

CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 7th 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.)

Article 15—Contd.

Mr. Vice-President (Dr. H. C. Mookherjee) : We can now resume general discussion on article 15.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, May I request you to allow this matter to stand over for a little while?

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

Honourable Members : Yes.

Article 20

Mr. Vice-President : Then we can go to the next article, that is article 20.

The motion before the House is:

“That article 20 form part of the Constitution.”

I have got a series of amendments which I shall read over. Amendment No. 613 is disallowed as it has the effect of a negative vote. Nos. 614 and 616 are almost identical; No. 614 may be moved.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

“That in the beginning of article 20, the words ‘Subject to public order, morality and health,’ be inserted.”

Sir, it was just an omission. Honourable Members will see that these words also govern article 19; as a matter of fact they should also have governed article 20 because it is not the purpose to give absolute rights in these matters relating to religion. The State may reserve to itself the right to regulate all these institutions and their affairs whenever public order, morality or health require it.

Mr. Vice-President : I can put amendment No. 616 to the vote if it is to be pressed. Has any Member anything to say on the matter?

(Amendment No. 616 was not moved.)

Mr. Vice-President : There is, I understand, an amendment to amendment No. 614 in List No. VI. Is that amendment to amendment being moved?

Mr. Naziruddin Ahmad (West Bengal : Muslim): Yes, Sir, I move:

“That for amendment No. 614 of the List of Amendments, the following be substituted namely:—

That article 20 be numbered as clause (1) of that article and the following new clause be added at the end, namely:—

‘(2) Nothing in clause (1) of this article shall affect the operation of any existing law or prevent the State from making any law for ensuring public order, public morality and public health.’ ”

[Mr. Naziruddin Ahmad]

Sir, the amendment moved by Dr. Ambedkar just now is also to the same effect. I should think that instead of the expression "subject to public order, morality and health" this expression would be better. The expression "ensuring public order etc.," is perhaps better than "subject to public order etc." This type of draftsmanship has been adopted in other places in the Constitution.

(Amendment Nos. 15 and 16 in List I and Nos. 615 and 617 were not moved.)

Shri Lokanath Misra (Orissa : General) : Sir, I move:

"That in clause (a) of article 20, after the word 'maintain' the words 'manage and administer' be inserted."

One who has a right to establish and maintain an institution for religious and charitable purposes ought also to have the right, unless such institutions offend against public order and morality or any established law, to manage and administer the same. Otherwise, there will be difficulty.

Syed Abdur Rouf (Assam : Muslim) : Sir, I beg to move:

"That in clause (a) of article 20, for the words 'religious and charitable purposes', the words 'religious, charitable and educational purposes' be substituted."

We are dealing here with a subject which empowers religious denominations to have the right to establish and maintain institutions for religious and charitable purposes only. Religious education is as important as religion itself. Without religious education the charitable purposes or religious purposes would lose all meaning. Therefore, I hope my amendment would be accepted by the House.

(Amendment Nos. 17 of list 1, 620 and 622 were not moved.)

Mr. Naziruddin Ahmad : Sir, I beg to move:

"That in clause (c) of article 20, for the words 'and immovable property' the words 'immovable and incorporeal property' be substituted."

Clause (c) provides for acquisition of movable and immovable property. It does not mention incorporeal property. Copyright is incorporeal property. It is neither movable nor immovable. The amendment would perhaps fill in a lacuna.

(Amendment Nos. 623 to 625 were not moved.)

Mr. Vice-President : Article 20 is for general discussion.

Shri Jaspat Roy Kapoor : (United Provinces : General) : Mr. Vice-President, Sir, while I accord my support to article 20, I must confess that I do not feel happy over the phraseology of it or the scope of it. I very much wish that in clause (a) thereof, the words 'and charitable', were deleted. The article then should have read:

"Every religious denomination or any section thereof shall have the right: (a) establish and maintain institutions for religious purposes." Sir having conceded the right of free profession of religion and propagation of religion, surely, it is a necessary corollary that the right to establish and maintain religious institutions should be also conceded. But to concede it as a fundamental right that any religious denomination or section thereof can maintain a charitable institution exclusively for its own benefit and deny its benefit to any other section of society is certainly repugnant to the idea of fraternity and common nationality.

Let us clearly understand what the implications, the mischievous implications I should say, of this article are. It means that I, as a member of the Hindu religious community or even as a member of a section of that community called Khatri, have the right, derive the right under this article 20, to establish say *piao* or place where water is served to all. Under this article. I will have it as a fundamental right to establish a *piao* and serve therein water only to the Khatri or to other caste Hindus and not to other sections of the Hindu community, much less to Muslims or Christians. This means that there can be a Christian, hospital where only Christians may be admitted and a non-Christian, however badly he might need medical service and even if he were lying at the door of the Christian hospital dying there, may be refused admission in the Christian hospital. It means that the upper class Hindus shall have it as a fundamental right to establish a *piao*, refusing at the same time water to members of the Scheduled castes. It means, Sir, that the Muslims in a Muslim 'sabil' may impose restrictions for the service of water to non-Muslims. I have been always told that serving free water to all without distinction of caste or creed is a very religious act according to Islamic law. I wonder if my Muslim friends want that they should be conceded this as a fundamental right. I wonder if my depressed or Scheduled caste friends would like that the upper caste Hindus should have this as a fundamental right that they can establish a *piao* where members of the Scheduled castes shall be denied water. I am sure neither my Muslim friends nor my Scheduled caste friends want to concede this as fundamental right.

