

[The Honourable Dr. B. R. Ambedkar]

entertained by the High Court. That would be one way whereby the State would be in a position to diminish the authority of the High Court.

Secondly, in enacting any measure under any of the Entries contained in List II, for instance, debt cancellation or any such matter, it would be open for the Provinces to say that the decree made by any such Court or Board shall be final and conclusive, and that the High Court should have no jurisdiction in that matter at all.

It seems to me that any such Act would amount to a derogation from the authority of the High Court which this Constitution intends to confer upon it. Therefore, it is felt necessary that before such law becomes final, the President should have the opportunity to examine whether such a law should be permitted to take effect or whether such a law was so much in derogation of the authority of the High Court that the High Court merely remained a shell without any life in it.

I, therefore, submit that in view of the fact that the High Court is such an important institution intended by the Constitution to adjudicate between the Legislature and the Executive and between citizen and citizen such a power given to the President is a very necessary power to maintain an important institution which has been created by the Constitution. That is the purpose for which this amendment is being introduced.

Shri H. V. Kamath: What about my suggestion to simplify the language?

The Honorable Dr. B. R. Ambedkar: I cannot at this stage consider any drafting amendments.

Shri H. V. Kamath: All right : Do it later on.

Mr. President : I will now put it to vote.

The question is :

“That to article 175 the following proviso be added:

‘Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that court, is by this Constitution designed to fill’.”

The amendment was adopted.

Article 13

Mr. President : There is a previous amendment of which notice has been given—amendment No. 415.

Shri T. T. Krishnamachari : I do not propose to move it.

Sir, I move.

“That in clause (2) of article 13, after the word ‘defamation’ the word ‘contempt of court’ be inserted.”

Sir, the House will recognise that amendment No. 415 was originally tabled, as we had been advised by our legal advisers that there will be certain difficulties in regard to the exception in sub-clause (2) of article 13 in so far as the operation of sub-clause (a) of clause (1) of article 13 is concerned. But, Sir, a

number of honourable Members of this House spoke about this amendment to Members of the Drafting Committee, and they felt that it is not an amendment merely seeking to remedy a lacuna but altering the character of the clause in its entirety. They objected to two words “public order being included. The idea, at any rate, of a part of that amendment was to cover one category of what might be called lapses in the exercise of freedom of speech and expression, namely, a person might be speaking on a matter which is *subjudice* and thereby interfere with the administration of justice. That is a category of offences which is not covered by the exceptions mentioned in clause (2) of article 13, so far as the right of freedom of speech and expression is concerned. Honourable Members of this House will realize that it was not our intention to allow contempt of court to take place without any let or hindrance, and it is not our idea that sub-clause (a) of clause (1) of article 13 should be used for this purpose.

We therefore, felt, Sir, that we would restrict ourselves to merely remedying a lacuna rather than extending the scope of the exceptions mentioned in clause (2) and that is why we have decided to drop the original amendment 415 and we have tabled amendment No. 449 in which contempt of court will figure on a par with libels, slander, defamation or any matter which offends against decency or morality, or which undermines the security of, or tends to overthrow, the State. Actually, contempt of court will figure with the first three and it is a very necessary protection so far as our law courts are concerned, and I hope the House will have no objection to accepting this amendment.

Mr. President : There is an amendment by Prof. Saksena. I do not understand it. Will he explain it?

Prof. Shibban Lal Saksena: (United Provinces: General) For “contempt of court” read “or contempt of court”. That has been omitted by inadvertence.

Shri T. T. Krishnamachari : ‘Contempt of court or any matter’: That comes later. Technically, Sir, there ought to be a comma after “defamation.,’

Pandit Thakur Das Bhargava (East Punjab: General) Mr. President, with your permission I propose to move my amendment No. 435 which was intended to amend No. 415, but this amendment has not been moved. My amendment seeks to substitute for the words ‘any law’ the words “any reasonable law. That was the old amendment in respect of amendment No. 415. Now instead of 415 Mr. T. T. Krishnamachari has moved an amendment adding the words ‘contempt of court’ after the word ‘defamation’ instead of the words “morality, public order or the administration of justice”; and when I gave the amendment it was in view of the words ‘public order or the administration of justice’. All the same my amendment does not lose its value in so far as I wanted that the article 13 should be amended. The change in the amendment of Mr. Krishnamachari makes no difference to me. So with your permission I beg to move:

“That for the words ‘any law’ the words ‘any reasonable law’ be substituted.”

