

of what is called the National Recovery Act of the United States passed in the year 1930 or thereabouts, which give the power to the President to make similar provisions in order to remove the difficulties, both economic and financial, that had overtaken the American people as a result of the great depression from which they were suffering. The reason why, for instance, we have thought it necessary to include such a provision in the Constitution is because we know that under the American Constitution within a very short time the legislation passed by the President was challenged in the Supreme Court and the Supreme Court declared the whole of the legislation to be unconstitutional, with the result that after that declaration of the Supreme Court, the President can hardly do anything which he wanted to do under the provisions of the National Recovery Act. A similar fate perhaps might overwhelm our President if he were to grapple with a similar financial and economic emergency. In order to prevent any such difficulty we thought it was much better to make an express provision in the Constitution itself and that is the reason why this article has been brought forth.

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***Mr. President :** Have you anything to say ?

The Honourable Dr. B. R. Ambedkar : If you think it is necessary, I will speak.

Mr. President : No, no. I do not say so. Then I will put the amendment to the vote.

Shri H. V. Kamath : I suggest that Dr. Ambedkar might consider the change of the wording from “threatened” to “gravely threatened.”

Mr. President : You did make your suggestion. He will consider whether it is worth considering. I do not think I should allow you to make a second speech in the form of a suggestion to Dr. Ambedkar.

Srijut Rohini Kumar Chaudhuri (Assam : General) : I wanted to make my only speech.

Mr. President : But I have already closed the debate.

[All 8 amendments were negatived. Original amendment of Dr. Ambedkar was adopted, Article 280A was added to the Constitution.]

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†**Shri B. Das :** I wish Dr. Ambedkar should make it clear whether the tribunal in the territory of India applies to the Income-tax tribunal or the different Railway tribunals that we have. If the power is extended, then the Income-tax tribunal must be dissolved at once. We have got the Income-tax tribunal which is the final authority.

*CAD, Vol. X, 16th October 1949, pp. 372.

†*Ibid.*, p. 378-80.

The Honourable Dr. B. R. Ambedkar : Are they relevant to this discussion ? How does the Income-tax tribunal come here ?

Shri B. Das : In this article it is stated :—

“The Supreme Court may, in its discretion, grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.”

I only wish to be assured by you that the ‘tribunal’ does not mean the ‘Income-tax tribunal’.

The Honourable Dr. B. R. Ambedkar : You said other personnel also. So far as my memory goes, this has been amended to make provision for income-tax cases also to be taken up in the Supreme Court. I know that it has been amended.

Pandit Thakur Das Bhargava : Sir, in my humble opinion clause (2) seems to be very wide and unnecessary. It reads as follows :

“Nothing in clause (1) of this article shall apply to any judgement, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.”

So far as offences relating to the military personnel and military offences are concerned, they may be immune from the jurisdiction of the Supreme Court; but there are many laws relating to the Armed Forces which countenance the judgements etc. by courts constituted under those Acts and the accused in those cases are the civil an population or military personnel accused of civil offences. In regard to, say, the Cantonment Act or in regard to the Territorial Forces Act, there are some offences in which the members of the civil population are accused and there is no reason whatsoever why such sentences should not be subject to the jurisdiction of the Supreme Court. I, therefore, think that this clause is too widely worded and needs amendment.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, in view of the observation made by my honourable Friend, Prof. Shibban Lal Saksena, it has become incumbent upon me to say something in relation to me proposed article moved by my honourable Friend, Mr. T. T. Krishnamachari. It is quite true that on the occasion when we considered article 112 and the amendment moved by my honourable Friend, Prof. Shibban Lal Saksena. I did say that under article 112 there would be jurisdiction in the Supreme Court to entertain an appeal against any order made by a Court-martial. Theoretically that proposition is still correct and there is no doubt about it in my mind, but what I forgot to say is this : That according to the rulings of our High Courts as well as the rulings of the British Courts including those of the Privy Council, it has been a well recognized principle that civil courts, although they have jurisdiction under the statute, will not exercise that jurisdiction in order to disturb any

