

CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 30th August 1949

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

DRAFT CONSTITUTION—(Contd.)

Seventh Schedule—(Contd.)

Entry 7—(Contd.)

Mr. President : We shall take up the discussion of Entry No. 7. I find that several Members have given notice of amendments. No. 172—Dr. Deshmukh.

Dr. P. S. Deshmukh : (C. P. & Berar: General) : I have moved it already, Sir.

Mr. President : Then 173. Shri T. T. Krishnamachari.

Shri T. T. Krishnamachari : (Madras: General) : Mr. President, I move:

“That with reference to amendment No. 6 of List I (Sixth Week), in the proposed entry 7 of List I of the Seventh Schedule, for the words ‘local self-government’ the words ‘local government’ be substituted.

This has been explained by Dr. Ambedkar yesterday. There is no need for me to explain that further.

Shri Mahavir Tyagi : (United Provinces : General) : Sir, I am sorry that for a small matter yesterday you adjourned the House; otherwise I think it would have been clarified yesterday. My difficulty is that when you put the Cantonments and Cantonment Boards and the regulation of house accommodation (including the control of rents in such areas in the hands of the Government of India) a great inconvenience will be felt. Personally, I feel that the cantonments in various States are not imperial islets. For all practical purposes, all the civil population in cantonments is controlled by the States. The cantonments were brought into being just to see that the sanitation of those places was suitable to the military neighbourhood and that all local government activities were in the hands of the military authorities or at least influenced by military authorities, so that the military areas may not find any sort of inconvenience with regard to health, hygiene or other matters.

Now, Sir, in the beginning the cantonments were mostly comprised of military barracks and officers’ mess and a few other bungalows considered to be of military. Now what has happened is; let us take an instance. Take Meerut. In Meerut there is a military Cantonment, three-fourths of which is composed of civil population. There is the Sadar Bazar and there are lawyers and others living in that cantonment area. That area is within the area and the jurisdiction of the Cantonment Board. All the laws of the U.P. apply to the inhabitants of the cantonment areas. For instance, in the bazar there is the same sales tax as is elsewhere in U.P. For all purposes of law and order, they are controlled by the very same civil authorities of the Provinces

[Shri Mahavir Tyagi]

everywhere in India. It was only the local government part of it which was transferred or rather intended to be transferred to the hands of the Cantonment Boards and the rest of the laws of the States equally apply to the citizens of cantonments.

Now, Sir, at most of the places cantonment area is exactly adjacent to the city areas. If the house rent controls and all similar powers were handed over to the Centre, and if those adjacent areas were to, be controlled by the Centre, then it will be an anomaly. One shop on this side of the demarcation line will be controlled by one law; the other shop on the other side of the line will be controlled by another. For a few years we controlled the house rents and house allotments by means of a law in the U.P. which was equally effectively controlling the rents of the cantonment areas. For two or three years it was getting on peacefully, but for the last one year or so, when in our Province the Rent Act was amended, they excluded the cantonment area, perhaps on the desire of the Central Government, with the result that I have received a number of letters from the cantonments of my province, complaining against the hardships which their civil population was undergoing with regard to house rents. I will read a few lines from the letter of the Secretary of the Cantonment Taxpayers' Association. "More than 1,000 suits for ejectment of tenants from houses and shops in Meerut Cantonment have already been filed in the civil courts, and decrees for ejectment in some cases have already been passed." This is not a case where the ownership of the buildings or shops belongs to Government. It is about the civil area. The Secretary further says: "In Meerut alone the civil population in the cantonment is more than one lakh". Now, this one lakh of people belonging to one State shall now for all practical purposes be controlled by a different law from the Centre just as Delhi is controlled by the Centre. When that State enacts a law it will not automatically apply to the civil population in cantonments. The law will only apply if and when the Centre thinks it fit to extend the application thereof to those areas. If this is going to be the state of affairs under the future Constitution. I must protest against it, because all those civilians living in cantonment areas are as good as the rest of the population in a State. To make this distinction will be 'invidious and unfair. I therefore submit that, except for the local self-government part of it, the civil population of cantonment areas must be controlled on an equal footing with their fellow citizens living as neighbours in the very same State.

I therefore move :

"That in amendment No. 6 of List I (Sixth Week), in the proposed entry 7 of List I, the words 'and the regulation of House accommodation (including the control of rents) in such areas' be deleted."

Rent control is the function of the State everywhere in the Union. Why should the civil areas in the cantonments now be handed over to the Centre ?

My alternative, amendment, which I shall presently move, will come in only in case this is not accepted. It runs thus:

"That in amendment No. 6 of List I (Sixth Week), in the proposed entry 7 of List I, for the brackets and words '(including the control of rents)' the brackets and word '(excluding the control of rents)' be substituted."

I mean this control of rent must not be left in the hands of the Union administration. I have received another letter from Jhansi saying that the people there are in trouble, because the United Provinces has not been permitted to control the rent in cantonment areas. I therefore submit that if my first suggestion is not approved my alternative proposal may be accepted; or Dr. Ambedkar's genius might find some other way to accommodate my wishes.

(Amendments Nos. 175 to 177, were not moved.)

Shri R. K. Sidhwa (C.P. & Berar: General) : Mr. President, I want to speak on Mr. Tyagi's amendment.

Mr. President : Very well, but do not take more than three minutes. I, shall be looking at the clock.

Shri R. K. Sidhwa : Yesterday, while speaking on this amendment I made: the position very clear that the Drafting Committee, will accept the amendment. But the point is that Mr. Tyagi wanted to cover the extent to which delimitation of cantonments could take place. Mr. Tyagi wanted that house rent should be deleted from this. That means delimitation also would come to the Provincial List. Unless you absolutely remove from this List delimitation also, you cannot have house-rent regulation left in the Central List. I know the difficulty he has mentioned about the control of rents in the United Provinces. Complaints have, come to me also that the Rent Act is not applicable to the cantonment areas. That is a matter of opinion of the various, provincial Governments. In Bombay the position is different. In Poona Cantonment the House Rent Control is made applicable by the provincial Government. Apart from that, I do not think it is germane to Mr. Tyagi's amendment, because it will take away the entire delimitation now in the hands of the Centre.

Shri Mahavir Tyagi : For the information of my Friend I may say I have given notice of an amendment to include this in the Provincial List.

Shri R. K. Sidhwa : When it comes we shall see. But so far as this is, concerned, you cannot divide the two, rent and delimitation. I am not prepared to support his amendment. I think that the Drafting Committee's amendment serves the purpose.

The Honourable Dr. B. R. Ambedkar (Bombay: General) : Sir, the amendments moved by my Friend Mr. Tyagi are the only amendments which call for reply. His amendments are in alternative form. In the first, place, he wants to delete the whole part dealing with regulation of house accommodation including the control of rent. In his alternative amendment he is prepared to retain the control and regulation of house accommodation, but wishes to delete the words 'rent control'. It seems to me, the matter is really one of common sense. If my Friend has no objection to the retention of the words "regulation of house accommodation", as is clear from his alternative amendment, then it seems to me that the control of rent is merely incidental to the power of regulation of house accommodation. It will be quite impossible to carry out the purpose, namely, of regulating house accommodation, if the authority which has got this power has not also the power to control rents. Therefore my submission is that the control of rents is incidental to the regulation of house accommodation. If Mr. Tyagi has no fundamental objection to the retention of the power to deal with house accommodation, I think he must not have any objection to the transfer of control also.

Mr. President : I will now put the amendments to vote. The first is that of Dr. Deshmukh.

Dr. P. S. Deshmukh : I will be content if the Drafting Committee will be pleased to consider it at the time of the final draft.

Mr. President : It is only a matter of drafting so far as I can see. So we might leave it to the Drafting Committee.

The question is:

"That with reference to amendment No. 6 of List I (Sixth Week), in the proposed entry of List I of the Seventh Schedule, for the words 'local self-government' the words 'local government' be substituted.

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 6 of List I (Sixth Week), in the proposed entry 7 of List I, the words ‘and the regulation of House accommodation (including the control of rents) in such areas’ be deleted.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 6 of List I (Sixth Week), in the proposed entry 7 of List I, for the brackets and words ‘(including the control of rents)’ the brackets and words ‘(excluding the control of rents)’ be substituted.”

The amendment was negatived.

Mr. President : We have now disposed of all the amendments.

The question is :

“That for Entry 7 of List I, the following entry be substituted:-

“7. Delimitation of cantonment areas, local self-government in such areas, the constitution and powers within such areas of cantonment authorities and the regulations of House accommodation (including the control of rents) in “such areas.”

The amendment was adopted.

Mr. President : The question is.

“The Entry 7, as amended, stand part of List I.”

The motion was adopted.

Entry 7, as amended, was added to the Union List.

Entry 8

Mr. President : I find there is no amendment to Entries 8, 9, 10 and It originally.

Shri Brajeshwar Prasad (Bihar: General) : There is one amendment No. 178 to Entry 8.

Mr. President : It is a new amendment. I was referring to the original printed list of amendments to Entries 8, 9, 10 and 11. Consequently there was no amendment even in the smaller printed list. Now, I have got notice of new amendments, but I do not think I will allow new amendments to the original entries. So, amendments Nos. 178, 179 and 181 are ruled out.

The question is :

“That Entry 8 stand part of List I.”

The motion was adopted.

Entry 8 was added to the Union List.

Entry 9

Entry 9 was added to the Union List.

Entry 10

Entry 10 was added to the Union List.

Entry 11

Entry 11 was added to the Union List.

Entry 12

Mr. President : There is an amendment in the name of Professor Shibban Lal Saksena that entry 12 be deleted. It is opposition. If he wishes to speak about it, he, may do so. I also I understand that there is an amendment by Mr. Kamath.

Shri H. V. Kamath (C.P. & Berar: General) : Mr. President, I move, Sir:

“That in entry 12 in List I the words ‘or any other international body’ be inserted at the end.”

That is to say, I want this entry to be modified so as to comprehend any international body other than the United Nations Organisation. In moving this amendment, Sir, I would like to state that the United Nations Organisation is not the only or the last word in international Organisation. My honourable Colleagues are very well aware of a certain League of Nations which was founded after the First World War and which died an untimely death a few years later. World War II has given birth to the United Nations Organisation, but he would be a rash prophet who would give a long lease of life for this Organisation also. Already there are rifts and cracks.....

Mr. President : Would not your purpose be served by entry 13 ?

Shri H. V. Kamath : No, Sir. I would come to that entry presently. There are already rifts and cracks in this Organisation and one never knows when this United Nations Organisation will go the way of the League of Nations. I hope that our Constitution will last quite a long time, and I need not point out that sceptics and pessimists are not wanting who are predicting an early death for the United Nations Organisation. God forbid that its end should come about in that manner, but nobody knows whether this Organisation would stand or whether some other Organisation will take its place. Apart from that, it is quite likely that in the future we might have regional organisations in the world. We are well aware that an Asian Relations Conference was held in April 1947 and in pursuance of that Conference an organisation called the Asian Relations Organisation has been set up. It may be that in times to come the Government of India along with the Governments of some other States might elect to become members of the Asian Relations Organisation. It may be that that Organisation may prove to be even more permanent than the United Nations Organisation.

You were good enough to draw my attention, Sir, to the fact that my proposal might probably be covered by what is mentioned in entry 13, that is to say, international associations and other bodies. If that were so, then my plea would be that there is no need for entry 12 as well, because the United Nations Organisation is also an international body or association. I suppose that what is meant by entry 13 is participation in these conferences and bodies from time to time, while entry 12 refers to membership of the organisation with its attendant consequences, responsibilities, duties and obligations. This, Sir, seems to be the distinction between entries 12 and 13 Entry 13

[Shri H. V. Kamath]

refers to participation in these conferences while entry 12 is more comprehensive and includes the obligations and responsibilities resulting from membership of a particular international Organisation. I therefore plead that considering, that the United Nations Organisation is not at all a permanent body so far as we can see, and considering that we hope that our Constitution will last much longer than any other international body, I think we should provide for this contingency in the List and provide for our membership, with its attendant consequences and responsibilities, of not merely the United Nations Organisation but also any other international Organisation which might come into being in the future. I therefore move amendment No. 3517 and commend it to the House for its consideration.

Prof. Shibban Lal Saksena (United Provinces : General) : Mr. President I beg to move that this entry No. 12 be deleted, and my reasons for demanding its deletion are as follows : I would like to draw the attention of the House to the Report of the Union Powers Committee and in that report in paragraph 2 it is said :

“ ‘Foreign Affairs’ connotes all matters which bring the Union into relation with any foreign country and in particular includes the following subjects:—

- (1) Diplomatic, consular and trade representation;
- (2) United Nations Organization;
- (3) Participation in international conferences, associations and other bodies and implementing of decisions made thereat; etc.”

In fact 17 subjects are mentioned and here we find almost all of them reproduced verbatim in this list. In entry 10 we have said: “Foreign Affairs; all matters which bring the Union into relation with any foreign country.” So this entry No. 10 is very comprehensive and in fact includes all the entries which follow, at least 17 of them. I do not see any need of duplication. My second Point is more important and it is this. We are framing a Constitution for our country and I do not see that in this Constitution we should provide an entry relating to the United Nations Organization, as a permanent part of our Constitution. As we all know the United Nations Organisation has only come into existence about four years back and even now it is not an organization in which all the nations put trust, and I very well know that in spite of its existence the nations are trying to prepare for war and they have no trust that the United Nations Organization can prevent war. If we lay down the United Nations Organization as one of the entries in this List that means that we give to it importance which is not justified by plain facts. It may be that the United Nations Organization may cease to exist tomorrow. It may be that India may desire to leave it and if so what is the sense in keeping this entry in the Union List? I personally feel that entry No. 10 is very comprehensive and it is a matter of foreign policy whether we should continue our membership of the United Nations Organization or whether we should get out of it. So I do not see any reason Why we should put this entry in our Constitution. I also personally feel that the experience of India as a member of the United Nations Organization has not been very happy and the amount of expenditure which it bag involved was not at all commensurate with the advantages, if any, which we have derived from its membership, and in the Kashmir question, we know that we have not been able to get things settled. In fact it has become more complicated. We had hoped that we will get justice and, instead of that, international politics have vitiated the whole thing and we are involved therein.

