

Shri Mahavir Tyagi : I need not say anything then. I thank the Drafting Committee for this. It is very good, Sir.

(Amendments Nos. 402, 403, 404, 405 were not moved.)

Mr. President : Article 365. Amendment No. 408 by Pandit Thakur Das Bhargava.

Pandit Hirday Nath Kunzru (United Provinces: General): On a point of order, Sir, Article 365 has been justified by the Drafting Committee in the report appended to the Draft Constitution as revised by it on certain grounds. It is stated there that certain articles taken together justify the language of article 365. The articles that have been referred to are 256, 257, 353, 360 and 371. I should like to refer first to articles 256 and 257.

Shri L. Krishnaswami Bharathi (Madras: General): What is the point of order?

Pandit Hirday Nath Kunzru : The point of order is that there is nothing in these articles that is as wide as article 365. Article 365, as Honourable Members will see, enables the President to declare that a situation has arisen in which the Government of the State cannot be carried on, in accordance with the provisions of this Constitution, if the Government of a State does not give effect to any directions given by the Central Executive in the exercise of any of the powers conferred on it by this Constitution. This is, Sir, a question of policy. The Drafting Committee treats it as if it were a question of fact. But a reference to articles 256 and 257 will show that while the Central Executive has been empowered to issue instructions to the Provincial Executive in certain cases, yet if there is any failure on the part of the Provincial Executive to carry out the directions of the Central Executive, that will not amount to a failure to carry on the Government of a State in accordance with the provisions of this Constitution. These questions were thoroughly considered when the various provisions of the Draft Constitution were discussed. Articles 353, 360 and 371 relate to the powers that might be exercised by the Central Executive or by Parliament in certain emergencies. They do not, therefore, bear on the question that I have raised. We are principally concerned here with articles 256 and 257 and what we have to see is whether the scope of articles 256 and 257 is the same as the scope of article 365. Is there anything in articles 256 and 257 that can enable the President to declare that the Government of a State cannot be carried on in accordance with the provisions of this Constitution, if a State Executive fails to carry out the instructions of the Central Executive? Difference of opinion may arise from time to time between the Central Government and the Provincial Governments and the Central Government may lawfully issue instructions to the Provincial Governments to act in a certain manner. It will be the duty then of the Provincial Governments to carry out those instructions, but it is going too far to say that if the Provincial Executive fails to carry out in every respect the instructions of the Central Executive or if the Central Executive feels that its instructions have not been fully carried out, then the President may declare that the Government of the State cannot be carried on in accordance with the provisions of this Constitution and may then assume to himself all the powers of Government or take such other measures as he can under this Constitution. Some honourable Members may be of opinion that this should be done but the time for making such a change has gone. The Drafting Committee has been authorised by Rule 38-R of the Rules of this Assembly.

Shri Brajeshwar Prasad (Bihar: General): Is the honourable Member raising a point of order or delivering a speech?

Mr. President : It is a point of order. I have followed the point of order.

Pandit Hirday Nath Kunzru : To make such changes as are complementary or consequential or necessary and what we have to discuss is what the word, 'necessary' means. Does it mean that if the Drafting Committee feels that the House gave a wrong decision on a question of policy then it should substitute its own judgment for that of the House or does it mean that the Drafting Committee should make such changes as are implied in certain decisions arrived at by the House but not actually provided for? I think that in this particular case, Sir, the draft of article 365 can be approved only on the supposition that the Drafting Committee can override the judgment of this House and substitute its own judgment for it. We are not concerned with seeing whether it is desirable as a question of policy or not that the Central Executive should enjoy certain powers that have not been given to it by this Constitution. All that we are concerned With at the present time is that the decision arrived at by the House on this point is carried out in a proper way.

Mr. President : As I understand the point of order which you are raising Pandit Kunzru, it is this, that this article as it is now proposed goes beyond the decisions of this House and it is not a necessary consequence of any decision which has been taken.

The Honourable Dr. B. R. Ambedkar (Bombay: General): The only question on this point of order that could arise is whether the change proposed by the Drafting Committee in article 365 is a consequential change. It is quite clear in the judgment of the Drafting Committee that this is not only necessary but consequential, for the simple reason that, once there is power given to the Union Government to issue directions to the States that in certain matters they must act in a certain way, it seems to me that not to give the Centre the power to take action when there is failure to carry out those directions is practically negating the directions which the Constitution proposes to give to the Centre. Every right must be followed by a remedy. If there is no remedy then obviously the right is purely a paper right, a nugatory right which has no meaning, no sense and no substance. That is the reason why the Drafting Committee regarded that such an article was necessary on the ground that it was a consequential article.

But, Sir, I propose to say something more which will show that the Drafting Committee has really not travelled beyond the provisions as they were passed at the last session of the Constituent Assembly. I would ask my honourable Friend Pandit Kunzru to refer to article 280-A, clause (5), and article 306-B. Article 280-A, clause (5), and the provisions contained in the concluding portion of the main part of 306-B are now embodied in article 365. To that extent, article 365 cannot be regarded as a new article interpolated by the Drafting Committee. If my honourable Friend.....

