

[The Honourable Dr. B. R. Ambedkar]

(2) Nothing in clause (1) of this article shall prevent Parliament from making any law giving any preference or making any discrimination as aforesaid if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India.

274 D. Notwithstanding anything contained in article 274 A or article 274 C of this Constitution, the Restrictions on trade, commerce and legislature of a State may, by law—
intercourse among State.

- (a) impose on goods which have been imported from other States any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and
- (b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest.

Provided that no Bill or amendment for the purpose of clause (b) of this article shall be introduced or moved in the legislature of the State nor shall any Ordinance be promulgated for the purpose by the Governor or Ruler of the State without the Previous sanction of the President.

274 E. Parliament may by law appoint such authority as it considers appropriate for carrying out the purposes of articles 274 A, 274 B, 274 C and 274 D. of this Constitution, and confer on the authority so appointed such powers and such duties as it thinks necessary.' "

Appointment of authority to carry out the provisions of article 274A to 274D.

Sir, all that I need do at this stage is to inform the House that originally the articles dealing with freedom of trade and commerce were scattered in different parts of the Draft Constitution. One article found its place in the list of Fundamental Rights, namely, article 16, which said that trade and commerce, subject to any law made by Parliament, shall be free throughout the territory of India. The other articles, namely, 243, 244 and 245 were included in some other part of the Draft Constitution. It was found in the course of discussion that a large number of members of the House were not in a position to understand the implications of articles 243, 244 and 245, because these articles were dissociated from article 16. In order, therefore, to give the House a complete picture of all the provisions relating to freedom of trade and commerce the Drafting Committee felt that it was much better to assemble all these different articles scattered in the different parts of the Draft Constitution into one single part and to set them out seriatim, so that at one glance it would be possible to know what are the provisions with regard to the freedom of trade and commerce throughout India. I should also like, to say that according to the provisions contained in this part it is not the intention to make trade and commerce absolutely free, that is to say, deprive both Parliament as well as the States of any power to depart from the fundamental provision that trade and commerce shall be free throughout India. The freedom of trade and commerce has been made subject to certain limitations which may be imposed by Parliament or which may be imposed by the Legislatures of various States, subject to the fact that—the limitation contained in the power of Parliament to invade the freedom of trade and commerce is confined to cases arising from scarcity of goods in any part of the territory of India and in the case of, the States it must be justified on the ground of public interest. The action of the States in invading the freedom of trade and commerce in the public interest is also made subject to a condition that any Bill affecting the freedom of trade and commerce shall have the previous sanction of the President; otherwise, the State would not be in a position to undertake such legislation. Article 274- E is merely an article which would enable Parliament to establish an authority such as the Inter-State Commission as it exists in the United States. Without specifically mentioning any such authority it is thought desirable to leave the matter in a fluid state so as to leave Parliament freedom to establish any kind of authority that it may think fit.

If any further points are raised in the course of the debate. I shall be glad to offer the necessary explanation.

Mr. President : We shall have to take up the amendments one by one. The first amendment is with regard to the heading—that is by Pandit Thakur Das Bhargava (No. 339).

Pandit Thakur Das Bhargava : Before I move this amendment, I would humbly submit that I may be permitted to move all the amendments together. Sir, I move :

“That in amendment No. 269 of List IV (Seventh Week) in the heading of the proposed new Part X-A, for the words ‘Trade, Commerce and Intercourse’ the words ‘Trade and Commerce’ be substituted.”

“That in amendment No. 269 of List IV (Seventh Week), in the proposed new article 274 A for the word ‘Part’ the word ‘Constitution’ be substituted.”

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

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

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

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

“That in amendment No. 269 of List IV (Seventh Week), in clause (1) of the proposed new article 274C, for the words ‘to one State over another’ the words ‘to any State as against any other State in the Union or to any part within that State’ be substituted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (1) of the proposed new article 274C, for the words ‘between one State and another’ the words ‘between any State and another State of the Union or between any parts within that State’ be substituted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (1) of the proposed new article 274 C, the words ‘by virtue of any entry relating to trade or commerce in any of the Lists in the Seventh Schedule’ be deleted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274 C, for the words ‘a situation’ the words ‘any emergent situation’ be substituted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274 C, before the word ‘scarcity’ the word ‘temporary’ be inserted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274 C, the words ‘for the period of the, emergency’ be added at the end.”

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

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

“That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article 274 D, the words ‘or intercourse’ be deleted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article 274 D, the words “with or” be deleted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article 274 D, for the words ‘in the public interest’ the words ‘in the interests of the general public and are not inconsistent with the provisions of article 13’ be substituted”

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

[Pandit Thakur Das Bhargava]

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

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

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

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

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

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

or alternatively,

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

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

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

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

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

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

interest', whereas if you use the words "interests of the general public" they would have reference to the interests, of the. general public of India as a whole. It may be that on many occasions a conflict may arise between the public interest as understood in the amendment of Dr. Ambedkar and 'the interests of the general public' as used in article 13. When that conflict arises it would be encouraging provincialism and the interests of a few as against the general interest if we accept the words 'public interest' in the place of the words "in the interests of the general public".

If it is true that article 16 confers on the citizens a fundamental right which could be enforced by appropriate proceedings through the Supreme Court, it means that the right given is being taken away by these articles if we pass them in their present form. Then there will be no fundamental right of an absolute character conferred by article 16. My submission, therefore, is that we are tampering with the right which has been guaranteed. Therefore, to save that right, I have tabled an amendment which seeks to amend article 16 also. My attempt is to see that, either the amendment relating to article 16 may be accepted or the amendment which runs as follows : 'Notwithstanding anything contained in this Constitution, and citizen or State shall have the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by article 12 or Part X-A of the Constitution'.

