

Thursday, 25th November, 1948

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**CONSTITUENT ASSEMBLY
DEBATES
OFFICIAL REPORT**

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CONSTITUENT ASSEMBLY OF INDIA

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CONSTITUENT ASSEMBLY OF INDIA

Thursday, 25th 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 39-A

Mr. Vice-President (Dr. H. C. Mookherjee): Notice of an amendment has been received from Dr. Ambedkar. Will you please move your amendment, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar : (Bombay: General): Mr. Vice-President, I move:

That in article 39-A delete the words beginning from “secure” up to “separation of”, and in their place substitute the word “separate”.

So that the article 39-A, with this amendment would read as follows:

“The State shall take steps to separate the judiciary from the executive in the public services of the State.”

The House will see that the object of this amendment is to eliminate the period of three years which has been stated in the original article as proposed by 39-A. The reasons why I have been obliged to make this amendment are these. There is a section of the House which feels that in these directive principles we ought not to introduce matters of details relating either to period or to procedure. These directive principles ought to enunciate principles and ought not to go into the details of the working out of the principles. That is one reason why I feel that the period of three years ought to be eliminated from article 39-A.

The second reason why I am forced to make this amendment is this. The expression “three years” has again brought about a sort of division of opinion amongst certain members of the House. Some say, if you have three years period, then no government is going to take any step until the third year has come into duration. You are practically permitting the provincial legislatures not to take any steps for three years by mentioning three years in this article. The other view is that three years may be too short. It may be that three years may be long enough so far as provinces are concerned, where the administrative machinery is well established and can be altered and amended so as to bring about the separation. But we have used the word “State” in the directive principles to cover not only the provincial governments but also the governments of the Indian States. It is contended that the administration in the Indian States for a long time may not be such as to bring about this desired result. Consequently the period of three years, so far as the Indian States are concerned, is too short. All these arguments have undoubtedly a certain amount of force which it is not possible to ignore. It is, therefore, thought that this article would serve the purpose which we all of us have in view, if the article merely contained a mandatory

[The Honourable Dr. B. R. Ambedkar]

provision, giving a direction to the State, both in provinces as well as in the Indian States, that this Constitution imposes, so to say, an obligation to separate the judiciary from the executive in the public services of the State, the intention being that where it is possible, it shall be done immediately without any delay, and where immediate operation of this principle is not possible, it shall, nonetheless, be accepted as an imperative obligation, the procrastination of which is not tolerated by the principles underlying this Constitution. I therefore submit that the amendment which I have moved meets all the points of view which are prevalent in this House, and I hope that this House will give its accord to this amendment.

Prof. Shibban Lal Saksena : (United Provinces: General): Sir, Dr. Ambedkar has already moved an amendment, that is he has added a new article No. 39-A. Is it permissible to a member to amend his own amendment?

Mr. Vice-President : Yes. I would request you all to bear in mind that we have to go to the fundamentals and not to technicalities.

Shri R. K. Sidhwa (C. P. and Berar: General): Mr. Vice-President, Sir, I am very glad that Dr. Ambedkar has moved this amendment and that at this late stage better counsels and sense have prevailed. In article 36 a similar time limit has been mentioned in connection with a very important matter—primary education. I objected to it, then saying that in the directive principles, no such time limit should be fixed. But my voice was one in the wilderness and the article was carried. But I am very glad at this late stage, better sense has prevailed and the time limit in this article has been sought to be removed.

Yesterday my friend Mr. Das stated that this question of separation of the executive and the judiciary has absolutely changed in view of the attainment of freedom. I was rather surprised to hear such an argument. If a principle, a basic principle was bad at the time of the British regime, I fail to understand how it can be good in free India. The basic principle is this, that the judiciary and the executive functions are combined. The District Magistrate is the prosecutor and he is also the administrator of justice. May I ask whether under these circumstances, can impartial justice be dispensed by the same person who prosecutes and also at the same time sits in judgment over that case?

As Dr. Ambedkar stated yesterday, ever since its inception the Congress has been stating that these two functions must be separated if you really want impartial justice to be done to the accused persons.

The arguments advanced yesterday were that in Free India the conditions have changed and that therefore it is not desirable that these two functions should be separated. The real secret, so far as I know, of those who advocate retaining the same position is that they want to retain their power. If the Honourable Ministers of the Provincial Governments feel that these two should not be separated, it is because they feel the power of appointments, which is in their patronage, would go away from them to the High Court Judges. I am very sorry if that is so. I am glad however that some of the Provinces have already started in this direction; but if any Provincial Governments feel that under the changed condition this change should not come, I will be very sorry for them because nothing has changed in the very fundamental principle after we had attained our freedom; on the contrary after the freedom or even during the partial freedom that we had, I would have preferred that our Congress Governments should really have taken an initiative in this matter. I am very glad to observe that some of the Provinces are going in that direction. The High Court Benches, even in the

British regime, have stated times without number that if you really want impartial justice done, these two departments must be separated.

While the time-limit has been removed, I expect, Sir, that after the passing of this Constitution or rather immediately I should say, I would desire these two functions should be separated. I therefore expect that while the time-limit has been removed, the Ministries in the Provinces will realize their duty and see that these two functions are separated in the interests of right and impartial justice.

With these words I commend the amendment that has been moved, for the acceptance of this House.

Mr. Vice-President : I shall now put this amendment to the vote.

Pandit Hirday Nath Kunzru (United Provinces: General): Sir, it is an important amendment and I hope you will allow the House to express its opinion on it.

Mr. Vice-President : Will you please come to the microphone then?

Pandit Hirday Nath Kunzru : Mr. Vice-President, the proposition that judicial functions should be separated from the executive was placed before the House yesterday by Dr. Ambedkar. I think that he gave the matter his very careful consideration before proposing that this separation should take place in three years.

Everyone knows the importance of this subject. The demand for the separation of the judicial from the executive functions so that the executive may have nothing to do with the administration of justice, is about fifty years old, and when Dr. Ambedkar brought forward his proposal I thought that the Government of India were desirous that this reform should be accomplished as speedily as possible.

I know, Sir, that this proposition would have been included in the Chapter relating to Directive Principles and would, therefore, not have been binding either on the Government of India or on any State and I wondered whether probably for that reason it was not included among the Directive Principles drafted by the Drafting Committee. But the matter having come before the House, and Dr. Ambedkar's proposition having been accepted, it is a matter of regret and deep regret to me that he should now seek to modify the proposition in such a way as to leave it to the discretion of the local Governments when the reform that we have all been insisting on for half a century should be carried out.

Dr. Ambedkar, while defending the deletion of the period, mentioned in his proposition, said that some people held the view that it might create the impression that nothing was to be done for three years. I wonder, Sir, whether he was satisfied with his own explanation. There is no one here so simple as to feel that the insertion of his proposal in the Draft Constitution would have made the Provincial Governments feel that they could rest comfortably for three years and that such action as they might choose to take might be taken only when this period was about to expire.

Had this proposition not been passed by the House yesterday the matter would have been quite simple. Frankly, I attach no value to any of the Principles included in the Chapter on Directive Principles, particularly as there is at the commencement of that Chapter an article saying that nothing in that Chapter can be judicially enforced. But the matter having been placed before, and accepted by, the House it is unfortunate that any change should be sought to be made in it. The impression that will be created now

[Pandit Hirday Nath Kunzru]

will be that the State is not serious in separating the judicial from the executive functions and that it means to take its own time in order to bring about the separation. Had this proposition not come before us, we could still have felt that this separation which is so important to the impartial administration of justice might be carried out within a reasonable period of time. But if the period of three years is now deleted and the matter is left entirely to the discretion of the authorities, the effect of this deletion will be very unfortunate. It is bound to create both in official and non-official circles the feeling that the reform is not considered to be of any great importance, that other reforms may easily be given precedence over it, and that it is merely an ideal to be kept in view by the authorities.