Pandit Hirday Nath Kunzru : May I interrupt my honourable Friend? Article 306-B relates only to the power of the Central Executive over the Governments of the States included in Part B of the first Schedule. My honourable Friend has extended that power of the Central Executive over all State Governments.

The Honourable Dr. B. R. Ambedkar : If my honourable Friend would allow me to complete, I would like to read article 280-A, not of the present draft, but of the old, as was passed at the second reading. These are financial provisions. Clause (5) of article 280-A says: "Any failure to comply with any directions given under clause (3) of this article shall be deemed to be a failure to carry on the Government of the State in accordance with the provisions of this Constitution." Therefore, article 365 merely seeks to incorporate this clause (5) of article 280-A. My honourable Friend, if he refers again to article 306-B

Pandit Hirday Nath Kunzru : Will my honourable Friend allow me to interrupt him again?

The Honourable Dr. B. R. Ambedkar : I think it would be better if he speaks after I have completed my argument. If he refers to article 306-D which deals again with the power to issue instruction and directions to States in Part III which are now States in Part B of the First Schedule, he will see that the last portion says: "any failure to comply with such directions shall be deemed to be a failure to carry on the Government of the State in accordance with the provisions of this Constitution." There fore my contention is that article 365 does not introduce any new principle at all. It merely gathers together or assembles the different sections in which the power to issue directions is given and states in general terms that wherever power is given to issue directions and there is a failure, it would be open to the President to deem that a situation has arisen in which there has been a failure to carry out the provisions of this Constitution. The only article in which such a power to deem that there has been a failure to carry on the Government in accordance with the provisions of the Constitution was not specifically mentioned were articles 256 and 257. It merely that the Centre had the power to give directions. Therefore, if there is it all any extension of the principle embodied in articles 280-A, (5) and 306-B in the new article 365 it is with regard to some of the articles in which this fact was not positively stated. My submission is that when the Constitution does say that with respect to certain articles where the power to issue directions is given, the President shall be entitled or it shall be lawful for the President to deem that there has been a failure to carry on the Government in accordance with the provisions of the Constitution, it seems difficult to justify that certain other articles in which also the power to issue directions has been given should have been omitted from the, purview of article 365. The object of article 365 is to make the thing complete and to extend the express provision contained in article 280-A and article 306-B which have been passed by the House already. Therefore, I submit that there is no innovation of any kind at all. It merely makes good the omission which had taken place with regard to some of the articles which are, I submit, on the same footing as articles 280-A clause (5) and 306-B.

Pandit Hirday Nath Kunzru : May I point out that the reference by Dr. Ambedkar to articles 280-A and 306-B in the Draft Constitution as amended by the Constituent Assembly is not to the point? Article 280-A refers only to financial emergencies. The power conferred on the President under that article can be exercised only when he has declared that the financial stability or credit of India or any part thereof is threatened. The scope of that article therefore is very limited. There is another article in the Constitution which enables the President to issue a proclamation of emergency. Such a proclamation can be issued only when India is threatened by war or internal disturbances. But, these articles do not justify the extension of the power that the Central Executive may exercise in certain emergencies to all cases. Article 306-B is definitely limited to the case of States mentioned in Part B of the First Schedule. Such a provision was not made in the Constitution in reference to States mentioned in Part A of the First Schedule. Dr. Ambedkar has himself admitted that he has extended the provisions of article 306-B and article 280-A. He has generalised them and brought even the States mentioned in Part A of the First Schedule under the wider exercise of the powers of the Central Executive referred to in articles 306-B and 280-A. I submit, Sir, that the analogy is unjustified and, in any case, incomplete. Whatever the Assembly may have done in the case of States mentioned in Part B of the First Schedule, it does not follow from this that the same provisions must be extended to the States mentioned in Part A of the First Schedule. I submit, therefore, that the language of article 365 goes beyond the express decisions of the Constituent

Assembly. A certain difference has to be maintained between the States mentioned in Part A of the First Schedule and Part B of the First Schedule. The difference cannot be obliterated simply because the Drafting Committee desires that they should be removed.

Pandit Balkrishna Sharma (United Provinces: General): May I offer some remarks?

Mr. President : On the point of order?

Pandit Balkrishana Sharma : Yes, Sir.

Mr. President : Dr. Ambedkar has already replied.

The Honourable Dr. B. R. Ambedkar : I would like to draw your attention that even in the present Government of India Act there is a provision to the same effect contained in section 126 which empowers the Governor-General to give directions to the provinces and if it appears to Governor-General that effect has not been given to any such directions he can in his discretion issue orders to the Governor who was to act in his discretion in the matter of carry in go out the directions given by the Governor-General. This provision, if I may say so, is very necessary because we all know—those of us who were Ministers during the time of the war—how these mere powers of giving directions turned out to be infructuous when the Punjab Government would not carry out the food policy of the Government of India. The whole Government can be brought to a standstill by a province not carrying out the directions and the Government of India not having any power to enforce those directions. This is a very important matter and I submit that the change made is not only consequential but very necessary for the very stability of the Government.

