

Mr. President : That was given notice of before we accepted the term “Consolidated Fund of India”.

Does anyone wish to say anything on this article?

The question is :

“That article 262 stand part of the Constitution.”

The motion was adopted.

Article 262 was added to the Constitution.

Article 263

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

“That for article 263 the following be substituted :—

‘263 (1) The custody of the Consolidated Fund of India, the payments of moneys into such Fund, the withdrawal of moneys therefrom and all other matters connected with or ancillary to the matters aforesaid shall be regulated by law made by Parliament, in to and withdrawal of and until provision in that behalf is so made by Parliament, shall be regulated moneys from such funds. by rules made by the President.

(2) The custody of the Consolidated Fund of a State, the payments of moneys into such Fund and the withdrawal of moneys therefrom, and all other matters connected with or ancillary to the matters aforesaid shall be regulated by law made by the Legislature of the State, and, until provision in that behalf is so made by the Legislature of the State, shall be regulated by rules made by the Governor of the State.’ ”

I do not think any explanation is necessary.

Pandit Hirday Nath Kunzru : Mr. President, I move:

“That in the amendment just moved by Dr. Ambedkar, after the words ‘Consolidated Fund’, wherever they occur, the words ‘and the Contingency Fund’ be inserted; and for the words ‘such Fund’, wherever they occur, the words ‘such Funds’ be constituted.”

The House has already agreed to the establishment of a Contingency Fund. It is therefore necessary to provide for the manner in which money may be put into the Contingency Fund and may be withdrawn from it. This is a purely formal amendment and I trust that the House will accept it.

Mr. President : I take it that Dr. Ambedkar will accept Pandit Kunzru’s amendment.

The Honourable Dr. B. R. Ambedkar : I accept the amendment.

Mr. President : The question is :

“That in amendment No. 206 above in the proposed article 263, after the words ‘Consolidated Fund’, wherever they occur, the words ‘and the Contingency Fund’ be inserted; and for the words ‘such Fund’, wherever they occur, the words, ‘such Funds’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That proposed article 263, as amended, stand part of the Constitution.”

The motion was adopted.

Article 263, as amended, was added to the Constitution.

Article 263-A

Mr. President : There is an additional article to be moved by Dr. Ambedkar.

Shri T. T. Krishnamachari : May I suggest that it should be held over?

Mr. President : Very well. Then we go to article 267. Articles 246, 265 and 266 are not on to-day’s list.

Article 267

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

“That in article 267—

- (i) after the words ‘Crown in India’ the words ‘or after such commencement in connection with the affairs of the Union or of a State’ be inserted;

- (ii) for the words 'revenues of India' wherever they occur, the words 'Consolidated Fund of India' be substituted;
- (iii) for the words 'revenues of a State' wherever they occur, the words 'Consolidated Fund of the State' be substituted;
- (iv) the words and figure 'for the time being specified in Part I of the First Schedule' be omitted; and
- (v) for the words 'revenues of the State, the words 'Consolidated Fund of the State' be substituted."

It is just consequential.

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

"That for part (i) of amendment No. 102 above, the following be substituted:—

- '(i) for the words "Crown in India", the words "Government of India prior to 15th August 1947 or after such commencement in connection with the affairs of the Union or the Government of a State" be substituted;'

Sir, I have suggested this amendment, because I do not want the words "Crown in India" to appear in our Constitution and to be a reminder of the period of our slavery for ever in future. I do not think that the word is so essential and it can be very easily avoided by converting it into "Government of India prior to 15th August 1947". I think this is a very simple amendment and the sentiment of the House, I am sure, will be in favour of it. The other portion of the amendment is merely the incorporation of Dr. Ambedkar's amendment and that I think will be acceptable to him. I therefore think that these words "Crown in India" should be changed into "Government of India prior to 15th August 1947".

Shri H. V. Kamath : Mr. President, I move, Sir, amendments 142, 143, 144, and 145 of List IV, Third week. Amendment No. 142 runs thus :

"That in part (i) of amendment No. 102 of List I (Third Week) of Amendments to Amendments, in article 267, for the words 'in connection with the affairs of the Union or of a State' (in the words proposed to be inserted), the words 'under the Government of the Union or of a State' be substituted."

