

Tuesday, 23rd Novemeber, 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

Tuesday, the 23rd 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 32

Shri Syamanandan Sahaya (Bihar : General): Sir, I will move amendments Nos. 933 and 934 together with your permission. I move:

“(i) That in the article 32 after the word ‘education’ a comma and the words ‘to medical aid’ be added; and

(b) that for the words ‘of undeserved want’ the words ‘deserving relief’ be substituted.”

This part deals with directives to the Government in power and the article deals with different aspects of social relief and other amenities which the State should strive to secure for the well being of the people. These include the right to work, education, public assistance in case of unemployment, old age, sickness, disablement and other “cases of undeserved want”. The acceptance of my amendment would give the State an added responsibility of medical relief also.

In the second amendment, although the words “undeserved want” may have been used in other constitutions, I submit that the words “deserving relief”, although not new to the language of constitutions, expresses the idea better and should be accepted.

With the conditions of health and the figures of mortality in this country as also the duration of life according to actuarial statistics I submit that special attention should be devoted to medical aid.

I do not think the amendment requires much argument to support it. Sir, I move.

Shri H. V. Kamath (C. P. & Berar: General): Mr. Vice-President, I move my amendment No. 936 as amended by my amendment No. 69 in List II. If the two are taken together, my intention will be very clear. In effect my amendment will substitute the word ‘State’ for the word ‘public’ occurring in this article. I find that provision as regards food, clothing, shelter and medical aid are covered by article 38 which seeks to raise the standard of living and provide for public health and such other amenities. I think that my friend Mr. Syamanandan Sahaya’s amendment as regards medical aid is also covered by the same article. There is no need to include these provisions as regards food, clothing, medical aid, etc. specifically in this article.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, I oppose the amendments.

Mr. Vice-President (Dr. H. C. Mookherjee): I put the amendments to vote. Amendments Nos. 933 and 934, and 936 as further amended, were negatived,

Mr. Vice-President : I shall now put article 32 to the vote of the House.

The question is:

“That article 32 stand part of the Constitution.”

The motion was adopted.

Article 32 was added to the Constitution.

Article 33

Mr. Vice-President : The House will now take up article 33 for consideration.

Shri V. I. Muniswamy Pillai (Madras: General) : I am not moving my amendment No. 940 as the subject-matter relates to the Schedules.

Mr. Vice-President : I shall now put article 33 to the vote of the House. The question is:

“That article 33 stand part of the Constitution.”

The motion was adopted.

Article 33 was added to the Constitution.

Article 34

Mr. Vice-President : The House will now take article 34 into consideration.

(Amendments Nos. 938 to 947 were not moved.)

Shri Mahavir Tyagi (United Provinces: General): Sir, I beg to move:

“That article 34 be numbered as 34(1) and the following new clause be inserted after clause (1) so re-numbered:

‘(2) The State shall encourage the use of Swadeshi articles and promote cottage industries, especially in the rural areas with a view to making as far as possible those areas self-sufficient.’”

In moving this amendment I wish to bring to the notice of the House the fact that the condition of rural areas is very bad today. In fact rural areas have been depleted, and deliberately deprived and made devoid of all their old initiative and incentive to work. The conditions in the villages are so bad that the artisan classes have all practically come to the towns. Even a barber, if he is good at razor, does not stay in the village but goes to towns where more money can be had. Attendance on villagers does not enable him to earn his daily bread. He goes to the town and opens a saloon. The village carpenter also does the same; if he knows his job well. He goes to town and easily earns Rs. 5 or 6 a day. Masons do likewise and also the tailors. All the craftsmen flock to towns abandoning their village homes. I want to put it before the House that, under these conditions, when the villagers have been reduced to the position of carrying their dirty clothes to the town to be washed, what will happen to three-fourths of our population living in the villages? We have put it on record that what we want is economic democracy. How will economic democracy come about in the existing state of affairs in the rural areas?

We have given the villager only the right of vote. And this too we have given him only to take back after every five years—he will give us his vote. He is only the custodian of the right of vote; and we being his leaders he must return the vote to us at the time of elections. We are always their leaders. Sir, I have had experience of Legislative Assemblies for the last ten or twelve years and I know that we are not treating the villagers fairly. All budget amounts are mostly spent in towns. Only in the towns you have electricity and all sorts of other amenities. Their roads are cemented. There is public health only in the towns. But the villagers are totally neglected. Every man who has the least initiative comes to the towns. All intelligence has come away and now it is only the sluggish people who are left in the villages. Anyone who has passed the Matriculation Examination comes to the towns and employs himself in some service or other. So the villages are

fast going to ruination. Now, Sir, it is very good to say that we want economic equality and economic democracy but cannot we on this occasion direct the future governments of the country that this is the line through which we want to achieve our objective of economic democracy? I am not opposed to big concentrations of industries in big towns. In fact, these big industries have been drawing muscular man-power from the villages. Villages have been their recruiting grounds. Villagers come and employ themselves in these big mills only to demoralise themselves in the bad atmosphere in towns. That is the reason why the Britishers purposely kept them weak and poor from all points of view. Initiative they have been deprived of, because otherwise they would not work as mere labourers. Sir, all the villagers cannot come to the towns. Even if you go on increasing the number of industrial towns, you cannot accommodate the vast populations living in the rural areas. They will have no housing in the towns. The purpose of my placing this amendment before you is that instead of the muscular power going to the machine, I want to carry the machines to the sources of muscular power. I want the machines to be taken to the villages so that the villagers who are living in their own sweet homes in their own healthy environments may not be snatched away from their families. At present, Sir, the pressure on land has become too much. The House may be surprised to know that in 1891 only 61 per cent of our population were employed on agriculture. In 1901, it was 66 per cent and in 1931 it was 72 per cent. Land has been torn into tiny fragments and agriculture has become totally uneconomic. If things go on like that, most of the villagers will come to the towns. We are enjoying our life in towns, while the villagers in whose name we come here are deprived of even their ordinary privileges of citizenship. Therefore, Sir, I submit that this amendment may kindly be accepted. Our Party, the Congress Party, has been propagating Swadeshi and cottage industries since its very inception. But now that the time has come for making our constitution, if we ignore the villagers that will be disappointing to the village people. I do not want to take any more time of the House because most of the Members of this honourable august House already appreciate the usefulness of the amendment that I am bringing forward. I hope honourable Members will consider the feasibility of giving to the world a new type of social revolution. In Russia, they say, there is already achieved economic democracy, but this economic democracy in Russia has concentrated all power in the hands of the State, with the result that the State has become autocratic. If you want to combine political democracy with economic democracy and translate into life Dr. Ambedkar's maxim, "One man, one unit", then you should make the villages self-reliant and self-sufficient. Otherwise the millions who are unemployed in the rural areas will never enjoy the fruits of freedom; they will remain slaves of the townsmen as they are today. Political consciousness and patriotism will come only when they are economically contented. The way to do this is to give them cottage industries so that they can live happily with their families in their own happy surroundings. It is only then that they can exert some influence on the government that be and contribute towards the progress of the country. With these words, Sir, I move this amendment and I hope the House will accept it.

Mr. Vice-President : I understand that there is an amendment to this amendment by Mr. Ramalingam Chettiar. Do you propose to move it?

Shri T. A. Ramalingam Chettiar (Madras: General): Sir, I gave notice of an amendment, but I would like, Sir, that it be altered a little, as this altered amendment is more likely to be accepted. Instead of the amendment of which I have given notice, I would move with your permission that at the end of

[Shri T. A. Ramalingam Chettiar]

article 34 itself we add as follows :

“And in particular the State shall endeavour to promote cottage industries on co-operative lines in rural areas.”

If you will permit me, I will move that amendment, Sir.

Mr. Vice-President : Do you want an addition to the article which has been already accepted and passed?

Shri T. A. Ramalingam Chettiar : This is the article which is under consideration now.

Shri Amiyo Kumar Ghosh (Bihar: General): Sir, there is an amendment, standing in the name of Shri Gupta Nath Singh which is exactly the same as the amendment now proposed to be moved. The amendment number is 954.

Shri T. A. Ramalingam Chettiar : What I want to move is in the place of Mr. Tyagi's amendment.

Shri Amiyo Kumar Ghosh : The new clause 34-A which is sought to be moved is exactly the same as this. It says:

“The state shall endeavour to develop and promote cottage industries and make the villages self-sufficient as far as possible.”

An Honourable Member : Are two persons permitted to address the House at the same time?

Mr. Vice-President : Two persons are not speaking. I am afraid you are making a mistake. Mr. Ghosh should have resumed his seat.

Mr. Chettiar, have you moved your amendment?

