

## CONSTITUENT ASSEMBLY OF INDIA

*Thursday, the 8th September 1949*

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

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### DRAFT CONSTITUTION—(Contd.)

#### Article 282- B

**Mr. President :** We shall take article 282- B

**Shri Brajeshwar Prasad** (Bihar: General): Sir, this amendment No. 8 fits in with article 282- B clause (1). The last line of that clause is 'by an authority subordinate to that by which he was appointed'. I want to substitute the words by 'except by an order of the Union Public Service Commission, or, as the case may be, by the State Public Service Commission'. May I move this amendment ?

**Mr. President :** Yes.

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

"That in Article 282 B clause (1), for the words by an authority subordinate to that by which he was appointed' the words 'except by an order of the Union Public Service Commission, or, as the case may be, by the State Public Service Commission' be substituted."

The purpose of my amendment is obvious. The power of dismissal, removal or reduction in rank of persons employed in several capacities under the Union or State should be in the hands of the Public Service Commission. I want that disciplinary matters should not rest in the hands of the Ministers, either Central or Provincial. Sir, I am not in any way suggesting a course of action which has got no precedent in any part of the world. In Great Britain, in Canada, in Australia and in South Africa in all these countries the public servants are not under the Ministers, and there has been no conflict or no confusion of authority. In the circumstances in which we are placed to-day, I am quite clear in my own mind that if the foundations of our civil service are to be laid on sound and scientific basis they must be removed from the control of the Ministers. The independence of the bureaucracy from the control of the Ministers is as important, if not more, than the independence of the judiciary from executive interference. 'The role of the public servants, according to my humble judgment, is more important than that of Ministers. "Men may come and men may go, but I go on for ever", The Public servants remain, though Ministers may come in and go out of the cabinet with bewildering rapidity. The foundations of our national life can be secured if the public servants are assured of their security, if they get the conviction that there will be no ministerial interference. For no fault of theirs, if they do not find favour with the Ministers, they are transferred to some unknown regions in some God forsaken districts. This creates a sense of insecurity. I am quite clear in my mind that there is need for administrative unification of the country. Sir, I am of opinion that all the civil servants should be brought under the control of the Union Public Service Commission. As a matter of concession I am prepared to agree that some control should also be vested in the hands of the

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State Public Service Commissions. I stand for the proposition that the civil servants of India, whether Central or Provincial, should be under the Central Public Service Commission. We are passing through a very difficult period, Sir. The whole of our society is passing through a period of decadence and decay and if we want that the birth-pangs of the new social order should not be prolonged, we should lay the foundations of our civil services on safe and secure basis.

**Mr. President :** You do not move to clause (3) ?

**Shri Brajeshwar Prasad :** Yes, Sir. I move:

“That in paragraph (b) of the proviso to clause (3), for the words ‘where an authority empowered to dismiss a person or remove or reduce him in rank’ the words ‘if the Union Public Service Commission, or, as the case may be, the State Public Service Commission’ be substituted.”

I have got only one word to say about this amendment. In this proviso the authority to dismiss, remove or reduce in rank has been vested in the hands of three authorities, Superior Officers, Governor and the President. Sir, I am opposed to this procedure. I am convinced that there should be some authority in the State to dismiss a public servant if a civil servant is found guilty, if the authority is convinced that he is a fifth columnist and that it is not desirable to keep him in service. But there should not be so many authorities vested with this power. I feel that the President alone should be empowered with this power. It is not right vesting this power in the hands of a large number of officers. If you do so, it will give no security to officers.

**Mr. President :** Amendment No. 10—Mr. Jaspat Roy Kapoor.

**Shri Jaspat Roy Kapoor** (United Provinces: General) : Sir, I beg to move:

“That in the proposed article 282 B, sub-clause (b) of clause (2) thereof be deleted, and clause (3) also of the said article be deleted, and thereafter sub-clause (c) be relettered as sub-clause (b)”.

Clause (2) of the proposed article 282- B reads thus

“(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:”

and to this substantial portion of clause (2) there are three provisos, of which proviso (b) reads thus :—

“where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause;”

and it is this sub-clause (b) that I seek to delete.

And then the other clause which I seek to delete is clause (3) which reads thus—

“(3) If any question arises whether it is reasonably practicable to give notice to any person under clause (b) of the proviso to clause (2) of this article, the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final.”

It will be clear that deletion of clause (3) is consequential and is necessary in the event of sub-clause (b) of clause (2) being deleted.

Sir, the object of article 282- B is obviously to give security and protection to Government servants so that these government servants may feel that they shall not be punished in any way whatsoever, unless and until a reasonable opportunity has been given to them to show cause why any order punishing

them in any way whatsoever may not be passed. But, Sir, while the object of this article is to give this sense of security and protection to these government servants, unfortunately this article is so worded that what is provided in the substantive portion of clause (2) is being taken away by the subsequent long and detailed provisos which follow. So, what has been conceded in the substantive portion of this clause is being taken away by the provisos which follow. This article has been framed on the model of section 240 of the old Government of India Act. In fact, that section 240 of the Government of India Act has been bodily taken over from there and incorporated here, but with two additions both of which go against the interests of the Government servants. The two portions of this proposed article which have been added to section 240 of the Government of India Act are sub-clause (c) of clause (2) and clause (3) of this article. My submission is that it is the inherent, fundamental and elementary right of every person not to be condemned unheard. We should not take away this inherent and fundamental right in the case of government servants. It is true that this right has been recognised, in this article, but as I have submitted, merely to recognise the right at one place and take it away substantially, though not altogether, in another, by providing various provisos that have been mentioned herein, does not appear to be fair.

Let us see what these provisos are. The first proviso says :

“Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge”.

no opportunity need be given to the government servant to show cause why an order of dismissal or removal or reduction should not be passed against him. This sub-clause (a) of clause (2) as it stands is much too wide. It says that if a person is convicted of any offence, howsoever trivial it may be (for that is the natural implication), he may be dismissed, etc., and he need not be given an opportunity to show cause why such an order may not be passed against him. This is much too wide and it is, therefore, necessary, I think, that some clause may be added to the effect that the criminal charge of which the person is convicted is one which involves moral turpitude.

It may be said that even if the sub-clause is not there, no superior officer is going to act in such a foolish and stupid manner as to dismiss or reduce a government servant for any trifling offence of which he may have been convicted. True, this clause was there in its present form in the old Government of India Act and it may be said that government servants never felt that because of this clause being there, they were unduly harassed or punished in a manner the hardship of which was felt by them. But when we are going to start on a clean slate, when we are going to have a fresh constitution there seems to be no reason why these lacunae need not be provided for.....

**Mr. President :** I would ask the honourable Member to be short. The amendment is clear and Members are able to follow the effect of it.

**Shri Jaspat Roy Kapoor :** Not only do I wish to be short but for that reason I have not moved an amendment to this clause, and I will say nothing further on the subject.

The second proviso for the deletion of which I have moved my amendment reads :

“Where an authority empowered to dismiss or remove a person or to reduce him rank is satisfied that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause;”

In that case no such opportunity need be given to the person concerned. I cannot conceive of any circumstances under which it cannot be reasonably

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practicable to give such an opportunity to any government servant. If a person is absconding how will it be possible for such a person to be given an opportunity, it may be asked. My simple answer is that the notice may be served at the place where he last resided or at the place the address of which he had given to his employer. That would certainly be considered as the man having been given a reasonable opportunity. Such a thing always happens in a court of law or under the company law. If a shareholder is served with a notice at the registered place of his residence it is supposed to be enough. So I submit that I cannot possibly conceive of any difficulty in regard to the government servant being served with a notice if an adverse order is to be passed against him.