Similar is the case in the matter regarding the treatment of Indians in South Africa. We very well know that India has not got any, real voice

in the United Nations Organization. The United Nations Organization has got five permanent seats in the Security Council, and countries like Britain, America, Russia, France and China have each got one seat and India with a population almost bigger than any of them has not been given any seat. I therefore, think that it is not very honourable for India to be there on these terms.

It is quite possible that tomorrow the Parliament may decide that we shall not be in the United Nations Organisation and in that case this entry in the Constitution may be a sort of hindrance. The United Nations Organization is mentioned as something permanent and I therefore think that this entry in the Union List is superfluous as well as injurious. It really binds down the Parliament, and so I personally feel that this entry has no place in this list. Neither India is committed for ever to the United Nations Organization nor does the House wish to aspire to do so and when we study the reactions of the world to this United Nations Organization, we find that there is always criticism that it can only be a real world organization when other nations are ready to part with a little of their sovereignty. The veto power gives power to the United States of America and the Soviet Russia, who do not want to part with any of their sovereignty, to veto any proposal and in this way, I do not think it can go very far with this sad state of affairs.

I therefore, think that the United Nations Organization is not an organization of such a character that it should be put down in our Constitution as entry No. 12 in List No. 1 of Seventh Schedule. I think that entry No. 10 is quite comprehensive and it will include the United Nations Organization. I therefore strongly feel that this entry 12 must be deleted and we must not have this in our Constitution.

The Honourable Dr. B. R. Ambedkar : Sir, there are various considerations which arise with regard to this amendment. As my honourable Friend, Mr. Kamath will see this is not the only entry which relates to foreign nations. There is, in the first place, an entry called Foreign Affairs which is broad enough, to be operated upon by this country if it wishes to establish itself as a member of any international organization. There is also the entry following, which we are dealing with now, which permits legislation relating to participation in any international conference or any international body. In view of that, I should have thought that the kind of amendment which has been moved by my honourable Friend, Mr. Kamath is really unnecessary. Secondly, it must be remembered that this is merely a legislative entry. It enables the State to make legislation with regard to any of the entries which are included in List I. If there was an article in the body of the Draft Constitution which limited the legislative power of the State given by any one of these entries, the question such as the one raised by my honourable Friend, Mr. Kamath would be very relevant, but I do not find that there is any limiting article in the Constitution itself which confines the legislative power given under this entry to the membership of the United Nations Organization and there is no such entry at all in the article. Therefore the State can act under any of the other items and be a member of any other international organization. But if the House is particular about it, I think no harm can be done if Mr. Kamath's amendment is accepted and therefore, I leave the matter to the House to decide.

Mr. President : The question is:

“That in entry 12 in List-I the words ‘or any other international body’ be inserted at the end.”

The amendment was negatived.

Mr. President : The question is :

That entry 12 stands part of List I."

The motion was adopted.

Entry 12 was added to the Union List.

New Entry 9-A

Mr. President : There is notice of one amendment by Prof. Shibban Lal Saksena for adding one more entry : "Cosmic energy, and scientific and industrial research and other resources needed for its production, development and use." It comes after entry No. 9. I missed it just then. I should have put it after entry No. 9.

Would you like to move it, Mr. Shibban Lal Saksena ?

The Honourable Dr. B. R. Ambedkar : I do not know what it means.

Mr. President : We have atomic energy; he wants to have cosmic energy also.

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

"That after entry 9 of List I, the following new entry be added :—

" 9- A Cosmic energy, and scientific and industrial research and other resources needed for its reproduction, development and use."

Sir, we have provided in entry No. 9 for atomic energy and mineral resources essential to its production. We very well know that atomic energy has revolutionised the whole conception of defence. In fact, the biggest problem in the U.N.O. is about the atomic energy. You all very well know that there is also the cosmic energy. About this also, researches are being made by Russia. We have often heard that on the Pamir Plateau there are laboratories where Russia is investigating into cosmic rays and its use for war purposes. In these days we cannot remain ignorant of this great advance in science. I think our State should also undertake this research work which is at present being carried on by Russia and other countries. Therefore, I think there should be entry No. 9-A in which we should provide for this item. We have recently passed a Bill for atomic energy and we are doing something about it. About this cosmic energy and cosmic rays also about which we have heard so much in the scientific magazines, I think we should make provision in our Constitution. I hope Dr. Ambedkar will see that this lacuna is removed.

The Honourable Dr. B. R. Ambedkar : Sir, all I can say is that if the amendment moved by my Friend Prof. Shibban Lal Saksena is at all necessary, I think we have enough power under entry No. 91 of List I to deal with that "any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists". That matter could be covered by this.

Shri H. V. Kamath : That would cover many of the entries in the List itself.

Mr. President : The question is:

"That after entry 9 of List I, the following new entry be added:—

" 9- A. Cosmic energy, and scientific and industrial research and other resources needed for its reproduction, development and use."

The motion was negatived.

Entry 13

Mr. President : There is an amendment of which notice has been given by Messrs Mohammed Ismail, Pocker, and Ahmed Ibrahim. I find none of them, here. So that is not moved.

There is no other amendment to this entry.

Entry 13 was added to the Union List.

Entry 14

Mr. President : There is no amendment.

Shri Brajeshwar Prasad : I would like to speak on this, Sir.

Mr. President : Speak on war and peace ? Why ? We all understand war and peace. It is there.

Shri Brajeshwar Prasad : I would like to speak a few lines.

Mr. President : Oppose it or support it?

Shri Brajeshwar Prasad : I would like to have further elucidation.

Mr. President : Very well; come along.

Shri Brajeshwar Prasad : Mr. President, Entry 14: War and Peace. While discussing entry No. 5, I had suggested that instead of the word Parliament, the word 'President' ought to be incorporated—"such industries which are declared by Parliament to be essential for certain purposes". Here, it is not defined whether the question of declaration of war or peace shall be the sole jurisdiction of the President or Parliament. On the lines of the American Constitution, I would like clarification of this question. It is a very vital question, Sir. The power to frame laws regarding war and peace has been left to Parliament. But, I want that this power should not be left in the hands of Parliament. It should be left in the hands of the President. I have nothing more to add.

Mr. President : Dr. Ambedkar, would you like to say anything in reply?

The Honourable Dr. B. R. Ambedkar : No elucidation is necessary.

Mr. President : The question is :

"That entry No. 14 stand part of List I."

The motion was adopted.

Entry No. 14 was added to the Union List.

Entry 15

Mr. President : There is no amendment to this.

Entry No. 15 was added to the Union List.

New Entry 9-A

Mr. President : There is a suggestion by Mr. Kamath that another entry be added, No. 15-A, Mr. Kamath, you may move it.

Shri H. V. Kamath : Mr. President, I move:

“That after entry 15 in List I, the following new entry be inserted:

“ 15-A. The acquisition, continuance and termination of membership of any international or supranational Organisation.”

I am sorry there is a printers devil : it is ‘supernational’ it should be ‘supranational’.

I feel, Sir, that in view of the rejection of my last amendment which happily enough commended itself to Dr. Ambedkar.....

Mr. President : But not to the House.

Shri H. V. Kamath : Unhappily though, not to the House. I feel, Sir, there is some *raison d’etre* for this amendment of mine. Had my last amendment been accepted, namely, membership of the UNO or any other international body, then, there would have been no need for this amendment. But as the House, as on one or two rare occasions which I recollect did not accept the advice of Dr. Ambedkar, I think that this provision should be made in this List. My honourable Friend Dr. Ambedkar pointed out to me Entry 10 and said that it had a very wide field and covered many things not otherwise specifically mentioned. It may be that the term ‘foreign affairs’ means all things to all men. But in a matter like this *i.e.*, in the Union List (Legislative) we ought to be specific as far as lies in human power. It is not enough to say just ‘foreign affairs’. It conveys either everything or nothing. Apart from that, the second part of Entry 10 refers to all matters which bring the Union into relation with any foreign country. No Organisation or association or international body is mentioned as such. Entry 12 which we had adopted refers only to UNO. This list therefore to my mind suffers from a little lacuna and that is, our membership of any international body, or I may call it supranational body, other than the UNO. I have made a distinction between “international” and “supranational.” Supranational in political parlance today connotes more than merely international. In modern political theory. after the birth of the League of Nations, politically interested people started talking of the Super-State—the Super-State to which all component States would willingly surrender a portion of their sovereignty. That was called a Super-State. But here we are talking of an Organisation which has no powers, coercive powers of the State apparatus which we may find in a World Government of which many are dreaming today. Here we are confining ourselves to an Organisation of nations where various assembled in conclave or in conference might discuss several matters affecting all of them and arrive at certain decisions for implementation by the various Governments concerned, or members of the particular Organisation; and here comes the moot point, *viz.*, the membership of any international or supranational Organisation must be a matter which has got to be considered in great detail before one elects to become a member of any organisation. Today membership of an organisation carries with it several commitments of various sorts and therefore it is necessary to provide for not merely the acquisition of membership but also its continuance and termination. If we say mere membership, it is in my judgment too vague, and therefore we must specifically state everything. I am not mentioning only UNO because it is only one of the many organisations which human wisdom has created. There are no bounds to man’s wisdom, here as elsewhere. I, therefore, feel that in view of the rejection of my previous amendment, and in view of the non-mention of this particular item in the other entries of this List, that this is a very vital matter which not merely Dr. Ambedkar but also the House might choose to consider in all seriousness. I, therefore, commend my amendment to the House for its consideration.

Shri S. V. Krishnamoorthy Rao : (Mysore) : Mr. President, acquisition, continuance and termination of membership of international or supranational organisations can be only according to the rules,—bye-laws framed by those bodies and I think it has already been provided in entry 13 which we have already accepted—participation in international conferences, associations and other bodies and implementation of decisions made therein. So I feel that entry 13 which the House has already accepted covers this and this amendment is superfluous. I, therefore, oppose it.

Mr. President : The question is :

“That after entry 15 in List I, the following new entry be inserted:—

‘15- A. The acquisition, continuance and termination of membership of any international or supranational Organisation.’ ”

The amendment was negatived.

Entry 16

Mr. President : We go to Entry 16. There is no amendment to that. I put it to vote.

Entry 16 was added to the Union List.

Entry 17

Entry 17 was added to the Union List.

Entry 18

Entry 18 was added to the Union List.

Entry 19

Entry 19 was added to the Union List.

Entry 20

Entry 20 was added to the Union List.

Entry 21

Entry 21 was added to the Union List.

Entry 22

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

“That for entry 22 of List I, the following entry be substituted:—

‘22. Piracies and crimes committed on the high seas or in the air; offences against the law of nations committed on land or the high seas or in the air.’ ”

[The Honourable Dr. B. R. Ambedkar]

The second part of this entry—"offences against the law of nations committed on land or the high seas or in the air" is new. It was an omission made in the earlier part of the draft. With regard to the first part, we are substituting the word "crimes" for "felonies and offences", as it is the common word used in India. "Felonies and offences" are English technical terms. We are also taking out of the first part, the words, "against the law of nations" because piracies and crimes are matters which can be regulated by any country by reason of its own legal jurisdiction and authority. It has nothing to do with the law of nations.

Mr. President : There are two amendments to this, of which notice is given by Mr. Diwakar and Mr. Brajeshwar Prasad. But they do not arise after the amendment which has been moved by Dr. Ambedkar. Then there is the amendment of Prof. Saksena. But is your amendment any different?

Prof. Shibban Lal Saksena : No, it is covered by the same amendment.

Mr. President : Then there is the amendment of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Sir. I move :

"That in amendment No. 8 of List I (Sixth Week), in the proposed entry 22 of List I—

- (i) for the word 'Piracies' the word 'Piracy' be substituted; and a semi-colon be inserted thereafter;
- (ii) the word 'and' after the word 'Piracies' be deleted; and
- (iii) the words 'committed on land or the high seas or in the air' be deleted."

Sir, with regard to the first part of my amendment, I want to change the Word "Piracies" from the plural to the singular. I shall not press this matter to the vote, but I would ask the Drafting Committee to consider the matter. I would like to draw the attention of the House to certain other items which precede this item, and to say that they are all in the singular. I submit that the word "piracy" is quite sufficient to include the subject. It is not necessary that we should use the word in the plural. For instance, we have in item 11, said—"Diplomatic, consular and trade representation" and not "representations". So also in item No. 14 we speak of "War and Peace" and not "Wars and Peaces". Then we come to item 16—"Foreign jurisdiction" and not "Foreign jurisdictions." We come to item 17—"Trade and Commerce" and not "Trades and Commerces". Then we come to item 20—"Extradition" and not "Extraditions". I think these would be enough to show that the singular is quite sufficient in this item also. But as I said, I shall be quite content to leave the matter to the tender care of the Drafting Committee.

Then with regard to the second part of my amendment, I want to remove the word "and" occurring, after the word "Piracies" or "Piracy"—whichever would be more acceptable. I say that that word, Piracy or Piracies should stand alone, and then there should be a semi-colon so as to entirely separate this from what is coming on, because they are entirely different. A semicolon has been accepted as a favourite device in similar other places. This is also a matter of drafting.