Pandit Hriday Nath Kunzru : The provisions of the Government of India Act, 1935, were before us when the Constitution was drafted and was considered by this Assembly. We have copied certain provisions from that Act, but we have deliberately omitted certain other provisions. We have for instance included in the Draft Constitution a provision relating to the breakdown of the Government of a State. We have copied that provision from the Government of India Act, 1935. We have done so deliberately and after a great deal of discussion. Yet we have omitted to enact certain other provisions of the Government of India Act, 1935, in the Draft Constitution and article 126 is one of those articles in that Act that has not been copied in the Draft Constitution. The reference therefore to section 126 of the Government of India Act, 1935 does not in any way justify the language of article 365 which is now before us.

Mr. President : The limited question which I have to decide at the present moment is whether this new article 365 goes beyond the decisions which were taken and whether it is not necessary in view of all the other articles which we have adopted. Now it seems to me that if we turn to article 280-A and also to article 257, the wording is exactly the same so far as it refers to the power of the Union. In article 257 we find—

"The executive power of the Union shall also extend to the giving of directions to a State as to such and such matters."

and in article 280-A, clause (2)—

"The executive authority of the Union shall extend to giving of directions to any State such and such matters."

So in both the cases the power of the Union is exactly the same and expressed in exactly the same words. Therefore the necessary consequence which is given in clause (5) of article 280-A is attracted to article 257 also, and from that point of view I think it is not a question of order. Of course it is a matter on which the House may hold a different view and it may throw it out on merits

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but I think this proposal is in order and you may discuss it. Pandit Bhargava has really given notice for deleting this clause. Now it is for the House whether to accept it or not.

Prof. N. G. Ranga (Madras: General): Has it been moved?

Pandit Thakur Das Bhargava (East Punjab : General): Sir, I beg to move:

"That article 365 be deleted."

In making this motion I do really think that as a matter of fact the Drafting Committee has rather "tended the scope of its jurisdiction by enacting this provision which is one of the most important sections in this Constitution and bringing it at this last stage. Since you have been pleased to give your ruling on the point of order, I will not advert to this aspect of the case and will confine myself to the question whether in the circumstances, this article 365 should be allowed to stand in the Constitution. Now as you have been pleased to observe, articles 256, 257 as also 280-A and 306-B have great relevancy when we are considering this question. In regard to article 280-A, there is no doubt that we have passed that if a situation should arise in which certain directions of the Government of India are not obeyed in regard to financial matters, the Government can hold that there is a failure to carry on the Government in accordance with the provisions of this Constitution. If you will kindly refer to article 356, you will observe that the basic provision says—

"If the President on receipt of a report from the Governor or Rajpramukh of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation....."

So the ultimate situation in which these powers should be exercised by the President is described in these words:—

"if a situation has arisen in which the Government of the State cannot be carried on accordance with the provisions of this Constitution."

If on account of the failure to comply with any directions given in 256 or 257 or 280-A or 306-B such a situation arises, then the President has got absolute power, even if there is no report from Governor, to make an order or declare an emergency or issue a proclamation. This is a question of fact. Without such a situation arising in fact a fictitious situation can be conjured up under articles 280-A and 306-B from which this provision has now been omitted. We are now out for allowing such fiction to be raised under article 365 by virtue of which the President will be able to hold without its being actually a fact that the Government cannot be carried on in accordance with the provisions of the Constitution. On any disobedience to a particular direction, however insignificant, a situation can be held to have arisen in the words of article 365. The question now is whether we are justified in arming the Government of India with these powers, that however insignificant the direction may be, however innocent the situation may be, yet it may be authorised to hold that such a situation has arisen which can attract the provision of 365. This is the real question. To me it appears that the question resolves itself into this, whether on account of the failure to comply with any direction, such a penalty can be imposed upon a Provincial Government, because it may be that so far as the provisions of the Constitution are concerned, so far as the orderly government of the State is concerned, it may be carried on with as much smoothness as before; but there may be a failure in respect of an insignificant direction.

We have also to consider the effect of articles 250 and 257. In my humble opinion, Sir, article 256 is clothed in Such general words that we cannot say that a particular dereliction of duty alone can attract this drastic provision. Article 256 runs as follows:

"The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose."

We will come to the same situation in the case of article 257 also, because these words occur there in article 257 also, and they are very extensive, very vague, and very general, Sir, I do not visualise that our Central Government as at present constituted will ever exercise such absolute or arbitrary powers. But I should think that no Government of the day should exercise powers in an arbitrary manner. I know that the present Ministers of the Government of India are persons in whom people have confidence, and they will not abuse their powers. But we have to think of all future governments. We have to see if any Government of India manned by persons in some of whom the people may not have confidence, will not be able to abuse such provisions. That is the question at issue. My humble submission is that any Government of India consisting of twenty ministers exercising jurisdiction over various matters can give directions to a Provincial Government under the Factories Act, or under the Child Marriage Act, or under the Rehabilitation Act, or any other executive matter, and even a lawful or reasonable non-compliance can be taken advantage of capriciously to declare that a situation has arisen which has not really arisen.

