. However, strong a believer I may be in their right to be represented in the University bodies. I am afraid to make of them a special electorate for the Second Chamber in a State. And the three years standing appears to me to lack any reason or principle.

Whatever may be the convenience of securing them as elements to be represented in the Second Chamber, I fail to understand what principle there could be in just selecting graduates and teachers against any other section or professions in the State. The teachers, moreover, would be a part of the social services. I take it social service is such a wide and comprehensive term that it can easily include the teachers, health workers, public welfare visitors to Jails or factories and so on, so that if we really want to have Social Service as such, as a category to be represented by itself, to select a fraction of it like the teachers separately is again an over doing or rather duplicating the machinery.

The classification in the last instance of certain elements to be nominated by the Governor, such as science, literature, art, cooperative movement and social services, seems to me again to suffer from the same defect of there being absolutely no principle whatsoever by which these items have been chosen and others, which could be put equally on a par with them, are left out.

My Friend Mr. Kamath mentioned, for example, that he would like to add religion. This is the one subject on which I am afraid I have never been able to agree with Mr. Kamath. Representation of religion in a body of this kind seems to me to be utterly uncalled for and out of place. However, it is also a category that might have been suggested, though in what way that category would function I cannot quite imagine, myself. Would you choose the Ministers of religion ? Or would you choose those who profess or speak loudest in its praise ? Or those who follow silently whose number is unknown ? These are categories which if included in the Second Chamber appear to me to be only giving so much more power to the Governor or his Advisers to put for ornament's sake or for the sake of honouring those particular persons who are supposed to represent art, literature, science, co-operative movement and social services. Of all these perhaps the co-operative movement is the only one which may be said to have some definite Organisation. If selection were to be made out of such elements, here is the only one illustration where selection could be made according to some reasonable understandable principles. For the rest, eminence in science, art, literature or social service would be judged more by a person's occupying certain chairs or posts, and having a certain reputation as a publicist; or indications of this character rather than representation of the whole element as such which is not organised, unless, again, it may be the intention to select such people from the Universities for example which are said to represent or embody the faculty of art, faculty of science and so on.

For all these, reasons, it is evident that this compromise draft will not really serve any purpose, let alone the purpose of making the Second Chamber useless in itself and dangerous in its possibilities, and will not make the Second Chamber a part of the machinery that would add weight to our Constitution, to the dignity of the deliberations in the legislative bodies and to the sound working of a democratic system.

**Mr. Vice-President :** I will now put the closure motion to the House.

The question is:

"That the question be, now put."

**Mr. Vice-President :** Closure is accepted.

**Some Honourable Members :** The Noes were more vociferous.

**Mr. Vice-President :** May I call again ?

The question is:

“That the question be now put.”

The motion was adopted.

**The Honourable Dr. B. R. Ambedkar :** Mr. Vice-President, Sir, out of the amendments that have been moved, I am prepared to accept the amendments moved by Mr. Sarwate. I think he has spotted a real difficulty in the draft as it stands. The draft says University in the State. It is quite obvious that there are many States with at present no university. All the same there are graduates from other Universities who are residing in that State. It is certainly not the intention to take away the right of a graduate residing in a State to participate in the elections to the Upper Chamber merely because he does not happen to be a graduate of a University in that particular State. In order therefore to make the way clear for graduates residing in the particular State, I think this amendment is necessary and I propose to accept it. I would only say that the word ‘habitually’ is perhaps not necessary because residence as a qualification will be defined under the provisions of article 149 where we have the power to describe qualifications and disqualifications.

With regard to the other points of criticisms, I do not know that those who have indulged in high-flown phraseology in denouncing this particular article have done any service either to themselves or to the House. This is a matter which has been debated more than one. Whether there should be a Second Chamber in the province or not was a matter which was debated and the proposition has been accepted that those provinces who want Second Chambers should be permitted to have them. I do not know that any good purpose is served by repeating the same arguments which were urged by those Members at the time when that matter was discussed.

With regard to the merits of the proposition which has been tabled before the House, I have not seen any single constructive suggestion on the part of any Member who has taken part in this debate as to what should be the alternative constitution of the Second Chamber. Here and there bits have been taken and denunciations have been indulged in to point out either that that is a useful provision or a dangerous provision. Well, I am prepared to say that this is a matter where there can be two opinions and I am not prepared to say that the opinion I hold or the opinion of the Drafting Committee is the only correct one in this matter. We have to provide some kind of constitution and I am prepared to say that the constitution provided is as reasonable and as practicable as can be thought of in the present circumstances.

Then there were two points that were made, one of them by my Friend Mr. Nagappa. He wanted that a provision should be made for the representation of agricultural labour. I do not know that any such provision is necessary for the representation of agricultural labour in the Upper Chamber, because the Lower Chamber will be in my judgment having a very large representation of agricultural labour in view of the fact that the suffrage on which the Lower Chamber would be elected would be adult suffrage and I do not know.....

**Shri S. Nagappa :** If that is the case, all other sections also to whom you are giving will also get representation in the Lower Chamber.

**The Honourable Dr. B. R. Ambedkar :** They are provided for very different reasons agricultural labour would be amply provide in the Lower Chamber.

My Friend Shri Muniswami Pillai by an amendment raised the question that there should be special representation for the Scheduled Castes in the Upper Chamber. Now, I should like to point out to him that so far as the Drafting Committee is concerned, it is governed by the report of the Advisory Committee which dealt with this matter. In the report of the Advisory Committee which was placed before the House during August 1947 the following provision finds a place :—

“(c) There shall be reservation of seats for the Muslims in the Lower House of the Central and Provincial Legislatures on the basis of their population.”

“3. (a) The section of Hindu community referred to as scheduled Caste and defined in scheduled I to the Government of India Act 1935 shall have the same rights and benefits which are herein provided for etc., etc.”

which means that the representation to be guaranteed to the Scheduled Castes shall be guaranteed only in the Lower Houses of the Central and Provincial Legislatures. That being the decision of the Constituent Assembly, I do not think it is competent for the Drafting Committee to adopt any proposition which would be in contradiction to the decision of the House. I might say, although I do not want to injure anybody's feeling, that if any one was vociferously in favour of this decision, it was my Friend Mr. Muniswamy Pillai and I think he ought to be content with what he agreed to abide by then.

**Mr. Vice-President :** Dr. Ambedkar you have to formally withdraw amendment No. 2.

**The Honourable Dr. B. R. Ambedkar :** Yes, I have to withdraw it.

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

**Shri H. V. Kamath :** I beg leave of the House to withdraw amendment No. 3.

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

**Shri S. Nagappa :** In view of the explanation given by Dr. Ambedkar, I beg leave to withdraw amendment Nos. 66, 67, 68, 70 and 71.

The amendments were, by leave of the Assembly, withdrawn.

**Dr. Manmohan Das :** I beg to withdraw amendment No. 69.

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

**Shri V. I. Muniswamy Pillay :** I beg leave of the House. to withdraw my amendment, and I do not agree with the observations of the Honourable Dr. Ambedkar.

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

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

“That in amendment 1 (List I Fourth Week), the proviso to clause I of the proposed article 150 be deleted.—

The amendment was negatived.

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

“That in amendment 1 (List I Fourth Week), in clause of the proposed article 150. the words ‘Unless Parliament by law otherwise provides’ be deleted.”

The amendment was negatived.



**Mr. Vice-President :** The third amendment is for the deletion of the words “co-operative movement” in clause (5).

The question is:

“That in amendment 1 (List I Fourth Week), in clause 5 of the proposed article 150 the words ‘co-operative movement be deleted.’

The amendment was negatived.

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

“That in amendment 1 (List I Fourth Week), in clause 5 of the proposed article 150, before the word ‘literature’ the words ‘religion, philosophy’ be inserted.”

The amendment was negatived.

**Mr. Vice-President :** I now put Mr. Sarwate’s amendment to the House.

The question is:

“That in sub-clause (b) of clause (3) of the proposed article 150, after Words ‘consisting of persons, the words ‘resident in the State, be added, and for the words in the the words ‘in the territory of India’ be substituted.”

