

## CONSTITUENT ASSEMBLY OF INDIA

*Monday, the 13th June, 1949*

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The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

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### DRAFT CONSTITUTION —(Contd.)

#### Article 216

**Mr. President :** We finished article 186 the other day. I am told we should begin with article 216 today.

(Amendment Nos. 2739 and 2740 were not moved.)

The question is:

“That article 216 stand part of the Constitution.”

The motion was adopted.

Article 216 was added to the Constitution.

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#### Article 217

(Amendment Nos. 2741 and 2742 were not moved.)

**Mr. Naziruddin Ahmad** (West Bengal : Muslim). Sir, I beg to move:

“That in clause (2) of article 217, for the words ‘next succeeding clause’, the words, figure and brackets ‘clause (3)’ and for the words ‘preceding clause’, the word, figure and brackets ‘clause (1)’ be substituted respectively.”

The only reason for moving this is that upon this a very important amendment depends. That is why I have given the initiative.

**Shri T. T. Krishnamachari** (Madras: General): May I move amendment Nos. 87-B and 87-C? They are only formal. I move:

“That in clause (2) of article 217, after the word and figure ‘Part I’ the words and figures ‘or Part III’ be inserted.”

and

“That in clause (3) of article 217, after the word and figure ‘Part I’ the words and figures ‘or Part III’ be inserted.”

**Prof. Shibban Lal Saksena** (United Provinces: General): I have also given notice of an amendment.

**Mr. President :** I have not seen any amendment.

**Prof. Shibban Lal Saksena :** I gave notice of it this morning. I beg to move.....

**The Honourable Dr. B. R. Ambedkar :** (Bombay: General): We have not got copies of his amendment.

**Shri L. Krishnaswami Bharathi** (Madras: General): We cannot follow what he is moving.

**Mr. President :** He gave notice of his amendment a few minutes before we actually sat. But I am told it is more or less word for word the same as No. 2741.

**The Honourable Shri K. Santhanam** (Madras: General): Sir, in a matter of importance like this I do not think anyone should be allowed to move amendments without proper notice. We do not propose to move amendment No. 2741 at all and I do not think any other Member has got the right to move our amendment.

**Shri L. Krishnaswami Bharathi** : If you give the right to Members to move amendments like this it will go on interminably and it will be sheer waste of time.

**Shri K. M. Munshi** (Bombay: General) : The amendment the Member wants to move is the same as the one which is not being moved by Members who have given notice of it. He wants to move what they have not moved.

**Shri R. K. Sidhwa** (C.P. & Berar: General): Sir, I do not object to what you may decide. But I want to draw attention to an amendment which I gave notice last week, but which you disallowed. I do not see why an exception should be made in this case.

**Prof. Shibban Lal Saksena** : Under the rules we are allowed to move amendments to amendments if we give notice before the session commences. This amendment only incorporates the idea contained in the note of dissent by Shri Alladi Krishnaswami Ayyar given at the end of the Draft Constitution. As this is an important matter I do think that if the Members who have given notice of similar amendments are not moving them, the article should not be allowed to be passed without discussion and without attempt at its amendment.

**Mr. President** : Why did you not give notice of it in time?

**Prof. Shibban Lal Saksena** : Sir, I gave notice in time, *i.e.*, “before the session commences”. Further, it is only a reproduction of amendment No. 2741, and is proposed to be moved as an amendment to 2743.

**Mr. President** : Yes. I got notice of this before the session commenced. It took the office a little time to get it copied. So I could not disallow it.

**Prof. Shibban Lal Saksena** : Sir, I feel that articles of this fundamental importance should not go unnoticed in this House merely because certain amendments are not moved by Members who gave notice of them.

**The Honourable Dr. B. R. Ambedkar** : I would like to raise one or two points about this. This seems to be a rather important matter. The first thing I want to know is whether this is an amendment or an amendment to an amendment. If it is an amendment to an amendment, it cannot be moved unless the main amendment is moved.

