Schedule. According to that Schedule, the ordinary law passed by Parliament or by the local legislature applies automatically unless the Governor declares that that law or part of that law shall not apply. In the case of the scheduled tribes in tribal areas, the position is a little different. There the law made by Parliament or the law made by the local legislature of Assam shall not apply unless the Governor extends that law to the tribal area. In the one case it applies unless excluded and in the other case, it does not apply unless extended. That is the position.

Now, coming to the question of the scheduled tribes and as to why I substituted the word "scheduled" for the word "aboriginal", the explanation is this. As I said, the word "scheduled tribe" has a fixed meaning, because it enumerates the tribes, as you will see in the two Schedules. Well, the word "Adibasi" is really a general term which has no specific legal *de jure* connotation, something like the Untouchables, it is a general term. Anybody may include anybody in the term 'untouchable'. It has no definite legal connotation. That is why in the Government of India Act of 1935, it was felt necessary to give the word 'untouchable' some legal connotation and the only way it was found feasible to do it was to enumerate the communities which in different parts and in different areas were regarded by the local people as satisfying the test of untouchability. The same question may arise with regard to Adibasis. Who are the Adibasis ? And the question will be relevant, because by this Constitution, we are conferring certain privileges, certain rights on these Adibasis. In order that, if the matter was taken to a court of law, there should be a precise definition as to who are these Adibasis, it was decided to invent, so to say, another category or another term to be called 'Scheduled tribes' and to enumerate the Adibasis under that head. Now I think my friend, Mr. Jaipal Singh, if he were to take the several communities which are now generally described as Adibasis and compare the communities which are listed under the head of scheduled tribes, he will find that there is hardly a case where a community which is generally recognised as Adibasis is not included in the Schedule. I think, here and there, a mistake might have occurred and a community which is not an Adibasi community may have been included. It may be that a community which is really an Adibasi community has not been included, but if there is

a case where a community which has hitherto been treated as an Adibasi Comunity is not included in the list of scheduled tribes, we have added, as may be seen in the draft Constitution, an amendment whereby it will be permissible for the local government by notification to add any particular community to the list of scheduled tribes which have not been so far included. I think that ought to satisfy my friend, Mr. Jaipal Singh.

He asked me another question and it was this. Supposing a member of a scheduled tribe living in a scheduled area or a member of a scheduled tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local government, within whose jurisdiction he may be residing, the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area ? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But, so far as the present Constitution stands, a member of a scheduled tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practically impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them.

Sir, I hope I have met all the points that were raised by the various speakers when they spoke upon the amendments to this clause, and I believe that my explanation will give them satisfaction that all their points have been met. I hope that the article as amended will be accepted by the House.

Mr. Vice-President : I shall now put the amendments which have been moved, which number thirty, to the vote one by one.

[Following amendments were accepted by Dr. Ambedkar and were adopted by the House. Rest 28 amendments were negatived.]

(i) "That in clause (1) of article 13. the words "Subject to the other provisions of this article" he deleted."

(ii) That for clause (2) of article 13, the following he substituted :—

"(2) Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law in so far as it relates to. or prevent the

State from making any law relating to libel, stander, defamation or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State."

(iii) "That with reference to amendment No. 454 of the List of amendments—

(i) in clauses (3), (4), (5) and (6) of article 13. after the words "any existing law" the words "in so far as it imposes" be inserted, and

(ii) in clause (6) of article 13, after the words "in particular" the words "nothing in the said clause shall affect the operation of any existing law in so far as it prescribes or empowers any authority to prescribe, or prevent the State from making any law" be inserted."

(iv) "That in clauses (3), (4), (5) and (6) of article 13, before the word "restrictions" the word "resonable " be inserted."

(v) "That in clause (4) of article 13, for the words "the general public" the words "public order or morality" be substituted."

(vi) "That in clause (5) of article 13, for the word "aboriginal" the word "Scheduled" be substituted."

(vii) "That in clause (6) of article 13. for the words "morality or health" the words "the general public" be substituted."

Article 13 was added to the Constitution.

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ARTICLE 14

***Shri T. T. Krishnamachari** (Madras : General) **:** Mr. Vice-President, Sir, the point I have to place before the House happens to be a comparatively narrow one....

I recognise that I am rather late now to move an amendment. What I would like to do is to word the clause thus : 'No person shall be prosecuted and punished for the same offence more than once.' If my Honourable Friend Dr. Ambedkar will accept the addition of the words 'prosecuted and' before the word 'punished' and if you. Sir. and the House will give him permission to do so, it will not merely be a wise tiling to do but it will save a lot of trouble for the Governments of the future. That is the suggestion I venture to place before the House. It is for the House to deal with it in whatever manner it deems fit.

Mr. Vice-President: Does the House give the permission asked for by Shri T. T. Krishnamachari ?

Honourable Members : Yes.

Mr. Vice-President : Now I will call upon Dr. Ambedkar to move the amendment suggested by Shri T. T. Krishnamachari.

*CAD. Vol. VII. 2nd December, 1948. pp. 795-97.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, with regard to the amendments that have been moved to this article, I can say that I am prepared to accept the amendment moved by Mr. T. T. Krishnamachari. Really speaking, the amendment is not necessary but as certain doubts have been expressed that the word 'punished' may be interpreted in a variety of ways, I think it may be desirable to add the words "prosecuted and punished."