Shri T. A. Ramalingam Chettiar : That is the amendment, Sir.

Mr. Vice-President : Mr. Ghosh, what is it that you want to say? Please come to the mike.

Shri Amiyo Kumar Ghosh : Mr. Vice-President, what I was submitting was that there is already an amendment (No. 954) to the same effect and that instead of moving an amendment to Shri Mahavir Tyagi's amendment, it is better that we should take the amendment No. 954, which is to the same effect. I do not see why we should move this amendment over the amendment of Shri Mahavir Tyagi.

The amendment which is now going to be moved by my friend is to the effect that the State shall endeavour to develop and promote cottage industries etc. as an amendment to Shri Mahavir Tyagi's amendment, but I submit that when there is already an amendment standing in the name of Shri Gupta Nath Singh to the same effect that the State shall endeavour to develop and promote cottage industries and make the villages self-sufficient as far as possible, there is no need of moving this amendment. We can therefore take up amendment No. 954 for discussion and if it is acceptable to the mover, then we can accept it and put it as clause 34-A.

Mr. Vice-President : The amendment of Mr. Ramalingam Chettiar runs as follows:

“And in particular the State shall endeavour to promote cottage industries on co-operative lines in rural areas.”

That is the language of the amendment moved by Mr. Chettiar. Therefore, it is in order. Now the article is open for general discussion.

Shri T. A. Ramalingam Chettiar : Mr. Vice-President, Sir, there is no doubt about the general feeling in the country that cottage industries ought to be encouraged. The only point I want to make is that so far the cottage industries have not been able to make headway for two reasons. One is the competition with the imported and mill-made goods and the other the want of organisation to help the cottage industries. Raw materials have to be supplied, wages have to be paid and above all, marketing has to be arranged. It is on the rock of marketing that most of our cottage industries have floundered. An

organisation for the purpose of undertaking these things is necessary and so far we have been able to find only two methods, either the introduction of master capitalists who will exploit labour or co-operative societies. Of course, it is not the intention of any of us that we should encourage these master capitalists, who practically exploit the village labourers and even town labourers. So the only method that is available and that is open to us is the formation of co-operative societies to undertake the supply of raw materials and the marketing of the produce. It is on that account, Sir, that I have ventured to move this amendment and I hope the House will accept it unanimously.

Shri H. V. Kamath : Mr. Vice-President, Sir, I am happy that articles 34, 32 and 31 have been incorporated in this Part dealing with directive principles of state policy. If the provisions in these articles are going to be seriously implemented and Government will really and in earnest take action in accordance with the provisions of these articles, I have no doubt that they will provide a new charter, the charter of a new life for the exploited, the disinherited and the under-privileged, and they will provide the basis or the framework for the blue-print of economic and social democracy in our country. I was very much heartened to hear Dr. Ambedkar saying the other day in this House that the Constitution seeks to lay down the ideal of economic democracy in this country. Indeed, Sir, that is the ideal we have got to strive for in this country. It may be argued that it is a vague idea. What is economic democracy and what is social democracy? Pandit Nehru, if I remember aright, when he moved the Objectives Resolution in this House hoped that our country along with the rest of the world would move towards socialism, though in his own mind there were doubts as to what democracy meant or political democracy meant or economic democracy meant. But, Sir, article 30 says that we will have social, economic and political justice. Is it not far better to say that we will have political, economic and social democracy, rather than mere justice, which is an abstract conception? (*Interruption*)

This concept of economic and social democracy has formed the basis, the content of most Congress resolutions that have been passed since 1936; especially, Sir, I would refer to the resolution passed at the Meerut session of the Congress, which gives a definite meaning to this concept of economic and social democracy. Dr. Ambedkar said that to his mind, political democracy means one man, one vote; economic democracy means one man, one value. I, Sir, would say that social democracy, to my mind, means: all men, one class; all men one caste; and I hope, Sir, that we are moving towards the creation of a casteless and classless society which Mahatma Gandhi envisaged for the social order in India.

Here, Sir, political democracy we have now secured. Through experience, not merely here, not merely in Europe, not merely in America, but all over the world, we have realised today that political democracy is not enough; unless you translate this political freedom, this political democracy into the life of the common man in economic and social terms this political democracy will not work and political democracy will be dead.

That is why, when democracy is opposed or resisted, it gives rise to a totalitarian form of Government. If political democracy is allowed to evolve, to grow, into economic, social democracy, then we would not have strife, we will not have wars, we will not have a totalitarian form of Government. Even today, we see the world is half slave and half free. In Asia and Africa vast tracts of land are under colonial rule. That is why this movement of communism is growing a pace. You may call them communist bandits or communist fellow travellers. It is no use dubbing them and calling them names. Unless

[Shri H. V. Kamath]

you change your exploiting social order into a freer order, this movement for violently ending the social order will continue. Therefore, we should take heed be times and try to establish in our country economic and social democracy. Here, Sir, in article 34 we have got an important provision. It is stated, "The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, work etc.....". I am glad that this has been incorporated. We have got three alternatives or all of them: legislation, organisation or in any other way. I hope, Sir, the Government will take advantage of this and act up to it and see that in accordance with the terms of the article, all workers, industrial or otherwise, are secured work, a living wage and a decent standard of life. We want a society of workers; every one must work. We should inscribe on the portals of our temple of democracy that he who will not work shall not eat: No work, no food. In the Bible this is laid down. Sir. In the Gita, it is said, he who eats without sacrifice, without work, he is a thief; (*Stan Ev sa:*) he steals from society. We must therefore lay down this concept that work must be compulsory, work must be obligatory. In article 32, it is said that the State shall secure the right to work; article 34 goes further and says, that the State shall secure work. There are millions of people in India today who want to work, but do not get work. There are a few parasites who can work, but do not want to work. As Bernard Shaw has said, at one end we have got men with appetites but no dinners; at the other, we have men with dinners, but no appetites. This social order is a House divided against itself. So long as this House divided continues, there will be no peace in the world; there will be no happiness in the world. We will have violent movements; we will have desperate men armed with bullets, armed with bren guns, trying to overthrow the social order. You cannot entirely blame them; you cannot find fault with them only; the fault lies also with those of us who want to perpetuate the exploiting social order. The answer to the bullet and bren gun is not the tank and the bomber as we see in Malaya; the answer is a change in the social order. I hope these articles will be implemented by the Government that is going to take office in the new India of the future, and that Government will try to establish economic and social democracy.

I would only make one more observation. To India through the ages has been given the mission of preaching the noble and sublime ideal, the concept of spiritual democracy, of which political, social and economic democracy are mere off-shoots. If true spiritual democracy takes root in our society, there is no doubt that we shall show to humanity a new way of life, and if all other countries in the world have tried to establish economic and social democracy by violence, by disorder, by strife, we can make a beginning here and go forward and try to achieve this new order.....

Mr. Vice-President : I am afraid that you are taking too much time over the amendments.

Shri H. V. Kamath : I am speaking on the article also.

Mr. Vice-President : You have sufficiently explained the article.

Shri H. V. Kamath : I have finished, Sir. We in our country must try to bring about this new order by methods of peace and non-violence and thus show a new way to the world. Otherwise, the present order, exploiting as it does, will perish, consumed in its own fires. But I hope out of the ashes will rise like unto the Phoenix of old, a new order with the light of morning in its eyes.

Shri S. Nagappa (Madras: General): Sir, I do not want to take the time of the House; I just want to make an amendment. After the words "to all

workers, industrial”, the word “agricultural” may be added. Sir, I need not say that the bulk of the working population consists of agricultural workers.

Mr. Vice-President : This is out of order.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, as there is a considerable amount of feeling that the Directive Principles should make some reference to cottage industries, I am agreeable in principle to introduce in article 34 some words to give effect to the wishes of the Members of this House. I am therefore prepared to accept the amendment moved by my friend Mr. Ramalingam Chettiar, subject to the substitution of one or two words. One substitution that I would like to make is this. After the words “cottage industries on” I would like to add the words “individual or”. I would like to substitute his word ‘lines’ by the word ‘basis’. So that the amendment would read as follows:

“And in particular the State shall endeavour to promote cottage industries on individual or co-operative basis in rural areas.”

That, I think, would meet the wishes of most of the Members who are particularly interested in the subject.

I may also add that I am quite agreeable to accept the amendment moved by Mr. Nagappa that the word ‘agricultural’ be added after word ‘industrial’.

Mr. Vice-President : That was not allowed.

The Honourable Dr. B. R. Ambedkar : I have no objection if you allow that. I think Mr. Nagappa’s suggestion that agricultural labour is as important as industrial labour and should not be merely referred to by the word ‘otherwise’, has some substance in it. However, it is a matter of ruling and it is for you to decide.