Clause (3) which I seek to delete must necessarily be deleted if my amendment seeking deletion of proviso (b) is accepted.

Besides, clause (3) is very drastic, for it seeks to make final the decision of the authority dismissing or otherwise punishing a government servant; on the question as to whether it is reasonably practicable or not to give notice. There is to be no appeal even against this decision. This makes the implications of sub-clause (b) of clause, (2) worse still.

One word more with regard to proviso (c). The implication of this is that whenever the President, the Governor or the Ruler is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity, no such opportunity need be given. Even in the case of political offenders, where a person is deprived of his liberty, the Government, as we know very well by our own experience, does inform the person who is being detained as to under what circumstances and for what reason he is detained. An opportunity is given to him to show cause why such an order should not be passed or confirmed. But under this sub-clause, if a government servant is dismissed, removed or reduced no such opportunity need be given to him. I do not see any reason why the government servant should be deprived of this elementary right of his. If we want our government servants to work efficiently, if we want our government servants to remain happy and contented, if we want them to work with a sense of security, it is absolutely necessary that we must provide that no order will be passed against them unless a reasonable opportunity has been given to them to show cause why they should not be punished or Penalised.

**Mr. President :** I desire to tell honourable Members that I propose to finish at least up to article 245 in the course of this day, that is before lunch, and I would therefore seek the co-operation of honourable Members. The amendments are more or less obvious and their effect is perfectly clear. So, long speeches are not required either in favour or against the amendments. I would therefore ask honourable Members to confine themselves to moving the amendments and not to speak for more than two minutes, if they at all wish to speak.

**Pandit Thakur Das Bhargava** (East Punjab: General) : Sir, I may be permitted to move my amendment Nos. 239, 244 and 245.

I beg to move

“That in sub-clause (a) of the proviso to clause (2) of the proposed new article 282 B, after the word ‘conduct’ the words ‘involving moral turpitude’ be inserted.”

Or, alternatively.

“That in sub-clause (a) of the proviso to clause (2) of the proposed new article 282 B, after the word ‘charge’ the words ‘involving moral turpitude’ be inserted.”

I also beg to move :

“That in sub-clause (b) of the proviso to clause (2) and in clause (3) of the proposed new article 282 B, for the word ‘practicable’ the word ‘possible’ be substituted.”

I further beg to move :

“That in sub-clause (c) of the proviso to clause (2) of the proposed new article 282 B, for the words ‘is satisfied’ the word ‘certifies’ be substituted.”

In regard to these I need not take much of the time of the House. As regards amendment 239, it is obvious that there are many cases in which convictions take place in courts which do not afford sufficient ground for the removal of such persons. If the clause stands as it is, and unless the words I suggest are inserted, every conviction will earn a dismissal or removal of a public servant, and that is not satisfactory. I know that there are cases of persons who are convicted on the basis of conscientious objections, for instance if they do not resort to vaccination. There are cases of negligence. There are many cases in which there is no question of moral turpitude involved. The public conscience will be shocked if on a mere conviction a public servant will be discharged or dismissed. My humble submission is that in regard to these cases, the cases may be decided on merits. I hold that even an acquittal order may be tantamount in a particular case to conviction. A man may be acquitted on a technical ground but on matters of fact the judgment may be one of conviction. Again if it is an order of conviction on technical grounds but as a matter of fact one of acquittal, it is but meet that the person should not be subjected to dismissal or removal. In these circumstances I beg the House to accept my amendment so that honest persons may be saved and dishonest persons may be punished as the occasion arises.

In regard to my amendment No. 244, it is true as my Friend Mr. Jaspat Roy Kapoor has complained before you that what is given by one hand is taken by the other. This is a balanced set of rules and the balance should not be tilted in favour of the employer or the employee, As it stands the provision which is contained in 282 B is quite fair. But at the same time we should see that in practice it does not work any hardship. Therefore I propose that instead of the word “practicable” the word “possible” may be there. In ordinary cases it would happen that whenever it is possible, all attempts should be made to see that the person is served with notice to show cause. Not to allow him to appear before you and show cause is not fair. To prevent abuses of the “practicability” of his being afforded an opportunity to show cause, I have said that where it is reasonable “possible” be should be allowed an opportunity. This would as a matter of fact ensure a proper opportunity for every public servant.

Similarly in regard to amendment 245 I want to submit a word. As it is, the words used here are “is satisfied”. We know how the words “satisfaction” and “satisfied” are interpreted. In fact it is not the satisfaction of the President at all. The satisfaction is generally of the Minister in charge. It is not even of the Minister in charge but of some Secretary or Under Secretary. Therefore, as a measure of precaution I want to substitute the words “is satisfied” by the word “certifies”, so that when the certificate is made fun caution is exercised. Before the certificate is given the mind of the Minister in charge or the President is brought to bear on the question at issue. If the word “certifies” is there the relevant authority would certainly think twice before certifying. But if the word “satisfied” is there and this satisfaction is at the back of the public servant, then the protection afforded to him is obscure and illusory.

**Mr. President :** In amendment No. 240 by Mr. Naziruddin Ahmad there are three parts. The first part is covered by Pandit Thakur Das Bhargava's amendment 239. The second part is covered by amendment 10 which has been moved by Mr. Jaspat Roy Kapoor. Only the third part which seeks to delete sub-clause (c) is not covered by any of the amendments moved.

**Mr. Naziruddin Ahmad** (West Bengal: Muslim): Yes, Sir, that exactly is the position. But though the first part of my amendment is identical in purpose with Pandit Thakur Das Bhargava's amendment there is some verbal difference. Therefore, with your permission I shall move the first part also.

**Mr. President :** Very well.

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

'That in the proviso to clause (2) of the proposed new article 282- B,—

- (i) in sub-clause (a), for the words "on the ground of conduct which has led to his conviction on a criminal charge" the words "on the ground that he has been convicted of an offence involving moral turpitude" be substituted; and
- (ii) sub-clause (c) be deleted."

As regards my other amendment, No. 246, for the deletion of clause (3), that has already been covered by Mr. Jaspat Roy Kapoor's amendment No. 10 and so I need not move it.

Sir, I submit that this article is very important and it affects the welfare of a large number of government servants. As regards higher government servants I submit that they are more than well protected. They are influential, and they can take care of themselves and any injustice to them will be rare and may be rectified. But with respect to a large number of middle class public servants rotting in the districts and in the sub-divisions, in out of the way Places and also in higher places, the injustice to them might be very great. So I submit that the House should carefully consider the provisions which would affect them and which may result in serious injustice to them.

Clause (2) of this article says that no officer shall be removed or reduced or dismissed until an opportunity has been given to him to show cause against any proposed order. Then comes the proviso. The proviso, I submit, takes away literally all the safeguards which are purported to have been given in the body of clause (2). The first proviso is that no opportunity need 'be given to show cause if the man has been discharged or dismissed on account of a criminal conviction. My honourable Friend Pandit Thakur Das Bhargava has already clearly explained that the conviction should be a conviction for an offence involving moral turpitude. There are various offences like assault, trespass, technical defamation and similar things which are compendiously described as offences not involving moral turpitude. In all such cases if the office master tries to drive him off, all that we ask for is that he should be given an opportunity to show cause.

