

Article 260

Mr. President : Then we go to article 260.

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

“That for amendment No. 2943 of the List of Amendments, the following be substituted:—

That for clause (1) of article 260, the following clause be substituted :—

‘(1) The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order, constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President.’ ”

Sir, the point of this amendment is this. Originally, as the article stood, it stated that the Commission shall be appointed at the end of five years. It is felt that it is necessary to permit the President to appoint the Commission much earlier and consequently we are now providing that it should be appointed within two years from the commencement of the Constitution.

Mr. President : You may move amendment No. 96 also.

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

“That in sub-clause (b) of clause (3) of article 260, for the words ‘revenues of India’ the words ‘Consolidated Fund of India’ be substituted.”

This is a formal one.

Mr. President : There are amendments to this article, which have been printed in the Book.

(Amendments Nos. 2941, 2942, 2944, 2945, 2946, 2947, 2948, 204, 205, 97 and 98 were not moved.)

Mr. President : Amendment No. 115. Pandit Kunzru.

(Pandit Hirday Nath Kunzru was not in the House.)

He told me that he would like to move this amendment. I would allow any other Member if he wishes to move it.

(At this stage Pandit Hirday Nath Kunzru came in.)

Pandit Hirday Nath Kunzru : (United Provisions: General): Mr. President I beg to move :

“That with reference to amendment No. 95 of List I (Third Week) of Amendments to Amendments, for sub-clause (a) of clause (3) of article 260, the following sub-clauses be substituted :—

- ‘(a) the distribution between the Union and the States of the net proceeds of taxes on income which are to be divided initially between them under this Chapter;
- (aa) the allocation between the States of the respective shares of the net proceeds of taxes which are to be, or may be, divided between the Union and the States under this Chapter;’ ”

Sir, the sub-clause to which I have moved the amendment runs as follows:

“(a) the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds;”.

This sub-clause which is sub-clause (a) of clause (3) of article 260 provides that it will be the duty of the Finance Commission not merely to distribute that part of the taxes divisible between the Central Government and the provinces which belongs to the provinces among the provinces themselves, but also that the Commission should lay down how these proceeds are to be distributed, that is the proceeds of what I may call the divisible taxes, between the Centre and the provinces. My amendment, if accepted, will leave the position as it is so far as

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the taxes on income are concerned; but it will change the Position with regard to the other divisible taxes which, I suppose, will be excise duties. I have left the position with regard to taxes on come as it is because article 251 lays down that after the Finance Commission has been appointed, the President will prescribe the percentage of the net proceeds of the taxes on income to be assigned to the provinces after consultation with the Finance Commission when it is appointed. I confess that I did not fully realise when this article was under discussion what the effect of the definition of the word 'prescribed' laid down there would be on article 260. I discovered this only when I drafted with the help of the Draftsman and Joint Secretary of the Constituent Assembly the amendment that I have just moved. I have however sought to impose one limitation even in that respect, and that limitation is this. While the President may consult the Finance Commission initially with regard to the respective shares of the net proceeds of the taxes on income calculated in the manner laid down in article 251, to be assigned to the Centre and the provinces, the Commission should not have the power to review these percentages later on its own initiative. If we leave sub-clause (3) of article 260 as it is, then it will be the duty of the Commission to make recommendations to the President as regards the distribution of the proceeds of the divisible taxes between the Centre and the provinces and it will be able to review any percentages that may be initially fixed. The purpose of my amendment is to limit the power of the Finance Commission in this respect to the initial fixation of the percentage. Once the shares of the Centre and the provinces have been fixed, I suggest that the Finance, Commission should have nothing more to do with that matter unless the matter is referred to it by the President. Should the provinces stand in need of more money later on, should their recurring expenditure increase to such an extent as to need, on prudent financial and economic grounds, not large grants but a definite share in the proceeds of certain taxes, then the matter ought to be considered by the Government of India in consultation with the provinces. I shall not discuss this question at length because I dealt with the principle underlying this yesterday; but I venture to repeat that my opinion on this subject has not been altered in the slightest degree by the observations made by Dr. Ambedkar yesterday.

