divisions : one division believes in cottage industries solely on a cooperative 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The amendment was, by leave of the Assembly, withdrawn.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.

The amendment, as further modified by Mr. Nagappa was adopted.

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

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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.

*CAD. (Official Report). Vol. VII. 23rd November 1948, p. 538.

ARTICLE 36

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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." .....

* * * * *

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."

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***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 pan 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.

[The motion of Pandit Maitra was adopted. The motion of Naziruddin Ahmad was negatived.]

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

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*CAD, (Official Report), Vol. VII, 22nd November 1948, p. 538.

†*Ibid.*, 540

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 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 statements, 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 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 tiling 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.

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*CAD. Vol. VII, 23rd November 1948, p. 540.

†*Ibid.*, p. 550.

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 Held 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 Northwest 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 Malbar 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 Partriarchal form of law.

The Mussulmans, therefore, in North Malbar 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 farmers 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 Slate 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 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.

[The motion of Mohd. Ismail Saheb and that of B. Pocker Sahib Bahadur were negatived. 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 subcastes 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, Balmikis and

*CAD. Vol. VII, 23rd November 1948, pp. 552-53.

Chamars. They are as 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 Stales 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 Hukum Singh : I beg leave to withdraw my amendment.

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

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Article 37 was added to the Constitution.

ARTICLE 38

* * * * *

***Mr. Vice-President:** We shall commence today's proceedings with the consideration of the particular article with which we are concerned today in the Draft Constitution. The introduction of the Bill will be taken up after a little while.

*CAD, Vol. VII, 24th November 1948, p. 555

Prof. Shibban Lal Saksena : (United Provinces : General) : I am tabling an amendment which is an amendment of Mr. Mahavir Tyagi's. I hope it will be acceptable to him, because in his amendment, he has not included the words 'except for medicinal purposes'. I think that if the amendment of Mr. Mahavir Tyagi is accepted as amended by my amendment, it would become much better. I wish Dr. Ambedkar to accept my amendment which is mentioned in No. 86 of list IV.

Sir I beg to move :

"That at the end of article 38, the following he substituted:—

'and shall endeavour to bring about prohibition of the consumption of intoxicating drinks and drugs which are injurious to health except for medicinal purposes' ".

* * * * *

***The Honourable Dr. B. R. Ambedkar :** Mr. Vice-President, I accept the amendment of Prof. Shibban Lal Saksena subject to a further amendment, namely, that after the word ' and ' at the beginning of his amendment (86 of List IV) the words " in particular " be added.

Shri Mahavir Tyagi : I really cannot understand how that amendment can be accepted by the Honourable Dr. Ambedkar. The amendment under discussion is mine.

The Honourable Dr. B. R. Ambedkar : Sir, I accept the amendment of Mr. Tyagi as amended by the amendment of Prof. Shibban Lal Saksena (Laughter).

Mr. Vice-President : Mr. Tyagi is a great stickler for rights.

The Honourable Dr. B. R. Ambedkar : Sir, if I may say so, the right really belongs to me, because it is I who drafted the amendment he moved. (Renewed laughter.)

Mr. Vice-President : That puts the matter in a new light.

The Honourable Dr. B. R. Ambedkar : I do not think the House would have found any difficulty in accepting this amendment. Two points have been raised against it. One is by Prof. Khandekar who represents Kolhapur in this Assembly. I am sure that Mr. Khandekar has not sufficiently appreciated the fact that this clause is one of the clauses of an Article which enumerates what are called Directive Principles of Policy. There is therefore no compulsion on the State to act on this principle. Whether to act on this principle and when to do so are left to the State and public opinion. Therefore, if the State thinks that the time has not come for introducing prohibition or that it might

*CAD. Vol. VII, 24th November 1948. pp. 566-67.

be introduced gradually or partially, under these Directive Principles it has full liberty to act. I therefore do not think that we need have any compunction in this matter.

