

Mr. Vice-President : Amendment No. 801.

The question is:

“That clause (4) of article 25 be deleted.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 802 standing in the name of Mr. Karimuddin.

The question is:

“That in clause (4) of article 25, for the words ‘as otherwise provided for by this Constitution’ the words ‘in case of rebellion or invasion and when State of Emergency is proclaimed under Part XI of this Constitution’ be substituted.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 805 by Mr. Naziruddin Ahmad. The question is:

“That in clause (4) of article 25, for the word ‘guaranteed’ the word ‘conferred’ be substituted.”

The amendment was negatived.

Mr. Vice-President : I will now put to the vote article 25 as amended by amendments Nos. 789 and 794. The question is:

That article 25, as amended, stand part of the Constitution.

The motion was adopted.

Article 25, as amended, was added to the Constitution.

Article 25-A

Mr. Vice-President : We next come to article 25-A. Amendment No. 808 by Mr. Lari.

(The amendment was not moved.)

Article 26

Mr. Vice-President : We then come to article 26. The motion before the House is: That article 26 form part of the Constitution.

Amendment No. 809 is of a negative character and therefore disallowed.

(Amendment No. 810 was not moved.)

Amendment Nos. 811 and 812 are of similar import. I should say they are almost identical. I allow 811 to be moved.

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

“That in article 26 for the words ‘guaranteed in’ the words ‘conferred by’ be substituted.”

This part does not guarantee but only confers these rights. Therefore to bring the language in conformity, I propose this amendment.

Mr. Vice-President : There is an amendment to this amendment. No 48 of List I.

(The amendment was not moved.)

(Amendment No. 813 was not moved.)

I shall now put article 26 to vote.

Shri T. T. Krishnamachari: How can the article be put to the vote before the amendment is put to the vote?

Mr. Vice-President : The question is:

“That in article 26 for the words ‘guaranteed in’ the words ‘conferred by’ be substituted.”

The amendment was adopted.

Mr. Vice-President : The question is that:

That article 26, as amended stand part of the Constitution.

The motion was adopted.

Article 26, as amended, was adopted to the Constitution.

Article 27

(Amendment Nos. 814, 815 & 816 were not moved.)

Mr. Vice-President : Amendment Nos. 817 and 818 are to be considered together. 817 may be moved; it stands in the name of Dr. Ambedkar.

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

“That for clause (a) of article 27 the following be substituted:

‘(a) with respect to any of the matters which, under clause (2a) of article 10, article 16, clause (3) of article 25, and article 26 may be provided for by legislation by Parliament, and’, ”

The object of introducing this addition of clause (2a) of article 10 is because this is a new clause which was adopted by this House. It is, therefore, necessary to make a reference to it in this article.

Mr. Vice-President : There is an amendment to this amendment.

The Honourable Dr. B. R. Ambedkar : I have moved it as amended.

Mr. Vice-President: I see.

(Amendment No. 818 was not moved.)

Amendment No. 819 is a verbal amendment. Amendment No. 820 may be moved.

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

“That for the words ‘to provide for such matters and for prescribing punishment for such acts’ the words ‘for prescribing punishment for the acts referred to in clause (b) of this article’ be substituted.”

Mr. Vice-President : Amendment No. 48 of List I standing in the name of Mr. Naziruddin Ahmad. Does he wish to move it?

Mr. Naziruddin Ahmad : Sir, I beg to move:

“That in amendment Nos. 820 and 822 of the List of amendments, in article 27 and in the proviso to article 27, the words ‘in this article’, wherever they occur, and the words ‘of this Constitution’ in the Explanation be deleted.”

Mr. Vice-President : It is very much like a verbal amendment.

Mr. Naziruddin Ahmad : Yes, Sir; because I was called, I had to obey the ruling of the Chair and that is why I came to the mike to move it, but this is verbal.

Mr. Vice-President : I am very grateful. I take it that you are not moving it.

Mr. Naziruddin Ahmad : No, Sir. I have already moved the amendment, but I do not wish to press it.

Mr. Vice-President : Amendments Nos. 822 and 823 are of similar import. No. 822 can be moved.

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

“That for the proviso and explanation to article 27, the following be substituted:

‘Provided that any law in force immediately before the commencement of this Constitution in the territory of India or any part thereof with respect to any of the matters referred to in clause (a) of this article or providing for punishment for any act referred to in clause (b) of this article shall, subject to the terms thereof, continue in force therein, until altered or repealed or amended by Parliament.’

‘Explanation.—In this article the expression ‘law in force’ has the same meaning as in article 307 of this Constitution.’ ”

(Amendment Nos. 50 of List No. 1, 65 of List No. IV and 823 were not moved.)

Mr. Vice-President : The article is now open for discussion.

(At this stage Mr. Kamath rose to speak.)

Mr. Vice-President : I hope you will permit me to get the things through before we disperse, in which case, I shall adjourn the House at 1 o'clock.