Now I come to the second part of my amendment. If sub-clause (a) of clause (3) of article 260 is left as it is, then the Finance Commission will be able to say how much of the net proceeds of the Union duties of exercise should be kept by the Government of India and how much should be assigned to the provinces. Now the article that relates to the imposition of Union duties of excise and the distribution of their proceeds between the Centre and the provinces is article 253. There is nothing in the language of that article to compel the President to consult the Finance Commission before coming to a decision on this subject. If the second part of my amendment is accepted, then the power of the President to consult the Commission in this respect will remain absolutely untrammelled. Honourable Members will thus see that if my amendment is accepted, while the provinces will, lose nothing, the Centre which will have to bear the ultimate responsibility for the protection of the highest interests of the country and for its defence will be in a Position to discharge those responsibilities adequately even in emergencies. The framers of the Constitution realised that the position as contemplated here might be found to be unsatisfactory later on when the Central Government was confronted with an exceptional situation and for this reason, I suppose, 'included Article 277 in the Draft Constitution which empowers the Government of India in, an emergency to suspend all or any of the provisions of articles 249 and 259 of this Constitution. This is obviously a very sweeping provision. The representatives of the provinces will easily see how dangerous this article is. They will be completely at the mercy of the Government of India

when, say, a war breaks out. This article show that the framers of the Constitution feel that under the provisions of article.....

The Honourable Dr. B. R. Ambedkar : It has not been passed yet.

Pandit Hirday Nath Kunzru : That is why I am referring to it now otherwise there would have been no point in referring to it.

The Honourable Dr. B. R. Ambedkar : I have a right to withdraw it.

Pandit Hirday Nath Kunzru : Dr. Ambedkar says he has a right to withdraw I hope he will be wise enough to withdraw it.

The Honourable Dr. B. R. Ambedkar : No, it might be modified.

Pandit Hirday Nath Kunzru : But I understand that its purpose is to enable the Central Government to resume the whole or a part of that portion of the money that might generously have been made over to the provinces. Now the Government of India Act, 1935, also envisaged a position when the Central Government might be unable to make over to the provinces the prescribed share of the taxes on income and authorised the Governor-General to delay the process of transferring to the provinces their share of the net proceeds of these taxes. But this article 277 goes far beyond that. I suggest, that in order to remove the possibility in view of which article 277 has been inserted in the Constitution, the Finance Commission should have nothing to do with the allocation of the shares of the Central Government and the Provincial Governments in the proceeds of any tax. This is a matter that should be decided by the Central Government, as I have already said, in consultation with the provinces. If this is done I am owe that the Central Government will be able to discharge their supreme responsibility and also to justify their position to the provinces. No situation will in that case arise which will compel the Central Government practically to annual the provisions of all the financial articles that we have so far discussed.

Sir, there is a Finance Commission in Australia. It has been functioning for sixteen years, but its duty is to examine the demands of the provinces and scrutinise their budgets and then recommend how much money should be given to them either in order to make up for their deficits or for any other purpose. It has, so far as I know not been authorised to say to the Commonwealth Government that it should give, a certain proportion of the proceeds of a certain tax to the States. In Canada, very recently an attempt was made to induce the provinces to agree to an arrangement like that prevailing, in Australia. During the war the Central Government persuaded the provinces to vacate the income-tax field and occupied it completely itself. Under the Canadian Constitution the provinces can levy taxes on income for purely provincial purposes. But the Dominion Government has levied such high taxes that there is hardly any possibility of the provincial Governments reentering the field of income-tax. The Dominion Government suggested that the Provinces should agree to the appointment of a Finance Commission which would recommend periodical grants to the Provinces, in consideration of their needs. But it was never suggested during the course of the discussion, either by the Dominion Government or by the Provinces that the proposed Finance Commission should have the power to say to the Dominion Government that a certain proportion of the net proceeds of the income tax should be made over to the Provinces. All that suggested was that the Finance Commission should, after considering what the legitimate needs of the Provinces were make such recommendation as would satisfy their requirements. In Canada no agreement was arrived at, let me add between the Centre and the Provinces.. But this does not in any way vitiate the argument that I have been using.