finding or decision given or order made by the Court-martial. I do not wish to go into the reason why the civil courts of superior authority, which notwithstanding the fact that they have this jurisdiction have said that they will not exercise that jurisdiction; but the fact is there and I should have thought that if our courts in India follow the same decision which has been given by British Courts—the House of Lords, the King's Bench Division as well as the Privy Council and if I may say so also the decision given by our Federal Court in two or three cases which were adjudicated upon by them—there would be no necessity for clause (2); but unfortunately the Defence Ministry feels that such an important matter ought not be left in a condition of doubt and that there should be a statutory provision declaring that none of the superior civil courts whether it is a High Court or the Supreme Court shall exercise such jurisdiction as against a court or tribunal constituted under any law relating to the Armed Forces.

This question is not merely a theoretical question but is a question of great practical moment because it involves the discipline of the Armed Forces. If there is anything with regard to the armed forces, it is the necessity of maintaining discipline. The Defence Ministry feel that if a member of the armed forces can look up either to the Supreme Court or to the High Court for redress against any decision which has been taken by a court or tribunal constituted for the purpose of maintaining discipline in the armed forces, discipline would vanish. I must say that that is an argument against which there is no reply. That is why clause (2) has been added in article 112 by this particular amendment and a similar provision is made in the provisions relating to the powers of superintendence of the High Courts. That is my justification why it is now proposed to put in clause (2) of article 112.

I should, however, like to say this that clause (2) does not altogether take away the powers of the Supreme Court or the High Court. The law does not leave a member of the armed forces entirely to the mercy of the tribunal constituted under the particular law. For, notwithstanding clause (2) of article 112, it would still be open to the Supreme court or to the High Court to exercise Jurisdiction, if the court martial has exceeded the jurisdiction which has been given to it or the power conferred upon it by the law relating to armed forces. It will be open to the Supreme Court as well as to the High Court to examine the question whether the exercise of jurisdiction is within the ambit of the law which creates and constitutes this court or tribunal. Secondly, if the court-martial were to give a finding without any evidence, then, again, it will be open to the Supreme Court as well as the High Court to entertain an appeal in order to find out whether there is evidence. Of course, it would not be open to the High

Court or the Supreme Court to consider whether there has been enough evidence. That is a matter which is outside the jurisdiction of either of these Courts. Whether there is evidence or not, that is a matter which they could entertain. Similarly, if I may say so, it would be open for a member of the armed forces to appeal to the courts for the purpose of issuing prerogative writs in order to examine whether the proceedings of the court martial against him are carried on under any particular law made by Parliament or whether they were arbitrary in character. Therefore, in my opinion, this article, having regard to the difficulties raised by the Defence Ministry, is a necessary article. It really does not do anything more but give a statutory recognition to a rule that is already prevalent and which is recognised by all superior courts.

I am told that some people feel some difficulty with regard to the law relating to the armed forces. It is said that there are many persons in the armed forces who are really not what are called men of the line, men behind the line. It seemed to me quite impossible to make distinction between persons who are actually bearing arms and others who are enrolled under the Army Act, because the necessity of discipline in the armed forces is as great as the necessity of maintaining discipline among those who are not included among the armed forces.

My honourable Friend Mr. Sidhva raised the question that sometimes when a member of the armed forces commits a certain crime, kills somebody by rash driving or any such act, he is generally tried by court-martial, and there is nothing done so as to bring him to book before the ordinary courts of criminal law. Well, I do not know; but I have no doubt in my mind that so far as a member of the armed forces is concerned, he is subject to double jurisdiction. He is no doubt subject to the jurisdiction of the court which is created under the military law. At the same time, he is not exempt from the ordinary law of the land. If a man, for instance, commits an offence which is an offence under the Indian Penal Code and also under the Army Act, he will be liable to be prosecuted under both the Acts. If a member of the army has escaped any such prosecution, it is because people have not pursued the matter. The general theory of the law is that because a man becomes a member of the armed forces, he does not cease to be liable to the ordinary law of the land. He continues to be liable, but in addition to that liability, he takes a further liability under the Act under which he is enrolled.