But, Sir, I was quite surprised at the speech delivered by my friend Mr. Jaipal Singh. He said that this matter ought not to be discussed at this stage, but should be postponed till we take up for consideration the report of the Advisory Committee on Tribal Areas. If he had read the Draft Constitution, particularly the Sixth Schedule, paragraph 12, he would have found that ample provision is made for safeguarding the position of the tribal people with regard to the question of prohibition. The scheme with regard to the tribal areas is that the law made by the State, whether by a province or by the Centre, does not automatically apply to that particular area. First of all, the law has to be made. Secondly, the District Councils or the Regional Councils which are established under this Constitution for the purposes of the administration of the affairs of these areas are given the power to say whether a particular law made by a province or by the Centre should be applied to that particular region inhabited by the tribal people or not, and particular mention is made with regard to the law relating to prohibition. I shall just read out sub-paragraph (a) of paragraph 12 which occurs on page 184 of the Draft Constitution. It says :

> "Notwithstanding anything contained in this Constitution—
>
> (a) no Act of the legislature of the State in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Legislature of the State prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to any autonomous district or autonomous region unless in either case the District Council for such district or having jurisdiction over such region by public notification so directs, and the District Council in giving such direction with respect to any Act may direct that the Act shall in its application to such district or region or any part thereof have effect subject to such exceptions or modifications as it thinks fit;"

Now, I do not know what more my friend, Mr. Jaipal Singh, wants than the provision in paragraph 12 of the Sixth Schedule. My fear is that he has not read the Sixth Schedule : if he had read it, he would have realised that even though the State may apply its law regarding prohibition in any part of the country, it has no right to make it applicable to the tribal areas without the consent of the District Councils or the Regional Councils.

Mr. Vice-President : There are three amendments. One is by Mr. Mahavir Tyagi. That is No. 71 in List II. If I read the situation aright, that has been practically withdrawn. Am I right, Mr. Tyagi ?

Shri Mahavir Tyagi : I have not withdrawn my amendment. I have only accepted the words which Prof. Shibban Lal Saksena intends to add to my amendment.

Mr. Vice-President : I want to know whether you want that your amendment should be put separately to the vote.

Shri Mahavir Tyagi : Yes, Sir, of course. As I have said, I want to abolish liquor altogether. He wants to add the words "except for medical purposes". Therefore my amendment is the original amendment.

Mr. Vice-President : I understand the situation. I shall now put to the vole the amendment of Mr. Mahavir Tyagi as modified by Professor Shibban Lal Saksena and further modified by Dr. Ambedkar.

Shri Mahavir Tyagi: On a point of order, Dr. Ambedkar has added the word "particular" but he has not taken my permission.

Mr. Vice-President : I take your permission on behalf of Dr. Ambedkar.

Shri Mahavir Tyagi : I accept his amendment also, Sir.

Mr. Vice-President: This particular amendment as amended is now put to the vote.

The amendment was adopted.

[Article 38 as amended, was added to the Constitution.]

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ARTICLE 38-A.

***Pandit Thakur Dass Bhargava** (East Punjab : General) : †[Mr. President, the words of the amendment No. 72 which I am moving in place of amendment No. .1002, are as follows :—

"That for amendment No. 1002 of the lists of amendments to 38-A the following he substituted :—

"38-A. The State shall endeavour to organise agriculture and animal husbandry on modem and scientific lines and shall in particular take steps for preserving and improving the breeds of cattle and prohibit the slaughter of cow and other useful cattle, specially milch and draught cattle and their young stock

At the very outset I would like to submit that this amendment...

Shri S. Nagappa : (Madras : General) : Sir, on a point of order, my Honourable friend, who can speak freely in English, is deliberately

*CAD, Vol. VII, 24th November 1948, p. 568.

† Translation of Hindustani speech.

talking in Urdu or Hindustani which a large number of South Indians cannot follow.

Mr. Vice-President : The Honourable Member is perfectly entitled to speak in any language he likes but I would request him to speak in English though he is not bound to speak in English.

Pandit Thakur Dass Bhargava : I wanted to speak in Hindi which is my own language about the cow and I would request you not to order me to speak in English. As the subject is a very important one, I would like to express myself in the way in which I can express myself with greater ease and facility. I would therefore request you kindly to allow me to speak in Hindi.

*[Mr. Vice-President, with regard to this amendment I would like to submit before the house that in fact this amendment like the other amendment, about which Dr. Ambedkar has stated, is his manufacture....