An Honourable Member: Law is always reasonable.

Pandit Thakur Das Bhargava: The law has been defined only as a measure which is passed by the legislature. The law can be both reasonable as well as unreasonable. The law that all blue eyed persons be killed will be a good law though an unreasonable one. We are competent to pass any law which is reasonable or otherwise. We certainly pass laws through ignorance, passion, panic and prejudice which look reasonable to some and unreasonable to others. Therefore, the courts have been given the power to see whether the laws are

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reasonable or otherwise. You have already passed under article 13 certain amendments to the original article 13 which when amended said that the courts are empowered to see whether any restrictions are reasonable or not. The legislature is competent to pass any kind of law and the courts are therefore empowered in certain matters to see that the powers exercised by the legislature are reasonable. So far as the fundamental aspect is concerned, I do not think any person shall doubt that the courts can be armed with a power like this because we have already armed the courts with these powers.

Now coming to the amendment of Mr. T. T. Krishnamachari he wants that the words “contempt of court” be added after the word “defamation” in article 13(2) and the clause would read thus :

“Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law, relating to libel, slander, defamation, contempt of court, or any other matter which offends against decency or morality or undermines the security of or tends to overthrow the State.”

In regard to this contempt of court, my contention is this, that these words need not be added to article 13, because as a matter of fact contempt of law as we understand it consists of a certain piece of conduct not necessarily with freedom of speech, because when you read the law relating to contempt of court, you will find in section 480 of the Criminal Procedure Code that usually the contempt of the ordinary courts of law consists in the infringement of sections 175, 178 and 179 and sections 180 and 288 of the Indian Penal Code. All these sections relate to certain pieces of conduct of the individual. For instance section 175 relates to non-taking of the summons from a court peon, omission to produce document; sections 178, 179-and 180 relate to the refusal to reply to question put by the Court or refusal to take an oath; and similarly section 288 applies when there is an interruption of any judicial proceedings or when there is any insult offered to the court; insult can be offered in many ways and not necessarily by way of speech.

Therefore my submission is that the essence of any of these sections is that a wrong motion or wrong conduct or attitude is penalised and not speech by itself. The courts are empowered to take cognizance of the act of contempt and then deal with these offences. My first contention, therefore, is that these sections 175, 178, 180 and 288 which are the subject-matter of contempt as envisaged in section 480 do not relate to the freedom of speech at all and therefore, this amendment is not germane to the subject of the freedom of speech and expression.

Moreover, Sir, we have already passed article 118 in this Constitution. It relates to the powers of the Supreme Court and in so far as the contempt of the Supreme Court is concerned, it is already covered by law and the Supreme Court is perfectly entitled to deal with cases of contempt. In regard to other courts, Sir, the law is generally contained either in the law of defamation or in Act 12 of 1926. Apart from visible contempt committed in the view of the courts as envisaged in section 480. Criminal Procedure Code. Comments of judicial acts of courts and magistrates are in the nature of technical contempt, and if you want to change the law, relating to such contempt, if you want to take away the powers of freedom of speech, you must enact that if the legislature passes any such law, it must be subject to the scrutiny of the courts.