Then comes the expression "crimes committed on the high seas or in the air". I should leave it untouched. But when we come to the words "offences against the law of nations", and then there is an unnecessary explanation—"committed on land, or the high seas or in the air". The addition of those last words, I think, is first of all absolutely unnecessary. If we leave it at

“offences against the law of nations,” it includes offences Committed anywhere. As the honourable Member Dr. Ambedkar has just now explained, in dealing, with another article, we should be elaborate when dealing with a subject in an article, but in specifying a certain subject in the legislative list, it is enough to mention the subject, and the question as to in what direction the legislature, will act, that is a matter for the legislature alone. We need not try to elaborate the jurisdiction of the legislature in that respect. In this case, I humbly suggest that the words—“committed on land, or the high seas or in the air” have the effect—if they have any effect at all—of curtailing the jurisdiction of the Union Legislature, and quite unnecessarily too, and without perhaps appreciating the curtailment effected. I submit that if we leave the expression “offences against the law of nations” that will imply offences committed anywhere. By saying that the offences must be committed on “land, the high seas or in the air,” we are needlessly elaborate. I also submit that the very mention of the expression “high seas” would leave out offences against the law of nations committed in the low seas or within the limits of the territorial waters. If any offence against the law of nations is committed between the land and the high seas, then I think entry 22 as it is now drafted, would preclude it from the jurisdiction of the Union Legislature. Therefore I submit it is better to omit, the words “committed on land, or the high seas or in the air”.

Sir, while considering a previous entry the honourable Member referred to entry 91. That is a residuary article. There it is stated—“Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists”. But I submit it would not be a very safe thing to rely upon the curative virtues of entry 91. It is not meant, I submit most respectfully, to cure any specific omission of a certain subject in a specific part of a list. It is a well-known law of interpretation that where you make a specific mention of a subject, and omit certain specific subjects, then the general words in any other part would not cover that omission, and would not cure any defect or omission which might have been left in the specific items. I suppose the items introduced by the Honourable Dr. Ambedkar have been submitted to the House with careful thought and careful consideration. So it would be said that offences against the law of nations committed in this no-man’s area would be out of the jurisdiction of the Union Legislature. Therefore, I submit it will be better to leave out the explanatory portion altogether. That part is, in my humble judgment, absolutely unnecessary and may lead to some amount of quibbling. I know my fears are justified by some leading cases on this point. There are some very authoritative ruling to the effect that general words at the end of a list do not enlarge the powers already given or to supply the gaps which are definitely left in the body of the enumerated list. That is a well-known law of interpretation. But I believe probably that I am submitting my arguments to the Honourable Dr. Ambedkar without any effect, because he has not heard me and was engaged in conversation.

Mr. President : There is then Mr. Kamath’s amendment, No. 184.

Shri H. V. Kamath : Sir, I move :

“That in amendment No. 8 of List I (Sixth Week), in the proposed entry 22 of List I, the words ‘and crimes’ be deleted.”

I am not sure, Sir, in my own mind as to whether crimes of all types should be within the exclusive jurisdiction of the Union Government and not also concurrently with the State Governments. As regards high seas there is no doubt on that point, because shipping, navigation and allied subjects are within the purview of the Union Government.

[Shri H. V. Kamath]

The House is very well aware that many States and provinces have made considerable headway in civil aviation. Most of the provinces have now flying clubs and some of the provinces have planes of their own for their Ministers. Facts reported in the press recently—not in our country, but in other countries like America and Europe—have brought to light different types of crimes committed when a plane was in mid-air. There has been *mar peet* inside a plane; there have been scuffles for money, or rum or liquor. Suppose, for instance, one of the provincial or State planes, or the plane of a flying club is up in the air and some sort of offence is committed. Or, consider, for instance, a pilot who may be drunk tries to jump out of the plane, either with parachute or without it; then he is certainly attempting to commit suicide and putting the lives of people inside it into danger. In such contingencies should we leave these matters solely to the exclusive jurisdiction of the Union Government? Should we not make such matters concurrent between the Union and the State Governments and confer power upon the States also to make rules or regulations, or even to legislate in matters of this kind ?

I feel, that this matter needs some attention because of the recent developments in civil aviation.

The Honourable Dr. B. R. Ambedkar : Sir, listening to what my honourable Friend Mr. Naziruddin Ahmad said, I am afraid I have again to say that he has not got a very clear notion of what this entry 22 proposes to do.

Mr. Naziruddin Ahmad : The difficulty was that Dr. Ambedkar was engaged in conversation and did not hear me.

The Honourable Dr. B. R. Ambedkar : I was no doubt engaged in conversation; but I was quite avadhan to what he was saying.

My Friend first posed the question as to why we should use the term “piracy and crime” in plural. Well, the other way in which we can use piracy and crime would be in collective terms. I think in matters of this sort, where criminal legislation is provided for, it is much better not to use the word in collective form. He cited some examples, but he forgets the fact that in some cases the generic use of the term is quite sufficient; in other cases it is not sufficient. The Drafting Committee, therefore, has deliberately used the word “piracies and crimes” in plural because it is appropriate in the context in which it is used.

My Friend Mr. Naziruddin Ahmad said as a second count against this entry that there ought to be a semi-colon after ‘Piracies’. Now, that, I think, would distort the meaning and the purport of item 22. Supposing we had a semicolon after ‘piracies’ ‘Piracies’ in item 22 would be dissociated from the rest of the entry. Now, if piracies are dissociated from the rest of the entries would mean that the Centre would have the right to legislate on all piracies, including piracies in inland rivers also. It is not the intention of this entry to give to the Central Legislature the power to legislate on piracies of all sorts. The words “committed on high seas or in the air” are words which not only qualify the word “crime” but they are also intended to qualify the word “piracy”

Then, the third count of my Friend was that we should omit the words “on land, on high seas and in the air” after the words “offences against the law of nations”. That would not make it clear that the second entry is an all-pervasive entry and gives the power contrary to the first part of the entry to the Central Legislature to deal with offences against the law of nations, not merely on the high seas and in the air but also on land. In other words, the States

will have no kind of power so far as the second part of the entry is concerned. I, therefore, submit that the entry as proposed carries the intention of the draftsman and no amendment is necessary.

Mr. Naziruddin Ahmad : The honourable Member has not heard me. What about offences committed against the law of nations, which is neither, on land, nor on high seas, nor in the air, but in the low seas ?

The Honourable Dr. B. R. Ambedkar : It can only be in his imagination, it cannot be anywhere else.

Sardar Hukum Singh : (East Punjab : Sikh) : If piracies are not dissociated from the remaining items, then would these words 'in the air' also qualify the word 'piracy'?

The Honourable Dr. B. R. Ambedkar : There may be piracies in the air also.

Mr. Naziruddin Ahmad : Piracies are always on water, never on land or in the air.

Mr. President : I will now put the amendments to vote.

Mr. Naziruddin Ahmad : I would like only the last one to be put to vote.

Mr. President : The question is :

That in amendment No. 8 of List I (Sixth Week), in the proposed entry 22 of List I, the words 'committed on land or the high seas or-in the air' be deleted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 8 of List I (Sixth Week), in the proposed entry 22 of List I. the words 'and crimes' be deleted."

The amendment was negatived.

Mr. President : The question is :

"That for entry 22 of List I, the following entry be substituted:—

"22. Piracies and crimes committed on the high seas or in the air; offences against the law of nations committed on land or the high seas or in the air."

The amendment was adopted.

Entry 22, as amended was added to the Union List.

Entry 23

Entry 23 was added to the Union List.

Entry 24

Entry 24 was added to the Union List.

Entry 25

Entry 25 was added to the Union List.

Entry 26

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

“That for entry 26 of List I the following be substituted :—

‘26. Import or export across customs frontiers; definition of customs frontiers.’ ”

This is just a re-arrangement of the original entry.

Mr. Naziruddin Ahmad : Sir, I move :

“That in amendment No. 9 of List I (Sixth Week), for the proposed entry 26 of List I, the following be substituted :—

‘26. Customs frontiers; import and export across customs frontiers.’

I fully admit that this is more or less of a drafting nature and therefore I should explain the reasons which induced me to suggest this amendment and then leave it to the Drafting Committee for final consideration. The entry as moved by Dr. Ambedkar says “import or export across customs frontiers”. I fail to see the real purport of the word “or”. Are the subjects “imports” and “exports” alternative? Should it be import or export, or should it be import and export? The form in which it is moved makes the entry “either import or export”. It would seem from the alternative way of expression that if the Union will have “import” it cannot have “export” and *vice versa*. I do not think that this contingency was intentional but it is a drafting error which should be corrected.

Dr. Ambedkar’s amendment puts it as “definition of customs frontiers”. I think the expression “Customs frontiers” would include the entire subject of customs frontiers and necessarily implies the power to define customs frontiers. You cannot have jurisdiction to pass laws over customs frontiers without having jurisdiction to define customs frontiers. The very fact that customs frontiers is within the cognisance of the Union legislature also empowers it to define it and it is absolutely unnecessary to expand it further. The word “and” in “import and export” in my amendment is most important. As I have said already this is more or less, of a drafting nature and therefore I would leave it to the Drafting Committee to deal with it without having my motion put to the House.

The Honourable Dr. B. R. Ambedkar : Sir, I am content with clarity and I do not wish to run after elegance.

Mr. President : The question is :

“That for entry 26 of List I the following be substituted:—

‘26. Import or export across customs frontiers; definition of customs frontiers.’ ”

The amendment was adopted.

Entry 26, as amended, was added to the Union List.

New Entry 26-A

Mr. President : The honourable Member’s (Mr. Shibban Lal Saksena) amendment No. 185 is already covered by one of the articles we have passed (271-A). We have already passed the chapter dealing with ownership of property. That gives the right to the legislature to deal with the subject.

Prof. Shibban Lal Saksena : I want that the power to legislate on the subject should be given only to the Union legislature and not to the States.

Mr. President : It will come under entry 42 which will cover that.

Prof. Shibban Lal Saksena : Will it exclude the power of the State ?

Mr. President : Oh, yes. All properties of the Union are covered by entry 42. I do not think the amendment is necessary at all.

Prof. Shibban Lal Saksena : Sir, there have been cases in the Supreme Court of America on this subject and I would like it to be clearly stated. I would therefore like to move my amendment. Sir, I move:

“That after entry 26 of List I, the following new entry be added:—

‘26- A. Ownership of and dominion over the lands, minerals, and other things of value underlying the ocean seaward of the ordinary low watermark on the coast exceeding three nautical miles.’ ”

I am aware that in the Constitution we are taking over these things but I do want that it should be made absolutely clear. I would refer to one important case recently decided by the Supreme Court of America on June 23rd, 1947. The case was *United States vs. California*. In that case, they had found some very valuable quantities of oil and gas underneath the land near California. The case went to Supreme Court and although the majority of the Court were in favour of the United States, two judges, Justices Reed and Frankfurter were against it. I think it is a very important thing that this right of the Union should be absolutely above suspicion. I would quote a paragraph from that judgment:

“The very oil about which the State and Nation here contend might well become the subject of international dispute and settlement. The ocean, even its three-mile belt in this of vital consequence to the nation in its desire to engage in commerce and to live in peace with the world; it also becomes of crucial importance should it ever again become impossible to preserve that peace. And as peace and world commerce are the paramount responsibilities of the nation, rather than an individual State, so if wars come, they must be fought by the nation. The State is not equipped in our constitutional system with the powers or the facilities for exercising the responsibilities which would be concomitant with the dominion which it seeks. Conceding that the State has been authorized to exercise local police power functions in the pact of the marginal belt within its declared boundaries, these do not detract from the Federal Government’s paramount rights in and power over this area. Consequently, we are not persuaded to transplant the Pollard, rule of ownership as an incident of State sovereignty in relation to inland waters out into the soil beneath the ocean, so much more a matter of national concern.”

This is from the judgment of the U.S. Supreme Court, who laid down that the property underneath the ocean belongs to the Federal State. If this is mentioned specifically in the Union List, then there is no likelihood of any future dispute arising in regard to any such minerals or other wealth which may be found in the coast underneath the land. I, therefore, suggest that if this entry is added, it will make the whole thing very clear.

The Honourable Dr. B. R. Ambedkar : This matter is already covered, if I may say so, by article 271 A. My difficulty is : my Friend Prof. Shibban Lal’s amendment speaks of ownership. Now, in all these legislative lists, we only deal with power to make law, not power to appropriate. That is a matter which is regulated by another law, and not by legislative entries. I therefore cannot accept it.

Mr. President : He has referred to a judgment of the Supreme Court of the United States, but I think that is based on the absence of something like article 271 A of our Constitution.

The Honourable Dr. B. R. Ambedkar : We discovered that there was no entry and this was therefore a matter of doubt and in order to clear that doubt we put in 271 A. It is practically a verbatim reproduction of Mr. Shibban Lal’s amendment.

Mr. President : So I shall put Mr. Shibban Lal's amendment. The question is :

"That after entry 26 of List I, the following new entry be added:—

'26- A. Ownership of and dominion over the lands, minerals, and other things of value underlying the ocean seaward of the ordinary low watermark on the coast exceeding the nautical miles.' "

The motion was negatived.

Entry 27

Entry 27 was added to the Union List.

Entry 28

Mr. President : Then we come to entry 28. There is an amendment Mr. Naziruddin Ahmad No. 158.

Mr. Naziruddin Ahmad : Not moving, Sir.

Entry 28 was added to the Union List.

Entry 29

Mr. President : Now we come to entry 29. There is an amendment by Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Not moving, Sir.

Entry 29 was added to the Union List.

Entry 30

Mr. President : There are no amendments to entry 30.

Entry 30 was added to the Union List

Entry 31

Mr. President : I find there are some amendments to entry 31.

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

"That for entry 31 of List I, the following entry be substituted:

'31. Highways declared to be national highways by or under law made by Parliament.' "

It is just transposition of words to make the matter clear.

Mr. President : There is notice of an amendment to the original entry Mr. Karimuddin, but that is not to be moved. There is no other amendment. So I put this entry No. 31 as moved by Dr. Ambedkar.

The question is:

“That entry 31, as amended, stand part of List I.”

The motion was adopted.

Entry 31, as amended, was added to the Union List.

Entry 32

Mr. President : There is an amendment to entry 32, but that is only for deletion.

Entry 32 was added to the Union List.

Entries 33 and 34

Entries 33 and 34 were added to the Union List.

Entry 35

Mr. President : There is an amendment to entry 35 by Mr. Santhanam.

The Honourable Shri K. Santhanam : (Madras: General) : Not moving, Sir.

Entry 35 was added to the Union List.

Entry 36

Entry 36 was added to the Union List.