With regard to amendments Nos. 506 and 509 moved by my friend, Mr. Naziruddin Ahmad .....

Mr. Naziruddin Ahmad : It is No. 510.

The Honourable Dr. B. R. Ambedkar : Anyhow, I have examined the position the whole day yesterday and I am satisfied that no good will be served by accepting these amendments. I am however prepared to accept amendment No. 512 moved by Mr. Karimuddin. I think it is a useful provision and may find a place in our Constitution. There is nothing novel in it because the whole of the clause as suggested by him is to be found in the Criminal Procedure Code so that it might be said in a sense that this is already the law of the land. It is perfectly possible that the legislatures of the future may abrogate the provisions specified in his amendment but they are so important so far as personal liberty is concerned that it is very desirable to place these provisions beyond the reach of the legislature and I am therefore, prepared to accept his amendment.

With regard to amendment No. 513 moved by my friend, Mr. Kakkan .....

An Honourable Member : It was not moved.

Mr. Vice-President : What about amendments Nos. 505 and 506 ?

The Honourable Dr. B. R. Ambedkar : I have already said that I am not prepared to accept amendment Nos. 506 and 510.

Mr. Vice-President : Have you anything to say about amendment No. 505, the second part of it as modified by amendment No. 92 in List V ? perhaps you have overlooked it. It is in the name of Pandit Thakur Dass Bhargava.

The Honourable Dr. B. R. Ambedkar : I accept the amendment moved by him.

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

Amendment No. 505 as modified by amendment No. 92 of List V. I understand that Dr. Ambedkar accepts it. The question is:

"That in clause (1) of article 14, for the words ' under the law at the time of the commission 'the words' under the law in force at the tune of the commission ' be substituted. "

The amendment was adopted.

[Two amendments were negatived.]

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Mr. Vice-President : Amendment No. 512 moved by Kazi Syed Karimuddin and accepted by Dr. Ambedkar. The question is : That in article 14, the following be added as clause (4):—

"(4) The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized."

I think the 'Ayes' have it.

Shri T. T. Krishnamachari : The Noes have it.

Mr. Vice-President : I will again put it to the vote.

I think the ' Ayes ' have it.

Shri T. T. Krishnamachari : No, Sir, the 'Noes' have it.

Mr. Vice-President : I shall first of all call for a show of hands.

(The Division Bell was rung.)

Shri Mahavir Tyagi (United Provinces : General) : May I proposed that this question might be postponed for the time being and a chance be given for the Members to confer between themselves and arrive at a decision. Even the British House of Commons, sometimes converts itself into a committee to give various parties a chance to confer and arrive at an agreed solution.

Mr. Vice-President : I am prepared to postpone the voting on this amendment provided the House gives me the requisite permission. I would request the House to be calm. This is not the way to come to decisions which must be reached through co-operative effort and through goodwill. Does the House give me the necessary power to postpone voting on this ?

The Honourable Pandit Jawaharlal Nehru : Mr. Vice-President, Sir, as apparently a slight confusion has arisen in many members' minds on this point, I think. Sir, that the suggestion made is eminently desirable, that we might take up this matter a little later, and we may

proceed with other things. It will be the wish of the House that will prevail of course. I would suggest to you, Sir, and to the House that your suggestion be accepted.

Dr. B. V. Keskar (United Provinces : General) : Can it be done after the division bell has rung ?

Mr. Vice-President : I never go by technicalities. I shall continue to use common-sense as long as I am here. I have little knowledge of technicalities, but I have some knowledge of human nature. I know that in the long run it is good sense, it is common-sense, it is goodwill which alone will carry weight. I ask the permission of the House to postpone the voting.

Honourable Members : Yes.

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ARTICLE 16

***The Honourable Dr. B. R. Ambedkar** : Mr. Vice-President, what I understood from Mr. Subramaniam, if I have understood him correctly is not that he objects to article 16, but his objection is directed to the place which this article finds. He says that although there may be utility and necessity so far as this article is concerned, it ought not to find a place in the fundamental rights. And his second point, if I have understood him correctly is that as this article is made subject to article 244, article 16 may be completely nullified, and to use his own words, no residue of it might be left if the powers given under article 244 were exercised. I think I am right in thus summarising what he said.

Now, I quite appreciate the argument that this article 16 is out of place in the list of fundamental rights, and to some extent, I agree with Mr. Suhramaniam. But I shall explain to him why it was found necessary to include this matter in the fundamental rights. My Friend, Mr. Suhramaniam will remember that when the Constituent Assembly began, we began under certain limitations. One of the limitations was that the Indian Stales would join the Union only on three subjects-foreign affairs, defence and communications. On no other matter they would agree to permit the Union Parliament to extend its legislative and executive jurisdiction. So he will realise that the Constituent

*CAD, Vol. VII. 3rd December 1948, pp. 802-03.

