

The Honourable Dr. B. R. Ambedkar: I do not know. The position is quite clear whether the President is to be left in his complete discretion to make any allocation he likes with regard to the income-tax or whether he should be guided by the recommendations made by the Commission. It seems to me that the position of the President will be considerably strengthened if he could refer as a justifying cause to the recommendations made by the Finance Commission. It seems to me that the Finance Commission will be acting as a bumper between the President and the provinces which may be clamouring, for more revenue from income-tax. I therefore do not think there is any reason for accepting the amendment moved by my Friend, Mr. Kunzru.

Mr. President : I have now to put the two amendments to the vote. First, amendment No. 95 moved by Dr. Ambedkar. The question is:

“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.”

The amendment was adopted.

Mr. President : The question is:

“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-clause 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;’ ”

The amendment was negatived.

Mr. President : The question is:

“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.”

The amendment was adopted.

Mr. President : The question is:

“That article 260, as amended, stand part of the Constitution.”

The motion was adopted.

Article 260, as amended, was added to the Constitution.

Article 261

(Amendment No. 2949 was not moved.)

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

“That in article 261, for the word ‘Parliament’ the words ‘each House of Parliament’ be substituted.”

[Amendment No. 99 (List 1, Third Week) was not moved.]

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

“That with reference to amendment No. 2950 of the List of Amendments, in article 261, for the words ‘together with an explanatory memorandum as to the action taken thereon’ the words ‘together with such explanatory memorandum as he may think fit’ be substituted.”

I move also, Sir, by your leave the next amendment that stands in my name, namely amendment No. 139 of List IV, Third Week, to the effect:—

“That in amendment No. 2950 of the List of Amendments, for the words ‘each House of Parliament’ proposed to be substituted, the words ‘each House of Parliament for such action thereon as Parliament may deem necessary’ be substituted.”

This amendment No. 139 incorporates the amendment proposed by Dr. Ambedkar, amendment No. 2950 in our List of Amendments, so that if these two amendments of mine were accepted by the House, the article will read as follows :—

“The President shall cause every recommendation made by the Finance Commission under the foregoing provisions of this Chapter together with such explanatory memorandum as he may think fit to be laid before each House of Parliament for such action thereon as Parliament may deem necessary.”

To my mind, Sir, this article 261 coming as it does after article 260 and relating as it does to an important Commission, namely the Finance Commission, presents an unfortunate anomaly. This article is one of those numerous articles in our Draft Constitution which seek to centralize more and more power in the President, that is to say, the Executive; the President, of course acting upon the advice of his Council of Ministers as we have been repeatedly told here. I see no reason why the action to be taken on the recommendations of the Finance Commission should be left to the judgment solely of the President said his Cabinet. In article 260 which has been already adopted by the House. We have clothed Parliament with certain powers regarding this Finance Commission; Clauses (2) and (4) of article 260 vest in Parliament powers regarding the determination of qualifications for membership of the Commission and determination of the powers of the Commission. The Finance Commission, as has been made clear by Dr. Ambedkar and also by Pandit Kunzru is going to be a very important piece of machinery of the State. We have clothed the Finance Commission with vital powers. Though of course in law and in the Constitution, it is merely advisory and recommendatory, yet I have no doubt in my own mind that this Commission will play a vital part in the decision that the President or his Cabinet or Parliament might arrive at so far as financial matters are concerned. Sub-clause (d) of clause (3) gives powers with respect to general matters, that is to say, matters relating to federal finance in general. Besides this, the Commission has been invested with advisory powers regarding allocation of revenues between the Centre and the units and also as between the various units of our Union. Considering all these various aspects of this vital matter, I feel that we shall be failing in our duty if we do not provide in the Constitution that the last word as to the action to be taken on the recommendations of the Finance Commission shall rest with Parliament and not with the President.

I said a similar point in connection with another Commission, the article regarding which has already been adopted by the House, namely article 301, the Commission to investigate the conditions of backward classes. I then raised the issue that Parliament and not the President or the Executive should be clothed with powers regarding the action to be taken on the recommendations of that Commission. My Friend, Prof. Shibban Lal Saksena, I am glad to find, has now got a similar amendment to mine. I hope, Sir, that this

matter, important as it is, will receive the earnest and serious consideration of this House and that we shall see to it that where it is derogatory to the dignity of our Constitution and the sovereignty of our Parliament, the Executive is not clothed with these powers which are absolutely uncalled for, Parliament passes the law laying down the qualifications of the Commissioners; Parliament gives them certain powers; however, it has not the power to take action, but the President has been clothed with the power to take action on the recommendations of the Commission. Parliament will be presented, unfortunately, with a *fait accompli*.

Shri Brajeshwar Prasad (Bihar: General): For purposes of elucidation, Sir, I would like to know from Mr. Kamath whether the position and powers of Parliament under the Draft is that of a sovereign body or it has got only limited powers.

Shri H. V. Kamath : I am glad my honourable Friend Mr. Brajeshwar Prasad has thought fit to raise this question by way of an interruption. If he scans the article carefully, he will find that memorandum referred to in this article is a memorandum as to the action taken thereon. That is to say, it does not say “proposed to be taken thereon”. The President will take action on the recommendation and then it will be laid before Parliament.

