

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 19th November, 1948

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.

DRAFT CONSTITUTION—(contd.)

Article 28

Mr. Vice-President (Dr. H. C. Mookherjee): Shall we resume discussion of Part IV? If I remember a right, amendment numbers 831, 832 and 833 were disposed of yesterday. We start with amendment No. 834.

Shri Brajeshwar Prasad (Bihar: General): Sir, before we go clause by clause, I would suggest that the House may be given an opportunity to discuss the general provisions of State Policy.

Mr. Vice-President : I am afraid it cannot be done.

(Amendment numbers 834, 835 and 836 were not moved.)

Kazi Syed Karimuddin (C. P. & Berar: Muslim): Mr. Vice-President, Sir, the amendment which I am moving is:

“That in the heading under Part IV the word ‘Directive’ be deleted.”

Sir, it would have been much better if the amendment of Mr. Kamath could be taken up along with the amendment that I have moved. The provisions of Directive Principles which have been embodied in Part IV are very important as they relate to uniform civil code and to economic pattern and very many Fundamental matters. Directive Principles mean that they will not be binding on the State; in any case, they would not be enforceable in a court of law. My submission is that, if this Constitution is not laying down these principles for being enforced in a court of law, or if they are not binding on the State, they are meaningless. I would like to draw the attention of the Honourable Members to what Dr. Ambedkar has said in his own book, that these principles should be embodied in the Constitution as Fundamental Rights and that a scheme embodying these principles should be brought into operation within ten years. I find, Sir, in Article 31 the economic pattern of the country has been based on very vague generalisations. It is very necessary that the word ‘Directive’ should be deleted, and as Mr. Kamath has suggested, they should be made Fundamental Principles of State Policy. Therefore, my submission is that the word ‘Directive’ is unnecessary and meaningless. The provisions under this Chapter become only platitudes or pious wishes and it has been very rightly stated by Dr. Ambedkar that they are more or less only Instrument of Instructions. If they are really an Instrument of Instructions, why should they find a place in the Fundamental Principles to be embodied in the Constitution, I do not understand. Dr. Ambedkar has further said in his speech that we do not want to lay down certain principles because it would be open to the coming generations to have their own pattern—I do not want to read the whole speech. It is only stated in Article 31 that there will be improvement in economic, social and other things. What is the use of laying down generalisations as has been stated in Article 31? Therefore, I submit, it is

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no use treating these principles as Directive; such a course will not prove to be to the good of the people and to the State. It is very necessary that all these principles should be made mandatory in order that a scheme embodying these principles could be brought into operation within ten years.

Sir, I move my amendment, and reading my amendment with Mr. Kamath's amendment, it should be "Fundamental Rights".

Shri M. Ananthasayanam Ayyangar : (Madras: General): Sir, if my friend Mr. Karimuddin follows Mr. Kamath, as Mr. Kamath has withdrawn his amendment.....

Shri H. V. Kamath (C. P. & Berar: General): I have not yet withdrawn my amendment, Sir.

Shri M. Ananthasayanam Ayyangar : He is not moving, I think. The point is this. It is not as if Mr. Karimuddin does not want this Chapter. He only wants the word 'Directive'.....

Kazi Syed Karimuddin : I want the Chapter; only, I want the word "Directive" to be deleted from the heading.

Shri M. Ananthasayanam Ayyangar: He does not want the Chapter to be deleted.

Shri H. V. Kamath : On a point of order, Sir, did we not agree yesterday that all the amendments to an article will be moved first, and then the article will be taken up for discussion?

Mr. Vice-President : Mr. Kamath is correct. I am sorry that this matter escaped my attention altogether. Discussion will be taken up later on.

The next amendment stands in the name of Mr. Kamath, No. 838.

Are you moving amendment No. 838?

Shri H. V. Kamath : Mr. Vice-President, I move:

"That in the heading under Part IV for the word 'Directive', the word 'Fundamental' be substituted."