Shri H. V. Kamath : I am equally anxious. Mr. Vice-President, I am here seeking only a little light from Dr. Ambedkar with regard to his amendment No. 820 moved by him. I fail to see clearly why the words in the article as it stands at present should be substituted by the words he proposes to. In case his amendment is accepted, it will mean that Parliament shall have power only for prescribing punishment for the acts referred to in clause (b). Then what about the Parliament's power to make laws with respect to any of the matters which under this power are required to be provided for by legislation in clause (a)? Does he intend by his amendment to take away the power which is sought to be conferred by clause (a) of this article? It is conceivable that there are certain matters about which there are not laws already in force. Therefore, if there be such matters with regard to which there is no law in force, does he intend by his amendment to take away the power sought to be conferred by clause (a) of this article, which is 'to make laws with respect to any of the matters which under this Part are required to be provided for by legislation by Parliament'? The amendment seeks to give power only for prescribing punishment and not for making laws with respect to the matters required to be provided for by legislation under this Part. I want to know exactly what the import of his amendment is and why this clause (a) is sought to be amended in this fashion.

The Honourable Dr. B. R. Ambedkar : I am sorry, Mr. Kamath has not been able to understand the scheme which is embodied in article 27. This article embodies three principles. The first principle is that wherever this Constitution prescribes that a law shall be made for giving effect to any fundamental right or where a law is to be made for making an action punishable, which interferes with Fundamental Rights, that right shall be exercised only by Parliament, notwithstanding the fact that having regard to the List which deals with the distribution of power, such law may fall within the purview of the State Legislature. The object of this is that Fundamental Rights, both as to their nature and as to the punishments involved in the infringement thereof, shall be uniform throughout India. Therefore, if that object is to be achieved, namely, that Fundamental Rights shall be uniform and the punishments involved in the breach of Fundamental Rights also shall be uniform, then, that power must be exercised only by the Parliament, so that there may be uniformity.

The second thing is this. If there are already Acts which provide punishments for breaches of Fundamental Rights, unless and until the Parliament makes another or a better provision, such laws will continue in operation. That is the whole scheme of the thing. I do not see why there should be any difficulty in understanding the provisions contained in article 27.

Shri H. V. Kamath : I am sorry, Sir, that Dr. Ambedkar has not been able to follow me clearly. *(Laughter)*

The Honourable Dr. B. R. Ambedkar : It is quite possible.

Mr. Vice-President : Mr. Kamath, it may be the other way.

Shri H. V. Kamath : Sir, he has answered a different point from the one which I raised. My point was different. Perhaps he was not listening to me carefully. He was talking to someone else. If you will permit me, Sir, I shall try to explain the point.

Mr. Vice-President : Yes; but do not address the House; you must address the Chair.

Shri H. V. Kamath : I am addressing you, Sir, as I always do. The difficulty that arises is this. In the article as it stands at present, clause (a) gives Parliament alone the power. I do not question this; I agree Parliament and Parliament alone should have the right. You say here Parliament shall

[Shri H. V. Kamath]

have power to make laws with regard to any of the matters. Further on, you say that Parliament shall, as soon as may be, after the commencement of this Constitution, make laws to provide etc., etc. Now, Dr. Ambedkar wants to substitute this latter part by amendment No. 820. You want to omit the words "provide for such matters" and retain only the proviso as regards punishment. What about making laws for such matters? Why do you delete that portion? Why do you retain only the part regarding punishment? That was my point, but Dr. Ambedkar has answered a different point.

The Honourable Dr. B. R. Ambedkar : The reason why for instance, I have introduced an amendment in clause (a) is because it is only in specific matters that Parliament has been given this penal authority and these articles are referred to in my amendment. My friend Mr. Kamath will see that clause (a) contains no reference to any of the articles which specifically give Parliament the power to make laws. It is to make that point clear that I thought it would be desirable to make a reference to clause (2a) of article 10, article 16, clause (3) of article 25 and article 26, because, these are the specific articles which are to be dealt with exclusively by Parliament.

Mr. Vice-President : I shall now put the amendments to vote. All of them stand in the name of Dr. Ambedkar.

Amendment No. 817 as amended by amendment No. 56 of List III.

The question is:

"That for clause (a) of article 27 the following clause be substituted:

'(a) with respect to any of the matters which under clause (2a) of article 10, article 16, clause (3) of article 25, and article 26, may be provided for by legislation by Parliament, and,' "

The amendment was adopted.

Mr. Vice-President : Amendment No. 820.

The question is:

"That for the words 'to provide for such matters and for prescribing punishment for such acts' the words 'for prescribing punishment for the acts referred to in clause (b) of this article' be substituted."

The amendment was adopted.

Mr. Vice-President : Amendment No. 822.

The question is:

"That for the proviso and explanation to article 27, the following be substituted:

'Provided that any law in force immediately before the commencement of this Constitution in the territory of India or any part thereof with respect to any of the matters referred to in clause (a) of this article or providing for punishment for any act referred to in clause (b) of this article, shall, subject to the terms thereof, continue in force therein, until altered or repealed or amended by Parliament.

'Explanation.—In this article the expression 'law in force' has the same meaning as in article 307 of this Constitution.' "

The amendment was adopted.

Mr. Vice-President : The question before the House is :

"That article 27, as amended, stand part of the Constitution."

The motion was adopted.

Article 27, as amended, was added to the Constitution.

Mr. Vice-President : The House stands adjourned till Ten of the Clock tomorrow.

The Assembly then adjourned till Ten of the Clock on Friday the 10th December 1948.