The next amendment, 143, reads as follows :—

"That with reference to amendment No. 102 of List I (Third Week) of Amendments to Amendments, in clause (a) of article 267, for the words 'in connection with the affairs of such a State' the words 'under the Government of such a State' be substituted."

Amendment No. 144 reads to the following effect :—

"That with reference to amendment No. 102 of List I (Third Week) of Amendments to Amendments in clause (b) of article 267, for the words 'in connection with the affairs of the Union or another such State' the words 'under the Government of the Union or another such State' be substituted."

The last amendment, Sir, of mine, No. 145 of the same List, is to the following effect :—

"That with reference to amendment No. 102, of List I (Third Week) of Amendments to Amendments, in article 267, for the words 'an arbitrator' the words 'a tribunal' be substituted."

All these amendments are germane to the amendment just now moved by Dr. Ambedkar before the House, number 102 of list I (Third Week). These four amendment of mine fall into two categories. The first three are similar in nature and the last one is in another class. The first three seek to substitute certain expressions used in this article and thereby eliminate what I consider unnecessary and cumbrous verbiage. I do not know exactly whether in using

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expression “affairs of the Union or of a State”, the Drafting Committee has got something else in mind than service rendered by a person under the Government of the Union or of a State. The article refers to pensions payable to or in respect of a person who has served in connection with the affairs of the Union or of a State. Naturally, if a person is entitled to some pension in connection with services rendered by him, I believe it must be under the aegis of the Government of the Union or of a State which is liable to pay the pension to him. Therefore, I feel that it is somewhat vague to use this expression “affairs of the Union”. What kind of affairs? The Union or a State may have all kinds of affairs. I suppose the article contemplates governmental affairs, and not any other affairs that may arise in connection with the Union or as between the Union and the constituent units. Therefore, this article must be clear; that is to say, it must specify, clarify and make it absolutely crystal clear that the services rendered by a person on account of which he will get a pension will be in relation to the Government of the Union or under the Government of a particular State.

If, of course, this expression in the proposed draft means the very same thing, then mine will be a formal or verbal amendment; by plea will be that it is far less cumbrous, and far more clear. English is a notoriously cumbrous language. Some of us tend to make it more so. I am reminded of one of Bernard Shaw’s witticisms. Bernard Shaw once said that the English language is a very cumbrous instrument of expression and when we want to say, we cannot do a particular thing, we go on elaborating and say, “I am very sorry, I regret very much I cannot do this.” The Chairman says, “no can”, and expresses himself as clearly and effectively. I do not want the Drafting Committee or this House to be, like the Chairman, so brief, terse or concise as to sacrifice the meaning of the article. Therefore, the first point that I want to make out is that this expression ‘in connection with the affairs of the Union’ must be clarified so as to mean, and to say what it means, that the services rendered by a person under the Government of the Union and the Government of the State and no other affairs of any kind are contemplated under this Article. That disposes of three amendments 142, 143 and 144 that I have just now moved before the House.

Coming to amendment No. 145, which seeks to substitute a tribunal for an arbitrator, I must at the very outset confess my partial if not total ignorance of civil law and ancillary legislation. Whether in constitutional law or in civil law there is an essential distinction between an arbitrator and a tribunal, I am not competent to have the last word on. But, from the meagre tit-bits that I have gathered during my experience in several fields, I feel that a tribunal has got a greater constitutional importance or sanctity than an *ad hoc* arbitrator that may be appointed for a particular case. According to this article, if adopted as moved before the House by Dr. Ambedkar, it is conceivable that it is very likely that several cases may arise where under the visions of this article there may not be agreement between the parties concerned. There may not be just one or two cases; it is very probable that we may be inundated with scores if not hundreds of cases, because not merely the Union is involved, but various other States are also involved. Do we, by adopting this article, contemplate the appointment of an *ad hoc* arbitrator whenever a case arises ? That will mean that we will have several arbitrators appointed on several occasions. Or is it, our intention that to dispose of all cases of, this type, where agreement is not secured, to have a body of men, competent men, experts in their own line, to examine and decide all these cases and when they may arise ? If that be our intention, then in my humble judgment, not an arbitrator, but a tribunal is called for. The wording of this