Therefore, I feel strongly that the House should not agree now to the amendment proposed by Dr. Ambedkar. Why should Dr. Ambedkar or any other person now try to bring about a change? Frankly, I see no obvious reason in favour of such a step. This proposal will be one of the directive principles included in the Draft Constitution. The period of three years will not therefore be binding on any authority. If it is feared that it might not be within the resources of any province to introduce this reform within three years, the fact that the provision would not have been mandatory would have enabled that province to take a little longer time in order to separate judicial from executive powers. It would not have compelled any province regardless of its financial or administrative position to carry out the proposal in three years. I see no reason therefore why a change should be made. On the contrary, I see every reason why it should not be made. It would be most unfortunate, it would be most undesirable, it would be an act of public disservice, to give the public and the authorities the impression that this vital reform may be postponed indefinitely. I therefore oppose the amendment now proposed by Dr. Ambedkar and I hope that it will be strenuously resisted by the House.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): Mr. Vice-President, the Honourable Member who has just spoken referred to the Government of India in this connection. May I, on behalf of that Government, explain the position and express my regret at the fact that the Government of India as such, jointly certainly and largely even individually, is not intimately connected with the proceedings of this House as it ought to and should be? It should not be taken that any matter put forward here comes from the Government of India as such, although the Government is intensely interested in it naturally and would like to place their views before this House whenever it is possible. There are, if I may say so with all respect to this House, a number of matters which they have considered, on which the Government might have liked to place their views before this House, but owing to the stress of circumstances, owing to the fact that while this House is sitting matters of extreme moment are before the Government of India, whether in the domestic field or the international field, that many members of the Government are perhaps at the present moment more over-burdened with these problems and with work that even normally is so difficult, that it is their misfortune not to be able to give such time to these very important considerations of the Constitution as they ought to. I regret that on my own part, and I think the loss is entirely mine.

Coming to this present amendment, if I may again make some general observations with all respect to this House, it is this: that I have felt that the dignity of a Constitution is not perhaps maintained sufficiently if one goes into too great detail in that Constitution. A Constitution is something which should last a long time, which is built on a strong foundation, and which may of course be varied from time to time — it should not be rigid — nevertheless, one

should think of it as something which is going to last, which is not a transitory Constitution, a provisional Constitution, a something which you are going to change from day to day, a something which has provisions for the next year or the year after next and so on and so forth. It may be necessary to have certain transitory provisions. It will be necessary, because there is a chance to have some such provisions, but so far as the basic nature of the Constitution is concerned, it must deal with the fundamental aspects of the political, the social, the economic and other spheres, and not with the details which are matters for legislation. You will find that if you go into too great detail and mix up the really basic and fundamental things with the important but nevertheless secondary things, you bring the basic things to the level of the secondary things too. You lose them in a forest of detail. The great trees that you should like to plant and wait for them to grow and to be seen are hidden in a forest of detail and smaller trees. I have felt that we are spending a great deal of time on undoubtedly important matters, but nevertheless secondary matters—matters which are for legislation, not for a Constitution. However, that is a general observation.

Coming to this particular matter, the honourable Speaker, Pandit Kunzru, who has just spoken and opposed the amendment of Dr. Ambedkar seems to me, if I may say so with all respect to him, to have gone off the track completely, and to suspect a sinister motive on the part of Government about this business. Government as such is not concerned with this business, but it is true that some members of Government do feel rather strongly about it and would like this House fully to consider the particular view point that Dr. Ambedkar has placed before the House today. I may say straight off that so far as the Government is concerned, it is entirely in favour of the separation of judicial and executive functions (*Cheers*). I may further say that the sooner it is brought about the better (*Hear, hear*) and I am told that some of our Provincial Governments are actually taking steps to that end now. If anyone asked me, if anyone suggested the period of three years or some other period, my first reaction would have been that this period is too long. Why should we wait so long for this? It might be brought about, if not all over India, in a large part of India, much sooner than that. At the same time, it is obvious that India at the present moment, specially during the transitional period, is a very mixed country politically, judicially, economically and in many ways, and any fixed rule of thumb to be applied to every area may be disadvantageous and difficult in regard to certain areas. On the one hand, that rule will really prevent progress in one area, and on the other hand, it may upset the apple-cart in some other area. Therefore, a certain flexibility is desirable. Generally speaking, I would have said that in any such directive of policy, it may not be legal, but any directive of policy in a Constitution must have a powerful effect. In any such directive, there should not be any detail or time-limit etc. It is a directive of what the State wants, and your putting in any kind of time-limit therefore rather lowers it from that high status of a State policy and brings it down to the level of a legislative measure, which it is not in that sense. I would have preferred no time-limit to be there, but speaking more practically, any time-limit in this, as Dr. Ambedkar pointed out, is apt on the one hand to delay this very process in large parts of the country, probably the greater part of the country; on the other hand, in some parts where practically speaking it may be very difficult to bring about, it may produce enormous confusion. I think, therefore, that Dr. Ambedkar's amendment, far from lessening the significance or the importance of this highly desirable change that we wish to bring about, places it on a high level before the country. And I do not see myself how any Provincial or other Government can forget this Directive or delay it much. After all, whatever is going to be done in the future will largely depend upon the sentiment of the people and the future Assemblies and Parliaments that will

[The Honourable Pandit Jawaharlal Nehru]

meet. But so far as this Constitution is concerned, it gives a strong opinion in favour of this change and it gives it in a way so as to make it possible to bring it about in areas where it can be brought about—the provinces, etc.—and in case of difficulty in any particular State, etc., it does not bind them down. I submit, therefore, that this amendment of Dr. Ambedkar should be accepted. (*Cheers*).

Dr. Bakshi Tek Chand (East Punjab: General): Mr. Vice-President, Sir, I rise to lend my whole hearted support to the amendment which has been moved by Dr. Ambedkar today. The question of the separation of executive and judicial functions is not only as old as the Congress itself, but indeed it is much older. It was in the year 1852 when public opinion in Bengal began to express itself in an organised form that the matter was first mooted. That was more than thirty years before the Congress came into existence. After the Mutiny, the movement gained momentum and in the early seventies, in Bengal, under the leadership of Kisto Das Pal and Ram Gopal Ghosh, who were the leaders of public opinion in those days, definite proposals with regard to the separation of judicial and executive functions were put forward. Subsequently, the late Man Mohan Ghosh took up this matter and he and Babu Surendranath Bannerji year in and year out raised this question in all public meetings.

When the Congress first met in the session in Bombay in 1885, this reform in the administration was put in the forefront of its programme. Later on, not only politicians of all schools of thought, but even retired officers who had actually spent their lives in the administration, took up the matter and lent their support to it. I very well remember the Lucknow Congress of 1899 when Romesh Chunder Dutt, who had just retired from the Indian Civil Service, presided. He devoted a large part of his presidential address to this subject and created a good deal of enthusiasm for it. Not only that: even retired High Court Judges and Englishmen like Sir Arthur Hobhouse and Sir Arthur Wilson, both of whom subsequently became members of the Judicial Committee of the Privy Council, lent their support to this and they jointly with many eminent Indians submitted a representation to the Secretary of State for India to give immediate effect to this reform.

In the year 1912, when the Public Service Commission was appointed, Mr. Abdur Rahim, who was a Judge of the Madras High Court and was for many years the President of the Central Legislature, appended a long Minute of Dissent and therein he devoted several pages to this question.

Therefore, Sir, the matter has been before the country for nearly a century and it is time that it is given effect to immediately. One of the Honourable Members who spoke yesterday, observed that this matter was of great importance when we had a foreign Government but now the position has changed, and it may not be necessary to give effect to it. Well, an effective reply to this has been given by the Honourable the Prime Minister today. He has expressly stated that it is the policy of the Government, and it is their intention to see that this reform is given immediate effect to.

