

**Begum Aizaz Rasul** (United Provinces : Muslim): May I know if Dr. Ambedkar has accepted Prof. Shibban Lal Saksena's amendment? If not, I wish to oppose the second part.

**Mr. Vice-President** : There is no second part so far as I am aware. It only refers to deletion of certain words. The first part is the same.

**Begum Aizaz Rasul** : I wish to oppose that motion.

**Mr. Vice-President** : I am afraid it is too late now. The question is:

"That in article 39, after the words 'from spoliation', the word 'disfigurement' be inserted, and all the words after the words 'may be' to the end of the article be deleted."

The motion was adopted.

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

"That in article 39, for the words 'It shall be the obligation of the State to', the words. 'The State shall' be substituted."

The motion was negatived.

**Shri Ram Sahai** : I want to point out that Dr. Ambedkar has accepted my amendment. I would request you kindly to again call for voting.

**Mr. Vice-President** : I put the matter before the House and the House has rejected it, and whatever the reasons might be, it is not for me to reopen the matter.

I will put that clause in the form in which it now stands before the House.

**Shri Ram Sahai** : \*[My submission is, Sir, that Dr. Ambedkar has already accepted my amendment. I demand division on this question.]

**Mr. Vice-President** : It is too late now. Why don't you stand up in proper time and demand a division? The matter is now closed. The question is:

"That article 39, as amended, do stand part of the Constitution."

The motion was adopted.

Article 39, as amended, was added to the Constitution.

#### Article 39-A

**The Honourable Dr. B. R. Ambedkar** : Mr. Vice-President, Sir, I move:

"That after article 39, the following new article be inserted:

'39-A. That State shall take steps to secure that, within a period of three years from the commencement of this Constitution, there is separation of the judiciary from the executive in the public services of the State.' "

I do not think it is necessary for me to make any very lengthy statement in support of the amendment which I have moved. It has been the desire of this country from long past that there should be separation of the judiciary from the executive and the demand has been continued right from the time when the Congress was founded. Unfortunately, the British Government did not give effect to the resolutions of the Congress demanding this particular principle being introduced into the administration of the country. We think that the time has come when this reform should be carried out. It is, of course, realised that there may be certain difficulties in the carrying out of this reform; consequently this amendment has taken into consideration two particular matters which may be found to be matters of difficulty. One is this: that we deliberately did not make it a matter of fundamental principle, because if we had made it a matter of fundamental principle it would have become absolutely obligatory instantaneously on the passing of the Constitution to bring about the separation of the judiciary and the executive. We have therefore deliberately put this matter in the chapter dealing with directive principles and there too we have provided that this reform shall be carried out within three years, so that there is no room left for what might be called procrastination in a matter of this kind. Sir, I move.

**Shri T. T. Krishnamachari** (Madras : General): Mr. Vice-President, Sir, this is an after-thought of Dr. Ambedkar or, shall I say, of the rump of the

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\* [ ] Translation of Hindustani speech.

Drafting Committee. I do not know why they did not think of it at the time they drafted this particular Part of the Draft Constitution. Probably, he felt that in view of the fact that quite a number of new items have crept into this Part which might be called a veritable dust-bin of sentiment, he might also find a place in it for this particular amendment of his, I see no objection actually to this or any other amendment coming in because this dust-bin seems to be sufficiently resilient as to permit any individual of this House to ride his hobby-horse into it. But, I cannot understand Dr. Ambedkar's explanation when he said that he did not want to put this in the Fundamental Rights. He only wanted to make it permissive; but then he insists on a three-year limit within which this has to be carried out! As a matter of fact, when he himself realises it is not mandatory, what is the object of putting a three-year limit? The mere expression of the wishes of the framers of this Constitution that there should be separation of the judiciary from the executive is quite enough. It ought to be put into practice by the various Provincial Governments as early as possible. Where is the merit of the three-year limit in this particular matter? I personally would have favoured the amendment proposed by my friend Pandit Lakshmi Kanta Maitra, amendment No. 960.

The learned Doctor said that this has been practically one of the basic demands of the Congress ever since it was founded. I believe it is so; I do not want to deny it. I also remember that an eminent Congressman, who was Prime Minister of one of the major provinces in this country, once said that ideas about the separation of the judiciary from the executive have changed, and that because a foreign Government was no longer in power, separation need not be effected. This does not seem to be such a cardinal principle as politicians chose to believe it to be in the days when the British were in power.