Shri Brajeshwar Prasad : You said that Parliament is a sovereign body; I say Parliament is not a sovereign body.

Shri H. V. Kamath : If Parliament is not going to be, sovereign, if my Friend wants to make the President sovereign in relation to Parliament, I have no quarrel with him.

Shri Brajeshwar Prasad : Read the Draft and say whether it is a sovereign Parliament or a limited Parliament.

Shri H. V. Kamath : I do not want to enter into any academic discussion. I am concerned only with the particular article before the House. The article deals with the powers of the President *vis-a-vis* Parliament as regards the Finance Commission's recommendations. If we turn to article 275 and others, there at least we have got this provision that Parliament should approve of a certain action taken by the President; otherwise, that action ceases to have validity. Here, there is no such provision at all. The President will submit a memorandum to Parliament describing the action taken on the recommendations of the Commission and it will be laid before Parliament. For what purpose, God alone knows. For what purpose this would be laid before Parliament, for approval, disapproval rejection or consideration, nothing is stated.

Pandit Thakur Das Bhargava (East Punjab: General), Merely for information.

Shri H. V. Kamath : Pandit Thakur Das Bhargava says, merely for information. If that is the intention of the article, it is a most pernicious measure. Parliament will be treated with scant regard and with, I may even say, contempt, if this article is passed as it is. We must certainly provide whether Parliament will have power to reject, or what powers will be given to it, with regard, to the action taken by the President on the recommendations of the Finance Commission. If Parliament is going to have no powers at all in this matter, not last word in this matter, I am constrained to say that we are clothing the President with more and more powers which are absolutely uncalled for, absolutely unnecessary in this respect. The Finance Commission being a very important body. I would once more plead, before I conclude, it must be subordinate to Parliament which is going to be a sovereign legislature. It is no use the President presenting Parliament

[Shri H. V. Kamath]

with a *fait accompli* telling them “this is the action I have taken”. I think this will be a very humiliating position for the sovereign Parliament and derogatory to its dignity. I hope Dr. Ambedkar and his wise team will look into the matter very closely and just as the other day, after a full dress debate, upon article 280, we find a new amendment will shortly be moved by Dr. Ambedkar, seeking to give some authority to Parliament with regard to the suspension of fundamental rights,—that has been included in the agenda,—so also I hope Dr. Ambedkar, the Drafting Committee and the House look into the matter very closely and see to it that Parliament retains ultimate control over the action to be taken on the recommendations of the Finance Commission and not leave it to the sweet will and pleasure of the President and the executive. Sir, I move amendments 138 and 139, of List IV, Third Week, and commend them for the earnest consideration of the House.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, I beg to move:

“That with reference to amendment No. 2950 of the List of Amendments, in article 261, for the words ‘action taken thereon to be laid before Parliament’, the following words be substituted :—

‘containing his proposals for action that should be taken thereon to be laid before each House of Parliament. The House of the People shall have the right, to amend the proposals made by the President by a resolution passed by the House of the People. The proposals of the President in their original form or in the form in which they emerge after they are, amended by the House of the People shall thereafter become law.’ ”

After the amendment is adopted, the article will read as follows:—

“The President shall cause every recommendation made by the Finance Commission under the foregoing provisions of this Chapter to-ether with an explanatory memorandum containing his proposals for action that should be taken thereon to be laid etc.....law.”

As I said while discussing the last article, I feel that in this Chapter the ultimate authority of Parliament in regard to financial matters has been made secondary to the authority of the President. I regard this to be against the principles of democracy. Here we are appointing a Finance Commission which shall be charged with powers to make recommendations for allotments between the Union and the various States, for making grants-in-aid to various States, for even modifying terms of any agreement entered into by the Union. and in respect to any other matter which -may be referred to it by the President. Such are the wide powers which have been given to this Commission. Now this Commission will make a report after touring the country, after investigating the entire financial position and will submit its report to the President. I want to know whether the Parliament is the final authority to accept or reject any of the recommendations made by the Commission or the President is the final authority. I feel that it is a matter of deep consequence and cuts at the root of democracy if Parliament does not have the final say on this important question. I have therefore in this amendment suggested that after the report of the Commission is received the President shall lay a memorandum containing his advice to the legislature as to how far these recommendations should be accepted but the ultimate authority for accepting those proposals or rejecting them must be vested in the House of People. Mr. Kamath said that both the Houses of Parliament should vote upon such a Bill. Any Bill containing recommendations of the Finance Commission will be a financial Bill which can only be subject to the vote of the House of the People and not to the vote of the Upper House. Therefore I have here omitted the Upper House. I have said that the House of the People shall have

the right to amend the proposals made by the President by a Resolution passed by the House of the People. It is the House of the People that will determine whether the recommendations made by the Finance Commission on the proposals made by the President should be amended in some form or not. Normally when there is Parliamentary Democracy the Prime Minister will have a majority in the House of the People, and therefore whatever proposals the President will submit will surely be on the advice of the Prime Minister and therefore they will have the support of the majority of the House. There should therefore be no difficulty in getting them through, but the discussion in the Parliament will give the Opposition an opportunity to examine the proposals, to suggest amendments, to bring to the notice of Government another point of view which probably the Government may accept. If we deny the Opposition the right to bring forward amendments or criticise, the proposals, I do not think we are carrying on the form of democracy which we have accepted. I do not see how Dr. Ambedkar can get this article passed as it is. He is trying to give the power to the President, all along of course with two or three exceptions which make him all the more inconsistent. I have said that the authority of Parliament should be supreme in financial matters because on the proper control of finances depends the prosperity of the country. I therefore think that my amendment is a simple one and I hope the House will accept it.

