

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 9th December, 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.)

New Article 23-A

Mr. Vice-President (Dr. H. C. Mookherjee): Our work for today starts with the consideration of amendment No. 716. It stands in the name of Professor K. T. Shah.

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

“That under the heading “Right to Property” the following new article be added:

‘23-A. All forms of natural wealth, such as land, forests, mines and minerals, waters of rivers, lakes or seas surrounding the coasts of the Union shall belong to the people of India. No private property shall be allowed in any of these forms of the country’s wealth; nor shall they be owned, worked, managed or developed, except by public enterprise exclusively.’ ”

Shri B. Das (Orissa : General): On a point of order, Sir, how can 23-A about nationalisation of property be moved when we have not dealt with article 24 which deals with the right of property. I would respectfully suggest that, if you allow Professor Shah to move article 23-A, it may be moved after we have dealt with article 24.

Prof. K. T. Shah : I would point out, Sir,....

(Shri B. Das rose to speak.)

Mr. Vice-President : I want to hear what Professor Shah has to say.

Prof. K. T. Shah : There is a misapprehension on the part of Mr. Das. This does not talk of nationalising all existing private property. I am only enunciating a principle which may in legal parlance be called the right of eminent domain of the State. Therefore it is merely an assertion that natural wealth belongs to the people, to the State. That does not mean that that which is already in private possession is to be nationalised. Nor does it exclude the possibility of lands, forests, etc. being held, as delegated owners, by the present holders or subsequent holders under the eminent domain of the State. I see no difficulty in this.

Shri B. Das: My view is that article 24 deals with right to property, whether it belongs to a private citizen or to the State. This amendment can only be discussed when we discuss article 24 and Professor Shah can move his amendment afterwards.

Shri R. K. Sidhwa (C. P. & Berar : General): Mr. Vice-President, I think that what my honourable Friend Mr. Das said is quite correct. We are discussing article 23—cultural and educational rights—and if this article is passed....

Mr. Vice-President : The honourable Member need not repeat what Mr. Das has already said.

Shri R. K. Sidhwa : I am only emphasising it, Sir, to draw your attention.

Syed Muhammad Saadulla (Assam : Muslim): Mr. Vice-President, Sir, may I draw your attention to the motion itself as I read it at page 75 of the notice of amendments? Prof. Shah’s amendment runs as follows: “That under the heading ‘Right to Property’, the following new article be added” and “Right to Property” is the heading of article 24 and not of 23.

Mr. Vice-President : I rule that Prof. Shah be allowed to move this amendment under 24-A. So far as amendment Nos. 717 and 718 are concerned, they are already covered by the earlier decisions of this House relating to Directive Principles.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Those rights which are not justiciable are covered but those in connection with fundamental rights have not been covered at all. At that time an understanding was reached that this will be considered along with the Fundamental Rights.

Mr. Vice-President : Is it your contention that these both should go under the Directive Principles and also here? That is not possible. I rule it out of order.

Article 24

Shri T. T. Krishnamachari (Madras : General) : It is the desire of many Honourable Members of this House that this article should not be taken up now, but taken up later, because we are really considering various amendments to it so as to arrive at a compromise and Dr. Ambedkar will bear me out in regard to this fact.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Yes, Sir, I request that article No. 24 be kept back.

Mr. Vice-President : Is that the wish of the House?

Honourable Members : Yes.

Mr. Z. H. Lari (United Provinces : Muslim) : Then what about article 15, Sir?

Mr. Vice-President : The consideration of that article has been postponed for the time being.

(To Mr. Kamath) You want to say something about the amendment dealing with Military training in article 24?

Shri H. V. Kamath (C. P. & Berar: General): There are those amendments which do not relate to "Right to Property", and which have been given notice of as new article to be inserted after article 24. What about these?

Mr. Vice-President : They will be taken up after article 24.

Article 25

Kazi Syed Karimuddin (C. P. and Berar : Muslim) : Mr. Vice-President, Sir, article 25 lays down in clause 4 "The rights guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution." Now I move my amendment :

"That the consideration of article 25 be postponed till the consideration of Part XI of this Draft Constitution."

In article 280, it is laid down "Where a Proclamation of Emergency is in operation, the President may by order declare that the rights guaranteed by article 25 of this Constitution shall remain suspended for such period not extending beyond a period of six months after the proclamation has ceased to be in operation as may be specified in such order."

If article 25 is passed today, then we are accepting the provisions of article 280 because clause (4) of article 25 says that "the rights guaranteed by this article shall not be suspended except otherwise provided for by this Constitution." We have very serious objections to the passing of article 280. The emergency Provisions contained in articles 275 to 280 are of an extraordinary nature and some of them militate against the fundamental principles of federalism and do not find any parallel in any world constitutions and there are several amendments to be moved to articles 275 to 280. So by acceptance of this article, we will be accepting the provisions of articles 275 to 280. Moreover, this article says "as otherwise provided for by this Constitution." This article cannot be considered at all unless the provisions in articles 275 to