Shri T. A. Ramalingam Chettiar : I accept Dr. Ambedkar’s amendments.

Shri L. Krishnaswami Bharathi : (Madras: General): Sir, may I suggest, that we may stop with the word cottage industries and omit the rest. Why do you want the words ‘on individual or co-operative basis’? There is no point in adding these words unless you want to lay special emphasis on co-operative basis. I would like these words ‘on individual or co-operative basis’ to be omitted.

The Honourable Dr. B. R. Ambedkar : May I explain, Sir, I find among the Members who are interested in the subject, there are two divisions: one division believes in cottage industries solely on a co-operative basis; the other division believes that there should be cottage industries without any such limitation. In order to satisfy both sides, I have used this phraseology deliberately, which, I am sure, will satisfy both views that have been expressed.

Shri M. Ananthasayanam Ayyangar : (Madras: General): I do not want to speak.

Mr. Vice-President: I think we have discussed this matter sufficiently. We shall pass on to the actual voting.

Shri Mahavir Tyagi: In the hope that this will all be done on the basis of self-sufficiency, I accept the amendment to my amendment as finally proposed by Dr. Ambedkar and in that case I shall have to withdraw mine.

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

Shri Amiyo Kumar Ghosh : Sir, I want to know whether ‘agricultural workers’ have been included or not.

Mr. Vice-President : It has not been included but I am quite prepared to go back on my ruling provided the House as a whole, without any dissention, accepts the suggestion of Dr. Ambedkar.

Honourable Members : Yes.

Mr. Vice-President : Then I shall put the amendment of Shri Ramalingam Chettiar as amended by Dr. Ambedkar to the vote.

The amendment, as amended, was adopted.

Mr. Vice-President : Now I put the amendment as further modified by Mr. Nagappa.

The amendment, as further amended, was adopted.

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

“That article 34, as amended in the manner just mentioned, should form part of the Constitution.”

The motion was adopted.

Article 34, as amended, was added to the Constitution.

Article 34-A

Mr. Vice-President : Now we come to amendment No. 952 to article 34-A.

(Amendment No. 952 was not moved.)

Amendment No. 953—Shri Ranbir Singh Chaudhari.

Chaudhari Ranbir Singh (East Punjab: General): I am not pressing it but want to speak on the article.

Shri M. Ananthasayanam Ayyangar : This amendment is covered by article 34 as amended. These are all matters not so much for a Constituent Assembly to introduce in the Constitution but for legislation at the Centre or in the provinces. I therefore think this need not be moved. Even at present usury is restricted in the provinces. A percentage for interest is fixed.

Mr. Vice-President : As the wording is different Shri Ranbir Singh Chaudhari has a right to move his amendment but whether he will do so or not lies with him. I hope he will not take up too much time of the House. You ought to remember that our President wants that we should finalize our Constitution by the 9th December. Then there was some talk about moving it further back. We owe a certain duty to the country and I have been receiving a series of wires so much so that sometimes I am awakened in the middle of the night, throwing the blame on us.

Chaudhari Ranbir Singh : * [Mr. Vice-President, I wanted to make a few observations on the general article first and that is why I rose a little while ago to speak. But as I did not then get an opportunity to speak, with your permission, Sir, I would like to express my views now within a minute or two. I have already said that I would not press my amendments. Besides, there is one thing, more. As Shri Ayyangar has stated.....]

Mr. Vice-President : Kindly speak on the amendment.

* [] Translation of Hindustani Speech.

Mr. Z. H. Lari (United Provinces: Muslim): Sir, on a point of order. Can any person be allowed to address the House unless he formally moves a motion?

Mr. Vice-President : You are right.

(Addressing Mr. Chaudhari) You will first of all move the motion and then address the House.

Chaudhari Ranbir Singh : My new article reads thus:—

“That after the article 34, the following new article 34-A be added:—

‘34-A. (a) The State shall endeavour to secure by suitable legislation or economic organisation or in any other way the minimum economic price of the agricultural produce to the agriculturists.

(b) The State shall give material assistance to national co-operative organisations of the producers and consumers.

(c) Agricultural insurance shall be regulated by special legislation.

(d) Usury in every form is prohibited.’”

Mr. Vice-President : May I take it that you are moving this amendment formally? I suppose this is done.

Mr. Z. H. Lari : He says, it reads thus. He has not moved his amendment.

Mr. Vice-President : Suppose, you waive that point. Now, Mr. Chaudhari, you can address the House.

Chaudhari Ranbir Singh : * [Mr. President, I am afraid that one class remains still to whom the provisions of article 34, as it stands now or even with the amendment of Shri Nagappa as accepted by Dr. Ambedkar, would not afford any protection and whose economic interests would, therefore, remain unsafe guarded. My reference is not to the class of landlords. The fact on the contrary is that I do not desire to speak for that class at all. My reference is to the class of peasant proprietors of the Punjab who neither exploit anybody nor like to be exploited by anyone. Speaking for the peasantry. I would like to remark that so long as we do not fix some economic price of the produce, they will continue to suffer from a grave injustice. The duty of the State today is not merely to maintain law and order but also to resolve the economic complexities, the solution of which is the main problem of the peasantry at present. Sometime back the prices of gur and other commodities fell so much that they came down to one-fourth of what they were four or five months before. Ours is an agriculturist country and in this country such violent disturbances of the price level cannot but radically disturb the agricultural economy. I do not want to press this very much because I know that this point is covered by the previous article. But these matters should be kept in mind. My purpose is to emphasise that without fixing the economic price of agricultural products, there can be no stability in the economic life of the agriculturists and it is very necessary to make it stable. The other three parts also lend some support to this view. Since a good many members of the House think that the purpose of my amendment is covered by the previous article, I do not move it.]

Mr. Vice-President : I shall not, therefore, put it to the vote. The next amendment is that standing in the name of Mr. Guptanath Singh.

Shri Guptanath Singh (Bihar: General): Sir, My purpose, I see, has been served by the amendment of Dr. Ambedkar to a great extent, I, therefore, do not wish to move my amendment No. 954.

* [] Translation of Hindustani speech.

Article 35

Mr. Vice-President : Now, we come to article 35.

The Honourable Dr. B. R. Ambedkar : Sir, I have to request you to allow this article to stand over for the present.

Mr. Vice-President : This article is allowed to stand over for consideration later. Is it agreed to by the House?

Honourable Members : Yes.

Article 36

Mr. Vice-President : Then, the motion before the House is that article 36 do form part of the Constitution. Amendment No. 961 is a negative motion. So we come to amendment No. 962—Shri L. K. Maitra.

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

“That in article 36, the words ‘Every citizen is entitled to free primary education and’ be deleted.”

Sir, I will strictly obey the injunction given by you regarding curtailment of speeches. I will put in half a dozen sentences to explain the purpose of this amendment. If this amendment is accepted by the House, as I hope it will be, then the article will read as follows:—

“The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.”

It will thus be seen that this article 36 will be brought into line with the preceding and the subsequent articles, in form, at any rate. The House will observe that articles 30, 31, 32, 33, 34, 35, 37 and 38 all begin with the words—“The State shall..... so and so”. But article 36 alone begins with—“Every citizen is entitled to.... etc. Therefore if we delete the words I have referred to, this article also will come into line with the other articles. Besides the question of form there is also a question of substance involved in this. Part IV deals with directive principles of State policy, and the provisions in it indicate, the policy that is to be pursued by the future governments of the country. Unfortunately, in article 36, this directive principle of State policy is coupled with a sort of a fundamental right, *i.e.* “that every citizen is entitled..... etc.” This cannot fit in with the others. Here a directive principle is combined with a fundamental right. Therefore, I submit that the portion which I have indicated, should be deleted.

Now, there is another point, and I particularly want to draw the attention of the Drafting Committee to it. You will see that in the original draft, in the margin of this article there is a note, “provision for free primary education.” But in article 36, we are not making any distinction between primary and secondary educations. That is to say, to every citizen, up to the age of 14 years, the State shall provide, within ten years of the commencement of this Constitution, free and compulsory education. In other words, the education need not be confined to the primary but it may go up to the secondary stage, so long as the person is upto the age of 14. Therefore, the marginal note should be amended accordingly. Sir, I move.

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

“That in article 36, for the word ‘education’, the words ‘primary education’ be substituted.”

Sir, this article, as has been clearly pointed out by the previous speaker, deals with primary education.

It begins with primary education and the marginal note also makes it clear. But as has been pointed out, towards the end what is said is that the State shall provide within a period of ten years from the commencement of this Constitution for "free and compulsory education." I believe from the context and from other internal evidence that what was intended was compulsory 'primary' education. The State cannot undertake to give compulsory education of a secondary character.