Dr. P. S. Deshmukh (C.P. & Berar: General): Mr. President, I regret to say that both my friends Mr. Kamath and Professor Saksena are labouring under certain misconceptions. The first thing about this article 261 is that it does not give any additional power to President. There is no clause in this which seeks to give any additional power to President than what has already been decided by this House and is embodied in articles 254 and 255. Prof. Saksena was not also correct when he said that the Finance Commission has wide powers. Its powers are defined in 260 clause (3) and as would be quite clear, the powers are merely to make recommendations to the President. They have no final power to take any action whatsoever unless they act under clause (4), but those powers can be only those that are delegated to them by Parliament. Since it is only recommendations that they are competent to make, I do not think it is correct to say that the Finance Commission has wide powers. Nor can this article be, aid to enlarge the powers of President in any way. Whatever damage was to be done to the authority of the Parliament as the supreme body has already been done by articles 254 and 255 and no amendment whatever to 261 can rectify that position. I would however like to point out that it would have been better had the words 'by him' would have been added after the words 'thereon' so as to make it clear that the Parliament will have placed before it the President's action on the recommendations that have been made by the Commission and the recommendations themselves. Otherwise the article is quite satisfactory because when these papers are laid before Parliament, the Parliament would be competent to pass on it such resolutions or turn down any recommendations or to set aside any action taken so long as it has powers to do so. Those powers that have been expressly taken away from it by articles 254 and 255 cannot be exercised by Parliament even if we accept the amendments proposed by Prof. Saksena and Mr. Kamath. The Parliament will be incompetent to interfere with them. But the rest of the powers which it enjoys, as long, as they have not been specified as taken away from Parliament. it cannot be said to be not able to exercise. So I think the amendments suggested are not at all necessary, but the wording of the article as it stand is not as satisfactory as I would wish. It should have been made clear that excepting these cases governed by 254 the Parliament would be competent to take such action as it pleased on the recommendations of the Commission which are not specifically excluded from its purview.

[Dr. P. S. Deshmukh]

Otherwise I do not think there is likely to be any difficulty in retaining this clause as it stands.

The recommendations as well as the action of the President, I believe, are intended to be placed before Parliament and even after debate such distribution of finances which is within the discretion of the President and such charges on the consolidated funds of India which have been provided for under article 255, Parliament will not be in a position to interfere. So I think there is not much point in saying that Parliament will exercise those powers which are already there and which are not taken away. I therefore do agree that there is any need to amend this article.

Pandit Thakur Das Bhargava : Sir, I support the principle of the amendment of Mr. Kamath and the amendment of Mr. Saksena in regard to article 261, it is said the explanatory memorandum shall be, laid before Parliament and if you kindly pursue the wording of the article, you will see that the explanatory memorandum does not contain the proposal of the Finance Commission, but it refers to the action taken thereon. Action taken thereon can only mean that the President shall be the final judge of those proposals and he alone has, the discretion to accept or reject any of the recommendations made by the Finance Commission. This is very unsatisfactory. As a matter of fact, article 261 is the hope of all the provinces. At present, when we refer to article 255, as we discussed it yesterday, the need of the poor provinces will be looked into by Parliament, and in regard to article 254, it is a transitory provision. All these matters will be placed before the Finance Commission which will be appointed within two years, in the first instance, and subsequently after every five years. The proposals which the Finance Commission will make will be not of the nature of day to day affairs, but considered proposals regarding the fate of the provinces. All the progress in the provinces will depend upon the recommendations of the Finance Commission. The provinces do hope that the Finance Commission will be above board and will take their needs into consideration, so much so that we have intended under 262 (2) that Parliament shall determine the qualifications of those five members too. Therefore, my submission is that the report of the Finance Commission shall be a historic record and shall furnish the basis for those proposals which will affect the provinces vitally. The provinces, therefore, should have the say in the matter, through their representatives in Parliament. If the Cabinet or the President be the sole judges of such recommendations as the Finance Commission will make, I do not think it will inspire the confidence of the provinces. It is therefore, necessary that a matter of this importance, the Finance Commission which will come into being and which will make enquiries after every five or six years—because one year may be taken by the Commission to report—that a matter of this importance be placed before Parliament and Parliament should have the last word on it.