Not only that, Sir, another objection was raised that on financial grounds it will not be feasible to separate the judiciary from the executive. Well, to this, again, an effective reply has come from the province of Bombay. Soon after the Congress Government assumed office in 1946 in Bombay, it appointed a Committee to look into this question. It was presided over by a Judge of the Bombay High Court and consisted of eleven other Members. It submitted its report on 11th October 1947. I have got a copy of that report in my hands. I do not think it is necessary to give detailed extracts from that report. This Committee has come to the unanimous conclusion that the separation of judicial and executive functions was a feasible and practical proposition. So far as the financial aspect was concerned, they examined the matter in great detail and

have estimated that the additional expense will be about ten lakhs of rupees a year. From this you will find that the proposition is such that it is not financially impracticable. It is feasible. The Honourable the Prime Minister of Bombay who happens to be here today tells me that his Government is going to implement the scheme at the earliest possible opportunity.

The Honourable Shri B. G. Kher : I confirm it.

Dr. Bakshi Tek Chand : I am glad to hear that he confirms it. This gives the quietus to these two objections which have been raised, that because of the changed circumstances, because we have attained freedom, it is no longer necessary and that the financial burden will be so heavy that it might crush provincial Governments. Both these objections are hollow.

One word more I have to say in this connection and that is, that with the advent of democracy and freedom, the necessity of this reform has become all the greater. Formerly it was only the district magistrate and a few members of the bureaucratic Government from whom interference with the judiciary was apprehended, but now, I am very sorry to say that even the Ministers in some provinces and members of political parties have begun to interfere with the free administration of justice. Those of you, who may be reading newspaper reports of judicial decisions lately, must have been struck with this type of interference which has been under review in the various High Courts lately. In one province we found that in a case pending in a Criminal Court, the Ministry sent for the record and passed an order directing the trying Magistrate to stay proceedings in the case. This was something absolutely unheard of. The matter eventually went up to the High Court and the learned Chief Justice and another Judge had to pass very strong remarks against such executive interference with the administration of justice.

In another province a case was being tried against a member of the Legislative Assembly and a directive went from the District Magistrate to the Magistrate trying the case not to proceed with it further and to release the man. The Magistrate who was a member of the Judicial Service and was officiating as a Magistrate had the strength to resist this demand. He had all those letters put on the record and eventually the matter went up to the High Court and the Chief Justice of the Calcutta High Court made very strong remarks about this matter.

Again in the Punjab, a case has recently occurred in which a Judge of the High Court, Mr. Justice Achu Ram, heard a *habeas corpus* petition and delivered a judgment of 164 pages at the conclusion of which he observed that the action taken by the District Magistrate and the Superintendent of Police against a member of the Congress Party was *mala fide* and was the result of a personal vendetta. These were his remarks.

In these circumstances, I submit that with the change of circumstances and with the advent of freedom and the introduction of democracy, it has become all the more necessary to bring about the separation of the judiciary from the executive at the earliest possible opportunity.

My honourable and respected friend, Pandit Kunzru, thinks that the deletion of the three years limit has got some sinister motive behind it. I myself was originally in favour of such a time limit being fixed, but for the reasons which have been so lucidly put before this House by the honourable Prime Minister, it is neither desirable nor necessary. A time limit of this kind may, in certain cases, defeat the very object in view. I have mentioned the case of Bombay where they are going ahead with the separation. I am told that the Madras Government had also appointed a similar Committee which has reported on the same lines as the Bombay Committee. Thus we have got two of our principal provincial governments taking action in this matter. In the Punjab, a scheme

[Dr. Bakshi Tek Chand]

for separation of the judiciary from the executive was prepared many years ago by a Committee appointed by the Government of the united Punjab. I have no doubt that in the East Punjab also steps will be taken in this direction. At the same time we have to take the case of the newly formed administrations and Indian States who are merging or forming Unions amongst themselves and are States for purposes of this clause. Some of these newly set-up administrations may require a longer time limit than three years. Therefore, Sir, fixing a time limit would not be a proper thing.

For these reasons I support the amendment which has been moved by Dr. Ambedkar today.

Shri Lokanath Misra (Orissa : General) : Sir, we are all beholden to Honourable Pandit Nehru for his frank and straight advice on this matter, because as I see and as I have heard the proceedings of the House, for some days, everybody is trying to put in changes in the Constitution as if it is an election manifesto. Now, Sir, as a lawyer I know the difficulties of the lawyer, the difficulties of the litigants as also the difficulties of the law courts. My first point is this that we are perhaps going to put in this article in the Directive Principles for the better administration of justice, and to that end the article that we are going to put in would not serve any purpose because for better administration of justice, we want first of all just laws. Unfortunately due to our slavery, we have so many bad laws that, however justly they may be administered, they cannot give you justice. Therefore, we must have just laws. I am sure that in the new order we will frame our laws in such a manner that their administration would give us justice. Apart from that, it is said here that there must be separation of the judiciary from the executive. Perhaps we do not thereby mean that the judiciary should not be executive and the executive should not be judicious. I should rather say and it is my experience that when the executive works, it becomes injudicious and when the judiciary works, it becomes too dilatory. Therefore, while separation of the judiciary from the executive there must be, we must at the same time make people know and make the judicial officers and executive officers know that when an executive officer executes, he must do it judiciously and when a judicial officer or a judge executes, he must do it in time. I will give you one example. Sir, in my own province of Orissa, we recently passed a law called the Tenants Protection Act. We passed it in all good sense and we know that it will do people good, but although a year has passed, I have found that it has never been put into practice for the simple reason that the law of evidence is so defective, the law of enquiry is so defective and the judges are so half-hearted. Even though the Act has been passed, it has given no good. Therefore, the mere separation of the judiciary from the executive will not serve our purpose. We require something more.

Then again, Sir, I should say another thing which we require for the proper administration of justice. If we expect any good from the separation of the judiciary from the executive, we must be sure of one thing. The profession of law, being a private business, does not really help justice. It feeds on fat fees and forged facts. Lawyers may be as much officers of the Courts as the judges but they have no prestige unless they earn fat fees. Of course for this the lawyers may be to blame to some extent, but, Sir, the lawyers have to earn their living. They have to win their cases and to win their cases they have to formulate evidence and do all sorts of things, and unless they win one or two cases, they have no chance. Therefore I say that unless the professions of law and medicine become a State business, you

cannot have proper administration of justice either for rights or for health and disease. That means that just as government pleaders are engaged, attorneys are engaged, the profession of law should be paid and controlled by the State to the extent that they need only help justice and not have to promote perjury or forgery to win a case and please their clients. But now the fact remains that this side wins or that side loses, but in all sides truth and justice are lost.

Mr. Vice-President : Are you supporting or opposing the amendment?

Shri Lokanath Misra : I am supporting the amendment in principle. I was just going to say that it is simply a claptrap device. If we are whole-heartedly for the administration of better justice, mere separation of the judiciary from the executive would not do. Sir, I therefore beg to submit that if we are sincere in our desire for better administration of justice, not only should the judiciary be separated from the executive but the State should also see that law becomes so simple and so few and at the same time so intelligible to the masses that law is nothing far away and frightful and better administration of justice becomes a reality and does not remain a farce.

(Amendments Nos. 1010 to 1012 were not moved.)

Mr. Vice-President : We have had a reasonable amount of debate, and I would like to put the matter to vote.

Shri H. V. Kamath (C. P. & Berar : General) : It is a very important matter that is before the House.

Mr. Vice-President : I am afraid there are many more speakers. I would like to accommodate them, but it is now impossible. I am sorry. I shall put this amendment to vote.

Mr. Vice-President : The question is:—

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

“39-A. The State shall take steps to separate the judiciary from the executive in the public services of the State.”

The motion was adopted.

Mr. Vice-President : The question is:

That article 39-A stand part of the Constitution.

The motion was adopted.

Article 39-A was added to the Constitution.

Mr. Mohd. Tahir (Bihar : Muslim) : Mr. Vice-President, Sir, I beg to move:

That after article 39, the following new article be inserted and the rest of the articles be renumbered:—

“40. It shall be the duty of the State to protect, safeguard and preserve the places of worship such as Gurdwaras, Churches, Temples, Mosques including the graveyards and burning ghats.”