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Sir, I do not think that I need dwell any further on this subject. I think that I have said enough to show that it is not desirable that apart from the income-tax in respect of which we are committed under article 251, we should go further and allow the Finance Commission to decide how the proceeds of the Union Excise Duties should be divided between the Centre and the Provinces. Nor is it desirable, in my opinion, that the Finance Commission, after initially laying down what percentage of the net proceeds of the tax on income should be retained by the Centre, and assigned to the Provinces, should have the power to review this percentage later. The needs of the provinces can be adequately met in other and sounder ways.

Shri B. Das : Sir, very reluctantly I accept the amendment moved by my Friend Dr. Ambedkar. Sir, there is a Sanskrit adage:

सर्वनाशे समापन्ने अर्थं त्यजति पंडितः

Sarvanashe Samapanne ardhani tyajati panditah.

Mr. Kamath will correct my Sanskrit, if it is wrong, but it means that “wise men part with half of their just demands when there is prospect of annihilation”. The Government of India, in their mad career from 1924 onwards up to now, in their self-centred financial policy, have annihilated the growth and development of the provinces. It is now said that within two years of the coming into effect of the Constitution, the Finance Commission should function. But this is also a departure from the recommendation of the Sarker Committee’s Report where they recommend that the Finance Commission should be appointed immediately. Of course, Dr. Ambedkar has told us that an *ad hoc* committee, or some special officer is going to review the position of the Provinces and the Centre, as regards the resources and may, allocate something to the undeveloped provinces for their immediate development. Sir, apart from incidental expressions on the floor of the House, no declaration on this *ad hoc* committee has been made. I, therefore, hope that before we close the debate on these dealings with the distribution of finance between the Centre and (the Provinces, some sort of definite declaration would be made.

Sir, I wholeheartedly support the amendment moved by my Friend Pandit Kunzru, to the amendment of Dr. Ambedkar. Sir, this morning I observed Pandit Hirday Nath Kunzru is a man of principles. He has pointed out the existences of a lacuna. These principles have to be put into practice. His speech definitely pointed out how the lacuna exists, and also how those principles must be given effect to. Of course something is better than nothing. Pandit Kunzru wants clause (3) (a) to be subdivided into (a) and (aa), and I hope the House will accept this in the interest of those undeveloped provinces about which the House has heard so much the other day and today.

What we have been trying to assert incidentally places before the House the fact that there is no initial distribution of the resources. We may have failed to emphasise and to convince others that an initial division of income-tax and other resources is necessary, for the development of the undeveloped provinces, such as Orissa, Assam, Bihar and to a certain extent Bengal. And I suppose Pandit Thakur Das Bhargava wants that East Punjab also should be included in the list of provinces of low resources, which want initial allocation of resources for development. Sir, I do very respectfully differ from my respected Friend Pandit Kunzru, that the President or the Cabinet or the Government of India in the Finance Department should not think of apportioning initially all resources simultaneously with the promulgation of this Constitution. In other aspects, such as

Excise Duties and other duties, they have been recommended in the Sarker Report I have occasionally differed from the recommendations of that Committee., especially that the distribution of income-tax should be on the collection basis. My objection still stands and I hope Pandit Kunzru has already advocated my stand, that the distribution of Income-taxes should be on a population basis.

