

Sir, on an earlier occasion, while moving an amendment I pointed out that the Constitution seems to leave out completely the Obligations side of human behaviour, and insists more and more.....

**Shri M. Ananthasayanam Ayyangar :** Sir, I believe Professor K. T. Shah is moving amendment No. 238, to change the heading. May I request him to take this up after we dispose of the articles? The title as it is, is "Fundamental Rights". He wants to include Obligations also. After we dispose of this part, if we find that any articles referring to obligations are introduced substantively, then we can move for the change of the title. In case no article referring to any obligation, is introduced in the substantive portion, there is no purpose in changing the title to include Obligations also. I would request him to allow this amendment to the title to stand over until we exhaust the substantive provisions of Part III.

**Prof. K. T. Shah :** I am quite willing to agree to the suggestion that this may stand over. I would only point out to my honourable Friend that it is not merely a particular section or sections which include Obligations that would justify a change in heading. I would like by this change in the title to draw attention to an aspect of the Constitution which has been omitted. However, if I am allowed to holdover this amendment, I shall try to bring it to the notice of the House on a later occasion. Meanwhile, I agree to the suggestion.

**Mr. Vice-President :** This amendment stands over for the present.

(Amendment No. 239 was not moved.)

**Mr. Vice-President :** Amendment No. 240 stands over.

(Amendment Nos. 241 and 242 were not moved.)

**The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar : General):** Sir, Amendment No. 243 becomes redundant. Article 28 has already been passed. If it has not been passed, this would have been necessary. I do not move this amendment.

## Article 7

**Mr. Vice-President :** The motion before the House is:

That article 7 form part of the Constitution.

We will take up the amendments one by one.

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

"That the following words be added at the end of article 7:—

‘or under the control of the Government of India.’ ”

Sir, this amendment was thought necessary because apart from the territories which form part of India, there may be other territories which may not form part of India, but may none-the-less be under the control of the Government of India. There are many cases occurring now in international affairs where territories are handed over to other countries for the purposes of administration either under a mandate or trusteeship. I think it is desirable that there ought to be no discrimination so far as the citizens of India and the residents of those mandated or trusteeship territories are concerned in fundamental rights. It is therefore desirable that this amendment should be made so that the principle of Fundamental Rights may be extended to the residents of those territories as well.

**Mr. Naziruddin Ahmad (West Bengal : Muslim):** Sir, I beg to move—

"That with reference to amendment No. 246 of the List of Amendments, in article 7, the words 'and all local or other authorities within the territory of India or under the control of the Government of India' be deleted."

[Mr. Naziruddin Ahmad]

Sir, along with this, I desire to move the second part of amendment No. 247 because they are related and may be disposed of conveniently together. Sir, I beg to move—

“That before the words ‘In this Part’ the figures and brackets ‘(1)’ be inserted and the following new clause after clause (1) so framed be inserted:—

“(2) The provisions of this Part shall so far as may be, apply to all local or other authorities within the territory of India or under the control of the Government of India.”

At the time I gave notice of this amendment I thought that the whole of the article 7 as redrafted by the Drafting Committee would be moved together. But really only a small amendment has been moved to the original article 7. What I want to do by these amendments is to remove the words—“all local and other authorities within the territory of India” from the article and reintroduce them in a separate clause. In article 7 “State” is defined to mean the Parliament of India and the Government of the Legislature of each of the State *i.e.*, the provinces and the Indian States and other States and all *local and other authorities* within the territory of India.

This, I am very sorry to say, creates some amount of anomaly in this context. In fact I have no difficulty in applying the provisions of part III to local and other authorities *i.e.*, District Boards, Municipalities etc., but I object only to the Municipalities and District Boards and other authorities to be styled a ‘State’. One honourable gentleman, Pandit Lakshmi Kanta Maitra, objected to the use of the word ‘State’ even to Indian States and the Provinces because they do not represent full sovereignty, but full sovereignty is not necessary for using the word ‘State’ in this connection. But I submit that by no stretch of imagination can District Boards and Municipalities be called ‘State’. Therefore what I have attempted to do is to remove these words from the articles which should be renumbered as clause (1) of the article and add clause (2) just to say that “the provisions of this Part shall, so far as may be, apply to all local or other authorities etc.” This avoids the anomaly of describing the local bodies as ‘States’ and at the same time attains the same object by removing those words from the body of article 7 and relegating them to clause (2). I submit this will remove the anomaly of District Boards etc., being described as ‘State’ and at the same time serve the purpose.