Sir, while moving this amendment for the consideration of my Honourable friend Dr. Ambedkar and of the House, I would like to advance only two reasons for the same. Firstly, we have been told that Parts III and IV of the Draft Constitution embody certain rights, Part III being justiciable rights and Part IV being non-justiciable rights. But both are looked upon or regarded as rights which are fundamental. I derive support from the report of the Honourable Sardar Patel. I am reading from the reports of the Committees Second Series, from July to August, 1947. Copies of this booklet were supplied to all the Members of the House in March of this year. I am reading from the Honourable Sardar Vallabhbhai Patel's Report which was presented to the Assembly on the 30th August 1947. There he says—and it is addressed to the President of the Constituent Assembly—in para. 2:

"We have come to the conclusion."

'We' means the Advisory Committee on the subject of Fundamental Rights.

"We have come to the conclusion that in addition to these Fundamental Rights, the Constitution should include certain directives of state policy which though not cognizable in any court of law, should be regarded as fundamental in the governance of the country."

And on page 48 of this booklet which contains the reports of the committee of which the Honourable Sardar Patel was the Chairman, they have given the title to these very rights which are now embodied in Part IV — "Fundamental Principles of Governance". I should like to know from Dr. Ambedkar and the gentlemen of the Drafting Committee, why they have made a departure from the title given by Sardar Patel to these rights. That Committee gave the title of 'Fundamental Principles of Governance', but here the Drafting Committee have changed the title to 'Directive Principles of State Policy'. There is some

force in Syed Karimuddin's argument that both these are fundamental—the justiciable and the non-justiciable rights; and in requesting the House to consider my amendment I would only say this in conclusion, that if this amendment is thrown out, you will be throwing out not my amendment, but the recommendation of Sardar Vallabhbhai Patel.

Mr. Vice-President : Amendment No. 839—not moved. Is amendment No. 840 going to be moved?

Shri M. Ananthasayanam Ayyangar : No. 840 is the same as No. 838.

Mr. Vice-President : Then, it seems to me that the amendments considered so far deal with the heading of this chapter. Members who wish to speak on this may please do so now.

Shri M. Ananthasayanam Ayyangar : Sir, the object of differentiating certain rights as justiciable and non-justiciable rights is well-known. Those here are non-justiciable rights as has been laid down in paragraph 29. They shall not be enforceable in a court of law. Mr. Karimuddin wants that these also should be justiciable rights. I do not know if Mr. Karimuddin is a lawyer. But let him consider one or two suggestions. In Article 26 it is said that the State should within a period of ten years introduce free compulsory education. Take this as an instance. Let us assume that the State does not do so, then can any court of law enforce it? Against whom? In case a decree is granted by a court of law, who will carry it out? If the Government does not carry it out, can the High Court or the Supreme Court enforce it? Is it open to the Supreme Court to change such a government? With its authority, can it by an officer of the Court, an Amin or a Sheriff, imprison all the Ministers, and bring into existence a new set of ministers? In the nature of things, these are only directives and cannot be justiciable rights at all. So there is no purpose in removing the word directive. These are principles which the Government must keep in mind, whatever government may be in power, and they must be carried out. We have incorporated them in the Constitution itself because we attach importance to them. But to classify them as Fundamental Rights as in Part III would be to take away the difference between the one set and the other, and making all the rights justiciable, which, in the nature of things, is impossible. There is no use being carried away by sentiments. We must be practical. We cannot go on introducing various provisions here which any Government, if it is indifferent to public opinion, can ignore. It is not a court that can enforce these provisions or rights. It is the public opinion and the strength of public opinion that is behind a demand that can enforce these provisions. Once in four years elections will take place, and then it is open to the electorate not to send the very same persons who are in different to public opinion. That is the real sanction, and not the sanction of any court of law.

Therefore, this amendment is mis-conceived, and I would request the House not to accept it.