As far ‘defamation’, under which such contempt usually comes it is covered by the provisions in the Penal Code. This question of defamation is a very

intricate one. In so far as civil defamation is concerned truth is absolute defence but so far as the criminal defamation is concerned the greater the truth the greater the defamation. When you arm the legislature with such plenary powers to make any law and that law is not subject to the scrutiny by the courts, it means that the legislature is given a very free hand and the freedom of speech will be reduced to a mere farce. We had lately an Act which was enacted by the previous Government in so far as they armed the courts to punish persons who made comments in respect of certain judgments. It was called the Judicial Officers' Protection Act and the provisions of that Act were very wide and sweeping. It may be that the contempt of courts may include cases of such contempt also. In regard to such contempt cases, which are technically contempt cases and which are not committed in the view of the court, there and then, they may come within the purview of the contempt law and as such should be controlled and their interpretation should be made amendable to the jurisdiction of the Court. If we do not do that, my fear is that the liberty of freedom of speech and expression will practically become a nullity.

If you kindly see the six clauses of article 13, you will find the words "reasonable restrictions". But in clause (2) there are no such words "reasonable restrictions", which means that a legislature has been given full powers to place any kind of restriction, reasonable or unreasonable. When the subject matter of clause (2) was only confined to certain matters, I could understand that the word "reasonable" might have been omitted. Even then so far as the question of "sedition" was concerned when the original article was before us we amended this law and we saw that the word "sedition" did not cover cases which it ought not to have dealt with. Therefore we changed the words thus: "which undermines the security of or tends to overthrow the States", and because these words were changed, the words, "reasonable" was not put in clause(2). Now clause (2) will not only deal with ordinary matters but the question of freedom of speech in regard to the executive authority of the courts is being introduced in it.

Therefore, since we are enlarging the scope of clause (2) it stands to reason that we may also enlarge the scope of the restriction upon the power of the legislature in so far as, if we introduce the word "reasonable" before the word 'law' then we will attain our object and we will also attain this object of restricting the scope of the legislature in defining defamation, libel, slander, etc. or any other matter which offends against decency or morality. All these matters will be rationalised to a certain extent and instead of reducing the rights and privileges of the citizens of the Republic it would be better if we enlarge their liberties, and I therefore suggest that instead of the words 'any law' the words 'any reasonable law' may be substituted. In case we do not agree to amend it further by the addition of these words, my fear is that again we will be going forward in the process which we are unfortunately after, viz. whatever has been given in article 13 may be taken away in some form or other. We have already done this by enacting article 24, articles 244, 278, 307 and other articles.

Therefore, my humble submission is that in regard to this, most important matter relating to freedom of speech and expression we should so arrange matters that what has been given is not taken away and whatever powers we have given to the legislature, they may be curtailed to this extent that they may be subject to the scrutiny of the courts. After all, the courts are as much the creatures of the Government as the legislature. Therefore, there is no point in having suspicion-against the authority of the courts when you yourself are, giving the legislature the power of arming the courts to hold persons guilty of contempt

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or proceeding against them in regard to contempt of court, in executive manner. You are by the amendment giving the power to the courts to see whether the law enacted in respect of contempt of court is good or not. As a matter of fact, you are helping the courts in one way and enlarging the authority of the courts another way. Therefore, I submit that this amendment of mine should be accepted by the House.

Shri R. K. Sidhwa: Mr. President, Sir, this amendment relates to article 13 clause (1) (a). Clause (1) (a) says, All citizens shall have the right to freedom of speech and expression. Clause (2) imposes a restriction on making speeches and using any words which may be libel, slander or defamation. My honourable Friend Mr. T. T. Krishnamachari wants that the words “contempt of court” should be inserted after the word ‘defamation’.