Mr. President : But Mr. Bhargava, is not that an argument which cuts both ways? Suppose a Provincial Government were to ride rough-shod on a very important provision of the Constitution, or of law, and the Government of India were to issue instructions to carry on the Government in accordance with that provision, and the Provincial Government refuses, then how would the Government of India be able to enforce its orders?

Pandit Thakur Das Bhargava : I will just explain, Sir.

I am one of those who want that the Centre should be strong, quite strong and absolutely strong to control every provincial government. And I also can see that a situation can arise when very important directions of the Government of India may not be complied with. And therefore, I submit whenever such a situation arises, article 356 is there and the words used there are, I say, such as will certainly meet the needs of any case. The point is not that the Government cannot be carried on. The only question is if the President is satisfied that a situation has arisen when such a step is necessary, then the President can declare in any given set of circumstances, such a situation has actually arisen.. My humble submission is that even if there is only the fear of such a situation arising, even then it may be said that such a situation has arisen. Sir, there are two aspects of the case, as you have been pleased to point out. Such a situation need not have actually arisen, but even then, the President may say that a situation has arisen when action under article 256 or 356 should be taken, that the Government of the State cannot be carried on in accordance with the provisions of the Constitution.

Mr. President : The point is that a situation has arisen in which the government cannot be carried on, as distinct from the fact that the government is not being carried on. Supposing the Government of the State is not carrying on the administration in accordance with the Constitution, is that covered by that?

Pandit Thakur Das Bhargava : It is more than covered. It envisages a situation in which the government is not carried on. If it is not carried on

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then the question does not arise. There are the powers conferred under article 352 dealing with the security of India, when there is external or internal disturbance.

Mr. President : There is no question of external or internal disturbance but it is simply a case of government not being carried on. Government can be carried on, but it is not being carried on. Is that covered by article 356?

Pandit Thakur Das Bhargava : I think the Government of India must be alive to the situation every moment, and if the government cannot be carried on, the Government of India has got the power to act. The provision envisages even the prospect of danger, not to speak of existing danger. In article 280-A more than necessary power has been vouchsafed to the Central Government as financial matters are emergent matters and call for peremptory action. To article 306-B we agreed, because we know that certain States are not fully developed and therefore their general control is to be tightened for ten years at least. It may be that the financial position in a State may not be so bad, yet because it is an emergent matter, more than necessary power has been given. The provinces of A class are not under the general control. Under 306-B which deals with B class provinces the Honourable Sardar Patel has been good enough to point out why this drastic power has been given in the hands of the Government. Now this 365 has broken down the difference between A and B States. The provisions of article 256 deal with executive power and laws made by Parliament which are very fluid in nature. Thus, practically speaking, A class provinces have been brought to the level of B class States. Article 365 viewed as a penal provision creates a psychological difficulty also. Now, if we were to hold that with regard to every offence of the Indian Penal Code, from every crime omitted, the accused could be hanged, or sentenced to prison for twenty years, or to one year or only fined or even admonished, then the result will be that people will be encouraged to commit graver offences. This is the second law of Bentham's theory about punishments. I am sure that these powers under 365 are not going to be used in the smaller or lesser cases. I also know that with regard to food and rehabilitation, the provincial governments are not fully complying with the orders of the Central Government, and very grave difficulties have arisen in the country because of this. These powers under section 365 are not going to be used in the ordinary cases, and therefore there will be the tendency of the Provincial Government to defy the Government on more important matters or commit much worse offences as the consequences of big or small failures can be the same. Therefore it is necessary to apportion consequences in a proportionate measure to failures, assigning ordinary consequences to ordinary failures and serious consequences to serious failures. My submission is that the existence of this power is likely to conduce to greater difficulties.

Pandit Balkrishna Sharma : May I interrupt the honourable speaker for a minute? Provision 365 says that the President may hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. It is not incumbent on him that on every trifling transgression by the Provincial Government he should

Pandit Thakur Das Bhargava : I know that, if he were to do so in every case then the carrying on of the Government of India would be impossible. But what does it mean? It means that every provincial government shall be constantly trembling before the Prime Minister. The Prime Minister of India will become not only the Grand Moghul, but he will be like a lion and the Provincial Governments will be like lambs. The Provincial Government will be in constant fear and will constantly tremble before him. Such a provision

invests the Central Government with absolutely arbitrary power and I maintain that arbitrary powers should not be given to any person. Ministries and Provincial Governments will have no security or stability and will change at the whim or caprice of the Prime Minister.

In practice such a power will not be used and its non-user will encourage bigger defaults and the tendency for disintegration will increase. This drastic power is not necessary and whatever is necessary is already there in 356.

Mr. President : You have not taken note of the distinction between an actual disobedience of the order of the Government of India—which order is justified under some provision or other of the Constitution—and a state of things arising which makes it impossible for the provincial government to be carried on. There is that distinction—a case of physical impossibility of the Government being carried on and a case of actual disobedience on the part of a provincial government to carry out the orders of the Government of India. This article is based upon that distinction.