The amendment was adopted.

**Mr. Vice-President :** I now put amendment No. 2284 of the Printed List. Volume 1, that the word “medicine” be inserted in clause (5).

The question is:

“That in clause (5) of article 150, after the word ‘art’ the word ‘medicine be inserted”.

The amendment was negatived.

**Mr. Vice-President :** I now put the amendment No. 2287 in the printed volume 1, for the addition of the words “engineering and commerce” in clause (5).

The question is:

“That in clause (5) of article 150, before the word ‘engineering’ the word ‘commerce’ be added.”

The amendment was negatived.

**Mr. Vice-President :** Now I place before the House article 150, as amended. The question is:

“That article 150, as amended, stand part of the Constitution”.

The motion was adopted.

Article 150, as amended, was added to the Constitution.

## PART VIII-A

### Article 215-A

**The Honourable Dr. B. R. Ambedkar :** Sir, I move my amendment No. 6, List 1, Fourth Week.

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

## “PART VIII-A

### THE SCHEDULED AND TRIBAL AREAS

215 A. In this Constitution—

- (a) the expression ‘scheduled areas’ means the areas specified in pars I to VII of definitions the Table appended to paragraph 18 of the Fifth Schedule in relations to the states to which those Parts respectively relate subject to any order made under sub-paragraph (2) of that paragraph;

- (b) the expression 'tribal areas' means the areas specified in Parts I and II of the Table appended to paragraph 19 of the Sixth Schedule subject to any order made under sub-paragraph (3) of paragraph 1 or clause (b) of sub-paragraph (1) of paragraph 17 of that Schedule.

215 B. (1) The provisions of the Fifth Schedule shall apply to the administration and control of the Administration of scheduled areas and scheduled tribes in any State for the time being specified in Part I or Part III of the First Schedule other than the State of Assam.

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam."

Sir, my amendment merely replaces the original articles 189 and 190. The only thing we are doing is that we are transferring the provisions contained in articles 189 and 190 to another and a separate part. It is because of the transposition that it has become necessary to re-number them in order to secure the necessary logical sequence of the new part. Barring minor changes, there are no changes of substance at all, in the new articles proposed by me—article 215 A and article 215 B.

**Mr. Vice-President :** There is an amendment at page 253 of the printed volume I No. 2553, by Mr. Naziruddin Ahmad. Does he propose to move it?

**Mr. Naziruddin Ahmad :** The whole basis of that amendment is taken away come new amendments moved, making the whole thing impracticable.

**Mr. Vice-President :** Then you do not move it. The same remarks apply to amendments Nos. 2554 and 2557. I presume amendment No. 2555 is not moved. Does any Member wish to speak on the motion ?

**Shri Brajeshwar Prasad :** Sir, I rise to support the articles 215 A and 215 B as moved by Dr. Ambedkar. But I would like to add the following words "Until Parliament by law otherwise provides...." It is not safe, it is not proper to define and lay down the constitution and the government of the tribal areas which cannot be changed without an amendment of the Constitution. Everything in the tribal areas is in a flux. Therefore it will be wise on the part of the Drafting Committee to add these words in articles 215 A and 215 B.

**Shri Yudhisthir Mishra (Orissa: General):** Mr. Vice-President, Sir. The Committee which was set up under clause 20 of the Cabinet Mission's Statement of 16th May, 1946 was required to report to the Constituent Assembly upon the scheme for the administration of the tribal and excluded areas and to advise whether these rights should be incorporated in the Constitution : and I think, in accordance with the Cabinet Mission's plan, the Tribal Advisory Committee was set up to report about the administration of the tribal areas and the provisions to be incorporated in the Draft Constitution. The Advisory Committee has submitted its report and the present provisions have been incorporated in the Draft Constitution according to that report. Now, Sir, the Tribal Advisory Committee did not then enquire into the conditions of the tribal people in the Indian States as it was not within its scope. In the meantime, however, a large number of Indian States have been integrated into the neighbouring provinces and they will now be administered as parts of those provinces. It is therefore meet and proper that the tribal people of these small States should also get the benefit of the present provisions. In the original draft, the States were excluded from the operation of these provisions regarding the scheduled tribes but they have been included in the amendment just moved by Dr. Ambedkar. When the backward tribal people of the provinces will have the benefit of the provisions of the Fifth Schedule, there is no reason why the aboriginal tribes of the States under the same administration should be excluded. There is a large aboriginal population in Saraikella and Kharswan in Bihar and Orissa and the C.P. States, in

[Shri Yudhisthir Mishra]

Orissa they form one-third of the population in the States. But I regret to say that none of the tribal areas in these States have been specified as Scheduled areas in parts V to VII of the table appended to paragraph 18 of the Fifth Schedule of the Draft Constitution. The reason probably for omitting the tribal areas from the category of Scheduled areas is that the Advisory Committee on Tribes has not been able to go into the whole question, as it was not within its scope. I would request the Drafting Committee to specify the scheduled areas from the States in the Fifth Schedule, when that particular Schedule is taken into consideration in this House. The President of the Indian Republic under the new Constitution will, of course have sufficient authority to specify any new area in any State as a Scheduled area under sub-para (2) of paragraph 18 of the Fifth Schedule. If it is not possible for the Drafting Committee at this stage to specify the scheduled areas from the States in the Constitution, I would submit that as soon as the Constitution is passed, the President of the Indian Republic should set up a Commission to enquire into the conditions of the tribal people of these States and to report whether any of the areas would be specified as scheduled areas. I cannot but strongly press for the protection of these tribal people of Orissa and the C.P. States by bringing the tribal areas under the scope of the Fifth Schedule as has been done in the case of the provinces.

The tribal areas according to the proposed Constitution will no longer be treated like excluded or partially excluded areas in the present Constitution, and as they have been done in the 1935 Act. The scheduled areas specified in the Fifth Schedule will not be excluded from the jurisdiction of the Legislature or executive but according to the provisions of the Draft Constitution, the Tribal Advisory Committee as has been provided for in the Fifth Schedule, will only work is a sort of check on the executive power of the provinces as far as tribal matters are concerned. I submit that the tribal people of these States are as backward as, their kinsmen in the provinces. Therefore, whilst supporting the amendment of Dr. Ambedkar, I request him to take steps to incorporate the scheduled areas of Orissa and the C.P. States in the Fifth Schedule when that question comes up for consideration before this House.

**Shri H. V. Kamath** : Sir, I rise to support the suggestion made by my honourable Friend, Shri Brajeshwar Prasad, with regard to the future administration of these tribal areas. It will be agreed on all hands that we do not contemplate the continuance of these various tribal scheduled areas in the same condition as they are today. I am sure that all of us visualise the day when they will be brought up to the level of the adjoining neighbouring provinces and will be integrated with the Provinces and States that lie contiguous to them. We do not contemplate a permanently different type of administration for them, from what is obtaining or might obtain or will obtain in the rest of India. In the light of these considerations the suggestion made by my Friend, Shri Brajeshwar Prasad is quite sound and I suggest that we should adopt the article as proposed by Dr. Ambedkar today, subject to the condition "until Parliament by law otherwise provides". We have just now adopted an article where we have vested power in Parliament to alter such a fundamental thing as the composition of the Second Chamber. I do not see any reason why, as regards the constitution of these tribal councils, and in general the administration of the tribal areas, Parliament should not be vested with the power to alter, at any subsequent date, this Constitution by an ordinary vote of Parliament.

**Pandit Thakur Das Bhargava** (East Punjab: General): According to Mr. Brajeshwar Prasad the whole thing is in a state of flux. Therefore it is a good ground that Parliament should be given the power.

**Shri Brajeshwar Prasad :** That is exactly what he is saying!

**Pandit Thakur Das Bhargva:** The very ground given by Mr. Brajeshwar Prasad constitutes a good reason why Parliament should be empowered and the proposed provision is justifiable.