First of all, let me state that this is not a consequential amendment. This is a fundamental proposition that is being brought before this House. We know, Sir, about this contempt of court, how the Judges have been exercising their powers in the past, as if they are infallible, as if they do not commit any mistakes. Even third class magistrates, first class magistrates and sub-judges have been passing such strictures which even High Court Judges have condemned many a time. I would also like to state that the High Court Judges themselves sit as the prosecutors. They themselves want the judiciary and executive functions to be separated. In cases of contempt of court, the High Court Judge is the prosecutor and he himself sits and decides cases in which he himself has felt that contempt of court has been committed. We have many cases before us. I will quote the illustration of two cases, Mr. B. G. Horniman, the Editor of “Sentinel” and Mr. Devadas Gandhi, Editor, of the “Hindustan Times”. The Allahabad High Court passed strictures against the very reasonable comments made by these two persons. They preferred to go to the jail and went to jail rather than submit to the *ex parte* decision of the High Court. I cannot understand why my lawyer friends here are very lenient to the Judges. After all, Judges have not got two horns; they are also human beings. They are, liable to commit mistakes. Why should we show so much leniency to them ? We must safeguard the interest of the public. If a citizen by way of making a speech condemns the action of a third class magistrate or a fourth class magistrate who has passed strictures upon the public, is he not entitled to make a speech and comment upon it ?

It is unfair that in the matter of contempt of court, this clause is to be added. I strongly resent it. It is very unfair that the citizen after having been given some rights, and having been restricted by so many clauses, you want to further restrict it by inserting “contempt of court”. In contempt of court, we know when certain extraordinary things happen, High Court Judges have some sort of power. Here, you have the power right down from the magistrate up to the High Court Judges. Even there, I say the High Court Judges are not infallible: they have also committed so many mistakes. They do not want any comment to be made against a High Court Judge when comment was necessary in the interest of the public life

With these words, Sir, I feel that at this juncture the Drafting Committee may drop these words “contempt of court” which has always been a bone of contention both on the part of the newspapers and the public. I want to know in what constitution contempt of court is being inserted. My honourable Friend Mr. A. Alladi Krishnaswami Ayyar will guide whether in any constitution

in the world contempt of court is included. That power already exists with the judges. Why do you want to put that in the Constitution and make the Judge above everybody? You want to make him a Super God.

Mr. President : This has nothing to do with courts. If you read the article you will see that it says that nothing in sub-clause (a) shall effect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to contempt.

Shri R. K. Sidhwa : It relates to the citizens. The citizens shall have the right to freedom of speech and expression provided they do not make a speech which may be libel, slander, defamation or contempt of court. A judgement may have been passed by a court.....

Mr. President : A law may be passed which will prevent defamation of a private individual; but a law may not be passed which will prevent defamation or libel of a court; that is what your argument comes to.

Shri R. K. Sidhwa: I do not want any law to be made in respect of contempt of court. I am very clear on this point because in my past experience about contempt of court, from the lowest to the highest court judges have not been impartial. Therefore I am opposed to this amendment.

Mr. Naziruddin Ahmad : (West Bengal: Muslim): Mr. President, Sir, a warm controversy hangs round Contempt of Court. I submit that the High Court should have the power to punish for contempt in a summary manner. The reason is that the trial in a case must be conducted in an atmosphere of calm without any prejudice, on the evidence alone. If there is no power to proceed for Contempt of Court, any one may start a newspaper trial of a case pending in a Court or it may be that he indulges in public harangues about the merits of a case and thereby seriously prejudice the fair and impartial trial of a case. It is for this reason that Contempt of Court has found a place in our statute book. There is an act of 1926 namely the Contempt of Courts Act. There are some contempts which can be punished by even the smallest magistrates. Mr. Sidhwa described him as the Fourth Class Magistrate; there is no such thing at all, If there is a man who interrupts the proceedings of a Court, he should be punished summarily by any Court. There are many other serious kinds of contempt which could be punished only by the High Court.

It is said that the High Court becomes the complainant or the prosecutor. I do not think so. Really, the dignity of the Court is impaired or its impartiality is challenged and the High Court alone should have the power to punish for contempt. To quote an example, if we show contempt to the President, the President alone should have the summarily power to deal with it. It is by way of analogy that Contempt of Court should be a part of the law. It is already a part of the law, Pandit Thakur Das Bhargava pointed out that we have already provided for Contempt of Court to be dealt with by the Courts in another place and his only objection to this amendment is whether it should find a place in clause (2) of article 13. It is very difficult on the spur of the moment to find out what is the effect of the provision we have already made. We are changing our mind so often and introducing new amendments of a scrappy character so often that it is often impossible to find out what an amendment means. It would, at the most, be, overlapping. If there is overlapping that would not be very much of a fault in this Constitution as there is plenty of overlapping in other places. I submit, therefore, that the amendment should rather be accepted.