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

“That in article 7, for the word ‘or’ the word ‘and’ be substituted.”

Sir, in this article we are going to enumerate what are the States and that enumeration is exhaustive and not merely illustrative. Therefore in my opinion the word “and” will be happier than the word ‘or’. Though the word ‘or’ has got conjunctive sense, it has got other senses as well. In literature it may be quite alright but in matters of law where legal terms are to be used, when we can find a more concise word, we should not use less concise ones. Therefore I recommend this amendment for the acceptance of the House.

**Mr. Vice-President** : Now it is open to general discussion. I should have said Amendment No. 249 is blocked by Dr. Ambedkar’s.

**Mahboob Ali Baig Sahib Bahadur** (Madras : Muslim) : Sir, I consider that it is not advisable that an expression in a legislative enactment should bear different meanings in different parts of the enactment. It will create confusion. Therefore I wish this definition of ‘state’ had not been entered in this article at all. Further this expression ‘state’ includes the Government of India and its Parliament, the governments of the states, *i.e.*, the Provincial states, I think, and its legislature and the local bodies. I know that local authorities have been defined in the General Clauses Act, as District Boards and Municipalities. But I do not know what those ‘other authorities’ are. Is there any necessity for us to include other authorities which are not defined

either here or anywhere else? Therefore, Sir, as far as this Part of the Constitution is concerned, the State is defined in a manner which is comprehensive of all institutions, whether they are legislative bodies, executive bodies or executive authority or the municipal or district boards or for the matter of that even the co-operative institutions, or according to me, even other authorities, such as the sub-magistrates of a locality. So the word 'State' is used to include a man in authority under the circumstances anywhere. That is too wide a definition of the word 'State'. When this definition is given to the same expression used, say for instance in article 13 let us see what is its effect. I may read to you, Sir, sub-clause (2) of article 13.

"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, sedition or any other matter which offends against decency or morality or undermines the authority or foundation of the State."

That means the local body or the executive of a province or even a Sub-Magistrate might pass any order or the local body might pass any bye-law or resolution modifying the Fundamental Right given under sub-clause (a) of clause 1 of article 13.

Now, it may be contended that the expression is "making any law". Now, let us see whether 'law' has been defined here. Law has not been defined for the entire part, but it has been defined for a certain article—article 8, clause (3). There, it is stated that—

".....law includes any Ordinance order, bye-law, rule, regulation, notification, custom or usage having the force of law in the territory of India or any part thereof."

But law has not been defined generally, but it has been defined only for the purpose of article 8, to cover any order that is passed, any bye-law; that suits very well there, as we are abrogating all laws which are inconsistent with Fundamental Rights. If any Magistrate or any municipal body passed any law which derogates from the Fundamental Rights, that shall be considered void. So far so good. But has law not been defined for the purpose of Part III? It may be argued from the analogy of the law defined under clause (3) of article 8, that any order or bye-law passed by a local body or order that may be passed by any other authority may be included in the expression 'Law' in Part III. But what that "any other authority" is, has not been defined. Therefore, it may be contended, and very rightly perhaps, that a Magistrate or a local body or even a collector or even a Minister might pass an order, or make a notification abridging the rights that are given under sub-clause (a) of clause (1) of article 13. Therefore, my submission is, especially in the absence of a definition of law, and in the light of the definition of law under clause(3) of article 8, it will not only create confusion, but it might tend to the usurpation of those rights, and to nullify and abridge the fundamental rights given under clause (1). Sir, I am aware that article 7 says, "unless the context otherwise requires,....". I know that it might be contended that that expression answers my objection. But my submission is this. It is not only law that is passed by a legislature that is law. What is law, must be made quite clear. Unless that is done, the executive might pass an order, or put out a notification and that too might claim to come under this expression. Otherwise, as far as this part is concerned, there is no place at all for any executive authority to make any law to make anything, say anything or do anything. You have stated in all these places—"Nothing...shall...prevent the State from making any law, imposing in the interests of public order restrictions on the etc. etc." That clearly shows that a magistrate might pass an order restricting the right of a person or persons to assemble peacefully. So, when this expression is susceptible of being interpreted as giving authority to a district magistrate, an executive body to abridge the rights given here, with equal weight it may be contended by a local body or by some other authority — and you have not defined your authority.