Now, the words 'of any law made by Parliament' in article 16 will mean only that they are in conformity with the provisions which are now sought to be put in by this amendment. Articles 282 C and 274 D are laws of that nature which are contemplated in article 16. I cannot think of any other law by means of which the liberties of the citizens of India can be curtailed. These two provisions are more than enough. But in relation to these articles also my humble submission is that if the provinces are allowed to have their own way to impose restrictions upon the citizens of any other State, then this one Nation talk, this unity and this one-Government and one-country talk will mean nothing. It has happened even now. The Government of India exercises some powers and the provinces exercise other powers in relation to the commodities essential for the life of the community. In regard to this, the whole House knows and we of the East Punjab know to our best how these Provisions are being worked. It has happened that while the whole country is suffering from scarcity of food-stuffs and very large quantities of food are being imported from other countries and the grow-more-food campaign is being vigorously pursued, we know that as the- result of the exercise of the powers enjoyed by the Government of India and the Provincial Government, today the position is that food-grains of the value of crores of rupees are being waited in East Punjab on account of the exercise of these powers.

Now, Sir, if you will kindly read the provisions which are to be enacted by virtue of this amendment of Dr. Ambedkar, it follows that each State is authorised to impose reasonable restrictions on the freedom of trade, commerce and intercourse as may be required in the public interest. This means that Bombay can say that in the interests of the Bombay people, they would put some restrictions on the freedom of trade in cloth. Similarly in the East, Punjab, we have enough gram to spare. Well suppose these grams are not allowed to be exported by the policy of the Central Government or the local government it may happen that while gram is selling at Rs. 6 or Rs. 7 in the East Punjab, in parts of Bengal or Madras the same gram may be selling at Rs. 20 or Rs. 22. Neither Madras nor Bombay would be benefited by the existence of surplus gram in the East Punjab, nor the people of the East Punjab would be benefited by the increase in, the prices elsewhere. This is not a picture which is due to my imagination.. This is what is happening and what has happened in the past. I have approached people in the central Government as well as the provincial government and told them the whole story but still they have not moved.

[Pandit Thakur Das Bhargava]

I want, Sir, that so far as this question of freedom of trade, commerce and intercourse is concerned, it should be absolutely free, only subject in times of scarcity or times of national emergencies to such restrictions as may be imposed in the public interest. Otherwise, in normal times no restrictions should be allowed, if we really mean that we all belong to parts of the same country or we are living under the same government. The whole scheme of article 243 is that it speaks of certain kind of preference or discrimination. Now, 274 A give us a proposition which I welcome because it says that trade and commerce shall be free. But what I object to in this is the words "subject to the other provisions of this Part". I want the word "part" to be substituted by the word "Constitution". So far as the Constitution puts restrictions, I am ready to accept them, but this part puts so many restrictions upon this freedom of trade which are irksome and unnecessary. It is the same thing throughout in this Constitution that what is given by one hand is taken away by the other. I want, Sir, that the rights given under article 13 should be restricted only by the restrictions which we have already placed on them, but not to the extent in which they are sought to be restricted now I feel that such restriction will give rise to provincial jealousies, and provincial patriotism will do great injury to India as a whole.

Now, in regard to section 274 B I have submitted that I want before the word "restrictions" the word "reasonable" to be inserted. In article 13 which is justiciable we have used the word "reasonable". The question which arises is whether the rights under this chapter will be justiciable or not. According to my reading, and according to the meaning of the words which Dr. Ambedkar has been pleased to use, I apprehend that he does not want that this should be justiciable. If he says that they are justiciable, then I will take back some of the amendments which I have tabled.

Dr. P. S. Deshmukh : Dr. Ambedkar has already told us that he is going to alter the fundamental rights provided by article 16.

Pandit Thakur Das Bhargava : Sir article 16 is of the fundamental rights and as such justiciable. I know the reply would be that the words used are "subject to any law made by Parliament". But now it is much more restricted because even the States can take away those rights. My whole point is that this fundamental right of the citizen should not be taken away and, I therefore all the amendments that I have moved should be accepted and this right should be made justiciable.

As regards the other amendments which I have read out to the House, I will not take any more time of the House. I will not speak on each of the amendments the words in which they are couched make their meanings quite clear. I will only speak on the principles on which they are based.

Now, speaking about trade and intercourse, Sir, I have taken exception to this : article 13 says that every citizen has got a right to go, reside and settle in any part of India. This is the intercourse which I can understand. I do not know what other meaning is there of the word "intercourse". As regards article 13, we have already provided for reasonable restrictions and we need not make any further restrictions. I do not understand what intercourse can there be between State and State. I can understand it only in relation to individuals. Now, Sir, the difference between this chapter and article 13 is this. The State is not an individual. Between State and State there will be very few occasions for inter-State commerce, trade and intercourse, but very many occasions will arise for that when the interests of individuals are involved if article 13 remains as such, my submission is that it will be difficult to deny this fundamental right to individuals under 274 A.

etc. If I practise a trade or a profession, I want to understand how it is possible for any State to put restrictions on that, so long as my fundamental right under 13 exists. Occasions are bound to arise when there will be conflicts between article 13 and the present article. Therefore I have moved an amendment to the effect that these restrictions should be subject to the provisions of article 13. If this is accepted, this can be made justiciable. My submission is that the prevailing idea in the minds of the mover of the amendment seems to be that the rights under 13 and 16 are too wide and he wants to restrict those rights. I do not think that these rights should be tampered with in this way.

With regard to my amendment relating to 274 C, I have submitted that the last two lines should be taken away. My point is that if you removed the words “by virtue of any entry relating to trade or commerce in any of the Lists in the Seventh Schedule”, this will become fool-proof and no discrimination or preference would be possible anywhere.

Again in 274 C (2) these words have been used “for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India”. In times of famine, etc., by all means let this be used; I have no objection. But that power must be restricted to real emergencies. Otherwise, this right will be abused to the detriment of the general public, though it may be to the advantage of the inhabitants of the particular State.