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With regard to Pandit Thakur Das Bhargava's amendment that the words 'any law' should be substituted by the words 'any reasonable law', it would be useless in practice. If any law is to be passed, it is to be passed by the Legislature. It has always to be assumed that the Legislature passes a law which is, or at least it considers to be, reasonable and not unreasonable. After all, a Legislature is absolutely free. The Legislature cannot contravene any constitutional limitation. But the word 'reasonable' cannot be a condition. That condition must be assumed in their very power, and the fact that elected men will make laws necessarily implies that the laws made are reasonable. But supposing we introduce this expression and make it "reasonable law", it will have no binding force on the Legislature. The word 'reasonable' would not in the least curtail their power or in the least fetter their discretion. In these circumstances, the word 'reasonable' would be absolutely unnecessary and quite meaningless in practice, and so the amendment should not be accepted; and so far as the Contempt of Court amendment is concerned, for the time being it should be accepted, subject of course to further consideration by the Drafting Committee that there is no overlapping in two places.

Shri B. Das: (Orissa: General): Sir, I seek your protection from the tyranny of the Drafting Committee. The Fundamental Rights were passed by us with great solemnity—I am not a lawyer, but being a common man I understand the Fundamental Rights given to us after great consideration in so many Committees and after serious consideration by this House. What has happened for the last two or three days that we are suffering from the tyranny of the Drafting Committee? On the 15th we received amendments to article 13 by the same two gentlemen—the Honourable Dr. Ambedkar and Mr. T. T. Krishnamachari—and today Mr. Krishnamachari has moved another amendment. Last night we got the present amendment which the House is concerned. Fundamental Rights cannot suddenly be changed. If today was not the last day of this House to consider further amendments, article 304 would have applied to any changes in the Constitution; for any changes to the Constitution it says :

"An amendment of the Constitution may be initiated by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting etc."

When Dr. Ambedkar himself as Chairman had provided in Part XVI—Amendment of the Constitution—with such solemnity, how does the change take place overnight?

I am not one who thinks very high of the judges particularly as they are trained under the British tradition and they have misapplied justice and kept us down. I have not read in any place of public utterances that the High Court Judges or other Court Judges or Magistrates in India have changed since August 1947 and have a better realization of their function and duties. If Dr. Ambedkar, ten years hence on his retirement, writes a book on the vagaries of Courts, about contempt of court, he will see his particular partiality overnight to give certain more powers to these magistrates and judges were not called for. It will, be a very wonderful book where many penniless lawyers became judges and regulated and controlled the affairs and rule of the alien Raj by the 'contempt of court' and the chicken-hearted lawyers got frightened at them.

Mr. President : So far as High Courts are concerned, all parties and all people in this country have always held them in high esteem and it is no use casting aspersions on them generally. There may have been individual Judges who may have erred, but we should not cast aspersions on the judiciary as a whole.

Shri B. Das : Sir, I bow to your ruling. I wish my heart becomes pure and I respect the Judges in India for their eminent position and for their due discharge of their duties. However, I seek your protection. If I have my personal view, I will oppose any tempering with any articles in the Fundamental Rights, at this fag end of the session when we are dispersing and we will soon come to the Third Reading of this Constitution. We must have some sanctity over change of Fundamental Rights. If it were such a mistake, how is it that it was not spotted on the 15th of this month ? It is spotted only yesterday. Dr. Ambedkar has been described as the Manu of this century. Do Manus change overnight? In that case everyone of us will be Manu and not Dr. Ambedkar alone. I think no harm will be done if this amendment to article 13 does not take place. Let Parliament meet, let Dr. Ambedkar himself bring out a Bill and we will examine it on its merits. But why tamper with Fundamental Rights? That is my submission and I do hope, Sir, as our President, you will be pleased to give a ruling over such matters as amendments to Fundamental Rights.