Entry 37

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

“That in amendment 12 of List I, in entry 37, for the words ‘by air or sea’ the words ‘by railway, by sea or by air’ be substituted.”

This is just caused by an omission.

Dr. P. S. Deshmukh : Sir, I beg to move:

“That in amendment No. 12 of List I (Sixth Week), in entry 37 of List I for the words ‘by railway, by sea or by air’ (proposed to be substituted.), the words ‘by land, sea or air’ be substituted.”

My reason is quite plain. The present change introduced according to the amendment moved by Dr. Ambedkar is for the addition of the words ‘by railway’. I do not see any reason why the change should be so restricted. If the transport of goods and passengers by railways have to be brought within the jurisdiction of the Union-Government, why not we use the term ‘by land’? If this is not done, the carriage of goods and passengers on the national highways will not come within the jurisdiction of the Union Government. If there is any particular reason why this should not be made applicable to passengers moved by roads, I would not press my amendment. I do not think so because, although road transport falls within State jurisdiction exclusively inter-State road-transport cannot. I would like therefore to know why the amendment should be confined to railway traffic only and should extend to traffic on Toads also ?

Shri R. K. Sidhwa : What about buses run by provincial Governments ?

Mr. President : They all come under your amendment.

Dr. P. S. Deshmukh : Bus transport in the States will be excluded. It will apply to inter-State traffic only.

Shri R. K. Sidhwa : This could be applied to them.

Mr. President : This could be applied to the carriage of passengers by air, by sea or by railway.

Dr. P. S. Deshmukh : If goods and passengers carried by railway are to be placed under the Union Government according to my amendment it should include also goods and passengers carried by road, but only where the movement covers more than one State. The States having been given exclusive jurisdiction within their territories will not be affected.

Mr. President : The entry does not cover only inter-State traffic. It may be within one State, but if the transport is by railway it will be within the cognisance of the Central legislature. If you put down 'by land', it will bring in the ekka, the tongas and even the bullock-carts.

Dr. P. S. Deshmukh : I intend my amendment to be limited to traffic covering more than one State only.

Mr. President : It is not limited like that here.

Dr. P. S. Deshmukh : That was my intention. If it covers more than one State, it will be necessary for the Union to have this jurisdiction.

Mr. President : The next amendment stands in the name of Mr. Kamath to substitute the word 'rail' for the word 'railway'. Is a speech necessary for moving this amendment ?

Shri H. V. Kamath : I shall leave it to the cumulative wisdom of the Drafting Committee which I am sure is abundant. My Knowledge of English language, though very meagre, impels me to say that the expression carriage 'by railway' is not quite correct and opposite. We usually say carriage 'by rail' and not by 'railway'. Therefore I just formally move this amendment, viz.,

"That in amendment No. 12 of List I (Sixth Week), in entry 37 of List I, for the word 'railway' (proposed to be substituted) the word 'rail' be substituted."

The Honourable Dr. B. R. Ambedkar : Sir, I am afraid I cannot accept the amendment moved by Dr. Deshmukh, because if we include it, it will become a central subject.

Dr. P. S. Deshmukh : If it is between two provinces?

The Honourable Dr. B. R. Ambedkar : That will come under inter-State traffic.

Dr. P. S. Deshmukh : I am prepared to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn

(Shri H. V. Kamath did not press his amendment.)

Mr. President : The question is

"That in entry 37 of List I, for the words 'by air or by sea' the words 'by railway, by sea or by air' be substituted."

The amendment was adopted.

Entry 37, as amended, was added to the Union List.

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

“That for entry 38 of List I, the following entry be substituted:—

‘38. Railways.’ ”

I think this change requires some explanation. If honourable Members will turn to entry 38 as it stands in the Draft Constitution, they will notice in the first place the distinction made between Union railways and minor railways. The distinction was necessary because, in respect of the Union railways, the Centre would have the authority to legislate with regard to safety, minimum and maximum rates and fares, etc. The responsibility of actual administration as carriers of goods and passengers, in respect of minor railways, was limited. In other words, so far as maximum and minimum rates and fares, station and service terminal charges etc. are concerned, they were taken out of the jurisdiction of the Central legislature. It is felt that it is desirable that, as the railway service is one uniform service throughout the territory of India, there should be a single legislative authority to deal with railways in all matters on a uniform basis. Consequently the entry in the First Part is now extended to all railways including minor railways. Again, as legislation is intended to be uniform, it is felt that it is unnecessary to retain the second part of the entry which makes a distinction between Union railways and minor railways.

I might also say that this entry is purely a legislative entry. It is not an entry which deals with ownership. That means that even if the Centre had power to regulate minimum and maximum fares and rates and terminal charges, every State which owned a minor railway, whether it is a State in Part I or Part III, if it was the owner of the particular railway, would be entitled to receive and keep the proceeds of the rates and fares as may be fixed by the Centre. It does not affect the rights of ownership at all. They remain as they are. If the Centre wishes to acquire any minor railway now owned by any State either in Part I or Part III the Union will have to acquire it in the ordinary way. Therefore this is purely a legislative entry. The object of the amendment is to have a uniform law with respect to all matters dealing with railways and it does not affect any question of ownership at all.

The question of tramways is however separated from the question of railways. We propose in the Interpretation Clause to define railways in such a manner as to exclude tramways so that the States in Parts I and III will retain the power to regulate tramways in all respects as though they are not covered by ‘railways’.

Shri R. K. Sidhwa : There is a Minor Railways Act which is worked by the Provincial Government. May I know whether it is intended to repeal that Act and bring it into the Union ?

The Honourable Dr. B. R. Ambedkar : Yes, the Union will have power to abrogate that Act, make any other law or retain it if it so feels. It is only an enabling entry which will enable the Centre either to make different laws regulating the major and minor railways or make one single law regulating all railways irrespective of whether they are a major railways or minor railways.

Shri R. K. Sidhwa : Then the minor railways will be governed by the Minor Railways Act ?

The Honourable Dr. B. R. Ambedkar : Yes, the existing law will continue until Parliament changes it. This is merely to give power to the Parliament to change it.

Mr. President : I would now put entry 38 to the vote. I am told there is an amendment which I have received this morning after nine. I am afraid I cannot accept it. The question is :

[Mr. President]

“That for entry 38 of List I, the following entry be substituted :—

‘38. Railways.’ ”

The amendment was adopted.

Entry 38, as amended, was added to the Union List.

Entry 39

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

“That for entry 39 of List I, the following entry be substituted :—

‘39. The institutions known on the date of commencement of this Constitution as the National Library, the Indian Museum the Imperial War Museum, the Victoria Memorial, the Indian War Memorial, and any other institution financed by the Government of India, wholly or in part and declared by Parliament by law to be an institution, of national importance.’ ”

The substance of the entry is the same as it exists at present, except for a few verbal changes which have taken place in the nomenclature of the institutions subsequent to the 15th August 1947.

Shri B. Das : (Orissa: General) : When the Constitution comes into force, will the name “Imperial War Museum” be changed to “National War Museum” as “Imperial Library” has been changed to “National Library” ?

The Honourable Dr. B. R. Ambedkar : I understand that the “Imperial Library” has been changed to “National Library”, but the Imperial War Museum retains its existing name. These descriptions are intended-merely to identify the institutions, whenever Parliament wishes to make any law about them.

Shri B. Das : I want to know whether when the Constitution comes into force and the Adaptations are made, the word “Imperial” will go. I expect words like “His Majesty’s Government”, “The Crown,” etc., will vanish.

The Honourable Dr. B. R. Ambedkar : Adaptations will apply to laws and not to names.

Mr. President : This entry gives the right to Central Legislature to change the names.

There is an amendment to this by Mr. Naziruddin Ahmad, No. 160.

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

“That in amendment No. 14 of List I (Sixth Week), in the proposed entry 39 of List I—

- (i) for the words ‘on the date of commencement’ the words ‘at the commencement’ be substituted;
- (ii) for the words ‘other institution’ the words ‘other similar institution’ be substituted; and
- (iii) for the words ‘by Parliament’ the words ‘by or under any law made by Parliament’ be substituted.”

With regard to the, first part of my amendment, it is of a drafting nature. Entry 39 as it is at present refers to the “date of commencement of the Constitution”. I submit the “commencement” of the Constitution means the date on which the Constitution comes into effect. We have used this expression in numerous places in the Draft Constitution in the articles which have been accepted by the House. We have described the date of commencement of the Constitution as the “commencement of the Constitution”. The words

“date of” would be not only unnecessary but would not be in keeping with the nomenclature and the phraseology used in other articles which have been accepted by the House. I submit that there should be some amount of uniformity, and instead of “on the date of commencement” of the Constitution, we should have “at the commencement” of the Constitution which certainly means the date. Commencement always starts on a date and it begins immediately after twelve midnight of the previous day. This is of a drafting character and I merely draw the attention of the House and of the Drafting Committee to this so that they can make the necessary change, if they so choose, in the interest of uniformity.

The second part of my amendment is important. The item moved by Dr. Ambedkar runs thus: “The Institutions known as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, the Indian War Memorial, and any other institution financed by the Government of India”. I want to change the last part to read as “any other similar institution” financed by the Government of India. Sir, here we are dealing with a particular class of institutions. The National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and the Indian War Memorial, they all belong to a class, and if we do not restrict the last part of the entry to any other “similar” institution, we would be unconsciously including many other institutions of an entirely dissimilar character. This will enable Parliament to cover under this entry any other institution financed wholly or in part by the Government of India, apart from its character, apart from its being related to cognate subjects specifically included herein. I submit, therefore that in order to clarify the meaning of this entry and restrict it to similar class of institutions, we should definitely say “any other similar institution”. There is again the rule of interpretation to which I referred a little while ago that if we specify certain items and at the end we include a general expression, the general expression will be controlled by the items mentioned. Courts will be inclined to declare that “any other institution” will enlarge the scope of the entry beyond the class or character of the institutions specifically mentioned. This is known to every lawyer but may not be known to every non-lawyer. That is why I say that though the meaning should be clear, it is far better to be on the safe side. That will certainly maintain the integrity of the entry and also make it sufficiently elastic to include similar institutions. But if the expression “any other institution” is intended to include other classes of institutions, then I think it is vague and it should be definitely brought in by means of an independent entry. So this amendment raises a question somewhat of principle.

That other part, the last part of my amendment is for the words “by Parliament” the words “by or under any law made by Parliament” be substituted. In this connection I would only refer to amendment No. 10 introduced by Dr. Ambedkar, the insertion of a substituted entry No. 31. It reads :—“Highways declared to be national highways by or under law made by Parliament.” There is a distinction between a declaration made by Parliament and a declaration under any law made by Parliament, and in the one case Parliament makes the declaration on the floor of the House but in the other case Parliament empowers others to make the declaration and declarations are made under the law. In order to keep to the phraseology of the amended entry No. 31, I have also attempted to introduce “or under law made by Parliament”. It will make it more elastic and Parliament need not be required to make the declaration directly but will permit the declaration being made by some other authority empowered in this behalf. I have seen in many other entries the expression “by or under law made by Parliament.” So I wanted to make it uniform so as to make it more elastic. I submit this is more or less of a drafting nature

[Mr. Naziruddin Ahmad]

and may be left to the Drafting Committee but with regard to the second portion of my amendment, namely, "similar institution", I think it may have some important consequences. So I will ask the House to consider the second part of the amendment.

Prof. Shibban Lal Saksena : Sir, in this entry we have named a few institutions and we have said that they shall be in the Union List. The institutions which have been mentioned are such as the Imperial War Museum, the Victoria Memorial, etc., and in the end we have also got a clause which says: "any other institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance". If it is only one institution of its kind, there would be no objection. But so long as we put in our Constitution the words "Imperial War Museum" I think that it is not worthy of Free India. In our Constitution also we are trying to perpetuate things which remind us of that imperial power which kept us under bondage so long. I think, Sir, that any trace of that imperialism or a reminder of that must not find a place in our Constitution. I, therefore, think that we must only mention that there should be some institutions and it should be left for the Parliament to define the institutions and in the meantime if you put this in the Constitution, it will be difficult for us to change it afterwards. I, therefore, think that it will be better that these things should be left for the Parliament to decide instead of putting them in this Constitution.

The Honourable Dr. B. R. Ambedkar : I do not think that much explanation is necessary as to why I cannot accept the amendment of Mr. Naziruddin Ahmad. As you will see the entry really falls into two parts. In the first part it deals with specific institutions which are enumerated therein. In the second part it deals with institutions which are either financed by the Government of India, wholly or in part. Therefore, it is not possible to use the words "similar" because that would circumscribe the object of the entry, which is to give the Central Government power to take over any institution which is either financed by itself or financed partly by itself and partly by the Provinces.

Mr. President : The question is:

"That in amendment No. 14 of List I (Sixth Week), in the proposed entry 39 of List I-

- (i) for the words 'on the date of commencement' the words 'at the commencement' be substituted;

(This was not pressed by the Mover.)

- (ii) for the words 'other institution' the words 'other similar institution' be substituted; and

The amendment was negatived.

- (iii) for the words 'by Parliament' the words 'by or under any law made by Parliament' be substituted."

(This was not pressed by the Mover.)

Mr. President : The question is:

"That for entry 39 of List I, the following entry be substituted:-

'39. The institutions known on the date of commencement of this Constitution, as National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, the Indian War Memorial, and any other institution financed by the Government of India, wholly or in part and declared by Parliament by law to be an institution of national importance.'

The amendment was adopted.

Entry 39, as amended was added to the Union List

Entry 40

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

“That for entry 40 of List I, the following entry be substituted

‘40. The institutions known on the date of commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University, and the Delhi University and any other institution declared by Parliament by law to be an institution of national importance.’”

I submit the word “university” is a mistake and it ought to be “institution” and I hope you will permit me to substitute it.

There is no fundamental change in this except that the latter part permits also Parliament to take over any institution which it thinks is of national importance.

Dr. P. S. Deshmukh : May I suggest that 40 A may also be taken together? It is part and parcel of the same thing.

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

“That after entry 40 of List I, the following new entry be inserted:—

‘40 A Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.’”