Similarly Sir, in regard to article 274 D, I have no objection to clause (a); but so far as (b) is concerned, this is the clause to which I object most seriously. I think this is unnecessary because when the powers are given to the Parliament as originally they were given to the Parliament, I have no objection. The Parliament shall have to consider it from the general standpoint, from the standpoint of the whole of India, whereas a State is bound to consider it from a parochial point of view, from the point of view of the State and therefore, this mutual jealousy is bound to arise if we allow these powers to the State. Therefore, the policy of the Government should be that so far as the State is concerned, they should not be allowed to exercise that power unless it be through Parliament. If a State is empowered to use its powers under clause (a) I have no quarrel as it will be a salutary power; but if you allow clause (b) to remain as it is, I do not understand what it may lead to. I can understand that under article 13, considerations of health when epidemic, like plague etc. justify quarantine regulations, intercourse may be ‘restricted’ but if general intercourse in normal times is disallowed or restricted it amounts to passing against the people in general orders under the Safety Acts and placing embargo on their entering any State, which is absolutely wrong. Every person has a right to go into any State and no State has a right to prevent intercourse of people in the rest of India. I consider it is most dangerous to arm a State with this power especially with the words as they stand “as may be required in the public interest.”

Then again, Sir, the safeguard of sanction is provided so that this power may not be abused. After all the safeguard is quite illusory. The only safeguard is that the previous sanction of the President is there. We know how the President’s sanction is given. It only means that some secretary, some Minister, some person who is interested may be able to get the order of the President. In this way sanction could easily be secured. Therefore, this power should not be allowed to remain with the State. If clause (b) is to be retained, then I will propose that the sanction may be such as may be revocable and as soon as Government thinks that this power is being abused, it should be able to withdraw that sanction so that ultimately the powers of the province may be curtailed to that extent.

[Pandit Thakur Das Bhargava]

In regard to all these amendments, the House has to be very careful because this is one of the most important matters which we have so far dealt with, considering that the amendments which are coming in are curtailing the rights of the individual in the whole of India; and therefore the powers given to the State, according to me, should never in any case be allowed, because that would mean that every State shall be able to raise barriers against the rest of India and people living in other States and they will constitute a state of things, which I feel, will not conduce to the unity of the whole of India.

Shri Brajeshwar Prasad : There are a large number of amendments standing in my name. I would like to move one amendment only, that is 295. It has reference to article 274 D.

Mr. President : We shall see when we come to 274 D. I will take the amendments first as they appear on the Order Paper in regard to the new articles.

(Amendment Nos. 317, 318, 319 and 320 were not moved.)

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

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

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

I move :

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

‘274 B. Parliament may by law enacted by virtue of powers conferred by this Constitution impose such restrictions on trade and commerce in or between any parts of India as may be determined by the Parliament from time to time.

I move :

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

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

(2) Legislature of a State may, however, by law—

- (a) impose on goods imported from other States any tax to which similar goods manufactured or produced in that State are subject so as not to discriminate between goods so imported and goods so manufactured or produced; and
- (b) impose such reasonable restrictions on trade and commerce or inter-commerce with or within that State as may be required in the public interest with the previous approval of the Parliament.’

I move :

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

‘274-D. Parliament may, by law, appoint such authority or delegate its powers to such person or persons and confer on them, such powers and duties as it thinks necessary.’ ”

Mr. President, Sir, I for one, do not regret the fact that we are already finding our fundamental rights cumbersome and impeding our progress, if not the Constitution itself. I have always regarded these fundamental rights as so many ghosts which we are going to place permanently on the chest of the future Parliaments for ever to wage battles; and wars with. I am not therefore

surprised that long before the ink of these articles has dried, we have discovered that some powers and privileges which we thought were indispensable, some fundamental rights which we considered it our solemn duty to promulgate and enunciate are no longer convenient for us to maintain. Dr. Ambedkar has made bold to say that it is impossible to leave the trade and commerce between the various parts of India so free as we contemplated. We gave this article (Article 16) the dignity of a fundamental right, a right moreover which is justiciable; and now before even the second reading is complete, we are going to tell the people, we are going to resolve and decide that the justiciable right shall not be any more justiciable. I wonder if it will remain any right at all. I for one hope that before we make the draft final, we will realize our mistakes in having these fundamental rights. As a matter of fact most of them have not remained as fundamental as we should have liked them to be; and the rest of them which are fundamental in some way or the other, they are also tampered with from time to time. This, as I have already stated, affects the supremacy and sovereignty of the Parliament. So far as my amendments are concerned, I do not wish that we should complicate the whole commercial and trade relations between the various States and fetter the discretion of Parliament for all time.

Trade and commerce are not things which are decided once, for all; they are things that arise and grow from day to day. They may be varied; there may be circumstances and situations when the whole thing will have to be revised. This may arise so far as a particular State is concerned or in respect of more than one State. How pompously did we decide that there shall be “free trade” everywhere. It is not such an easy thing as that and I hope that this is now broadly realized. For instance, we know that the stage, of advancement and progress of the various units of the Union varies considerably. Some of them are backward like Assam or Orissa where there are, very few industries and very little trade is in the hands, at least of the indigenous population. We may have probably to give them some protection in order that they may rapidly come on par with other units. It may be necessary also from time to time to vary our provisions so far as aid and concessions to industries and other things are concerned. I therefore do not think that is right to bar all discrimination, as it is called (in fact it is not), barring all possibility of help to those who are backward and who are unable to compete with the more advanced, and who therefore, stand in need of ‘assistance. From that point of view, my amendment seeks to give Parliament a blank cheque and leave to it entirely the determination of the policy. with regard to trade and commerce not only of the whole Union or in regard to any particular State or States, but so far as all States and their trade and commerce *inter se* is concerned. Therefore, I have proposed a very simple provision as has been embodied in my amendment No. 340.