Mr. Naziruddin Ahmad (West Bengal : Muslim): Sir, I support the amendment to drop the word “directive”. It is not only the heading but the entire chapter which is misconceived. Only the other day Dr. Ambedkar enunciated a very important principle by way of reply to Prof. Shah's amendment (No. 98) by which he wanted to introduce certain words into the Constitution to which Dr. Ambedkar said that pious expressions are not proper things to be embodied in a Constitution. He said, “the Constitution is a mere mechanism and no political principles or policies need or should be incorporated in it.” He further said that “political principles or policies should be dictated by the people themselves through their votes and posterity should never be fettered by an announcement of policy or principle.” These are important words coming

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from such a high authority. I submit these pious principles should not be enunciated unless there is the backing of the law and they are also made justiciable. Dr. Ambedkar further said that to introduce pious expressions would be “taking away from the people their right to vote” and these things would be “superfluous”. I submit that if you introduce pious principles without making them justiciable, it will be something like resolutions made on New Year’s day which are broken on the 2nd of January. I submit that these pious wishes are so obvious that they need not be enunciated at all. If you state them you might also say that people should get up from their bed early and be kind to their neighbours, and so forth. Sir, I submit these are not proper things to be embodied in the Constitution and the amendment of Syed Karimuddin should be accepted.

The Honourable Dr. B. R. Ambedkar (Bombay : General): Sir, I am sorry I cannot accept either of the two amendments: Mr. Kamath’s amendment is really incorporated in the phraseology as it now stands; the word “Fundamental” occurs, as Mr. Kamath will find, in the very first Article of this part. Therefore his object that these principles should be treated as fundamental is already achieved by the wording of this Article.

With regard to the word “directive” I think it is necessary and important that the word should be retained because it is to be understood that in enacting this part of the constitution the Constituent Assembly, as I said, is giving certain directions to the future legislature and the future executive to show in what manner they are to exercise the legislative and the executive power which they will have. If the word “directive” is omitted I am afraid the intention of the Constituent Assembly in enacting this part will fail in its purpose. Surely, as some have said, it is not the intention to introduce in this part these principles as mere pious declarations. It is the intention of this Assembly that in future both the legislature and the executive should not merely pay lip service to these principles enacted in this part, but that they should be made the basis of all executive and legislative action that may be taken hereafter in the matter of the governance of the country. I therefore submit that both the words “fundamental” and “directive” are necessary and should be retained.

Mr. Vice-President : The question is:

“That in the heading under Part IV, the word ‘Directive’ be deleted.”

The motion was negatived.

Shri H. V. Kamath : Sir, I beg leave of the House to withdraw my amendment.

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

Mr. Vice-President : We shall now take up amendment Nos. 841 to 846. The movers will kindly move them one after another and then there will be a discussion.

Amendment No. 841 is a negative one and therefore it is ruled out of order.

Since the Member concerned is not here, Amendment No. 842 falls through.

Amendment Nos. 843 to 846—Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : I shall be moving Nos. 843, 844 and 846. I shall not be moving No. 845.

Sir, I move:

“That in article 28, the words ‘unless the context otherwise requires’ be omitted.”

“That in article 28, for the word ‘requires’, the word ‘indicates’ be substituted.”

“That in article 28, for the words ‘the State’, the word ‘State’ be substituted.”

With regard to my first amendment for the deletion of the words “unless the context otherwise requires”, I beg only to submit this. There are only a

few articles in this part. This article attempts to define “the State” to mean States in Part III of the Constitution. I submit that there is here no difficulty or any confusion. If we say “unless the context otherwise requires” it would indicate that the meaning that has been definitely given by article 28 to the expression “the State” is subject to fluctuation in accordance with the context, that is in accordance with the individual approach of each man. This would create an uncertainty and a very needless uncertainty in the context. I would submit that the word should be precisely defined. In fact the word “State” has been defined in so many places to mean so many things that there has already been a sufficient amount of confusion in the understanding of the word “State” and the introduction of these words—“unless the context otherwise requires” would introduce further complications. I therefore submit that these words should be removed and, if necessary, doubts in any particular context should be met by a proper change in draftsmanship.

The second amendment is merely verbal, and I want to change the word ‘requires’ into the word ‘indicates’. I do not wish to say anything further in this connection.

With regard to the third amendment, that for the words “the State” the word “State” be substituted, I have to submit that the word ‘State’ is the proper word in the context. If we define the expression as “the State” it will lead to difficulties in the clauses in which this expression occurs. I should submit that the word “State” should be more appropriate and I shall attempt to show why.