Assembly, as well as the Drafting Committee, was placed under a very serious limitation. On the one hand it was realised that there would be no use and no purpose served in forming an All-India Union if trade and commerce throughout India was not free. That was the general view. On the other hand, it was found that so far as the position of the States was concerned, to which I have already made a reference, they were not prepared to allow trade and commerce throughout India to be made subject to the legislative authority of the Union Parliament. Or to put it briefly and in a different language, they were not prepared to allow trade and commerce to be included as an entry in List No. I. If it was possible for us to include trade and commerce in list I, which means that Parliament will have the executive authority to make laws with regard to trade and commerce throughout India, we would not have found it necessary to bring trade and commerce under article 16, in the fundamental rights. But as that door was blocked, on account of the basic considerations which operated at the beginning of the Constituent Assembly, we had to find some place, for the purpose of uniformity in the matter of trade and commerce throughout India, under some head. Alter exercising a considerable amount of ingenuity, the only method we found of giving effect to the desire of a large majority of our people that trade and commerce should be free throughout India, was to bring under fundamental rights. That is the reason why, awkward as it may seem, we thought that there was no other way left to us, except to bring trade and commerce under fundamental rights. I think that will satisfy my friend Mr. Subramaniam why we gave this place to trade and commerce in the list of fundamental rights, although theoretically, I agree, that the subject is not germane to the subject-matter of fundamental rights.

With regard to the other argument, that since trade and commerce have been made subject to article 244, we have practically destroyed the fundamental right, I think I may fairly say that my friend Mr. Subramaniam has either not read article 244, or has misread that article. Article 244 has a very limited scope. All that it does is to give powers to the provincial legislatures in dealing with inter-State commerce and trade, to impose certain restrictions on the entry of goods manufactured or transported from another State, provided the legislation is such that it does not impose any disparity, discrimination between the goods

manufactured within the State and the goods imported from outside the State. Now, I am sure he will agree that that is a very limited law. It certainly does not take away the right of trade and commerce and intercourse throughout India which is required to be free.

Shri C. Subramaniam : The clause says that it shall be lawful for any State to impose by law such reasonable restrictions on the freedom of trade, commerce or intercourse... as may be required in the public interests.

The Honourable Dr. B. R. Ambedkar : Yes, but reasonable restrictions do not mean that the restrictions can be such as to altogether destroy the freedom and equality of trade. It does not mean that at all.

Sir, I therefore, submit that the article as it stands is perfectly in order and I commend it to the House.

Article 16 was adopted and added to the Constitution.

ARTICLE 17

***Mr. Vice-President** : Now we come to article 17.

The motion before the House is that article 17 form part of the Constitution.

There are a number of amendments to this article, and they will be gone through now. The first in my list is No. 543. It is a negative one and is therefore ruled out.

There is an amendment to this amendment, that is No. 93 in List V, standing in the name of Shri Ram Chandra Upadhyaya.

(Interruption by Mr. Kamath).

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†**The Honourable Dr. B. R. Ambedkar** : Mr. Vice-President, I should like to state at the outset what amendments I am prepared to accept and what, I am afraid, I cannot accept. Of the amendments that have been moved, the only amendment which I am prepared to accept is the amendment by Prof. K. T. Shah, No. 559, which introduces the word "only" in clause (2) of article 17 after the words "discrimination on the ground". The rest of the amendments, I am afraid, I cannot accept. With regard to the amendments which, as I said, I cannot accept one is by Prof. K. T. Shah introducing the word 'devadasis' ! Now

*CAD, Vol. VII, 3rd December 1948. p. 803.

†*Ibid.,* pp. 812-13.

I understand that his arguments for including 'devadasis' have been replied to by other members of the House who have taken part in this debate and I do not think that any useful purpose will be served by my adding anything to the arguments that have already been urged.

With regard to the amendment of my Honourable Friend, Mr. H. V. Kamath, he wants the words 'social and national' in place of the word 'public'. I should have thought that the word 'public' was wide enough to cover both 'national' as well as 'social' and it is, therefore, unnecessary to use two words when the purpose can be served by one, and I think, he will agree that that is the correct attitude to take.

With regard to the amendment of my Honourable Friend Shri Damodar Swamp Seth, it seems to be unnecessary and I, therefore,do not accept it. With regard to the amendment of Sardar Bhopinder Singh Man, he wants that wherever compulsory labour is imposed by the State under the provisions of clause (2) of article 17 a proviso should be put in that such compulsory service shall always be paid for by the State. Now, I do not think that it is desirable to put any such limitation upon the authority of the State requiring compulsory service. It may be perfectly possible that the compulsory service demanded by the State may be restricted to such hours that it may not debar the citizen who is subjected to the operation of this clause to find sufficient time to earn his livelihood, and if, for instance, such compulsory labour is restricted to what might be called 'hours of leisure' or the hours, when, for instance, he is not otherwise occupied in earning his living, it would be perfectly justifiable for the State to say that it shall not pay any compensation.

In this clause, it may be seen that non-payment of compensation could not be a ground of attack ; because the fundamental proposition enunciated in sub-clause (2) is this : that whenever compulsory labour or compulsory service is demanded, it shall be demanded from all and if the State demands service from all and does not pay any, I do not think the State is committing any very great inequity. I feel, Sir, it is very desirable to leave the situation as fluid as it has been left in the article as it stands.