**Shri H. V. Kamath:** On the contrary, Parliament should also have the power to declare other than otherwise, later on. It can change later on. I do not know what Pandit Bhargava has in his mind. I hope he will make it clear later on. But it is clear to me that it should not be left to an amendment of the Constitution : as it is, it will be so rigid that the Constitution will have to be amended if we wish to change the constitution and administration of the tribal areas. But if we leave it to Parliament to change it, it will be easier : otherwise it will involve an amendment of the Constitution, which I do not like in this particular context. I therefore suggest that Parliament should be invested with the power to make any suitable alterations in this regard and therefore the suggestion made by Shri Brajeshwar Prasad may be embodied suitably in the final draft of the article before it is brought before the House.

**The Honourable Dr. B. R. Ambedkar:** I do not think there is any necessity to offer any remarks in reply.

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

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

#### PART VIII-A

##### THE SCHEDULED AND TRIBAL AREAS

215A. In this Constitution—

(a) the expression ‘scheduled areas’ means the areas specified in Parts I to VII of the Table appended to paragraph 18 of the Fifth Schedule in relation to the States to which those Parts respectively relate subject to any order made under sub-paragraph (2) of that paragraph;

(b) the expression ‘tribal areas’ means the areas specified in Parts I and II of the Table appended to paragraph 19 of the Sixth Schedule subject to any order made under sub-paragraph (3) of paragraph 1 or clause (b) of sub-paragraph (1) of paragraph 17 of that Schedule.

215 B. (1) The provisions of the Fifth Schedule shall apply to the administration and control of the Administration of scheduled areas and scheduled tribes in any State for the time being specified in Part I or Part III of the First Schedule other than the State of Assam.

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam.

The motion was adopted.

Part VIII A and articles 215 A and 215 B were added to the Constitution.

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

“That article 189 be deleted.”

The motion was adopted.

Article 189 was deleted from the Constitution.

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

“That article 190 be deleted.”

The motion was adopted.

Article 190 was deleted from the Constitution.

**Article 250—(Contd.)**

**Mr. Vice-President :** We now take up article 250. When the article was last under consideration Mr. Sidhwa was speaking on his amendment No. 12 of List I—Fourth Week.

**Shri R. K. Sidhwa :** Mr. Vice-President, Sir, as you rightly stated, last time when I was moving my amendment No. 12 the Honourable Dr. Ambedkar intervened and stated that this article should be held over. My amendment in the printed list (page 27) reads :

“That with reference to Amendment No. 2851 of the List of Amendments, in article 250, the following proviso be added at the end:—

‘Provided that the proceeds collected by the Government of India under clause (e) shall be assigned to local authorities in the jurisdiction of the States.’”

If you refer to clause (c) of the article you will find that it relates to “terminal taxes on goods or passengers carried by railway or air”. My amendment, if accepted, would mean that, while (a), (b) and (d) would remain, (c) would go. I will give you my reasons as to why I desire that clause (c) should be deleted from this article.

The Octroi, terminal tax and toll tax are more or less allied taxes and at the same time they form the major revenue of the local bodies. Prior to the Government of India Act, 1935, the terminal tax was a provincial subject. In the 1935 Act this terminal tax has been put as a Central subject. The Drafting Committee has more or less borrowed the section from the Government of India Act with minor changes in the language. They have not taken care to see why the terminal tax was changed in the 1935 Act from a provincial subject to a Central subject. If they had taken pains in the matter I am confident that they would have accepted my amendment.

This octroi tax which is levied by the local bodies is a pernicious tax. It creates so many complications. The tax is levied on the weightment of goods and in the matter of *ad valorem* also on the weightment of articles carried by rail, which has created a kind of harassment to the trade. Not only that. It has also lead to corruption with the result that the Government of India appointed a Committee to investigate into this matter. They unanimously resolved that the octroi should be abolished and instead terminal tax should be substituted.

Terminal tax is a very substantial tax which is recovered by various local bodies, and on the recommendation of that Committee in many local bodies this octroi has now been abolished although it has proceeded with a slow pace. Today nearly 80 per cent. of the local bodies still levy the octroi and the Provincial Governments are permitting them without taking any notice of the recommendations of the Committee.

The terminal tax is levied by municipalities and also by the Sanitary Committees and local boards Committees. The object of this alteration in the Government of India Act, 1935, is quite evident. This terminal tax brings a substantial big amount on one single item which is imported, namely, petroleum. The kerosen and petrol which is imported from foreign countries is subject to a tax, and although the terminal tax is only one pice per gallon it brings in a revenue of nearly Rs. 1,10,000 for only one tanker which arrives at either of the ports of Karacyhi, Bombay, Madras or Calcutta. This affected the Britishers who hold

the Sole Monopoly of the import of these articles. Therefore for the interest of their own nationals, the Britishers at that time thought that under the provisions of the Government of India Act, 1935, which confers autonomy to province, if the terminal tax is allowed to be retained by the province, the province might further increase the terminal tax. Therefore they conveniently omitted this from the provincial list and tagged it on to the Central list.

You will be pleased to see that I had moved another amendment in this matter which I am glad the Drafting Committee has accepted. That amendment was that after the word “railway” there should be a comma and the word “sea” should be added. In the original clause you will find that the word “sea” is omitted. The Drafting Committee without considering its implications merely copied the words from the Government of India Act. I brought to their notice that the omission of the word “sea” was deliberate on the part of the framers of the Government of India Act, 1935, their object being not to allow the terminal tax to be levied on petroleum goods which arrived by sea, and they therefore intentionally omitted the word “sea”. I am not quite sure that the Drafting Committee actually realised the reason for accepting my amendment—I do not know whether they merely felt that ‘air’ and ‘railways are mentioned here but sea’ is omitted and therefore ‘sea’ should be included, without realising the implications of my amendment. My amendment, if not accepted, would have deprived the local bodies of a large revenue on terminal tax. Therefore, from that point of view I congratulate the Drafting Committee for having accepted my amendment. I can assure, that if this amendment was not accepted, in all it would have brought a loss of a crore of rupees to the local bodies by way of this terminal tax.

I come to the other part in which it is stated in the article that this tax shall be collected by the Government of India but will be handed over to the States. So far so good. In the Government of India Act, 1935, there is a proviso that no fresh or additional terminal tax shall be imposed unless the permission of the Central Government is obtained. That is a most objectionable feature in that Act which has been copied by the Drafting Committee. You are preventing the local bodies from expanding their revenue by increasing the terminal tax on certain articles. I see no reason why the Provincial Government should not be allowed to increase it on the recommendation of the local bodies in regard to items on which they desire an increment in the terminal tax. The Calcutta Corporation wanted to increase certain items of tax on goods imported by rail, but when the matter was referred to the Government the increment was not allowed on the ground that it is a corollary of the toll-tax. The Kanpur Municipality had a question of similar nature which was referred to the U.P. Government which in turn referred it to the Central Government who did not give permission to accept any additional items. These are the impediments which stand in the way of betterment of the local bodies. I am sorry to state that the Drafting Committee have not taken this matter into consideration at all. At a Conference held last year of the Provincial Local Self-Government Ministers presided over by the Health Minister, this question of Finances in relation to the Provinces and the local bodies was considered and a unanimous resolution was passed which was forwarded to the Drafting Committee. I fail to understand how when the Provincial Ministers are agreed unanimously on the point, the Drafting Committee negatived it. The resolution said :—

“The Committee was of the opinion that while terminal tax may be governed by Central Legislature, it should be made clear that such taxes are for the benefit of local bodies. With this end in view, it suggested that in the Draft article 250, the words ‘and shall be payable to local bodies’ be inserted after the words ‘shall be assigned to the States in clause (1) of the Draft article’.”