* * * * *

***The Honourable Dr. B. R. Ambedkar** : I accept the amendment of Pandit Thakur Dass Bhargava.

Mr. Vice-President : I shall now put the amendments one by one to the vote. The amendment of Pandit Thakur Dass Bhargava. That is No. 72 in List II.

[The motion was adopted.]

Article 38-A, as amended, was added to the Constitution.

ARTICLE 39

†Mr. Vice-President : Shall we now go on to the next item in the agenda ? No. 1003 has been covered by one of the previous amendments. No. 1004 has also been disposed of. Then No. 1005. The first part of it cannot be moved, but the second part can be moved. (Not moved.)

Then the motion before the House is that article 39 forms part of the Constitution. There are several amendments to this.

(Nos. 1006, 1007 and 1008 were not moved.) No. 1009 by Dr. Ambedkar and his colleagues.

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

"That in article 39, after the words 'from spoliation' the word 'disfigurement' be inserted."

*CAD, Vol. VII, 24th November 1048, p. 580.

†*Ibid,* p. 581.

Prof. Shibban Lal Saksena : Mr. Vice-President, Sir, I beg to move :

"That in article 39, after the words 'from spoliation' the word 'disfigurement' be inserted, and all the words after the words 'may he' to the end of the article be deleted."

The Honourable Dr. B. R. Ambedkar : Why do you want to make a speech when I am going to accept it ?

Prof. Shibban Lal Saksena : I am glad that Dr. Ambedkar is going to accept it. Because this article is to be a directive principle, it should not mention about laws of Parliament and so we must omit the words "to preserve and maintain according to law made by Parliament all such monuments or places or objects."

The Honourable Dr. B. R. Ambedkar : Sir, I accept the amendment.

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Mr. Vice-President : I am now putting the amendments one by one.

The motion was adopted.

Mr. Vice-President : There is the amendment of Prof. Shibban Lal Saksena.

Begum Aizaz Rasul : (United Provinces : Muslim) : May I know if Dr. Ambedkar has accepted Prof. Shibban Lal Saksena's amendment ? If not, I wish to oppose the second part.

Mr. Vice-President : There is no second part so far as I am aware. It only refers to deletion of certain words. The first part is the same.

Begum Aizaz Rasul : I wish to oppose that motion.

Mr. Vice-President : I am afraid it is too late now. The motion was adopted.

Article 39, as amended, was added to the Constitution.

ARTICLE 39-A

***The Honourable Dr. B. R. Ambedkar** : Mr. Vice-President, Sir, I move:

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

'39-A. That State shall take steps to secure that, within a period of three years from the commencement of this Constitution, there is separation of the judiciary from the executive in the public services of the State.'."

I do not think it is necessary for me to make any very lengthy statement in support of the amendment which I have moved. It has been the desire of this country from long past that there should be separation of the judiciary from the executive and the demand has been

*CAD, Vol. VII, 24th November 1948, p. 582.

continued right from the time when the Congress was founded. Unfortunately, the British Government did not give effect to the resolutions of the Congress demanding this particular principle being introduced into the administration of the country. We think that the time has come when this reform should be carried out. It is, of course, realised that there may be certain difficulties in the carrying out of this reform ; consequently this amendment has taken into consideration two particular matters which may be found to be matters of difficulty. One is this : that we deliberately did not make it a matter of fundamental principle, because if we had made it a matter of fundamental principle it would have become absolutely obligatory instantaneously on the passing of the Constitution to bring about the separation of the judiciary and the executive. We have therefore deliberately put this matter in the chapter dealing with directive principles and there too we have provided that this reform shall be carried out within three years, so that there is no room left for what might be called procrastination in a matter of this kind. Sir I move.

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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

*CAD. Vol. VII, 25th November 1948, pp. 585-86

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 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. Shibhan 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....

The motion was adopted.

Article 39-A was added to the Constitution.

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***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 he the duty of the State to protect, safeguard arid preserve the places of worship such as Gurdwaras, Churches, Temples, Mosques including the graveyards and burning ghats."

* * * * *

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

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

The amendment was negatived.

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THE ARTICLE 40

‡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 front 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

*CAD. Vol. VII, 25th November 1948, p. 593.

