

CONSTITUENT ASSEMBLY OF INDIA

Sunday, the 16th October 1949

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

DRAFT CONSTITUTION—(Contd.)

Mr. President : We have got a number of articles on the agenda. Some of them are of a controversial nature and are of great importance. They will probably take a little time in discussion, while the others are more or less of a formal nature. I would like to take up the difficult and controversial articles first, so that we might dispose them of and then we can deal with those which are only consequential amendments and things of that sort. Shall we begin with 264A, Dr. Ambedkar ? Will it suit you ?

Mr. Naziruddin Ahmad (West Bengal : Muslim) : May I point out that these amendments were received by us at quarter past nine this morning and I had to read them on my way to the Assembly.

Mr. President : Quarter past nine ? They were circulated last night.

Some Honourable Members. : We got them at 9 A.M.

Shri Mahavir Tyagi (United Provinces : General) : My proposal is that this article may be taken up in the afternoon, Sir.

Mr. President : We may not have a session in the afternoon. In this way I do not know what to do.

Mr. Naziruddin Ahmad : These are very intricate matters and they are reopening decisions of the House already taken.

Mr. President : Article 264A has been there for several days, article 274DD has been there for several days; so also article 302AA.

Mr. Naziruddin Ahmad : I am speaking generally of the agenda today. Most of them reopen matters already decided by the House. It is difficult for anyone, even the fastest brain, to follow these changes. No indication is given as to what changes are to be made.

Mr. President : No doubt article 280A, I understand, is a new article which has come up today; but the others have been there on the agenda for many days.

Shri H. J. Khandekar (C.P. & Berar: General) : 264A is a new article altogether and we got notice of it at about 9 A.M. today. It is impossible to send any amendment to that article. Therefore, I request that it may be taken up in the afternoon or tomorrow.

Mr. President : It means that we shall have to prolong the session for two or three days. I do not think that will be right. Let us take up article 264A.

Article 264A

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

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

‘264A. (1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase	of goods where such sale or purchase takes place—
Restriction as to imposition of tax on sale or purchase of goods.	(a) outside the State; or
	(b) in the course of the import of the goods into, or export of the goods out of the territory of India.

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

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

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

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

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

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

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

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

Article 274-DD

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

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

‘274DD. Notwithstanding anything contained in the foregoing provisions of this Part or in any other provisions of this Constitution, any State which before the commencement of this Constitution was levying any tax or duty on the import of goods into the State from other States or on the export of goods from the State to other States may, if an agreement in that behalf has been entered into between the Government of India and the Government of that State, continue to levy and collect such tax or duty subject to the terms of such agreement and for such period not exceeding ten years from the commencement of this Constitution as may be specified in the agreement :

Power of certain States in Part III of the First schedule in impose restrictions on trade and commerce by the levy of certain taxes and duties on the import of goods into or the export of goods from such States.

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

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

Prof. Shibban Lal Saksena : Sir, I move:

That in amendment No. 428, in the proviso to the proposed article 274DD, for the word 'President', the word 'Parliament' be substituted, and for the words 'he thinks', the words 'it thinks' be substituted."

I only want that in matters of financial agreement with the States the Parliament should be the authority and not the President.

Shri T. T. Krishnamachari (Madras: General): Sir, with regard to the only objection that has been put forward by Prof. Shibban Lal Saksena I would like to say that we have followed the scheme of article 258 already passed by the House, where it is the President that enters into an agreement and not the Parliament. Actually if we bring in Parliament for the purpose of making an agreement with the ruler of a State or the executive of a State, we are diminishing the status of Parliament which has supremacy over the States. Parliament cannot be a party to an agreement with the States: it is a matter of executive arrangement and the arrangement follows the scheme recommended by the V. T. Krishnamachari Committee Report. That Committee's Report in its scheme for financial integration has practically done away with the system of land customs levied in various States. Only two exceptions have been made and one singular exception happens to be Rajasthan where on an examination of the internal financial structure of the Union they have found that the Government of India will have to pay an enormous amount by way of subvention or a large amount of money by way of a grant if the State is to balance its budget. Therefore, they have for a period of five years to start with—perhaps it may be ten years in the ultimate—allowed them to levy land customs. This is a matter between one executive authority and another and if Mr. Saksena's amendment is accepted it will be taking away from the supreme position that the Parliament would enjoy in relation not merely to the executive at the Centre but also in relation to the executive of the States as well. This is a transitory provision and follows the scheme that has been recommended by a Committee which has gone thoroughly into the scheme of State finances and has prescribed ways and means by which complete integration can be secured at the earliest possible moment. I do feel that no possible objection can be taken which can be sustained with respect to the article in question.