Pandit Lakshmi Kanta Maitra : As far as possible !

Mr. Naziruddin Ahmad : But then if you enlarge the scope of the Government's duty, it will be making it innocuous. I think it would be better to confine it to primary education and that should be a directive principle of the State. I think that is what is meant. The word, if introduced, would, I submit, fill up an obvious lacuna.

Mr. Vice-President : It would be as well if you move the other amendments in your name as that would save the trouble of your coming up again.

Mr. Naziruddin Ahmad : Sir, I move:

"That in article 36, a semi-colon be inserted after the word 'education'."

As this relates only to punctuation. I am asking the Drafting Committee to consider it.

Mr. Vice-President : Article 36 is now open to general discussion.

Shri B. Das (Orissa: General): I have never been enamoured of these directive principles. They are just pious hopes and pious wishes laid down there occasionally to create trouble for the provincial Ministries and very seldom the Central Government will be affected by criticisms of this House. Yet article 36 deals with primary education, which article 23 on Fundamental Rights which we have not yet discussed, ignores to provide for. I am not yet satisfied from the speeches what free and compulsory primary education will be like. Will it be in one language, or will it be in two or three languages if a province has two or three kinds of people making up the province?

I will talk of Orissa, where we have some of the Andhra people and some Bengalee people, for whom I think free primary education up to a certain stage should be provided by the State. The same demand I make from the provinces of Madras, Bengal and the Central Provinces, where education in the mother tongue of the Oriyas has been denied. My friend, Premier Shukla, is looking at me. It is not his Ministry's fault. It is a tradition that has grown. No one bothers about giving free primary education in the mother tongue of any race that has a language and a script of its own. In Bengal in the Midnapore district, in the 1881 census, five lakhs of Oriyas existed. In the last census only a few thousands and perhaps in the coming census they will be completely wiped out. But yet primary education gives individuals the chance to be in communion with their God and in communion with the textbooks of their religion. The Oriya children of Midnapore have at present to study Bengali. They have changed their names into Bengali names. So is the case in Madras in the Vizagapatam district where very large numbers of Oriyas live and it was their misfortune that the area could not become part of Orissa Province in 1936. But I do want in bi-lingual areas where there is a large population of another race, the Provincial Ministry and the Government concerned should not deny those children their right of knowledge in their own mother tongue so that when they become literate they may have been able to undertake some study of their religious texts. It is not the policy of this House or the contemplation of this Constitution that every province as it is constituted now should make all the people of one language. That is a problem on which I have had discussions in private. I understand that the

[Shri B. Das]

Drafting Committee will take this up in article 23(1). So that is the reason why I did not move my amendment No. 970 which asked for free and compulsory primary education for all children in their respective mother tongue. It is a very primary and essential problem that we should not denationalise those people who have a mother tongue of their own and compel them to learn the mother tongue of someone else, however suitable it may be.

The Honourable Dr. B. R. Ambedkar : Sir, I accept the amendment proposed by my friend, Mr. Maitra, which suggests the deletion of the words “every citizen is entitled to free primary education and”. But I am not prepared to accept the amendment of my friend, Mr. Naziruddin Ahmad. He seems to think that the objective of the rest of the clause in article 36 is restricted to free primary education. But that is not so. The clause as it stands after the amendment is that every child shall be kept in an educational institution under training until the child is of 14 years. If my honourable Friend, Mr. Naziruddin Ahmad had referred to article 18, which forms part of the fundamental rights, he would have noticed that a provision is made in article 18 to forbid any child being employed below the age of 14. Obviously, if the child is not to be employed below the age of 14, the child must be kept occupied in some educational institution. That is the object of article 36, and that is why I say the word “primary” is quite inappropriate in that particular clause, and I therefore oppose his amendment.

Mr. Vice-President : The question is:

“That in article 36, the words ‘Every citizen is entitled to free primary education and’ be deleted.”

The motion was adopted.

Mr. Vice-President : The question is:

“That in article 36, for the word ‘education’ the words ‘primary education’ be substituted.”

The motion was negatived.

Mr. Vice-President : The question is:

“That article 36, as amended, stand part of the Constitution.”

The motion was adopted.

Article 36, as amended, was added to the Constitution.

Article 35

Mr. Mohamad Ismail Sahib (Madras: Muslim): Sir, I move that the following proviso be added to article 35:

“Provided that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law.”

The right of a group or a community of people to follow and adhere to its own personal law is among the fundamental rights and this provision should really be made amongst the statutory and justiciable fundamental rights. It is for this reason that I along with other friends have given amendments to certain other articles going previous to this which I will move at the proper time.

Now the right to follow personal law is part of the way of life of those people who are following such laws; it is part of their religion and part of their culture. If anything is done affecting the personal laws, it will be tantamount to interference with the way of life of those people who have been observing these laws for generations and ages. This secular State which we are trying to create should not do anything to interfere with the

way of life and religion of the people. The matter of retaining personal law is nothing new; we have precedents in European countries. Yugoslavia, for instance, that is, the kingdom of the Serbs, Croats and Slovenes, is obliged under treaty obligations to guarantee the rights of minorities. The clause regarding rights of Mussulmans reads as follows:

“The Serb, Crot and Slovene State agrees to grant to the Mussulmans in the matter of family law and personal status provisions suitable for regulating these matters in accordance with the Mussulman usage.”

We find similar clauses in several other European constitutions also. But these refer to minorities while my amendment refers not to the minorities alone but to all people including the majority community, because it says, “Any group, section or community of people shall not be obliged” etc. Therefore it seeks to secure the rights of all people in regard to their existing personal law.

Again this amendment does not seek to introduce any innovation or bring in a new set of laws for the people, but only wants the maintenance of the personal law already existing among certain sections of people. Now why do people want a uniform civil code, as in article 35? Their idea evidently is to secure harmony through uniformity. But I maintain that for that purpose it is not necessary to regiment the civil law of the people including the personal law. Such regimentation will bring discontent and harmony will be affected. But if people are allowed to follow their own personal law there will be no discontent or dissatisfaction. Every section of the people, being free to follow its own personal law will not really come in conflict with others.

Shri Suresh Chandra Majumdar : (West Bengal: General): Sir, on a point of order, what is being said now is a direct negation of article 35 and cannot be taken as an amendment. The Honourable Member can only speak in opposition.

Mr. Mohamed Ismail Sahib : Article 35 reads thus:

“The State shall endeavour to secure for citizens a uniform civil code throughout the territory of India.”

That will include the personal law as well.

Mr. Vice-President : I hold that the Honourable Member is in order.

Mr. Mohamed Ismail Sahib : Therefore, Sir, what I submit is that for creating and augmenting harmony in the land it is not necessary to compel people to give up their personal law. I request the Honourable Mover to accept this amendment.

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

“That to article 35, the following proviso be added, namely:—

‘Provided that the personal law of any community which has been guaranteed by the statute shall not be changed except with the previous approval of the community ascertained in such manner as the Union Legislature may determine by law’.”

In moving this, I do not wish to confine my remarks to the inconvenience felt by the Muslim community alone. I would put it on a much broader ground. In fact, each community, each religious community has certain religious laws, certain civil laws inseparably connected with religious beliefs and practices. I believe that in framing a uniform draft code these religious laws or semi-religious laws should be kept out of its way. There are several reasons which underlie this amendment. One of them is that perhaps it clashes with article 19 of the Draft Constitution. In article 19 it is provided that ‘subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right

[Mr. Naziruddin Ahmad]

freely to profess, practise and propagate religion.' In fact, this is so fundamental that the Drafting Committee has very rightly introduced this in this place. Then in clause (2) of the same article it has been further provided by way of limitation of the right that 'Nothing in this article shall affect the operation of any existing law or preclude the State from making any law regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice'. I can quite see that there may be many pernicious practices which may accompany religious practices and they may be controlled. But there are certain religious practices, certain religious laws which do not come within the exception in clause (2), viz. financial, political or other secular activity which may be associated with religious practices. Having guaranteed, and very rightly guaranteed the freedom of religious practice and the freedom to propagate religion, I think the present article tries to undo what has been given in article 19. I submit, Sir, that we must try to prevent this anomaly. In article 19 we enacted a positive provision which is justiciable and which any subject of a State irrespective of his caste and community can take to a Court of law and seek enforcement. On the other hand, by the article under reference we are giving the State some amount of latitude which may enable it to ignore the right conceded. And this right is not justiciable. It recommends to the State certain things and therefore it gives a right to the State. But then the subject has not been given any right under this provision. I submit that the present article is likely to encourage the State to break the guarantees given in article 19.