Today, we are framing the constitution of our great country and the eyes of every individual of our great country are fixed on this Assembly to see what we are doing and what we are granting for them. At this important and historical period, Sir, I have moved my amendment, a simple amendment by which I want that the State should be responsible for the protection, safeguard and preservation of religious places of worship for all communities of the Indian Nation. There was a time when this country was ruled by the Englishmen, by the foreigners through a constitution framed by them,—of course a constitution which was foreign to us. In that Constitution, of course, no such idea was incorporated, for the simple reason that the Britisher had the policy to play a game at the cost of the different communities of the Indian Nation. But, now we see that the country is ours, the State belongs to us and, of course, we have a right to claim the protection of our religious

[Mr. Mohd. Tahir]

places of worship. Unfortunately, Sir, the Father of the Nation is not amongst us today; otherwise I can say without any fear of contradiction that I must have had his sacred consent for the acceptance of this amendment. Anyhow, I appeal to every individual member of the House and especially to every member of the Congress that they will give strong support for the acceptance of this amendment and I also appeal to the Honourable mover, Dr. Ambedkar, to give due consideration to it.

Sir, only yesterday, the House was bold enough to give effect to prohibition. The House was bold enough to give protection to the cows of our country and I hope that the House will be still bolder to give protection to the religious places of worship.

Sir, with these few words, I appeal again to every honourable Member of this House to give support to this simple and very light amendment.

Lastly, I would say that this amendment is the only amendment which would show one of the best qualities which can be found in this whole constitution for a secular state. With these few words, Sir, I move.

Shri M. Ananthasayanam Ayyangar (Madras : General) : Mr. Vice-President, Sir, it is certainly the duty of the State to protect all places of public worship such as Gurdwaras, Churches, Temples, Mosques and also graveyards and burning ghats. The general law of the land—the penal law—has made ample provision for this. The Honourable mover of this amendment wants three things to be done and they are to protect, safeguard and preserve. So far as “to protect and safeguard” are concerned, it is the duty of the State to protect all places of public worship whether of property, whether belonging to an individual or a community. Particularly, places of public worship will be protected and safeguarded against all invasion, against all aggression and any molestation. That is one of the fundamental rights that is contained in the earlier part, Part III. Therefore, it need not be a directive here. But so far as the preservation of the places of public worship is concerned, there is the difficulty. We will assume that a temple is abandoned by the community which was erstwhile utilising that for public worship. Is it the duty of the State to preserve that, though it may have been a place of public worship? Article 39 provides that it shall be the obligation of the State to protect every monument or place or object of artistic or historic interest. These it will certainly preserve. ‘Preserve’ includes maintaining or keeping it in the same condition. If every temple and every gurdwara is to be maintained, which may be abandoned by a community, then it will be imposing an unnecessary obligation on the State and diverting the tax-payers’ money to purposes which are not legitimate charges upon it. On the other hand, it is the duty of the community to maintain and preserve every gurdwara and temple. All that can be expected of the State is that it should see that there is no molestation, it should protect them against all aggression. That is all that can be expected and for that there is ample provision in the Fundamental Rights and also in the general Criminal Law. On the whole, I am sorry to oppose this amendment, however much I might like that all these places of worship to whichever community they might belong must be protected. They must be safeguarded. I am equally one with him that places of God ought not to be molested. There is ample provision already. Therefore, this amendment need not be accepted.

The Honourable Dr. B. R. Ambedkar: Sir, I do not accept the amendment.

Mr. Vice-President : I will now put the amendment to vote.

The amendment was negatived.

Article 40

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

That article 40 form part of the Constitution.

There are a number of amendments which I shall read one after the other.

(Amendments Nos. 1016 and 1017 were not moved.)

Mr. Vice-President : No. 1018. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : I understand Mr. Kamath is moving an amendment.

Shri H. V. Kamath : I shall be moving my amendment after Dr. Ambedkar has moved his.

The Honourable Dr. B. R. Ambedkar : Sir, I move: "that for the existing article 40, the following be substituted:—

"40. The State shall —

- (a) promote international peace and security;
- (b) seek to maintain just and honourable relations between nations; and
- (c) endeavour to sustain respect for international law and treaty obligations in the dealings of organised people with one another."

Sir, this amendment merely simplifies the original article 40 and divides it into certain parts separating each idea from the other so that any one who reads the article will get a clear and complete idea of what is exactly intended to be covered by article 40. The propositions contained in this new article are so simple that it seems to be super-arrogation to try to explain them to the House by any lengthy speech.

Sir, I move.

Mr. Vice-President : There are certain amendments to this which I am calling out. No. 74 Mr. Sarwate.

Shri V. S. Sarwate (United States of Gwalior-Indore-Malwa-Madhya Bharat): Mr. Vice-President, Sir, I beg to move an amendment to this amendment. My amendment stands thus:

"That in amendment No. 1018 of the list of amendments, in article 40, after the words "The State shall—" and before sub-clause (a), this new clause be inserted and the existing clause be renumbered accordingly:—

- (a) foster truthfulness, justice, and sense of duty in the citizens;"

Sir, the House may note that this amendment seeks to embody the characteristics of the Gandhian ideology. Mahatmaji led our struggle for independence with these characteristics and won it. The House may further note that the amendment begins with truthfulness. I need hardly point out that in Mahatmaji's view, truth was God and if I may be permitted to say so, I think he attached more importance to truth than to non-violence. There may be exceptions to non-violence; there is none to truth. Those who do not believe even in God certainly do believe in truth. Society is based on truth. Therefore, he styled his autobiography not as Experiments after non-violence, but as Experiments after truth. Therefore, I commend to this House this amendment which embodies these characteristics.

I would anticipate certain objections that may be raised to this. The first objection may be that this is too general and too vague to have any practical effect. I would submit that if this be the objection, I stand in honourable company, because, the rest of the clauses probably may be subject to the same objection. I may further point out that if need be, concrete steps which

[Shri V. S. Sarwate]

could be taken to bring into effect this amendment can be suggested. But, that is not necessary. I believe after all the principles given in this Chapter are of such a nature that they are fundamental, that they are basic, and that efforts to implement them to the fullest extent would have to be taken as long as society goes on. That is exactly the description which may be applied to this amendment also. I would say only a few more words, Sir, I would submit that in the whole of the Constitution as it stands, one would be painfully surprised that there is absolutely nothing which shows one way or the other and which sheds light on the Fundamental principles of the Gandhian philosophy.

Another objection that may be taken possibly is this: this need not be said because such moral principles are not laid down in a Constitution. I would very respectfully submit that it is not at present the model which is followed in Constitutions. For instance, in the Constitution of the U.S.S.R., in the first Chapter which gives the political foundations and economic foundations, they have given the famous sentence of Marx: "To those who shall need, sufficient shall be given; to this every man must work according to his ability; every man must get according to his needs."

They have given in this draft Constitution the Fundamental ideas which move you to the adoption of the Constitution and accordingly, I would commend this to the good sense of the House. I am sure that my honourable Friends and colleagues and others, those who have followed Mahatma Gandhi in this struggle, would like to have in this Constitution something which he had given to us, and which he has left for us ever to remember and follow.

Shri H. V. Kamath : Mr. Vice-President, Sir, at the outset, may I say that a single amendment which I had given notice of has been split up into three different amendments, numbers 82, 83 and 84. I am not saying this as a carping critic; but I find that it would have been better if this had appeared as a single amendment as I had sent it. I know our office is heavily overworked and I appreciate that they are doing very well in the face of the heavy odds which they are contending with. I shall read it as one amendment by your leave. It will read thus.

Mr. Vice-President : I understand that they have been broken into three amendments because you seek to make alterations in three different places—not continuously. That is a technical explanation for a technical objection.

Shri H. V. Kamath : If the three amendments are taken separately and not together, they will have no meaning. Anyway that is a minor objection. I do not want to press it. With your permission, Sir, I would like to read it as one amendment. Sir I move—

"That in amendment No. 1018 of the List of Amendments in article 40, after the word 'shall' the words 'endeavour to' be inserted, in clause (b) the words 'seek to' be deleted; deleted; in clause (c) the words 'endeavour to' 'be deleted' ".

So that if this amendment be accepted by the House the amendment of the Drafting Committee will read as follows:—

"The State shall endeavour to (a) promote international peace and security; (b) maintain just and honourable relations between nations; and (c) sustain respect for international law and treaty obligations in the dealings of organised people with one another."