[Mahboob Ali Baig Sahib Bahadur]

Therefore, I submit, if it is meant that all the authorities mentioned in this article have got the right to abridge rights, the fundamental rights mentioned in clause (1) of article 13, it might lead to absurd results. As I said, a magistrate or even a petty officer in authority can rightly claim under this article to have the authority to abridge a citizen's rights. Therefore, my submission is, either this article is unnecessary, or if you really mean that any man or any officer in authority has got right to abridge the Fundamental rights, I submit that this clause should not find a place here at all. It leads to confusion.

I wish that the Member in charge of piloting this Constitution would make it more clear and satisfy us before we are in a position to vote in favour of this resolution.

**Mr. Vice-President :** I would request Dr. Ambedkar to enlighten us about the points raised here by Mr. Ali Baig. We are laymen and we would like to hear him.

**The Honourable Dr. B. R. Ambedkar:** Mr. Vice-President, I must confess that although I had concentrated my attention on the speech of my friend who moved this amendment, I have not been able to follow what exactly he wanted to know. If his amendment is to delete the whole of article 7, I can very easily explain to him why this article must stand as part of the Constitution.

The object of the Fundamental Rights is two-fold. First, that every citizen must be in a position to claim those rights. Secondly, they must be binding upon every authority—I shall presently explain what the word “authority” means—upon every authority which has got either the power to make laws or the power to have discretion vested in it. Therefore, it is quite clear that if the Fundamental Rights are to be clear, then they must be binding not only upon the Central Government, they must not only be binding upon the Provincial Government, they must not only be binding upon the Governments established in the Indian States, they must also be binding upon District Local Boards, Municipalities, even village panchayats and taluk boards, in fact, every authority which has been created by law and which has got certain power to make laws, to make rules, or make bye-laws.

If that proposition is accepted—and I do not see anyone who cares for Fundamental Rights can object to such a universal obligation being imposed upon every authority created by law—then, what are we to do to make our intention clear? There are two ways of doing it. One way is to use a composite phrase such as “the State”, as we have done in article 7; or, to keep on repeating every time, “the Central Government, the Provincial Government, the State Government, the Municipality, the Local Board, the Port Trust, or any other authority”. It seems to me not only most cumbersome but stupid to keep on repeating this phraseology every time we have to make a reference to some authority. The wisest course is to have this comprehensive phrase and to economise in words. I hope that my friend will now understand why we have used the word “State” in this article and why this article must stand as part of this Constitution.

**Mr. Vice-President :** I will now put this amendment to the vote. First of all, we have amendment No. 21 of Mr. Naziruddin Ahmad, which is an amendment to amendment No. 246.

The question is :

“That with reference to amendment No. 246 of the List of Amendments in article 7 the words “and all local or other authorities within the territory of India or under the control of the Government of India” be deleted.”

The motion was negatived.

**Mr. Vice-President :** The next amendment is No. 246 moved by Dr. Ambedkar.

The question is: that the following words be added at the end of article 7:

“or under the control of the Government of India.”

The motion was adopted.

**Mr. Vice-President :** Then we come to amendment No. 247 as amended by No. 22.

The question is:

That in article 7, for the words and inverted commas “the State” the word and inverted commas “State” be substituted, and before the words “In this Part” the figure and brackets “(1)” be inserted, and the following new clause after clause (1) so framed be inserted :

“(2) The provisions of this Part shall, so far as may be, apply to all local authorities within the territory of India or under the control of the Union Government.”

The motion was negatived.

**Mr. Vice-President :** The question is: that in article 7, for the word “or” the word “and” be substituted.

The motion was negatived.

**Mr. Vice-President :** The question is: that article 7, as amended, stand part of the Constitution.

The motion was adopted.

Article 7, as amended, was added to the Constitution.

### Article 8

**Mr. Vice-President :** Now we go on to the next article.

The motion is:

That article 8 stand part of the Constitution.

There are a number of amendments. No. 250 is by Dr. P.K. Sen but he is not in the House. No. 251 is in the name of Mr. Kamath.

**Shri H. V. Kamath :** I am not moving it.

**Mr. Vice-President :** Then there is No. 252 by Pandit Lakshmi Kanta Maitra.

**Pandit Lakshmi Kanta Maitra** (West Bengal : General): Mr. Vice-President, Sir, I move to:

That the proviso to clause (2) of article 8 be deleted.

The purpose of this amendment is self-evident, and as I have been strictly enjoined not to make any speech I simply move this amendment.

Sir, I move.

**Mr. Vice-President :** Then there are amendment Nos. 253 to 258. Is any Member going to move his amendment?

The amendments were not moved.

**Shri Lokanath Misra :** Sir, I want to move amendment No. 259 standing