**Mr. President** : It is an amendment to amendment No. 2743 which has been moved by Mr. Naziruddin Ahmad. The honourable Member in his notice says that his amendment is an amendment to Nos. 2741, 2742, 2743, 2744 or 2745.

**The Honourable Dr. B. R. Ambedkar** : If it is to be taken as an amendment to No. 2743, then obviously, as this goes far beyond the scope of 2743, it cannot be moved unless the Member satisfies you that he is not substantially changing the original amendment. As it is, it is a pure reproduction of the amendment which stands in the names of Messrs. Santhanam, Ananthasayanam Ayyangar and others.

**Shri Jaspat Roy Kapoor** (United Provinces : General): Sir, may I submit that Dr. Ambedkar is taking in this matter a very narrow view. The position is this article 217 is under discussion. One Member wants it to be amended in a particular manner. Mr. Naziruddin Ahmad wants the article to be amended in another manner and confines himself to clause (2) of it. All the same the amendment is to article 217. My Friend Prof. Shibban Lal would be

in order if he says that rather than amending it in the manner suggested by Mr. Naziruddin Ahmad it should be done in the way he wants. That is obviously an amendment to the amendment of Mr. Naziruddin Ahmad. If a too narrow view is taken off these things by Dr. Ambedkar, I am afraid he himself would find it very difficult to move many of his amendments. He has done so in the past and he will find it necessary to do so also hereafter.

**Mr. President :** I treat this as an amendment to amendment No. 2743. I rule that this is in order.

**Shri B. Das (Orissa: General):** I do not follow you, Sir.

**Mr. President :** If Mr. Das will turn to page 285 of the Printed List, he will find amendment No. 2741. This is more or less a word for word a copy of that. There is no difficulty, you can follow it.

**Prof. Shibban Lal Saksena :** Sir, I beg to move:

“That for article 217, the following be substituted :—

- ‘217. (1) The Legislature of the States in Part I, Schedule I, shall have exclusive power to make laws for the States or for any part thereof in relation to matters falling within the classes of subjects specified in List I (corresponding to Provincial Legislative List).
- (2) The Legislature of any State in Part I, Schedule I, shall in addition to the powers under clause (1) have power to make laws for the State or any part thereof in relation to matters falling within the classes of subjects specified in List II, provided however, that the Union Parliament shall also have power to make laws in relation to the same matters within the entire area of the Union or any part thereof and an Act of the Legislature of the State shall have effect in and for the State as long as and as far only as it is not repugnant to any Act of the Union Parliament.
- (3) In addition to the powers conferred by the previous sub-section, the Union Parliament may make laws for the peace, or order and good government of the Union or any part thereof in relation to all matters not falling within the classes of subjects enumerated in List I and in particular and without prejudice to the generality of the foregoing, the Union Parliament shall have the exclusive power to make laws in relation to all matters falling within the classes of subjects enumerated in List III.
- (4) (a) The Union Parliament shall have power to make laws for the peace, order and good government of the States in Part II, Schedule I.
- (b) Subject to the general powers of Parliament under sub-section (a), the legislature of the States in Part II, Schedule I, shall have the powers to make laws in relation to matters coming within the following classes of subjects:
- Provided however that any law passed by that Unit shall have effect in and for that Unit so long and as far only as it is not repugnant to any law of the Union Parliament.
- (5) The power to legislate either of the Union Parliament or the Legislature of any State shall extend to all matters essential to the effective exercise of the legislative authority vested in the particular legislature.
- (6) When a law of a State is inconsistent with a law of the Union Parliament or to any existing law with respect to any of the matters enumerated in List I or (List II), the law of the Parliament or as the case may be, the existing law shall prevail and the law of the State shall to the extent of repugnancy be void.’ ”

Sir, I am very sorry that an attempt was made to get this amendment disallowed. I would like only to point out that this amendment is word for word what Shri Alladi Krishnaswami Ayyar has suggested in the Appendix to the Draft Constitution on pages 212-213.