In regard to Parliament, I understand that the principle contained in the amendment of Professor Saksena is a very salutary one. According to the other provisions of this Constitution, it is the House of the People which has got the final voice in all matters relating to finance, and it is but meet that both Houses of Parliament be able to discuss the proposals of the Finance Commission, but the House of the People should have the final say in regard to financial matters. Therefore it is necessary that the proposals are laid before the House of Parliament and then discussed and any proposals that emerge out of these discussions should ultimately be recommended by the House of the People, and the law emerging therefrom should have the effect of Money Bills. All provisions that we have so far enacted in regard to Money Bill should apply to these also.

I am not impressed by the arguments of Dr. Deshmukh who thinks that in article 261 no power has been taken away from Parliament. My humble opinion is that in regard to 261, if the President has the power to take action, then the only purpose of the memorandum will give information to the Members. It is clear that the powers of Parliament as such are taken away. My Friend is of the view that after the action has been taken, then after it is placed before Parliament, the House will then be in a position to take action. This evidently cannot be correct. Even if it is correct, I think if the proposals are not in the first instance put before the House of the People, then a great deal of harm will be done. It will be difficult to reject or do away with the recommendations already made. It is but fair that the report of the Finance Commission and the entire matter should be within the purview of the House of the People to debate upon and take action. My own apprehension is that after action has been taken by the President, this memorandum will only be placed for information and not for the purpose of taking action. I feel that this provision takes away the inherent power of Parliament to deal with financial matters, and therefore, I would like that the amendments of Mr. Kamath and Professor Saksena be accepted.

Prof K. T. Shah (Bihar: General): Mr. President, Sir, I also support the amendments moved by Messrs. Kamath and Saksena. I confess I am not very happy over this entire chapter relating to the appointment, powers and activities of the Finance Commission. The Finance Commission is so much more additional patronage in the hands of the executive, and will act, in so far as it is empowered under this article to act, against the inherent rights of a sovereign Parliament. It is impossible to agree that by this provision no power that normally vests in a sovereign Parliament is taken away, because, even according to article 261, the right to consider the memorandum, or the right to submit the memorandum to Parliament, will result only in a kind of postmortem examination of the action taken, which, if I may say so, will encourage only fruitless discussion, where the opposition may for opposition's sake, only find fault and where constructive suggestions would not be in order, because it will be only a debate on action actually taken, which cannot be remedied and which, therefore, can give occasion only to venting, as it were some past spite.

I do not think a provision of this kind will help either the requirements of economy, or, what is still more important, the requirements of popular sovereignty, as embodied in the Power of the Purse, as it is called, under the model we are copying—I mean the British Constitution. If, as these amendments propose, there is some chance given to Parliament to say the last word on the action to be taken, then there may be some hope that the rights of Parliament over matters financial will be kept intact. But if Parliament is only to review the action taken, and indicate its general dissatisfaction with the action taken, I do not think that it would be at all worthwhile making even such a submission. The Commissioners are presumably experts, well versed in their lines. It may, therefore, well be presumed that the recommendations they make are based on very strong considerations, and will not be lightly disregarded by the President or any other power. To that extent, therefore, the Commissioners may be said to be taking away the powers of Parliament. It is only to make it quite clear, as these amendments try to do, that the last word will rest with Parliament that I support these amendments. The sovereignty of the House of the People in matters financial ought to be left in no doubt. I therefore support these amendments.

Mr. President : May I just say one word? I did not like to mention it, but I think I should. I find there are too many conferences going on inside the

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House with the result that even those Members who are desirous of listening to the speeches find it difficult to follow them. There is a tendency I find to gravitate, against the law of gravity, from the benches in the front to benches in the back, and I find that benches on the back afford opportunities of discussion which probably has nothing to do with the discussion that is going on in the House. I would therefore suggest to the Members that if any other question has to be discussed than that which is being actually discussed in the House, that might be discussed elsewhere.

Shri Mahavir Tyagi (United Provinces: General): Sir, will you also kindly ask the speakers to bring their points in such a way as to attract attention ?

Mr. President : That is beyond me.

Shri Biswanath Dass (Orissa: General): Sir, I stand to record my protest against the aspersions made by so scholarly a gentleman as Professor Shah. He finds unfortunately ghosts where there are none. He has made reference to Patronage. I would request him to show anything in the article wherein comes patronage. The appointment of a Finance Commission is a necessity. It is not peculiar to India. It is a necessity and has been accepted and adopted in India to suit the peculiar conditions of a federal structure that has been devised for her on the lines of similar other States. And that the Constitution has done is to lay down specific powers for Parliament to make laws by which a Finance Commission is to be appointed. And it has gone a little, further. It has laid down also the conditions and qualifications of persons to be appointed. May I refer you to article 260(2) in this connection, which lays down that "Parliament by law shall determine the qualifications etc. of the Finance Commission". I would request Professor Shah not to proceed with unjustifiable suspicion. If by the appointment of any Member of any Commission you mean patronage will come in, certainly you have to stop all State activities. That will be something like burning a house in a fight against flies. I hope therefore that Professor Shah will not play the role of an unnecessary opposition in a case where there is no scope for opposition.

Having stated so much about the unnecessary allegation made by our learned Professor, let me come to the vital issue that faces us in the discussion. I am sorry I have to differ from my esteemed colleagues Professor Saksena and Mr. Kamath. Both of them, I am sure, have erred grievously. They feel that powers of the Parliament are interfered with and that no discussion of a full and frank nature is possible under the circumstances. These two allegations seem to be the basis of their opposition.

