

Mr. Vice-President : The main point is, the Calcutta Port carries goods and passengers for more than one province. Anyway, does Dr. Ambedkar want to say anything?

The Honourable Dr. B. R. Ambedkar : I do not want to say anything.

Mr. Vice-President : I will now put the amendments to the House.

The question is :

“That in sub-clause (c) of clause (1) of article 250, after the word ‘railway’ a comma and the word ‘sea’ be inserted.”

The amendment was adopted.

Mr. Vice-President : The question is:

“That in clause (2) of article 250, for the words ‘revenues of India’ the words ‘Consolidated Fund of India’ be substituted.

The amendment was adopted.

Mr. Vice-President : The question is:

“That in amendment No. 2851 of the List of Amendments, for the words proposed to be added in article 250, the following words be substituted :—

‘The net proceeds of such taxes recovered under sub-clause (c) and (d) be assigned by the States to the local authorities in their Jurisdiction.’ ”

The amendment was negatived.

Mr. Vice-President : I now put the whole article as amended. The question is :

“That article 250, as amended, stand part of the Constitution.”

The motion was adopted.

Article 250, as amended, was added to the Constitution.

Article 277

Mr. Vice-President : We now go to 277.

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

“That article 277 be re-numbered as clause (1) of article 277, and to the said article as so re-numbered the following clause be added :—

‘(2) Every order made under clause (1) of this article shall as soon as may be after it is made, be laid before each House of Parliament.’ ”

This article 277 is a consequential article. It lays down what shall be the financial consequences of the issue of an emergency proclamation by the President. Clause (1) of the article says that provisions relating to financial arrangements between Provinces and the Centre may be modified by the President by order during the period of the emergency. It was felt that it was not proper to give the President this absolute and unrestricted power to modify the financial arrangements between the provinces and the States and that the Parliament should also have a say in the matter. Consequently it is now proposed to add clause (2) to article 277 whereby it is provided that any order made by the President varying the arrangements shall be laid before, each House of Parliament. It follows that after the matter is placed before the Parliament, Parliament will take such action as it deems proper, which the President will be bound to carry out.

Mr. Vice-President : Amendment No. 14 is not moved by Shri Brajeshwar Prasad. Pandit Kunzru—No. 72.

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

“That with reference to amendment No. 3007 of the List of Amendments and Amendment No. 13 of List I (Fourth Week) of Amendments to Amendments, for article 277, the following article be substituted :—

<p>‘277. (1) While a Proclamation of Emergency is in operation, the Union may, notwithstanding anything contained in article 251 of this Constitution, retain out of the moneys assigned by clause (1) of that article to States in the first year of a prescribed period such sum as may be prescribed and thereafter in each year of the said prescribed period a sum less than that retained in the preceding year by an amount, being the same amount in each year, so calculated that the sum to be retained in the last year of the period will be equal to the amount of each such annual deduction :</p>	<p>Modification of the provisions relating to distribution of taxes on income during the period proclamation of emergency is in operation.</p>
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Provided that the President may in any year of the said prescribed period direct that the sum to be retained by the Union in that year shall be the sum retained in the preceding year and that the said prescribed period shall be correspondingly extended, but he shall not give any such direction except after consultation with the States nor, shall he give any such direction unless he is satisfied that the maintenance of the financial stability of the Government of India requires him so to do.

(2) In this article, ‘Prescribed’ means prescribed by the President by Order.”

Sir, the language of the amendment is complicated but it has been borrowed from the Government of India Act, 1935, with which honourable Members are familiar. I think that Dr. Ambedkar who laughed without any cause should also be familiar with it. The meaning of my amendment is this. Under article 251 a percentage has to be prescribed which will represent the share of the provinces in the divisible portion of the net proceeds of the income-tax. The language of that article is such as to make it appear that the entire provincial share shall have to be made over to the provinces at once. As soon as it has been prescribed by the President, with or without consultation with the Finance Commission as the case may be, it must be made over to the provinces at once. What my amendment proposes is that notwithstanding the language of article 251, the Centre may make over the entire provincial share to the provinces not at one bound but in a certain period; But if during that period an emergency occurs, an emergency so grave as to require the issue of a Proclamation of Emergency, then the President may direct that the transfer of the provincial share in the particular year in which the emergency occurs shall be stopped. In other words, my amendment if accepted would restrict the power proposed to be given to the President by article 277. Further, while there may be delay in the transfer of the provincial share to the provinces nothing that has been already given to the provinces can be taken back from them.