I fail to understand why they have discarded the suggestion unanimously put forward. I may also draw your attention to the amendment proposed by the

[Shri R. K. Sidhwa]

Honourable Pandit Govind Ballabh Pant. He is one of the Ministers who takes great interest in the welfare of local bodies. He has stated that in clause (1) of article 250, sub-clause (c) be deleted and sub-clause (d) be re-numbered as subclause (c). I wish he was present here today; had he been present he would have supported me very strongly and I am sure if he had supported this, Dr. Ambedkar would have had no other alternative but to accept it. On a previous occasion when the question of the increment of the taxes on profession came up, my amendment suggested Rs. 250 *plus* a certain percentage but the Drafting Committee did not accept it. My Friend Pandit Pant was very keen on it and he pressed for Rs. 250 and the Drafting Committee accepted it. It is very strange that the Drafting Committee ignores the recommendations from Members like us but when similar recommendations are moved by a man of position they accept them. What does it show ? It shows that they have not understood the matter themselves thoroughly and only when—according to them a responsible Member puts it forward they accept it. They consider us as irresponsible. I deprecate that idea. While I have the highest respect for the legal knowledge that the Drafting Committee have I in return expect the same kind of respect from the Drafting Committee to those members who have studied and have vast experience of the working of local bodies. I am very sorry that that spirit does not exist, otherwise there would be no dispute over the present question. Why should the terminal tax be removed from the Provincial to the Central List ? It was done in 1935 for other reasons; the Britishers did not want a particular type of tax to be imposed on articles that they imported. The Provinces were autonomous in those days and they could have increased the terminal tax. It made no difference to the consumers, the tax being insignificant, but the collective amount that was brought in was beneficial to the local bodies. Sir, I feel very strongly on this question. It is not my view-point but I am telling you that as the President of the All-India Local Authorities Union they have unanimously supported my standpoint; all the Local Self-Government Ministers have supported it and because the Finance Minister of the Central Government is opposed to it, for reasons best known to him, the Drafting Committee has rejected these unanimous proposals. When my Friend Dr. Ambedkar last time got up and intervened to say that this subject should be held over, I thought he would take a very reasonable view of this matter but I was surprised to find that he has made no change in his attitude and has allowed this article to remain as it was. It is not going to improve the financial conditions of the local bodies; the Provincial Governments will be put to a great amount of strain. It is up to this House to see that sufficient provision is made in the Constitution for the betterment of the local bodies. How else are you going to improve the lot of the common man and make him happy? The common man, the masses live in the villages; *gaon panchayats*, notified and sanitary committees and municipal committees all govern their respective villages and towns. Somehow it seems to be the notion of the Drafting Committee that they will have nothing to do with the local bodies, that it is the function of the Provincial Governments. I ask what business have you to take away the terminal tax to the Centre ? Why should you take away the taxes for which a Province is legitimately entitled and which the local bodies have all along been collecting ? The Centre has nothing to do with this tax. I want to hear one single instance where the terminal tax has been collected at any time by the Centre. It has been a Provincial subject and always recovered by the local bodies. Even the Provincial Governments have not kept a single pie of it to themselves but given it all to local bodies. This impediment of not allowing the terminal tax to be increased but having to come to the Centre for permission has brought about the result that the finances of the local bodies have suffered gravely.

Sir, I have sufficiently elaborated my points on this question. This being a technical issue many Members do not probably care to understand it, but I

would request the honourable House to bear in mind one factor that if you really want the local bodies to live, if You want your common man to be happy, you cannot do it without giving them adequate money. You merely give them certain powers but you deny them the money which is entirely due to them. Today, the entertainment tax, the electricity tax and similar taxes which are really the local boards' share, are taken away by the Provinces. In the County Councils of Europe and, I can tell you, in many States of America, these taxes are collected by the local bodies and not by the Government. Tramways, buses and taxis are run by local bodies in the other countries and all the gains' go to them. The terminal tax which the local bodies were enjoying up to 1935 were taken away from them in that year. I am very sorry that particular provision of the Government of India Act has been bodily put in in the Draft Constitution. I expected the Government to bear in mind the difficulties of the local bodies. I hope the Drafting Committee would now at least see that this clause is omitted especially when an amendment to this effect has been sponsored by no less a person than Pandit Govind Ballabh Pant, at the instance I think of the Conference of Ministers of Local Self-Government who unanimously demanded this financial provision for the good working, of the local bodies. It is only the Finance' Ministry who are against this demand. They want to grab everything. This is unfair. From this point of view I move the amendment and I expect that even at this late stage the Drafting Committee will consider the necessity, the urgency and the importance of this tax being left to be, levied by the Provinces for the benefit of the local bodies. I have here before me a report of the United Provinces Grants-in-aid Committee. I wish the Drafting Committee had read this report. They have made out a very strong case for the purpose of the terminal tax which, they say, should be allowed to be levied by the local bodies, They also say that the local bodies should be given freedom to increase the number of items for the levy of this tax and to increase the tax. If you bring in an impediment to this, you will be doing a great disservice to the administration of the local bodies, while the Provincial governments are doing their best by enacting the Panchayat Act. United Provinces have passed this Act, though it is too early to say how it will work; the Central Provinces Government also have enacted a similar measure. If you do not give them sufficient funds or financial resources, how will the local bodies be able to do any good to the small man for whom everyone today is showing lip sympathy ? With these words I move my amendment which I hope the Drafting Committee will accept.

**Shri Brajeshwar Prasad :** Mr. Vice-President, I am not moving my amendments 7 and 11.

**Mr. Vice-President :** Amendment No. 8 is also not moved, as Pandit Govind Ballabh Pant is not present.

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

“That in sub-clause (c) of clause (1) of article 250, after the word ‘railway’ a comma and the word ‘sea’ be inserted.”

Sir, I move my next amendment also.

“That in clause (2) of article 250, for the words ‘revenues of India’ the words ‘Consolidated Fund of India’ be substituted.”

**Mr. Naziruddin Ahmad :** Mr. Vice-President, Sir, I beg to move:

That in sub-clause (b) of clause (1) of article 250, after the word ‘estate’, the words ‘or succession’ be inserted.”



[Mr. Naziruddin Ahmad]

I submit this is a purely formal amendment. Clause (b) says 'Estate duty in respect of property.....' To that I want to add "or succession duty". There is a difference between estate duty and succession duty. Estate duty is leviable on the death of a man owning an estate and succession duty is calculated from the point of view of the successor. If we put down Rs. one-lakh as the taxable value of the property, estate duty will have to be paid by all who get the property. But if there are more heirs than one, the share of each would be less than the one lakh and no one pays the succession duty. At present there is a Bill before the Legislature for charging estate duty. Here we are legislating for a long time. 'Therefore we should have both estate or succession duty.

**The Honourable Dr. B. R. Ambedkar :** Succession duty is covered by (a) which says 'Duties in respect of succession to property, Why repeat that in (b) ?

**Mr Naziruddin Ahmad:** The two might have been combined.

**Mr. President :** At the last meetings, the amendments on pages 297 and 298 of the Printed List, Vol. II were called and no Member moved them. Does any Member now propose to move any of them? If no one wants to move them, does any Member wish to speak on the article ?

**Prof. Shibban Lal Saksena** (United Provinces. General): Mr. Vice-President, Sir, I have stood up to support the amendment moved by my honourable Friend, Mr. Sidhva. He has in a very lucid speech explained to the House the purpose of his amendment and, also pointed out the importance of it. He has also said that no less a person than the Premier of my Province, the Honourable Pandit Govind Ballabh Pant, had given notice of a similar amendment. Sir, it is the second occasion when the cause of local bodies has been brought before this House. The first occasion was when we discussed article 256, when I moved an amendment for increasing the limit up to which local bodies could tax the people in their areas, *i.e.*, up to one per cent. of their annual income or up to Rs. 1,000. That was opposed on the ground that income-tax would be affected and that the men are already taxed by the Centre on their income. Here again, my honourable Friend, Mr. Sidhva, has suggested that clause (3) should be deleted from article 250 and the appropriation of revenue from this head should not be made by the Central Government but the local bodies should be entitled to appropriate the sums coming from this revenue. I am therefore very much surprised that in spite of all the arguments put forward by my honourable Friend, Mr. Sidhva, and his assertion before this House that all the local self-government Ministers of all the provinces in the country had suggested that this clause should go and in spite of the fact that a person like Pandit Pant has also suggested that this clause should be deleted, still the Drafting Committee will not accept the amendment because the Finance Ministry wants that this money should go to them.