**The Honourable Dr. B. R. Ambedkar** (Bombay: General) : There is no amendment to delete clause (3). Your amendment is only to delete subclause (b).

**Mr. Naziruddin Ahmad :** Yes, I have given notice of this amendment too. *See* amendment No. 246.

**The Honourable Dr. B. R. Ambedkar :** There is an amendment by Mr. Jaspat Roy Kapoor to delete clause (3) of 282 B

**Mr. President :** There is an amendment by the Honourable Member (Mr. Naziruddin Ahmad) also.

**The Honourable Dr. B. R. Ambedkar :** He can go on; I merely wanted to draw his attention.

**Mr. Naziruddin Ahmad :** I have given notice of an amendment to delete clause (3) but I did not move it because that has already been moved by Mr. Jaspat Roy Kapoor. Dr. Ambedkar was probably engaged in more interesting conversation than listening to the point I made as to why I was not moving it.

Sir, the proposal has already been made for the deletion of clause (3). It was made by my friend Mr. Jaspat Roy Kapoor. He has already moved it and as you referred to the matter and gave me directions I did not seek to move it because it was unnecessary.

This proviso is extremely important. With regard to proviso (a) the condition is that the officer or public servant need not be given any opportunity to show cause if he is removed, discharged or reduced in rank on account of a conviction in a criminal case. But a conviction in a criminal case does not necessarily involve moral turpitude. There is many an important man who would assault people on provocation; on almost a justifiable cause, but he may be convicted; that does not in the least affect his moral or intellectual qualities or in the least make him unfit for Government service. In a case where he is convicted of an offence involving moral turpitude, of course the usual safeguard of giving him an opportunity need not be provided. But I wish to restrict myself to the proviso (a) dispensing with the necessity of giving opportunity to show cause to be confined to offences involving moral turpitude where the conviction will be conclusive and no explanation need be taken.

Mr. Jaspat Roy Kapoor has clearly explained why opportunities should always be given. What is the meaning of the expression, "it is not reasonably practicable to give" him notice? In fact, a man in office can easily be available for serving the notice. If he runs away, he would be dismissed on that ground alone. If he is on leave, he has a notified address and the notice can be sent to that address. All that I want is that an opportunity should be given. An opportunity is a great thing and sometimes an explanation might reveal strong points in the delinquent's case and might help him. To refuse to give an opportunity is to refuse justice.

Then, Sir, my amendment which is not already covered by other amendments is the deletion of clause (c) of this proviso. This I consider to be very important. Clause (c) runs thus :—

"where the President or Governor or Ruler, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give to that person Such an opportunity".

The expression "security of the State" which is so dear to the heart of everyone is a much exploited expression and has been needlessly over-emphasised in proviso (c). I quite concede the need for ensuring the security of the State. But I utterly fail to see how, when a Government officer is reduced or dismissed, any opportunity given to him to show cause why he should not be dismissed or otherwise dealt with is really going to affect the "security of the State". All that I want is that he should be, given an opportunity. If an officer is very undesirable and undermines the security of the State—if his activities are dangerously undesirable in this respect—he may be kept in detention; even then it cannot affect the security of the State to give him an opportunity to explain; if his conduct is otherwise bad and affects the security of the state, there are ample powers to deal with him, but that could be no justifiable or reasonable cause for refusing to give him an opportunity to explain. I think, Sir, the expression "security of the State" is fantastically out of the question in a matter like this. Security of the State can never be affected by giving, anyone an opportunity. If the man is in detention you can send him a notice in the prison and he can send the explanation and no harm would be caused in considering the explanation. What is the harm in doing him justice? He may

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be dangerous to the security of the State—for that adequate provisions have been made and he can be adequately dealt with. But we are concerned with the security of the services. We are considering whether opportunity should be given to them. If we say that it is the opinion of the Governor or the President that the man is so dangerous that he should be dismissed on that ground, it is a different matter. But when he is being dismissed or reduced in rank not on the ground that he is a danger to the security of the State, then the security of the State is attempted to be made a ground for refusing to give him an opportunity to explain his alleged misconduct or shortcoming.

I think no purpose will be gained by introducing this imposing expression “security of the State”. At this expression everyone will jump up and cry out—“security of State, security of State, security of State”. I submit that if the security of India would be seriously affected by giving an officer opportunity to show cause, if the security of India is based on this, I think there is no security in India must be dangerously insecure if her security is based upon a refusal to give an opportunity to an humble officer. What happens in such cases is that men are dismissed by higher officers on insufficient cause, sometimes on bias and not always with a sense of impartiality. We hear of these things; these things are not published in the Press nor are they subject matters of Council questions, but these things happen, in fact they are very widespread. An opportunity to show cause would place on record the delinquent’s version; nothing will be lost but much will be gained by allowing him to put on record his reason. An officer who dismissed him may be biased, but a superior officer may read his explanation and do him justice. It is provided that the decision of the officer dismissing him would be final. Nothing could be more improper than giving the higher officer an arbitrary power. In fact, the officer himself is the complainant, he is the judge and he is the final appellate authority. There is no point in questioning his authority. Clauses (a) and (b) of this proviso were taken from the proviso to section 240 of the Government of India Act, 1935. In those settings this was highly proper; there was the imperialistic Government, they would dismiss anyone they liked and any opportunity to explain would be refused. But we are living in a free India. We, must take care to safeguard the rights and liberties of our poor, humble officers; they are the middle classes and they require protection. So, whatever may be the justification for retaining these clauses (a) and (b) in the Government of India Act, in free India there cannot be any such a thing. We should be more open to conviction, we should give more opportunities to show cause we are bound to give them an opportunity to show cause. If reasonable opportunity is not given, I think there is no sense of security.

Sir, these amendments should be taken into consideration carefully as they will affect these officers who would be entirely at the mercy of their dissatisfied superiors; they require Sufficient protection. All the protection is merely nominal, it is merely psychological. You must give an opportunity to show cause. These clauses of the proviso cannot be given effect to and they should be deleted. With regard to proviso (a) it should be seriously modified so as to reduce it to cover offences involving moral turpitude.

Sir, I have taken a little more time than I should have but I bow down to your ruling that we should cut down our speeches to the minimum and I give my assurance that I shall cut down my speeches to the minimum.

**Mr. President :** Amendment No. 241. Mr. Shibban Lal Saksena. Both 241 and 242 are covered by amendments already moved.

**Prof. Shibban Lal Saksena** (United Provinces: General): I want to speak, Sir.



**Mr. President :** Not now. Then, amendment, No. 243, Mr. Kamath. Your amendment also is covered by the one already moved.

**Shri H. V. Kamath** (C.P. & Berar: General): Not the whole of it. The alternative is not covered.

**Mr. President :** All right. I want to be strict in regard to the time-limit on speeches.

**Shri H. V. Kamath :** But in view of the importance of the subject some latitude may be shown. If I am found to repeat myself you may pull me up.