The Honourable Shri K. Santhanam (Madras: General): Sir, I am glad that the draft of this article has been considerably improved and I certainly approve of the principle and the objective of the article. But there is one point which has to be examined in connection with this. It says: "any State which before the commencement of this Constitution was levying any tax or duty on the import of goods into the State from other States or on the export of goods from the State to other States". Suppose some articles come to Bombay port and go straight to Rajasthan and there they are liable to land customs. Will it come under the definition of import of goods from other States into Rajasthan? It will be from outside India into Rajasthan. I think the present agreements include land customs even on such articles. Therefore I do not know if the words "to other States" and similarly "from other States" are necessary. They seem to be wholly unnecessary. We are only concerned with land customs on goods coming into the State or going out of the State. Where they go or where they come from, I do not think, are matters of importance so far as this particular object is concerned and as every thing is defined meticulously in the actual agreement I do not think we should put in words which are likely to give merchants room for evasion. Because things come from Bombay they will argue that they do not come from any State in India and that they come from outside and therefore they ought not to be assessable to land customs under the agreement. I want the Drafting Committee to look into the point and see they do not give any loophole for evasion. I hope I have made

[The Honourable Shri K. Santhanam]

myself clear. My objection is to the words “from other States” and “to other States”, which are wholly unnecessary for the purpose of this clause and may be deleted and thereby close one loophole for litigation and evasion.

Shri T. T. Krishnamachari : It takes into account existing States where they do levy customs duty on goods that come into the States, whether they are goods from outside or inside and it is merely.....

The Honourable Shri K. Santhanam : This clause will mean that if applies to goods coming from some State of India into another State and if the goods come from outside and enter a State this clause will not apply and therefore the State concerned will not be able to levy land customs on them. it is not intended to prevent the State from levying land customs and therefore this point may be looked into.

Shri T. T. Krishnamachari : After all it is only an enabling agreement.

The Honourable Shri K. Santhanam : It is limited by the clause of the Constitution. If the clause prevents the imposition of a duty then no agreement can prevail against the clause. That is why I suggest that we should widen the clause and leave the agreement to operate.

The Honourable Dr. B. R. Ambedkar : We will look into it.

Shri Raj Bahadur (United State of Matsya): I have sought this opportunity, to take a few minutes of this House while this article is under consideration to give vent to the feeling of the common people in the States' Unions about these customs, duties and taxation. As a matter of fact, ever since political awakening dawned upon the people of the Indian States customs taxes have been a particular target of political opposition. It was not without reason that the people of the Indian States and their movements were set against the imposition of customs duties on both imports and exports. It was because of a particular feeling amongst the people that this opposition was there. We have felt all through that all our trade, our industries have been crippled because of these Customs Duties. Even today we are not going to be benefited by it. Somehow or other, because these States were not viable units and they had to balance their budget the customs taxation was resorted to. Apart from that it was also supposed to be a part of the sovereign rights of the States. But so far as the interests of the people were concerned, they were not served by the imposition of these customs duties.