Sir, a very fundamental question is raised by this amendment. We probably think that only the Centre and provinces should be provided with funds. We forget that the local bodies have also got 'vital functions to perform. I was surprised to learn from one of the members of the Drafting Committee that these bodies were useless bodies and it was so much money wasted if it was given to them. As one who has experience of these bodies I personally feel that ultimately you have to take care of the people in the villages and in the cities and you can really reach them only through these local bodies. I know that in my own district there are about a thousand primary schools and the conditions of the schools are such that it should be a shame to any Government, and if one were to go about repairing them it would cost several lakhs of rupees but the total income

of my District Board is hardly Rs. 10 lakhs; it cannot afford the repairs. Here you pass schemes worth crores of rupees for education, for universities and all these things but when it comes to the question of giving money to the local bodies which really finance the schools for the children of the village people, then we say we should not remove this clause from this article and we should not raise the limit of taxability of persons for local bodies to Rs. one thousand. I therefore say that by this stubbornness and refusal to help local bodies, you are really defeating the very purpose of the Constitution which is intended to benefit the masses. I say the masses are benefited best when the local bodies are given the power to cater for them. They must be supplied with sources of revenue which are expanding and the terminal tax that is levied on pilgrim traffic should be given to them because they have to spend a lot to cope with that traffic and if you deny them this terminal tax, they would not be able to serve the pilgrims properly. Everybody wants to grab money and there is no source of revenue, left to be exploited by the local boards, and with the little that the local bodies get they cannot make even both ends meet. I therefore strongly support the amendment moved by Mr. Sidhva; he has shown that it is not his own opinion but the unanimous opinion of all the ministers of local self-government of the various provinces in the country; he also said that it is the legitimate right of local bodies to get this tax, and still I do not know of any reason why his amendment should not have been accepted. Last time this article was held over for further consideration and therefore I ask the House to support the amendment of Mr. Sidhva and see that this clause does not remain in this Constitution.

**Shri V. S. Sarwate :** Mr. Vice-President, Sir, I am in full sympathy with the claim which my honourable Friend, Mr. Sidhva has put forward regarding the local bodies, but as I interpret the article, I see no necessity for the amendment which he has proposed. As the article at present stands, the House may have noted that it is a reproduction of Section 137 of the Government of India Act except one item namely the stamp duty which has been transferred to article 249. Now admitting that the local bodies are very important bodies and as such require all the assistance and encouragement from the provincial Governments as put forward by Mr. Sidhva, till the article as it stands gives full discretion to the Provincial Governments to make allotments as they please, out of the proceeds which they receive from the Centre. There are many nation building activities in every province. There are village panchayats, there are local bodies, there is medicine and other subjects, for instance, education, and it may be that in one province the village panchayats or local bodies may be important and may require comparatively more attention. Then in other parts of the country, Education may require more attention and in a third Province probably hygiene, and medicine. So when the proceeds are received by the Governments of these various provinces, the Governments would have full discretion to allot the proceeds according to the special requirements of that province. If we accept the amendment, the effect would be that the discretion of the Provincial Governments will be circumscribed and would be restricted, so that all the proceeds must necessarily be given to the local bodies; whereas at present there is discretion to allot to the local bodies or to other nation-building departments. Therefore, I think that the article as it stands, gives more discretion, has more elasticity and serves better the purpose which the honourable Mover of the amendment has in mind. If the U.P. Government for the matter of that intends that the village panchayats and local bodies should be specially encouraged, it has full discretion to do so without the amendment being accepted here. Therefore, I think that the article as it stands should go in.

**Shri R. K. Sidhwa :** May I know from the honourable the speaker whether he desires that the terminal tax collected from the jurisdiction of one province

[Shri R. K. Sidhwa]

can be transferred to the other jurisdiction of that very province ? Does he, mean that?

**Shri V. S. Sarwate :** That would depend upon the principle. It is provided that the total amount collected would be divided among all the provinces. The principle of division which would be presented in the case of duties in respect of succession to property may also be prescribed in the case of terminal taxes also. As I interpret it, there may also be different principles prescribed for the different categories (a) and (b) and different principles for (c) and (d) when Parliament passes the law prescribing principles of division. The article as it is gives a wider scope and greater elasticity and by the amendment we are creating difficulties for the provincial Governments.

**Shri Brajeshwar Prasad :** Mr. Vice-President, Sir, I rise to support the article; I am opposed to Mr. Sidhwa's amendment for a very simple reason.

This Constitution recognises only two levels of Government, Central and provincial. There is no third legal entity known to constitutional law.

**Shri R. K. Sidhwa :** Read section 250 carefully, you will find local bodies are mentioned here.

**Shri Brajeshwar Prasad :** That comes only by the way. If we give this power to the local bodies, we will have also to say what are the powers and functions of these local bodies. We will have to make a constitution for these local bodies here. Though in fact, it is a *de facto* Government, in this Draft Constitution, there are only two levels of Government known. We shall be creating innumerable difficulties and complications if we recognise third level of Government by the backdoor.

**Shri M. Annanthasayanam Ayyanagar** (Madras: General): Sir, I am sorry. I am not able to support the amendment moved by Mr. Sidhwa. This article 250 has been taken word for word section 137 of the Government of India Act. On that alone, I am not basing my claim. On the other hand, the principle that Mr. Sidhwa's amendment seeks to introduce is both dangerous and not feasible. It is dangerous from this point of view. We are trying to interfere with provincial autonomy. He has read some extracts from books and publications, the views of some Ministers of particular provinces. It is open to them to say so because the distribution of the proceeds of the taxes which are collected by the Centre can be made in any way they like. We introduce this principle of allocating or earmarking of particular taxes collected by the Centre to the provinces not for being utilised for such purposes as they may consider proper, but for a particular head of provincial administration, that would be interfering with provincial autonomy. I do not know how many of these Ministers are in favour of this proposal. We have already got the petrol tax which is being earmarked for the purpose of roads; there is a certain amount earned for education, and so on. Ultimately, what remains to the provinces ? You ought to make the provision as flexible as possible.

There is another difficulty also. The terminal taxes are collected not at every terminal; not always in the same place. The amendment does not say that the amount collected at particular terminals are to be earmarked for those local administrations. Again there are many local bodies; there are panchayats in the villages; there are district boards covering the entire district; there are municipalities having jurisdiction over only particular areas. Does he mean to say that amount should be distributed among the panchayats, district boards and municipalities ? Even there, a certain amount of discretion is vested in the hands of the provincial Government. Again, the local administrations are in charge of various subjects, primary education, secondary education, health, sanitation, drainage, water-supply. For what purposes does he mean that this amount should be utilised ? Even if this amendment is accepted, even then it would not

interfere with the discretion vested. Even though it may not be flexible but rigid, it is still open to the provincial Government to use such powers as they have and to say that this amount shall be utilised for such and such purposes by the local bodies. It is not right that the Constitution itself should sub-divide and earmark the amounts for particular purposes and for particular local administrations. I was sorry to hear when my Honourable Friend said that if the amendment had come from any other Minister, the Drafting Committee would have accepted it. I am sure the Drafting Committee goes into these matters on their own merits and not with reference to the person who brings forward a particular amendment.

**Shri R. K. Sidhwa :** That has happened in one case.

**Shri M. Ananthasayanam Ayyanagar :** That may have happened. But, so far as article 250 is concerned, the persons who are incharge of and are interested in this matter are the persons incharge of the provincial administration. My Honourable friend. Mr. Sidhwa must take into consideration the experience, weight and authority which flows with any recommendation made by the provincial Governments as against individuals, be they as high as Mr. Sidhwa himself. He cannot say that he has got all the experience of the Premier of a provincial Government. He ought not to have made such a remark in the House that the Drafting Committee makes invidious distinctions. I have got the greatest respect for the Drafting Committee. They are putting themselves to enormous inconveniences and trouble. We address ourselves only to some amendment here and there. They are incharge of the entire drafting of the Constitution. I take this opportunity to thank the Drafting Committee for the able manner in which they are carrying out the work. Any aspersion against their character or alleging that they make invidious distinctions is out of place.