This amendment seeks only a slight structural change in the amendment brought forward by Dr. Ambedkar so as to bring out or indicate the directive character of the principle embodied in article 40. It is recognised and it has been always India's endeavour to promote international peace and security and to enhance respect for international law and treaty obligations. I think, Sir, and I am sure the House will agree with me when I say that

India with her ancient cultural and spiritual heritage and her tradition—centuries old tradition of non-aggression—is best qualified to enhance respect for international law and treaty obligations. It is common knowledge that within the last thirty years regard for international law and treaties had sunk to a low level and treaties are regarded as mere scraps of paper. I hope that in the new world in which we are living today and in which we are playing and are going to play a vital part, we will be able to bring about a vital change in international relations, so that at an early date we will have really one world Government or one Super-State to which the various nation-States of the world will have surrendered part of their sovereignty and to which all these nation-States will owe willing allegiance and will accept the Sovereignty of this Super-State. I do not wish to add anything more but I will only content myself with saying that in these days there is a tendency to regard international relations as not of paramount importance, but that tendency ought to be curbed, and we ought to give more attention to international affairs so that the world can really become one free world.

My friend Mr. Sarwate's amendment does not deal with the subject contained in article 40. Mr. Sarwate will see that article 40 deals with international relations and the amendment that he has moved is something which deals with the qualities of citizens in India. I do not think that is really relevant to the article under consideration and I think it cannot find a place here. Sir I move my amendments Nos. 82, 83 and 84 as one amendment to Dr. Ambedkar's amendment No. 1018.

Mr. Vice-President : Prof. Shibban Lal Saksena. Yours is the same as Mr. Kamath's.

Prof. Shibban Lal Saksena : Sir, I do not move:

Mr. Vice-President : Amendment No. 1019—Mr. K. T. Shah.

Prof. K. T. Shah (Bihar: General): Mr. Vice-President, Sir, I beg to move—"That for article 40, the following be substituted:—

"40. The Federal Republican Secular State in India shall be pledged to maintain international peace and security and shall to that end adopt every means to promote amicable relations among nations. In particular the State in India shall endeavour to secure the fullest respect for international law and agreement between States and to maintain justice, respect for treaty rights and obligations in regard to dealings of organised peoples amongst themselves."

Sir, in commending this motion to the House I would begin by recognising at once that, as far as the surface goes, there seems to be not much difference in the ideals sought to be attained by my amendment and those in the wording of article 40 as it stands. The difference may appear to be the difference of wording only. I submit, however, that though the difference seems to be a difference, superficially judging, of wording only, to me at any rate the difference in wording seems to conceal a difference of approach, a difference of out-look, perhaps also a difference of intention. I would urge, Sir, that we should leave no room for doubt about this matter. I will point out for instance that the original clause as it stands requires—

"That the State shall promote international peace and security by the prescription of open, just and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among governments and by the maintenance of justice and respect for treaty obligations in the dealings of organised people with one another".

Now I have emphasised in this connection that by such articles in our Constitution, we want to convey, not merely some vague promise or endeavour to promote, or even an obligation to promote international peace and security etc. I want, first and foremost, the State in India to be pledged to promote international peace and security.

[Prof. K. T. Shah]

The recent wrangles that we have seen in the International Security Council of the U.N.O. in regard for instance, to disarmament, the entire history in fact for the last twenty years or so of the problem of disarmament, would go far to convince any impartial observer that the powerful nations of the world do not really intend to disarm. They do not desire peace and security for peoples, but only for their friends and associates, and of course, for themselves. Now so long as you continue to indulge in a race between yourselves as to who shall disarm first, it is unlikely that you would be finding any great progress in an all-round disarmament, as the first step to securing international peace. I would submit that somebody will have to make a beginning and such a beginning cannot be made unless an open, frank declaration of policy, pledging a nation unreservedly to peace, to the maintenance of international law and friendship is given. Unless that is given, it would be impossible to make a real beginning in the task of all-round disarmament and securing and maintenance of peace.

We are, I admit, living today in a heavy atmosphere of all-round distrust and suspicion. And in that atmosphere, it is impossible to find people in any country willing to expose their own national security and independence, by taking the first step towards real disarmament. For us, however, in this country, I venture to submit to this House, there have been the teachings and the example of our great leader who made Non-violence, most clearly and unmistakably the rule of conduct, not only for individuals but also for nations. That non-violence was not, as I am afraid some people have been inclined to believe, a mere matter of, shall I say, political chicanery or practical expediency. It was a matter of religious belief, at least with him who preached it. It, therefore behoves us who claim to be following in this footsteps, and who claim to uphold his teachings, that this State at least, of which he has been proclaimed the father, should be pledged from the outset to the maintenance of peace.

May I, in this connection recall to this House the very categoric declaration which Mahatma Gandhi made at the time of the Round Table Conference which he attended. He said that if he got Swaraj, if the Congress was master in this country, one of the first things he would advise it to do would be to disband the army and the police, and anything else which savoured of violence in the organization of the Indian State. I do not know whether you would be prepared at this time, and living under the circumstances in which we are living, to carry out literally such a desire as that. But I know this, that unless we make a beginning, and pledge ourselves to the maintenance of peace, and to ensure security to all countries, we shall be making these professions sound too hollow to be believed. We would then indeed be in the good company of people who make loud professions for the maintenance of peace, but at the same time go on arming themselves to the teeth, making up piles of atomic bombs and threatening each other at every crisis, which is of their own creation, so that peace seems to be as distant as ever and certainly not as permanently established as one would desire it to be.

There are other circumstances, Sir, which also incline me to place this categoric declaration before the House, and desire that it be incorporated in our basic Constitution. The possibility merely of promoting peace and respect for international law in the world today may involve us in those combinations of nations which are taking place whereby rival imperialisms seems to be arrayed against each other. These combinations involve each part, each associate and each ally in their own designs for which we may have no taste. It has, in the past history, been our common complaint, that we have been dragged against our will, without our consent, into the imperialistic, aggressive wars of Britain. Now, when we are free, now when we may claim to

shape our own foreign policy, and determine our relations with other people ourselves, would it not be as well for us to declare that we at least from the start, shall pledge ourselves to peace that we as a people will take an oath whereby for no reason shall we resort to arms, to settle our differences with other countries, and with other peoples. If we are prepared to do so, then I do not see why we may not accept the amendment I am placing before the House.

Sir, reasons less idealistic than those I have so far referred to also indicate a course which I have now proposed. We are not only comparatively very poor in the matter of armaments, we are not only backward in all the material equipments that ensure some success in modern warfare, but we have not, I venture to think, that industrial background, that background of very highly developed modern mechanical or chemical industry or the scientific technique which alone is an assurance for securing adequate armament from our own resources, and so a chance for victory in the end, and for making an effective contribution for the maintenance of peace, at least for those, at any rate who believe in securing peace by piling up armaments.

We have been, I see, buying second-hand materials, like the cruiser that was ready for the scrap heap which we are supposed to have bought recently, or planes or other arms. Very often these weapons and vehicles are nothing more than what is designed for the scrap heap by their original owners, and these are unloaded upon us, and I do not know at what price. In any case, what I mean to say is that we are completely dependent, for our initial supplies of such material, upon outside producers.

And Sir, the mischief of this state of affairs does not end there. Modern armaments are so highly specialised, parts of these weapons and vehicles and instruments are so extremely standardised and inter-changeable, that once you begin to get your supplies of materials for warfare from a particular source, we shall be bound for ever to that particular source. If you change, the armament material already acquired will prove futile and useless.

Under these circumstances, for us to get involved in any particular combination, which compels us to model our armies, navies and air-forces upon the organizations and equipments of other places, and by keeping pace with them, so to say, in the race for armaments and ever more armament, would to my mind, be to spell disaster, and continued dependence in a most vital particular upon others which we should do our best to avoid.