Shri Mahavir Tyagi : Can he have two punishments for one crime ?

The Honourable Dr. B. R. Ambedkar : Oh, yes.

Shri R. K. Sidhva : Why not make it clear ?

The Honourable Dr. B. R. Ambedkar : It is quite clear. Section 2 of the Indian Penal Code says : “every person”. “Every person” means High or low, armed or unarmed.

Mr. President : Mr. T. T. Krishnamachari, would you like to say anything after this ?

Shri T. T. Krishnamachari : No, Sir.

Mr. President : I shall put the amendments to vote.

[Amendment was negatived.]

I shall put article 112 as proposed in amendment No. 421. The question is :

“That with reference to amendment No. 364 of List XV (Second Week), for article 112, the following article be substituted :—

‘112. (1) The Supreme Court may, in its discretion, grant special leave to	appeal from any judgment, decree, determination,
Special leave to	sentence or order in any cause or matter passed
appeal by the	or made by any court or tribunal in the territory
Supreme Court.	of India.

(2) Nothing in clause (1) of this article shall apply to any judgement, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.’ ”

The motion was adopted.

Article 112, as amended, was added to the Constitution.

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***Mr. President :** Now we are at the fag end of the clauses and over four or five clauses we need not quarrel.

The Honourable Shri K. Santhanam : But some of the amendments tabled are matters of substance which, I think, will have to be debated at length. I leave it to you, Sir, but so far as this is concerned I think the words “made by Parliament” are absolutely essential to make the meaning precise and clear.

The Honourable Dr. B. R. Ambedkar (Bombay : general) : Sir, the amendment moved by my Friend Mr. Santhanam is quite unnecessary. It has been brought in by him because he has forgotten to take account of the provisions contained in article 60. Article 60 says that the executive power of the Union shall extend to all matters with respect to which Parliament has power to make laws, provided that it shall not so extend, unless the Parliament, law so provides, to matters with respect to which the Legislature of the States has also power to make laws that is, matters in the concurrent List. Therefore, the amendment moved by my Friend Mr. Krishnamachari in sub-clause (b) of clause (1) of article 59 cannot go beyond the power of Parliament to make laws.

The Honourable Shri K. Santhanam : The article does not limit it only to those laws; it can also extend further.

The Honourable Dr. B. R. Ambedkar : No, it cannot extend further. The necessity for bringing an amendment in sub-clause (b) is this; that the executive power of the centre extends not only to matters enumerated in List I, but may also extend to matters enumerated in List III, and the position of the Drafting Committee is this, that whenever a law is made by Parliament, in respect of any matter contained in List III if the law confers executive power on the Centre, the power of the President to grant reprieve must extend to that law. Therefore, these words are necessary. Mr. Santhanam's amendment is absolutely unnecessary and out of place because article 60 covers the point.

(Amendment of Mr. Santhanam was negatived.)

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***The Honourable Dr. B. R. Ambedkar :** The clause moved by my Friend Mr. Krishnamachari is of old standing. It occurs in the Instrument of Instructions issued to the Governor of the provinces under the Government of India Act, 1935.

Paragraph 17 of the Instrument of Instructions says :

“Without prejudice to the generality of his powers as to reservation of Bills, our Government shall not assent in our name to, but shall reserve for the consideration of our Governor-General any Bill or any of the clauses herein specified, *i.e.*

(b) any Bill which in his opinion would, if it became law so derogate from the powers of the High Court as to endanger the position that that Court is, by the Act, designed to fulfil.”