Mr. President : There are some amendments to entry No. 40. Item 162 stands in the name of Mr. Naziruddin Ahmad and item 1 thereof substituting “ at the commencement” for “on the date of commencement” need not be moved.

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

“That in amendment No. 15 of List I (Sixth week) in the proposed entry 40 of List I,

“the words ‘and the Delhi University and any other institution declared by Parliament by law to be an institution of national importance’ the deleted.”

I have slightly altered my amendment to suit the change introduced by Dr. Ambedkar in his own amendment. I submit that Dr. Ambedkar’s amendment would unduly enlarge the jurisdiction of the Centre and many things which would be otherwise cognizable by the Provinces would now, by virtue of the words which I seek to delete, be included within the jurisdiction of the Centre. The Benares Hindu University and the Aligarh Muslim University have been regarded from their very inception as institutions of a national character and importance and therefore they have been rightly regarded so far as national institutions and they have been rightly placed under the jurisdiction of the Union. But, Sir, the wording “any other institution declared by Parliament by law to be an institution of national importance”, would give undue latitude to the Centre. By virtue of these words, the Union Government will be enabled at any time to acquire jurisdiction over one institution or another of a similar kind. In fact, from a University, a College or school down to a small village school, anything may be claimed as within the jurisdiction of the Centre. While one can appreciate the desire of the Centre to express a carnivorous instinct in this respect, trying to eat everything good or bad, whether belonging to somebody else or belonging to it, I should think that the Centre is getting seriously encumbered with a large number of subjects. The effect of that would be that the Provinces or the States as they are now called will feel less and less responsibility. They will have less and less money and so they will have less and less responsibility. They will develop an irresponsibility and a sense of grievance against the Centre. The result would be that for everything, the Provinces will throw the responsibility upon the Centre.

While there is a natural desire on the part of the Centre to be the guardian of the Provinces who are regarded as not having attained the age of majority,

[Mr. Naziruddin Ahmad]

the Centre is taking an undue responsibility which would make it cumbersome and will highly complicate its machinery and induce it to go into matters of details of administration which should be left to the Provinces. After all the Provinces should be allowed to meddle with their own affairs, to make mistakes and learn from experience. This is the only way that Democracy grows. It is 'not by the extension of your paternal jurisdiction over the Provinces that you can make them learn democracy by experience. In fact, in this respect the, present Constitution as it is now being shaped goes far beyond the acquisitive tendency of even the British Government.

I would point out the dangers that may arise out of these words. With regard to the Delhi university, it may be supposed that the Centre should have some amount of jurisdiction. But, the Centre has already jurisdiction over the matter. It is a University in an area which is centrally administered. Therefore, so long as the Centre has jurisdiction to maintain it as a centrally administered area, Delhi University will certainly continue to be within its jurisdiction. But we are looking forward to a day when the Delhi University or Delhi itself may be made over to a Corporation or other authority and if it is desired to make Delhi a separate Province, then Delhi University will be on the shoulders of the State and not on the Union.

Then, again, we say, "any other institution declared by Parliament by law to be an institution of national importance." Any other institution may mean an institution which is not even educational. Supposing it to mean any other educational institution, it would have the effect of unduly enlarging the jurisdiction of the Union, and curtailing the jurisdiction of the Provinces. This tendency should stop. After all the House took serious decisions in this House before the Draft Constitution was prepared. There were resolutions on individual topics and the Draft Constitution was prepared in accordance with these resolutions. Those decisions should be respected; but we find those decisions have, been flouted or circumvented without any justification, without telling the House that our own resolutions were being violated and in what respect and to what extent. In one case, we have found, Sardar Patel thought, rightly thought, that the decision of the House should be changed. A strong and powerful man as he is he felt the necessity of taking the House into confidence; he placed his cards fully on the table and got the decision altered in a formal way. The House cheerfully accepted it. So far as the present amendments are concerned, there are wholesale changes of the decisions which we have arrived at after careful consideration in this House, which are recorded in our proceedings. They are being changed without adequate reasons being assigned and without allowing the House an opportunity to consider them. This tendency is a thing to which I have referred on previous occasions and I oppose this tendency. I hope the House will carefully consider the implications of this tendency and the tremendous burden of responsibility which the Centre is taking. I believe, if there was an enemy of the Central Government, he would do the very thing that we are doing to discredit it in the end. This is the best and the most effective way of encumbering it and making unpopular any future Central administration. I think we are doing something Which only our enemies would like us to do. This tendency should stop. The Drafting Committee or the men behind it want to eat more, the more they are fed.

Sardar Hukum Singh : I am not moving my amendment as it is covered.

Shri Brajeshwar Prasad : Sir, I move:

"That in amendment No. 3529 of the List of amendments, for the proposed entry 40 of List I, the following be substituted:—

"40. Education."

May I move the other amendment, Sir ?

Mr. President : Yes.

Shri Brajeshwar Prasad : Sir, I move:

“That in amendment No. 3529 of the List of Amendments, for the proposed, entry 40 of List I, the following be substituted :—

“40. All the Universities, advanced scientific research institutes and public and private educational and cultural organisations in the Indian Union shall be subject to the supervision, superintendence direction and control of the Union Government.

I consider this subject to be of vital national importance. The only way that India can rise rapidly in the councils of the nations is by providing education to the illiterate masses of this country. No form of Government can be laid on a secure basis unless the people are educated. Especially in a Parliamentary form of Government, unless the people are educated, Parliamentary democracy cannot function. The danger that, by vesting a large number of powers in the hands of the Centre, the whole machinery of administration will break down seems to me clearly an ephemeral one. Till recently India was governed on a unitary basis and the British people ran the administration on scientific, sound and efficient lines. There is no reason why there should be a change ‘from a unitary to a federal form of Government. But, at the present moment, I am not going to enter into that discussion. My object is of a very limited character. I want education to be placed in the Central list. Power, Sir, must have some relation to the economic and financial resources of the provincial Governments. The financial implications of the powers that are going to be vested in the hands of the Provincial Governments have not been ascertained. I am quite clear in my own mind that they are not competent, they have not got the economic resources to fulfil or discharge even one-tenth of the powers that are going to be vested in their hands.

Sir, I do not like to make a long speech on this subject but I would like to urge another point before I conclude. There are linguistic minorities living in different provinces and the provincial governments have not got the resources even to impart education to the permanent people living in their regions. To ask them to impart education in the mother-tongue of those linguistic minorities who have come from different provinces is to ask them to perform an impossible task. Therefore, for the sake of uniformity, for the sake of the rapid development of our education I am definitely of opinion that this subject should be vested in the hands of the Centre.

Shri H. V. Kamath : Mr. President, may I hope that you will “tend to me the same latitude that you have extended to Dr. Ambedkar to permit me to change the word ‘university’ to ‘institution’ ?

Mr. President : Yes.

Shri H. V. Kamath : Sir, I move:

“That in amendment No. 15 of List I (Sixth Week) in the proposed entry 40 of List I, the words ‘and any other institution declared by Parliament by law to be an institution of national importance’ be deleted.”

Sir, I would like to move 191 also as Dr. Ambedkar has moved 40 A

Mr. President : Yes.

Shri H. V. Kamath : I move:

“That in amendment No. 19 of List I (Sixth Week), in the proposed new entry 40A of List I, after the word ‘education’ the words ‘and research’ be inserted.”

Taking my first amendment first, I feel that the acceptance of the amendment moved by Dr. Ambedkar, referring to an institution which may be declared by Parliament by law to be one of national importance,—I am not referring to Delhi University at all but the second part of the amendment—is fraught with dangerous consequences. I hope the House will pause to consider whether such a sweeping provision for bringing within the purview of the Central Government any institution—which of course Parliament may declare by law

[Shri H. V. Kamath]

to be of national importance—is at all necessary. The House will see that in the previous Entry No. 39 which we have passed we have given power to the Union to legislate about any institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance. This entry goes further and gives power to Union to legislate in regard to institutions, whether financed wholly or in part or not at all by Government. I have in mind certain institutions in this country which are doing very good work, wholly privately run but run on efficient lines without any Government interference. The amendment just now moved by Dr. Ambedkar shows that the grabbing instinct of the Drafting Committee is growing by leaps and bounds; and if this passes muster, if this is accepted by the House I am sure the day is not far distant when the acquisitive instinct of the Union Government will run riot and the Union will try to step in where perhaps angels fear to tread. This is a possibility, not merely possibility but probability which, I do not desire, should eventuate in our country.

As regards the two Universities mentioned in this entry, the Benares Hindu University and the Aligarh Muslim University—of course, either, it may be true that they are of national importance or because they have the communal tag attached to them, Government to show their impartial non-communal nature might legislate in regard to these Universities. As regards Delhi too because the status of Delhi is not yet defined it is perhaps desirable that it should be within the purview of the Union. But to specify here very vaguely that any other institutions may be also taken over by the Union, legislated upon by the Union—though of course the saving proviso is there that Parliament should declare by law those institutions to be of national importance—but, Sir, in modern times Parliaments are becoming more and more very pliant tools in the hands of the Executive; and if a Government takes into its head to take over or legislate or administer any particular institution not financed by Government at all, Parliament according to the dictates of the Executive may declare that to be one of national importance, and then the Government could take it over and administer it as it likes. I have in mind certain institutions—to take only one instance—several Yogic Institutes in this country; one very well-known Yogic Institute is Kaivalyadhama in Lonavala, in Bombay. Some Government of the future may smell a rat where there is none. Of course our present Government is well disposed towards this, but there is no guarantee that the present Government will continue for many long years to come. Suppose a Government comes into power, and it is hostile to our ancient culture, especially Yogic and Spiritual matters, that Government may get a very obedient Parliament to declare that institution as of national importance and take it over and ultimately suppress it. The House must be well aware that Herr Hitler, soon after he became the Fuhrer and Reichskanzler of Germany, closed down certain Natur Kultur, Nature Culture institutions because.....

Dr. P. S. Deshmukh : He did not act on any list.

Shri H. V. Kamath : We have the facade of democracy, which is worse. Hitler found perhaps through his Gestapo that people assembling in those Natur Kultur institutions were undesirables and were planning and plotting against the Government and so he closed them down. Here we are proceeding in another way which is more vicious than that one. At least that was a straightforward course. Here we are enabling the Union to give it a colour of propriety and legality.

Mr. President : I do not think the matter requires much discussion.

Shri H. V. Kamath : I will close in one minute. I bow to your ruling. I would crave your indulgence for two or three more minutes only, Sir, not

longer, But if you think otherwise, I am at your service and your disposal.

As I said, if you have this entry, you will give power to the Union Government to take over any institution, firstly which is financed wholly or partly or not all by Government, and secondly, which the Government may think is contrary to their interests, for the time being. I think entry 39 as already passed is quite sufficient to cover such institutions as may be financed wholly or in part by the Government of India. There are other institutions, and these may be left free to act in any manner that is not contrary to the national interest.

Sir, one word more about the universities. In list II of the Schedule, there is item 18—"Education including Universities other than those specified in entry 40 of List I." This, of course, is to be modified in the new draft which will be brought before the House shortly. But I do feel that the Union has taken more power than is necessary, more power than is desirable with regard to these matters. Personally I hold that that university is the best which is the least contaminated by governmental interference. But in modern times, of course, education, including higher education suffers from such interference. I am not against primary and secondary education being regulated by government. But the true university is, to my mind, a centre of learning and it must be the least touched, if not completely untouched by governmental interference. But I know in these days there is dragooning and regimentation not only in the primary schools and the secondary schools, but also in the higher stages of education, in the universities, though it is contrary to the true spirit of freedom, of learning which has been so aptly summarised in the Gita as—

नहि ज्ञानेन सदृशं पवित्रमहि विद्यते।

"Na hi jnanena sadrisam

Pavitramiha Vidyate."

But the purity, Pavitrata, of Jnanam is being sought to be polluted by governmental interference at every step. I hope, Sir, that at least so far as the universities are concerned, apart from these three universities, we shall leave them to be regulated not overmuch by the State Governments concerned. But provision in this entry is a very sweeping provision as regards other institutions. It is a very pernicious provision, and I hope this House will not accept it, and that this House will pass the entry only with regard to these three universities, Benares, Aligarh and Delhi. I also hope that at no distant date the communal tag of the Benares and Aligarh universities will also disappear.

As regards the second amendment, No. 191, I do not know whether any provision has been made in this List for research of this type. There is some provision for research, but whether there is provision for scientific and technical research. I am not sure. If there is provision for research in the scientific and technical fields, I shall withdraw amendment No. 191. But if there is no such provision for research in scientific and technical fields, I should like to see this provision included in the entry 40 A through my amendment No. 191.

I move amendments Nos. 188 and 191 and commend them to the House.

Mr. President : Dr. Deshmukh, do you want to move your amendment ?

Dr. P. S. Deshmukh : Yes, Sir. I move:

"That in amendment No. 15 of List I (Sixth Week), in the proposed entry 40 of List I, after the words "any other university" the words "academy or institution" be inserted."

And as a consequence to this, I would like to move my amendment No. 190—

"That amendment No. 19 of List I (Sixth Week), be deleted."

[Dr. P. S. Deshmukh]

My reasons for moving these amendments are quite simple. I was glad to find that the Honourable Dr. Ambedkar himself was of the opinion that the word "university" should be changed to "institution". But the amendment which I have proposed seeks to retain the word "university" also and add to it the words "academy or institution". And if these words are there, then there is no necessity for defining what kind of institutions will come under the purview of the Union, and the long and unnecessary entry No. 40 A could be easily deleted. Institutions can include scientific institutions, technical institutions, research institutions, etc. There is no necessity whatsoever to particularise and to give all these details, as well as to refer to the fact whether they are financed by the Government or not. The entry will be quite comprehensive and will meet all the purposes that are in view, if these words are added. The word "university" also should be there. You might have seen, Sir, it was only this morning, that a suggestion was made by Dr. Jayakar that university education should be taken over by the Centre. One need not go so far as that. If there are universities of national importance or academies, it should be permissible for the Union to take them over.

