

## CONSTITUENT ASSEMBLY OF INDIA

*Monday, the 29th November 1948*

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The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

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### TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the Pledge and signed the Register:

Shri Balwant Singh Mehta (United State of Rajasthan).

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### STATEMENT REGARDING FUTURE PROGRAMME

**Mr. Vice-President** (Dr. H. C. Mookherjee): Before we start discussion of article 8, which has not yet been put to the vote, I beg for leave to inform the House that at one time it was decided, of course informally, that we should meet tomorrow from 3 P.M. to 8 P.M., then a large number of Members represented to me that it would be inconvenient for various reasons. Therefore from tomorrow we shall meet at 9-30 A.M. and carry on till 1-30 P.M. That would give us four hours of work daily.

The second thing which I have to tell the House is that we shall meet up to the 13th of December and then break up, and reassemble on the 27th December. The exact time will be notified hereafter.

### Article 8—(contd.)

**Mr. Vice-President** : Does any honourable Member wish to speak on article 8? If not, I should like to put it to vote.

**Pandit Hirday Nath Kunzru** (United Provinces : General): Sir, there is no quorum. I do not want to hold up the proceedings but in a House like this we cannot do anything at all consistently with the rules.

(The bells were rung.)

(There being no quorum.)

**Mr. Vice-President** : The House stands adjourned for a quarter of an hour.

The Assembly then adjourned till Twenty-five minutes past Ten of the Clock.

The Assembly reassembled at Twenty-five Minutes Past Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

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#### TAKING THE PLEDGE AND SIGNING THE REGISTER

**Mr. Vice-President** (Dr. H. C. Mookherjee): I understand there is another Member who has to sign the roll and take the pledge.

The following Member took the Pledge and signed the Register:—

Lt. Col. Dalel Singh (United State of Rajasthan).

#### STATEMENT *re* TIME OF MEETINGS

**Mr. Vice-President** : For the benefit of those Members who did not attend the House in time, I have to announce here again that from tomorrow we shall assemble at 9-30 A.M. and continue up to 1-30 P. M. and that we shall hold the last meeting of the current session on the 13th and reassemble on the 27th December. Our last day will be the 13th December and we shall reassemble on the 27th December; the exact time will be announced hereafter.

May I in all humility suggest that it is improper on the part of Members to be unpunctual in attending the House? We have lost 20 minutes in this way today and I do not know how we shall be able to explain it to the public (*Hear, hear*).

#### Article 8—(contd.)

**Mr. Vice-President** : Shall we resume discussion of article 8? Is there any honourable Member who wishes to speak on it?

**The Honourable Dr. B. R. Ambedkar** (Bombay : General): Mr. Vice-President, the amendment of Mr. Naziruddin Ahmad, I think, creates some difficulty which it is necessary to clear up. His amendment was intended to remove what he called an absurdity of the position which is created by the Draft as it stands. His argument, if I have understood it correctly, means this, that in the definition of law we have included custom, and having included custom, we also speak of the State not having the power to make any law. According to him, it means that the State would have the power to make custom, because according to our definition, law includes custom. I should have thought that that construction was not possible, for the simple reason that sub-clause (3) of article 8 applies to the whole of the article 8, and does not merely apply to sub-clause (2) of article 8. That being so, the only proper construction that one can put or it is possible to put would be to read the word 'Law' distributively, so that so far as article 8, sub-clause (1) was concerned, Law would include custom, while so far as sub-clause (2) was concerned, 'Law' would not include custom. That would be, in my judgment, the proper reading, and if it was read that way, the absurdity to which my Friend referred would not arise.

But I can quite understand that a person who is not properly instructed in the rules of interpretation of Statute may put the construction which my Friend Mr. Naziruddin Ahmad is seeking to put, and therefore to avoid this difficulty, with your permission, I would suggest that in the amendment which I have moved to sub-clause (3) of article 8, I may be permitted to add the following words after the words "In this article". The words which I would like to add would be—

"Unless the context otherwise requires"

so that the article would read this way—

‘In this article, unless the context otherwise requires—

- (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.....’ ”

I need not read the whole thing.

So, if the context in article 8(1) requires the term law to be used so as to include custom, that construction would be possible. If in sub-clause (2) of article 8, it is not necessary in the context to read the word law to include custom, it would not be possible to read the word ‘law’ to include custom. I think that would remove the difficulty which my Friend has pointed out in his amendment.