This clause is the old Instrument of Instructions the Drafting Committee had bodily copied in the Fourth Schedule which they had proposed to introduce and it will be found in Vol. II of the amendments at pages 368-369. In view of the fact that the House on my recommendation came to the conclusion that for the reasons which I then stated it was unnecessary to have any such schedule containing instructions to the Governors of the States in Part I, it is felt by the Drafting Committee that, at any rate, that particular part of the proposed Instrument of Instructions, paragraph 17, should be incorporated in the Constitution itself. Now, Sir, the reasons for doing this are these :

The High Courts are placed under the Centre as well as the Provinces. So far as the organisation and the territorial jurisdiction of the High Court are concerned, they are undoubtedly under the Centre and the Provinces have no power either to alter the organization of the High Court or the

*CAD, Vol. X, 17th October 1949, pp. 393-394.

territorial jurisdiction of the High Court. But with regard to pecuniary jurisdiction and the jurisdiction with regard to any matters that are mentioned in List II, the power rests under the new Constitution with the States. It is perfectly possible, for instance, for a State Legislative to pass a Bill to reduce the pecuniary jurisdiction of the High Court by raising the value of the suit that may be entertained by the High Court. That would be one way whereby the State would be in a position to diminish the authority of the High Court.

Secondly, in enacting any measure under any of the entries contained in List II, for instance, debt cancellation or any such matter, it would be open for the Provinces to say that the decree made by any such Court or Board shall be final and conclusive, and that the High Court should have no jurisdiction in that matter at all.

It seems to me that any such Act would amount to a derogation from the authority of the High Court which this Constitution intends to confer upon it. Therefore, it is felt necessary that before such law becomes final, the President should have the opportunity to examine whether such a law should be permitted to take effect or whether such a law was so much in derogation of the authority of the High Court that the High Court merely remained a shell without any life in it.

I, therefore, submit that in view of the fact that the High Court is such an important institution intended by the Constitution to adjudicate between the Legislature and the Executive and between citizen and citizen such a power given to the President is a very necessary power to maintain an important institution which has been created by the Constitution. That is the purpose for which this amendment is being introduced.

Shri H. V. Kamath : What about my suggestion to simplify the language?

The Honourable Dr. B. R. Ambedkar : I cannot at this stage consider any drafting amendments.

Shri H. V. Kamath : All right : Do it later on.

Mr. President : I will now put it to vote.

(Amendment of Mr. T. T. Krishmachari)

The question is :

“That to article 175 the following proviso be added :

Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President any which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that court is by this Constitution designed to fill.’ ”

The amendment was adopted.

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***Mr. President :** Would you like to reply, Dr. Ambedkar ?

The Honourable Dr. B. R. Ambedkar : Sir, this article is to be read along with article 8.

Article 8 says—

“All laws in force immediately before the commencement of this Constitution in the territory of India, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency be void.”

And all that this article says is this, that all laws which relate to libels, slander, defamation or any other matter which offends against decency or morality or undermines the security of the State shall not be affected by article 8. That is to say, they shall continue to operate. If the words “contempt of court” were not there, then to any law relating to contempt of court article 8 would apply, and it would stand abrogated. It is prevent that kind of situation that the words “contempt of court” are introduced, and there is, therefore, no difficulty in this amendment being accepted.

Now with regard to the point made by my Friend Mr. Santhanam, it is quite true that so far as fundamental rights are concerned, the word “State” is used in a double sense, including the Centre as well as the Provinces. But I think he will bear in mind that notwithstanding this fact, a State may make a law as well as the Centre may make a law; some of the heads mentioned here such as libel, slander, defamation, security of State, etc., are matters placed in the Concurrent List so that if there was any very great variation among the laws made, relating to these subjects, it will be open to the Centre to enter upon the field and introduce such uniformity as the Centre thinks it necessary for this purpose.

The Honourable Shri K. Santhanam : But contempt of court is not included in the Concurrent List or any other list.

The Honourable Dr. B. R. Ambedkar : Well, that may be brought in.

Mr. President : Then I will put these two amendments to vote. As a matter of fact. Pandit Thakur Das Bhargavas’s amendment is not an amendment to Mr. Krishnamachari’s amendment, it is independent altogether I will put them separately. First I put Mr. Krishnamachari’s amendment to vote.