My friend Mr. Naziruddin Ahmad and my Friend Mr. Kamath have gone far beyond what is contemplated here, and they have attributed motives which have no foundation. Mr. Kamath has smelt a rat where none exists. It does not give power to the Executive. I was rather surprised that they also do not trust the future Parliament. There need be no apprehensions. Everywhere in this schedule power is sought to be given, and authority sought to be conferred on the Parliament and there is therefore no room or justification for any apprehension of the executive acquiring power over the institutions. Nor will the Central Government be keen to acquire institutions. It will be the institutions that will be keen that the Centre should take them up. The whole thing is absolutely beside the point.

My amendments make the position clear, and if, the Honourable Dr. Ambedkar will kindly listen a little more carefully, I am sure he will agree that they do away with the necessity for another item, and also the specification of the various kinds of institutions. On the other hand, even if you have the institution as specified in the entry No. 40 A, even then you will not be able to bring art institutions within the provision of the entry. We have scientific and technical institutions, but we know art institutions are different from these and they will not be included. So if you have these three words that I have suggested, then the entry will be sufficiently comprehensive and that will serve the purpose far better. I hope the Honourable Dr. Ambedkar will at least once be reasonable enough to accept this amendment.

Mr. President : Mr. Naziruddin Ahmad has two amendments.

Mr. Naziruddin Ahmad : I am not moving them, Sir.

Mr. President : Then there are no more amendments.

Prof. Shibban Lal Saksena : Sir, I want to speak. I want to oppose it.

Mr. President : Very well; but please do not take more than three minutes.

Prof. Shibban Lal Saksena : Sir, the entry as it stands envisages central control over three universities. But I feel university education should be a central subject. This important subject has been debated all over the country and the Inter-University Board in our country has also discussed it, and it has come to the opinion that university education should be a central subject. So I feel we need not mention here these three universities only. In fact, this proposition that university education should be in the Union List has got a very large number of supporters. In fact, a large number of members of the universities themselves are in favour of it.

At present these universities are provincial subject and are under Provincial Governments. If there is coordination between these universities and some of them specialise in some branches of learning and others in other branches, it will lead to considerable advancement in the field of education and research and there will be economy in expenditure. I know that in Oxford and Cambridge, particular colleges specialise in particular subjects. If, therefore, all the Universities in the country are brought under the purview of the Centre, we can have planned education for the whole country. At present there is a lot of duplication, leading to waste. Centralisation will lead to better Coordination and also to better control resulting in greater national unity.

The Honourable Dr. B. R. Ambedkar : Sir, I find my honourable Friends, Mr. Naziruddin Ahmad and Dr. Deshmukh, running at cross-purposes. One wants to enlarge the scope of the article by adding the word “academy”. The other wants to limit the scope of the article by dropping the word “Delhi University and any other institution declared by Parliament by law to be an institution of national interest”

So far as Dr. Deshmukh’s amendment is concerned, it seems to me quite unnecessary to introduce the word “academy” because the word ‘institution is large enough to include both University and academy. Therefore, that is quite unnecessary.

With regard to the amendment of my honourable Friend Mr. Naziruddin Ahmad, Delhi University is as was pointed out by him already under the Central Legislature by virtue of the fact that the Delhi University is in a Commissioner’s province, which is subject to the legislation of the Centre. Therefore in introducing the words “Delhi University” we are really not departing from the existing state of affairs. With regard to the subsequent part of the entry relating to any other institution declared by law by Parliament, it seems to me, that it is desirable to retain those words, because there might be institutions which are of such importance from a cultural or from a national point of view and whose financial position may not be as sound as the position of any other institution and may require the help and assistance of the Centre. In view of that, I think the last part of the entry is necessary and I am not prepared to accept his amendment.

Now with regard to my honourable friend, Mr. Kamath, he wanted to introduce the words “research institution”. He has forgotten, or probably his attention has not been drawn to my amendment dealing with entry. No. 57A which deals with research institutions. Of course, that entry is limited to coordination and maintenance of standards. Mr. Kamath has, perhaps, in mind agencies established by the provinces and which it may be desirable for the Centre to take over. It seems to me that it is no use overloading the Centre with every kind of institution. It would be enough if, as I said, the provisions contained in 57A were allowed to pass because that will give the Centre enough power to maintain by law coordination and the maintenance of standards for higher education in scientific and technical institutions. I think that ought to suffice for the present.

Mr. President : I will now put the amendments. The first is, amendments Nos. 16 and 17 of Shri Brajeshwar Prasad.

Shri Brajeshwar Prasad : I ask for leave to withdraw both my amendments.

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

Mr. President : Next, I shall take up Mr. Naziruddin Ahmad’s amendment No. 162.

[Mr. President]

The question is :

“That in amendment No. 15 of List I (Sixth Week), in the proposed entry 40 of List I,-

“the words “and the Delhi University and any other university declared by Parliament by law to be an institution of national importance” be deleted.”

The amendment was negatived.

Mr. President : The question is :

“That in amendment No. 15 of List I (Sixth Week), in the proposed entry 40 of List I, the words “and any other institution declared by Parliament by law to be an institution of national importance” be deleted.”

The amendment was negatived.

Mr. President : The question is :

“That in amendment No. 15 of List I (Sixth Week), in the proposed entry 40 of List I, after the words “any other university” the words “academy or institution” be inserted.”

The amendment was negatived.

Mr. President : The question is :

“That for entry 40 of List I, the following entry be substituted:-

“40. The institutions known on the date of commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University, and the Delhi University and any other institution declared by Parliament by law to be an institution of national importance.”

The amendment was adopted.

Entry 40, as amended, was added to the Union List.

Mr. President : I shall now put the amendments to 40-A. There is an amendment (No. 191) by Mr. Kamath.

The question is :

“That in amendment No. 19 of List I (Sixth Week), in the proposed new entry 40 A of List I, after the word “education” the words “and research” be inserted.”

The amendment was negatived.

Mr. President : I now put entry 40 A to vote.

The question is:

“That after entry 40 of List I, the following new entry be inserted :—

‘40- A. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be, institutions of national importance.’

The motion was adopted.

Entry 40 A was added to the Union List.

(Amendment No. 18 relating to new entries 40 A and 40 B, and Amendments Nos. 3530, 3531, and 3532 were not moved.)

New Entry 40B

Pandit Thakur Das Bhargava : (East Punjab: General) : Sir, I would like this to be held over as I would like, to consult my friends on this subject.

(The entry was held over.)

Entry 41

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

“That in entry 41 of List I for the words “and Zoological” the words “Zoological and Anthropological” be substituted.”

Shri H. V. Kamath : Sir, I move

“That with reference to amendment No. 20 of List I (Sixth Week), in entry 41 of List I, for the words “and Zoological” the words “Zoological, Anthropological and Ethnological” be, substituted.”

I am glad to see that this entry runs the whole gamut of life on our planet. Modern science has established that there is no such thing as inanimate matter at all. Every thing is animate: it might be occult or manifest life.

An Honourable Member : It is not modern science: it is very ancient science.

Shri H. V. Kamath : Our philosophy has held:

सर्वं खल्विदं ब्रह्म। नेह नानास्ति किंचन।

Sarvam khalvidam Brahma.

Neha nanasti kinchana!

Modern science is coming to the same view, that every thing in the Universe has occult or manifest life. “Geological” refers to what is called in ordinary parlance inanimate matter—ordinary matter without life but of course even there life is occult. Then we come to botanical, plants where you have the first quivering of sensation and of life. Higher up is zoological, animals with life and in whom a rudimentary mind by way of instinct has developed. Dr. Ambedkar perhaps rather feels it below or derogatory to human dignity to include man also in the term “zoological”. Zoology comprehends all animals and man has been described as a social, political or philosophical animal, but a higher animal all the same. Perhaps Dr. Ambedkar feels that man should be assigned a separate category. I do not know whether anthropology includes ethnology also. Some of us are aware that many years ago during the British regime certain surveys were conducted in this country called ethnological surveys which showed the ethnic distribution of population in India. Their results have been incorporated in various history books. I do not know whether the science of anthropology would include this as well. Anthropos means man and anthropology will mean the science of man. If I am assured by the wise men of the Drafting Committee that ethnology is comprehended in the term anthropology I should not like to press my amendment. Otherwise it is an important branch of human science and if there is any doubt on that point, whether it does or does not include ethnology, I would certainly like to press my amendment and commend it to the House for acceptance.

The Honourable Dr. B. R. Ambedkar : The word “anthropological” is very wide and would cover even “ethnology”.

Shri R. K. Sidhwa : Sir, I move:

“That in entry 41 in List I, the word “Geological” be deleted and the words “the Geological Surveys” be inserted.”

My object in deleting the word “geological” from the Union. List is that in the past the Centre has neglected this very important department of survey. The country is full of potential wealth and there are rich minerals but the Government of India have taken no pains or care to discover them or survey them. If the Government of India in the past had appointed a sufficient number of geologists to do the surveys in various parts of the country we would have

[Shri R. K. Sidhwa]

enough of minerals for our own consumption, as also to spare a large quantity for export to other countries. Thus our country would have been richer, and wealthier.

I find that in the Government of India there has been a practice prevailing that once in live years geologists are sent to the provinces and they make a survey for three months and then the next turn will come after another five years. if the geologist finds some mineral he does not know whether commercially it is useful or not. Perhaps because the Government of India has not a sufficient number of geologists or because of lack of efficiency in the department concerned this has been neglected. Many Provincial governments have complained in the matter and they are prepared to appoint geologists if the subject is transferred to the provincial List. I beg the Drafting Committee to consider this matter. It is in the interest of the country and if the Government of India is not going to exploit our rich minerals it is better to leave it to the provinces who are considerably interested in the matter. I may state that wherever the geologists have gone they have found some rich minerals existing but no effort was made to develop them for commercial purposes. I, therefore, strongly plead that geology be removed from the Union List and transferred to the Provinces.

The Honourable Dr. B. R. Ambedkar : Sir, I am afraid my Friend Mr. Sidhwa has drawn too much upon the attitude of neglect and indifference shown by the Central Government in the past towards geological surveys in India. I quite admit that hitherto this matter has been neglected by the Centre, but it does not follow from that that the provinces are going to take any more interest in geology than the Centre has taken hitherto. First of all, this is a matter of very great magnitude involving a great deal of expense and I do not think that the provinces will be able to find the resources to develop the minerals which are to be found within their area. From that point of view I think there will be no advantage in transferring geology to the Concurrent List so as to give the provinces an opportunity to legislate about it.

The second difficulty I find in accepting his amendment is that we have in the Union List an entry stating that the mineral resources of India may be developed by the Centre. If Parliament were to make a law that the mineral development of the country shall be a central subject obviously there would be very great difficulty created in the way of Parliament executing that law or developing the mineral resources, if the provinces retained with themselves concurrent power of legislation. Therefore, my request to Mr. Sidhwa is to allow the entry to remain as it is.

Mr. President : Then I put the amendments to vote. The first amendment moved by Mr. Kamath.....

Shri H. V. Kamath : As Dr. Ambedkar assures me that the word “anthropological” includes the word “ethnological”, I accept his superior wisdom and won’t press the amendment.

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

Mr. President : Then Mr. Sidhwa’s amendment.....

Shri R. K. Sidhwa : In view of the assurance given, I beg leave to withdraw the amendment.

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

Mr. President : The question is :

That entry 41, as amended, stand part of List I.

The amendment was adopted.

Entry 41, as amended, was added to the Union List.

Entry 42

Mr. President : I do not find any amendments to entry 42.

Entry 42, was added to the Union List.

Entry 43

Mr. President : Now we take up entry 43. Dr. Ambedkar has to move an amendment.

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

“That for entry 43 of List I, the following entry be substituted :

‘43. Acquisition or requisitioning of property for the purposes of the Union.’”

Members will see that the original entry as it stood had other words along with it, namely, the principles of compensation etc. Those words, it is proposed to put in a separate entry in the Concurrent List. So it is unnecessary to retain those words here. That entry will be entry 35 in the Concurrent List.

Shri Syamanandan Sahaya : (Bihar General) : Sir, I want to make a suggestion.

Mr. President : Just wait a little. There is an amendment to be moved.

Shri Syamanandan Sahaya : I want to make it before the amendment is moved. This item on the list which is proposed by Dr. Ambedkar will have a deal to do with the language of article 24 and I suggest therefore that this item be held over till we have passed article 24. It may be said that in any case acquisition and requisitioning of property by the Union will be a necessary factor and will have to find a place in the items somewhere. I concede that that is an important consideration and this item will have to be included, but after we have passed article 24, we will be in a better position to frame the language of this item because it may be that certain powers with regard to the acquisition in the States also may according to article 24 have to be vested in the Centre. I would therefore suggest that this item on the list may be held over till we have passed article 24.

The Honourable Dr. B. R. Ambedkar : I submit that is unnecessary because the power to lay down principles in any case will have to be given to the legislature. The question is whether the Centre should have a separate entry and the province should have a separate entry for laying down principles of acquisition. What is proposed is this, that for both Centre as well as the provinces, there should be a common entry in the Concurrent List. Therefore, whatever happens to article 24, this entry regarding Principles will have to be put in somewhere. Unless my friend has any objection to putting the matter in the Concurrent List, there is no object served by postponing the consideration of this entry.

Shri Syamanandan Sahaya : I was thinking of a case where even in the matter of acquisition by States the principle may have to be decided by the Central Parliament.

The Honourable Dr. B. R. Ambedkar : That is exactly the point. If my friend would understand it, if we put it in the Concurrent List, the Centre also will have power.

Shri Syamanandan Sahaya : Precisely, but you say that the “Centre also will have”. My submission is...

The Honourable Dr. B. R. Ambedkar : What I am saying is this: that we are cutting out the words “principles” etc. and putting them in entry 35 of the Concurrent List. If my Friend will refer to the two entries, 43 in the Union List and 9 in the State List he will find both of them are exactly in the same terms. In other words, both of them not only give the power to compulsorily acquire property but also give the power to lay down principles. Instead of distributing the entry regarding principles between the Centre and the provinces independently of each other, it is now proposed to take out those words “principles” etc., and put them in entry 35 of the Concurrent List.