Pandit Thakur Das Bhargava : Supposing there is a failure of the provincial government to comply with any of the directions given by the Government of India, will it not be declared that the future Government of the State cannot be carried on in accordance with the provisions of the Constitution, if the failure is such as really brings about the situation envisaged ? In case you postulate that the Government of a State cannot be carried on according to the provisions of the clause, the Government of India can take action under article 356. If the article is to be construed that only in case of prospective failure, when the situation is likely to arise, this 356 can be applied, then certainly your objection is perfectly valid. But, Sir, if you hold that in a given set of circumstances, when the government is not being carried on in accordance with the provisions of article 356, then article 356 applies to both the contingencies then there is no occasion for enacting a measure like this, which is very arbitrary and despotic in character.

The Honourable Shri K. Santhanam (Madras: General): Sir, I want to point out that this amendment is not quite appropriate. We cannot delete article 365 without leaving articles 360 and 371, as originally passed, truncated. The clauses there empowering the President to hold that there has been a failure of the Constitution have been taken out and incorporated in article 365. A wholesale deletion will go against the decisions which the House has already taken. It is only because they have brought article 365 that they have deleted the clauses in 360 and 371. A deletion therefore will not be in order but an attempt to restrict the application of article 365 to those articles will be in order. Otherwise we will be practically nullifying the original articles 360 and 371.

Shri H. V. Kamath : Sir, I move.

“That in article 365, after the word where the words ‘the President is satisfied that’ be inserted.”

During the second reading of the Constitution I made certain observations with regard to this article in the chapter on Emergency Provisions and I tried to mellow the harshness of some of the provisions and to tone down the drastic nature of some of them. I do not at this stage, therefore, propose to say anything, on the merits of the proposition, as the House has accepted the articles dealing with the emergency provisions in the Constitution. Once they have been accepted I suppose there will be room for this article as well. The only point in my amendment is that we must make it clear in the first part of the article as to what the *modus operandi* should be before the President holds that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution. If the House will turn for a moment to article 356, there it is laid down that the President can

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not act unless and until he receives a report from the Governor or Rajpramukh and he is satisfied. Of course the words “or otherwise” are also there. If the House will turn to article 360 dealing with a financial crisis or emergency there also it is made clear that the President should be satisfied that a situation has arisen whereby the financial stability or credit of India is threatened. In both these articles dealing with emergencies it is specifically and clearly provided that the President must be satisfied, in the first instance, on the report of the Governor or Rajpramukh or otherwise, in whatever way he thinks fit or necessary. In both cases, my honourable Colleagues will see that unless, the President is satisfied the rest of the article cannot become operative. Therefore, I seek through my amendment to make a similar change in this article in conformity with the two articles to which I have just now referred and I would plead with the House that they accept my amendment, so that the article will be quite clear on this point, that once the President is satisfied that a State has failed to comply with or give effect to any directions of the Government of India, then he may hold that a situation has arisen where his special powers will have to be invoked. I, therefore, commend my amendment for the acceptance of the House.

Shri R. K. Sidhwa (C. P. & Berar: General): Sir, I move:

“That in article 365, after the words ‘under any of the provisions of this Constitution’ the words ‘which is in direct contravention of the declared policy of the Union’ be inserted.”

Sir, I do not want to discuss this article at length, as you have very lucidly and rightly answered the arguments advanced by Pandit Kunzru and Pandit Thakur Das Bhargava. I only want to remind my honourable Friends who are opposed to this article that when we were discussing the Objectives Resolution in the very first session of the Assembly, very great stress was laid by every Member who spoke on the occasion that the Centre should be made strong and very strong. I wanted to know whether there was any Member at that time who stated that the Centre should not be made strong and everybody pleaded that the Centre should be made strong. From that point of view brought to bear on the Objectives Resolution, the Drafting Committee have borne that point in mind and amended the Constitution accordingly. While I do not want that the Provincial Government should be made a skeleton Government, still I do feel that under the conditions that are prevailing it is very necessary that the Centre should have some power in the event of the provinces going wrong. Do we for a moment think that any one believes that the Centre will exercise its power if the Provinces are functioning correctly? My amendment says that it is only “against the declared policy”. I want to make that clear. Let it not be understood by Provincial Governments that in any ordinary matter the Centre is going to issue a fiat that “since you are not behaving well, your, powers are suspended”. I say when the Government is able to convince the people and also the province that they have gone against the declared policy and against the Constitution and that they are going wrong, then certainly the Centre should have the right to intervene. If the Centre has no right to intervene this Constitution will be a scrap of paper, and if one province goes one way and another some other way against the decision of the Centre, there will be chaos. Do we not know that so many situations are arising over price-control and finance and in so many things where we have given power under the Concurrent List and the Provincial List to the provinces? So if they squander away the money and go on controlling food and other articles as they like against the declared decision of the Government of India which voices the feelings of the people as a whole—it is they who look to the interests of the people—it will result in the provinces looking to their own provincial interests. I have seen in so many provincial matters that some of the Members look to the interests of their province alone at the cost of the people as a whole. I have seen that and

therefore the Government of India is justified if they interfere, as they represent the people of the country, they are the masters of the Provincial Governments. I would use that word. If the master's orders are not obeyed, then they would be called upon to behave properly; if they do not improve, that administration should be taken over by the Central Government. The necessity of this article has been very rightly and lucidly explained to the House. It is not in contravention of what we have decided I have tried to read into the arguments and Pandit Thakur Das Bhargava. Undoubtedly, there is a change in by Pandit Hirday Nath Kunzru the wording but the intention is still there: the object is there. Therefore, I contend that this article Should remain and the amendment that I have moved is commended for the acceptance of the House.