If we analyse the new articles that have been proposed, it is very difficult to understand them and I think the comment is absolutely justified that this is going to be a lawyers’ constitution, “a Paradise for lawyers” where, there will be so many innumerable loopholes that we will be wasting years and years before we could come to the final and correct interpretation of many clauses. If we read this article 274, you will find, Sir, that this is one of the most wonderful articles in the whole Constitution. This is not the only one; there are many others. If we count the use of the word ‘notwithstanding’ in this Constitution, I am certain that the number of times that word is used will far exceed the use of the word ‘Parliament’ or ‘Constitution’ in the whole Constitution. If you will permit me, Sir, I will describe the situation a little graphically. We first of all provide, and say or declare that a certain person is a man. Then we say, notwithstanding this declaration, you shall wear a *sari* and nothing but a *sari*.

Shri T. T. Krishnamachari : Then is no bar to that.

Dr. P. S. Deshmukh : Then, notwithstanding the fact that you are considered a man, and notwithstanding the fact that you wear nothing else but *saris*, you will wear a Gandhi cap also. Then we have another 'notwithstanding'. Notwithstanding that you are a man, notwithstanding that you shall wear nothing but a *sari*, notwithstanding that you shall also wear a Gandhi cap, you will be at liberty to describe yourself as a woman. (Laughter) Some thing of that sort, as funny and as amusing, is really the situation so far as this article 274 is concerned. If you read through it, you will see that as soon as the first part is over, we start with "notwithstanding whatever is said in the first part, such and such a thing will happen". In the next clause, we say, not only notwithstanding what is contained in the first clause, together with notwithstanding what is contained in the other clauses and then add something more. I think there is a better method of drafting. Even if it is necessary to cope with complex situations and to provide something on the lines proposed, there, should be a simpler and more direct way of drafting and making a provision which is not so ununderstandable that only supermen could read this Constitution, even assuming that only supermen are, to be born in India hereafter. If this Constitution is made for the average man, if it is going to affect the rights and privileges of the ordinary common man, it is necessary that the drafters of this constitution should be more clear and use phraseology which is more easily understandable and simpler.

My honourable Friend, Pandit Thakur Das Bhargava, pointed out, and he for one regretted the fact that not only trade and commerce, but intercourse also, with a hyphen in between, was not going to be free. We are going to interfere also with inter-course. By this means, we are going to fetter the discretion of the future Parliament. I think trade and commerce is a thing which cannot be determined once for all, knowing the varying degree of progress which the various units of the Union have attained. It may become necessary to give protection to several States because they are not, on the mere ground of merit and competition, in a position to compete with the rest. I have studied this question with some care and I can say that there are many issues which are likely to arise. For instance, the question of rationalisation of industries, *i.e.*, deciding in what places there should be new industries started, whether in the places where there are no industries or only where there are. It will be the policy of the Indian Union to encourage starting of new industries. If it is necessary to encourage them, it may be necessary to assist them in more than one way and give them concessions.

There was at one time a complaint that all the industrialists were rushing to the Indian States because they got certain monopolies, privileges and advantages there which were not available to them in British India. Therefore, they had to decide upon a policy of restricting the growth of industries in the Indian States. Just as we have had to restrict the growth of industries in Indian States, it may be necessary on the other hand to encourage them not only by giving them certain concessions and privileges, but also by putting certain handicap on the States which are advanced enough so as not to allow anybody else to compete with them. Such situations are imaginable.

I hope therefore that the whole chapter will be made simpler. Instead of tying the hands of both the States as well as of Parliament, it would be far better not to commit ourselves to any policy, but to leave the whole thing to Parliament. Otherwise, the situation which has arisen already in respect of article 16 may arise in respect of article 274 itself. It is therefore better to have simpler provisions and I have given them the simplest form. I hope

that this will appeal to the drafters of the Constitution and if they accept it, I can tell them that they will be out of much of the trouble. But if they insist upon the draft that they have produced, it will be very difficult for trade and commerce not only to prosper but even to exist.

Shri B. Das (Orissa: General) : Mr. President, I move:

“That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274C, after the words ‘Prevent Parliament from making any law’ the words ‘With previous consultation of the Government and legislature of a State’ be inserted.”

Sir, I welcome this new part XA. It is necessary that the conditions of our trade and commerce and intercourse within the territory of India, between the different States, are all codified at one place so that we know how trade and commerce should be regulated under the new Constitution. I will confine my remarks only to the amendment I have moved. I do not apprehend any interference by Parliament and the Union into the affairs of the States that I heard of from the two previous Speakers. But as regards my own amendment, while article 282 C (1) allows restrictions on the legislative powers of the Union and of the States with regard to trade and commerce, in clause (2) it takes away that power and gives Parliament special power when a situation will arise when there is scarcity of goods in any part of the territory of India. I concede that the Parliament will have such a power but I do want the points would be clarified by acceptance of my amendments and the States which shall be affected, their Governments and Legislatures must have to be, consulted before clause (2) of article 274 C will operate. Mine is not a revolutionary idea to what is contained in the original draft. I only wish the position of the Provincial Legislature and the Provincial Government be clarified and it will be obligatory on the Union Government to consult the State Governments and State Legislatures.

Mr. President : Mr. Brajeshwar Prasad.

Shri B. P. Jhunjunwala (Bihar : General) : There are other amendments also to this article.

Mr. President : We shall see later on.

Shri Brajeshwar Prasad : Amendment 295 fits in with new article 274-D. The old article 244 has now been replaced by 274 D. Sir, I move :

“That in amendment No. 269 of the List of Amendments, for the proposed article 274 D, following be substituted :—

‘It shall not be lawful for any State either to impose any tax on goods imported from any State or to impose any restrictions on the freedom of trade, commerce or intercourse with any State.’ ”

I want that there should not be any obstacle in the way of the development of a feeling of common consciousness of oneness and unity in this country. The doctrine of nationalism has been accepted by each and every citizen. Now to give a loophole in this matter will lead to undesirable consequences. I know this power has been restricted. In spite of that, I feel that it will be better if we conform to the old fundamental principle that we have accepted in the Fundamental Rights. I do not care what will happen to the finances of the Provincial Governments. Constitution or no Constitution, it is the duty of the Government of India to see that there is peace and progress in this country, that there is general prosperity in all parts of the country. I have nothing more to add.