The question as :

“That in clause (2) of article 13, after the word ‘defamation’ the words ‘contempt of court’, be inserted”

The amendment was adopted.

Pandit Thakur Das Bhargava's amendment was negatived.

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***Mr. President :** Then we take up the new article 302AAA, *i.e.* amendment No. 450, Mr. Santhanam has made a suggestion that in order to complete the amendment which has just been passed, "Contempt of Court" must be included in the Concurrent List, and I think it is consequential and we had better take that thing.

The Honourable Dr. B. R. Ambedkar : I will move an amendment straightaway, Sir, I move :

"That after entry 15 in the Concurrent List, the following entry be added :

"15A. Contempt of Court"

Mr. President : I do not think there can be any objection to that.

Mr. Naziruddin Ahmed : There may be many more such things.

Mr. President : May be, but they will come up in time. So, I will put this to vote.

The above amendment was adopted.

Entry 15A was added to the Concurrent List.

NEW ARTICLE 302AAA

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†**The Honourable Dr. B. R. Ambedkar :** Sir, I think my Friend Mr. Sidhva has entirely misunderstood the position. If he will refer to List II, in Schedule Seven, items 30 and 35 which relate to the matters covered by the amendment moved by my Friend Shri T. T. Krishnamachari, he will see that the power of legislation given to the Centre under items 30 and 35 is of a very limited character. The power given under item 30 is for the purpose of regulation and organisation of air traffic. The power given under 35 is for the purpose of delimitation of the Constitution and the powers of port authorities. He will very readily see that, so far as the territory covered by aerodromes or air ports and ports is concerned, it is put out of the territory of the province and consequently any law made by the State is applicable to the area covered by the aerodrome or the port. These entries 30 and 35 do not give the Centre power to legislate for all matters which lie within the purview of the Central Government under the entries. The powers are limited. Therefore the proposal in this article is this : that while it retains areas covered by the aerodromes and by the ports

*CAD, Vol. X, 17th October 1949, p. 403.

†*Ibid.*, pp. 405-406.

as part of the area of the provinces, it does not exclude them—it retains the power of the States to make laws under any of the items contained in List II so as to be applicable to the areas covered by the aerodromes and the areas covered by the ports. What the amendment says is that if the Central Government think that for any particular reason such as for instance sanitation, quarantine, etc., a law is made by the State within whose jurisdiction a particular aerodrome or port is located, then it will be open for the President to say that this particular law of the State shall apply to the aerodrome or to the port subject to this, that or the other notification. Beyond that, there is no invasion on the part of the Centre over the dominion of the States in respect of framing laws relating to entries contained in List II, so far as aerodromes and ports are concerned. I hope my Friend, Mr. Sidhva, will now withdraw his objection.

Mr. President : I shall now put amendment No. 450 to the vote. The question is :

“That after article 302AA, the following new article be inserted :

“302AAA. (1) Notwithstanding anything contained in this Constitution, the
 Special provisions as President may by public notification direct
 to major ports and that as from such date as may be specified in
 aerodromes notification—

- (a) any law made by Parliament or by the Legislature of a State shall not apply to any major port or aerodrome or shall apply thereto subject to such exceptions or modifications as may be specified in the notification, or
- (b) any existing law shall cease to have effect in any major port or aerodrome except as respects things done or omitted to be done before the said date, or shall in its application to such port or aerodrome have effect subject to such exceptions or modifications as may be specified in the notification.

(2) In this article :—

- (a) ‘major port’ means a port declared to be a major port by or under any law made by Parliament or any existing law and includes all areas for the time being included within the limits of such port ;
- (b) ‘aerodrome’ means aerodrome as defined for the purposes of the enactments relating to airways, aircraft and air navigation.’ ”

The motion was adopted.

Article 302AAA was added to the Constitution.

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***Mr. President :** Now I have to put the amendment moved by Mr. Kamath to vote. There is no alternative left to me.

The Honourable Dr. B. R. Ambedkar : He may be asked to withdraw it.