My honourable Friend Pandit Hirday Nath Kunzru referred to the system envisaged by the Grants Commission in Australia. We have, got some inkling of it in the Nehru-Adarkar Report. The thing is that though Australia was not a sovereign Government, and it had a dominion system of Government, it could utilise its resources for the uplift of the undeveloped provinces. Unfortunately in India for 150 years, up to 1947, we were a subordinate Government run under the colonial pattern of British system, whereby all the resources were concentrated at the Centre and were spent at the behest of the British Finance Member for good of Britain and not of India. Today we want to hear something to soothe our heart that the Finance Department of the Government of India is not following that colonial pattern of finance administration in India. That is the crux of the situation. I do not mind my honourable Friend Dr. Ambedkar postponing the appointment of a Grants Commission or the Finance Commission for another two and a half years—perhaps it will be three years because if on 26th January, 1950 we accept this Constitution, in another place we will compel the Cabinet and the President to appoint the Finance Commission within two years of that date which means it will be four years after the Nalini Sarker Committee reported.

But, Sir, how are we to determine the principles of the distribution of revenues ? I plead guilty I have given no amendment because we were left in a haze. The House at no stage; discussed the principles of finance allocation and today we authorise the President to appoint a Finance Commission and to lay down certain principles.

Sir, I am grateful to Pandit Hirday Nath Kunzru who referred to article 277. That the President of India should interfere in provincial resources in time of emergency shows a mentality which the Britishers had in 1937. Knowing that the war was coming, in 1937 they amended Section 126 of the Government of India Act in the House of Commons and called it Section 126-A, whereby all resources were placed in the hands of the Central Government. Not only all our leaders were placed in jail, but provinces worked under Section 93 to serve U.K. What happened was that India was bled white during the 2nd War, nearly Rs. 4,000 to 5,000 crores were mulcted out of us by the Allied Powers. in which the U.S.A. equally benefited along with the U.K. Everything was purchased at controlled prices, at pre-war level of prices, and if there is inflation today, if there are financial difficulties, poverty and starvation, inflation and high prices, it is due to that Section 126-A. I would have thought, Sir, a national Government, a democratic Government framing an independent Constitution would not think of acquiring financial powers under article 277 in time of emergency. This is an evolution of mind of those of us who fought for the freedom of India. I cannot fathom why this power should be handed over to the President.

Whenever I examine any article of these financial provisions, I feel baffled. Sir, we have postponed article 258, but what does it aim at ? It aims at centralization of all sales tax so that there will be uniformity of basis in collection of sales tax. Sales-tax today is on a lower trend because our Finance Minister has agreed to spend less dollars and less sterling during his recent London visit. If we accept lower expenditure, how can Provinces like Madras who live on luxurious goods of foreign import, live when there is less sales-tax. There will

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perhaps be another debate on article 258 but I am looking at the picture as a whole. The Finance Commission would be faced with bigger problems than was originally visualised by the Drafting Committee.

Mr. President : Article 258 does not refer to sales-tax?

Shri B. Das : Yes, Sir. it will refer to sales-tax.

Mr. President : It refers to agreement with States.

Shri B. Das : Yes, Sir, and there the Government of India comes in.....

Mr. President : It has nothing to do with sales-tax.

Shri B. Das : Let me then give the information to the House that the Government of India is in close correspondence with the Provincial Finance Ministers and others. They want uniformity of sales-tax in all the provinces and yet they are decided on reducing the volume of trade in the Provinces whereby the revenue, of the provinces will be reduced. I am not an advocate of the use of foreign goods, I do not use them if I can help it, but everywhere the Centre is using its arbitrary power to reduce the income of the provinces and yet it does not settle the fundamental issue that the initial basis of distribution of resources should be revised. I do not wish to harp on points on which I have spoken on so many occasions during the last three or four days, but I am baffled at the trend of events as regards the distribution of finances between the Centre and Provinces. I am not very happy that three years hence a Finance Commission will be appointed, but I see a ray of hope, I see a streak of light. If the principle advocated in Pandit Hirday Rath Kunzru's amendment is accepted wisdom may dawn on those who are in control of the Government of India today that the initial basis of allocation of resources should be revised. I do hope that Pandit Kunzru will not object if undeveloped provinces like Orissa, Assam and Bihar get a little more money than they would otherwise be given by the Finance Commission later.