**Shri R. K. Sidhwa :** May I know from the honourable Member what answer he has to this point ? Before the Government of India Act of 1935, this was a provincial subject, which has since been brought into the Centre by the Act of 1935.

**Shri M. Ananthasayanam Ayyanagar :** It is not as if the proceeds are taken away by the Centre. The Centre is only a collecting agency. The Centre collects only for the purpose of ensuring uniformity. My honourable Friend may also see that with respect to another provincial tax, the sales tax, for the purpose of ensuring uniformity a conference of provincial Finance Ministers is being called. The centre may be able to act with greater speed and efficiency allocate the proceeds of the taxes to the various provinces. We are not unused to this; there is the duty in respect of succession to property; there is the Estate Duty in the same category.

**Mr. Vice-President :** Also, does Mr. Sidhwa think that the taxes collected in Calcutta, Bombay and Madras should go to those provinces exclusively or to the local bodies in those provinces ?

**Shri R. K. Sidhwa :** At present these taxes are collected by the local bodies. The Government of India Act of 1935 makes it a Central subject.

**Mr. Vice-President :** We have now included terminal taxes on goods or passengers carried by sea. Take terminal taxes collected in Calcutta, Bombay, Madras and other big ports which serve large areas. Should the particular corporation or provinces be entitled to retain them ?

**Shri R. K. Sidhwa :** The Calcutta Corporation or the Madras Corporation gets the benefit.

**Mr. Vice-President :** The main point is, the Calcutta Port carries goods and passengers for more than one province. Anyway, does Dr. Ambedkar want to say anything?

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

**Mr. Vice-President :** I will now put the amendments to the House.

The question is :

“That in sub-clause (c) of clause (1) of article 250, after the word ‘railway’ a comma and the word ‘sea’ be inserted.”

The amendment was adopted.

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

“That in clause (2) of article 250, for the words ‘revenues of India’ the words ‘Consolidated Fund of India’ be substituted.

The amendment was adopted.

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

“That in amendment No. 2851 of the List of Amendments, for the words proposed to be added in article 250, the following words be substituted :—

‘The net proceeds of such taxes recovered under sub-clause (c) and (d) be assigned by the States to the local authorities in their Jurisdiction.’ ”

The amendment was negatived.

**Mr. Vice-President :** I now put the whole article as amended. The question is :

“That article 250, as amended, stand part of the Constitution.”

The motion was adopted.

Article 250, as amended, was added to the Constitution.

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### Article 277

**Mr. Vice-President :** We now go to 277.

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

“That article 277 be re-numbered as clause (1) of article 277, and to the said article as so re-numbered the following clause be added :—

‘(2) Every order made under clause (1) of this article shall as soon as may be after it is made, be laid before each House of Parliament.’ ”

This article 277 is a consequential article. It lays down what shall be the financial consequences of the issue of an emergency proclamation by the President. Clause (1) of the article says that provisions relating to financial arrangements between Provinces and the Centre may be modified by the President by order during the period of the emergency. It was felt that it was not proper to give the President this absolute and unrestricted power to modify the financial arrangements between the provinces and the States and that the Parliament should also have a say in the matter. Consequently it is now proposed to add clause (2) to article 277 whereby it is provided that any order made by the President varying the arrangements shall be laid before, each House of Parliament. It follows that after the matter is placed before the Parliament, Parliament will take such action as it deems proper, which the President will be bound to carry out.

**Mr. Vice-President :** Amendment No. 14 is not moved by Shri Brajeshwar Prasad. Pandit Kunzru—No. 72.

**Pandit Hirday Nath Kunzru** (United Provinces: General): Mr. President, I beg to move:

“That with reference to amendment No. 3007 of the List of Amendments and Amendment No. 13 of List I (Fourth Week) of Amendments to Amendments, for article 277, the following article be substituted :—

<p>‘277. (1) While a Proclamation of Emergency is in operation, the Union may, notwithstanding anything contained in article 251 of this Constitution, retain out of the moneys assigned by clause (1) of that article to States in the first year of a prescribed period such sum as may be prescribed and thereafter in each year of the said prescribed period a sum less than that retained in the preceding year by an amount, being the same amount in each year, so calculated that the sum to be retained in the last year of the period will be equal to the amount of each such annual deduction :</p>	<p>Modification of the provisions relating to distribution of taxes on income during the period proclamation of emergency is in operation.</p>
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Provided that the President may in any year of the said prescribed period direct that the sum to be retained by the Union in that year shall be the sum retained in the preceding year and that the said prescribed period shall be correspondingly extended, but he shall not give any such direction except after consultation with the States nor, shall he give any such direction unless he is satisfied that the maintenance of the financial stability of the Government of India requires him so to do.

(2) In this article, ‘Prescribed’ means prescribed by the President by Order.”

Sir, the language of the amendment is complicated but it has been borrowed from the Government of India Act, 1935, with which honourable Members are familiar. I think that Dr. Ambedkar who laughed without any cause should also be familiar with it. The meaning of my amendment is this. Under article 251 a percentage has to be prescribed which will represent the share of the provinces in the divisible portion of the net proceeds of the income-tax. The language of that article is such as to make it appear that the entire provincial share shall have to be made over to the provinces at once. As soon as it has been prescribed by the President, with or without consultation with the Finance Commission as the case may be, it must be made over to the provinces at once. What my amendment proposes is that notwithstanding the language of article 251, the Centre may make over the entire provincial share to the provinces not at one bound but in a certain period; But if during that period an emergency occurs, an emergency so grave as to require the issue of a Proclamation of Emergency, then the President may direct that the transfer of the provincial share in the particular year in which the emergency occurs shall be stopped. In other words, my amendment if accepted would restrict the power proposed to be given to the President by article 277. Further, while there may be delay in the transfer of the provincial share to the provinces nothing that has been already given to the provinces can be taken back from them.

Now having briefly explained the purpose of my amendment, I shall deal with article 277 as modified by the amendment of Dr. Ambedkar. When I referred to article 277 the other day and said that it was practically subversive of the financial rights of the States, Dr. Ambedkar objected to my referring to it and said that the article had not been moved and might therefore not be moved or be modified. He has now introduced a modification; but does this modification mean anything at all ? Suppose Dr. Ambedkar had not moved this amendment, could anything have debarred Parliament from taking into consideration the modification of the financial relations between the Provinces and the States, brought into effect by the order of the President during the period of emergency? Parliament has got an inherent right to consider any matter that it likes. Consequently the amendment moved by Dr. Ambedkar

[Pandit Hriday Nath Kunzru]

adds nothing to its power. It gives it no right that it would not otherwise possess. Let us therefore, consider article 277 as it is, in the form in which it has been proposed in the Draft Constitution. We need pay no attention whatsoever to the amendment moved by Dr. Ambedkar because it means nothing in practice. It gives Parliament no additional opportunity of dealing with any order that the President might make that it would not otherwise have. Now article 277 authorises the President, while a Proclamation of Emergency is in force, to direct "that all or any of the provisions of articles 249 to 259 of the Constitution shall for such period, not extending in any case beyond the expiration of the financial year in which such proclamation ceases to operate, as may be specified in the order, have effect subject to such exceptions or modifications as he thinks fit." The President in this article will enjoy full authority to alter the financial relations between the Provinces and the States in any manner that he likes. Let us therefore, consider what it is that the articles referred to in article 277, give to the provinces. Under article 249, the Union may levy stamp duties under any law made by Parliament and such duty of excise on medicinal and toilet preparations as are mentioned in the Union List. These duties shall be collected and appropriated by the States. The Centre has never claimed a share in their proceeds. Article 250 that we have just dealt with provides that certain duties and taxes including duties in respect of succession to property other than agricultural land, and estate duty in respect of property other than agricultural land, shall be levied and collected by the Centre, but shall be distributed entirely between the Provinces except in so far as they represent the share attributable to the States for the time being specified in Part II of the First Schedule. This is the second source from which Provinces will derive their income and it too is entirely provincial. The Centre has never laid claim to a percentage of their proceeds of these duties. The third source will be the taxes on income. The President will, by order, fix the percentage of the divisible portion of the net proceeds of the income-tax that should be made over to the Provinces. I have already dealt with this. Then we come to the excise duties, duties of excise, other than duties of excise on medicinal and toilet preparations mentioned in the Union List, are to be levied and collected by the Government of India. But if Parliament so provides, the proceeds of these duties may be divided between the Centre and the Provinces. The President has no power to deal with them. Then there is the duty on jute which is not to be distributed now, between the Centre and the Provinces, but such provinces as are entitled to a share in the proceeds of the jute export duty will get a sum to be prescribed to compensate them for the loss of their share in the duty. Lastly, Sir, there are the grants from the Centre which of course can be altered from time to time.