Shri H. V. Kamath : On a point of information, Sir, is Dr. Ambedkar's objection to my amendment merely on the ground that

it consists of two words in place of one ? In that case, I shall be happy if the wording is either 'social' or 'national' in place of 'public'.

The Honourable Dr. B. R. Ambedkar : It is better to use a wider phraseology which includes both.

Shri Rohini Kumar Chaudhuri (Assam : General) **:** May I know, Sir, does the Honourable Member accept amendment No. 548, which deals with prostitution, and which was moved by Giani Gurmukh Singh Musafir ?

The Honourable Dr. B. R. Ambedkar : I understand it was not moved.

Mr. Vice-President : It was not moved.

I shall now put the amendments to vote one by one.

Amendment No. 544 standing in the name of Kazi Syed Karimuddin was negatived.

Amendment No. 545 standing in the name of Shri Damodar Swarup Seth was negatived.

Amendment No. 546 standing in the name of Professor K. T. Shah was also negatived.

Amendment No. 560 standing in the name of Sardar Bhopinder Singh Man was withdrawn.

[Amendment No. 556 standing in the name of Mr. Kamath was negatived.]

Amendment No. 559 standing in the name of Professor K. T. Shah, was accepted by Dr. Ambedkar and was adopted.

"That in clause (2) of article 17. after the words "discrimination on the ground "the word" only "be added."

Article 17, as amended was adopted and added to the Constitution.

ARTICLE 18

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***The Honourable Dr. B. R. Ambedkar** : I do not accept the amendment moved by Mr. Damodar Swarup—No. 564.

The amendment was negatived.

Article 18 was adopted and addded to the Constitution.

*CAD, Vol. VII, 3rd December 1948, p. 815.

ARTICLE 19

***Mr. Vice-President :** Amendment No. 596, Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General) **:** Sir, I beg to move :

> "That in clause (2) of article 19. for the word "preclude" the word "prevent" be substituted."

This is only for the purpose of keeping symmetry in the language that we have used in the other articles.

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†The Honourable Shri K. Santhanam : Sir, we have adopted a directive asking the State to endeavour to evolve a uniform civil code, and this particular amendment is a direct negation of that directive. On that ground also, I think this is altogether inappropriate in this connection.

Mr. Vice-President: Would you like to say anything on this matter, Dr. Ambedkar ? I should value your advice about this amendment being in order or not, on account of the reasons put forward by Mr. Santhanam.

The Honourable Dr. B. R. Ambedkar : I was discussing another amendment with Mr. Ranga here and so .....

The Honourable Shri K. Santhanam : Amendment No. 612 about personal law is sought to be moved.

The Honourable Dr. B. R. Ambedkar : This point was disposed of already, when we discussed the Directive Principles, and also when we discussed another amendment the other day.

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‡Mr. Vice-President: I have on my list here 15 amendments, most of which have been moved before the House. I should think that they give the views on this particular article from different angles. We had about seven or eight speakers giving utterance to their views. I think that the article has been sufficiently debated. I call upon Dr. Ambedkar to reply.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I have nothing to add to the various speakers who have spoken in support of this article. What I have to say is that the only amendment I am prepared to accept is amendment No. 609.

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*CAD, Vol. VII, 6th December 1948, p. 826.

†*Ibid.,* pp.. 829-30.

†*Ibid.,* p. 838.

Shri H. V. Kamath : May I ask whether it will be enough if Dr. Ambedkar says : "I oppose, I have nothing to say". I should think that in fairness to the House, he should reply to the points raised in the amendments and during the debate.

Mr. Vice-President : I am afraid we cannot compel Dr. Ambedkar to give reasons for rejecting the various amendments.

Mr. Naziruddin Ahmad (West Bengal : Muslim) **:** Mr. Vice-President, may I say that amendment No. 609 which has been accepted by the Honourable Dr. Ambedkar is a mere verbal amendment 7

Mr. Vice-President : It will be recorded in the proceedings. We shall now consider the amendments one by one.

[Following amendment was accepted by Dr. Ambedkar and was adopted by the House. In all 12 amendments were negatived and one was withdrawn.]

"That in clause (2) of article 19 for the word "preclude" the word "prevent" be substituted."

The amendment was adopted.

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***Mr. Vice-President :** The question is :

"That in sub-claue (b) of clause (2) of article 19 for the words "any class or section "the words" all classes and sections ' he substituted."

Have you accepted it. Dr. Ambedkar 7

The Honourable Dr. B. R. Ambedkar : Yes, Sir.

Mr. Vice-President : The amendment has been accepted by Dr. Ambedkar.

The amendment was adopted.

[Article 19 as amended by Amendments Nos. 596 and 609 was adopted and added to the Constitution.]

ARTICLE 14 *(Continued)*

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†Mr. Vice-President : We shall go back to Article 14. So far as I remember—I am sorry I have mislaid my notes—in article 14 there were a number of amendments which were put to the vote one after the other, and that only two amendments were being considered, when, for reasons already known to the House, we postponed their consideration. One was amendment No. 512 moved by Kazi Syed Karimuddin, and the other was a suggestion—am I right in saying that it was a suggestion made by Mr. T. T. Krishnamachari ? Mr. T. T. Krishnamachari, will you please enlighten me ? Was it a suggestion or was it a short notice amendment ?