Let me take the first, namely, that there will be no possibility of discussion. Parliament is to enact a law by which a Finance Commission is to be appointed. The impartiality of the Finance Commission is a matter beyond doubt, because the whole thing is left to Parliament itself. They have to devise the law, they have to lay down qualifications, and the choice of the personnel depends upon the Cabinet, I believe, in the name of the Governor-General. They represent the people. Under these circumstances I have no hesitation in believing that there will be an impartial Tribunal. The Finance Commission is thus a baby of the Parliament—it is an institution created by the Parliament under its own statute.

On appointment, the Commission makes a thorough, deep and searching enquiry, also if required sit in examination over the budgets and administration of provinces, and submit a report to the executive. Whose executive? The executive of the Parliament. Thereupon the Cabinet in the name of the

Governor-General take decisions and they practically accept the recommendations of the Finance Commission, just as in the case of the findings of the Election Tribunal where the Governor or the Governor-General has the power to interfere. But can you point out a case wherein a Governor or Governor-General has ever interfered ? No, never. Therefore, precedents have been created and have been in existence wherein the recommendations of statutory bodies—judicial or quasi-judicial bodies—are accepted in *toto*.

Then the other stage comes in, namely, of their being placed before both Houses of Parliament. That again gives an occasion for discussion. Any member of the House, under its Rules of Procedure, can raise a debate. Political parties may also move Parliament for a debate and discussion. Therefore there is scope for discussion immediately after the sitting of Parliament.

The grant again comes before Parliament in the shape of a Money Bill. Then again Parliament has got the power to discuss the whole question on its merits. Is it possible for a responsible Ministry and a Cabinet to go beyond the wishes of the Parliament? It is impossible unless we visualise that we are not to have a parliamentary system of democracy having a Cabinet which is absolutely representative of the wishes, aims and aspirations of this honourable House.

One question more remains for me to discuss here and that is about the charged items. Charged items in our country are many. They have become a part of the Constitution. Charged items are inevitable and charged items are the creations of the Legislative Assemblies themselves, because they pass legislation and they agree to charge their own items of revenue and expenditure as a charged amount in their budget. Therefore it is one of their own creation. It is only a question whether you should have a prior sanction or a post-sanction. That is all the difference. Therefore in this regard I do not agree with my honourable Friends that any injustice or wrong, serious, great or constitutional, has been done in this regard. Sir, it will not be conducive to the advantage of the nation if a fraternal duel is undertaken in this House by politicians from provinces and States. Each member is anxious to see that his provinces gets more. True it is that when a member is elected, he represents, after the election, India and not his province. That is true, but the fact remains that we are men and we are average men, not rising so high as few people have done, like our leaders Sardar Patel or Pandit Jawarharlal Nehru. So within these limitations, I claim that a decision, after a judicial and thorough enquiry of a non-Political Body, of the nature required to be undertaken by the Finance Commission in regard to the aids to be given to provinces, is necessary. The power is also vested under the statute in the Governor-General to revise these grants whenever he likes after a certain period of years. With these words I strongly support the article and oppose the amendment.

Shri B. N. Munavalli (Bombay States): Mr. President, Sir, article 261 as it stands now empowers, as I understand, the President to place the recommendations of the Finance Commission together with the action taken thereon before the Parliament. This clearly shows that the Parliament will not be in a position to discuss the various recommendations that are going to be approved by the Executive and upon which action has already been taken. The amendments moved by my Friends Messrs. Kamath and Shibban Lal Saksena, as I understand them, require that the Finance Commission's recommendations should be placed before the House of Parliament before any action is taken, so that the House of Parliament may approve or disapprove or reject some of the recommendations made by the Finance Commission.

[Shri B. N. Munavalli]

Some of my Friends, for example, my honourable Friend Dr. P. S. Deshmukh, said that this article does not clothe the President with any more powers. That is true, but the Parliament will lose the opportunity of discussing and approving the recommendations if they were placed by the President after action has been taken by the executive. The whole difference between the article as it is and the amendments now put forth is that the power of discussion of the Parliament over the recommendations, before any action is taken, should not be removed. If the recommendations together with the action taken thereon by the executive are placed, the Parliament will be only in a position to approve and not to disapprove. Under these circumstances, I think that if these amendments are not accepted, the House of Parliament will lose much of its power. I therefore support the amendments and I commend that they be accepted by the House.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, neither the amendment of Mr. Kamath nor that of Mr. Shibban Lal Saksena for substitution is good. I am requesting them to consider how substitution is not proper. These may be in addition to the power given under article 261. It is admitted, and there is no dispute regarding the fact, that the Finance Commission's recommendations are only recommendatory and not obligatory. Some person, whether the President or the Parliament, should take action on them. With respect to certain matters, the President can take action. Under article 251 which we have already passed, so far as income-tax is concerned, it is collected by the Centre. A percentage of the income-tax is divisible among the provinces or States. The allocation is also to be recommended by the Finance Commission. Now, until the Finance Commission goes into the matter as to what percentage ought to be shared and how that income-tax is to be distributed among the States according to their needs, the President has the exclusive power to prescribe the percentage. The Parliament does not interfere as far as income-tax is concerned. "Prescribed" means until the Finance Commission has been constituted, "prescribed by the President by order", and after the Finance Commission has been constituted, "prescribed by the President by order after considering the recommendations of the Finance Commission". Nowhere in this article does the Parliament come in. Before the appointment of a Finance Commission, the President by order can direct that such and such a percentage of the income-tax has to be distributed among the provinces and States and in what percentage. After the Commission is appointed, the President may, after looking into the Commission's recommendations, take action. He may change the allocation and the percentage. As article 261 now stands, he has to report to the Parliament what action he has taken regarding those recommendations where action has already been taken. Therefore, there is no good deleting that portion relating to the action. Therefore, instead of substitution, I would suggest the addition of the following words in article 261:

"With an explanatory memorandum of the action taken or to be taken thereon to be laid before the Parliament."

I will give my reasons as to why there cannot be substitution but addition. The principle of the amendments suggested has also to be accepted, because it is not in every case that the President takes action. There are certain matters where it is the Parliament that has to take action. Take excise duties in article 253. Under article 253, excise duties in the first instance have to be levied and collected by the Centre. The portion of the excise duties that may be distributed among the provinces and the principles have to be laid down by Parliament. Now, with respect to those excise duties also, whatever duties are collected by the Centre which can be shared by the States, with respect to them also the Finance Commission has jurisdiction to recommend the

allocation under article 261. Article 260 clause (3), sub-clause (a) relates to distribution between the Union and the States of the net proceeds of taxes which may be levied. Taxes are general. Taxes include not only income-tax, but also other taxes collected by the Centre, as for instance, the excise. But unlike income-tax which can be distributed by the President himself by order, excise duties have to be distributed by law made by Parliament. Parliament will do so, make allocations, after looking into the recommendations of the Finance Commission. Therefore, there are two aspects—one, the action taken by President, the other, the action taken by Parliament. Therefore, if article 261, as it stands at present, refers only to action taken by the President, it does not include action to be taken by Parliament. Under these circumstances, my respectful suggestion is, that instead of these amendments as the stand, these principles may be incorporated, and to effectuate this. I would suggest after the words “action taken” the words “and to be taken” may be included.

Sir, I have not tabled an amendment. After these amendments have come in and after this discussion, I find these amendments ought not to be in substitution, but in addition. I find that there is a lacuna and if you have no objection, and if honourable Friend the Chairman of the Committee also agrees, I can move an amendment in the following terms :

“As to the action taken or to be taken thereon to be laid before Parliament.”

I shall move this amendment if it is acceptable to the House and the Drafting Committee.

Mr. President : I am not taking that amendment at this stage, unless the Drafting Committee is prepared to accept it,

Shri T. T. Krishnamachari (Madras : General): Mr. President, Sir, I do not want to appear to be very wise, but I do feel that there has been considerable misapprehension in this House in regard to the scope of the work of the Finance Commission and I feel that the discussion that has taken place both on article 260, which the House has passed, and on this article arises out of that misapprehension.

I would ask the Members of this House to consider the origin of the scheme envisaged by this particular clause. There is an expedient that is being followed in Australia for the purpose of distribution of amounts set apart by the Centre either statutorily or otherwise to the States. The machinery in Australia, called the Australian Grants Commission, is the result of an Act passed by the Australian Federal Parliament in 1933. It is only a piece of administrative machinery similar to the *ad hoc* machinery that has been devised by the Government of India on various occasions, namely, Conference of Premiers of various States, Conference of Finance Ministers, Conference of Finance Secretaries, and so on. The creation of a body of this nature though it is put in the Constitution as an assurance to the States that an impartial machinery will be created for the purpose of distribution of grants, has no more sanctity about it than it would have under a Parliamentary Act. I would also ask the Members of this House to realise this particular fact. Parliament undoubtedly can make legislation in regard to what portion of the Central finances, subject to the provisions contained in this chapter, could be distributed to the provinces. My honourable Friend Mr. Shibban Lal Saksena twitted the Drafting Committee yesterday that, while they have given the President powers to determine the allocation in certain articles, in one article they failed to do so and, therefore, he suggested acceptance of the amendment moved by my honourable Friend Mr. Nichols Roy to that end. The explanation is that it would not be proper that a mere matter of administrative detail should be discussed at length by Parliament and decided on.