†Ibid., p. 594.

‡Ibid., p. 595.

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 lenghty 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 lie fore sub-clause (a), this new clause he inserted and the existing clause be renumbered accordingly :—

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

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***Shri H. V. Kamath :** .....Sir, I move—

"That in amendment 1018 of the list of Amendments in article 40, after the word, 'shall' the words ' endeavour to ' be inserted, in clause (b) the wods 'seek to' be deleted in clause (c) the words 'endeavour to ' be deleted."

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

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

"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."

This amendment seek 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 .....

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†Mr. 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 arbitration."

The motion was adopted.

‡The Honourable Dr. B. R. Ambedkar : Sir I accept Mr. Kamath's three amendmednts. 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.

The motion was negatived.

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*CAD, Vol. VII, 25th November 1948. p. 596.

†Ibid., pp. 595

‡Ibid., p. 604.

ARTICLE 7

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.

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†**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 Government 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 by-laws.

*CAD, Vol. VII. 25th November 1948, p. 607.

†*Ibid.,* 610.

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 tins 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 "he 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.

[Two more amendments were negatived.]

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

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ARTICLE 8

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***Mr. Vice-President :** We have a quarter of an hour more. We can resume discussion of article 8 of the Draft Constitution.

Pandit Lakshmi Kanta Maitra (West Bengal : General) **:** We may adjourn now.

Mr. Vice-President : Our time is valuable. We should not waste a quarter of an hour.

*CAD, Vol. VII, 26th November 1948, p. 640.

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

"That for clause (3) of Article 8, the following he substituted :—

'(3) In this article—

(a) the expression '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;

(b) the expression 'laws in force' includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas."

Sir, the reason for bringing in this amendment is this : It will be noticed that in article 8 there are two expressions which occur. In sub-clause (1) of article 8, there occurs the phrase "laws in force", while in sub-clause (2) the words "any law" occur. In the original draft as submitted to this House, all that was done was to give the definition of the term "law" in sub-clause (3). The term "laws in force" was not defined. This amendment seeks to make good that lacuna. What we have done is to split sub-clause (3) into two parts (a) and (b). (a) contains the definition of the term "law" as embodied in the original sub-clause (3), and (b) gives the definition of the expression "laws in force" which occurs in sub-clause (1) of article 8. I do not think that any more explanation is necessary.

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***Mr. Naziruddin Ahmad :** Sir, before I move my amendment, I beg to point out that as a comprehensive amendment has been moved by the Honourable Dr. Ambedkar, I think the present amendment should be suitably adapted to apply to that amendment. I wish to move the second part of it only.

Mr. Vice-President : First of all, find out whether he accepts it or not.

Mr. Naziruddin Ahmad : Unless I argue the matter, he will not accept it. I think. Sir, this amendment will have to be accepted.

I beg to move :

That in amendment No. 260 which has been moved by Dr. Ambedkar, the words "custom or usage having the force of law in the territory of India or any part thereof be deleted.

Mr. Vice-President : How can you add to that amendment without giving notice ? It is out of order. You can only make a suggestion.

*CAD. Vol. VII. 26th November 1948, p. 641.

Mr. Naziruddin Ahmad : I have already given notice of an amendment to the original article. In view of the amendment of Dr. Ambedkar, there should be consequential changes.

Mr. **Vice-President :** All right.

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***Mr. Naziruddin Ahmad :** I am very glad for the kind interruption. It does not remove my difficulties at all. Does it mean to say that the State 'makes' a custom or usage ? Still you have the difficulty to face that the State has to make a law including custom or usage.

The Honourable Shri B. G. Kher : Of course, it means ' whenever necessary'. That is always understood in law. I am sorry to interrupt.

The Honourable Dr. B. R. Ambedkar : Probably he may not find it necessary to continue his speech if I refer to him this fact, namely, that the expression "law" in (3) (a) has reference to law in 8 (1).

Mr. Naziruddin Ahmad : I am again grateful for the kind interruption of Dr. Ambedkar that the words 'custom and usage' have the force of law and so forth....

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†**Mr. Vice-President :** Shall we resume discussion of article 8 ? Is there any Honourable Member who wishes to speak on it ?