Now having briefly explained the purpose of my amendment, I shall deal with article 277 as modified by the amendment of Dr. Ambedkar. When I referred to article 277 the other day and said that it was practically subversive of the financial rights of the States, Dr. Ambedkar objected to my referring to it and said that the article had not been moved and might therefore not be moved or be modified. He has now introduced a modification; but does this modification mean anything at all ? Suppose Dr. Ambedkar had not moved this amendment, could anything have debarred Parliament from taking into consideration the modification of the financial relations between the Provinces and the States, brought into effect by the order of the President during the period of emergency? Parliament has got an inherent right to consider any matter that it likes. Consequently the amendment moved by Dr. Ambedkar

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adds nothing to its power. It gives it no right that it would not otherwise possess. Let us therefore, consider article 277 as it is, in the form in which it has been proposed in the Draft Constitution. We need pay no attention whatsoever to the amendment moved by Dr. Ambedkar because it means nothing in practice. It gives Parliament no additional opportunity of dealing with any order that the President might make that it would not otherwise have. Now article 277 authorises the President, while a Proclamation of Emergency is in force, to direct "that all or any of the provisions of articles 249 to 259 of the Constitution shall for such period, not extending in any case beyond the expiration of the financial year in which such proclamation ceases to operate, as may be specified in the order, have effect subject to such exceptions or modifications as he thinks fit." The President in this article will enjoy full authority to alter the financial relations between the Provinces and the States in any manner that he likes. Let us therefore, consider what it is that the articles referred to in article 277, give to the provinces. Under article 249, the Union may levy stamp duties under any law made by Parliament and such duty of excise on medicinal and toilet preparations as are mentioned in the Union List. These duties shall be collected and appropriated by the States. The Centre has never claimed a share in their proceeds. Article 250 that we have just dealt with provides that certain duties and taxes including duties in respect of succession to property other than agricultural land, and estate duty in respect of property other than agricultural land, shall be levied and collected by the Centre, but shall be distributed entirely between the Provinces except in so far as they represent the share attributable to the States for the time being specified in Part II of the First Schedule. This is the second source from which Provinces will derive their income and it too is entirely provincial. The Centre has never laid claim to a percentage of their proceeds of these duties. The third source will be the taxes on income. The President will, by order, fix the percentage of the divisible portion of the net proceeds of the income-tax that should be made over to the Provinces. I have already dealt with this. Then we come to the excise duties, duties of excise, other than duties of excise on medicinal and toilet preparations mentioned in the Union List, are to be levied and collected by the Government of India. But if Parliament so provides, the proceeds of these duties may be divided between the Centre and the Provinces. The President has no power to deal with them. Then there is the duty on jute which is not to be distributed now, between the Centre and the Provinces, but such provinces as are entitled to a share in the proceeds of the jute export duty will get a sum to be prescribed to compensate them for the loss of their share in the duty. Lastly, Sir, there are the grants from the Centre which of course can be altered from time to time.

These are the various ways, Sir, in which the Provinces will derive their income. And article 277 allows the President to arrive at any decision he likes in regard to the availability of any or all these sources of income to the provinces. Now, what are the provinces to do, if such action is taken by the President? If the sum to be made over by the Centre to the Provinces were to be parted within a prescribed period, then in an emergency, the President could well say that the Centre could not afford to part with more money than it had already given to the Province, so long as the emergency lasted. Such a proceeding would be intelligible and reasonable, but what is now proposed is that, after a financial settlement has been arrived at with the provinces and they have increased their expenditure and have come to depend on the money received by them from the Centre for meeting their liabilities, the President may say to them that whatever happens to them the financial settlement made