Prof. Shibban Lal Saksena : Would there be any harm if the thing is postponed until the other article is passed?

The Honourable Dr. B. R. Ambedkar : No good will be served by postponing. I am not in favour of having these things postponed. There is already so much time taken in the consideration of this matter.

Dr. P. S. Deshmukh : Sir, I move:

“That in amendment No. 21 of List I (Sixth Week), in the proposed entry 43 of List I, after the words “of property” the words ‘according to law of the Union’ be inserted.”

From the discussion that has just taken place, it is quite clear that it is understood that this matter, so far compensation or the principles of acquisition or requisitioning are concerned, will be subject to the legislation of Parliament. My purpose in proposing this amendment is to be make this intention obvious and leave no room for any doubt. This does not raise the question as to what should be the compensation or whether there should be compensation or anything of that nature. The Parliament should have the latitude and the power to determine all these things just as occasion may arise from time to time, but it would not be correct to leave the wording as has been proposed at the moment without referring to the powers of the Parliament or the law making powers of the Union. I think this would lead to clarity and will obviate any ambiguities hereafter which might lead to very serious trouble. I, therefore, hope that the amendment proposed by me which specifies that any acquisition or requisitioning of property shall be by law passed by the Parliament and shall not be undertaken arbitrarily will be accepted.

The Honourable Dr. B. R. Ambedkar : It is quite unnecessary. These entries do deal with legislative power. What is the use of adding the words ‘according to the law of the Union’ ? According to the entry as it is, the Union will have the power to make the law, it cannot mean anything else.

Dr. P. S. Deshmukh : I beg leave to withdraw my amendment.

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

Mr. President : The question is:

“That for entry 43 of List I, the following entry be substituted :

‘43. Acquisition or requisitioning of property for the purposes of the Union.’ ”

The amendment was adopted.

Entry 43, as amended, was added to the Union List.

Entry 44 was added to the Union List.

Entry 45 was added to the Union List.

Entry 46 was added to the Union List.

Entry 47

Mr. President : There is an amendment to entry 47 standing in the name of Mr. Santhanam. As Mr. Santhanam is not moving it, I shall put the entry to the vote of the House.

Entry No. 47 was added to the Union List.

Entry 48

Entry 48 was added to the Union List.

Entry 49

Mr. President : There are certain amendments to entry 49. Thakur Cheedi Lal may move his amendment No. 3537 in the Printed List.

As the Member is not in the House, the amendment is not moved. Amendments Nos. 3538 and 3539 are also not moved. Now I will put entry No. 49 to vote.

Entry 49 was added to the Union List.

Entry 50

Mr. President : Entry 50. Mr. Brajeshwar Prasad has an amendment to this entry.
(Amendment 22 was not moved.)

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

“That for entry 50 of List I, the following entries be substituted:—

‘50. The incorporation regulation and winding up of trading corporations including banking, insurance and financial corporations but not including co-operative societies.

50A. The incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State but not including universities.”

Sir, the reason for this amendment is that the existing entry 50 which is a comprehensive entry was found to be a little confusing by some Members of the House. They represented to us that the language is a little involved and it might be made to express clearly the objects indicated therein. For instance, there was doubt whether a co-operative society carrying on trading operations in more than one State will be included in the entry or not. It was thought desirable, therefore, to split up the entry into two, clearly demarcating the position of trading corporations including banking, insurance and finance corporations and other corporations whether trading or not when they operate in more than one State, and also excluding universities. This is merely a clarificatory amendment and I do not think there is any need for explaining it further. It has been framed to meet the wishes of several Members of the House who expressed the view that the entry as it originally stood did not clearly indicate the purpose for which it stood.

Mr. President : I understand that Mr. Krishnaswami Bharathi and Shri K. Santhanam are not moving the amendments standing in their name, in the printed list.

Shri Jagat Narain Lal (Bihar: General) : Sir, I venture to suggest that splitting up of the entry into two may not be necessary in case the words “corporations, that is to say”, are omitted. If this is done the entry will read thus:

“The incorporation; regulation and winding up..... but not including universities.”

[Shri Jagat Narain Lal]

This will make the meaning quite clear. There will be no ambiguity. I suggest this to Shri T. T. Krishnamachari. The object they have in view can be achieved by adopting my suggestion.

The Honourable Dr. B. R. Ambedkar : I will consider the matter. For the present the entry proposed by Shri T. T. Krishnamachari may go in.

Mr. President : The question is:

“That for entry 50 of List I, the following entries be substituted:—

‘50. The incorporation regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies.

50A. The incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State but not including universities’.”

The amendment was adopted.

Entries 50 and 50A were added to the Union List.

Entry 51

Entry 51 was added to the Union List.

Entry 52

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

“That for entry 52 of List I, the following entry be substituted:—

‘52. Constitution and Organisation of the Supreme Court and the High Courts; jurisdiction and powers of the Supreme Court and fees taken therein; persons entitled to practice before the Supreme Court or any High Court’.”

The last words are additions. It is found necessary to have them because the time has come when it is necessary to regulate the right to practise of persons practising in both the High Court and the Supreme Court.

Mr. President : There are certain amendments to this.

Shri Brajeshwar Prasad : I am not moving amendment No. 24, Sir.

Mr. President : Mr. Naziruddin Ahmad who has given notice of an amendment to this entry is not in his place.

Sardar Hukum Singh : Sir, I beg to move:

“That in amendment No. 23 of List I (Sixth Week), in the proposed entry 52 of List I—

(i) the words “and the High Courts” be deleted; and

(ii) the words “or any High Court” be deleted.”

We have just listened to Dr. Ambedkar. He said that the last portion was newly included. The original draft entry 52 reads thus :

“Constitution, Organisation, jurisdiction, and powers of the Supreme Court and fees taken.”

There is absolutely no mention of the High Courts in that entry in the original draft. This is an innovation. When we started, we had in view the framing of a federal Constitution and it was clearly observed by the honourable the Mover then—and he took credit for its flexibility—that in normal times

this is framed to work as a federal Constitution, and in times of war it is so framed that it would work as a unitary Constitution. But now what do we find? With every day that passes, we are progressing more and more towards a unitary system, not merely in times of war as was first intended, but in normal times as well. Everywhere you find that there is an attempt to grab all powers for the Centre and emasculate the provinces altogether. Provincial autonomy has been made a farce. There is nothing left there. They are only municipal boards now. The reasons given are that the circumstances have changed; there are some dangers on the borders and we have to provide against them; the Centre must be sufficiently strong. I agree with all this; I am second to none in lending my support to making the Centre as strong as possible, but I differ about the way in which the Centre is going to be made strong. The question is whether the units should be free, whether sufficient confidence is reposed in them, whether there should be sufficient initiative with them, in which case they would be willing partners in lending every support to the Centre, or whether we should frame an authoritarian Constitution and impose our will on them.

The Honourable Dr. B. R. Ambedkar : I do not wish to interrupt the debate, but I would like to point out that we have already passed articles 295A, 193, 197, 201 and 207 which deal with the constitution of the High Courts. Under those articles, except for pecuniary jurisdiction, the whole of the High Courts are placed, so far as their Constitution, organisation and territorial jurisdiction are concerned, in the Centre. It seems to me, therefore, that this amendment is out of order.

Sardar Hukum Singh : All I can say is that I differ from the honourable Doctor. I was going to submit that I do not agree that this pressure from outside would make the Centre strong and would make the units voluntary partners in lending their support to the Centre. So, in my humble opinion, we should not try to take every power for the Centre. So far as the persons practising in the High Courts are concerned, this can be safely left to the provinces themselves. Sir, many things are being done not even with the object of making the Centre strong, but their sole desire is to grab everything for the Centre. So, I move that the words “and the High Courts” and “or any High Court” be deleted from the entry.

Dr. P. S. Deshmukh : Sir, I move:

“That in amendment No. 23 of List I (Sixth Week), for the proposed entry 52 of List I, the following be substituted :—

‘52. Constitution, jurisdiction and powers of all courts including the Supreme Court; enlargement of the appellate jurisdiction of the Supreme Court and conferring of supplementary powers thereon, regulation of fees chargeable by the Supreme Court and licensing and regulation of persons entitled to practise before the Supreme Court or any High Court.’”

According to the first draft, entry 52 was to be worded as follows:—

“Constitution, organisation, jurisdiction and powers of the Supreme Court and fees taken.”

That is to say, it was solely intended to cover the Supreme Court and there was no reference to High Courts at all. According to the present amendment, all the High Courts have been brought in, not only for purposes of constitution and Organisation, but also so far as the persons entitled to practise therein are concerned. So, Sir, it has been found necessary to widen the scope of the item as it stood originally. I have tried to make it still wider in its application so as to bring it into line with the original of this

[Dr. P. S. Deshmukh]

entry to be found in entry 53 of the Government of India Act of 1935. That entry reads as follows :

“Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list and, to such extent as is expressly authorised by Part IX of this Act, the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers.”

So, if it is necessary to include the High Court, I do not see why we should not refer back to what was provided in the Act of 1935 and provide for the constitution, jurisdiction and powers of all courts including the Supreme Court.

The second point that I want to urge is that it is necessary that there should be a provision, just as there is in the Act of 1935, for the enlargement of the appellate jurisdiction of the Supreme Court and conferring of supplemental powers thereon. Then the last portion really seeks to give a better shape to the amendment that is proposed, so far as licensing of legal practitioners and the levying of fees chargeable by the various courts are concerned. I would be glad, if this could be accepted.

In any case, if any satisfactory and cogent explanation is coming forth which would convince me that it is not necessary to refer to the powers of all the courts or to make any provision for the enlargement of the appellate jurisdiction of the Supreme Court, I would see my way not to press this amendment. Otherwise, I think it would be necessary that the Union should have powers of enlargement of the jurisdiction of, as well as for giving supplemental powers to, the Supreme Court.

Mr. President : Amendment No. 197 is covered by the amendment moved by Sardar Hukum Singh.

Shri H. V. Kamath : All right, Sir.

Shri Alladi Krishnaswami Ayyar (Madras: General): With regard to the amendment moved by Dr. Ambedkar, I should like to say a few words. In the first place, we have already taken a particular step in regard to the High Court; that is, the appointment of the judges is in the hands of the President. Secondly, so far as the organization and jurisdiction is concerned, the idea is that there must be uniformity in the organization of the High Courts in the different parts of India, subject of course to the provisions of the Constitution. Therefore, in so far as the organization is concerned, with a view to emphasize the principle of uniformity and to see that there is uniformity in the different High Courts, this power is transferred to the Central Legislature. It will be realized that we have High Courts and High Courts. There are High Courts which have been functioning for several years, for a century. There are High Courts which have come into being recently, and it is, also proposed to bring in all the High Courts in the States under the jurisdiction of Parliament, and see that there is a certain uniformity in the organization and constitution of the different High Courts in India. The only legislature that can function in this regard is the Parliament. That is why that part of the amendment provides for it.

Secondly, it makes some important provision in regard to the right of practitioners in the Supreme Court and in the different High Courts in India. Under the present law as it stands, each High Court makes its own rule for the enrolment of an Advocate and for the right of a person to practise in a particular High Court. So far as the Supreme Court is concerned, the Supreme Court has the power to make its own rule in regard to the person entitled to practise before the Supreme Court. The power of the Supreme Court is subject to the power of Parliament. The power of the High Court also is subject to the power of the appropriate legislature.

Now, there are certain anomalies which have necessary to be removed, an anomaly which was adverted to by Sir S. Varadachari when he retired from the Federal Court. Today any practitioner entitled to practise in the Federal Court can appear in that Court but if the case is remanded, say, to the High Court of Bombay, that practitioner will not be entitled to appear in the High Court unless he is an advocate of the Bombay High Court. That is an anomaly. You might have done a good part of the case; you might have mastered the details, the facts and the law of the case when the case was presented before the Federal Court and there is neither reason nor Principle behind permitting the practitioner to appear before the Federal Court and not before the High Court from which an appeal is lodged. The proposed amendment does not give straightaway a right of audience in the High Court. It enables Parliament to remove anomalies and to see that there is a uniform judicial system throughout the country. I can give one instance, for example when the Honourable Sir Tej Bahadur Sapru applied, for permission to appear in the Bombay High Court, on account of the rules of the Bombay High, permission was refused to Sir Tej Bahadur Sapru to appear in the original side of the Bombay High Court. Similar instances have occurred in the case of other practitioners of eminence and position at the bar; and therefore to see that these anomalies are removed the Parliament is invested with the right to regulate the right of audience of the practitioners in the Supreme Court as well as in the High Court. Of course, until and unless the plenary power is exercised in a particular manner by the Parliament the existing rules of the Supreme Court and of the different High Courts in India will continue to operate. In the Parliament different sections are represented and I have no doubt that the Parliament will take a wise step calculated to improve the tone of the judicial administration as also to see that there is a certain uniformity observed in the different parts of India. That is the object of the amendment. I do not think any exception can be taken to the amendment as proposed by Dr. Ambedkar. It is a move in the right direction.

Shri H. V. Kamath : Mr. President, I shall be content with a bare and bald statement of my view in this regard. I seek to delete the words “or any High Court” appearing at the end of this proposed entry. My amendment is No. 197, List III, Sixth Week. Neither Dr. Ambedkar nor my jurist friend, Mr. Alladi Krishnaswami Ayyar has shown any valid reason why the power in this regard to make regulations in respect of persons entitled to practise before the High Court, should not be given to the State Legislatures. Mr. Alladi Krishnaswami Ayyar said that at present every High Court makes regulations in this regard but we have certainly not tried to consider why this power could not be conferred on the State Legislatures. We can trust the State Legislatures to enact laws which will not be contrary in spirit to the laws of the Central Parliament. I invite your attention and the attention of the House to article 208. Dr. Ambedkar pointed out article 207, and in, the light of article 207, I do not dispute the desirability of the Union Legislature to regulate in regard to the constitution and organization of High Courts; but the point with regard to persons entitled to practise, the practitioners in the High Courts, is on a different footing. Article 208 which the House has passed confers certain powers on the State Legislature with regard to jurisdiction of certain High Courts in certain circumstances. If that power can be given to the State Legislatures. I do not see why this trifling power of legislating with regard to practitioners appearing in the High Courts could not also be given to the State Legislatures and so that matter might be transferred to List II, *i.e.*, the State List. Otherwise I feel that by empowering Legislatures as has been done in article 208 with regard to jurisdiction of High Courts and divesting the Legislatures of power to make

[Shri H. V. Kamath]

regulations with regard to practitioners appearing before the High Courts, I feel that the Drafting Committee is straining at a gnat while swallowing a camel.