Mr. President : I suggested to him not to move it. It rests with him to withdraw it.

Shri H. V. Kamath : I am not withdrawing it.

Mr. President : He says he does not withdraw it.

The question is :

“That in amendment No. 2 of the List of Amendments (Volume I), the following be substituted for the proposed preamble :—

“In the name of the God,

We, the people of India,

having solemnly resolved to constitute India into a Sovereign democratic republic, and to secure to all her citizens

Justice, social, economic and political;

Liberty of thought, expression, belief, faith and worship ;

Equality of status and of opportunity; and to promote among them all;

Fraternity, assuring the dignity of the individual and the unity of the nation ;

In our Constituent Assembly do hereby adopt, enact give to ourselves the Constitution.’ ”

Shri H. V. Kamath : I claim a division.

Pandit Govind Malaviya : I also want a division on this question.

Maulana Hasrat Mohani : I also want a division on this question.

Pandit Govind Malaviya : I want a division because I feel that we are doing an injustice to this country and to its people and I want to know who says what on this matter.

The assembly divided by show of hands.

Ayes: 41

None: 68

The amendment was negatived.

Honourable Members : Closure, closure.

***Mr. President :** I take it that closure is accepted. I shall now ask Dr. Ambedkar to reply.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, the point in the amendment which makes it, or is supposed to make it, different from the Preamble drafted by the Drafting Committee lies in the addition of the words “from whom is derived all power and authority”. The question therefore is whether the Preamble as drafted, conveys any other meaning than what is the general intention of the House, *viz*, that this Constitution should emanate from the people and should recognise that the sovereignty to make this Constitution vests in the people. I do not think that there is any other matter that is a matter of dispute. My contention is that what is suggested in this amendment is already contained in the draft Preamble.

*CAD, Vol. X, 17th October 1949, pp. 454-456.

Maulana Hasrat Mohani : Then why don't you accept it ?

The Honourable Dr. B. R. Ambedkar : I propose to show now, by a detailed examination; that my contention is true.

Sir, this amendment, if one were to analyse it, falls into three distinct parts. There is one part which is declaratory. The second part is descriptive. The third part is objective and obligatory, if I may say so. Now, the declaratory part consists of the following phrase : 'We the people of India, in our Constituent Assembly, this day, this month..... do hereby adopt, enact and give to ourselves this Constitution.' Those Members of the House who are worried as to whether this Preamble does or does not state that this Constitution and the power and authority and sovereignty to make this Constitution vest in the people should separate the other parts of the amendment from the part which I have read out, namely the opening words 'We the people of India in our Constituent Assembly, this day, do hereby adopt enact and give to ourselves this constitution' Reading it in that fashion.....*

Shri Mahavir Tyagi : Where do the people come in ? It is the Constituent Assembly Members that come in.

The Honourable Dr. B. R. Ambedkar : That is a different matter. I am for the moment discussing this narrow point: Does this Constitution say or does this Constitution not say that the Constitution is ordained, adopted and enacted by the people. I think anybody who reads its plain language, not dissociating it from the other parts, namely the descriptive and the objective cannot have any doubt that that is what the Preamble means.

Now my Friend Mr. Tyagi said that this Constitution is being passed by a body of people who have been elected on a narrow franchise. It is quite true that it is not a Constituent Assembly in the sense that it includes every adult male and female in this country. But if my Friend Mr. Tyagi wants that this Constitution should not become operative unless it has been referred to the people in the form of a referendum that is quite a different question which has nothing to do with the point which we are debating whether this Constitution should have validity if it was passed by this Constituent Assembly or whether it will have validity only when it is passed on a referendum. That is quite a different matter altogether. It has nothing to do with the point under debate.

*Dots indicate interruption.

The point under debate is this : Does this Constitution or does it not acknowledge, recognise and proclaim that it emanates from the people ? I say it does.