by them must be modified. What are the provinces to do in these circumstances ? So far as I can see, they are to enjoy the blessing of financial *nirvana*. The Provincial Governments and the people of the provinces may suffer seriously—may, so to say go about with a loin cloth—but the Centre will have little regard for their plight. Such a proceeding, I think, is both iniquitous and impracticable. My contention is, as I have already said, that if you have to give a certain sum of money, or a certain percentage of the proceeds of certain taxes to the provinces, you may delay the full distribution of the provincial share, but nothing that has been once given to them ought to be taken back. The Government of India Act, 1935, proposed nothing so drastic. The framers of the Act realized as well as the framers of the Constitution do, that the Centre may some day be involved in an emergency. But all that they provided was that the transfer of the full provincial share of the divisible portion of the proceeds of the income-tax may be delayed on account of an emergency, but no part of the divisible portion given to the provinces before the occurrence of the emergency could be taken away from them. As regards the proceeds of the Central Excise Duties and the Central Export Duties and the other taxes that I have referred to, there could be no change in them whatsoever in any emergency. The position of the provinces in regard to the other taxes was to remain wholly unaffected by the occurrence of an emergency. It was realized that if the provinces, depending on the money received by them from the Centre extended primary education, or made it compulsory, or increased the number of hospitals and dispensaries, or undertook a programme for the improvement of the condition of the rural masses, they could not in justice be asked suddenly to change their budgets and tell their people that the facilities already available to them in respect of education, public health, medical relief or rural welfare shall be withdrawn. If such a thing were to be done in future, there would be serious discontent in the provinces, so serious indeed as to create another emergency greater than that to deal with which the President is to be given the plenary power contained in article 277. I think, therefore, Sir, that article 277, the effect of which on the provincial administration will be exceedingly harmful, should be replaced by the amendment that I have moved.

Sir, I do not know what the exact share of the divisible portion of the net proceeds of the income-tax now received by the provinces is. But I understand that the maximum share is still that prescribed in 1936, namely 50 per cent. and that in all probability, the provinces are getting about 42 or 43 per cent. of the divisible portion. I do not know what the prescribed percentage in future will be. Let us suppose that it is 60 per cent. Then you can lay down that the differences between 42 per cent. and 60 per cent. shall be transferred to the provinces within a certain period, and that if an emergency occurs during this period, the process of transfer can be halted. The provinces will thereby not suffer materially but article 277 is contrary to the best interests of the provinces and if given effect will create chaos there.

The House will undoubtedly be surprised that so drastic a provision should have been included in the Draft Constitution. The framers of the Constitution are reasonable people. We have therefore to consider what made them think of inserting such an article in the Constitution. When I dealt with some of the articles relating to the future financial position of the provinces, I pointed out that if the settlement were made too generous to begin with, the Centre might be faced with a serious position later when an emergency occurred. I ventured to say that it would be better if the Centre were a little cautious in the beginning so that it might have to take no action that would completely dislocate the finances of the provinces later. But that warning, was not heeded. The only way now in which, according to the framers of the Constitution, the future financial position of the Centre can be safeguarded is

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that the President should be allowed during an emergency practically to annul the provisions of the articles 249 to 259. It will be open to the Finance Commission when it is appointed, and to the President after the Constitution has been passed, to consider carefully the existing situation and distribute the proceeds of the divisible sources of revenue between the Centre and the Provinces in such a way as to take due note of the interests both of the Provinces and the Centre. In spite of our having passed all the articles referred to in article 277, the President can still so fix the provincial and Central shares that the Centre may not be driven to take action of the kind envisaged in article 277. Such a course would be far better than pleasing the Provinces now and making them gnash their teeth and tear their hair afterwards.

Sir, I have explained the meaning and purpose of my amendment as clearly as I could. I hope that the representatives of the Provinces realise how grave a danger to their interests article 277 constitutes. If the Provinces are not even to enjoy financial autonomy in certain circumstances, they will have no independence left whatsoever and their position will be equivalent to that of the municipalities and district boards. But it is not primarily on that ground that I have moved my amendment. I have done so in the interests of the people of the Provinces who cannot arbitrarily be deprived of the facilities that they have become accustomed to in such matters as education, medical relief and the welfare of the masses even during a war. Such a thing did not happen during the last war. Why should be then think that it would happen or might happen during a future war? Article 277 is an expression of nothing but the undiluted financial autocracy of the Centre. I hope therefore that every Member of the House will protest against this iniquitous provision and see that it is changed in such a way as to assure the Provinces that their finances cannot suddenly be disorganised by any order of the President and that at the same time the position of the Centre is such as to enable it to discharge properly its supreme responsibilities.

Amendments Nos. 3009 and 3010 on page 318 of the Printed List were not moved.

Prof. Shibban Lal Saksena : Sir, the speech delivered just now by my honourable Friend Dr. Kunzru will certainly give food for thought to the House for reviewing this important article. I have very carefully followed his speech and also studied his amendment. When we were discussing articles 275 and 276 and when we gave to the President powers to issue a Proclamation when necessary, we had provided that within two months of that Proclamation, it must be laid before each House of Parliament and must be approved. Only then will it continue for a further period of six months.