**Mr. President :** The honourable Member need not read out his alternative to amendment No. 243.

**Shri H. V. Kamath :** My amendment runs:

“(a) That in the proposed new article 282 B, in sub-clause (b) of the proviso to clause (2), for the words ‘that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause’ the words, on grounds to be recorded in writing, that the whereabouts of that person are unknown’ be substituted;

(b) That in the proposed new article 282 B, sub-clause (c) of the proviso to clause (2) be deleted;

(c) That in the proposed new article 282 B, clause (3) be deleted.”

May I humbly add my feeble voice to the protest that has been raised in the House by several honourable Members against the injustice that has been sought to be embodied in this article ? We have proclaimed in the Preamble to the Constitution that Justice shall be the Pole Star or the lode-star of our Constitution. We have given pride of place in the Preamble to our ideal that Justice, social, political and economic, shall be meted out to all. I hope we shall not deny any class of people, public servants or others, the fundamental justice that is their due. I was wondering whether, after all, these articles 282 A, 282 B and 282 C are at all necessary to be embodied in our Constitution. I was wondering whether in this House are sitting as mere lawyers framing Fundamental Rules for civil servants or a Civil Service Manual, or whether we as a free people, after the attainment of freedom, are busy drafting a Constitution for a free people—a Constitution illumined by the ideals of liberty, equality, and justice. These articles are reminiscent or redolent of the Civil Service Manual. There is no need for these articles in the Constitution. No Constitution any where in the world includes such rules. Our Drafting Committee has taken the Government of India Act, 1935, as a guide, to draft a Constitution for a free country. I am sorry for it. My friend Mr. Naziruddin Ahmad pointed out how iniquitous it is to copy in our Constitution the provisions of the Government of India Act with regard to the Civil Services. This, to say the least, is a blot on our escutcheon and denial of the Justice which we have proclaimed to the world in the Preamble of our Constitution. I would only say that if we adopt this article as it is, I warn the House that the services will have no heart in their work; they will get demoralised and they will not be efficient. There will always be, hanging over their heads, this sword of Damocles. When will it fall, when will a whimsical or a vindictive Minister let it fall?

**Mr. President :** The honourable Member has taken more than three minutes already.

**Shri H. V. Kamath :** I will not take more than five minutes. I am not speaking on any other article today.

**Mr. President :** Finish your peroration.

**Shri H. V. Kamath :** It is no peroration, Sir, If however you deem it so, I have nothing to say.

Sir, I was saying that the public services, with this sword hanging over their head, will not put their heart into their work. A capricious Minister might any day dismiss or remove a civil servant without serving a notice asking him to show cause. Of course the article mentions the President or Governor; but it means the Minister or the Council of Ministers. A Minister might take it into his head to inform a public servant, thus : “In the interests of the security of the State, I hereby take action against you. You are removed from service”. This is most unfair to anybody, not to say a civil servant.

About sub-clause (b) I think the attention of the House has been drawn by Pandit Thakur Das Bhargava or Mr. Naziruddin Ahmad that the only circumstance in which it will not be possible to serve a notice upon a public servant asking him to show cause is when his whereabouts are unknown. As that is the case, I have moved my alternative amendment (a) to the effect that for the words “that for some reason to be recorded by that authority in writing, it is not reasonably practicable etc., etc.” the words ‘on grounds to be recorded in writing, that the whereabouts of that person are unknown’ be substituted. This is the only circumstance when it would not be possible to serve a notice on a public servant. The two lacunae in this article are, firstly, that a person, according to (b) and (c) could be summarily removed without any opportunity being given him to show cause. If it is not practicable, I would like the authority to record in writing that the whereabouts are unknown. If otherwise it is obligatory on the State to ask him to show cause, (c) must be deleted. It is grossly unfair to summarily dismiss any man without giving him an opportunity to explain. Even detenus in jails, during the last war you will remember, Sir, were informed of the grounds of detention and given an opportunity to make their representations in writing. This has been proposed to be denied to Government servants who form an important part of the machinery of the State.

There is another point on which I would say a few words. There is no right of appeal specifically mentioned in the article.. I feel that every public servant before he is removed must be given not only an opportunity to show cause why he should not be removed, but also the right of appeal against any such order before he is finally removed.

**Mr. President :** The honourable Member has taken eight minutes.

**Shri H. V. Kamath :** Unfortunately, Sir, . . .

**Mr. President :** He should not take advantage of my indulgence.

**Shri H. V. Kamath :** I am concluding my speech. If unfortunately this article is adopted without amendment, I feel that public servants, whether of the Union or of the States, who are so important to an efficient administration will be reduced to the position of virtual slaves or serfs. I for one shudder to think what will happen to our administration if that situation develops. I commend my amendments. Sir . . .

**Mr. President :** Amendment No. 247.

**Shri H. V. Kamath :** I am concluding, Sir.

**Mr. President :** I have already called upon the mover of the next amendment to move it.

**Shri H. V. Kamath :** I am sorry you are, over-strict today.

**Mr. President :** I am sorry you are taking advantage of my leniency. Amendment No. 247, Shri Munavalli.

**Shri B. N. Munavalli (Bombay States) :** Sir, I move:

“That in clause (3) of the proposed new article 282B, for the word ‘If’, the words ‘if, and the application of the person, so affected,’ be substituted.

(2) That in amendment No. 2 of list 1, 7th week, in clause (3) of the proposed new article 282 B, for the words ‘any person’ the word ‘him’ be substituted.”

If this is not done, the question may be raised by the relatives of the person to whom a notice has not been given under 282 B (2) (b), or his friends may raise the question or, if any organisation of employees is in existence, it will raise that question. So according to this clause there is Wide scope. The purpose of my amendment is to restrict that scope to the person who has been affected. It is only that person that should raise this question so that it may be dealt with according to law. The general principles embodied in this article can be seen to exist in the laws of the various nations. Even in the U.S.A. it has been established that there should be permanency of tenure. In Great Britain also by tradition the permanency of tenure has become so firmly entrenched that it is not possible for any new Ministry to assail it. All these provisions have been substantially embodied in this article. Some of the honourable Members said that what has been provided in this article has been taken away by the proviso. Sir, it is not so. To my mind it seems that the proviso is applicable only in the case of those civil servants whose loyalty is very doubtful. There are civil servants whose political affiliations are open to criticism and whose loyalty to the existing government is doubtful. Under those circumstances there is no other course but to deal with them according to this proviso. Such laws can be traced in the history of other nations also. For example in 1933 when the National Socialists came to power in Germany they promulgated a Civil Service Law whereby it was provided that those civil servants whose political affiliations were questionable and open to criticism could be discharged or reduced in rank. So also those that came out openly in an aggressive manner against the existing government were severely dealt with. Similarly in our country also, for dealing with those civil servants whose loyalty is questionable and who come out openly in an aggressive manner against the government, there must be some proviso, so that the heads of departments could properly deal with them. Therefore I am of opinion that this proviso should exist and I support the provisions of this article wholeheartedly.

**Mr. Mahboob Ali Baig (Madras: Muslim):** Mr. President, Sir, it is to be regretted that this important question which involves millions of public servants should have been brought before us when we are very much pressed for time. Anyway, the President has been kind enough to allow us to move amendments in this regard. Sir, I move.

“That in clause (2) of the proposed new article 282 B, after the words ‘aforesaid shall be’ the word ‘suspended’ be inserted.”