I submit, Sir, there are certain aspects of the Civil Procedure Code which have already interfered with our personal laws and very rightly so. But during the 175 years of British rule, they did not interfere with certain fundamental personal laws. They have enacted the Registration Act, the Limitation Act, the Civil Procedure Code, the Criminal Procedure Code, the Penal Code, the Evidence Act, the Transfer of Property Act, the Sarda Act and various other Acts. They have been imposed gradually as occasion arose and they were intended to make the laws uniform although they clash with the personal laws of a particular community. But take the case of marriage practice and the laws of inheritance. They have never interfered with them. It will be difficult at this stage of our society to ask the people to give up their ideas of marriage, which are associated with religious institutions in many communities. The laws of inheritance are also supposed to be the result of religious injunctions. I submit that the interference with these matters should be gradual and must progress with the advance of time. I have no doubt that a stage would come when the civil law would be uniform. But then that time has not yet come. We believe that the power that has been given to the State to make the Civil Code uniform is in advance of the time. As it is, any State would be justified under article 35 to interfere with the settled laws of the different communities at once. For instance, there are marriage practices in various communities. If we want to introduce a law that every marriage shall be registered and if not it will not be valid, we can do so under article 35. But would you invalidate a marriage which is valid under the existing law and under the present religious beliefs and practices on the ground that it has not been registered under any new law and thus bastardise the children born?

This is only one instance of how interference can go too far. As I have already submitted, the goal should be towards a uniform civil code but it should be gradual and with the consent of the people concerned. I have therefore in my amendment suggested that religious laws relating to particular communities should not be affected except with their consent to be ascertained in such manner as Parliament may decide by law. Parliament may well decide to ascertain the consent of the community through their representatives, and

this could be secured by the representatives by their election speeches and pledges. In fact, this may be made an article of faith in an election, and a vote on that could be regarded as consent. These are matters of detail. I have attempted by my amendment to leave it to the Central Legislature to decide how to ascertain this consent. I submit, Sir, that this is not a matter of mere idealism. It is a question of stern reality which we must not refuse to face and I believe it will lead to a considerable amount of misunderstanding and resentment amongst the various sections of the country. What the British in 175 years failed to do or was afraid to do, what the Muslims in the course of 500 years refrained from doing, we should not give power to the State to do all at once. I submit, Sir, that we should proceed not in haste but with caution, with experience, with statesmanship and with sympathy.

(B. Pocker Sahib Bahadur rose to speak.)

Mr. Vice-President : When we discuss the clause as a whole, you will get your chance. Amendment No. 960. The Mover has called it a new sub-clause, that is 35-A. We can take it up later on. The article as a whole is now under consideration.

Mahboob Ali Baig Sahib Bahadur (Madras : Muslim) : I have given notice of an amendment to article 35. It is No. 833.

Mr. Vice-President : That escaped my attention. I am glad you pointed that out.

Mahboob Ali Baig Sahib Bahadur : Sir, I move that the following proviso be added to article 35:

“Provided that nothing in this article shall affect the personal law of the citizen.”

My view of article 35 is that the words “Civil Code” do not cover the strictly personal law of a citizen. The Civil Code covers laws of this kind: laws of property, transfer of property, law of contract, law of evidence etc. The law as observed by a particular religious community is not covered by article 35. That is my view. Anyhow, in order to clarify the position that article 35 does not affect the personal law of the citizen, I have given notice of this amendment. Now, Sir, if for any reason the framers of this article have got in their minds that the personal law of the citizen is also covered by the expression “Civil Code”, I wish to submit that they are overlooking the very important fact of the personal law being so much dear and near to certain religious communities. As far as the Mussalmans are concerned, their laws of succession, inheritance, marriage and divorce are completely dependent upon their religion.

Shri M. Ananthasayanam Ayyangar : It is a matter of contract.

Mahboob Ali Baig Sahib Bahadur : I know that Mr. Ananthasayanam Ayyangar has always very queer ideas about the laws of other communities. It is interpreted as a contract, while the marriage amongst the Hindus is a Samskara and that among Europeans it is a matter of status. I know that very well, but this contract is enjoined on the Mussalmans by the Quran and if it is not followed, a marriage is not a legal marriage at all. For 1350 years this law has been practised by Muslims and recognised by all authorities in all states. If today Mr. Ananthasayanam Ayyangar is going to say that some other method of proving the marriage is going to be introduced, we refuse to abide by it because it is not according to our religion. It is not according to the code that is laid down for us for all times in this matter. Therefore, Sir, it is not a matter to be treated so lightly. I know that in the case of some other communities also, their personal law depends entirely upon their religious tenets. If some communities have got their own way of dealing with their religious tenets and practices, that cannot be imposed on a community which insists that their religious tenets should be observed.

Shri L. Krishnaswami Bharathi : It is sought to be done only by consent of all concerned.

Mr. Vice-President : Mr. Bharathi, the majority community has always been so very indulgent that I would ask you as a personal favour to give the fullest possible freedom to our Muslim brethren to express their views. I would ask you to exercise patience for a little while. I know they feel very strongly on this matter.

Shri L. Krishnaswami Bharathi : My point was, Sir, that it was not an attempt at imposition. If anything is done, it will be done only with the consent of all concerned, and the Honourable Member need not labour that point.

Mr. Vice-President : It is understood and I thank you for it.

Mahboob Ali Baig Sahib Bahadur : Now, Sir, people seem to have very strange ideas about secular State. People seem to think that under a secular State, there must be a common law observed by its citizens in all matters, including matters of their daily life, their language, their culture, their personal laws. That is not the correct way to look at this secular State. In a secular State, citizens belonging to different communities must have the freedom to practise their own religion, observe their own life and their personal laws should be applied to them. Therefore, I hope the framers of this article have not in their minds the personal law of the people to cover the words "Civil Code". With this observation, I move that that it may be made clear by this proviso, lest an interpretation may be given to it that these words "Civil Code" include personal law of any community.

B. Pocker Sahib Bahadur (Madras : Muslim) : Mr. Vice-President, Sir, I support the motion which has already been moved by Mr. Mohamed Ismail Sahib to the effect that the following proviso be added to article 35:—

"Provided that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law."

It is a very moderate and reasonable amendment to this article 35. Now I would request the House to consider this amendment not from the point of view of the Mussalman community alone, but from the point of view of the various communities that exist in this country, following various codes of law, with reference to inheritance, marriage, succession, divorce, endowments and so many other matters. The House will not that one of the reasons why the Britisher, having conquered this country, has been able to carry on the administration of this country for the last 150 years and over was that he gave a guarantee of following their own personal laws to each of the various communities in the country. That is one of the secrets of success and the basis of the administration of justice on which even the foreign rule was based. I ask, Sir, whether by the freedom we have obtained for this country, are we going to give up that freedom of conscience and that freedom of religious practices and that freedom of following one's own personal law and try or aspire to impose upon the whole country one code of civil law, whatever it may mean,—which I say, as it is, may include even all branches of civil law, namely, the law of marriage, law of inheritance, law of divorce and so many other kindred matters?

In the first place, I would like to know the real intention with which this clause has been introduced. If the words "Civil Code" are intended only to apply to matters of procedure like the Civil Procedure Code and such other laws which are uniform so far as India is concerned at present well, nobody has any objection to that, but the various Civil Courts Acts in the various provinces in this country have secured for each community the right to follow their personal laws as regards marriage, inheritance, divorce, etc. But if it is intended that the aspiration of the State should be to override all these provisions and to have uniformity of law to be imposed upon the whole people on these matters which are dealt with by the Civil Courts Acts in the various provinces, well, I would only say, Sir, that it is a tyrannous provision which ought not to be tolerated; and let it not be taken that I am only voicing forth the feeling of the Mussalmans. In saying this, I am voicing forth the feeling of ever so

many sections in this country who feel that it would be really tyrannous to interfere with the religious practices, and with the religious laws, by which they are governed now.

Now, Sir, just like many of you, I have received ever so many pamphlets which voice forth the feelings of the people in these matters. I am referring to many pamphlets which I have received from organisations other than Mussalmans, from organisations of the Hindus, who characterize such interference as most tyrannous. They even question, Sir, the right and the authority of this body to interfere with their rights from the constitutional point of view. They ask: Who are the members of this Constituent Assembly who are contemplating to interfere with the religious rights and practices? Were they returned there on the issue as to whether they have got this right or not? Have they been returned by the various legislatures, the elections to which were fought out on these issues?