In article 277 it is provided that not only will the Central Parliament have concurrent jurisdiction over subjects which are the province of the States but also that "provisions of articles 249 to 259 of this Constitution shall for such period not exceeding in any case beyond the expiration of the financial year in which such proclamation ceases to operate, as may be specified in the order, have effect subject to such exceptions or modifications as the President thinks fit". So that, by this article, articles 249 to 259 lose their existence during an emergency. For the President has the power to pass orders in contravention of the provisions of these articles. I would have been happier if whatever changes or variations of the articles are desired were also part of the Proclamation and are brought before Parliament for approval. I have throughout protested against arming the President with almost autocratic powers in financial matters, but I am sorry to have to say that our protests have gone in vain and every time when an amendment comes, the President is armed with powers of issuing orders by which even the provisions of this Constitution can be

amended. I think Dr. Kunzru has pointed out what difficulties arise if, this article is passed as it is. The amendment of Dr. Ambedkar does not help matters at all. To “lay it” before each House of Parliament is not a sufficient safeguard. I therefore think that Dr. Kunzru has done a service to the House by bringing forward this amendment and by pointing out the danger inherent in this article 277.

This is a vital article. The budgets framed by the States may be upset by an order of the President and if he is not very favourably disposed towards some of the Ministers of any Province, then woe betide that Province. Therefore, it is not proper to pass this article in its present form. I would request Dr. Ambedkar and the Drafting Committee to review this article in the light of the arguments advanced by Pandit Kunzru and also in view of the fact that such powers should not be given to the President which may upset the budgets of the Provinces. Of, course no President will deliberately use such powers and upset all their plans, but unless there are safeguards in the Constitution it is not proper to give those powers. With the best will in the world and with the most pious intentions he may pass orders which may bring about the position I have pointed out. I therefore request that some machinery may be provided for in the Constitution by which that position may not be brought about. I hope that in the light of these arguments, the learned Doctor will accept my amendment.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. Vice-President, I should like to say a few words in support of article 277 along with the amendment moved by my Friend, the Honourable Dr. Ambedkar. A lurid picture has been painted by my esteemed Friend Pandit Hriday Nath Kunzru as to the effect of this article. Hospitals will be closed, all constructive activities of the Provinces will be set at naught, Provincial autonomy will come to a dead stop, the Central Executive will assume dictatorship, &ire will be nothing but chaos as a result of this article taken along with the amendment.

My friend forgets that article 277 is a sequel to 275. We are proceeding on the footing that the security of India is threatened or that there is war or domestic violence of a character which necessitates the President to proclaim an emergency posited by article 275. The normal conditions are disturbed by the very premises with which we start, namely war, and everybody must be ready to support the security of the country, to see that the State itself which is the basis for individual liberty, does not fall to the ground. That is the basis of article 275.

Then, article 277 does not say that the whole of the financial provisions will come to an end. It says, “subject to such exceptions or modifications as he thinks fit”. Normally it is not expected that he will abrogate the entire financial scheme. The article provides that the provisions of articles 249 to 259 of the Constitution shall for such period have effect subject to such exception or modification as he thinks, fit. Therefore, it is an exception to the rule that has been working for sometime, it is a modification of the rule that has been working for some time. It is not an obliteration of the entire financial structure or the financial relation between the Provinces and the Centre that is contemplated under article 277.

Even in normal times the Parliament has the power to interfere with the distribution. That is stated in the very articles, 249 to 259. The whole question of distribution is left to Parliament. No doubt distribution implies that a certain percentage at least will be left to the Provinces, but the intervention of the Federal Parliament is posited in the various articles to which reference has been made by my Friend Pandit Kunzru. Therefore, what we are now doing is—and he himself has pointed this out—to see that the plenary

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authority of Parliament to pass any law to interfere with the distribution is not affected even by the powers conferred upon the President under article 277. The President's power is not exclusive of, and does not derogate from, the plenary authority of Parliament under the Constitution. Therefore, the only question is that in an emergency like this, the President acting on the advice of the Central Cabinet ought to modify or to provide for certain exception in regard to the distribution of the various proceeds.

So far as the right to distribute income-tax is concerned, even in normal times, it rests upon an order of the President—(on all Order of His Majesty in Council under the present Constitution)—it does not rest on Parliamentary authority. It no doubt contemplates that after the Statutory Commission makes its report a degree of permanency will be introduced in the distribution of income-tax proceeds, but until the financial provisions come into operation the power rests with the President which means the Central Cabinet. It does not mean that they will flout the claims of the various Provinces who are represented in the Upper House, and in the Lower House, and we are not to proceed on the footing that the representatives will not discharge their functions and their duties to their constituencies properly.