“That in sub-clause (a) of the proviso to clause (2) of the, proposed now article 282 B, the following be added:—

“for offences of bribery, corruption or treason, or offences involving moral delinquency.”

Then 325.

**Mr. President :** That is already covered.

**Mr. Mahboob Ali Baig :** Amendment Nos. 325, 326 and 327 have already been moved, but I will comment on them. Then amendment No. 328. Sir, I move :

“That the following new clause be added at the end of the proposed new article 282 B :—

“The Parliament, in the case of Union services, and the Legislature of the State, in the case of State services, shall lay down rules and regulations in this behalf to be followed by the appropriate authority.”

Under article 282A a public servant holds his office during the pleasure of the President or the Governor as the case may be. The legal implication is that a public servant when he has been dismissed or removed, cannot claim to be restored through a court. That is the legal implication. So, it has become very necessary for us to provide safeguards which must be, adequate, fair and just, in order that the services may feel secure in their tenure of office, on which depends the welfare of the State and of the administration which is so necessary. Now, Sir, this article 282 B seeks to provide such safeguards. Let us see whether they are adequate, fair and just. That is the question before us when we are discussing this 282B. My first amendment, No. 323, proposes that a public servant cannot be suspended without being given an opportunity to show cause why he should not be suspended. The punishment of suspension is a severe one and a serious one. That is my proposal, Sir, as far as 323 is concerned.

My amendment No. 324 refers to sub-clause (a) of the proviso to clause (2). What I propose is that where a person is dismissed, removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge, then no opportunity need be given to the public servant for showing cause why he should not be dismissed or removed. It has already been argued by many honourable Friends who came before me that a man may be convicted and sentenced for offences which do not involve either a dereliction of duty as a public servant or for any offence involving moral turpitude or moral delinquency and such cases have been cited also. But I have added two or three instances also such as “for offences of bribery, corruption, or treason or offences involving moral delinquency”. The circumstances in which a public servant may have been convicted or sentenced in these cases are of a very serious nature and when he has been so convicted, he should not be given an opportunity. That seems to be fair; but if you state that he was convicted for any offence before a criminal court, then he need not be given any opportunity, it is too sweeping a circumstance and therefore, Sir, I submit that the amendment, as drafted by the Drafting Committee may be amended as I have suggested.

I have purposely added the word “treason” for this reason. Clause (c) perhaps contemplates all cases where a person may be suspected of being disloyal and that a public servant is disloyal cannot be proved, it may be argued. It may also be true that there may be mere allegations against him. I submit that either you give an opportunity to him to prove that he is not disloyal or if he is tried by a court of law and found to be treasonable or disloyal, then he need not be given an opportunity. Beyond that it is not fair that he should not be given an opportunity to prove that he is disloyal and therefore he should be dismissed.

Now, Sir, with regard to clause (b) it has been argued by my honourable friends that we cannot conceive of cases where you cannot serve a notice upon him and a reasonable opportunity cannot be given to him. I do not know why such a clause has been introduced unless it be to facilitate the work of the inquiring officer when a delinquent has absconded and is not to be found anywhere. For that there is the, procedure which can be easily followed. I do

not see any reason why this clause should be there. With regard to (c), it is very unfortunate that this clause has been introduced. Even the Government of India Act, section 240, does not mention any provision of this kind. Where a foreign Government, a bureaucratic Government has not found it necessary.

**Mr. President :** The honourable Member is only repeating what has been said by more than one member. He can confine himself to amendment No. 328.

**Mr. Mahboob Ali Baig :** I consider that sub clause (c) is not only unnecessary but it is retrograde, and ought to be deleted.

Now with regard to clause (3) also I might mention that such a clause also does not find a place in section 240 of the Government of India Act. The reason for this may be that clause (b) states as follows :—“Where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied”. This itself was quite enough. So perhaps it is not necessary to have introduced clause (3) here.

Then my amendment No. 328, I submit, is very necessary. The reason is that, as we know, these rules and regulations are framed not by the legislature but by the Government. I want that these rules and regulations should be framed by the legislature and not by the Governments concerned. The safeguards that you can provide.

**Shri T. T. Krishnamachari** (Madras : General) : If the honourable Member refers to article 282, he will find what he wants there.

**Mr. Mahboob Ali Baig :** So what I want is that in the absence of the help of the court in the case of persons sought to be removed you must provide very adequate, fair and just safeguards and those safeguards must be very clear and they must be made by the Parliament or the legislature to be followed by the appropriate authority. The words “reasonable opportunity” have no meaning at all. We have known many cases where the Government servants go to a court after being removed and they are told by the court that it has no jurisdiction at all because they are holding service during the pleasure of the Crown. The only way in which the Court can safeguard the rights of the person who goes to a court is to see what is a “reasonable opportunity” whether the procedure laid down by the Government, laid down by the legislature has been followed satisfactorily by the appropriate authority before dismissing him. It is only in those circumstances the Court can say whether the “reasonable opportunity” has been given to the person aggrieved and then come to his rescue. Even then he cannot be rescued or restored at all, but compensation only can be, granted to him. I am not only referring to the remedy that he may have before the court; but in order that he may feel secure, that he might have confidence in his office, it is necessary that these rules should be framed and the authorities concerned should follow them strictly. Though it is stated “if any question arises whether it is reasonably practicable to give notice to any person under clause (b)”, you have not provided in clause (3) any appellate authority to find out whether the reasons given by the appropriate authority, that he is satisfied that it is not reasonably practicable to give notice are sound. It is the person who dismisses the Government servant who has to decide whether it is reasonably practicable to, give notice or not. You have not provided that some appellate authority should examine the matter and come to the conclusion that the appropriate authority who refused to give a reasonable opportunity is really right in having dismissed a Government servant without notice. If you say that the legislature might provide, for that, you might make it clear even now when we are dealing with this matter.

Therefore, Sir, my submission is that while the article makes an attempt to provide safeguards, in my considered view they are not adequate, fair and just

[Mr. Mahboob Ali Baig]

and it is necessary that in order to safeguard the interests of these millions of Government servants on whose efficiency and honesty our administration depends, these amendments of mine should be accepted.

(Amendment No. 367 was not moved.)

**Prof. Shibban Lal Saksena :** Mr. President, Sir, while carefully listening to the debate, I have been wondering whether the removal of this article from this Constitution would not be better than putting it in this form. In fact there is the fundamental principle that no man shall be condemned unheard. What we are laying down here is that some persons can be condemned unheard. If this article is removed, at least everybody could go to a court of law and say "I will be heard before I am punished." I know Dr. Ambedkar has introduced this article, not because of the provisos, but because of the fundamental principle involved in it that he wants to guarantee to the people in Government service that they shall not be removed from service or punished unless they are heard. But I say, Sir, that the provisos have ruined the whole thing. In fact under clause (a) even Pandit Jawaharlal Nehru, yourself and probably half of the House would all be liable to be dismissed because of our conviction on criminal charges during Satyagrah movement which did involve moral turpitude. I hope, Sir, the amendment of Pandit Thakur Dass Bhargava, of which he has given notice, will be accepted.