*CAD, Vol. VII, 6th December 1948, p. 839.

† *Ibid.,* p. 840.

Shri T. T. Krishnamachari : It was a short notice amendment.

Mr. Vice-President : It was a short notice amendment admitted by me. These two only remained to be put to the vote.

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***Mr. Vice-President :** We come to Mr. Krishnamachari's amendment which was accepted by Dr. Ambedkar.

Shri H. V. Kamath : Is it necessary to say that Dr. Ambedkar has accepted or rejected everytime ?

Mr. Vice-President : Sometimes it is necessary. Not always. I now put the amendment to vote.

The question is :

"That in clause 2 of article 14 after the word 'shall he' the words ' prosecuted and 'be inserted."

The amendment wass adopted.

Article 14, as amended was added to the Constitution.

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ARTICLE 15 *(Contd.)*

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

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

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

Honourable Members : Yes.

ARTICLE 20

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

The motion before the House is :

"That article 20 form part of the Constitution".

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

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

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

Sir, it was just an omission. Honourable Members will see that these words also govern article 19 ; as a matter of fact they should also have governed article 20 because it is not the purpose to give absolute rights

*CAD, Vol. VII, 6th December 1948, p. 842.

†*Ibid.,* 7th December 1948. p. 859.

in these matters relating to religion. The State may reserve to itself the right to regulate all these institutions and their affairs whenever public order, morality or health require it.

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

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(Amendment No. 616 was not moved.)

***Mr. Tajamul Husain :**

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

(a) to establish and maintain institutions for religious and charitable purposes ;"

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

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

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

The question is :

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

The amendment was adopted.

[Four other amendments were negatived.]

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

NEW ARTICLE 20-A

†**The Honourable Dr. B. R. Ambedkar:** I do not accept amendment No. 632 or amendment No. 633.

Shri H. J. Khandekar (C. P. and Berar : General) **:** Sir, I want to speak.

Mr. Vice-President : I am afraid it is too late. I shall now put the amendments to the vote.

[Both the following amendments were negatived.]

(1) "That in article 21. after the word "which" the words "wholly or partly" be inserted."

(2) "That in article 21, for the words "the proceeds of which are "the words" on any income which is "be substituted."

Article 21 was added to the Constitution.

ARTICLE 22

†**Mr. Vice-President** : Amendment No. 645 standing in the name of Dr. Ambedkar.

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*CAD, Vol. VII. 7th December 1948, p. 863.

†*Ibid.,* p. 866.

‡*Ibid.,* p. 871.

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

"That in clause (1) of article 22, the words "by the State" he omitted."

The object of this amendment is to remove a possibility of doubt that might arise. If the words "by the State" remain in the draft as it now stands, it might be construed that this article permits institutions other than the State to give religious instruction. The underlying principle of this article is that no institution which is maintained wholly out of State funds shall be used for the purpose of religious instruction irrespective of the question whether the religious instruction is given by the Slate or by any other body.

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***Mr. Vice-President :** Much as I would like to accommodate other members, for whose opinions I have great respect, I find we have already had a number of speakers. Twelve amendments have to be put to vote. Nine amendments have been moved and I think six speakers have already spoken. I feel this article has been discussed sufficiently. I now call on Dr. Ambedkar to speak.

Pandit Lakshmi Kanta Maitra (West Bengal : General) **:** Sir, I want to get one or two points cleared. I am not going to make a speech. I want only to get one or two points explained.

Mr. Vice-President : I have already given my ruling. I cannot allow any further speeches, especially as you and I belong lo the same Province.

Pandit Lakshmi Kanta Maitra : Belonging to the same province has nothing lo do with this. I only wanted lo have clarification on one point.

Mr. Vice-President : My decision is final, Panditji. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, out of the amendments that have been moved, I can persuade myself to accept only amendment No. 661 moved by Mr. Kapoor to omit sub-clause (3) from the article, and I am sorry that I cannot accept the other amendments.

It is perhaps, desirable, in view of the multiplicity of views that have been expressed on the floor of the House to explain at some length as to what this article proposes to do. Taking the various amendments that have been moved, it is clear that there are three different points of view. There is one point of view which is represented by my friend Mr. Ismail who comes from Madras. In his opinion, there ought to be

*CAD. Vol. VII. 7th December 1948. pp. 882-86

no bar for religious instruction being given. The only limitation which he advocates is that nobody should be compelled to attend them. If I have understood him correctly, that is the view he stands for. We have another view which is represented by my friend Mr. Man and Mr. Tajamul Husain. According to them, there ought to be no religious instruction at all, not even in institutions which are educational. Then there is the third point of view and it has been expressed by Prof. K. T. Shah, who says that not only no religious instruction should be permitted in institutions which are wholly maintained out of State funds, but no religious instruction should be permitted even in educational institutions which are partly maintained out of State funds.

Now, I take the liberty of saying that the draft as it stands, strikes the mean, which I hope will be acceptable to the House. There are three reasons, in my judgment, which militate against the acceptance of the view advocated by my friend Mr. Ismail, namely that there ought to be no ban on religious instructions, rather that religious instructions should be provided ; and I shall state those reasons very briefly.