Therefore, I submit, Sir, that there is nothing drastic in article 277. You cannot carry on a war under the principle which obtains in normal times. You must provide the Centre with an emergency power and that emergency power is by no means so drastic and so omnibus a power, so all-comprehensive a power as might be imagined. It expressly says “subject to such exceptions or modifications as the Cabinet thinks fit.” An exception cannot be the rule. A modification cannot take away the original rule. A modification can only be a modification and an exception can only be an exception. Therefore, in an emergency, is the President, is the Central Cabinet, to be clothed with some kind of discretionary power in regard to the adjustment of the financial relation between the Provinces and the Centre subject to the plenary power of Parliament and to the intervention of Parliament if anything goes wrong in the action of a Cabinet which is responsible to the Lower House and in which both the Houses can take the Cabinet to task for putting the emergency provisions into operation ? Under those circumstances, I submit that it is inevitable that you should have a provision of that description. Whenever we refer to these things we must remember that we are dealing with a Cabinet which is responsible to the people. A Government which is responsible to the Parliament and the people can certainly be invested with greater powers than His Majesty in Council who was responsible only to the British Parliament and not to the Parliament of this country. It will mean the negotiation of the principle of responsible government to say that the responsible Government today must exercise the same kind of power as His Majesty in Council or a foreign Government could exercise in the circumstances of a war. At that time other people were responsible for the maintenance of India and for seeing there was no internal commotion. We are responsible now for the security of India and for the safety of the State. No price is too high for discharging that responsibility for the welfare of the people. That is the principle contained in article 277. It is a necessary consequence of article 275 which posits the existence of war or some domestic situation equivalent to war. There can be no exception taken to the principle underlying article 277 and the amendment which has been brought before the House by Dr. Ambedkar.

Shrimati Renuka Ray (West Bengal: General): Mr. Vice-President. Sir, I am one, of those who believe that, in the present context of things in this country and in view of the fact that we have so much leeway to make up in the matter of the nation-building services, we should of course have a very

strong federal Centre. It is necessary that the Centre should be in a position to see that the provinces do not fall behind in regard to the minimum standards of development. But, nonetheless, I must say that the arguments that Pandit Kunzru has advanced before the House this morning have a great deal in them. It is not possible for a province to administer its responsibilities in an adequate manner if its financial position is unstable or uncertain. I realise that it is in the case of emergencies alone that this power under article 277 is sought to be given to the President, which means the Central Government. None-the-less I do feel that this is a very drastic measure. The provinces draw their finances from two sources. One source is the obligatory allocation made to them to maintain their general services. The other is the grants made for development purposes. I could have understood it, if a demarcation had been made and the finances of the provinces had been left intact in the matter of the obligatory taxes with which they carry on their normal life. Even that has not been done. I do not want to reiterate all that Pandit Kunzru has very pertinently pointed out. I do feel that this is a vital matter. There is article 276-B under which all extravagant expenditure during emergencies could be stopped. The provinces can be requested to drop their development programmes during an emergency such as war. But surely it should not be in the power of the Centre or the President to stop the normal functioning of the provinces. It is through the provinces that the life and activities of the people of the country is administered. I should like to point out that the Centre does not work in the air. It has to work through the provinces and I can see no reason whatsoever for having this provision just as it is. I do think that Pandit Kunzru has drawn attention to a very important point. I would therefore request Dr. Ambedkar and the Drafting Committee to hold over this article and re-draft it in the light of the observations that have been made.

Prof. N. G. Ranga (Madras: General): Hold over till the emergency is over ?

Shrimati Renuka Ray : I do not mean that. Professor Ranga has sought to be very sarcastic. I would point out to him that even in an emergency the normal functioning of the provinces must continue. I see no reason whatsoever to give the President power to stop those sources of revenue from which the provinces have to function in a normal way, even in an emergency. I can understand stopping the development activities of a province in an emergency, but how can the normal functioning of the provinces be stopped even in emergencies? Even in war-time, people have to continue to eat, to have education and be protected against evil-doers. I do appeal to Dr. Ambedkar and the Drafting-Committee to reconsider this article which is a vital one. I support the changes proposed by Pandit Kunzru.

Mr. Vice-President : Mr. Biswanath Das may now speak.

Pandit Hirday Nath Kunzru : It is nearly one o'clock.

Mr. Vice-President : We shall now adjourn and meet again at 9 a.m. tomorrow.

The Assembly then adjourned till Nine of the Clock on Saturday, the 20th August 1949.