[Shri T. T. Krishnamachari]

The idea of the Finance Commission is a very restrictive one. If the idea of the Finance Commission is something like what I had at one time envisaged and tabled amendment which I did not move, namely, that in the first instance it ought to be a sort of Tax Investigating Commission, then I quite agree to all the propositions contained in the amendment moved by my honourable Friend Mr. Saksena. If it is going to be a matter in which the Finance Commission is going to be entrusted with reviewing the tax structure of this country and proposing amendments thereon, certainly Parliament must consider the report and Parliament must decide what steps the Central Government should take to implement its recommendations and how it can be incorporated either in the Constitution, or by means of a statute which will be applicable to the Central Government and also to the States. But that is not the position before us today. The position envisaged is a very limited one. In order to assure the States that they will have a fair deal the Drafting Committee has put in the body of the Constitution a provision which is not so wholly necessary to be put in the Constitution for the purpose of execution of that idea, namely, the creation of a Finance Commission. That is a limited objective. That objective I think the House will forgive my repeating it would be equally well-served by a Parliamentary Act. This article therefore has no more sanction than a Parliamentary act will have. That being so, Parliament must leave it to the executive to undertake the very onerous duty of distributing between the various provinces, on certain principles to be laid down by Parliament, the proceeds of certain taxes levied and collected by the Centre. I want the House to refer to article 253, clause (2), which says that Parliament will determine whether the whole or part of the duty will be distributed to the States, the principles on which they should be distributed, the actual quantum, etc. The application of the principle of distribution is not a matter for Parliament; it is a matter for the executive. If the executive misbehaves in any manner, it is then the obvious duty of Parliament to call the executive to order. But the House will have to recognise that while the Australian Grants Commission is a piece of administrative machinery, our Finance Commission will also only be an aid to the administrative machinery even though created by an article in the Constitution and their recommendations must be decided on by the executive, in consultation with the various Ministers of the States. Naturally the Commission is to be a permanent body or a semipermanent body. But if Parliament is going to take upon itself the duty of adjudicating the claims of the various provinces, then instead of having a Finance Commission we may well have a sort of conference of the finance and other ministers of the States which will report to Parliament and Parliament can discuss the report and take necessary action thereon. But what will be the result ? I will ask the House to remember what happened here yesterday and the day before when individual claims of provinces, absolutely without any reference to the claims of other provinces were pressed and pressed hard for any length of time. Individual members spoke for about 75 minutes on the subject. And to what purpose ? The speeches had no relation to the total amount of revenue that is likely to be distributable or to the claims of provinces other than their own. It is in order to prevent Members of Parliament making claims on an individual or provincial basis and each group insisting on the rights of particular provinces that we have proposed to leave the thing in the hands of an administrative machinery, an arbitral body to decide. The executive can accept their recommendations if they are feasible and desirable.

I think my honourable Friend Mr. Saksena, himself a very diligent student of public finance, will realise that he is really throwing an apple of discord into the midst of members of Parliament when he wants Parliament to undertake this onerous responsibility. The farther we remove this responsibility from

Parliament and entrust it to an independent body like the Finance Commission, the better it will be for the future of this country. I think the point that has been made by members who spoke in support of the amendment is without any substantial merit.

In regard to the particular amendment suggested by Shri M. Ananthasayanam Ayyangar, I do see that it has a point. But the words here “as to the action taken thereon to be laid before Parliament” also mean that if anything is left over, a discussion may be raised in Parliament and what has been done or has not done will all be explained by those who are in charge of the finances of the country. Such a discussion will probably be useful for the purpose of future guidance rather than for determining what was to be done at the moment. I therefore think that the House will do well to reject the amendment, not because it is pointless, but because it arises from a total lack of understanding of the very limited field envisaged by articles 260 and 261.

Shri Brajeshwar Prasad : Mr. President, Sir, I rise to support the article moved by Dr. Ambedkar. I differ those who oppose this article on the ground that it is not in consonance with the sovereignty of Parliament. It is only in unitary States like England that Parliament is a sovereign body. There is no legal sovereign in a federal constitution. Political sovereignty rests with the people. We have distributed powers between the Centre and the provinces. Even in those spheres that have been left to the Union Government, powers have been divided between three organs of the State, the Judiciary in the form of the Supreme Court, the Parliament and the President. Sometime last year I had occasion to raise the question at a different place that the President under the Constitution has got absolute powers and that his powers are not circumscribed by ministerial advice. Sir, having due regard to the fact that there is no legal sovereign in our Constitution, all talk of sovereignty of this House is entirely misplaced.

Shri Rohini Kumar Chaudhuri (Assam: General): Mr. President, Sir, I have come here to protest very strongly against the two amendments which have been moved by my Friends Mr. Kamath and Mr. Saksena. I submit, Sir, that the amended article 260 is being hailed by people who suffer under a sense of injustice being done to them in the past and who hail this amended article 260 because it has reduced the period from five years to two years and also in the subsequent stages to a period shorter than five years. Sir, it follows therefore that if you have really a desire to do justice to the more unfortunate provinces, you should do so as early as possible and as quickly as possible. Therefore the provision in article 260 which enables the President to deal with the recommendations made by the Finance Commission is a very welcome one. If you leave it to be decided by Parliament it will necessarily mean that both Houses of Parliament would have to consider it. If the amendment which has been put forward by Mr. Saksena is accepted, then it will be enough if the Lower House puts its seal to it; but then it would mean delay and it would mean also that if the matter entirely rests on the vote of the House of Parliament, then the question of each province fighting for its own share or more than its own share will arise, and those provinces that have a more potent voice will get more than they deserve in some and will deprive other provinces which deserve more. Therefore, both on the ground of quick meting out of justice and also on the ground of having better justice. I think it is certainly very welcome that a decision will be made by the President as early as possible and communicate the same to the Legislature. I do not mind if the decision is accompanied, as my Friend Mr. Kamath desires, by an explanatory note or not. But, since it is the desire of Mr. Kamath that an explanatory note may be given so that he may find scope for criticism, that note may be furnished. That will not harm us in any way. But what I would like to say on behalf

[Shri Rohini Kumar Chaudhuri]

of the poorer provinces that are labouring under a sense of injustice so far as finances are concerned—that injustice was not done by the present regime, but by the previous’ one—is that we all welcome article 261 remaining as it is.