Shri B. P. Jhunjunwala : Sir, I have tabled an amendment to the amendment of Pandit Thakur Das Bhargava. My amendments are amendments to

[Shri B. P. Jhunjhunwala]

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

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

There is another amendment No. 293 as follows:—

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

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

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

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

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

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

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

those seeds and sell the, oil at a very high-rate in the U.P. and other Markets and that oil was allowed to be, sent from U.P. to other places so that the mills of other places may not have the advantage of taking that seed and crush it and then sell it at a competitive rate to the people. This year mustard seed is, not available in many of the provinces and even people who crush the seed by country method, that is, by means of *ghani*, they do not get seeds. I got a complaint from the Sadaquat Ashram of Patna which has started various village, industries that they are not in a position to get mustard seeds, as the U.P. Government had put a ban on its export and that some people were getting it by some other means and so on, and they asked me if I could help them to get supplies of these seeds, from persons who are getting their supplies. Of course that was arranged. But my point here is that the U.P. Government in dealing with this thing did not take into consideration the interests and the economic condition of India as a whole and especially of the general masses.

Then, Sir, I shall give another instance, and that is about potato seeds. Recently an order was promulgated that potato seeds should not be allowed to be exported from one province to another unless the exporter obtained a certificate from the consignee's agricultural department, I mean from the agricultural department of the consignee's province. This thing was enquired into, as to what they meant by it and when the agricultural department of the consignee's province was approached, it was said that all the seeds in the cold storages established in the province should be consumed first, and after that export from other provinces will be allowed. Here, Sir, there are two disadvantages in this arrangement. The first is that this restriction will increase the price of potato seeds in the province of U.P. because those who had stored the seeds would have the monopoly of it and they will charge higher and higher prices. And the second and most important point is that the Government of the U.P. did not take into consideration when promulgating their order—which order was agreed to by the Government of India, Railway Department—the fact that it is not the seeds grown in the U.P. which will give good result. Seeds of the same place or the same kind of soil are not as suitable for giving good results as the seeds brought from other provinces. Bihar produces very good potato seeds and that province supplies to the whole of India. As such, this order of the U.P. Government, in addition to raising the price of potato seeds in their province will result in less production of potato in their and other provinces.

Sir, the Agricultural Officer had said that he would allow it after the whole cold-storage seeds of this province are used up. But the planting season lasts only for a few days, and what with the red-tapism in Government Departments, and the long delay in getting an order passed, by the time they allow the import of seeds from other provinces, the planting season would be over and the seeds in Bihar would be spoilt and the cultivators they will find their potato seeds all have got rotten and apart from their suffering a great loss the other provinces, will not get seeds in time resulting in less plantation and less contentment production. Sir, after a great deal of difficulty this order was removed.

Then, recently there was another order from the Himachal Pradesh putting an export duty on potato sent out from Himachal Pradesh. We as knows that at present it is essential that the price of foodstuffs should go down as fast as possible. Though potato may be regarded a vegetable it serves more or less as a cereal also. This export duty on potato may yield more revenue to the State. but it will tell upon the price of potato. If they had allowed free export of potato, then the price of potato here would have come down, and people would have got it at a much lower rate, than the price at which they get now.

[Shri B. P. Jhunjhunwala]

There is another instance, to which though it may not be quite relevant here, with your permission I would like to refer. In the year 1940, the Governments of Bihar and U.P. passed an order that as there was surplus of sugar, no more cane should be allowed to be crushed. The industry and the general public tried its best to see that canes were allowed to be crushed so that the poor cultivators may not suffer, but their requests were not heard. The result was that the cane was allowed to dry in the fields, resulting in the loss of crores of rupees to the poor cultivators. Not only that, subsequently, the U.P. and Bihar Governments brought down the price of cane. In 1940 or 1939- I do not exactly remember, it was 11 or 12 annas and this was suddenly brought down to 4 annas 9 pies in the subsequent year with the result there was a great setback in the sugar industry, due to less plantation of cane; at least the industry in Bihar has not yet recovered from that set-back.

I may give you another one instance, the instance of sugar. At present I find that every day the Government of India is issuing a communique to control the price of sugar. It is right that they should try to stop the price from going higher and higher and whether they will succeed or not is a different question. It was very bad of the syndicate to have allowed the factories to sell the sugar at higher price and charge a premium privately or publicly. Even if the sugar going into the market was being sold at a higher price, the millers and the syndicate should not have indulged in charging premiums as I feel fair play must begin at some source and one should not take to wrong thing by saying that otherwise others will get benefit out of it and thereby create vicious circle. Well, it was pointed out as far back as November 1948 to the Government of India that there would be a shortage of sugar and certain suggestions were made by which the production of sugar could be increased, even with the standing crop of cane. One of the suggestions was that the price of cane should be higher which comes from a long distance and the other suggestion was that if the cane is crushed at a later stage when there is less sucrose in cane, for that sugar some allowance should be made in price of sugar. If those two suggestions had been accepted by the Government of India and they had taken it into their head to understand those suggestions, this situation would not have arisen and we would have had sugar at a cheaper rate. As I said in the beginning, without any disrespect, without any disregard of the State legislature or Parliament or any of the Ministers either in the provinces or in the Centre, I would suggest that the amendment moved by Pandit Thakur Das Bhargava with the addition I have proposed is very essential and this question should be regarded as justiciable of course making exception when such law or order is for temporary emergency purposes; as it will act as a check on them.

Shri Kuladhar Chaliha (Assam: General): Sir, I have not been able to follow Mr. Jhunjhunwala as to why his amendment has been moved. The objectionable provision has already been deleted and Dr. Ambedkar has put in a new article which is a great improvement on the original. Though we have often had to disagreed with the Drafting Committee, in this particular case it could not have been better. I find when textiles are purchased in Bombay, they are taxed there and again it is done in Assam. This discrimination is taken away. We shall have uniformity of law in inter-State trade. If potato seeds are taken from Shillong to Calcutta or Bihar they will not be taxed as before. I do not know why Mr. Jhunjhunwala made such a long speech on his amendment. I find Dr. Ambedkar's amendment is a great improvement on the existing law and I support it whole-heartedly and oppose Mr. Jhunjhunwala's amendment.