**Mr. Vice-President :** I shall put the amendments, one by one, to vote. I am referring to the numbering of the amendments in the old list.

I put amendment No. 252, standing in the name of Mr. Mahboob Ali Baig to vote. The question is:

“That the proviso to clause (2) of article 8 be deleted.”

The amendment was adopted.

**Mr. Vice-President :** Then I put amendment No. 259, standing in the name of Shri Lokanath Misra. The question is:

“That after clause (2) of article 8, the following new clause be inserted and the existing clause (3) be renumbered as clause (4) :—

‘(3) The Union or the State shall not undertake any legislation, or pass any law discriminatory to some community or communities or applicable to some particular community or communities and no other.’ ”

The amendment was negatived.

**Mr. Vice-President :** Then I put amendment No. 260, as amended by Dr. Ambedkar. The question is:

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

(3) In this article, unless the context otherwise requires,

- (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 repeated, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.’ ”

The amendment was adopted.

**Mr. Vice-President :** The question is:

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

The amendment was negatived.

**Mr. Vice-President :** The question is.

“That in clause (3) of article (8) for the words ‘custom or usage having the force of law in the territory of India or any part thereof’ be deleted.”

The amendment was negatived.

**An Honourable Member :** May I know whether you are referring to the old or new list of amendments?

**Mr. Vice-President :** I was referring to the old list for the purpose of convenience. Henceforward we shall go according to the numbering in the new list, which was, I understand, distributed to honourable Members last evening.

The question is:

“That article 8, as amended, stand part of the Constitution.”

The motion was adopted.

Article 8, as amended, was added to the Constitution.

#### Article 8-A

**Pandit Balkrishna Sharma** (United Provinces : General): There are some other amendments to article 8 in the form of inserting a new article 8-A.

**Mr. Vice-President** : Those are new articles which will be taken up presently.

Amendments Nos. 266 to 269 and 272 relate to language and script, which should stand over as that has been the decision of the House. I shall take up Amendment No. 270 standing in the name of Prof. K. T. Shah.

**Prof. K. T. Shah** (Bihar : General) : Sir, I beg to move:

“That after article 8, the following new article be added :—

‘8-A. Unless the context otherwise requires, the Rights of Citizens herein defined in this Part of the Constitution shall be deemed to be the obligation of the State as representing the community collectively : and the obligations of the citizens shall be deemed to be the Rights of the State representing the community collectively.’ ”

Sir, I do not wish to waste the time of the House. May I point out that this amendment is in substance the same as was rejected by the House when it was considering the Directives. I think the old number was 848. In substance it amounts to the same thing. I can make out a case to show that it is slightly different, both in numbering and perhaps in intention, but as I have no desire to waste the time of the House, I would beg leave to withdraw this amendment, as it seeks to make rights and obligations of the State and citizen conversely obligations and rights.

**Mr. Vice-President** : Has the honourable Member the permission of the House to withdraw his amendment?

The amendment was, by leave of the Assembly, withdrawn.

**Prof. K. T. Shah** : Sir, if I may speak against myself, it seems to me, Amendment No. 271 on the List is somewhat out of order, because it is a mere recommendation to the Draftsman to insert a clause, rather than a specific amendment, or a clause itself. I do not wish to move it.

**Mr. Vice-President** : The next amendment is No. 273 in the new list in the name of Mr. L. N. Misra.

**Shri Lokanath Misra** (Orissa : General): Sir, I beg to move:

“That after article 8, the following new article 8-A be inserted :—

#### ‘RIGHT OF SUFFRAGE AND ELECTION

8-A. (1) Every citizen who is not less than 21 years of age and is not otherwise disqualified under this Constitution or any law made by the Union Parliament or by the Legislature of his State on any ground, *e.g.*, non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at such elections.

(2) The elections shall be on the basis of adult suffrage as described in the next preceding sub-clause but they may be indirect, *i.e.*, the Pura and Grama Panchayats or a group of villages, a township or a part of it having a particular number of voters or being an autonomous unit of local self-government shall be required to elect primary members, who in their turn, shall elect members to the Union Parliament and to the State Assembly.

(3) The Primary Members shall have the right to recall the member they elected to the Parliament or the Assembly of the State.

(4) A voter shall have the right to election and the cost of election shall be met by the State.

(5) Every candidate will be elected by the People and even if there is no rival, no candidate shall be elected unless he gets at least 1/3 of the total votes.’ ”