article also, I believe is not quite happy. It is said here that there will be an arbitrator..... that means to say one; I am sure we do not want to quarrel on the point that 'an' means one; I am happy that the Chief Justice of India has been empowered in this regard. But to say that he will appoint 'an arbitrator' and no more or no less I am sorry, no less cannot arise because less than one is zero—no more than one, is to fetter the judgment of the Chief Justice unduly. He may think that a particular case before him is either so complicated or the cases are so numerous or so varied that one, man cannot dispose of all these cases, and he might think that a tribunal will be more competent to decide these cases than arbitrator. I believe, so far as an arbitrator is concerned, both the parties have to signify beforehand their agreement to abide by the decision of the arbitrator. But if a tribunal is appointed and if we provide in the Constitution that the decisions of the tribunal will not be subject to any appeal and they will be final, we will be following a far wiser course than approving of this provision for a mere arbitrator. When this Constitution comes into force and this article comes into effect several cases of this type may arise and one arbitrator will not then be able to dispose of the cases with promptitude and alacrity and I make bold to say, with sufficient impartiality and justice. A tribunal or a high order is called for to dispose of these matters and so I move that instead of arbitrator' proposed in this article the Chief Justice of India should be vested with powers to appoint a full-fledged tribunal to dispose of these cases as and when they arise. I therefore move Nos. 142, 143, 144 and 145 and commend them for the consideration of the House.

Dr. P. S. Deshmukh : Mr. President, this is a very simple article and I do not think the House need take long to pass it. It refers only to adjustments in respect of certain expenses and pensions. Mr. Kamath has moved an amendment to substitute 'arbitrator' by 'tribunal'. I would suggest to him that it is wholly unnecessary to transform a mere arbitrator into a tribunal with all the expenditure that it will involve. These are likely to be small cases and one person appointed by the Chief Justice to give an award so as to adjust the expenditure between the Union and the States would be quite enough. They are not likely to be very complicated cases nor is there likely to be great feeling on either side in fighting these cases. But I would ask one question from Dr. Ambedkar, *viz.*, whether there would not be cases between the Union and more than one State on the one hand, and on the other hand between one and more than one State so as to require adjustment and arbitration. In 267 there is a provision for arbitration between Union and one State only. Nowhere the word State has been used in plural and there is no provision also for adjudication as between two States. I do not think it is possible to interpret this article so as to mean that the singular includes the plural and I therefore think it is either deliberately or has been inattentively omitted. I would like myself to be satisfied whether it is impossible that cases are likely to arise of distribution of expenditure between two individual States. I cannot conceive that it is unimaginable because they refer to a variety of cases. In this first para, it is stated as follows :—

“Where under the provisions of this Constitution the expenses of any court or commission, or pensions payable to or in respect of a person who has served before the commencement of this Constitution under the Crown in India, are charged on the revenues of India or the revenues of a State etc.”

I can say that this can very well refer to more than one State, and if that is the position whether it is not intended that such cases should be referred to an arbitrator? If that is so, the article would have to be suitably amended. Perhaps we have to say the word 'States' should be substituted for 'State' wherever the word occurs. But I merely ask this for clarification and, if Dr. Ambedkar is convinced that there is no likelihood of such cases arising

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between two individual States or the Union and two other States, then of course my point would not arise. But if it is conceivable that they will arise then a proviso will also be equally necessary.

The Honourable Dr. B. R. Ambedkar : Sir, I do not accept any amendment.

Mr. President : I put the amendments to vote.

The question is:

“That for part (i) of amendment No. 102 the following be substituted:—

- ‘(i) for the words ‘Crown in India’ the words ‘Government of India prior to 15th August 1949 or after such commencement in connection with the affairs of the Union or the Government of a State’ be substituted.’ ”

The amendment was negatived.