The first reason is this. We have accepted the proposition which is embodied in article 21, that public funds raised by taxes shall not be utilised for the benefit of any particular community. For instance, if we permitted any particular religious instruction, say, if a school established by a District or Local Board gives religious instructions, on the ground that the majority of the students studying in that school are Hindus, the effect would be that such action would militate against the provisions contained in article 21. The District Board would be making a levy on every person residing within the area of that District Board. It would have a general tax and if religious instruction given in the District or Local Board was confined to the children of the majority community, it would be an abuse of article 21, because the Muslim community children or the children of any other community who do not care to attend these religious instructions given in the schools would be none-the-less compelled by the action of the District Local Board to contribute to the District Local Board funds.

The second difficulty is much more real than the first, namely the multiplicity of religions we have in this country. For instance, take a city like Bombay which contains a heterogeneous population believing in different creeds. Suppose for instance, there was a school in the City of Bombay maintained by the Municipality. Obviously, such a school

would contain children of the Hindus believing in the Hindu religion, there will be pupils belonging to the Christian community, Zoroastrian community, or to the Jewish community. It one went further, and I think it would be desirable to go further than this, the Hindus again would be divided into several varieties ; there would be *Sanatani* Hindus, Vedic Hindus believing in the Vedic religion, there would be the Buddhists, there would be the Jains—even amongst Hindus there would be the Shivites, there would be the Vaishnavites. Is the educational institution to be required to treat all these children on a footing of equality and to provide religious instruction in all the denominations ? It seems to me that to assign such a task to the State would be to ask it to do the impossible.

The third tiling which I would like to mention in this connection is that unfortunately the religions which prevail in this country are not merely non-social ; so far as their mutual relations are concerned they are anti-social, one religion claiming that its teachings constitute the only right path for salvation, that all other religions are wrong. The Muslims believe that anyone who does not believe in the dogma of Islam is a **Kafir* not entitled to brotherly treatment with the Muslims. The Christians have a similar belief. In view of this, it seems to me that we should be considerably disturbing the peaceful atmosphere of an institution if these controversies with regard to the truthful character or" any particular religion and the erroneous character of the other were brought into juxtaposition in the school itself. I therefore say that in laying down in article 22 (1) that in State institutions there shall be no religious instruction, we have in my judgment travelled the path of complete safety.

Now, with regard to the second clause I think it has not been sufficiently well-understood. We have tried to reconcile the claim of a community which has started educational institutions for the advancement of its own children either in education or in cultural matters, to permit to give religious instruction in such institutions, notwithstanding the fact that it receives certain aid from the State. The State, of course, is free to give aid, is free not to give aid ; the only limitation we have placed is this, that the State shall not debar the institution from claiming aid under its grant-in-aid code merely on the ground that it is run and maintained by a community and not maintained by a public body. We

* *Misprinted in the original as 'Fakir'.*

have there provided also a further qualification, that while it is free to give religious instruction in the institution and the grant made by the State shall not be a bar to the giving of such instruction, it shall not give instruction to, or make it compulsory upon, the children belonging to other communities unless and until they obtain the consent of the parents of those children. That, I think, is a salutary provision. It performs two functions . . . . . .

Shri H. V. Kamath : On a point of clarification, what about institutions and schools run by a community or a minority for its own pupils—not a school where all communities are mixed but a school run by the community for its own pupils ?

The Honourable Dr. B. R. Ambedkar : If my Friend Mr. Kamath will read the other article he will see that once an institution, whether maintained by the community or not. gets a grant, the condition is that it shall keep the school open to all communities. That provision he has not read.

Therefore, by sub-clause (2) we are really achieving two purposes. One is that we are permitting a community which has established its institutions for the advancement of its religious or its cultural life, to give such instruction in the school. We have also provided that children of other communities who attend that school shall not be compelled to attend such religious instructions which undoubtedly and obviously must be the instruction in the religion of that particular community, unless the parents consent to it. As I say, we have achieved this double purpose and those who want religious instruction to be given are free to establish their institutions and claim aid from the State, give religious instruction, but shall not be in a position to force that religious instruction on other communities. It is therefore not proper to say that by this article we have altogether barred religious instruction. Religious instruction has been left free to be taught and given by each community according to its aims and objects subject to certain conditions. All that is baaed is this, that the Stale in the institutions maintained by it wholly out of public funds, shall not be free to give religious instruction.

Pandit Lakshmi Kanta Maitra : May I put the Honourable Member one question 7 There is, for instance, an educational institution wholly managed by the Government, like the Sanskrit College, Calcutta. There the *Vedas* are taught, *Smrithis* are taught, the *Gita* is taught, the

Upanishads are taught. Similarly in several parts of Bengal there are Sanskrit Institutions where instructions in these subjects are given. You provide in article 22 (1) that no religious instruction can be given by an institution wholly maintained out of State funds. These are absolutely maintained by State funds. My point is, would it be interpreted that the teaching of *Vedas,* or *Smrithis,* or *Shastras,* or *Upanishads* conies within the meaning of a religious instruction ? In that case all these institutions will have to be closed down.