If such a body as this interferes with the religious rights and practices, it will be tyrannous. These organisations have used a much stronger language than I am using, Sir. Therefore, I would request the Assembly not to consider what I have said entirely as coming from the point of view of the Muslim community. I know there are great differences in the law of inheritance and various other matters between the various sections of the Hindu community. Is this Assembly going to set aside all these differences and make them uniform? By uniform, I ask, what do you mean and which particular law, of which community are you going to take as the standard? What have you got in your mind in enacting a clause like this? There are the Mitakshara and Dayabaga systems; there are so many other systems followed by various other communities. What is it that you are making the basis? Is it open to us to do anything of this sort? By this one clause you are revolutionising the whole country and the whole setup. There is no need for it.

Sir, as already pointed out by one of my predecessors in speaking on this motion, this is entirely antagonistic to the provision made as regards Fundamental Rights in article 19. If it is antagonistic, what is the purpose served by a clause like this? Is it open to this Assembly to pass by one stroke of the pen an article by which the whole country is revolutionised? Is it intended? I do not know what the framers of this article mean by this. On a matter of such grave importance, I am very sorry to find that the framers or the draftsmen of this article have not bestowed sufficiently serious attention to that. Whether it is copied from anywhere or not, I do not know. Anyhow, if it is copied from anywhere, I must condemn that provision even in that Constitution. It is very easy to copy sections from other constitutions of countries where the circumstances are entirely different. There are ever so many multitudes of communities following various customs for centuries or thousands of years. By one stroke of the pen you want to annul all that and make them uniform. What is the purpose served? What is the purpose served by this uniformity except to murder the consciences of the people and make them feel that they are being trampled upon as regards their religious rights and practices? Such a tyrannous measure ought not to find a place in our Constitution. I submit, Sir, there are ever so many sections of the Hindu community who are rebelling against this and who voice forth their feelings in much stronger language than I am using. If the framers of this article say that even the majority community is uniform in support of this, I would challenge them to say so. It is not so. Even assuming that the majority community is of this view, I say, it has to be condemned and it ought not to be allowed, because, in a democracy, as I take it, it is the duty of the majority to secure the sacred rights of every minority. It is a misnomer to call it a democracy if the majority rides rough-shod over the rights of the minorities. It is not democracy at all; it is tyranny. Therefore, I would submit to

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you and all the Members of this House to take very serious notice of this article; it is not a light thing to be passed like this.

In this connection, Sir, I would submit that I have given notice of an amendment to the Fundamental Right article also. This is only a Directive Principle.

Mr. Vice-President : That may be taken up at the proper time.

B. Pocker Sahib Bahadur : What I would submit is only this. The result of any voting on this should not be allowed to affect the fate of that amendment.

Mr. Hussain Imam (Bihar : Muslim) : Mr. Vice-President, Sir, India is too big a country with a large population so diversified that it is almost impossible to stamp them with one kind of anything. In the north, we have got extreme cold; in the south we have extreme heat. In Assam we have got more rains than anywhere else in the world; about 400 inches; just near up in the Rajputana desert, we have no rains. In a country so diverse, is it possible to have uniformity of civil law? We have ourselves further on provided for concurrent jurisdiction to the provinces as well as to the Centre in matters of succession, marriage divorce and other things. How is it possible to have uniformity when there are eleven or twelve legislative bodies ready to legislate on a subject according to the requirements of their own people and their own circumstances. Look at the protection we have given to the backward classes. Their property is safeguarded in a manner in which other property is not safeguarded. In the Scheduled areas,—I know of Jharkhand and Santhal Parganas—we have given special protection to the aboriginal population. There are certain circumstances which demand diversity in the civil laws. I therefore, feel, Sir, that, in addition to the arguments which have been put forward by my friends who spoke before me, in which they feel apprehensive that their personal law will not be safe if this Directive is passed, I suggest that there are other difficulties also which are purely constitutional, depending not so much on the existence of different communities, as on the existence of different levels in the intelligence and equipment of the people of India. You have to deal not with an uniformly developed country. Parts of the country are very very backward. Look at the Assam tribes; what is their condition? Can you have the same kind of law for them as you have for the advanced people of Bombay? You must have a great deal of difference. Sir, I feel that it is all right and a very desirable thing to have a uniform law, but at a very distant date. For that, we should first await the coming of that event when the whole of India has got educated, when mass illiteracy has been removed, when people have advanced, when their economic conditions are better, when each man is able to stand on his own legs and fight his own battles. Then, you can have uniform laws. Can you have, today, uniform laws as far as a child and a young man are concerned?

Even today under the Criminal law you give juvenile offenders a lighter punishment than you do to adult offenders. The apprehension felt by the members of the minority community is very real. Secular State does not mean that it is anti-religious State. It means that it is not irreligious but non-religious and as such there is a world of difference between irreligious and non-religious. I therefore suggest that it would be a good policy for the members of the Drafting Committee to come forward with such safeguards in this proviso as will meet the apprehensions genuinely felt and which people are feeling and I have every hope that the ingenuity of Dr. Ambedkar will be able to find a solution for this.

Shri K. M. Munshi (Bombay : General) : Mr. Vice-President, I beg to submit a few considerations. This particular clause which is now before the House is not brought for discussion for the first time. It has been

discussed in several committees and at several places before it came to the House. The ground that is now put forward against it is, firstly that it infringes the Fundamental Right mentioned in article 19; and secondly, it is tyrannous to the minority.

As regards article 19 the House accepted it and made it quite clear that—“Nothing in this article shall affect the operation of any existing law or preclude the State from making any law (a) regulating or restricting”—I am omitting the unnecessary words—“or other secular activity which may be associated with religious practices; (b) for social welfare and reforms”. Therefore the House has already accepted the principle that if a religious practice followed so far covers a secular activity or falls within the field of social reform or social welfare, it would be open to Parliament to make laws about it without infringing this Fundamental Right of a minority.

It must also be remembered that if this clause is not put in, it does not mean that the Parliament in future would have no right to enact a Civil Code. The only restriction to such a right would be article 19 and I have already pointed out that article 19, accepted by the House unanimously, permits legislation covering secular activities. The whole object of this article is that as and when the Parliament thinks proper or rather when the majority in the Parliament thinks proper an attempt may be made to unify the personal law of the country.

A further argument has been advanced that the enactment of a Civil Code would be tyrannical to minorities. Is it tyrannical? Nowhere in advanced Muslim countries the personal law of each minority has been recognised as so sacrosanct as to prevent the enactment of a Civil Code. Take for instance Turkey or Egypt. No minority in these countries is permitted to have such rights. But I go further. When the Shariat Act was passed or when certain laws were passed in the Central Legislature in the old regime, the Khojas and Cutchi Memons were highly dissatisfied.

They then followed certain Hindu customs; for generations since they became converts they had done so. They did not want to conform to the Shariat; and yet by a legislation of the Central Legislature certain Muslim members who felt that Shariat law should be enforced upon the whole community carried their point. The Khojas and Cutchi Memons most unwillingly had to submit to it. Where were the rights of minority then? When you want to consolidate a community, you have to take into consideration the benefit which may accrue to the whole community and not to the customs of a part of it. It is not therefore correct to say that such an act is tyranny of the majority. If you will look at the countries in Europe which have a Civil Code, everyone who goes there from any part of the world and every minority, has to submit to the Civil Code. It is not felt to be tyrannical to the minority. The point however is this, whether we are going to consolidate and unify our personal law in such a way that the way of life of the whole country may in course of time be unified and secular. We want to divorce religion from personal law, from what may be called social relations or from the rights of parties as regards inheritance or succession. What have these things got to do with religion I really fail to understand. Take for instance the Hindu Law Draft which is before the Legislative Assembly. If one looks at Manu and Yagnyavalkya and all the rest of them, I think most of the provisions of the new Bill will run counter to their injunctions. But after all we are an advancing society. We are in a stage where we must unify and consolidate the nation by every means without interfering with religious practices. If however the religious practices in the past have been so construed as to cover the whole field of life, we have reached a point when we must put our foot down and say that these matters are not religion, they are purely matters for secular legislation. This is what is emphasised by this article.

[Shri K. M. Munshi]

Now look at the disadvantages that you will perpetuate if there is no Civil Code. Take for instance the Hindus. We have the law of Mayukha applying in some parts of India; we have Mithakshara in others; and we have the law-Dayabagha in Bengal. In this way even the Hindus themselves have separate laws and most of our Provinces and States have started making separate Hindu law for themselves. Are we going to permit this piecemeal legislation on the ground that it affects the personal law of the country? It is therefore not merely a question for minorities but it also affects the majority.