Shrimati G. Durgabai (Madras: General): I move that the question be now put.

Shri Jagat Narain Lal (Bihar: General): Sir, the question before us is not entirely free from difficulty. It is true that the Finance Commission is an expert body consisting or a few select experts to judge as to what should be assigned to the different provinces. If the Parliament is to be made a cock-pit by the different provinces combining to get things done as they like, it will be very difficult for the Central Government. On the other hand the difficulty of the poorer provinces is there. The Finance Commission will be a small body. In case the Finance Commission does not see its way to do justice to some of the provinces which cannot carry on without a proper allocation, the position will be difficult indeed. I would have liked to support the amendment which makes the decision appealable from the decision of the Finance Commission in certain cases. The article as it stands does not make the decision appealable. If, however, some provision could be made whereby the recommendations of the Finance Commission could be reviewed in special cases by somebody, by the Cabinet or the Parliament, I would like to welcome such an amendment or such a provision. These are the difficulties and I would, instead of supporting the amendment which says that the Lower House should sit in judgment in, every case, urge that some provision may be made whereby the recommendations of the Finance Commission in special cases, if any province wants it, may be reviewed by somebody who might sit in judgment on them. These are the few suggestions that I wanted to make.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I am sorry I cannot accept the amendments moved- to this article. It seems to me that -the amendment are based upon a complete misunderstanding of the provisions contained in article 261, and I feel that no amendment is necessary at all. In order to understand exactly what article 261 means, you have to go back to the previous articles which deal with the distribution of the income-tax and the distribution of the net proceeds of the Centrally collected excise duties. Obviously, with regard to the distribution of the income-tax, the article which we have passed so far leave the matter entirely with the President acting on the recommendations of the Finance Commission. That being so, it would not now be possible to say by an amendment that so far as the recommendations with regard to the distribution of the income-tax are concerned, the matter may be left to Parliament. My mission is that that issue is now closed we having passed an article leaving to the President the allocation and the distribution of the income-tax either in the initial stage or in the subsequent variations.

Now the other matter which is covered by article 261 relates to the distribution of the revenue collected from Centrally levied excise duties. It is also clear from the article that we have passed that this matter shall be governed by the law made Parliament. The President cannot do it himself. Therefore the words “shall put before Parliament a memorandum stating the action that has been taken” merely means this that the President shall say, as he is bound to say, that a Bill shall be introduced before Parliament to regularise or sanction the proceeds of the excise duties and the manner in which they are to be allocated. Consequently, if my friend, Prof. Shibban Lal Sakseena, will read article 261 in relation to the other articles that we have passed, he

will realise that so far as the distribution of the excise duties is concerned, the result will be the same as what he proposes to bring about by his amendment. Therefore I think that his amendment is quite unnecessary.

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

The question is :

“That with reference to amendment No. 2950 of the List of Amendments, in article 261, for the words ‘together with an explanatory memorandum as to the action taken thereon’, the words ‘together with such explanatory memorandum as he may think fit’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 2950 of the List of Amendments for the words ‘each House of Parliament’ proposed to be substituted, the words ‘each House of Parliament for such action thereon as Parliament may deem necessary’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That with reference to amendment No. 2950 of the List of Amendments, in article 261, for the words ‘action taken thereon to be laid before Parliament’ the following words be substituted:—

‘containing his proposals for action that should be taken thereon to be laid before each House of Parliament. The House of the People shall have the right to amend the proposals made by the President by a resolution passed by the House of the People. The proposals of the President in their original form or in the form in which they emerge after they are amended by the House of the People shall thereafter become law.’ ”

The amendment was negatived.

Mr. President : The question is:

“That in article 261, for the word ‘Parliament’ the words ‘each House of Parliament’ be substituted.”

The amendment was adopted.

Mr. President : The question is :

“That article 261, as amended, stand part of the Constitution.”

The motion was adopted.

Article 261, as amended, was added to the Constitution.

Article 262

Mr. President : Amendment No. 141 is verbal. I take it that we should not have these formal amendments moved in every case.

Shri H. V. Kamath : This amendment relates to amendment No. 2951. If that amendment is not moved, this will not arise.

Mr. President : I am suggesting that verbal amendments like the substitution of “Consolidated Fund of India” for “the revenues of India” should be left to the Drafting Committee. Whenever such phrases occur, the Drafting Committee will put them a right.

Shri H. V. Kamath : Amendment No. 2951 seeks the substitution of the words “the revenues of India” by the words “Indian revenues”. If that amendment is not moved, my amendment will not arise.