

I said when moving an amendment to article 302 that a consequential amendment would be necessary in article 202. I am therefore moving this Article 202 as amended will now read as follows:—

“Notwithstanding anything contained in article 25 of this Constitution, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority including in appropriate cases any Government within those territories directions or orders in the nature of writs of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, for the enforcement of any of the rights conferred by part III of this Constitution for any other purposes.”

It is just consequential.

**Pandit Thakur Das Bhargava** (East Punjab : General) : Why do you say in appropriate cases’?

**The Honourable Dr. B. R. Ambedkar** : Because appropriate cases will be laid down by law of Parliament.

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

“That is clause (1) of article 202 after the words ‘to issue’ the words ‘to any person or authority including in appropriate cases any Government within those territories’ be inserted.”

The amendment was adopted.

#### Article 234-A

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

“That after article 234, the following new article be inserted :—

‘234A. (1) The executive power of the Union shall also extend to the giving of direction Control of the Union over States to a State as to the measures to be taken for the protection as respects protection of railways, of the railways within the State.

- (2) Where by virtue of any direction given to a State under clause (1) of this article costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given there shall be paid by the Government of India to the State such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in respect of the extra costs so incurred by the State.’ ”

Sir, all police first of all are in the Provincial list. Consequential the protection of railway property also lies within the field of Provincial Government. It was felt that in particular cases the Centre might desire that the property of the railway should be protected by taking special measures by the province and for that purpose the Centre now seeks to be endowed with power to give directions in their behalf. It is possible that by reason of the special directions given by the Centre some extra cost above the normal may be incurred by the provinces. In that event what that extra cost is, may either be determined by agreement or if there is no agreement, by an arbitrator chosen by the Chief Justice of India. The second clause is analogous to many of the clauses that we have passed in the Constitution for settling the disputes between the Centre and the Provinces so far as extra cost is concerned.

**Dr. P. S. Deshmukh** : Mr. President, I do not feel convinced about the necessity of this provision which refers only to railway property. I do not know what cause there is for special apprehension so far as the property belong to railway is concerned. There will be property belonging to the Centre spread over the length and breadth of India; and why should there be a special and specific provision for the protection and for issuing specific directions in this case only? The House is aware that the Centre has got

[Dr. P.S. Deshmukh]

authority for issuing directions in various spheres and giving certain directions which are necessary for the maintenance of law and order, and for protection of their property also the Centre has power of issuing those instructions generally. Therefore, I have not been able to follow why it was necessary to refer to it specifically and make special mention of the railway property and what causes there are which make us apprehensive of the possible damage to railway property only. I do not think it is proper that we should have such apprehensions apart from the general powers. We have already clothed the Centre with more than sufficient powers and this article should not be necessary. In an case the justification given has not convinced me of the necessity of having this article. There is nothing to fear that the States will not carry out directions without such an article being there and that any dispute will arise so far as the cost is concerned. There are matters which may arise in the normal administration and they can be normally settled and there is no necessity of abnormal provisions and abnormal means of settlement.

**Shri Brajeshwar Prasad :** Mr. President, Sir, I rise to extend my hearty support to clause (1) of this article, but I am thoroughly opposed to clause (2). There is no reason why an arbitrator should be appointed if there is a conflict between the Centre and the States regarding costs that have been incurred in excess of that that which would have been incurred in the ordinary performance of provincial duties. The master and the servant cannot be placed on the same platform. It is wrong to do anything which would bring about any deterioration of the power and position of the Majesty of the Government of India. Therefore I want that if there is any conflict between the Centre and the provinces as far as the costs are concerned, the matter may be left entirely in the hands of the President.

**The Honourable Dr. B. R. Ambedkar :** Sir this clause is very necessary. My Friend Mr. Deshmukh when he said, that there were adequate provision in the existing article we have passed—I am sorry to say—he is fundamentally mistaken. Railway Police is a subject within the authority of the State. Police as an entry does not find a place in List I. consequently the Centre has no authority to make a law with regard to any police matter at all, nor, not having the legal authority, has it any executive authority. Therefore so far as protection of the railway property is concerned, the matter is entirely within the executive authority of the State. That being so, there are only two methods of doing it. Either the Centre should be endowed with police authority for the purpose of protecting their own property in which case an article such as the one which I have moved is unnecessary or we should have the provision which I have suggested *viz.* to give directions. Supposing the Centre has a police to protect railways, that police may come in conflict with the police authority of the State. Therefore the double jurisdiction has been avoided by the scheme which has been suggested *viz.*, that the Centre should have the authority to give directions that more police may be posted on the railways, better precautions may be taken, so that there will not be any conflict, and should more expenditure be incurred the Centre should be ready to bear it. I cannot see what difficulty there can be. Dr. Deshmukh's premise that this matter is already covered is hopelessly wrong.

**Dr. P. S. Deshmukh :** What is the reason, why we do not need any protection so far as the rest of the property of the Union is concerned? How do you distinguish between railway property and others?

**The Honourable Dr. B. R. Ambedkar :** Because we find the railway property needs more attention. The safety of passengers is there.

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

“That after article 234, the following new article be inserted :—

Control of the Union over States as respects giving of direction to a State as to the measures to be taken for the protection of railways of the railway within the State.

- (2) Where by virtue of any direction given to a State under clause (1) of this article costs have been incurred in excess of those which would have been incurred is the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in respect of the extra costs so incurred by the State.”

The motion was adopted.

New article 234A was added to the Constitution.

### **New Article 242-A**

**Mr. President :** Dr. Ambedkar, you may move amendment No. 372A regarding the heading.

**Shri T. T. Krishnamachari :** If No. 373 is passed, then the deletion of the heading is consequential.

**The Honourable Dr. B. R. Ambedkar :** Sir, I move amendment No. 373:

“That after article 242, the following new article be inserted :—

‘242A. (1) Parliament may by law provide for the adjudication of any dispute of complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

Adjudication of disputes relating to waters of inter state rivers or river valleys.

- (2) Notwithstanding anything contained in this Constitution, Parliament may, by law, provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1) of this article.’ ”

Sir, originally this article provided for Presidential action. It was thought that these disputes regarding water and so on may be very rare, and consequently they may be disposed of by some kind of special machinery that might be appointed. But in view of the fact that we are now creating various corporations and these corporations will be endowed with power of taking possession of property and other things, very many disputes may arise and consequently it would be necessary to appoint one permanent body to deal with these questions. Consequently it has been felt that the original draft or proposal was too hide-bound or too stereo-typed to allow any elastic action that may be necessary to be taken for meeting with these problems. Consequently I am now proposing this new article which leaves it to Parliament to make laws for the settlement of these disputes.

**Shri R. K. Sidhwa :** Article 242 is proposed to be deleted, and so how does this new article 242A come up after article 242?

**The Honourable Dr. B. R. Ambedkar :** This one only indicates the position.

**Mr. President :** We have passed article 242. Now, does any one want to speak on this new article? There is no amendment to it.

**Shri Brajeshwar Prasad :** Mr. President, Sir, I support clause (1) of this article, but I feel that there is no necessity for vesting power into the hands of Parliament to make laws for resolving disputes in connection with inter-state river and river valleys. That matter I feel, should have been left in the hands of the President alone.