These are the various ways, Sir, in which the Provinces will derive their income. And article 277 allows the President to arrive at any decision he likes in regard to the availability of any or all these sources of income to the provinces. Now, what are the provinces to do, if such action is taken by the President? If the sum to be made over by the Centre to the Provinces were to be parted within a prescribed period, then in an emergency, the President could well say that the Centre could not afford to part with more money than it had already given to the Province, so long as the emergency lasted. Such a proceeding would be intelligible and reasonable, but what is now proposed is that, after a financial settlement has been arrived at with the provinces and they have increased their expenditure and have come to depend on the money received by them from the Centre for meeting their liabilities, the President may say to them that whatever happens to them the financial settlement made

by them must be modified. What are the provinces to do in these circumstances ? So far as I can see, they are to enjoy the blessing of financial *nirvana*. The Provincial Governments and the people of the provinces may suffer seriously—may, so to say go about with a loin cloth—but the Centre will have little regard for their plight. Such a proceeding, I think, is both iniquitous and impracticable. My contention is, as I have already said, that if you have to give a certain sum of money, or a certain percentage of the proceeds of certain taxes to the provinces, you may delay the full distribution of the provincial share, but nothing that has been once given to them ought to be taken back. The Government of India Act, 1935, proposed nothing so drastic. The framers of the Act realized as well as the framers of the Constitution do, that the Centre may some day be involved in an emergency. But all that they provided was that the transfer of the full provincial share of the divisible portion of the proceeds of the income-tax may be delayed on account of an emergency, but no part of the divisible portion given to the provinces before the occurrence of the emergency could be taken away from them. As regards the proceeds of the Central Excise Duties and the Central Export Duties and the other taxes that I have referred to, there could be no change in them whatsoever in any emergency. The position of the provinces in regard to the other taxes was to remain wholly unaffected by the occurrence of an emergency. It was realized that if the provinces, depending on the money received by them from the Centre extended primary education, or made it compulsory, or increased the number of hospitals and dispensaries, or undertook a programme for the improvement of the condition of the rural masses, they could not in justice be asked suddenly to change their budgets and tell their people that the facilities already available to them in respect of education, public health, medical relief or rural welfare shall be withdrawn. If such a thing were to be done in future, there would be serious discontent in the provinces, so serious indeed as to create another emergency greater than that to deal with which the President is to be given the plenary power contained in article 277. I think, therefore, Sir, that article 277, the effect of which on the provincial administration will be exceedingly harmful, should be replaced by the amendment that I have moved.

Sir, I do not know what the exact share of the divisible portion of the net proceeds of the income-tax now received by the provinces is. But I understand that the maximum share is still that prescribed in 1936, namely 50 per cent. and that in all probability, the provinces are getting about 42 or 43 per cent. of the divisible portion. I do not know what the prescribed percentage in future will be. Let us suppose that it is 60 per cent. Then you can lay down that the differences between 42 per cent. and 60 per cent. shall be transferred to the provinces within a certain period, and that if an emergency occurs during this period, the process of transfer can be halted. The provinces will thereby not suffer materially but article 277 is contrary to the best interests of the provinces and if given effect will create chaos there.

The House will undoubtedly be surprised that so drastic a provision should have been included in the Draft Constitution. The framers of the Constitution are reasonable people. We have therefore to consider what made them think of inserting such an article in the Constitution. When I dealt with some of the articles relating to the future financial position of the provinces, I pointed out that if the settlement were made too generous to begin with, the Centre might be faced with a serious position later when an emergency occurred. I ventured to say that it would be better if the Centre were a little cautious in the beginning so that it might have to take no action that would completely dislocate the finances of the provinces later. But that warning, was not heeded. The only way now in which, according to the framers of the Constitution, the future financial position of the Centre can be safeguarded is



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that the President should be allowed during an emergency practically to annul the provisions of the articles 249 to 259. It will be open to the Finance Commission when it is appointed, and to the President after the Constitution has been passed, to consider carefully the existing situation and distribute the proceeds of the divisible sources of revenue between the Centre and the Provinces in such a way as to take due note of the interests both of the Provinces and the Centre. In spite of our having passed all the articles referred to in article 277, the President can still so fix the provincial and Central shares that the Centre may not be driven to take action of the kind envisaged in article 277. Such a course would be far better than pleasing the Provinces now and making them gnash their teeth and tear their hair afterwards.

Sir, I have explained the meaning and purpose of my amendment as clearly as I could. I hope that the representatives of the Provinces realise how grave a danger to their interests article 277 constitutes. If the Provinces are not even to enjoy financial autonomy in certain circumstances, they will have no independence left whatsoever and their position will be equivalent to that of the municipalities and district boards. But it is not primarily on that ground that I have moved my amendment. I have done so in the interests of the people of the Provinces who cannot arbitrarily be deprived of the facilities that they have become accustomed to in such matters as education, medical relief and the welfare of the masses even during a war. Such a thing did not happen during the last war. Why should be then think that it would happen or might happen during a future war? Article 277 is an expression of nothing but the undiluted financial autocracy of the Centre. I hope therefore that every Member of the House will protest against this iniquitous provision and see that it is changed in such a way as to assure the Provinces that their finances cannot suddenly be disorganised by any order of the President and that at the same time the position of the Centre is such as to enable it to discharge properly its supreme responsibilities.

Amendments Nos. 3009 and 3010 on page 318 of the Printed List were not moved.

**Prof. Shibban Lal Saksena :** Sir, the speech delivered just now by my honourable Friend Dr. Kunzru will certainly give food for thought to the House for reviewing this important article. I have very carefully followed his speech and also studied his amendment. When we were discussing articles 275 and 276 and when we gave to the President powers to issue a Proclamation when necessary, we had provided that within two months of that Proclamation, it must be laid before each House of Parliament and must be approved. Only then will it continue for a further period of six months.

In article 277 it is provided that not only will the Central Parliament have concurrent jurisdiction over subjects which are the province of the States but also that "provisions of articles 249 to 259 of this Constitution shall for such period not exceeding in any case beyond the expiration of the financial year in which such proclamation ceases to operate, as may be specified in the order, have effect subject to such exceptions or modifications as the President thinks fit". So that, by this article, articles 249 to 259 lose their existence during an emergency. For the President has the power to pass orders in contravention of the provisions of these articles. I would have been happier if whatever changes or variations of the articles are desired were also part of the Proclamation and are brought before Parliament for approval. I have throughout protested against arming the President with almost autocratic powers in financial matters, but I am sorry to have to say that our protests have gone in vain and every time when an amendment comes, the President is armed with powers of issuing orders by which even the provisions of this Constitution can be

amended. I think Dr. Kunzru has pointed out what difficulties arise if, this article is passed as it is. The amendment of Dr. Ambedkar does not help matters at all. To “lay it” before each House of Parliament is not a sufficient safeguard. I therefore think that Dr. Kunzru has done a service to the House by bringing forward this amendment and by pointing out the danger inherent in this article 277.