The one thing that seems to me to be the best guarantee for avoiding any complications of this kind is here and now, to take a vow, so to say, pledge ourselves, as a people against any form of warfare, and for ever stand to maintain and uphold peace and international security for all countries of the world including our own. This, Sir, is not a matter of verbal profession only. I hope nobody would think that this implies mental reservation which, I for one, would utterly denounce. This is an expression as much of an idealism that has governed our actions and policies so far, as also of material consideration which I for one cannot omit placing before the House in commending this motion to it.

(Amendments No. 1020 to 1024 were not moved.)

Mr. Vice-President : Amendment No. 1025 in the joint names of Shri Damodar Swarup Seth and Shri Mohanlal Gautam.

Shri Damodar Swarup Seth (United Provinces: General): Sir, I move:

That in article 40, the following words be added at the end:

“It shall also promote political and economic emancipation and cultural advancement of the oppressed and backward peoples, and the international regulation of the legal status of workers with a view to ensuring a universal minimum of social rights to the entire working class of the world.”

[Shri Damodar Swarup Seth]

Sir, article 40 so far as it goes appears to be appropriate and good, but unfortunately it does not go far enough. While it rightly lays stress on promotion of international peace and security, it sadly ignores some of the basic causes which generally lead to conflagration and consequent devastation and destruction of the world. In this article nothing has been said about political and economic emancipation of the oppressed and backward people, nor has anything been said about the ensuring of minimum of social rights to the entire working class of the world through international regulation of their legal status.

It is clear that as we see, unless the basic causes of breach of peace and security are removed, it will not be possible to maintain peace, national or international, by simply arriving at an understanding between nations and nations. The continuance of the oppressed and backward people in this world has generally been a great menace to world peace. It offers temptation and encouragement to the exploiter and the blood-sucker in his nefarious job of exploitation and blood-sucking. It extends the hands of capitalism and nourishes imperialism and colonialism, paving the way for regional and international warfare.

So far as the working class is concerned, we see that it has not yet been able to secure even the universal minimum of their social rights. The workers of the world even today are the salt of the earth; it is they who produce wealth, it is they who make the world worth living in, but we see that they are nowhere living in a comfortable position. We see everywhere in this world that millions and millions of them are being changed into beggars without any homes or hearths. It is a point worth consideration that, when the workers who produce all the wealth of the world are not in a position to maintain themselves, it is difficult to consider who else will be able to live. I ask in all humility, when the salt has lost its savour wherewith is it to be salted? When the workers of the world die, who else will live in this world? India was till the other day an oppressed nation and I wonder if even today it is counted amongst the progressive people. It is therefore essential that now when we are making the Constitution of free India we, both in national and international interests, lay true emphasis on political and economic emancipation of the oppressed and backward classes and on ensuring the universal minimum to the entire working class of the world through international regulation of their legal status the lack of which so long has been causing breaches of peace and security. Unless that is done, Sir, I am afraid any efforts to promote peace and security will not be possible. I therefore hope that my amendment which is apparently very innocent and harmless will be accepted by this House ungrudgingly.

Prof. B. H. Khardekar (Kolhapur): Mr. Vice-President, Sir, I am here to support the amendment moved by Dr. Ambedkar, and to say a few words in general on article 40. I have promised you, Sir, to be very brief and I may say I cannot help being relevant.

In supporting the article, I wish to say a few words about two or three things: The position of international law today in the light of recent history; the relations between the different nations, and the role or the part—the very great part—that our country has to play in regard to the different nations.

Mr. Austin, a great jurist, says that there is no such thing as international law at all—if there is anything it is only positive morality. Very briefly he gives three reasons: that there is no legislature, no judiciary, no executive. In saying that there may be positive morality I think even there he is wrong. If there were to be morality amongst nations, well, we would not have all that has been going about. If there is a morality amongst nations today it is the morality of robbers. If there is any law today it is the law of the jungle where

might is right. That is why I think the part that India has to play and has played, is covered by Dr. Ambedkar's amendment which has not only verbal elegance to recommend it but also the intention that the country should take to certain actions if necessary. The part that India is to play is certainly very important because foundations of international morality have to be laid and only a country like India with its spiritual heritage can do it.

In support of Austin we find jurists like Gray. On the other hand, there are some international jurists like Hall, Westlake, Oppenheim and others who, because of their excessive zeal and anxiety to give international law a name and a shape, argue almost feverishly—somewhat childishly, if they are to be summarised—that is what they appear. Their contention is that it is very necessary to have international law and therefore we have international law. I might make it appear stupid by saying, “I think it is necessary for me to have a thousand pounds in my pocket; and if I think that I have a thousand pounds in my pocket, my place would be in the lunatic asylum”. Their wishes are father to their thought, and if wishes were horses beggars would ride; if there were to be an international law, peace would prevail. But that is unfortunately not the position. Mr. Brown, Jennings and others sit on the fence and take the middle course. They say that international law is neither a panacea nor a chimera. It is a thing in the process—it is growing, it is becoming. I subscribe to a certain extent to this view that if nations, and particularly if India were to lead the way, we may have some sort of international law in spite of all the chaos that we see today. Some efforts made so far I may refer to, within a couple of minutes (that I have got), in giving certain substance to the theories of the international jurists. The League of Nations, as you know, was an inglorious failure, unfortunately. Why? Because it was more or less a league of robbers. I met a friend of mine, who explained to me the reasons why the League of Nations failed so ingloriously. His father had told him: The headquarters of the League were situated in Switzerland at Geneva; salubrious climate, majestic Alps, sumptuous Swiss food, appetising women, exotic music and the hall for debate was something that gave sufficient exercise to the vocal organs—and the League came to nothing. It could not come to anything, because it was an institution meant to perpetuate a wrong that was perpetrated by the Treaty of Versailles. After the League, its successor is the United Nations. This also seems to be a weak, pusillanimous and impotent agency. But our Prime Minister has done a very wise, very diplomatic and morally also a very sound thing by lending his support to this weak agency. An agency which is meant for good things must be strengthened and I think the Article that we have in the directive is meant to be directed towards that particular end. India, as I said, has a spiritual heritage. The mission of India is the mission of peace. Right from Ram Tirth and Vivekananda down to Tagore and Gandhiji, we have been carrying on this mission of peace. Non-violence is in the soil and in the heart of every Indian. It is not something new. Gandhiji, if he has done anything, has very much strengthened it. Throughout history it is not because we have been weak but because it has been in our blood that we have always been peaceful, never aggressive. Therefore, it is in keeping with our history, with our tradition, with our culture, that we are a nation of peace and we are going to see that peace prevails in the world.

Now, Sir, I have some doubts about certain parts of the article that we are to be friends of all. But common sense and experience teach us that those who are friends of all sometimes have no friend at all. Therefore, when we want ends and means to be pure, we should make our policy somewhat clear. To Russia, we may and should say: “we accept and we appreciate your aims and ideals, but your means are rather crude, sometimes they are very doubtful.” To England and to America, we must say “we have very many misgivings about your aims and ideals. Your means are very very polished, very very civilised”.

[Prof. B. H. Khardekar]

So we should show a certain indication in our foreign policy and when we have men like Pandit Nehru at the helm of foreign affairs and when the foundations of peace and non-violence have been laid down by the Father of the Nation, this country need not despair of its future; it can even hold out a future to the whole of the world.

Shri Biswanath Das (Orissa : General): Sir, I stand to support the motion of the Honourable Dr. Ambedkar which has given a clear lead to the country. The Amendment which is to come as article 40 reiterates our policy and position regarding India's international relations. While the contribution of the West to international relations and promotion of international security was first the Hague Conference and secondly the League of Nations and now, thirdly, the United Nations Organisation, India even when she was in letters and bondage, had her mighty contribution, not in the shape of influence of prowess or wealth, but by bringing her thought into the field of international concept,—the mighty, intellectual and moral influence of a Tagore and a Gandhi who taught nothing short of international amity, honourable and open relations between nations and countries. This is a mighty contribution to the betterment of international relations in a world that is out for cut-throat competition in armament; and soon after, is bound to come into the field keen economic rivalry. This being the position today, it is difficult for India to decide what her international relations are going to be and what part she is going to play in the world. The motion of my Honourable friend Dr. Ambedkar not only lays down what we ought to do and what we have to do, but also states the limitations within which India is to play her role in international transactions with other nations. The role is honest; the role is upright; the role is open. India, under the leadership of Mahatma Gandhi, our great leader, has learnt to take to such open course of action. There is nothing hidden in our ways. There is nothing secret in our ways. That explains the difference between the course of action adopted by other States from those adopted by India.