Mr. President : The question is:

“That in part (i) of amendment No. 102 of List I (Third Week) of Amendments to Amendments in article 267, for the words ‘in connection with affairs of the Union or of a State’ (in the words proposed to be inserted) the words ‘under the Government of the Union or of a State’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That with reference to amendment No. 102 of List I (Third Week) of Amendments to Amendments, in clause (a) of article 267, for the words ‘in connection with the affairs of such a State’ the words ‘under the Government of such a State’ be substituted.”

The amendment was negatived.

Mr. President: The question is:

“That with reference to amendment No. 102 of List I (Third Week) of Amendments to Amendments, in clause (b) of article 267, for the words ‘in connection with the affairs of the Union or another such State’ the words ‘under the Government of the Union or another State’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That with reference to amendment No. 102 of List I (Third Week) of Amendments to Amendments, in article 267, for the words ‘an arbitrator’ the words ‘a tribunal’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in article 267.—

- (i) after the words ‘Crown in India’ the words ‘or after such commencement in connection with the affairs of the Union or of a State’ be inserted;
- (ii) for the words ‘revenues of India’ wherever they occur, the words ‘Consolidated Fund of India’ be substituted;
- (iii) for the word ‘revenue of a State’ wherever they occur the words ‘Consolidated Fund of a State’ be substituted;
- (iv) the words and figure ‘for the time being specified in Part I of the First Schedule; be omitted; and
- (v) for the words ‘revenues of the State’, the words ‘Consolidated Fund of the State’ be substituted.”

The amendment was adopted.

Mr. President : The question is :

“That article 267, as amended, stand part of the Constitution.”

The motion was adopted.

Article 267, as amended, was added to the Constitution.

Article 268

Mr. President : We go to article 268. There is a formal amendment in the name of Dr. Ambedkar. I take it the House accepts it.

The amendment is :

“That in article 268, for the words ‘revenues of India’ the words ‘Consolidated Fund of India be substituted.’”

Shri M. Ananthasayanam Ayyangar : Mr. President, I wish to draw the attention of the House to what an important matter this Chapter relates—borrowing. Though the entire borrowing both of the Centre as well as of, the provinces and loans may be granted by the Union Government to States are put compendiously in two articles 268 and 269, they are more important and require greater scrutiny than the powers to impose taxation, with respect to which and for the distribution of which—the revenues of both the Union and the States—we have devoted a long Chapter. My intention in speaking on this matter is to draw the attention of the House now, and later on to make sure that the Parliament will devote greater attention to this matter. We have been seeing from time to time that the revenues are being collected for the year by Finance Bills. So far as borrowing is concerned—they may be short or long term, imposing heavy obligations upon not only the present generation but future generation also—sufficient attention is not being given to the manner in which borrowing can take place. Many of the loans which have been raised recently by provincial Governments have not been fully subscribed, some had to be withdrawn, and even we have been very chary of borrowing in the open market. I would suggest that a Commission of the kind of Finance Commission might be constituted for all time.

We do not want any other Commission. The Reserve Bank in the State Bank and it is competent to give us advice as to what ought or ought not to be done in this matter. Development schemes generally are to be undertaken by borrowings. They ought not to be legitimately borne on the current revenues because the benefits of these schemes will be shared not only by the existing people by the mass of the people now present, but also all the succeeding generations. From our recent budgets, it will be clear that the borrowing programmes are as wide as are the programmes for the revenues of the year. Under these circumstances, the matter of borrowing, the question of what loans are to be floated, is not being placed before Parliament. There is a similar provision in the existing Government of India Act. It is open to the Dominion Parliament to give directions as to the methods of borrowing, the amount of borrowing and so on. But all the same, all these matters have not been placed before us except as an appendix, as the tail-end of the budget, indicating what the capital outlay will be, and how in very brief outline, that money is to be made up. Parliament, when it makes provisions, should be very chary in granting permission to all and sundry loans being floated, irrespective of the capacity of the people to subscribe, etc. These and the purposes for which the borrowings take place will all be regulated by Parliament under article 268.

I find that both in articles 268 and 269, as regards loans that have to be borrowed by provinces, the consent of the Central Government is necessary in certain cases. In the present Government of India Act, there is a clause