Prof. Shibban Lal Saksena : Sir, this is a very important article in the Constitution. I am glad that Dr. Ambedkar has provided that a Finance Commission shall be appointed within the first two years of the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary. Dr. Kunzru has given notice of two amendments to clause 3(a) of this article. I personally feel that the amendments will make the position worse. In fact he proceeds on certain assumptions. I feel that this Commission shall be only a body to recommend to the President and not a body whose decision is binding. He wants a convention that whatever this Commission recommends should be binding on the President. He says that the President of course has the power but he should not exercise it : that he should impose on himself a sort of voluntary self-denying ordinance. We have recently had the report of the Experts Committee on Finance and the other day Dr. Kunzru himself told us that it was wise that the report was not accepted. He must realise that there can be a Finance Commission which can make reports similar to the one which was made by the Sarker Committee and which the Central Government and the Drafting Committee thought fit to scrap. I therefore, say that the Finance Commission shall be a body of experts who shall examine the position of the Republic so far as finance is concerned and shall make their recommendations. They shall adduce their reasons for their viewpoint, but I do not think it could be a body which can take away the admitted responsibility of the Parliament to make final decisions in regard to finance. I am therefore opposed to any conventions being established that the Finance Commission's report shall be accepted.

In the previous article I opposed the powers of the President to make allocations on the ground that I wanted the Parliament to do it by law. If Dr. Kunzru's assertion were accepted that there shall be a convention by which the recommendations of this Commission shall be accepted, I personally feel that this convention would be very unhealthy and harmful. It will detract from the authority of the Parliament to make allocations. In fact this Commission has been given power to make recommendations about distribution of the proceeds of the taxes, about grants-in-aid, about the continuance or modification of the terms of any agreement, etc., in fact on anything which is referred to it. so that if the Commission's recommendations have to be accepted by convention it becomes more powerful than the Cabinet itself. The Cabinet will not be able to touch any of the recommendations of the Commission. I do not want to take away these powers of the Parliament and give them over to the Finance Commission, howsoever wise a body it may be. Dr. Kunzru's objection to the Parliament interfering with the recommendations of the Commission is this. Suppose the Finance Commission makes a recommendation giving a larger proportion of the taxes to a particular State and the President or the Parliament reduces the amount to be given to that particular State or province, then the province will accuse the Centre of depriving it of the sum which the Finance Commission thought fit to allot to it. I personally feel that the Parliament will be a parliament of the whole nation and every State will be represented on it. If Parliament after consideration of all the pros and cons of every proposal and after taking into consideration all the arguments of the Finance Commission, thinks in its supreme wisdom that a State should have a particular allocation, I think Parliament will be within its rights and nobody will make any accusation against it, because the members representing the particular State will also be there to give their opinion about the allocation. I therefore think that it will be a very dangerous principle to give authority to any outside body like the Finance Commission to dictate to the Parliament and to the Government that "this shall be the distribution of the finances of the country." I therefore feel that the fundamental assumption on which the two amendments of Dr. Kunzru are based is wrong. This Finance Commission as has been defined in the Constitution will be a Commission which will recommend to the President as to how the distribution of the finances will take place between the Centre and the States. That should be its function. It should not have the authority to have the last word on the distribution. Dr. Kunzru gave the example of Australia where he said such a convention was prevalent. I think except for Australia no such convention exists anywhere else. I am not fully familiar with conditions in Australia to be able to say why they have adopted this convention. But so far as my own country is concerned I feel that Parliament should be the ultimate authority and nobody shall have the right to criticize Parliament in its allocations, since every part of the country sends its representatives to it. I therefore think that the recommendations of the Commission shall be only recommendatory as contemplated by this Constitution and according to the clause as framed by Dr. Ambedkar. If that goes, these two amendments become superfluous. Dr. Kunzru wants the distribution between the Union and the States of the net proceeds of the taxes on income which should be divided initially between them and that this allocation should be the function of the Finance, Commission. Article 251 says .

"Such percentage, as may be prescribed, of the net proceeds in any financial year of any such tax..... shall be distributed."