The Honourable Dr. B. R. Ambedkar: Well, I do not know exactly the character of the institutions to which my Friend Mr. Maitra has made reference and it is therefore quite difficult for me.

Pandit Lakshmi Kanta Maitra : Take for instance the teaching of Gita, Upanishads, the Vedas and things like that in Government Sanskrit Colleges and schools.

The Honourable Dr. B. R. Ambedkar : My own view is this, that religious instruction is to be distinguished from research or study. Those are quite different things. Religious instruction means this. For instance, so far as the Islam religion is concerned, it means that you believe in one God, that you believe that *Paigambar* the Prophet is the last Prophet and so on, in other words, what we call "dogma". A dogma is quite different from study.

Mr. Vice-President : May I interpose for one minute ? As Inspector of Colleges for the Calcutta University, I used to inspect the Sanskrit College, where as Pandit Maitra is aware, students have to study not only the University course but books outside it in Sanskrit literature and in fact Sanskrit sacred books, but this was never regarded as religious instruction ; it was regarded as a course in culture.

Pandit Lakshmi Kanta Maitra : My point is this. It is not a question of research. It is a mere instruction in religion or religious branches of study.

I ask whether lecturing on Gita and Upanishads would be considered as giving religious instruction ? Expounding Upanishads is not a matter of research.

Mr. Vice-President: It is a question of teaching students and I know at least one instance where there was a Muslim student in the Sanskrit College.

Shri H. V. Kamath : On a point of clarification, does my friend Dr. Ambedkar contend that in schools run by a community exclusively for pupils of that community only, religious education should not be compulsory ?

The Honourable Dr. B. R. Ambedkar : It is left to them. It is left to the community to make it compulsory or not. All that we do is to lay down that that community will not have the right to make it compulsory for children of communities which do not belong to the community which runs the school.

Prof. Shibban Lal Saksena : The way in which you have explained the word "religious instruction" should find a place in the Constitution.

The Honourable Dr. B. R. Ambedkar : I think the courts will decide when the matter comes up before them.

Mr. Naziruddin Ahmad : The Honourable Member has proposed to accept the deletion of clause (3). It is an explanatory note. I would ask if its deletion will rule out the application of the principle contained therein even apart from the deletion.

The Honourable Dr. B. R. Ambedkar : Well, the view that I take is this, that clause (3) is really unnecessary. It relates to a school maintained by a community. After school hours, the community may be free to make use of it as it likes. There ought to be no provision at all in the Constitution.

Now, Sir, there is one other point to which I would like to make reference and that is the point made by Prof. K. T. Shah that the proviso permits the State to continue to give religious instruction in institutions the trusteeship of which the State has accepted. I do not think really that there is much substance in the point raised by Prof. Shah. I think he will realise that there have been cases where institutions in the early part of the history of this country have been established with the object of giving religious instruction and for some reason they were unable to have people to manage them and they were taken over by the State as a trustee for them. Now, it is obvious that when you accept a trust you must fulfil that trust in all respects. If the State has already taken over these institutions and placed itself in the position of trustee, then obviously you cannot say to the Government that notwithstanding the fact that you were giving religious instruction in these institutions, hereafter you shall not give such instruction. I think that would be not

only permitting the State but forcing it to commit a breach of trust. In order therefore to have the situation clear, we thought it was desirable and necessary to introduce the proviso, which to some extent undoubtedly is not in consonance with the original proposition contained in sub-clause (1) of article 20. I hope, Sir, the House will find that the article as it now stands is satisfactory and may be accepted.

Mr. Vice-President : I am now putting the amendments to vote one after another.

[In all, 12 amendments were negatived. Only one amendment of Mr. Kapoor as shown below was accepted by Dr. Ambedkar and was adopted.]

The question is :

"That clause (3) of article 22 be omitted."

[Article 22 as amended was adopted and added to the Constitution.]

ARTICLE 22A (New Article)

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

"That after article 22, the following new article he inserted :—

'22-A. All privileges, immunities or exemptions of heads of religious organisations shall be abolished'."

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†The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, the amendment probably is quite laudable in its object but I do not know whether the amendment is necessary at all. In the first place all these titles and so on which religious dignitaries have cannot be hereafter conferred by the State because we have already included in the fundamental rights that no title shall be conferred and obviously no such title can be conferred by the State. Secondly, as my Honourable Friend is aware perhaps, no suit can lie merely for the enforcement of a certain title which a man chooses to give himself. If a certain man calls himself a Sankaracharya and another person refuses to call him a Sankaracharya no right of suit can lie. It has been made completely clear in Section 9 of the Civil Procedure Code that no suit can lie merely for the enforcement of what you might call a dignity. Of course if the dignity carries with it some emoluments or properly of some sort, that is a different matter, but mere dignity cannot be a ground of action it all.

*CAD, Vol. VII, 7th December 1948, p. 8X8.

†*Ibid.* , p. 891.

With regard to the amenities which perhaps some of them enjoy, it is certtainly within the power of the executive and the legislature to withdraw them. It is quite true, as my Honourable Friend Mr. Chaudhari said, that in some cases summons are sent by the magistrate. In other cases when the man concerned occupies a bigger position in life, instead of sending summons, he sends a letter. Some persons, when appearing in courts, are made to stand while some other persons are offered a chair. All these are matters of dignity which are entirely within the purview of the legislature and the government. If there was any anomaly or discrepancy or disparity shown between a citizen and a citizen, it is certainly open both to the legislature and the executive to remove those anomalies. I therefore think that the amendment is quite unnecessary.