About clauses (b) and (c), I cannot see how the mere giving of an occasion or an opportunity to show cause would be dangerous. You are not giving anybody an assurance that that explanation will be accepted. What I want is that these sub-clauses (b) and (c) must be removed. It is said that there are Communists in service whom it is necessary to remove and therefore this clause is necessary. It is said that it will be difficult to give an opportunity to show cause. I say, Sir, that by putting this clause in the Constitution, you are going to make the services a communist nest. I am not afraid of communism or their philosophy. By this clause, you are only making the people labour under a sense of injustice and grievance that they have not been heard. That is the feeling which in fact infects the people with disaffection and disloyalty. I therefore think that for the sake of seeing that the services are satisfied, you must give them an opportunity to be heard. I do not say that you must always accept their explanation; but they must have an opportunity to explain. I hope Dr. Ambedkar will accept the amendment.

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

**Mr. President :** Closure has been moved. The question is:

"That the question be now put."

The motion was adopted.

**Mr. President :** I shall now put the amendments to vote. Dr. Ambedkar, do you wish to say anything ?

**The Honourable Dr. B. R. Ambedkar :** I should like to say one or two words, Sir.

As I listened to the criticisms made by the various speakers who have moved their amendments, I have come to the conclusion that they have not succeeded in making a clear distinction between two matters which are absolutely distinct and separate : these matters are grounds for dismissal and grounds for not giving notice. This article 282-B does not deal with the grounds of dismissal. That matter will be dealt with by the law that will be made by the appropriate legislature under the provisions of article 282. In what cases a person appointed to the civil service should be dismissed from service would be a matter that would be regulated by law made by Parliament. It is not the purpose of this article 282-B to deal with that matter.

This article 282-B merely deals with, as I stated, the grounds for not giving notice before dismissal so that a person may have an opportunity of showing cause against the action proposed to be taken against him. The purport of this clause is to lay down a general proposition that in every case notice shall be given, but in three cases which have been mentioned in sub-clauses (a), (b) and (c), notice need not be given. That is all what the article says. It has been, in my judgment, a very wrong criticism which has been made by my honourable Friend Mr. Kamath that this article is a disgrace or a shame or a blot on the Constitution.

**Shri H. V. Kamath :** (*interruption*) . . . . .

**The Honourable Dr. B. R. Ambedkar :** I should have thought that that was probably the best provision that we have for the safety and security of the civil service, because it contains a fundamental limitation upon the authority to dismiss. It says that no man shall be, dismissed unless he has been given an opportunity to explain why he should not be dismissed. If such a provision is a matter of disgrace, then I must differ from my honourable Friend, Mr. Kamath in his sense of propriety.

**Shri H. V. Kamath :** I am referring to the provisos to the article.

**The Honourable Dr. B. R. Ambedkar :** I am coming to the provisos.

So far as clause (2) is concerned, I have no doubt in my mind that everybody who has got commonsense would agree that this is the best proviso that could have been devised for the protection of the persons engaged in the civil service of the State. The question has been raised that any person who has been convicted in any criminal case need not be given notice. There, again, I must submit that there has been a mistake, because, the regulations made by a State may well provide that although a person is convicted of a criminal offence, if that offence does not involve moral turpitude, he need not be dismissed from the State service. It is perfectly open to Parliament to so legislate. It is not in every criminal charge, for instance, under the motoring law or under some trivial law made by Parliament or by a State making a certain act an offence that that would necessarily be a ground for dismissal. It would be open to Parliament to say in what cases there need not be any dismissal. It would be perfectly open to Parliament to exclude political offences. This clause in so many words merely deals with the question of giving notice. Parliament may exempt punishment for offences of a political character, exempt offences which do not involve moral turpitude. That liberty of the Parliament is not touched or restricted by sub-clause (a). I want to make this clear.

With regard to sub-clause (b), this has been bodily taken from section 240 of the Government of India Act. I think it will be agreed that the object of introducing, section 240 of the Government of India Act was to give protection to the services. Even the British people who were, very keen on giving protection to the civil services, thought it necessary to introduce it proviso like Sub-clause (b). We have therefore not introduced a new thing which had not existed before. With regard to sub-clause (c), it has been felt that there may be certain cases where the mere disclosure of a charge might affect the security of the State. Therefore it is Provided that under sub-clause (c) the President may say that in certain cases a notice shall not be served. I think that is a very salutary provision and notwithstanding the obvious criticism that may be made that it opens a wide door to the President to abrogate the Provisions contained in sub-clause (2). I am inclined to think that in the better interests of the State, it ought to be retained.

[The Honourable Dr. B. R. Ambedkar]

Coming to clause (3), this has been deliberately introduced. Suppose, this clause (3) was not there, what would be the position ? The position would be that any person, who has not been given notice under sub-Clauses (a) or (b) or (c), would be entitled to go to a court of law and say that he has been dismissed without giving him an opportunity to show cause. Now, courts have taken two different views with regard to the word 'satisfaction' : is it a subjective state of mind of the officer himself or an objective state, that is to say, depending upon circumstances ? It has been felt in a matter of this sort, it is better to oust the jurisdiction of the court and to make the decision of the officer final. That is the reason why this clause (3) had to be introduced that no Court shall be able, to call in question if the officer feels that it is impracticable to give reasonable notice or the President thinks that under certain circumstances notice need not be given.

Now, another misapprehension which I should like to clear is this. Some people think that under the provisions regarding civil service which I have introduced the Government has an absolute unfettered right to dismiss any civil servant and that this power is aggravated by the introduction of sub-clauses (a), (b) and (c) of clause (2). I submit that again is a misapprehension because under the provisions relating to Public Service Commission which we have passed already there is a provision that every civil servant who is aggrieved by any action taken by any officer relating to the conditions of service will have a right of appeal to the Public Service Commission. Therefore, even in cases where the Government has not given the officer an opportunity to show cause, even such an officer will have the right to go to the Public Service Commission and to file an appeal that he has been wrongfully dismissed contrary to the provisions contained in the rules made relating to his service. I, therefore, think that the apprehensions which have been expressed by honourable Members with regard to the provisions contained in this article are entirely misfounded and are due to misunderstanding of the provisions of this Act, the provisions of article 282 and the provisions relating to Public Service Commission.

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

"That in the proposed new Article 282-B clause (1), for the words 'by an authority subordinate to that by which he was appointed' the words 'except by an order of the Union Public Service Commission, or, as the case may be, by the State Public Service Commission' be substituted."

The amendment was negatived.

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

"That in the proposed new article 282- B, in paragraph (b) of the proviso to clause (3) for the words 'Where an authority empowered to dismiss a person or remove or reduce him in rank' the words 'If the Union Public Service Commission, or, as the case may be, the State Public Service Commission, be substituted.'"

The amendment was negatived.

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

"That sub-clause (b) of clause (2) of the proposed new article 282-B be deleted."

The amendment was negatived.

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

"That clause (3) of the proposed new article 282-B be deleted."

The amendment was negatived.



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

“That in sub-clause (a) of the proviso to clause (2) of the proposed new article 282-B, after word ‘conduct’ the words ‘involving moral turpitude’ be inserted.”

The amendment was negatived.

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

“That in sub-clause (a) of the proviso to clause (2) of the proposed new article 282-B, after the word ‘charge’ the words ‘involving moral turpitude’ be inserted.”

The amendment was negatived.

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

“That in the proviso to clause (2) of the proposed new article 282-B, sub-clause (c) be deleted.”