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

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

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

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

[Prof. Shibban Lal Saksena]

I think my amendment which is intended to remove part (2) of 274-C, which has also been sought to be done by Pandit Thakur Das Bhargava, should be accepted, so that there, may not be any discrimination and the Centre may be at liberty at least to restrict the freedom of provinces to keep such grains for themselves. I think the amendment is a very important amendment and I hope Dr. Ambedkar will see the wisdom of accepting it.

Shri T. T. Krishnamachari : Mr. President, Sir, I have no desire to flatter the Drafting Committee, but I do believe that the amendments that have been placed before the House in respect of trade, commerce and intercourse within the territory of India are about as nearly perfect as human ingenuity could possibly make them.

There are two sets of arguments against these articles that this House has had to face. The first is by my honourable Friend, Pandit Thakur Das Bhargava, who has moved a series of amendments, the main purport of them being to whittle down the limited discretion that is given to Parliament, or to the Legislature of a State as the case may be, in respect of these articles. My honourable Friend wants in article 274-B the word “reasonable” to be introduced so that restrictions imposed may be reasonable. I know in another instance we have accepted his amendment, particularly in regard to article 13, and I am also aware how it is going to open up an absolute flood-gate of litigation. My honourable Friend also objects to any power being given to the States in order to put restrictions on trade and commerce to a very limited extent. The other amendments he has suggested are only consequential. It is certainly a matter of opinion whether the wording has to be “in the public interest” or “in the interests of the general public”. Actually the idea seems to be that it must be made as vague as possible.

Let me tell the House that so far as I am concerned I think this is about the maximum amount of liberty that we can give for trade and commerce, the maximum amount of concession that we can give to trade and commerce consistent with the future economic improvement of this country. Even as it was originally suggested, that we should make it a matter of fundamental right, and even without the restriction that have been put in article 16, I am afraid the economic progress of the country will become well-nigh impossible. There is absolutely no use in the honourable Member trying to confuse a matter of civil liberty with a matter of rights in respect of trade and commerce. The world has well-nigh come to a position when trade and commerce cannot be run without control and some kind of direction by the Government. If my honourable friends think that we are in the days of the nineteenth century when the *laissez faire* enthusiast had’ practically the ordering of everything in the world I am afraid they are mistaken.

Let me take one particular amendment of my honourable Friend Pandit Thakur Das Bhargava. He objects to the wording of clause (2) of article 274-C. He says that a situation arising from scarcity of goods must be qualified by the word “temporary”. I am asking my honourable Friend if he can today say that the scarcity of goods in this country which manifests itself in various parts of this country is going to be a temporary affair. Is it not a matter which is going to be more or less permanent, certainly for a period of years, probably decades ?

Pandit Thakur Das Bhargava : Certainly not.

Shri T. T. Krishnamachari : If my honourable Friend holds that opinion I can only agree to differ. I for my part do hold that our present position in the matter of food and certain other essential commodities—the scarcity that is attached to them is a thing which it will be difficult for us to get over even in a

period of a decade and over. If my honourable Friend is an optimist, I have no quarrel with him but I am not one of the category that holds such opinions. I have a right to say that the fundamental purpose of this Constitution is that it should enable the citizen of this country to live. On this fundamental principle there can be no difference of opinion. I do believe that we cannot fetter the right of a State to order the economy of the country in such a way that 'the maximum number of people will be benefited by it.

I would say this in regard to the structure of this Chapter. A certain amount of freedom of trade and commerce has to be permitted. No doubt restrictions by the State have to be prevented so that the particular idiosyncrasy of some people in power or narrow provincial policies of certain States should not be allowed to come into play and affect the general economy of the country. That I think is amply covered by a general statement of the proposition in article 274 A and also by permitting Parliament which I have no doubt will be free from provincial prejudices and would not like to favour one province against another normally, to control the extent of limitation power, trade and commerce. Certain amount of powers in regard to restriction on trade is necessary and has been provided for.

Then again the question arises whether it will be right to allow Parliament to discriminate between one State and another. It may be that the people who are in power—at any rate the majority of them—have got particular leanings, and we have to put a check against any improper discrimination between one State and another. That is provided for by article 274 C. At the same time a certain amount of discrimination would sometimes become necessary and also desirable. I might give an extreme case though it might not altogether fit in with all the contingencies that have been envisaged by my friends. If supposing in ordering the distribution of cloth which is being produced by and large by the Bombay mills the Government of India says that the distribution so far as Madras is concerned must be restricted to a per capita basis of ten yards as against twenty yards to Punjab or twenty-five yards to Punjab and Delhi, having in view the fact that Madras produces a certain amount of handloom goods which ought to be consumed in that area for the benefit of those people, and one of the citizens to whom my honourable Friend, Pandit Thakur Das Bhargava wants to give a right to go to the Supreme Court might feel offended for the reason that he has to pay a much higher price for the handloom cloth. He has, by reason of this restriction of import of mill-made cloth into Madras to purchase more handloom cloth at perhaps relatively higher price and he therefore feels aggrieved and he wants to take it to the Supreme Court. Can such a thing be allowed? There would be plenty of cloth available of a general category. It may be that it is necessary for the general well being of the country as a whole that the Madras consumer is asked to pay a little more in regard to a portion of the cloth that he buys. It is a perfectly reasonable restriction. But if my honourable Friend Pandit Thakur Das Bhargava has his own way, any person who is offended or aggrieved by a decision of the Government of India on these lines could go to the Supreme Court. Sir, the idea of 274 C (2) is merely to allow the Government of India permission to restrict the movement of goods so as to arrange the whole economy in such a manner that the economy of the country will be well-balanced and everybody will be supplied with his necessities. As my honourable Friend Prof. Shibban Lal Saksena said the other day, the primary condition in regard to satisfaction of human needs must be satisfaction of their necessities. And I do feel that if the Government which is going to come into being as a result of this Constitution has stayed put for a long time, has to carry out the directives and purposes of this Constitution, it must be given enough power to control the economy of the country for the benefit of the masses of the country and not for the benefit of a few traders or merchants.