One of my Christian friends, Sir, for whom I have very great respect, and I may also say, very great affection—he may not be knowing it—told me the other day that a particular section of the Christians would like to have a hospital of their own where at the time of their death or at their last moments they may get the service of Christian priests. Sir, it is not my intention that they should not have this privilege and facility. They can have this privilege and facility not only in their own hospitals but in every hospital in the country. The question is not whether they should have this facility in their own hospital or in other hospitals; but it is whether it should be open to a Christian hospital to say that no non-Christians shall be allowed entry therein. I am not a Christian; but I have very great respect for the Christian religion, and I make bold to say that such an act on the part of any Christian management would certainly be a non-Christian act. Why then, Sir, should such a right be conceded as a fundamental right ?

Our society already stands disunited today. There are so many castes and creeds and communities in it. We have been tolerating these communal institutions and we may have to tolerate them for sometime more. The deletion of the words 'and charitable', let there be no mistake about it, will not take away the existing right or the existing concession. This is not a right. This is rather a concession to the weakness of the society. So, let this concession continue until society as a whole voluntarily realises that this is something which is against the interests of the country as a whole, something which is against the unity of the Nation and something which is against the idea of fraternity and brotherhood. Until Society voluntarily realises it, let the concession remain. But the question is, must this right or concession hereafter be recognised by a statutory law, and not only *recognised* as a right, but be granted also the sanctity, the glory and the dignity of fundamental right?

I would appeal to the honourable Members to realise the grave implications of the existence of the words 'and charitable'. I will quote an instance from my own place which may perhaps bring home to honourable Members the

[Shri Jaspat Roy Kapoor]

gravity of the situation that might arise after we have passed the present article in its present form. In my place, a number of years ago, an upper class Hindu established a *piao* in a particular locality and service of water therein to the Scheduled castes was prohibited. This led to great resentment amongst us, particularly amongst Congressmen. They approached the orthodox section of the Hindu community and entreated them to remove this restriction. The orthodox people refused to agree. Ultimately, as a result thereof, there was a communal riot. Thereafter, partly by our appeal and partly by pressure, we could make them withdraw those restrictions. But, Sir, if the Constituent Assembly includes in the list of Fundamental Rights this very restriction or right of exclusion as a fundamental right, these orthodox people will fling this sacred book of our Constitution at our face and say : “How foolishly you are talking after giving us the right to impose such restrictions in respect of our *piao*”.

The highest body in the land, the sovereign constitution making body of the land having conceded it as a fundamental right, what business have you now to tell us that we are in the wrong and that we should throw open our *piaos* to all sections of the Hindu community? Therefore, Sir, I would respectfully appeal to this House to agree to delete these words.

I am told, Sir, that the retention of these words is in the interests of the minority communities. I fail to see how it is in the interests of any minority community. I fail to see how it is in the interests of even the majority community. The minority communities, it will be readily conceded, are not so rich as the majority community. Probably all the minorities put together are not so rich as the majority communities. So the majority community, if it so wishes, can establish charitable institutions in much larger numbers than the minority communities and if such majority charitable institutions restrict their use, their benefit, to the members of the majority community, surely it is the minority communities who will suffer and not the majority community, though the majority may have this thing as a black spot on their face; but that is another thing. I would, therefore, appeal to the members of the minority communities here to agree to the deletion of these words. If they agree to the deletion of these words, I am sure the House will unanimously agree to delete these words and improve this article. If they do not agree to this, we must accept this article as it stands as we must not do anything which is not agreeable and acceptable to them. With these words, Sir, I support article 20, not of course with any great pleasure but with some regret and disappointment, making a last minute appeal to the House to agree to the deletion of these words. If need be, Sir, I would appeal to my honourable Friend, Dr. Ambedkar, to postpone the final disposal of this clause and consult members of the minority communities whose champion he undoubtedly is whether they are agreeable to the deletion of these words and then amend the article accordingly.

One more point, Sir, one more reason for suggesting the deletion of these words, though this may not be of any great strength. Sir, at the last moment I am urging this poor argument because it does sometimes happen that when strong arguments fail, weak and poor arguments prevail. The heading of this sub-chapter is “Rights Relating to Religion” and surely, Sir, these words “and charitable” do not properly fit in in this chapter at all. If for no other reason, at least on the grounds of technicality, I would appeal to my honourable Friend, Dr. Ambedkar, to agree to the deletion of these words. With these words. Sir, I support article 20.