[The motion of Prof, Shah was negatived.]

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ARTICLE 23 *(Contd.)*

***Mr. Vice-President (Dr. H. C. Mookherjee):** We shall now resume discussion of article 23 to which two amendments have been moved. Amendment No. 677 relates to national language and script and is therefore postponed. Amendments Nos. 678,679, 680 and 681 (1st part) are to be considered together as they are of similar import. I can allow No. 678 to be moved.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, I move—

> "That in clause (1) of article 23, for the words "script and culture" the words "script or culture" be substituted."

The only change is from and 'to' 'or' and the necessity of the change is so obvious that I do not think it is necessary for me to say anything regarding the same.

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†Mr. Vice-President : Amendment No. 679.

Shri H. V. Kamath (C.P. & Berar: General): I have been forestalled by Dr. Ambedkar. So, I do not move No. 679.

Mr. Vice-President : Do you wish to press No. 680 ?

Mohamed Ismail Sahib (Madras : Muslim) **:** Yes.

Mr. Vice-President : Do you wish that 681 first part should be put to vote ?

Prof. K. T. Shah (Bihar : General) **:** First part is covered by Dr. Ambedkar's amendmednt. But I would like to move the second part.

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*CAD. Vol. VII, 8th December 1948. p. 895.

† *Ibid.,* p. 895.

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***Shri Jaipal Singh** (Bihar : General) **:** Mr. Vice-President, Sir, I have great pleasure in welcoming this article, more so as it has been suitably amended by Dr. Ambedkar, and I hope his amendment will be accepted by the House. Sir, to me this article seems to open a new era for India....

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†Mr. Vice-President : Dr. Ambedkar.

Prof. Shibhan Lal Saksena (United Provinces : General) **:** Sir. I have to say something, and

Mr. Vice-President : I cannot allow the discussion to be prolonged any longer, and my decision is final in this matter.

Prof. Shibban Lal Saksena: To allow some people and not to allow others is not proper.

Mr. Vice-President : I know it is considered improper. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, of the amendments which have been moved to article 23, I can accept amendment No. 26 to amendment No. 687 by Pandit Thakur Dass Bhargava. I am also prepared to accept amendment No. 31 to amendment No. 690, also moved by Pandit Thakur Dass Bhargava. Of the other amendments which have been moved I think there are only two that I need reply to, they are, No. 676 by Mr. Lari and amendment No. 714 also by Mr. Lari. I think it would be desirable, if in the course of my reply I separate the questions which have arisen out of these two amendments.

Amendment No. 676 deals with cultural rights of the minorities, while the other amendment. No. 714, raises the question whether a minority should not have the Fundamental Right embodied in the Constitution for receiving education in the primary stage in the mother tongue.

With regard to the first question, my Friend, Mr. Lari, as well as my Friend, Maulana Hasrat Mohani, both of them, charged the Drafting Committee for having altered the original proposition contained in the Fundamental Right as was passed by this House. It is quite true that the language of paragraph 18 of the Fundamental Rights Committee has been altered by the Drafting Committee, but I have no hesitation

*CAD. Vol. VII, 8th December 1948, p. 907.

† *Ibid.* pp. 922-25.

in saying that the Drafting Committee in altering the language had sufficient justification.

The first point that I would like to submit to the House as to why the Drafting Committee thought it necessary to alter the language of paragraph 18 of the Fundamental Rights is this. On reading the paragraph contained in the original Fundamental Rights, it will be noticed that the term "minority" was used therein not in the technical sense of the word "minority" as we have been accustomed to use it for the purposes of certain political safeguards such as representation in the Legislature, representation in the services and so on. The word is used not merely to indicate the minority in the technical sense of the word, it is also used to cover minorities which are not minorities in the technical sense, but which are nonetheless minorities in the cultural and linguistic sense. For instance, for the purposes of this article 23, if a certain number of people from Madras came and settled in Bombay for certain purposes, they would be, although not a minority in the technical sense, cultural minorities. Similarly, if a certain number of Maharashtrians went from Maharashtra and settled in Bengal, although they may not be minorities in the technical sense, they would be cultural and linguistic minorities in Bengal. The article intends to give protection in the matter of culture, language and script not only to a minority technically, but also to a minority in the wider sense of the terms as I have explained just now. That is the reason why we dropped the word "minority" because we felt that the word might be interpreted in the narrow sense of the term, when the intention of this House, when it passed article 18, was to use the word "minority" in a much wider sense, so as to give cultural protection to those who were technically not minorities but minorities nonetheless. It was felt that this protection was necessary for the simple reason that people who go from one province to another and settle there, do not settle there permanently. They do not uproot themselves from the province from which they have migrated, but they keep their connections. They go back to their province for the purpose of marriage. They go back to their province for various other purposes, and if this protection was not given to them when they were subject to the local Legislature and the local Legislature were to deny them the opportunity of conserving their culture, it would be very difficult for these cultural minorities to