So far as 274 D is concerned, my honourable Friend Pandit Thakur Das Bhargava will either wholly amend it in such a way as to completely change its

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shape or completely eliminate it. I feel that it arises—I have no doubt—from a particular bitter experience of his in which a Provincial Government has not executed its duty towards its people in the proper way. But hard cases do not always mean bad law. There is no reason for us to completely shut out discretion of the States in so far as the Central Government will have enough power not merely to have a uniform fiscal policy but also as far as possible to have a uniform economic policy. And that is provided by the fact that the President's previous sanction is necessary in regard to any legislation undertaken by the State under clause (b) of 274D.

Pandit Thakur Das Bhargava : Is it not exactly the reason why the Provinces and the State Legislatures should not be given the power?

Shri T. T. Krishnamachari : That is exactly the reason why they should be given the power. The State should be given a certain amount of right in this matter and the only reason why the Centre should interfere is to see that the economic and fiscal policy of the Centre is not unduly interfered with, and the extent that it cannot be interfered with the State must be given a reasonable amount of power to order its own affairs.

I would like to say a word more before closing about the details mentioned in this Chapter. The reason for such detailed provision and a balancing of the interests of both the Centre and the Provinces is not one that has arisen because of a very particular whim or wish of either Dr. Ambedkar or the other Members of the Drafting Committee. It is more or less based on the experience of how this restriction on the power of the other Central Legislatures in the other Constitutions—or the conferment of a special power on the Central Legislatures by certain other Constitutions—has operated in practice. My honourable Friend Pandit Thakur Das Bhargava knows the amount of case law that has grown round the commerce clause so far as the United States Constitution is concerned. On the other hand, I do not know if he realises that an omnibus right such as the one that we recognise should not be given so far as freedom of trade and commerce is concerned, which perhaps has an echo in article 92 of the Australian Constitution, which has made the economic position of Australia a very difficult one today. They in Australia find that by reason of the fact that their provisions for amendment of the Constitution are so difficult that they are not able to amend the Constitution, and article 92 stands as a bar to any progressive legislation which they have undertaken. It may be right or it may be wrong—the people of Australia are behind the Government—but when they wanted to nationalise banking, article 92 of the Australian Constitution has been held as a bar to the Government's power to nationalise the banks. There is no point in shutting the hands of the future Government in operating this Constitution.

Dr. P. S. Deshmukh : When was this situation understood and realised for the first time?

Shri T. T. Krishnamachari : If my honourable friend wants me to say that I owe the realisation of this fact to my honourable Friend Dr. Deshmukh, I must deny any such idea. The thing has been realised long ago; any student of constitutions knows that there are similar articles in the various constitutions, and it is only because of the difficulties experienced by the people who work those constitutions that we have taken the liberty of putting forward this balanced and comprehensive chapter in regard to control of trade and commerce before the House. I do suggest, Sir, that the House would do well not to depart from the scheme, as the scheme as I said before is the best that could possibly be forged at the present moment having in view the demands of the future and the well-being of the country which would depend on how this Constitution would work.

Sir, I support the motion made by Dr. Ambedkar.

Shri Alladi Krishnaswami Ayyar : Mr. President, Sir, in the first place, I venture to state that these articles form a very well-thought-out scheme in regard to inter-State trade and commerce. This problem of inter-State trade and commerce has baffled constitutional experts in Australia, in America and in other Federal Constitutions. My Friend Dr. Ambedkar, in the scheme he has evolved, has taken into account the larger interests of India as well as the interests of particular State and the wide geography of this country in which the interests of one region differ from the interests of another region. There is no need to mention that famine may be raging in one part of the country while there is plenty in another part. It may be that manure and other things are required in one part of the country while profiteers from another part of the country may try to transport the goods from the part affected. At the same time, in the interests of the larger economy and the future prosperity of our country, a certain degree of freedom of trade must be guaranteed.

My Friend Mr. Krishnamachari has pointed out that this freedom clause in the Australian Constitution has given rise to considerable trouble and to conflicting decisions of the highest Court. There has been a feeling in those parts of Australia which depend for their well-being on agricultural conditions that their interests are being sacrificed to manufacturing regions, and there has been rivalry between manufacturing and agricultural interests. Therefore, in a federation what you have to do is, first, you will have to take into account the larger interests of India and permit freedom of trade and intercourse as far as possible. Secondly, you cannot ignore altogether regional interests. Thirdly, there must be the power intervention of the Centre in any case of crisis to deal with peculiar problems that might arise in any part of India. All these three factors are taken into account in the scheme that has been placed before you.

Now, let us take the comments that have been made. The scheme is this. Article 274A lays down the general principles of freedom of trade and commerce as the governing principle. Then 274 B deals with certain restrictions, "as may be required in the public interests". I do not want to go into that metaphysical or subtle distinction between "the interests of the public" and "public interest". I do not think there is any substance in that contention; the 'interest of the public and the public interest are in my view identical. Therefore, instead of leaving the freedom of trade guaranteed under article 274 unfettered, it clothes Parliament with the power to interfere with the freedom in certain cases in 274B, that is, certain restriction may be made in the interests of any part of the territory of India as may be required in public interest. That is the principle of article 274B.

Now about article 282C, I am rather surprised that people should take exception to it while they stand by the original article 16. If anything, it enlarges the freedom of trade which has been guaranteed under article 16. Article 16 gives an omnibus power to Parliament to make any inroad on the rights that are guaranteed under article 16. So far as 274 C is concerned, it further secures freedom of trade by enlarging the freedom trade and putting an embargo upon the Parliament as well as the Legislature of the State, namely that they shall not discriminate. Therefore, the advocates of the freedom of trade throughout the territory of India cannot take exception to an article which far from restricting the freedom of trade enlarges it.