Mr. Tajamul Husain (Bihar : Muslim) : Mr. Vice-President, Sir, I had no intention of speaking on this article but I find that my honourable Friends who

have just spoken have been appealing to the minorities. I want to tell the House, Sir, that there is no minority in this country. I do not consider myself a minority. In a secular State, there is no such thing as minority. I have got the same rights, status and obligations as anybody else. I wish those who consider themselves as the majority community would forget that there is any minority today in this country. (An honourable member: *Hear, hear.*) Now, Sir, with regard to article 20, as far as I understood, my honourable Friend the last Speaker wants clause (a) to be *deleted*. I will just read clause (a) of article 20:—

“Every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes.”

Now, Sir, this article gives the right to everybody—it does not matter to what religion he belongs or what religion he professes—to have his own private religious institutions if he so wants. If a person has got money and at the time of his death he wants to make a will and dedicate his property to some charitable purpose or religious purpose of a private nature, I do not think, Sir, that people should object to it. After all, as I have said already, religion is a private matter between the individual and his Creator, and if I, Sir, wish that my property should be utilised for a particular purpose after my death, I see no reason why the State should interfere with it. It is not a matter of public interest. After all it is a private individual who wishes that his religion should be observed in a particular manner.

Kazi Syed Karimuddin (C. P. and Berar: Muslim): What does the honourable Member have in his mind, a private or public institution?

Mr. Tajamul Husain :

“Every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes—”

These are the exact words in the article. I want these words to remain where they are. I do not want these words to be deleted.

The Honourable Dr. B. R. Ambedkar : I have nothing to say.

Mr. Vice-President : I will now put the amendments, one by one, to vote.

The question is:

“That in the beginning of article 20, the words “Subject to public order, morality and health,” be inserted.”

The amendment was adopted.

Mr. Vice-President : The question is:

“That article 20 be numbered as clause (1) of that article and the following new clause be added at the end, namely:—

‘(2) Nothing in clause (1) of this article shall affect the operation of any existing law or prevent the State from making any law for ensuring public order, public morality and public health.’ ”

The amendment was negatived.

Mr. Vice-President : The question is:

“That in clause (a) of article 20, after the word “maintain” the words ‘manage and administer’ be inserted.”

The amendment was negatived.

Mr. Vice-President : The question is:

“That in clause (a) of article 20, for the words ‘religious and charitable purposes’ the words ‘religious, charitable and educational purposes’ be substituted.”

The amendment was negatived.

Mr. Vice-President : The question is:

“That in clause (c) of article 20, for the words ‘and immovable property’ the words ‘immovable and incorporeal property’ be substituted.”

The amendment was negatived.

Mr. Vice-President : The question is:

That article 20, as amended, be adopted.

The motion was adopted.

Article 20, as amended, was added to the Constitution.

New Article 20-A

Mr. Vice-President : Now we come to amendment No. 626 by Mr. Mahboob Ali Baig. I disallow this because two similar amendments have been rejected by this House. These two amendments are No. 612 and No. 440. We now pass on to article 21.

Article 21

Mr. Vice-President : We shall consider the amendments one by one.

Amendment No. 627 is out of order as it has the effect of a negative vote.

(Amendment Nos. 628, 629, 630, 634, and 631 were not moved.)

Amendment No. 632. The first part of this amendment standing in the name of Syed Abdur Rouf is disallowed as being nothing but a verbal amendment. So far as the second part is concerned, I can allow it to be moved.

Syed Abdur Rouf : Sir, I beg to move:

“That in article 21, after the word ‘which’ the words ‘wholly or partly’ be inserted.”

If my amendment is accepted, Sir, the article will read like this: “No person may be compelled to pay any taxes, the proceeds of which wholly or partly are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.” If my amendment is not accepted, a person may be compelled to pay taxes, the proceeds of which will partly be appropriated for religious purposes. This is certainly not desirable, and I think that unless my amendment is accepted, the very intention of this article will be frustrated. Therefore, Sir, I hope that my amendment will be accepted by the House.

Mr. Naziruddin Ahmad : Mr. Vice-President, Sir, I beg to move:

“That in article 21, for the words ‘the proceeds of which are’ the words ‘on any income which is’ be substituted.”

Sir, the purpose of the previous amendment will be served by my amendment and they must be considered together. The article says “No person may be compelled to pay any taxes the proceeds of which etc.” If my amendment is accepted, it would read like this: “No person may be compelled to pay any taxes on any income etc.” Sir, taxes are paid not on the proceeds, but on the income. Proceeds rather imply the gross receipts. Taxes do not apply to proceeds, but really to income. In fact, there is the further limitation of this ‘proceeds’ which are specifically appropriated for payment of the expenses