Mr. Naziruddin Ahmad : Mr. President, as I was coming to the rostrum, I heard a remark from my honourable Friend Mr. Mahavir Tyagi that this concerns the lawyers. I should however think that the subject concerns not merely the lawyers, but the entire population of India. In fact, the independence of the High Courts, their judicial integrity are matters of concern for all.

I would like to draw the attention of the House to the manner in which the words 'and the High Courts' have been introduced into the amended entry. I submitted yesterday that there were certain interpolations in many of the entries. The present is a good example of this bad tendency. The original entry read thus : "Constitution, Organisation, jurisdiction and powers of the Supreme Court and fees taken". Fees have been taken out and I have no quarrel with that. The original entry dealt with the Supreme Court only. In the new entry proposed by Dr. Ambedkar, it reads : "Constitution and Organisation of the Supreme Court and the High Courts;" Then again, he has added "persons entitled to practise before the Supreme Court or any High Court".

My first objection is as to the surreptitious manner in which important things are interpolated into the entries. I could have well understood.....

(Interruptions).

Shri Mahavir Tyagi : On a point of order, Sir, is the word "surreptitiously" parliamentary ?

The Honourable Dr. B. R. Ambedkar : Is it a proper argument, Sir, to say that the Drafting Committee has surreptitiously tried to introduce something ? My honourable Friend is entitled to ask me an explanation as to why I have altered the entry. There is nothing surreptitious. I am perfectly prepared to justify every item and every part of it.

Shri Mahavir Tyagi : I want your ruling, Sir, is the word "surreptitiously" parliamentary ?

Mr. President : I confess I am not acquainted with parliamentary practice to such an extent as to say whether surreptitiously' is or is not parliamentary. I would ask the honourable Member not to use expressions which may be offensive.

Mr. Naziruddin Ahmad : I bow down to your ruling, Sir. I submit that it would have been much more straightforward to say that we should insert the word 'High Courts'. What I meant was that instead of doing the obvious thing in the open way of clearly and specifically indicating the exact changes proposed, by the addition of the words "and the High Courts", the whole entry has been re-written, and my submission was that this was done for the purpose of not making it apparent that the words 'High Courts' are introduced here by way of change. It would require long and patient comparison between the amended entry and the original entry to bring this out. It took us a few hours, including Sardar Hukam Singh and others, long and patient comparison in order to enable us to discover this. I fail to see any reason for not moving these introductions as so many specific amendments to the original entries. This I consider to be highly objectionable and at the same time highly inconvenient.

Mr. President : Consideration of every amendment involves a study of the original which is sought to be amended by the amendment and it is nothing extraordinary if the honourable Member had to study the original along with the amended form of the entry.

Mr. Naziruddin Ahmad : All that I was respectfully submitting was that the exact change might have been indicated by the suitable amendment that the word 'High Court' be introduced at the proper place. The objection was that in every case we have to carefully compare each entry with the past entries and it took us a very long time. In fact, nothing has been gained except that it put the Members to additional labours. That is in regard to the manner in which they are being introduced. There are numerous other cases where objectionable words are not introduced openly, but through the device of a re-draft. I fully admit the justice of your remark that every Member should come prepared to read and compare them. What I was submitting was that matters might have been made easier. We have only a very short time to consider innumerable innovations. Matters have been unnecessarily made more difficult, considering the short time at our disposal.

So far as the High Courts are concerned, they were all under the Provincial jurisdiction except the Calcutta High Court. The Calcutta High Court, for reasons of history, enjoyed a peculiar position of its own. The Calcutta High Court was situated geographically at a place where before 1911 the Government of India had its seat. So, somehow or other, the Government of India and the Imperial Council had been enjoying jurisdiction over that High Court. Then, with the passing of the Government of India Act, 1935, jurisdiction over the Calcutta High Court was made over to the Provincial Government and Legislature. There were long disputations over this. One of the reasons assigned was that the Provinces were getting greater rights and as the Centre was establishing the Federal Court, the Centre should be dealing with the Federal Court and not with the High Courts. In that way, the Calcutta High Court which was under the jurisdiction of the Centre for long was taken away and was placed under the jurisdiction of the Province. Thenceforward, all the High Courts were under the jurisdiction of the Provinces. The Centre is sufficiently encumbered with Central matters. The Centre should have been concerned, I submit, with matters relating to the Supreme Court, leaving it to the Provinces and the Assemblies to deal with the High Courts. I find that every item, financial, political, legal and others, is being taken away one by one in a systematic manner from the Provinces and made over to the Centre. I submit that the position of the High Courts is of great importance. I do not know why the Centre should assume jurisdiction in a summary manner like this over the High Courts.

I wish to raise another constitutional point with regard to this. So far as the High Courts are concerned, they were placed before in the Provincial list by common consent. We debated these matters as to the jurisdiction of the High Courts and the Supreme Court here before and the Drafting Committee was asked to draft a Constitution in accordance with those decisions. I submit that we should not disregard those decisions. In fact, if we disregard those decisions, many things would be upset. I would ask your ruling, Sir, as to whether we should lightly upset those decisions. Jurisdiction over the High Courts is a matter which was provincial, and I beg to ask whether it is proper to allow this being upset without a proper consideration of the subject, without the matter being Placed directly before the House that we are going to make these changes.

[Mr. Naziruddin Ahmad]

I submitted a few minutes ago the example of Sardar Patel. On a very important occasion, he came to the House and asked for a reconsideration of the decision and then suitable amendments were incorporated in the Constitution. So far as the High Courts are concerned, this is only one of the instances. I submit that is a very important constitutional step and the matter should have been placed straightforwardly before the House instead of its being put in this way. The matter will cause much dissatisfaction. Taking jurisdiction over the High Courts in this manner is highly improper and this should have been allowed to be dealt with by the provincial assemblies. I submit, the Provinces should have been allowed full jurisdiction over their High Courts; instead of that, if the Provinces are to be deprived of their Privileges one by one like this, I would rather have the Provinces abolished entirely.

Shri T. T. Krishnamachari : The attention of the Members of the House has already been drawn by Dr. Ambedkar to article 207. May I say, Sir, in view of that that the honourable Member need not labour this point?

The Honourable Dr. B. R. Ambedkar : I can reply. I want only ten minutes. I have understood what he wants to say.

Mr. Naziruddin Ahmad : There is a promise to reply but it would be an unusually fortunate thing for me actually to get a reply from Dr. Ambedkar. Hitherto, points have not been replied to. I should submit that, the subject of jurisdiction over the High Court should have been introduced only after sufficient consideration and ample debate in the House. Instead of that a mere re-drafting of the entry should not have been the manner in which this should be done. This is too important a matter to be lightly dealt with. I submit that if we assume that the Drafting Committee is entitled to do whatever it likes, then of course I am entirely out of Court. I feel I am faced with certain defeat irrespective of reason.

The Honourable Dr. B. R. Ambedkar : Sir, I am constrained to begin by stating that I have on very many occasions noted that my Friend Mr. Naziruddin Ahmad has got into the habit of speaking of the Drafting Committee in most derisive terms. I have not descended to his level in order to reply to him, but I should like to give him a warning that if he persists in doing this kind of thing, I shall certainly not fail to pay him in the same coin.

Mr. Naziruddin Ahmad : Are Members to be threatened in this manner ? Of course it produces no effect on me.

The Honourable Dr. B. R. Ambedkar : This is not a threat. This is a warning.

Now coming to the points raised by my Friend Dr. Panjabrao Deshmukh, I am very sorry that I cannot accept his suggestion. Because he wants to enlarge entry 52 in such a manner and to such a magnitude as to include every court in this country. It is an impossible proposition and I am afraid I cannot accept it.

I shall now deal with the arguments of my Friend Mr. Naziruddin Ahmad. First of all, he said that we were trying to smuggle in the High Court in this entry 52, because it did not find a place in the entry as it stood before. The House will remember that the Drafting Committee has been from time to time revising not only the entries but also the articles. I am not here to claim any omniscience on the part of the Drafting Committee. If the Drafting Committee has failed to grasp the whole thing at one grasp, I am not prepared to blame the Drafting Committee nor am I prepared to allow anybody to sit in judgment over it and pass censure upon the Drafting Committee. It is a huge task and we are bound to go slowly on our way.

Shri H. V. Kamath : Cannot the House sit in judgment on the Drafting Committee ?

The Honourable Dr. B. R. Ambedkar : But the House should recognise what I am saying *viz.*, that it is not possible for the Drafting Committee to bring forth before the House a neat and complete formula which will not require reconsideration. Now Sir, my Friend said that we have brought in the High Courts. Well, we have deliberately brought in the High Courts because we felt that it was necessary to bring in High Courts in view of certain articles that we have already passed. My Friend, Mr. Naziruddin Ahmad, evidently forgot articles 295 A, 193, 197, 201 and 207 which deal with the High Courts and if he were patiently to apply his mind to these articles, he will find that the only matter that is left to the Provincial Legislatures is to fix jurisdiction of the High Courts in a pecuniary way or with regard to the subject matter. The rest of the High Court is Placed, within the jurisdiction of the Centre. Obviously when considering entries in the Union List which are meant to give complete power to the Centre, we were bound to make good this lacuna and to bring in the High Courts which, as I said, by virtue of these articles excepting for two cases have been completely placed within the purview of the Parliament. There is nothing surreptitious about it. This is merely correcting an error which originally crept in by reason of the fact that the article and entry were not properly composed. That is the reason why High Courts have been brought in.

Coming to the question as to why we have brought in the entry—Persons entitled to practice before the Supreme Court and the High Court—the position has been already explained by my Friend Mr. Alladi Krishnaswami Ayyar; but I will put the same matter very shortly, and it is this that, really speaking, there is nothing very extraordinary in bringing in these words—persons entitled to practice before Supreme Court or High Court—as Members will see article 121 which gives Parliament the power to make any law with regard to persons practising before the Supreme Court. Therefore, that power is already there and there is nothing new so far as the entry refers to person entitled to practise before the Supreme Court.

Now with regard to the High Court, the position is this. The power which the Centre have today is contained in entry 17 of the Concurrent List which deals with professions, and legal profession is one of the professions. It is, therefore, perfectly possible for Parliament to enact a law regulating the practice of persons appearing in the High Court by virtue of the power given to it by entry 17 which is in the Concurrent List, but the trouble with that is this. Concurrent List means that both parties can legislate. The Centre can legislate and the provinces can legislate and the legislation may be not quite in consonance with each other. Consequently it was felt that while leaving entry 17 as it is in the Concurrent List to cover all professions, to pick out a part of the legal profession and to put it here so as to make any legislation with regard to legal profession in so far as it relates to practice of persons before High Courts an exclusive subject for legislation by the Centre, and the reason why we did it was because of the hard cases referred to by my friend Mr. Alladi Krishnaswami Ayyar and I may repeat one of them. Probably you have not heard what he said. Supposing, for instance, a lawyer or a barrister from Madras appears in a case in the Supreme Court and the Supreme Court instead of deciding the case remanded the case to Bombay High Court. What happens? The Bombay Government or Bombay law if enacted under entry 17 may not permit a person from Madras to appear in the Bombay High Court, with the result that one Madras, Lawyer who appeared in the Supreme Court conducted the whole case but if the case is remitted back to the High Court of Bombay, that High Court may by law

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prevent him from appearing before it. I think it will be agreed that is a great hardship. In order therefore to have a uniform position with regard to persons practising in different High Courts what this entry proposes to do is to cut it from entry 17 dealing with professions and to put it here so that the practice of persons appearing in the High Court may be regulated by uniform law. There is nothing revolutionary and there is nothing surreptitious in entry 52 as is proposed by the Drafting Committee.

Mr. President : I will now put the amendments to vote. There is first the amendment of Sardar Hukam Singh. It is in two parts, and I will put the two parts separately. First part.

The question is:

“That in amendment No. 23 of List I (Sixth Week), in the proposed entry 52 of List I,—

(i) the words ‘and the High Court’ be deleted.”

The amendment was negatived.

Mr. President : Then the second part:

The question is:

“That in amendment No. 23 of List I (Sixth Week), in the proposed entry 52 of List I,—

(ii) the words ‘or any High Court’ be deleted.”

The amendment was negatived.

Mr. President : Then there is the amendment of Dr. Deshmukh—No. 196.

The question is:

“That in amendment No. 23 of List I (Sixth Week), in the proposed entry 52 of List I, the following be substituted :—

‘52. Constitution, jurisdiction and powers of all courts including the Supreme Court, enlargement of the appellate jurisdiction of the Supreme Court and conferring of supplemental powers thereon; regulation of fees chargeable by the Supreme Court and licensing and regulation of persons entitled to practise before the Supreme Court or any High Court.’ ”

The amendment was negatived.

Mr. President : I will put the entry as moved by Dr. Ambedkar.

The question is:

“That for entry 52 of List I the following entry be substituted:—

‘52. Constitution and Organisation of the Supreme Court and the High Court; jurisdiction and powers of the Supreme Court and fees taken therein; persons entitled to practise before the Supreme Court or any High Court’.”

The amendment was adopted.

Entry 52, as amended, was added to the Union List.

Mr. President: We rise now. We adjourn till nine O’clock, tomorrow morning.

The Assembly then adjourned till Nine of the Clock on Wednesday, the 31st August, 1949.