Further it says that the word "prescribed" means "until it Finance Commission has been constituted prescribed by the President by order and after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission." Dr. Kunzru wants

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that this Finance Commission should not have the power to make a recommendation about the distribution of income-tax proceeds on each occasion on which the matter is referred to it but only wants that initially on the first occasion it should be permitted to do so. It may be that according to conditions today the proceeds of income-tax may be distributed in a certain manner; but tomorrow the finances, of the Centre may get worse and they may not be able to spare those allocations, while the finances of provinces may be better and they may not need that amount. So if the amendment is accepted, the Finance Commission cannot change the allocation. I think it is better that, the Commission should be able to report to the President every time how the taxes should be divided, according to conditions then existing. Laying down a fixed percentage for all time will defeat the very purpose of this Commission. I therefore do not think the first amendment of Dr. Kunzru is at all proper. He wants that the power of the Government and the President should not be taken away by this Commission so far as any change in the distribution of percentage is concerned. He wants that the recommendation of the Commission should be sacrosanct, but I want them to be recommendatory. They should not be binding and on every occasion the Finance Commission's advice should be sought as to the distribution between the provinces and the Centre. If the recommendations are not to be treated as binding on the President, the first clause becomes meaningless and the amendment therefore has no significance.

The second clause of the amendment refers to allocation between the States, but article 260 refers to distribution between the Union and the States. Therefore this amendment would deny to the Commission the power to say that so much of the proceeds of an excise duty should go to the Union and so much to the States; he wants the President to be the final authority to determine the allocation between the States and the Centre. That is to say, the President will say that 20 per cent will go to the provinces and then the Finance Commission will say how it will be distributed. This means that the Finance Commission will be useless, if it has no power to determine the percentage of allocation as between the Union and the States. Therefore I think this second amendment is even more dangerous. What I am really afraid of is the devolution of responsibility from Parliament to an outside authority, whether it be the President or the Finance Commission. I want Parliament to be the ultimate authority, in which case these amendments are out of place. Parliament must know the financial state of the country. The Finance Commission must have full authority to go into every aspect of every duty and the condition of provinces as well as the Centre, so that its report may enlighten Parliament. The second amendment is more dangerous because it makes the Finance Commission a useless body. In fact during discussions on articles 253 and 254, each province wanted a share of the duties that are raised in that particular province. So the President here should not be given the power to make allocations; Parliament must be the authority to allocate the shares. But this amendment of Dr. Ambedkar really wants that the allocation shall not be made by the Commission or by Parliament but by the President in his discretion, who will decide the percentage to be distributed and the Commission will report as to the manner of distribution. I think these two amendments are based on the supposition that the recommendations of the Finance Commission are to be binding. I do not think these recommendations should be sacrosanct. In the next article I will move an amendment that whatever decision is taken will have to be approved by Parliament which will decide whether the clarifications made by the President are proper. The ultimate authority must be the Parliament which will decide according to the state of the country. Sir I hope my points will be borne in mind and considered.

The Honourable Dr. B. R. Ambedkar: Sir, the House must have realised that my honourable Friend Dr. Kunzru's amendment referred to clause (3) of article 260 where the functions of the Finance Commission are laid down. But, in order to understand the exact significance of the amendments he has moved, I personally feel that it is desirable to know the method of allocation of revenues already provided for in the two articles we have already passed, namely, 251 and 253. It will be realised that the Draft Constitution separates the distribution and allocation of the income-tax from the distribution and allocation of central duties of excise. With regard to income-tax the distribution and allocation of the proceeds is a matter which is left to the President to decide. That will follow from reading article 251(2) with clause (4) (b) (i) and (ii). On the other hand with regard to the distribution and allocation of the proceeds of the central duties of excise the matter is left entirely to be determined by law made by Parliament, which you will find set out clearly in article 253.

As it is one o'clock I will continue my speech tomorrow.

The Assembly then adjourned till 9 of the clock on Wednesday, the 10th August, 1949.