The learned Doctor must have known that some provinces have already taken some steps in the matter of separating the judicial and executive functions. I think three major provinces have moved in the matter. Actually they have not made much progress, probably for various reasons, either other preoccupations or finance, or whatever it may be. I do not see why we should ask them to do this within three years when probably it could be done in six or seven years. What I really feel about this amendment is that there is no rhyme or reason in Dr. Ambedkar seeking to tie the hands of provincial Governments by saying that this should be done in three years, though actually, he cannot tie the hands of the provincial Governments by this directive as the provincial Governments can ignore this provision. We are merely voicing a pious wish and tying it up with a period within which we know that it may not be carried into effect.

In this connection, I would like to strike a note of warning. There are several amendments tabled in regard to this question of judiciary which are to be moved by the rump of the Drafting Committee, which are in the nature of an after-thought. For a Professor, it is all very good to envisage a complete separation of the judiciary and the executive. But in actual practice, it might work out in a different way altogether. It might also be that in trying to give the judiciary an enormous amount of power,—a judiciary which may not be controlled by any legislature in any manner except perhaps by the means of ultimate removal—we may perhaps be creating a Frankenstein which would nullify the intentions of the framers of this Constitution. I have in mind the difficulties that were experienced in another country where they have a rigid Constitution, the United States of America, not merely during the time of the New Deal of President Franklin Roosevelt, but also at the time of President Theodore Roosevelt when the Progressive Party felt that the judiciary was interfering unduly with the liberalising of the administration. My feeling is that while I have the greatest respect for Dr. Ambedkar's views on this matter, to put the Constitution of the country in a straight jacket by giving undue power

[Shri T. T. Krishnamachari]

to the judiciary at a time when we know that in the matter of recruitment to the judiciary, we are not able to get A Class men at all, is unwise. I see instances of judicial officers, Judges of the High Courts becoming administrators, and coming back to the judiciary, because, I suppose, the Government is not able to find sufficient material from the Bar to fill vacancies in the judiciary. It seems in every province the type of people that come up to the top so far as judicial officers are concerned is not about the best that we could possibly get. In these circumstances, this trend of empowering the judiciary beyond all reason and making it a regular administration by itself, will perhaps lead to a greater danger than we can now contemplate. I do not know if at this stage I can appeal to the mover of this amendment to remove the three-year limit, which is superfluous and meaningless and which may not be carried into effect, and which would then be a matter of inducing the provincial Governments to flout the Constitution, and allow the view to be expressed as a mere sentiment as other Articles in this Part happen to be. I do not know if Dr. Ambedkar will ever be persuaded, particularly in view of the fact, I think, that the Congress party has approved of the Draft in this particular form; but I think there is no harm in pointing out the obvious difficulty in the wording of this particular amendment, which perhaps is otherwise quite unexceptionable.

**Shri B. Das** (Orissa: General): Mr. Vice-President, Sir, I suggest to the House to postpone consideration of this amendment of Dr. Ambedkar to a later date. The Congress is meeting very shortly at Jaipur. When the people were harassed by the former British Government, we thought we had no justice from the British Government and we wanted separation of the judiciary from the executive. That suspicion does not exist now. We have to examine whether separation today is necessary.

Unfortunately, I find India is lawyer-ridden. In this House, more than fifty per cent. of the members are lawyers. The Municipalities have more lawyers than are necessary. The Ministry has got a large number of lawyers: I am speaking of our own Government here. Though it is a pious wish of this House that in three years the judiciary must be separated from the executive, because it is not included in the Fundamental Rights, we have to consider, and I think this House will allow the Congress at Jaipur to consider, whether the huge expenses that would be incurred, the country can afford to bear.

There had been Pay Committees of Government of India and the Provinces who have not thought of lowering the salary level of the Executive or Judicial Officers. This House had accepted Village Panchayats. Dr. Ambedkar was generous to refer to the Congress principles. Is it practicable to-day? I support my friend Mr. Krishnamachari that it is not possible in three years. It will take ten or twenty years to give effect. Otherwise most of the provincial Governments will go bankrupt if they pay the salaries that the Judicial Officers are getting. Incidentally I will allude to one fact. I find even the Government of India recently increased the number of Federal Court Judges from three to five. We go on generously providing high judicial appointments and now we want to provide separate judiciary from the executive, provide more lawyers and munsifs and district judges to allow more lawyers to argue the case on both sides. Where will the poor man be! I would respectfully suggest to this House to allow this amendment to stand over and let us see what the Jaipur Congress thinks on the subject after one year of freedom. Remember the Congress has not met since we won our freedom or so-called freedom from the British. If we have won our independence, let us try to think it out in our era of independence.

**Mr. Vice-President :** The House stands adjourned till 10 A.M. tomorrow.

The Assembly then adjourned till Ten of the Clock on Thursday, the 25th November 1948.