Coming to our relations either present or future with the United Nations Organisation, we see that that Organisation is divided into blocs. We have stated in the clearest terms that we belong to no bloc, despite the fact that we are a young nation, a new born free state, with feeble power though our resources are mighty and have yet to be developed. In this strife between two big blocs, ours is a difficult and unenviable position. We have not to be in *blocs* and we have to fend for ourselves for our own defence and for our own security. Though our respected leader, the honourable Pandit Jawaharlal Nehru, has told us that he found no theocracy or no communal tendency in the near and Middle East States, we have the latest announcements in the Press that the very slogan of "Islam in danger" is bringing most of the Muslim Arab countries together against us. That is one difficulty. Our neighbour, the Pakistan State, always considers us unfortunately as enemy No. 1 despite the fact that we agreed to bring Pakistan into existence so as to bring about peace and amity between us, the two states. She regards us however like an enemy and raises the cry 'Islam in danger' which brings Muslim countries together.

Secondly, Sir, despite the unanimity of purpose disclosed by the united action of representatives from Pakistan and India, the fact remains that the Muslim countries gave the go-by to India when the South-West African question was discussed by the U. N. O. This leads us to the belief that they are made to play the game of the Britisher, the unseen hand of Britain and the unseen hands of South Africa and Britain together. These explain our difficulty and helplessness in the international sphere. I have already stated that our leaders have emphatically announced that we do not belong to any bloc. We are not helped by any bloc and attempts are even being made by the different blocs not to do anything which helps India on her way to progress. That being the

position I find little reason for my friend Seth Damodar Swarup coming forward with an amendment calling upon the Constituent Assembly to accept a position which is least fair to the best interests of the country. Sir, we are called upon to free the politically and economically exploited people of the world. Where is the necessary force to back this great programme of freeing the politically and economically exploited races of the world today in India? It might be that after some time India will be their beacon light and focus attention on the exploited countries of the world. That is our hope. But Heaven knows how long it will take for us to be able to do it. It is in the hands of God. I would therefore beg of Mr. Damodar Swarup and appeal to him to withdraw his amendment which expresses the point of view of the Socialists. I support the amendment moved by Dr. Ambedkar which clearly and fully brings out the aspirations of India. I fully support it.

Shri B. M. Gupte (Bombay : General): Sir, I rise to support the amendment moved by Dr. Ambedkar. It is really a matter for sincere gratification that the cardinal principle of our foreign policy that has been laid down in this article as proposed is the promotion of peace, international peace and security. There is no doubt it is a very desirable thing. All the world over, in the deep recesses of the human heart there is a passionate longing for peace and Mahatma Gandhi was the embodiment of this yearning for peace. After the devastation caused by two world wars, the world is again threatened with a third war and the world is anxious to avoid that catastrophe. Personally it would have given me greater satisfaction if, instead of merely laying down our objective as the promotion of peace, we could have devised and emphasised some method for the promotion of peace. I think Mahatma Gandhi has suggested one method. He laid down the principle of arbitration for the settlement of labour disputes. That principle could be very well extended to other departments of life and also to international disputes. I think it would have been better if we had provided that arbitration should be resorted to if we want to avoid war. We should hold out some substitute for war. Naturally there cannot be a better substitute than arbitration. Therefore I would have been very much gratified if we had laid down here that our international policy would be to encourage the settlement of disputes through arbitration. I do not want to move any amendment to that effect myself, but I certainly would like to stress that and I shall be very glad if this suggestion is acceptable to the Mover and he himself volunteers to bring forward such an amendment. With this suggestion, I support the amendment moved by Dr. Ambedkar.

Shri M. Ananthasayanam Ayyangar : Mr. Vice-President, though it comes as the last article, article 40, in this Part, I consider it as one of the most important articles. When a storm is raging we cannot escape it by keeping aloof. If we want to have peace and progress in this country it is absolutely necessary that the nations around us also maintain peace and are in the march of progress economically and socially. Therefore we must lay emphasis on this article which seeks to insist upon our taking part in the settlement of international disputes by arbitration and by peaceful means. I am not satisfied that this article is sufficient for this reason that even in the Charter of the Nations on which the U.N.O. is based, one or two articles are missing. That was the reason why the League of Nations failed. The Nations of the world have not come to an agreement that all people should be set at liberty, small and big alike, and that all nations or races occupying particular territories ought to be set free to manage their own affairs. This sentiment did not find a place in article 10 of the League of Nations. Neither does it find a place in the Charter of the United Nations today. Until this is done, I do not think there will be any real peace in the world. Even today the coloured people in Africa and other parts of the world are not assured that they will be set free. Mandates are imposed upon them and they never end. Mandates are

[Shri M. Ananthasayanam Ayyangar]

merely transferred from one hand to another hand and these people are kept under perpetual domination. The territorial integrity of the various countries are protected by collective security. That means that Holland will be allowed to continue here stranglehold on Indonesia and France will be allowed to keep its possessions in Asia and Africa. Whether we suggest resort to arbitration for the settlement of disputes or some other peaceful method, these things will continue. The last war broke out because England was an Imperialist power and even chhota Belgium was an Imperialist power and this encouraged nations like Germany and Japan to attempt to become imperialist powers too.

I would like very much that we should have some such clause that it shall be the duty and the constant endeavour of the Government of India to see that all people in the world are released from the domination of other people, that each people big or small, each nation or race big or small, get freedom to manage their own affairs within the territory which God has given them. Situated as we are, we cannot do it. For this purpose, arbitration is the sole means of settling international disputes. This also finds a place in the United Nations Charter. I would like, Sir, with your permission to add a clause, clause (d), to the amendment moved by my honourable friend, Dr. Ambedkar. If it is agreeable to the House and if you accept it, the clause will be—

“and (d) to encourage the settlement of international disputes by arbitration.”

This is the clause (d) of Mr. Gupte's amendment but he did not move it. The other items in the amendments moved by Dr. Ambedkar would not be really effective unless you suggest the means by which they could be given effect to. International relations can be peaceful, International agreements—trade and other agreements—can be enforced only by arbitration and not by resort to arms. Therefore, Sir, if the House accepts and if the honourable Dr. Ambedkar finds it convenient to accept it, I would suggest that the following be added as sub-clause (d) to his amendment:

“and (d) to encourage the settlement of international disputes by arbitration.”

Mr. Vice-President : Does the House give leave to Mr. Ayyangar to make that addition to the amended clause of Dr. Ambedkar?

Honourable Members : Yes.

Mr. Vice-President : Mr. Ayyangar, will you move it formally?

Shri M. Ananthasayanam Ayyangar : Sir, I move that in the amendment of Dr. Ambedkar, at the end add the following sub-clause:—

“and (d) to encourage the settlement of international disputes by arbitrations.”

Shri Mahavir Tyagi (United Provinces : General): Sir, I am opposed to this.

Mr. Vice-President : If you want to discuss the amendment moved by Mr. Ayyangar, Mr. Tyagi, you are perfectly entitled to speak.

Shri Mahavir Tyagi : Sir, the article as sought to be amended by Dr. Ambedkar is a mere pious wish. It does not add any substance to the Constitution. It may be all right when delegates go to foreign countries, mix and familiarise themselves with the delegates from other countries. But when I see the phrases used here. I wonder whether you are really thinking of war against any nation, because whenever I saw any nation speaking in these terms, they were always immediately followed by their guns and aeroplanes. This phraseology has been misused by other nations. I have my suspicions. We cannot question our own motives. You talk of arbitration of international disputes. But where are the arbitrators? We have seen the arbitrators who came here and have seen the way they have been functioning. It is very difficult to get honest arbitrators. How can anybody arbitrate in such matters?

