

Mr. Vice-President : Amendment No. 1057 standing in the name of Mr. Karimuddin. The question is:

“That for article 43, the following be substituted:—

“43. The President shall be elected on the basis of adult suffrage.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 1068 standing in the name of Mr. Mohammed Tahir. The question is:

“That in clause (b) of article 43, the word “elected” be deleted.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 1064 standing in the name of Mr. Tajamul Husain. The question is:

“That in clause (a) of article 43, for the words “the members” the words “the elected members” be substituted.”

The amendment was adopted.

Mr. Vice-President : Amendment No. 1070 standing in the name of Dr. Ambedkar. The question is:

“That to article 43 the following explanation be added:—

“Explanation.—In this and the next succeeding article, the expression “the legislature of a State” means, where the legislature is bicameral, the Lower House of the legislature.”

The amendment was adopted.

Mr. Vice-President : Amendment No. 23 of List I (Fourth Week) standing in the name of Mr. Mohammed Tahir. The question is:

“That in amendment No. 1070 of the list of amendments in the proposed explanation, for the words “the Lower House of the Legislature” the words “the Legislative Assembly of the State” be substituted.”

The amendment was negatived.

Mr. Vice-President : I shall now put the article to vote. The question is:

“That article 43, as amended stand part of the Constitution.”

The motion was adopted.

Article 43, as amended was added to the Constitution.

Article 15

Mr. Vice-President : With the permission of the House, I should like to revert to an article left over: that is article 15. I have before me the proceedings of the House from which it appears—this was considered on the 6th December last—that general discussion had concluded and I had called upon Dr. Ambedkar to reply. At that time it was suggested that efforts should be made to arrive at some kind of understanding so that those who had submitted certain amendments might feel satisfied. I do not know the position now; but we cannot wait any longer. Dr. Ambedkar, will you please make the position clear? If no understanding has been arrived at, I would ask you to reply.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, I must confess that I am somewhat in a difficult position with regard to article 15 and the amendment moved by my Friend Pandit Bhargava for the deletion of the words “procedure according to law” and the substitution of the words “due process”.

It is quite clear to any one who has listened to the debate that has taken place last time that there are two sharp points of view. One point of view

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says that “due process of law” must be there in this article; otherwise the article is a nugatory one. The other point of view is that the existing phraseology is quite sufficient for the purpose. Let me explain what exactly “due process” involves.

The question of “due process” raises, in my judgment, the question of the relationship between the legislature and the judiciary. In a federal constitution, it is always open to the judiciary to decide whether any particular law passed by the legislature is *ultra vires* or *intra vires* in reference to the powers of legislation which are granted by the Constitution to the particular legislature. If the law made by a particular legislature exceeds the authority of the power given to it by the Constitution, such law would be *ultra vires* and invalid. That is the normal thing that happens in all federal constitutions. Every law in a federal constitution, whether made by the Parliament at the Centre or made by the legislature of a State, is always subject to examination by the judiciary from the point of view of the authority of the legislature making the law. The ‘due process’ clause, in my judgment, would give the judiciary the power to question the law made by the legislature on another ground. That ground would be whether that law is in keeping with certain fundamental principles relating to the rights of the individual. In other words, the judiciary would be endowed with the authority to question the law not merely on the ground whether it was in excess of the authority of the legislature, but also on the ground whether the law was good law, apart from the question of the powers of the legislature making the law. The law may be perfectly good and valid so far as the authority of the legislature is concerned. But, it may not be a good law, that is to say, it violates certain fundamental principles; and the judiciary would have that additional power of declaring the law invalid. The question which arises in considering this matter is this. We have no doubt given the judiciary the power to examine the law made by different legislative bodies on the ground whether that law is in accordance with the powers given to it. The question now raised by the introduction of the phrase ‘due process’ is whether the judiciary should be given the additional power to question the laws made by the State on the ground that they violate certain fundamental principles.

There are two views on this point. One view is this; that the legislature may be trusted not to make any law which would abrogate the fundamental rights of man, so to say, the fundamental rights which apply to every individual, and consequently, there is no danger arising from the introduction of the phrase ‘due process’. Another view is this: that it is not possible to trust the legislature; the legislature is likely to err, is likely to be led away by passion, by party prejudice, by party considerations, and the legislature may make a law which may abrogate what may be regarded as the fundamental principles which safeguard the individual rights of a citizen. We are therefore placed in two difficult positions. One is to give the judiciary the authority to sit in judgment over the will of the legislature and to question the law made by the legislature on the ground that it is not good law, in consonance with fundamental principles. Is that a desirable principle? The second position is that the legislature ought to be trusted not to make bad laws. It is very difficult to come to any definite conclusion. There are dangers on both sides. For myself I cannot altogether omit the possibility of a Legislature packed by party men making laws which may abrogate or violate what we regard as certain fundamental principles affecting the life and liberty of an individual. At the same time, I do not see how five or six gentlemen sitting in the Federal or Supreme Court examining laws made by the Legislature and by dint of their own individual conscience or their bias or their prejudices be

trusted to determine which law is good and which law is bad. It is rather a case where a man has to sail between Charybdis and Scylla and I therefore would not say anything. I would leave it to the House to decide in any way it likes.

Mr. Vice-President: I shall now put the amendments one by one to vote. No. 523.

The question is:—

“That in article 15, for the words “No person shall be deprived of his life or personal liberty except according to procedure established by law” the words “No person shall be deprived of his life or liberty without due process of law” be substituted.”

The amendment was negatived.

Mr. Vice-President : The question is—

“That in article 15, for the words “except according to procedure established by law” the words “due process of law” be substituted.”

The amendment was negatived.

Mr. Vice-President : No. 528.

Shri S. V. Krishnamurthy Rao (Mysore): I do not press it.

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

Mr. Vice-President: No. 530.

The question is:—

“That in article 15, for the words “procedure established by law” the words “due process of law” be substituted.”

The amendment was negatived.

Mr. Vice-President : No. 526

The question is:—

“That in article 15 for the words “except according to procedure established by law” the words “save in accordance with law” be substituted.”

The amendment was negatived.

Mr. Vice-President : No. 527.

The question is:—

“That in article 15 for the words “except according to procedure established by law” the words “except in accordance with law” be substituted.”

The amendment was negatived.

Mr. Vice-President : I shall put the article to vote.

The question is:—

That article 15 stand part of the Constitution.

The motion was adopted.

Article 15 was added to the Constitution.

Article 44

Mr. Vice-President : We shall now take up article 44.

The motion is:—

That article 44 form part of the Constitution.

I am going to call over the amendments one by one.

No. 1071 is of a negative character and is therefore disallowed.

(Amendments Nos. 1072 and 1073 were not moved.)

Amendment No. 1074 is disallowed as being formal.

Amendment No. 1075—Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar :

Sir, I move—