Shri Krishna Chandra Sharma : (United Provinces: General): Mr. President, I am jealous for the dignity and respect of the Judges. I hold that in democracy Judges should be respected by all classes of people and there should be dignity attached to the person and their functions. But one thing I object to is that this contempt of court addition is unnecessary because the article has the words 'existing law' and there is a provision in Cr. P. C. Section 480, which deals with contempt of court during the proceedings when the Court itself has the power to punish the man committing the contempt. There is another Contempt of Court Act which empowers the High Court to take cognizance of any contempt of court anywhere. Therefore in view of the existing provisions—and I think they are sufficient to deal with the situation—no more protection is necessary. This addition is therefore unnecessary and undesirable.

The Honourable Shri K. Santhanam : Sir, I do not think the argument of the last speaker is correct because article 13 will modify the existing law. Therefore provision for contempt of court is necessary but my difficulty is that under article 13(2) every State Legislature is given the power to enact a law relating to contempt of court. If dozen legislatures enact dozen different laws relating to contempt of court, I think the position, especially of newspapers, will become very difficult.

For instance, if the Madras Legislature makes a law relating to contempt of court, it will apply, of course, according to its jurisdiction, only to the papers published in Madras. But it will not apply to all papers coming from anywhere in India and circulating in Madras, and that will happen in every province. So far as defamation, slander, etc. are concerned, they are actionable wrongs which are put in the Concurrent List. When there is any confusion, Parliament can step in and bring about uniformity. But in the case of contempt of court, I do not think it is open to Parliament to bring about uniformity. Therefore, if they want to put it in article 13 there must be a separate item in the Concurrent List so that at any time Parliament can step in and bring about some uniformity of law. Otherwise, the insertion of the words "contempt of court"

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here, I suggest under clause (2) of article 13 will result in different laws of contempt of court and cause confusion throughout the country. I suggest that steps may be taken to at least reserve powers to Parliament either to make laws for contempt of court, or to see that laws relating to contempt of court are brought into some kind of uniformity. It may be put in the Concurrent List, if the words "contempt of court" are inserted in clause (2) of article 13.

Mr. President : Would you like to reply, Dr. Ambedkar ?

The Honourable Dr. B. R. Ambedkar : Sir, this article is to be read along with article 8.

Article 8 says:

"All laws in force immediately before the commencement of this Constitution in the territory of India, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency be void."

And all that this article says is this, that all laws, which relate to libels, slander, defamation or any other matter which offends against decency or morality or undermines the security of the State shall not be affected by article 8. That is to say, they shall continue to operate. If the words "contempt of court" were not there, then to any law relating to contempt of court article 8 would apply, and it would stand abrogated. It is prevent that kind of situation that the words "contempt of court" are introduced, and there is, therefore, no difficulty in this amendment being accepted.

Now with regard to the point made by my Friend Mr. Santhanam, it is quite true that so far as fundamental rights are concerned, the word "State" is used in a double sense, including the Centre as well as the Provinces. But I think he will bear in mind that notwithstanding this fact, a State may make a law as well as the Centre may make a law, some of the heads mentioned here such as libel, slander, defamation, security of State, etc., are matters placed in the Concurrent List so that if there was any very great variation among the Laws made, relating to these subjects, it will be open to the Centre to enter upon the field and introduce such uniformity as the Centre thinks it necessary for this purpose.

The Honourable Shri K. Santhanam: But contempt of court is not included in the Concurrent List or any other list.

The Honourable Dr. B. R. Ambedkar : Well, that may be brought in.

Mr. President : Then I will put these two amendments to vote. As a matter of fact, Pandit Thakur Das Bhargava's amendment is not an amendment to Mr. Krishnamachari's amendment, it is independent altogether. I will put them separately. First I Put Mr. Krishnamachari's amendment to vote.

The question is:

"That in clause (2) of article 13, after the word 'defamation' the words 'contempt of court', be inserted."

The amendment was adopted.