Even when this article is being retained here in this Constitution. I may at once give expression to my feeling and to the feeling of the large majority of the people in the Indian States that they are not at all happy about these customs duties being imposed in their States. As a matter of fact even the exports of buffaloes, bullocks, camels and donkeys are not being spared from these customs duties. In Rajasthan if you want to export a donkey, you will have to pay Rs. 7 per donkey. If you want to export a bullock you will have to pay Rs. 15 and in the case of a camel Rs. 25. The extra or surplus cattle that we have got we cannot easily export. Even the donkeys that we have got cannot be exported unless something is paid as customs duty on them. As far as cottage and, other industries and trades are concerned, they are crippled by the imposition of these customs duties.

I would, therefore, urge, while this article is under discussion that the Centre should come to our help. We do not want these customs duties to continue. In view of the fact that our province is a deficit province and the standards are very low, the sooner these customs duties and the Customs Department are done away with, the better for us. Even today the inter-State commerce and trade is being affected by such restrictions. Our trade with other provinces is obviously much

more affected. The price of the ordinary consumer goods that we want in our province is higher than if obtains in other provinces on account of the customs duties levied on such goods. All these considerations are there and the common man in the street or in the villages feels the pinch of this tax in his every day life. With these words, Sir, I would request the leaders and the Central Government to consider this point and come to the aid of our new Union, so that we may be rid of this scourge as early as practicable.

Mr. President : The question. is

“That in amendment No. 428, in the proviso to the proposed article 274DD, for the word ‘President’, the word ‘Parliament’ be substituted, and for the words ‘he thinks’ the words ‘it thinks’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

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

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

The amendment was adopted.

Mr. President : The question is :

“That proposed article 274DD stand part of the Constitution.”

The motion was adopted.

Article 274DD was added to the Constitution.

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

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

Article 302AA

Shri T. T. Krishnamachari : Sir, I move:

“That after article 302A, the following article be inserted:—

<p>302-AA. (1) Notwithstanding anything contained in this Constitution and subject to the provisions of article 119 thereof, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into by any Ruler of an Indian State and to which the Government of the Dominion of</p>	<p>Bar of jurisdiction of courts with respect to certain treaties, agreements, etc.</p>
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The question is :

“That after article 302A, the following article be inserted:—

‘302AA. (1) Notwithstanding anything contained in this Constitution and subject to the provisions of article 119 thereof, neither do Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after the date of commencement of this Constitution, or in any dispute in respect of any right accruing under any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, sanad or other similar instrument.

(2) In this article—

- (a) “Indian State” means any territory recognised by His Majesty or the Government of the Dominion of India as being such a State; and
- (b) “Ruler” includes the Prince, Chief or other person recognised by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State.’ ”

The motion was adopted.

Article 302AA was added to the Constitution.

Schedule III

Mr. President : We might take up the other articles and Schedule III. They are minor things.

Shri T. T. Krishnamachari : Schedule III and the other articles involve reopening of articles and schedule already passed. We have to take the permission of the House.

Mr. President : You will ask for leave reopen.

Shri T. T. Krishnamachari : Mr. President, in the Order Paper today, beginning from item 1, article 13 to the Third Schedule, with the exception of the items relating to article 264-A, 274DD, 302AA which have been passed and 280A which has been held over, all the other items are for re-opening the articles or Schedules that have been passed. I would therefore request that you put to the House the proposition whether they are willing to allow these articles to be re-opened.

Mr. President : I take it that the House gives leave to re-open these articles.

The Honourable Members : Yes.

Mr. President : We shall take up Schedule III.

Shri H. V. Kamath (C. P. & Berar: General): What about article Mr. President: Let us finish first this Schedule.

Shri T. T. Krishnamachari : Sir, I move amendments 401 and 402 together:

“That in item IV of the Form of Oath, in the Third Schedule, after the words ‘judges of the Supreme Court’ the, words ‘and the Comptroller and Auditor-General of India’ be inserted.”

“That in item IV of the Form of Oath, in the Third Schedule, after the words ‘Supreme Court of India’, the brackets and words ‘(or Comptroller and Auditor-General of India)’ be inserted.”

This is merely an omission which we seek now to rectify. The form of oath that has been prescribed for the Judges of the Supreme Court will be prescribed, if it is accepted by the House to the Comptroller and Auditor-General of India.