Sir, I prefer war in such cases. War is also a philosophy, it is both a curse and a blessing. If these are our objectives, if we want to maintain peace and seek to maintain just and honourable relations between nations, then I say it is not possible if we remain weak and remain merely a meadow of green grass for bulls to come and graze freely. For the purposes mentioned in this clause what we want is armament, both of will and weapons, moral armament as well as physical armament. We should see to it that our nation is militarily strong. We should see to it that our army, our navy and air force remain strong. That should be the directive that we should give to our future Government of India if only to achieve our laudable objective of "world peace". As it is, we are a pygmy in the world. Who cares for you unless you are strong? Unless your argument has guns behind it, nobody would appreciate your arguments. Our present position is weak. I do not say that we are weak against any of our immediate neighbours but to count in the International field, we should be a first-class power. Our aim should be to become a first-class power, a strong power, so that our voice, our pleadings and our arguments may have some weight and people may know that they should not annoy this great country and that would mean a war. So, Sir, I want to reserve one privilege as a man of war, that in case we fail to achieve these objects peacefully, we shall war and accomplish these objects. With these words of reservation, I support whatever you have said, because it is all a pious wish.

Dr. P. Subbarayan (Madras : General): Mr. Vice-President, Sir, I am proposing only a small verbal amendment to Dr. Ambedkar's amendment clause (c) and that is to use the word to 'foster' instead of 'sustain'. Dr. Ambedkar says that he will accept this amendment. The House will give me permission to move this.

Shri T. T. Krishnamachari (Madras : General): Why?

Dr. P. Subbarayan : The reasons are obvious. I think my honourable friend, Mr. Krishnamachari knows it as well as I do.

Shri M. Ananthasayanam Ayyangar : You want to use the word 'foster' instead of the word "sustain".

Dr. P. Subbarayan : Because 'sustain' will imply force. I do not think that we want to use force of any kind either in the future Government of India or in the Government as it is constituted today.

The Honourable Dr. B. R. Ambedkar : Sir, I accept Mr. Kamath's three amendments. I accept Dr. Subbarayan's amendment and I accept the amendment moved by my honourable friend, Mr. Ananthasayanam Ayyangar. I do not accept any other amendment.

Mr. Vice-President : The question is that for article 40, the following be substituted:—

"40. The Federal Republican Secular State in India shall be pledged to maintain international peace and security and shall to that end adopt every means to promote amicable relations between nations. In particular the State in India shall endeavour to secure the fullest respect for international law and agreement amongst States and to maintain justice, respect for treaty rights and obligations in regard to dealings of organised peoples amongst themselves."

The motion was negatived.

Mr. Vice-President : The question is that for the existing article 40, the following be substituted: —

"40. The State shall endeavour to —

- (a) promote international peace and security;
- (b) maintain just and honourable relations between nations;
- (c) foster respect for international law and treaty obligations in the dealings of organised people with one another; and
- (d) encourage the settlement of international disputes by arbitration."

The motion was adopted.

Mr. Vice-President : The question is that in article 40, the following words be added at the end;

“It shall also promote political and economic emancipation and cultural advancement of the oppressed and backward peoples, and the international regulation of the legal status of workers with a view to ensuring a universal minimum of social rights to the entire working class of the world.”

The motion was negatived.

Mr. Vice-President : The question is:

“That article 40, as amended, stand part of the Constitution.”

The motion was adopted.

Article 40, as amended, was added to the Constitution.

New Article 40-A

(Amendment No. 1026 was not moved.)

Amendment No. 1027 in the name of Shri Algu Rai Shastri was allowed to stand over.)

Shri Gopal Narain (United Provinces : General): Mr. Vice-President, Sir, I gave notice of several amendments on the last date and I did it when I found that the Members of this august House have tabled thousands of amendments and they wanted that every pious and noble sentiment may be incorporated in this Constitution. I also ran in the race, though I was of the opinion that this Constitution has already become very lengthy. I also felt that it should not be filled up with all the details; otherwise it may be made more ridiculous. Now I find that better sense is prevailing and Members are not moving the amendments now. My purpose has been served and with these few general remarks. I do not want to move this amendment or any other amendments tabled by me.

(Amendments Nos. 1029 to 1031 were not moved.)

Prof. K. T. Shah: This is part of Part V and there is a big question of principle involved in it. I also thought that according to the understanding reached, we should now be going over to the earlier amendments. But I am in your hands, Sir. I do not mind moving this amendment now.

Mr. Vice-President : If you want to move it, you are at perfect liberty to do so. If you do not want to move it now, you may do it at another place.

Prof. K. T. Shah: I should like to reserve it when we come to Part V. I shall take it up then.

(Amendments Nos. 1029 to 1031 were not moved.)

Mr. Vice-President : That finishes Part IV.

Part III

Shri M. Ananthasayanam Ayyangar: May I request you, Sir, to take up Part III?

Mr. Vice-President: That is also to be found in the Orders of the day. We take up Part III. The first amendment is in the name of Professor K. T. Shah, amendment No. 238.

Prof. K. T. Shah: Sir, I beg to move:

“That for the heading ‘Fundamental Rights’ under Part III, the following be substituted:—

‘Fundamental Rights and Obligations of the State and the Citizen.’ ”

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

[Shri Lokanath Misra]

in my name. I beg to move: that after clause (2) of article 8, the following new clause be inserted and the existing clause (3) be re-numbered as clause (4):

“(3) The Union or the State shall not undertake any legislation or pass any law discriminatory to some community or communities, or applicable to some particular community or communities and no other.”

In moving this new article I seek a thing more than supplementing article 35 which we have passed. Article 35 directs the State to do certain things, that is, to bring about a uniform civil code. My article simply says what the state should not do, so that it may not frustrate the very purpose for which article 35 has been enacted. Sir, deliberately we have chosen that our state is a secular state and we have tried to get rid of all the wranglings of religion because of the belief that although religion was made to unite mankind it has been found that it has disunited mankind and has brought various disputes. Rightly, therefore, have we declared that our State would be a secular State and thereby we mean that everybody who inhabits this land, everybody who is a citizen is just a man and his human needs will be fulfilled and his religion, if he has any, will be taken care of by the individual himself.

If we approve of this purpose, to give mankind that equality, that sense of justice, then when we are here to legislate for a future constitution, we must make it a fundamental right that we will not legislate in a manner and on a matter which will discriminate between one community and another. Our law must be so broad-based, must be so very intrinsically sound that it must apply to every human being, every citizen of this land. When you make any difference between citizens in this land, you can make it only on the lines of community and community directly means religion and we have deliberately eschewed religion. Therefore, to be frank enough, to be bold enough, to be true enough to our professions, we must make it a point that whenever we bring anything on the anvil of legislation, it must be such that it will apply to one and all of this land and there will be no differentiation. Let people say: We have one fundamental safeguard against inequality and injustice. Here is the law. It applies to everybody,—be he a Rajah, be he a Praja, be he a Hindu, be he a Muslim, be he a Parsi, be he a Christian. That itself is enough safeguard, because it will apply to every citizen equally. If the law is bad, it is bad for everybody; if it is good, it is good for everybody. Therefore, I say this must be a fundamental principle. We must accept it here and now that any law that henceforward we may be legislating must be applicable to one and all. To that effect, I candidly place before this House that to avoid all future doubts, all disparity, all discrimination, all distinction, we must make it a law and a fundamental law that the Union or the States shall not undertake any legislation or pass any law discriminatory to some community or communities, or applicable to some particular community or communities and no other. This House has very frankly, openly and boldly accepted the principle in article 35. I simply beg this House to make that article complete and self-sufficient. That gave only a direction; this gives a positive mandate for what we should not do, because by not doing all these things, by discriminating between citizens and communities we have divided the country and let it not lead to greater divisions. I submit that unless we accept this principle, our idea of a United Nation, of a united mankind and of equality of every citizen in this land will be frustrated. I therefore commend this new article to the consideration of this great House.

The Assembly then adjourned till Ten of the Clock on Friday, the 26th November 1948.