This is a vital article. The budgets framed by the States may be upset by an order of the President and if he is not very favourably disposed towards some of the Ministers of any Province, then woe betide that Province. Therefore, it is not proper to pass this article in its present form. I would request Dr. Ambedkar and the Drafting Committee to review this article in the light of the arguments advanced by Pandit Kunzru and also in view of the fact that such powers should not be given to the President which may upset the budgets of the Provinces. Of, course no President will deliberately use such powers and upset all their plans, but unless there are safeguards in the Constitution it is not proper to give those powers. With the best will in the world and with the most pious intentions he may pass orders which may bring about the position I have pointed out. I therefore request that some machinery may be provided for in the Constitution by which that position may not be brought about. I hope that in the light of these arguments, the learned Doctor will accept my amendment.

**Shri Alladi Krishnaswami Ayyar** (Madras: General): Mr. Vice-President, I should like to say a few words in support of article 277 along with the amendment moved by my Friend, the Honourable Dr. Ambedkar. A lurid picture has been painted by my esteemed Friend Pandit Hriday Nath Kunzru as to the effect of this article. Hospitals will be closed, all constructive activities of the Provinces will be set at naught, Provincial autonomy will come to a dead stop, the Central Executive will assume dictatorship, &ire will be nothing but chaos as a result of this article taken along with the amendment.

My friend forgets that article 277 is a sequel to 275. We are proceeding on the footing that the security of India is threatened or that there is war or domestic violence of a character which necessitates the President to proclaim an emergency posited by article 275. The normal conditions are disturbed by the very premises with which we start, namely war, and everybody must be ready to support the security of the country, to see that the State itself which is the basis for individual liberty, does not fall to the ground. That is the basis of article 275.

Then, article 277 does not say that the whole of the financial provisions will come to an end. It says, “subject to such exceptions or modifications as he thinks fit”. Normally it is not expected that he will abrogate the entire financial scheme. The article provides that the provisions of articles 249 to 259 of the Constitution shall for such period have effect subject to such exception or modification as he thinks, fit. Therefore, it is an exception to the rule that has been working for sometime, it is a modification of the rule that has been working for some time. It is not an obliteration of the entire financial structure or the financial relation between the Provinces and the Centre that is contemplated under article 277.

Even in normal times the Parliament has the power to interfere with the distribution. That is stated in the very articles, 249 to 259. The whole question of distribution is left to Parliament. No doubt distribution implies that a certain percentage at least will be left to the Provinces, but the intervention of the Federal Parliament is posited in the various articles to which reference has been made by my Friend Pandit Kunzru. Therefore, what we are now doing is—and he himself has pointed this out—to see that the plenary

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authority of Parliament to pass any law to interfere with the distribution is not affected even by the powers conferred upon the President under article 277. The President's power is not exclusive of, and does not derogate from, the plenary authority of Parliament under the Constitution. Therefore, the only question is that in an emergency like this, the President acting on the advice of the Central Cabinet ought to modify or to provide for certain exception in regard to the distribution of the various proceeds.

So far as the right to distribute income-tax is concerned, even in normal times, it rests upon an order of the President—(on all Order of His Majesty in Council under the present Constitution)—it does not rest on Parliamentary authority. It no doubt contemplates that after the Statutory Commission makes its report a degree of permanency will be introduced in the distribution of income-tax proceeds, but until the financial provisions come into operation the power rests with the President which means the Central Cabinet. It does not mean that they will flout the claims of the various Provinces who are represented in the Upper House, and in the Lower House, and we are not to proceed on the footing that the representatives will not discharge their functions and their duties to their constituencies properly.

Therefore, I submit, Sir, that there is nothing drastic in article 277. You cannot carry on a war under the principle which obtains in normal times. You must provide the Centre with an emergency power and that emergency power is by no means so drastic and so omnibus a power, so all-comprehensive a power as might be imagined. It expressly says “subject to such exceptions or modifications as the Cabinet thinks fit.” An exception cannot be the rule. A modification cannot take away the original rule. A modification can only be a modification and an exception can only be an exception. Therefore, in an emergency, is the President, is the Central Cabinet, to be clothed with some kind of discretionary power in regard to the adjustment of the financial relation between the Provinces and the Centre subject to the plenary power of Parliament and to the intervention of Parliament if anything goes wrong in the action of a Cabinet which is responsible to the Lower House and in which both the Houses can take the Cabinet to task for putting the emergency provisions into operation ? Under those circumstances, I submit that it is inevitable that you should have a provision of that description. Whenever we refer to these things we must remember that we are dealing with a Cabinet which is responsible to the people. A Government which is responsible to the Parliament and the people can certainly be invested with greater powers than His Majesty in Council who was responsible only to the British Parliament and not to the Parliament of this country. It will mean the negotiation of the principle of responsible government to say that the responsible Government today must exercise the same kind of power as His Majesty in Council or a foreign Government could exercise in the circumstances of a war. At that time other people were responsible for the maintenance of India and for seeing there was no internal commotion. We are responsible now for the security of India and for the safety of the State. No price is too high for discharging that responsibility for the welfare of the people. That is the principle contained in article 277. It is a necessary consequence of article 275 which posits the existence of war or some domestic situation equivalent to war. There can be no exception taken to the principle underlying article 277 and the amendment which has been brought before the House by Dr. Ambedkar.

**Shrimati Renuka Ray** (West Bengal: General): Mr. Vice-President. Sir, I am one, of those who believe that, in the present context of things in this country and in view of the fact that we have so much leeway to make up in the matter of the nation-building services, we should of course have a very

strong federal Centre. It is necessary that the Centre should be in a position to see that the provinces do not fall behind in regard to the minimum standards of development. But, nonetheless, I must say that the arguments that Pandit Kunzru has advanced before the House this morning have a great deal in them. It is not possible for a province to administer its responsibilities in an adequate manner if its financial position is unstable or uncertain. I realise that it is in the case of emergencies alone that this power under article 277 is sought to be given to the President, which means the Central Government. None-the-less I do feel that this is a very drastic measure. The provinces draw their finances from two sources. One source is the obligatory allocation made to them to maintain their general services. The other is the grants made for development purposes. I could have understood it, if a demarcation had been made and the finances of the provinces had been left intact in the matter of the obligatory taxes with which they carry on their normal life. Even that has not been done. I do not want to reiterate all that Pandit Kunzru has very pertinently pointed out. I do feel that this is a vital matter. There is article 276-B under which all extravagant expenditure during emergencies could be stopped. The provinces can be requested to drop their development programmes during an emergency such as war. But surely it should not be in the power of the Centre or the President to stop the normal functioning of the provinces. It is through the provinces that the life and activities of the people of the country is administered. I should like to point out that the Centre does not work in the air. It has to work through the provinces and I can see no reason whatsoever for having this provision just as it is. I do think that Pandit Kunzru has drawn attention to a very important point. I would therefore request Dr. Ambedkar and the Drafting Committee to hold over this article and re-draft it in the light of the observations that have been made.

**Prof. N. G. Ranga** (Madras: General): Hold over till the emergency is over ?

**Shrimati Renuka Ray** : I do not mean that. Professor Ranga has sought to be very sarcastic. I would point out to him that even in an emergency the normal functioning of the provinces must continue. I see no reason whatsoever to give the President power to stop those sources of revenue from which the provinces have to function in a normal way, even in an emergency. I can understand stopping the development activities of a province in an emergency, but how can the normal functioning of the provinces be stopped even in emergencies? Even in war-time, people have to continue to eat, to have education and be protected against evil-doers. I do appeal to Dr. Ambedkar and the Drafting-Committee to reconsider this article which is a vital one. I support the changes proposed by Pandit Kunzru.

**Mr. Vice-President** : Mr. Biswanath Das may now speak.

**Pandit Hirday Nath Kunzru** : It is nearly one o'clock.

**Mr. Vice-President** : We shall now adjourn and meet again at 9 a.m. tomorrow.

The Assembly then adjourned till Nine of the Clock on Saturday, the 20th August 1949.