The Australian precedent which has been cited in another connection by the Honourable Dr. Ambedkar, I think, should better be discarded. The reason why I submit this amendment is this: That in the context the expression “the State” appears in Articles 29 to 40. In those contexts the words “the State” are inappropriate. It should be remembered that the words “the State” are attempted to be defined as “State” within the meaning of Part III of the Constitution. It is enough for me to point out that there are more States than one included in Part III of the Constitution. Therefore the words “the State” in the following Articles— 29 to 40—would be inappropriate. If there is one individual State which we want to indicate, the words “the State” would be proper in the context. But we have in mind not one State or “the State” but several States in the different contexts. So I have suggested the expression “State”. It is for this reason that I want to remove the word “the” which to my mind is absolutely unnecessary. It is a grammatical article which need have no place in the definition itself. If we tie down the definition to the word “the” the words become inseparable and therefore a forced use of this expression in the succeeding articles becomes absolutely compulsory. Therefore, this will need careful consideration.

The Honourable Dr. B. R. Ambedkar : Sir, I oppose the amendments of my friend, Mr. Naziruddin Ahmad. The words “the State” in Article 28 have been used deliberately. In this Constitution, the word “State” has been used in two different senses. It is used as the collective entity, either representing the Centre or the Province, both of which in certain parts of the Constitution are spoken of as “State”. But the word used there is in a collective sense. Here the words “the State” are used both in a collective sense as well as in the distributive sense. If my friend were to refer to part III, which begins with Article 7 of the Constitution, he will see in what sense the word “State” is used. In this part, unless the context otherwise requires, “the State” includes the Government and the Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India. So that, so far as the Directive Principles are concerned, even a village *panchayat* or a district or local board

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would be a State also. In order to distinguish the sense in which we have used the word we have thought it desirable to speak of 'State' and also 'the State'. Honourable Members will find this distinction also made in Article 12 of the Constitution. There we say:

"No title shall be conferred by the State;

No citizen of India shall accept any title from any foreign State."

There we do not use the words "the State"; but in the first part we use the words 'the State'. We do not want any of the authorities, either of the Centre or of the provinces, to confer any title upon any individual. That being the distinction, the House will realise that the retention of the words 'the State' in Article 28 is in consonance with the practice we have adopted in drafting this Constitution.

Mr. Vice-President : I shall now put these three amendments to vote. The question is:

"That in article 28, the words 'unless the context otherwise requires' be omitted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in article 28, for the word 'requires' the word 'indicates' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in article 28, for the words 'the State', the word 'State' be substituted."

The amendment was negatived.

Mr. Vice-President : I shall put Article 28 to vote. The question is:

"That article 28 form part of the Constitution."

The motion was adopted.

Article 28 was added to the Constitution.

Article 29

Mr. Vice-President : The House will now take up Article 29 for discussion. Amendment No. 847 for the deletion of Article 29 is out of order.

Professor K. T. Shah may now move his amendment.

Prof. K. T. Shah (Bihar : General): Mr. Vice-President, I beg to move:

"That for article 29, the following be substituted:

'29. The provisions contained in this Part shall be treated as the obligations of the State towards the citizens, shall be enforceable in such manner and by such authority as may be deemed appropriate in or under the respective law relating to each such obligation. It shall be the duty of the State to apply these principles in making the necessary and appropriate laws.' "

In submitting this motion to the House, I would in the first place express my sense of keen appreciation of Dr. Ambedkar's remarks made a few minutes ago, wherein he not only insisted that we should not leave such matters as mere pious principles, but also should make them a sort of directive, which, though the word mandatory is not used, may amount to that state. I was a little unhappy when, on a previous occasion, the learned Doctor was pleased to say that the Constitution was not a document for embodying such principles. It seems that the course of conversion operates very swiftly with a brain so alert, an intelligence so sharp a mind so open to new ideas as that of the learned Doctor. That is why I am very happy to express my sense of keen appreciation for the rapid conversion that he has exhibited today in agreeing to find