I know there are many among Hindus who do not like a uniform Civil Code, because they take the same view as the Honourable Muslim Members who spoke last. They feel that the personal law of inheritance, succession etc. is really a part of their religion. If that were so, you can never give, for instance, equality to women. But you have already passed a Fundamental Right to that effect and you have an article here which lays down that there should be no discrimination against sex. Look at Hindu Law; you get any amount of discrimination against women; and if that is part of Hindu religion or Hindu religious practice, you cannot pass a single law which would elevate the position of Hindu women to that of men. Therefore, there is no reason why there should not be a civil code throughout the territory of India.

There is one important consideration which we have to bear in mind—and I want my Muslim friends to realise this—that the sooner we forget this isolationist outlook on life, it will be better for the country. Religion must be restricted to spheres which legitimately appertain to religion, and the rest of life must be regulated, unified and modified in such a manner that we may evolve, as early as possible a strong and consolidated nation. Our first problem and the most important problem is to produce national unity in this country. We think we have got national unity. But there are many factors—and important factors—which still offer serious dangers to our national consolidation, and it is very necessary that the whole of our life, so far as it is restricted to secular spheres, must be unified in such a way that as early as possible, we may be able to say, “Well, we are not merely a nation because we say so, but also in effect, by the way we live, by our personal law, we are a strong and consolidated nation”. From that point of view alone, I submit, the opposition is not, if I may say so, very well advised. I hope our friends will not feel that this is an attempt to exercise tyranny over a minority; it is much more tyrannous to the majority.

This attitude of mind perpetuated under the British rule, that personal law is part of religion, has been fostered by the British and by British courts. We must, therefore, outgrow it. If I may just remind the honourable Member who spoke last of a particular incident from Fereshta which comes to my mind, Allauddin Khilji made several changes which offended against the Shariat, though he was the first ruler to establish Muslim Sultanate here. The Kazi of Delhi objected to some of his reforms, and his reply was—“I am an ignorant man and I am ruling this country in its best interests. I am sure, looking at my ignorance and my good intentions, the Almighty will forgive me, when he finds that I have not acted according to the Shariat.” If Allauddin could not, much less can a modern government accept the proposition that religious rights cover personal law or several other matters which we have been unfortunately trained to consider as part of our religion. That is my submission.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. Vice-President, after the very full exposition of my friend the Honourable Mr. Munshi, it is not necessary to cover the whole ground. But it is as well to understand whether there can be any real objection to the article as it runs.

“The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.”

A Civil Code, as has been pointed out, runs into every department of civil relations, to the law of contracts, to the law of property, to the law of succession, to the law of marriage and similar matters. How can there be any objection to the general statement here that the States shall endeavour to secure a uniform civil code throughout the territory of India?

The second objection was that religion was in danger, that communities cannot live in amity if there is to be a uniform civil code. The article actually aims at amity. It does not destroy amity. The idea is that differential systems of inheritance and other matters are some of the factors which contribute to the differences among the different peoples of India. What it aims at is to try to arrive at a common measure of agreement in regard to these matters. It is not as if one legal system is not influencing or being influenced by another legal system. In very many matters today the sponsors of the Hindu Code have taken a lead not from Hindu Law alone, but from other systems also. Similarly, the Succession Act has drawn upon both the Roman and the English systems. Therefore, no system can be self-contained, if it is to have in it the elements of growth. Our ancients did not think of a unified nation to be welded together into a democratic whole. There is no use clinging always to the past. We are departing from the past in regard to an important particular, namely, we want the whole of India to be welded and united together as a single nation. Are we helping those factors which help the welding together into a single nation, or is this country to be kept up always as a series of competing communities? That is the question at issue.

Now, my friend Mr. Pocker levelled an attack against the Drafting Committee on the ground that they did not know their business. I should like to know whether he has carefully read what happened even in the British regime. You must know that the Muslim law covers the field of contracts, the field of criminal law, the field of divorce law, the field of marriage and every part of law as contained in the Muslim law. When the British occupied this country, they said, we are going to introduce one criminal law in this country which will be applicable to all citizens, be they Englishmen, be they Hindus, be they Muslims. Did the Muslims take exception, and did they revolt against the British for introducing a single system of criminal law? Similarly, we have the law of contracts governing transactions between Muslims and Hindus, between Muslims and Muslims. They are governed not by the law of the Kuran but by the Anglo-Indian jurisprudence, yet no exception was taken to that. Again, there are various principles in the law of transfer which have been borrowed from the English jurisprudence.

Therefore, when there is impact between two civilizations or between two culture, each culture must be influenced and influence the other culture. If there is a determined opposition, or if there is strong opposition by any section of the community, it would be unwise on the part of the legislators of this country to attempt to ignore it. Today, even without article 35, there is nothing to prevent the future Parliament of India from passing such laws. Therefore, the idea is to have a uniform civil code.

Now, again, there are Muslims and there are Hindus, there are Catholics, there are Christians, there are Jews, indifferent European countries. I should like to know from Mr. Pocker whether different personal laws are perpetuated in France, in Germany, in Italy and in all the continental countries of Europe, or whether the laws of succession are not co-ordinated and unified in the various

[Shri Alladi Krishnaswami Ayyar]

States. He must have made a detailed study of Muslim jurisprudence and found out whether in all those countries, there is a single system of law or different systems of law.

Leave alone people who are there. Today, even in regard to people in other parts of the country, if they have property in the continent of Europe where the German Civil Code or the French Civil Code obtains, the people are governed by the law of the place in very many respects. Therefore, it is incorrect to say that we are invading the domain of religion. Under the Moslem law, unlike under Hindu law, marriage is purely a civil contract. The idea of a sacrament does not enter into the concept of marriage in Muslim jurisprudence though the incidence of the contract may be governed by what is laid down in the Kuran and by the later jurists. Therefore, there is no question of religion being in danger. Certainly no Parliament, no Legislature will be so unwise as to attempt it, apart from the power of the Legislature to interfere with religious tenets of peoples. After all the only community that is willing to adapt itself to changing times seems to be the majority community in the country. They are willing to take lessons from the minority and adapt their Hindu Laws and take a leaf from the Muslims for the purpose of reforming even the Hindu law. Therefore, there is no force to the objection that is put forward to article 35. The future Legislatures may attempt a uniform Civil Code or they may not. The uniform Civil Code will run into every aspect of Civil Law. In regard to contracts, procedure and property uniformity is sought to be secured by their finding a place in the Concurrent List. In respect of these matters the greatest contribution of British jurisprudence has been to bring about a uniformity in these matters. We only go a step further than the British who ruled in this country. Why should you distrust much more a national indigenous Government than a foreign Government which has been ruling? Why should our Muslim friends have greater confidence, greater faith in the British rule than in a democratic rule which will certainly have regard to the religious tenets and beliefs of all people?

Therefore, for those reasons, I submit that the House may unanimously pass this article which has been placed before the Members after due consideration.

The Honourable Dr. B. R. Ambedkar : Sir, I am afraid I cannot accept the amendments which have been moved to this article. In dealing with this matter, I do not propose to touch on the merits of the question as to whether this country should have a Civil Code or it should not. That is a matter which I think has been dealt with sufficiently for the occasion by my friend, Mr. Munshi, as well as by Shri Alladi Krishnaswami Ayyar. When the amendments to certain fundamental rights are moved, it would be possible for me to make a full statement on this subject, and I therefore do not propose to deal with it here.

My friend, Mr. Hussain Imam, in rising to support the amendments, asked whether it was possible and desirable to have a uniform Code of laws for a country so vast as this is. Now I must confess that I was very much surprised at that statement, for the simple reason that we have in this country a uniform code of laws covering almost every aspect of human relationship. We have a uniform and complete Criminal Code operating throughout the country, which is contained in the Penal Code and the Criminal Procedure Code. We have the Law of Transfer of Property, which deals with property relations and which is operative throughout the country. Then there are the Negotiable Instruments Acts: and I can cite innumerable enactments which would prove that this country has practically a Civil Code, uniform in its content and applicable to the whole of the country. The only province the Civil Law has not been able to invade so far is Marriage and Succession. It is this little corner which we have not

been able to invade so far and it is the intention of those who desire to have article 35 as part of the Constitution to bring about that change. Therefore, the argument whether we should attempt such a thing seems to me somewhat misplaced for the simple reason that we have, as a matter of fact, covered the whole lot of the field which is covered by a uniform Civil Code in this country. It is therefore too late now to ask the question whether we could do it. As I say, we have already done it.