In fact in the Appendix Shri Alladi has stated that he differed from the majority of the Drafting Committee and he has stated that in his opinion the new scheme of division of powers between Parliament and the Legislatures of

[Prof. Shibban Lal Saksena]

the states should be as is given in this amendment. The amendment of which notice was given by the Honourable Mr. K. Santhanam was on the lines of the suggestion made by Shri Alladi in the Appendix. I suggest that the matter is of vital importance, on which one of the most eminent jurists of the country has differed from the Drafting Committee, and the article should not be allowed to be passed by the House without due consideration. I therefore thought it my duty to move this amendment. I would have preferred if Mr. Santhanam had himself moved it. I do feel that the House is entitled to know why the suggestion made by Shri Alladi could not be followed. The suggestion made by Shri Alladi is a very important one. In fact the Draft Constitution only reproduces word for word Section 100 of the Government of India Act, 1935. In the Appendix, Shri Alladi has given arguments to show why the change he has suggested is necessary. He has stated that at the time the Government of India Act was passed, it was not decided as to where the residuary powers should vest, whether they should be with provinces or with the Centre. Therefore it was necessary to frame the Section in the form in which it was framed. He has also pointed out that much litigation has been carried on on the meaning of the word "Notwithstanding", in the Federal Court. He has also stated that as it has been decided finally that the residuary powers shall belong to the Centre, the article should be redrafted in a different manner, in the manner he has suggested and as is given in my amendment. Firstly, we should not copy word for word the Government of India Act, 1935, which was a deed of our slavery. Now that we are now framing a new Constitution, we should not merely incorporate everything word for word from the old Constitution. One advantage of this is that we will not be reminded of our past slavery as we would be by copying, word for word, Section 100 of the Government of India Act, 1935. Secondly, Sir, this is a more logical form to say that the various States shall have exclusive power to make laws in relation to matters falling within the classes of subjects specified in List I, and that List II shall contain subjects in which both the States and the Union shall have concurrent power to make laws, and then to say that whatever remains shall belong to the Union. List I at present gives the powers of the Union Parliament. Shri Alladi has suggested that whatever is contained in the Union List should be by way of illustration only and that whatever remains should belong to the Centre. The more logical form will be to say that such and such powers will belong to the States, such and such powers will belong both to the States and the Union and then to say that whatever remains shall belong to the Union. This kind of division given by Shri Alladi is a more logical division and a much better division in every way. The suggestion made by him is a very important one and the House should take note of the reasons why he prefers this arrangement to the Draft which only copies Section 100 of the Government of India Act. The Drafting Committee itself says on page 100 of the Draft Constitution—

"Shri Alladi Krishnaswami Ayyar was of opinion that instead of following the old plan of legislative distribution this clause might, in view of the fact that the residuary power is to be in Parliament begin with the legislative powers of the States, then deal with the concurrent powers and then with the legislative powers of Parliament. As the question was merely one of form, the majority of the members preferred not to disturb the existing arrangement."

I cannot understand why the Drafting Committee does not feel this is a more logical form. The mere fact that the Government of India Act had it in that form is no arrangement to have it in that form. I therefore suggest that the form suggested by Shri Alladi is an improved form and is less open to litigation and far more clear.

Then, Sir clause (5) says :—

"The power to legislate either of the Union Parliament or the Legislature of any State shall extend to all matters essential to the effective exercise of the legislative authority vested in the particular legislature."

Shri Alladi has pointed out that this clause follows the Australian and American Constitutions. He has stated that in the Draft Constitution there is no provision to the effect that the power of legislation carries with it the power to make any provisions essential to the effective exercise of the legislative authority. This clause (5) gives that power. This makes the article complete and brings it in conformity with the provisions of the Australian and American Constitutions. The form suggested by Shri Alladi is superior in form as well as in content and also fills a lacuna in the draft article. Sir, I move my amendment and commend it for the acceptance of the House.

(Amendment Nos. 2744 and 2745 were not moved.)