Shri Brajeshwar Prasad : I rise to support article 365 as moved by the Drafting Committee. Unfortunately, Sir, I have not been able to see eye to eye with Dr. Ambedkar on most of the fundamentals of this Constitution. But here is one article, which to my mind, seems to be a very important article and with which I am in perfect concurrence.

Sir, my Friend, Pandit Thakur Das Bharpava, made an observation during the course of his speech that he is not in favour of arbitrary powers being vested in any authority in the Government of India or in the provinces. I feel that our notions about power must be revised. We have not got the proper appreciation of the difficulties of the problem of power. Power must have some relation with the facts and with the political situation prevailing in a country. The facts of Indian life cannot be ignored. In India the danger is not of arbitrary power being vested in the Centre : the danger is, as Indian history will bear ample testimony to it, that fissiparous tendencies may gather momentum and as in the past they have led to the downfall of empires and kingdoms, may lead us to same fate. I feel that if Indian unity is to be attained, 'if the danger of innumerable Pakistans being set up in this country is to be averted, this power must be in the hands of the President. I do not care if this article is in consonance with the other articles: I am indifferent to the argument that the Drafting Committee has overstepped the limits of its authority. I know this article bears the stamp of a realistic approach. If this power is not vested in the hands of the Centre, the provincial Governments will go on acting without caring for the authority of the Central Government.

Dr. Ambedkar has referred to the case of the food situation in Punjab. He referred to the case where the Punjab Government refused to fall in line with the food policy of the Government of India. Why go so far' Even today it has been brought to our notice—birds whisper in our ears that there are recalcitrant Prime Ministers today who refuse to conform to the directions issued by the Government of India. This tendency must be checked, or else Indian nationalism has no future. Today, Sir, the situation prevailing in East Punjab, the situation prevailing in West Bengal, the situation prevailing to a more or less similar extent in other provinces as well are of a dangerous character and if this power is not vested in the hands of the Government of India, there is no future for this country.

Shri B. Das (Orissa: General): I speak with sorrow and misgivings. I listened to my Friend Mr. Santhanam. But I do not think there was any necessity of article 365. Pakistan Government retained section 93 in their Government of Pakistan Act and we abolished section 93 from the Government of India Act. We know the meaning of democratic Provincial Governments democracy in the sense of a qualified democracy from the position of Provincial Governments under the British rule. Today we have not only introduced article 371, but the Drafting Committee suddenly in their wisdom, during the recess of a fortnight saw to it that article 365, which is nothing but section 93 of the Government of India Act, 1935, in all its nakedness and horror,

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had been introduced. I do not see eye to eye with my Friend Mr. Santhanam that this is necessary. I thought article 371 was enough. It gives the Government of India general powers to tighten the Control over the States which are no more autonomous today, and which were never autonomous and never will be autonomous under this Constitution. Why is it that we want to look in to the horrors of revolt of the State? That means failure of the President and the Cabinet. If the States get out of control and try to revolt, then it would mean that there is not that cordial relation between the Government of the Union and the States, and any body who is not a lawyer even a layman like myself-when he reads this Constitution which we are shaping, will see that it does not leave the Provinces any power. The provinces are today glorified municipalities and corporations. If that be so, why go to the horrors of article 365 ? We are not going to evolve a Fascists democracy. We are going to evolve democracy. Why this fear? Why this suspicion? The President has got enough emergency powers and article 371 is ample. Do you mean to say that this Constitution denies the right to the President and the Cabinet to take over control without the introduction of this article 365? I do not think so. I think the President and the Central Cabinet have got ample reserve power to meet an emergency of the type that Pakistan Government met in taking over the Government of the West Punjab. I do not like at the fog end, when we are nearing the end and giving the finishing touches to this Constitution, to harbour the feeling in my mind that we are legislating as autocrats. I do not wish to raise the cry that we must vote down article 365. But how is it and why is it that the Drafting Committee gets all the odium of Fascism in the fortnight's recess that we had? When we separated we felt, in spite of many shortcomings in this Constitution, that at least we have evolved a democratic Constitution. Article 365 introduces the horror of the Section 93 by which most of us suffered for many many years. I am glad that Dr. Ambedkar is present. I want him to justify his wisdom in having recourse to this new article 365.

