

Mr. Vice-President : Being a negative motion, amendment No. 18 to delete new rule 38-W is out of order.

Mr. Naziruddin Ahmad : I beg leave to withdraw my amendments Nos. 19, 20 and 22.

Amendments Nos. 19, 20 and 22 were, by leave of the Assembly, withdrawn.

Mr. Vice-President : I shall now put amendment No. 23 to vote.

The question is:

“That in the proposed rule 38-W, the following Explanation be added:—

‘Explanation.—This rule shall have retrospective effect as if it was made on the 4th day of November, 1948.’ ”

The motion was negatived.

Mr. Vice-President : I shall now put the new Rule 38-W to Vote.

The question is:

“That after Rule 38-V, the following new Rule be inserted:—

‘Definition.—38-W. In this Chapter (excepting in rules 38-U and 38-V thereof), the expression ‘President’ includes any person for the time being presiding over the Assembly.’ ”

The motion was adopted.

Article 8—contd.

Mr. Vice-President : We have a quarter of an hour more. We can resume discussion of article 8 of the Draft Constitution.

Pandit Lakshmi Kanta Maitra (West Bengal : General) : We may adjourn now.

Mr. Vice-President : Our time is valuable. We should not waste a quarter of an hour.

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

“That for clause (3) of Article 8, the following be substituted:—

‘(3) In this article—

- (a) the expression ‘law’ includes any Ordinance, order, bye-law, rule, regulation, notification, custom, or usage having the force of law in the territory of India, or any part thereof;
- (b) the expression ‘laws in force’ includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.”

Sir, the reason for bringing in this amendment is this: It will be noticed that in article 8 there are two expressions which occur. In sub-clause (1) of article 8, there occurs the phrase “laws in force”, while in sub-clause(2) the words “any law” occur. In the original draft as submitted to this House, all that was done was to give the definition of the term “law” in sub-clause (3). The term “laws in force” was not defined. This amendment seeks to make good that lacuna. What we have done is to split sub-clause (3) into two parts (a) and (b), (a) contains the definition of the term “law” as embodied in the original sub-clause (3), and (b) gives the definition of the expression “laws in force” which occurs in sub-clause (1) of article 8. I do not think that any more explanation is necessary.

Mr. Mohd. Tahir (Bihar : Muslim) : Sir, I beg to move:

“That in clause (3) of article 8, for the words ‘custom or usage’ the words custom, usage or anything be substituted.”

I do not want to make a long speech. I only want to say that the word “anything” will be more comprehensive if it is used after the word “usage”. It is legal phraseology to say “custom, usage or anything having the force of law”. Dr. Ambedkar has moved another amendment. If that amendment is accepted, I suggest that this amendment also may be accepted by the House With these words, I move.

Mr. Naziruddin Ahmad : Sir, before I move my amendment, I beg to point out that as a comprehensive amendment has been moved by the honourable Dr. Ambedkar, I think the present amendment should be suitably adapted to apply to that amendment. I wish to move the second part of it only.

Mr. Vice-President : First of all, find out whether he accepts it or not.

Mr. Naziruddin Ahmad : Unless I argue the matter, he will not accept it. I think, Sir, this amendment will have to be accepted.

I beg to move:

That in amendment No. 260 which has been moved by Dr. Ambedkar, the words “custom or usage having the force of law in the territory of India or any part thereof” be deleted.

Mr. Vice-President : How can you add to that amendment without giving notice? It is out of order. You can only make a suggestion.

Mr. Naziruddin Ahmad : I have already given notice of an amendment to the original article. In view of the amendment of Dr. Ambedkar, there should be consequential changes.

Mr. Vice-President : All right.

Mr. Naziruddin Ahmad : Sir, I hate to waste the time of the House, but I wish to ask the House to consider the absurdity that these words which I seek to delete will lead to. The absurdity is that in the first part of clause (3) we say that “law” includes “custom or usage having the force of law in the territory of India or any part thereof”. Regarded apart from the context, this is absolutely unexceptionable. Law must be supposed to include “custom or usage having the force of law”, but we must look to the application of the definition in the context. This must be read along with clause (2) of article 8. In clause (2) it is stated that “the State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void”. I respectfully draw the attention of the House to the word “make” in line 1 and to the word “made” in line 3 of sub-clause (2). Sir, you say that “the State shall not make any law” and also that “law includes custom or usage having the force of law”. Therefore applying the explanation in clause 3(a) to clause (2), what is said is “the State shall not make any law, *i.e.*, ‘make’ “any custom or usage having the force of law”. The point is that “custom or usage having the force of law” is not ‘made’ by anybody. It grows. “Custom” has been defined in the Oxford Dictionary as follows:—

“Custom means in law the usage which by continuance has acquired the force of law or right especially the special use of a locality, trade, society or the like.”

Therefore in no sense a custom is made by the State. A custom is made usually by the people of a locality or a family or group or the like. It is made by continuance of an observance. Here you use the words “the State shall not make any law, *i.e.* custom or usage having the force of law”. Even in independent India the State cannot have any hand in the making of a custom or usage having the force of law. I think these words should be deleted. These are the difficulties which beset me at every stage. I submit, Sir, that these words are not happy in the context and should be deleted.

The Honourable Shri B. G. Kher : (Bombay : General) : Sir, the wording is ‘includes’, not “means”.

Mr. Naziruddin Ahmad : I am very glad for the kind interruption. It does not remove my difficulties at all. Does it mean to say that the State 'makes' a custom or usage? Still you have the difficulty to face that the State has to make a law including custom or usage.

The Honourable Shri B. G. Kher : Of course, it means 'whenever necessary' That is always understood in law. I am sorry to interrupt.

The Honourable Dr. B. R. Ambedkar : Probably he may not find it necessary to continue his speech if I refer to him this fact, namely, that the expression "law" in (3) (a) has reference to law in 8(1).

Mr. Naziruddin Ahmad : I am again grateful for the kind interruption of Dr. Ambedkar that the words 'custom and usage' have the force of law and so forth. This explanation applies also to clause (2), that is, the State shall not make any law. My remarks do not relate to article 8(1) but to 8(2). The difficulty is exactly where it was. I am not wiser, though happier for the kind interruption.

(Amendments Nos. 263 and 264 were not moved).

Mr. Vice-President : Article 8 is now open for general discussion.

Honourable Members : We should like to adjourn now.

Mr. Vice-President : As there seems to be a difference of opinion, the House stands adjourned till 10 o'clock tomorrow.

Shri Satyanarayan Sinha : (Bihar: General): We shall meet on Monday.

Mr. Vice-President : I should have thought that as we were very anxious to have the money of the country, we would also meet on Saturday. The House stands adjourned till 10 o'clock tomorrow.

The Assembly then adjourned till Ten of the Clock on Monday, the 29th November 1948.