The amendment was negatived.

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

“That in the proposed new article 282-B in sub-clause (b) of the proviso to clause (2) for the words ‘that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause’ the words ‘on grounds to be recorded in writing, that the whereabouts of that person are unknown’ be substituted.”

The amendment was negatived.

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

“That in sub-clause (b) of the proviso to clause (2) and in clause (3) of the proposed new article 282-B for the word ‘practicable’ the word ‘possible’ be substituted.”

The amendment was negatived.

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

“That in sub-clause (c) of the proviso to clause (2) of the proposed new article 282 B, for the words ‘is satisfied’ the word ‘certifies’ be substituted.”

The amendment was negatived.

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

“That in clause (3) of the proposed new article 282 B, for the word ‘If’, the words ‘if on the application of the person, so affected,’ be substituted.”

The amendment was negatived.

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

“That in clause (3) of the proposed new article 282 B for the words ‘any person’ the word ‘him’ be substituted.”

The amendment was negatived.

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

“That in clause (2) of the proposed new article 282 B, after the words ‘aforesaid shall be’ the Word ‘suspended’ be inserted.”

The amendment was negatived.

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

“That sub-clause (a) of the proviso to clause (2) of the proposed new article 282-B. The following be added —

‘for offences of bribery, corruption or treason or offences involving moral delinquency’.”

The amendment was negatived.

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

“That the following new clause be added at the end of the proposed new article 282 B :-

“That Parliament, in the case of Union services, and the Legislature of the State, in the case of State services, shall lay down rules and regulations in this behalf to be followed by the appropriate authority.”

The amendment was negatived.

**Mr. President :** I put the original amendment of Dr. Ambedkar-Article 282- B

The question is:

“That proposed article 282- B stand part of the Constitution.”

The motion was adopted.

Article 282- B was added to the Constitution.

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### Article 282- C

**Mr. President :** We go to 282- C

**Shri Brajeshwar Prasad :** Sir, I move:

“That in clause (1) of the proposed article 282 C the words ‘if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do’ be deleted and after the words ‘other provisions of this Chapter’, the words ‘the Union Public Service Commission shall’ be inserted.”

The whole aim of Article 282 C is to protect the Federal foundations of this Constitution. Therefore this power has been given to the Upper Chamber. They have the right to take the initiative in the matter and the Lower House has no power in this respect. Secondly, not only they have this power of moving this resolution but something like a veto power has been given to them. A resolution must be passed by two-third members of the House. I do not see any reason why the Federal foundations of this Constitution should be protected. Our constitution is not merely federal in character but it is also unitary in character. There is no reason why the unitary foundations of this Constitution should not be protected. Federal Government tends towards unitary type of Government. It would be wrong on our part to put the hands of the clock back. I am in favour that all services in the country should be centralised and I am convinced that there are no classes of persons in this country who are champions of Federal rights.

Let me place my ideas in this connection. Who are the people in this country who want to protect the federal sentiments ? I come to the industrial workers in this land. Sir, Karl Marx had the vision to see that the industrial workers are international minded. Circumstanced as they are today in this world there is no course left open to them but to become champions of internationalism. Therefore these industrial workers are not at all in any way champions of local rights.

**Mr. President :** All this is quite irrelevant to the amendment.

**Shri Brajeshwar Prasad :** The whole aim of this article is to protect the Federal Constitution or else there is no meaning in giving this power. I want to deal with the theoretical foundations of this Constitution. If you want me to speak only on the provisions and not to deal with the philosophical background I am quite prepared to do so.

**Mr. President :** I think you had better confine yourself to the amendment tabled by you instead of talking of the background.

[Pandit Thakur Das Bhargava]

“That in amendment No. 269 of List IV (Seventh Week) in clause (b) of the proposed new article 274 D, the words “during any period of emergency arising from scarcity of goods within the State for the period of such emergency be added at the end.”

“That in amendment No. 269 of List IV (Seventh Week), in the proposed new article 274 D, the following new clause be added at the end :—

‘The President shall be competent to revoke such sanction when he considers it expedient to do so in the interest of the general public and on such revocation being made the law of the State imposing restrictions shall become void.’ ”

“That in amendment No. 269 of List IV (Seventh Week), the proposed new article 274 E. be deleted.”

“That in amendment No. 269 of List IV (Seventh Week), after the proposed new article 274 E, the following new article be added :—

‘274 F. Notwithstanding anything contained in this Constitution, any citizen or State shall have the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by article 13 or Part X-A of the Constitution.’ ”

*or alternatively,*

“That in article 16, after the word ‘Parliament’ the words and figures ‘under article: 282 B and 274C’ be inserted.”

Now, in regard to these amendments my submission is that the way in which I look at the subject is different from the way in which Dr. Ambedkar look at it. According to me, these rights of trade and commerce and intercourse should be absolute and only circumscribed by provisions relating to emergencies while in his view, the power of the Central Government as well as of the provincial Governments should be there, and these rights should be qualified We have already passed article 16 which runs thus :

“Subject to the provisions of article 244 of this Constitution and of any law made by Parliament, trade, commerce and intercourse throughout the territory of India shall be free.”

This article yet stands as it is. There has so far been no amendment that it stands abrogated. The existence of this article in the Chapter on Guaranteed Rights assures us that this is a fundamental right. The nature of this fundamental right has been, I know, curtailed to a great extent by the use of the words “and of any law made by Parliament”. Subject to this, this fundamental right has been guaranteed to the citizens of India by the Constitution we have already passed. Along with this I would ask you to consider the effect of article 13, the relevant portion of which says :

“All citizens shall have the right (d) to move freely throughout the territory of India, (e) to visit and settle in any part of the territory of India, (f) to acquire, hold and dispose of property; and (g) to practise any profession, or to carry on any occupation, trade or business.”

Now, I submit that this provision of Dr. Ambedkar comes to a certain extent in collision with the parts (d) to (g) of article 13. According to my understanding of the provisions of article 13, every citizen has got the right to carry on any occupation, trade or business subject of course to article 16 which we have adopted. According to it, only in the general interests of the public some restrictions can be put on the rights of a citizen. Now you will see that the expression ‘public interest’ has been used in the amendment moved by Dr. Ambedkar in several places which I have sought to substitute with the words “the interests of the general public”. I maintain that there is great difference between the two expressions. ‘Public interest’ in regard to a State would only include the interests of the inhabitants of that State at the most though the word ‘public’ includes portions of the public. Therefore, the interests of a part of the inhabitants of a State would also mean ‘public

[Shri B. P. Jhunjhunwala]

the old articles 243, 244, etc. I beg to move

“That in amendment No. 287 above, in clause (b) of the proposed article 244, after the word and figure ‘article 13’ (proposed to be inserted), the words ‘and with the general economic improvement of India as a whole’ be added.”

There is another amendment No. 293 as follows:—

“That in amendment No. 292 above in the proposed clause (c) of the proposed article 244, after the word ‘Constitution’ the words ‘and with the general economic improvement of India as a whole’ be added.”

Now all these articles have been changed and I could not give my amendment to those changed articles, but Pandit Bhargava has given an amendment to all those articles as have been changed which are given as 282 A, 282 B, 282 C, 274 D and 274 E.