Shri K. Hanumanthaiya (Mysore State): Mr. President, Sir, every time the question of the Centre comes up, people say that they should make the Centre strong, because the provinces misbehave and that we must always keep a vigilant eye on them. Not that I am in favour of the view of making the Centre weak, but people who have fought for democracy, people who are framing a democratic constitution, forget that if the provincial governments misbehave there are provincial legislatures to set them right. It is a sad commentary upon the psychology of most of us that we completely ignore the provincial legislatures and the people in the provinces, and attribute all virtues to the Centre and to the Government that exists in Delhi. If we scrutinise for a moment the way in which the Governments are run in the provinces and the Centre, I for one do not find that the Government at the Centre is being run on very much more efficient or honest lines than the Governments are being run in the provinces. It is far better that we take note of the facts as they are. Can we say that the Secretariat here in Delhi is being run more honestly or more efficiently than the Secretariats are being run in the provinces? It is a sad commentary, as I said before, on us that forgetting these facts we decry the regimes in the provinces and the provincial legislatures every time and praise the Government here to the skies. That is a psychology which will ultimately work to uproot democracy in this country. As a friend of mine suggested a little while ago, we are investing the Central Government with powers which it will not be able effectively to exercise or honestly make use of.

Having said this, I would like to point out that when we were fighting for freedom one of the principles on which we concentrated our mind upon in constitution-making was decentralisation of power. In this vast country,

centralisation will ultimately work to the detriment of what we call “unity” itself. it is impossible for any human being or any Government to control effectively all the administration from Cape Comorin to the Himalayas. Decentralisation is a necessity. It was also the principle on which Mahatma Gandhi wanted to construct this Constitution. Of course, we have given up his ideas in many respects, and I am not quoting him for the purpose of winning sympathy for that cause. Anyway, I make this observation with all the sense of responsibility that I have certain classes and interests and communities have taken hold of the Government in the Centre and they think they will be able to carry on the Government and enjoy all the privileges that could be enjoyed by taking as much power as possible for the Centre. This is the psychology...

Shri M. Thirumala Rao (Madras: General): What do you mean by “communities”?

Shri K. Hanumanthaiya : You know it and I know it. Therefore, why question ? They think they will be able to get all power and all privileges. This is the underlying psychology and that will be the rock on which this Indian unity will break ultimately, if people do not mend their ways.

Now, Sir, it is not as if I am not in favour of this article. It is the logical culmination of the kind of Constitution-making we have been doing. We have given to the Centre—financial, executive and legislative powers—in varying degrees, to the detriment of the provinces and the units. Article 365 is merely the “operative portion” of the powers we have given. Once having conceded so many powers to the Centre, it would be illogical if we do not entrust it with the power to operate them as well. It is this, what article 365 seeks to do. But in supporting this article, I wish to sound a note of warning. Let those people who think that they are making hay while the sun shines take note of the future also. If this article is worked, as we apprehend, in the interests of the classes or the communities that have taken hold of the Government of India, people will not keep quiet. That will be the starting of trouble to break the much sought-after Indian unity and Indian nationalism.

Shri Mahavir Tyagi : Sir, I am in favour of the newly proposed article 365. I feel there is no violation of the scheme of decentralisation according to this article. This article establishes links with the rest of the units. To talk of decentralisation does not mean, if I may use the word, “circumferising” the whole State. If we want to link all the States together in a circumference, we must have a Centre. A circle cannot exist without a Centre. This article merely provides the tender links and the lines of the circumference. These rights are being given not to Ministers or States or Governments alone,. Here in this Constitution, the rights of the people are being defined. When the Constitution is violated and the rights of the people denied to them in a province or State, the people will have no other course except to appeal to Parliament to their representatives though these representatives after taking the oath as representative have in actual practice nothing to do with the people except to tax them and govern them. Therefore, the people who are thus governed must have a forum or making their appeals for the redress of their grievances. This article is the security for the people that the provincial Governments will govern them properly. If they do not govern them according to the articles of this Constitution, the people must have the right to go to the Centre and appeal. The Centre alone can take a dispassionate view of things. Here in the Centre there will be so many representatives from the States sitting together. They will always take a dispassionate view of things and surely, whatever action the President takes will always be considered by Parliament. Parliament is the Supreme Court of the land and therefore it must have the right to enforce the rights of the people in the various States. It is not a question of centralisation at all. This is neither centralisation nor what I could call circumferisation. The real position is that there should not be disintegration. These are the tender

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Guarantees for the consolidation of the State. I must congratulate the Drafting Committee for introducing this provision. Although some might object to it. I support it. It is a great security of the rights of the people that the President should have the authority to intervene whenever he finds that the State Governments are not working according to the article of this Constitution

Mr. President : I desire to point out to the Members that we are really running a race against time. As this is an important article, I have allowed so much discussion on it. But if any other Member wishes to speak on this article he will have to bear this in mind. There are other articles also to be discussed. However, tomorrow by one o'clock we have to finish all the amendments.

Shri Kuladhar Chaliha (Assam: General): This is a very important article.

Mr. President : Therefore we, have discussed it for more than an hour and a half.

Pandit Hirday Nath Kunzru : Mr. President, many honourable Members have justified the language of article 365 on the ground that everybody recognises the need for a strong Centre in the present circumstances. Sir, I am at one with all those Members who wish that the Centre should have adequate power to discharge its responsibilities. But we cannot use the need for a strong Centre as an excuse for giving any bias we like to our Constitution.