The next comment was, there should be no reference to the power in relation to trade and commerce. It was advisedly put in for the reason that there might be very many powers which may be exercised by the different States in regard to supply of goods, the internal or indigenous industry, which may trench upon trade and commerce but which may not bear directly upon trade and

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commence. It is not the intention to interfere with these powers of the Provinces or States. Therefore the main article itself provides that by virtue of any power vested in them in regard to trade and commerce, neither Parliament nor the legislature shall enact any discriminatory law.

Then as to the principle, of article 274 C. The situation in the great continent of India may not be the same everywhere; there may be profiteers in one part and entrepreneurs in another and famine and scarcity in a third part—to deal with particular situations a certain course of action may have to be taken. When there is scarcity in one part it need not be accentuated by people from another part of the country exporting articles from profits motives. Parliament should have power to control it. That is the object of this article.

Then I am surprised at exception being taken to the terms of article 274D. It does not give any unfettered power to the States. The, proviso clearly lays down—

“No Bill or amendment for the purposes of clause (b) of this article shall be introduced or moved in the legislature of the State nor shall any Ordinance be promulgated for the purpose by the Governor or Ruler of the State without the previous sanction of the President.”

Therefore, if on account of parochial patriotism or separatism, without consulting the larger interests of India as a whole if any Bill or amendment is introduced, it will be open to the President, namely, the Cabinet of India to withhold sanction. This is therefore a very restricted power that is conferred on the legislature of a State. After all what is the nature of the power given? The power is confined to imposing such reasonable, restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest therefore the President who has to grant sanction will have the opportunity to see that the legislation is in the public interest and that the restriction imposed is reasonable. It is not possible to devise a water-right formula for the purpose of defining these restrictions.

Lastly, I want to say that there is absolutely no substance in the observation that this offends against any fundamental rights guaranteed. If a man has a right to move about the territory of India, how property and so on, under article 13, this does not in any way restrict that right conferred by that article. So far as article 16 is concerned, the substance of the freedom of trade guarantee is preserved. We have prohibited the States and the Centre from passing discriminatory laws.

Shrimati G. Durgabai (Madras : General) : Sir, the question may now be put.

The President : The question is

“That the question be now put.”

The motion was adopted.

The Honourable Dr. B. R. Ambedkar : Mr. President, I do not think I can usefully add anything to what my Friends Shri T. T. Krishnamachari and Shri Alladi Krishnaswami Ayyar have said.

Mr. President : Now I will put the amendments to vote. The first amendment relates to the heading. The question is :

“That in amendment No. 269 of List IV (Seventh Week), in the heading of the proposed new Part X-A, for the words “Trade, Commerce and Inter- could be’ the words “Trade and Commerce” be substituted.”

The amendment was negatived.

Mr. President : The question is :

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

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

The amendment was negatived.

Mr. President : The question is :

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

The amendment was negatived.

Mr. President : The question is :

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

The motion was adopted.

Article 274-A was added to the Constitution.

Mr. President : The question is:

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

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

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

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

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

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

The amendments were negatived.

Mr. President : The question is:

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

The motion was adopted.

Article 274-B was added to the Constitution.

Mr. President : The question is:

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

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

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

[Mr. President]

(2) Legislature of a State may, however, by law—

- (a) impose on goods imported from other States any tax to which similar goods manufactured or produced in that State are subject so as not to discriminate between goods so imported and goods so manufactured or produced; and
- (b) impose such reasonable restrictions on trade and commerce or inter-commerce with or within that State as may be required in the public interest with the previous approval of the Parliament.’ ”

“That in amendment No. 269 of List IV (Seventh Week), in clause (1) of the proposed new article 274-C, for the words ‘to one State over another’ the words ‘to any State as against any other State in the Union or to any part within that State’ be substituted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (1) of the proposed new article 274 C, for the words ‘between one State and another’ the words ‘between any State and another State of the Union or between any parts within that State’ be substituted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (1) of the proposed new article 274-C, the words ‘by virtue of any entry relating to trade or commerce in any of the Lists in the Seventh Schedule’ be deleted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274-C, after the words ‘prevent Parliament from making any law’ the words ‘with previous consultation of the Government and Legislature of a State’ be inserted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274-C, for the words ‘a situation’ the words ‘any emergent situation’ be substituted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274-C, before the word ‘scarcity’ the word ‘temporary’ be inserted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed now article 274-C, the words ‘for the period of the emergency’ be added at the end.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274-C, the words ‘for such period as the situation lasts’ be added at the end.”

The amendments were negatived.

Mr. President : The question is :

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

The motion was adopted.

Article 274-C was added to the Constitution.

Mr. President : The question is:

“That in amendment No. 2821 of the List of Amendments, for the proposed article 244, the following be substituted :—

‘244. It shall not be lawful for any State either to impose any tax on goods imported from any State or to impose any restrictions on the freedom of trade, commerce or intercourse with any State.’ ”

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

‘274-D. Parliament may, by law, appoint such authority or delegate its powers to such person or persons and confer on them such powers and duties as it thinks necessary.’ ”

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

“That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article 274-D, the words ‘or inter-course’ be deleted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article 274-D, the words ‘with or’ be deleted.”

“That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article 274-D, for the words ‘in the public interest’, the words ‘in the interests of the general public and are not inconsistent with the provisions of article 13’ be substituted.”

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

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

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

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

The amendments were negatived.

Mr. President : The question is :

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

The motion was adopted.

Article 274-D was added to the Constitution.

Mr. President : The question is :

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

The amendment was negatived.

Mr. President : The question is :

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

The motion was adopted.

Article 274-E was added to the Constitution.

Mr. President : The question is :

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

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

The amendment was negatived.

Mr. President : I think these are all the amendments to deal with.

The House will now adjourn till Nine of the Clock tomorrow morning.

The Assembly then adjourned till Nine of the Clock on Friday the 9th September 1949.