The main purpose of my amendment is that whatever a State Legislature or the Parliament may pass any law or order putting any restriction regarding trade and commerce, between one State and another, that should not be inconsistent with articles 13 and 16 of the Constitution and the general economic improvement of India as a whole. Pandit Bhargava has dealt with article 13 and he has said that there is a fundamental right of every citizen to have free trade and commerce. He has also dealt at length on the use of the words “public interest” and shown how it has been misused by the State. He has given example of grams in Eastern Punjab as to how the Punjab Government has muddled this trade by putting queer restrictions. Similarly there are many instances where you will find that the States in making certain law or order have totally forgotten the interest of India as a whole and have acted only on the temporary interest either of their State or of any particular interest. If there is any time when there is necessity to have any check on the passing of such laws and orders, it is at present when we find that our economic condition is deteriorating in such a way. Without any disrespect to provincial or Parliament Legislature I would like to say that these require some check and Pandit Bhargava has tabled his amendment No. 366 which is 274 E. wherein he says—

“Notwithstanding anything contained in this Constitution any citizen of a State shall have the right to move the Supreme Court by appropriate proceedings by the enforcement of the rights conferred by article 13 or part XA of the Constitution.”

To this I want to add that this right of moving the Supreme Court is also open to a citizen or State when the law or order passed by a State legislature or Parliament is inconsistent with the general economic policy improvement of India as a whole.

I am told that article 16 of the Constitution which gives free right of trade will also be taken away and the right to move the Supreme Court will also be taken away by the amendment which Dr. Ambedkar has moved. If that right is taken away, it is very necessary that the amendment of Pandit Bhargava which is given as 274 F, with my addition be accepted. I shall give a few instances as to how the different laws of the Parliament and of the States have acted against the general economic improvement of India as a whole.

If the honourable Members have seen the communique and the comment of a Staff Reporter as to how our export trade has gone down—in which one of the causes he has mentioned is that we have been unable to export our oilseeds to such an extent as we would have been able to do but for some restrictions on the movement of the same by Provincial Governments, thereby raising its price. This has told a great deal upon the economy of India as a whole. The U.P. Government put restrictions on the movement of mustard seeds and did not allow the mustard seeds to move from its province to another place, with the result that the whole thing was confined to U.P. traders to crush

**Shri Prabhu Dayal Himatsingka** (West Bengal : General) : Sir, I beg to support the various amendments moved by the honourable Member, Pandit Bhargava. So far as these articles are concerned the idea should be to put as few restrictions as possible, and trade and commerce should be allowed to be free without any restriction. Restriction should be only when it is absolutely necessary and in the interest of the general public or in a special emergency. Pandit Bhargava's amendments seek to limit the power of the Government to reasonable restrictions and when such restrictions are required in the interest of the general public. He has also suggested certain amendments to article 274 C by introducing the word "temporary" by his amendment No. 353 before the word "scarcity" and also by adding the words "for the period of the emergency which is amendment No. 354. I would request the Drafting Committee to consider whether or not they should accept his amendment No. 343 suggesting the introduction of the word "reasonable" before the word "restriction" in article 282 B, and amendment No. 345 suggesting the substitution of the words "interests of the general public", for the words "public interest". Similarly I would request them to consider accepting amendments Nos. 353 and 354.

As it is intended that article, 16 should be, removed from the present chapter on Fundamental Rights and 274 A is intended in substitution of that, section, I think amendment No. 366, suggested by Pandit Bhargava for adding an additional clause as 274 F has also become absolutely necessary. Otherwise it would be a question of doubt even when we know that certain restrictions and proceedings are invalid as to whether a person is entitled to seek redress in a court of law. Therefore, I support the various amendments moved by Pandit Bhargava and would request the Drafting Committee specially to consider his amendments Nos. 343, 345, 353, 354 and 366. With these words I support the amendments moved by Pandit Thakur Das Bhargava.

**Prof. Shibban Lal Saksena** : Sir, this new chapter, Part X-A, is a very important one. This article 274 A is what was formerly article 16 in the Constitution as a fundamental right. It would now become an ordinary article of the constitution and in that respect we have lost. But the other articles which have been proposed also need to be carefully amended and I am very glad that Pandit Thakur Das Bhargava has tabled his amendments to these. I myself had tabled an amendment to the former article 244 for the abolition of clause (b) of that article. Now of course that amendment is out of order, because the 'whole thing has been changed and put in a different form. I therefore desire only to support the amendments moved by Pandit Bhargava. Particularly, I do not see that there can be any argument against his amendment No. 343 to article 282 B. In fact even in article 13 on fundamental rights he had succeeded in getting the word "reasonable" introduced before all those restrictions imposed on those fundamental rights. I therefore think that this right of freedom of trade is very essential and if any restrictions are to be imposed upon it they should be "reasonable so that the rights may be justiciable and people may go to a court if Parliament or a State legislature tried to impose any restrictions which are not reasonable.

Mr. Jhunjhunwala dealt at length with the way in which freedom of trade may be interfered with. I could also have gone into such details but I am conscious of the urgency with which you, Sir, are trying to finish the article. so that I will not go into details. But I must say that I was shocked to learn only recently that in East Punjab several crores of maunds of gram had not been moved outside because of the restrictions which the Government had imposed. When India is importing grain from outside and spending crores of rupees, I think it is criminal waste that crores of maunds of gram should have been allowed to be spoilt in that area and reasonable facilities for inter-provincial trades should not have been allowed so that the gram could have been used elsewhere.

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

“That in amendment No. 269 of List IV (Seventh Week), for the proposed now article 274-A, the following be substituted :

‘274A. Subject to other provisions made in this Constitution, trade and commerce in any State or territory of India or between any two or more States of the Union, shall be as may be determined by the Parliament from time to time.’ ”

The amendment was negatived.

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

“That in amendment No. 292 above, in the proposed clause (c) of the proposed article 274 A, for the word ‘Part’ the word ‘Constitution’ be substituted”

The amendment was negatived.

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

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

The motion was adopted.

Article 274-A was added to the Constitution.

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

**Pandit Thakur Das Bhargava :** You may put all the amendments together to the vote. That will save time. They are all being negatived.

**Mr. President :** I thought the formality had to be observed. I Will adopt the course suggested. The question is:

“That in amendment No. 269 of List IV (Seventh Week), for the proposed new article 282 B, the following be substituted :—

‘That in amendment No. 269 of List IV (Seventh Week), in the proposed now article 274 B, before the word “restrictions” the word “reasonable” be inserted.’ ”

“That in amendment No. 269 of List IV (Seventh Week), in the proposed new article “ 274 B, for the words ‘trade, commerce or intercourse the words ‘trade or commerce’ be substituted.”

“That in amendment No. 269 of List IV (Seventh Week), in the proposed new article 274 B, for the words ‘public interest the word ‘interests of the general public’ be substituted.”

The amendments were negatived.

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

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

The motion was adopted.

Article 274-B was added to the Constitution.

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

“That in amendment No. 269 of List IV (Seventh Week), the proposed new article, 274-C be deleted.”

“That in amendment No. 269 of List IV (Seventh Week), for the proposed new article 274-C, the following be substituted :—

274-C (1) Legislature of a State shall not make any law giving or authorizing the giving of preference to one State over another or making any discrimination or authorizing the making of any discrimination between one State and another except with the consent of the Parliament.