My honourable Friend Dr. Ambedkar, in defending the draft of article 365, said that it was obviously necessary, when articles 256 and 257 authorised the Central executive to issue instructions in certain cases to the State executives, that a general remedy should be provided against a failure of the State executives to carry out the instructions of the Central executive. But Dr. Ambedkar has not been quite consistent in this matter. When he was asked some time ago whether any limitation had been placed on the power of the President, that is, whether there was any provision in the Constitution requiring the President to act in accordance with the advice received by him from the Ministry, he said that the Constitution proceeded on the assumption that every authority would be prepared to play the part assigned to it in the Constitution. It could not assume that every authority would try to violate the Constitution under which it was brought into existence. But, today he has taken almost an opposite view and he wants that the power of the Centre over the provinces should be made absolute. He wants that its instructions should not be allowed to be disregarded by the provinces in any circumstance.

However, that may be, Sir, I am quite prepared to consider this question on its merits. Let us see whether there are any provisions in the Constitution, apart from article 365, that enable the Central Government to take action when a provincial Government fails to discharge its responsibilities. If, Sir, the action of a provincial Government is of such a character as to lead to misgovernment and to create the possibility of disturbances occurring in the State, it will be open to the President under article, 352 to issue a Proclamation of Emergency and, when such a Proclamation has been made, he will have adequate powers to compel the provincial Government concerned to carry out the instructions of the Central Government. There may be other cases in which there may be mal administration and misgovernment in various directions, but the peace of the Province may not be endangered thereby. If such misgovernment goes so far as to make either the Governor or the Rajpramukh or the President himself feel that the Government of a State cannot be carried on in accordance with the provisions of this Constitution, the President will again be able to provide the necessary corrective under article 356. But articles 352 and 356 assume a little patience on the part of the Central executive. They can be brought into play only

when the Provincial Governments show persistent disregard of their responsibilities. If the Central Government is wise, it will not dream of compelling the provincial Government to carry out its wishes in every case. Its legal power may be there: yet experience of the world and the necessity for carrying the public and the provincial governments with it will tell it that it must occasionally wink at their negligence and allow the provincial electorates and the provincial assemblies to bring about a healthy change in the situation. If, however, the provincial electorates and the provincial assemblies fail to fulfil their responsibilities and the provincial governments continue to disregard the views of the Central Government, then the Central Government will have adequate powers under this Constitution, even if article 365 is deleted, to see that the government of the country is carried on in accordance with this Constitution.

I should like, Sir, to refer to one more point before I sit down. The Drafting Committee has referred to a number of articles in this Constitution in justification of the language of article 365. Now, one of the articles so referred to is article 371 which corresponds to the old article 306B. Had that article been omitted, then there might have been some justification for article 365, but article 306 B has not been omitted from this Constitution. It figures as article 371 but I have not been able to compare the languages of article 371 in the Constitution as revised by the Drafting Committee and article 306B in the Constitution as amended by the Constituent Assembly last month. If their language is the same—somebody says it is the same,—then I do not see how the Drafting Committee could refer to this article as a justification for bringing in article 365. The reference to article 371 is wholly irrelevant. There are two other articles referred to by the Drafting Committee to which I would like to refer, and they are article 353 and article 360. Article 353 deals with.....

The Honourable Dr. B. R. Ambedkar : Before my honourable Friend proceeds further. I would like to point out that the words “and any failure to comply with such directions shall be deemed to be a failure to carry on the Government of the State in accordance with the provisions of this Constitution” have been omitted from article 371 which corresponds to the original article 306B.

Pandit Hirday Nath Kunzru : Then I stand corrected in that respect, ‘If article 365 is deleted as proposed by my honourable Friend, Pandit Thakur Das Bhargava, then the Drafting Committee can revert to the old draft of article 306 B. Apart from this, Sir, since this question has been referred to by Dr. Ambedkar, I should like to point out that article 306 B in the Constitution as amended by the Constituent Assembly, which corresponds to article 371 in the present Draft or the Constitution that we are discussing now, is of limited duration. It will remain in operation for ten years only, and this provision cannot be referred to as a justification for introducing a new provision in the Constitution that will be permanent.

Sir, I was referring to articles 353 and 360 when my Honourable Friend, Dr. Ambedkar, pointed out to me the change that had been made in the draft of article 306B.

Shri H. V. Kamath : May I point out that article 371 provides for a period longer than ten years also?

Honourable Dr. B. R. Ambedkar : “Notwithstanding anything in this Constitution during a period of ten years from the commencement thereof, or during such longer or shorter period as Parliament may by law provide. . .” etc.

Pandit Hirday Nath Kunzru : Sir, article 353 refers only to the powers that can be exercised by the Central executive and the Parliament after a Proclamation of Emergency has been issued. Obviously, emergencies will last for a short time. This power therefore is not general: it has to be used only in certain circumstances of a special character. Again, article 360 refers to a situation in which the President is satisfied that the financial stability or credit of