The Honourable Dr. B. R. Ambedkar (Bombay : General) **:** Mr. Vice-President, the amendment of Mr. Naziruddin Ahmad, I think, creates some difficulty which it is necessary to clear up. His amendment was intended to remove what he called an absurdity of the position which is created by the Draft as it stands. His argument, if I have understood it correctly, means this, that in the definition of law we have included custom, and having included custom, we also speak of the State not having the power to make any law. According to him, it means that the State would have the power to make custom, because according to our definition, law includes custom. I should have thought that that construction was not possible, for the simple reason, that sub-clause (3) of article 8 applies to the whole of the article 8, and does not merely apply to sub-clause (2) of article 8. That being so, the only proper construction that one can put or it is possible to put would be to read the word 'Law' distributively, so that so far as article 8, sub-clause (1) was concerned, 'Law' would include custom, while so-far as sub-clause (2) was concerned, 'Law' would not include custom.

*CAD. Vol. VII, 26th November 1948. p. 642.

†*Ibid.,* VII. 29th November 1948, pp. 644-45.

That would be, in my judgment, the proper reading, and if it was read that way, the absurdity to which my Friend referred would not arise. But I can quite understand that a person who is not properly instructed in the rules of interpretation of Statute may put the construction which my Friend Mr. Naziruddin Ahmad is seeking to put, and therefore to avoid this difficulty, with your permission, I would suggest that in the amendment which I have moved to sub-clause (3) of article 8, I may be permitted to add the following words after the words "In this article". The words which I would like to add would be—

"Unless the context otherwise requires"

so that the article would read this way—

'In this article, unless the context otherwise requires—

(a) The expression '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;

(b) the expression ……..'"

I need not read the whole thing.

So, if the context in article 8 (1) requires the term 'law' to be used so as to include custom, that construction would be possible. If in sub-clause (2) of article 8, it is not necessary in the context to read the word 'law' to include custom, it would not be possible to read the word 'law' to include custom. I think that would remove the difficulty which my Friend has pointed out in his amendment.

Mr. Vice-President : I shall put the amendments, one by one, to vote. I am referring to the numbering of the amendments in the old list....

I put amendment No. 252, standing in the name of Mr. Mahboob Ali Baig to vote. The question is :

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

The amendment was adopted.

[Amendment No. 259, standing in the name of Shri Lokanath Misra was negatived.]

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***Mr. Vice-President :** Then I put amendment No. 260, as amended by Dr. Ambedkar. The question is :

"That for clause (3) of article 8, the following be substituted:—

* (3) In this article, unless the context otherwise requires,

(a) The expression '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;

*CAD, Vol. VII, 26th November 1948, p. 645.

(b) the expression 'laws in force' includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repeated, notwithstanding that any such law or any part thereof may not he then in operation either at all or in particular areas '"

The amendment was adopted.

[Two more amendments were negatived.]

Article 8. as amended was added to the Constitution.

ARTICLE 8-A

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***Mr. Vice-President :** The next amendment is No. 273 in the new list in the name of Mr. L. N. Misra.

Shri Loknath Misra (Orissa : General) : Sir, I beg to move :

"That after article S, the following new article 8-A he inserted :

Right op Suffrage and Election

8-A. (1) livery citizen who is not less than 21 years of age and is not otherwise disqualified under this Constitution or any law made by the Union Parliament or by the Legislature of his State on any ground, *e.g.,* non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at such elections.

(2) The elections shall be on the basis of adult suffrage as described in the next preceding sub-clause hut they may be indirect, *i.e.,* the Poura and Grama Punehayats or a group of villages, a township or a part of it having a particular number of voters or being an autonomous unit of local self-government shall he required to elect primary members, who in their turn, shall elect members to the Union Parliament and lo the State Assembly.

(3) The Primary Members shall have the right to recall the member they elected Lo the Parliament or the Assembly of the State.

(4) A voter shall have the right to election and the cost of election shall be met by the State.

(5) Every candidate will be elected by the People and even if there is no rival, no candidate shall be elected unless he gels at least ½ of the total votes."