**Mr. President :** Does anyone wish to say anything?

**Shri L. Krishnaswami Bharathi :** Nobody, Sir.

**Shri M. Ananthasayanam Ayyangar** (Madras: General): We do not want the amendment to be moved.

**Mr. President :** I will put the amendment of Prof. Shibban Lal Saksena to the vote. The question is:

“That for article 217, the following be substituted :—

- “217. (1) The Legislature of the States in Part I, Schedule I, shall have exclusive power to make laws for the State or for any part thereof in relation to matters falling within the classes of subjects specified in List I (corresponding to Provincial Legislative List).
- (2) The Legislature of any of the States in Part I, Schedule I, shall in addition to the powers under clause (1) have power to make laws for the State or any part thereof in relation to matters falling within the classes of subjects specified in List II, provided, however, that the Union Parliament shall also have power to make laws in relation to the same matters within the entire area of the Union or any part thereof and an Act of the Legislature of the State shall have effect in and for the State as long as and as far only as it is not repugnant to any Act of the Union Parliament.
- (3) In addition to the powers conferred by the previous sub-section, the Union Parliament may make laws for the peace, order and good government of the Union or any part thereof in relation to all matters not falling within the classes of subjects enumerated in List I and in particular and without prejudice to the generality of the foregoing, the Union Parliament shall have exclusive power to make laws in relation to all matters falling within the classes of subjects enumerated in List III.
- (4) (a) The Union Parliament shall have power to make laws for the peace, order and good government of the States in Part II, Schedule I.
- (b) Subject to the general powers of Parliament under sub-section (a), the legislature of the States in Part II, Schedule I, shall have the powers to make laws in relation to matters coming within the following classes of subjects :—
- Provided however that any law passed by that Unit shall have effect in and for that Unit so long and as far only as it is not repugnant to any law of the Union Parliament.
- (5) The power to legislate either of the Union Parliament or the Legislature of any State shall extend to all matters essential to the effective exercise of the legislative authority vested in the particular legislature.
- (6) Where a law of a State is inconsistent with a law of the Union Parliament or to any existing law with respect to any of the matters enumerated in List I or (List II), the law of the Parliament or as the case may be, the existing law shall prevail and the law of the State shall to the extent of repugnancy be void.’ ”

The amendment was negatived.

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

“That in clause (2) of article 217, for the words ‘next succeeding clause’, the word, figure and brackets ‘clause (3)’ and for the words ‘preceding clause’, the word, figure and brackets ‘clause (1)’ be substituted respectively.”

The amendment was negatived.

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

“That in clause (2) of article 217, after the word and figure ‘Part I’ the words and figures ‘or Part III’ be inserted.”

The amendment was adopted.

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

“That in clause (3) of article 217, after the word and figure ‘Part I’ the words and figures ‘or Part III’ be inserted.”

The amendment was adopted.

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

“That article 217, as amended, stand part of the Constitution.”

The motion was adopted.

Article 217, as amended, was added to the Constitution.

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#### Article 218

**Shri T. T. Krishnamachari :** Sir, this article is not considered necessary in the light of subsequent revision by the Drafting Committee. Therefore, the article may be put to the House, so that it can be negatived, if the House desires.

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

“That article 218 stand part of the Constitution.”

The motion was negatived.

Article 218 was deleted from the Constitution.

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#### Article 219

**Mr. President :** We shall take up article 219.

(Amendment No. 2749 was not moved.)

The question is:

“That article 219 stand part of the Constitution.”

The motion was adopted.

Article 219 was added to the Constitution.

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#### Article 220

**Shri T. T. Krishnamachari :** May I suggest that articles 220, 221 and 222 may be put together because the Drafting Committee does not consider these articles as necessary?

**Mr. President :** I will put them separately.

(Amendment Nos. 2751 and 2752 were not moved.)

The question is:

“That article 220 stand part of the Constitution.”

The motion was negatived.

Article 220 was deleted from the Constitution.