Coming to the amendments, there are only two observations which I would like to make. My first observation would be to state that members who put forth these amendments say that the Muslim personal law, so far as this country was concerned, was immutable and uniform through the whole of India. Now I wish to challenge that statement. I think most of my friends who have spoken on this amendment have quite forgotten that up to 1935 the North-West Frontier Province was not subject to the Shariat Law. It followed the Hindu Law in the matter of succession and in other matters, so much so that it was in 1939 that the Central Legislature had to come into the field and to abrogate the application of the Hindu Law to the Muslims of the North-West Frontier Province and to apply the Shariat Law to them. That is not all.

My honourable friends have forgotten, that, apart from the North-West Frontier Province, up till 1937 in the rest of India, in various parts, such as the United Provinces, the Central Provinces and Bombay, the Muslims to a large extent were governed by the Hindu Law in the matter of succession. In order to bring them on the plane of uniformity with regard to the other Muslims who observed the Shariat Law, the Legislature had to intervene in 1937 and to pass an enactment applying the Shariat Law to the rest of India.

I am also informed by my friend, Shri Karunakara Menon, that in North Malabar the Marumakkathayam Law applied to all—not only to Hindus but also to Muslims. It is to be remembered that the Marumakkathayam Law is a Matriarchal form of law and not a Patriarchal form of law.

The Mussulmans, therefore, in North Malabar were up to now following the Marumakkathayam law. It is therefore no use making a categorical statement that the Muslim law has been an immutable law which they have been following from ancient times. That law as such was not applicable in certain parts and it has been made applicable ten years ago. Therefore if it was found necessary that for the purpose of evolving a single civil code applicable to all citizens irrespective of their religion, certain portions of the Hindu law, not because they were contained in Hindu law but because they were found to be the most suitable, were incorporated into the new civil code projected by article 35, I am quite certain that it would not be open to any Muslim to say that the framers of the civil code had done great violence to the sentiments of the Muslim community.

My second observation is to give them an assurance. I quite realise their feelings in the matter, but I think they have read rather too much into article 35, which merely proposes that the State shall endeavour to secure a civil code for the citizens of the country. It does not say that after the Code is framed the State shall enforce it upon all citizens merely because they are citizens. It is perfectly possible that the future Parliament may make a provision by way of making a beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary. Parliament may feel the ground by some such method. This is not a novel method. It was adopted in the Shariat Act of 1937 when it was applied to territories other than the North-West Frontier Province. The law said that here is a Shariat law which should be applied to Mussulmans provided a Mussulman who wanted that he should be bound by the Shariat Act should go to an officer of the state, make a declaration that

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he is willing to be bound by it, and after he has made that declaration the law will bind him and his successors. It would be perfectly possible for Parliament to introduce a provision of that sort; so that the fear which my friends have expressed here will be altogether nullified. I therefore submit that there is no substance in these amendments and I oppose them.

Mr. Vice-President : The question is:

“That the following proviso be added to article 35:

‘Provided that any group, section or community or people shall not be obliged to give up its own personal law in case it has such a law.’”

The motion was negatived.

Mr. Vice-President : The question is:

“That to article 35, the following proviso be added, namely:

‘Provided that the personal law of any community which is guaranteed by the statute shall not be changed except with the previous approval of the community ascertained in such manner as the Union Legislature may determine by law.’”

The motion was negatived.

Mr. Vice-President : The question is:

“That Part IV of the Draft Constitution be deleted.”

The motion was negatived.

Mr. Vice-President : The question is:

“That article 35, stand part of the Constitution.”

The motion was adopted.

Article 35 was added to the Constitution.

Article 37

Sardar Hukum Singh (East Punjab: Sikh): Mr. Vice-President, I move:

“That in article 37, for the words ‘Scheduled Castes’ the words ‘Backward communities of whatever class or religion’ be substituted.”

Sir, “Scheduled Castes” has been defined in article 303(w) of this Draft Constitution as castes and races specified in the Government of India (Scheduled Castes) Order, 1936. In that Order, most of the tribes, castes and sub-castes are described and include Bawaria, Chamar, Chuhra, Balmiki, Od, Sansi, Sirviband and Ramdasis. It would be conceded that they have different faiths and beliefs. For instance, there are considerable numbers of Sikh, Ramdasis, Odes, Balmiki and Chamars. They are as the backward as their brethren of other beliefs. But, so far, these Sikh backward classes have been kept out of the benefits meant for Scheduled Castes. The result has been either conversion in large numbers or discontent.

I do realise that so far as election to legislatures was concerned, there could be some justification as the Sikhs had separate representation and the Scheduled Castes got their reservation out of General Seats. There is the famous case of S. Gopal Singh Khalsa who could not be allowed to contest a seat unless he declared that he was not a Sikh. Such cases have led to disappointment and discontent on account of a general belief that some sections were being discriminated against.

Now the underlying idea is the uplift of the backward section of the community so that they may be able to make equal contribution in the national activities. I fully support the idea. I may be confronted with an argument that at least there is the first part of the article which provides for promotion “of educational and economic interests of ‘weaker sections’ of the people”. So far it is quite good and it can apply to every class. But, as the “weaker sections” are not defined anywhere, the apprehension is that the whole attention would be directed to the latter part relating to ‘Scheduled Castes’ and ‘weaker sections’

would not mean anything at all. Even the article lays the whole stress on this latter portion by centralising attention through the words 'in particular' of the 'Scheduled Castes'.

I may not be misunderstood in this respect. I do not grudge this special care of the State being directed towards "Scheduled Castes". Rather, I would support even greater concessions being given and more attention being paid to backward classes. My only object is that there should be no discrimination. That is not the intention of the article either. But, as I have said, so far the "Scheduled Castes" have been understood by general masses to exclude the members of the same castes professing Sikh religion. We should be particular in guaranteeing against any misconstruction being placed or any discrimination being exercised by those who would be responsible for actual working of it. Under the present article, it is the "educational and economic interests" that are to be promoted and therefore it should be made clear that it is to be done for all backward classes, and not for persons professing this or that particular religion or belief. I commend this motion for the acceptance of the House.

Shri A. V. Thakkar (United States of Kathiawar : Saurashtra): Sir, I beg to move this amendment (983) which asks for the inclusion of the backward castes among Hindus and among Muslims.....

The Honourable Dr. B. R. Ambedkar : May I just make a statement? I believe both these amendments dealing with the backward classes, etc. would be more appropriate to the Schedule and could be better considered when we dealt with the Schedule. I would suggest that the consideration of these amendments may be postponed.

Shri A. V. Thakkar : My amendment seeks to lay down certain principles.....

Mr. Vice-President : Dr. Ambedkar proposes to give the fullest possible consideration to these in the Schedule.

Shri A. V. Thakkar : Does he agree to include all backward classes?

Mr. Vice-President : He can hardly agree to anything now. The matter is open to discussion later.

Shri A. V. Thakkar : Then I do not move my amendment now.

Mr. Naziruddin Ahmad : Sir, I am not moving my amendment No. 985. It merely seeks to use capital letters in the case of the Scheduled Castes. I would respectfully draw the attention of the Chairman of the Drafting Committee to article 303 (1), items (w) and (x) on page 147 of the Draft Constitution. We have there specified two definitions, 'Scheduled Castes' and 'Scheduled Tribes'. 'Scheduled Castes' have everywhere been spelt with capital letters, but 'Scheduled tribes' have been spelt with small letters.

The Honourable Dr. B. R. Ambedkar : We shall consider that.

Sardar Hukam Singh : I beg leave to withdraw my amendment. The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President : I shall now put article 37 to the vote of the House.

The question is:

"That article 37 do stand part of the Constitution."

The motion was adopted.

Article 37 was added to the Constitution.

Article 38

Mr. Vice-President : The House will now take up article 38 for consideration.

Shri Mahavir Tyagi : Sir, in connection with my amendment No. 999, I have given notice of another amendment (71 in List II) after consulting some of my friends. I hope Mr. Aziz Ahmed Khan who has his own amendment to this article will agree with my amendment. I do not want to make any speech in moving this amendment. Everybody appreciates the value of prohibition. Hence I simply move amendment No. 71 in List II:

“That at the end of article 38, the words ‘and shall endeavour to bring about the prohibition of the consumption of intoxicating drinks and drugs which are injurious to health’ be inserted.”

Sir, for this attempt of mine I am conscious of the abuses that will be hurled on me by the dry mouths of those who have to stop drinking. I am also aware of the blessing that will be showered on me by the wives of those who will benefit by the removal of this evil. I should only wish “good luck” to the country in case this amendment is accepted.

An Honourable Member : It is already past 1 o’clock.

Mr. Vice-President : Somebody is surely to blame. Here in this time-piece it is one minute to one.

The House stands adjourned till 10 A. M. tomorrow.

The Assembly then adjourned till Ten of the Clock on Wednesday, the 24th November 1948.