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†**Shri Algu Rai Shastri** (United Provinces : General) : Mr. President‡ I rise to oppose the amendment moved by my Friend. My first reason for doing so is that it has no relation to the question raised here. Matters relating lo elections have been dealt with in the Draft Constitution at other places where it has been staled as to how the Legislature shall be formed ; who shall be the members of the Legislatures ; what shall be their rights ; what shall be the procedure of their elections. Amendments of this nature may be moved in the article dealing with such things. This amendment is totally irrelevant lo Fundamental Rights of the Draft Constitution....

*CAD, Vol. VII. 29th November 1948. p. 646.

†*Ibid.,* 646.

‡Translation of Hindustani .speech.

...This amendment should be rejected outright and should never be accepted.

The Honourable Dr. B. R. Ambedkar : I cannot accept this amendment.

The motion of Loknath Misra was negatived.

ARTICLE 9

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***Mr. Vice-President :** Amendment No. 313 is disallowed as being verbal. Amendment No. 314. Dr. Ambedkar.

Shri H. V. Kamath : Mr. Vice-President, Sir, may I ask whether this is merely a verbal or at best a formal amendment liable to be disallowed ? It merely seeks to substitute the words 'State funds' in place of the words 'the revenues of the State'.

Mr. Vice-President : I shall keep that in mind. Dr. Ambedkar, will you please deal with that point also ?

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

> "That in sub-clause (b) of the second paragraph of clause (1) of article 9, for the words 'the revenues of the State' the words 'State funds' he substituted."

The reason why the Drafting Committee felt that the words "the revenues of the State" should be replaced by the words "State funds" is a very simple tiling. In the administrative parlance which has been in vogue in India for a considerably long time, we are accustomed to speak of revenues of a Provincial Government or revenues of the Central Government. When we come to speak of local boards or district boards, we generally use the phrase local funds and not revenues. That is the terminology which has been in operation throughout India in all the provinces. Now, the Honourable members of the House will remember that we are using the word 'State' in this Part to include not only the Central Government and the Provincial Governments and Indian States, but also local authorities, such as district local boards or taluka local boards or the Port Trust authorities. So far as they are concerned, the proper word is 'Fund'. It is therefore, desirable, in view of the fact that we are making these Fundamental Rights obligatory not merely upon the Central Government and the Provincial Governments, but also upon the district local boards and taluka local boards, to use a wider

*CAD, Vol. VII. 96th November 1948. pp. 653-34.

phraseology which would be applicable not only to the Central Government, but also to the local boards which are included in the definition of the word 'State'. I hope that my Honourable Friend Mr. Kamath will now understand that the amendment which I have moved is not merely verbal, but has some substance in it.

Sir, I move.

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*(One or two honourable Members rose to speak.)

Mr. Vice-President : You must forgive me if I am unable to meet the wishes of Honourable Members. I want the full co-operation of the House and I ask it specially just now. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, dealing with the amendments which have been moved, I accept Amendment No. 280 moved by Mr. Rouf.

Shri Syamanandan Sahaya (Bihar : General): Will the Honourable Member give his views also about amendments which have not been moved ?

The Honourable Dr. B. R. Ambedkar : I am very sorry I cannot give opinions regarding amendments which have not been moved.

Shri Syamanandan Sahaya : It was no fault of the member concerned.

The Honourable Dr. B. R. Ambedkar : I cannot help it. I accept the amendment of Mr. Rouf adding the words "place of birth". I also accept the amendment (No. 37 in List I) by Mr. Subramaniam to amendment No. 276 dropping the words "In particular" in clause (1) of article 9.

With regard to amendment No. 303 moved by Mr. Guptanath Singh. I am prepared to accept his amendment provided he is prepared to drop the word "kunds" from his amendment.

Shri Guptanath Singh: I have already done that, Sir.

The Honourable Dr. B. R. Ambedkar : Then, among the many amendments which I am sorry I cannot accept. I think it is necessary for me to say something about two of them. One is amendment No. 315 moved by Mr. Tahir which requires that any contravention of the provisions contained in article 9 should be made a crime punishable by law. My friend Mr. Tahir who moved this amendment referred

*CAD, Vol. VII, 29th November 1948, p.p. 660-64.