I would like honourable Members to consider also the Preamble of the Constitution of the United States. I shall read a portion of it. It says : “We the people of the United States”— I am not reading the other parts— “We the people of United States do ordain and establish this Constitution for the United States of America.” As most Members know, that Constitution was drafted by a very small body. I forget now the exact details and the number of the States that were represented in that small body which met at Philadelphia to draw up the Constitution. (Honourable Members : There were 13 States). There were 13 States. Therefore, if the representatives of 13 States assembled in a small conference in Philadelphia could pass a Constitution and say that what they did was in the name of the people, on their authority, basing on it their sovereignty. I personally myself, do not understand, unless a man was an obsolete pedant, that a body of people 292 in number, representing this vast continent, in their representative capacity, could not say that they are acting in the name of the people of this country. (*Hear, hear*)

Maulana Hasrat Mohani : I do not think, it is only a community.

The Honourable Dr. B. R. Ambedkar : That is a different matter, Maulana. I cannot deal with that. Therefore, so far as that contention is concerned, I submit that there need be no ground for any kind of fear or apprehension. No person in this House desires that there should be anything in this Constitution which has the remotest semblance of its having been derived from the sovereignty of the British Parliament. Nobody has the slightest desire for that. In fact we wish to delete every vestige of the sovereignty of the British Parliament such as it existed before the operation of this Constitution. There is no difference of opinion between any Member of this House and any Member of the Drafting Committee so far as that is concerned.

Some Members, I suppose, have a certain amount of fear or apprehension that, on account of the fact that earlier this year the Constituent Assembly joined in making a declaration that this country will be associated with the British Commonwealth, that association has in some way derogated from the sovereignty of the people. Sir, I do not think that is a right view to take. Every independent country must have kind of a treaty with some other country. Because one sovereign country makes a treaty with another sovereign country, that country does not become less

sovereign on that account. (Interruption). I am taking the worst example. I know that some people have that sort of fear. (Interruption).

Shrimati Purnima Banerji : May I, sir.....

Mr. President : Let Dr. Ambedkar proceed. He has not insinuated anything.

The Honourable Dr. B. R. Ambedkar : I say that this Preamble embodies what is the desire of every Member of the House that this Constitution should have its root, its authority, its sovereignty, from the people. That it has.

Therefore I am not prepared to accept the amendment. I do not want to say anything about the text of the amendment. Probably the amendment is somewhat worded, if I may say so with all respect in a form which would not fit in the Preamble as we have drafted, and therefore on both these grounds I think there is no justification for altering the language which has been used by the Drafting Committee.

[The amendment was negatived. The motion was adopted and The Preamble was added to the Constitution.]

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Mr. President : We are now coming to the close of this session. Before I actually adjourn the House, there are certain things which have to be settled at this stage. One of the questions which have to be decided is the next session for the Third Reading of the Constitution, and on previous occasions the House gave me permission to call it at any time I thought necessary, and this time also I suppose the House would give me that permission, but I would ask Mr. Satyanarayan Sinha to move a formal resolution to that effect.

The Honourable Shri Satyanarayan Sinha : Sir, I move :

“That the Assembly do adjourn until such day in November 1949 as the President may fix”.

Mr. President : The question is :

“That the Assembly do adjourn until such day in November 1949 as the President may fix”.

The motion was adopted.

Mr. President : I think we have done with all the amendments, of which we had notice, and I need not say anything more about them. Now that we have concluded the second Reading of the Constitution, by virtue of the powers vested in me under Rule 38-R as recently passed by this House, I shall refer the Draft Constitution with the amendments to the Drafting Committee in order to carry out such redraft of the articles, revision of punctuations, revision and completion of the marginal notes,

and for recommending such formal or consequential or necessary amendments of the Constitution as may be required. This has to be done to complete the work and I do that by virtue of the authority which you have given me, with this, we now adjourn till such date as I may announce.

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The Constituent Assembly then adjourned to a date in November 1949 to be fixed by the President.

TAKING THE PLEDGE AND SIGNING THE REGISTER .

***Mr. President :** I understand that there are two Members who have to take the Pledge and sign the Register.

The following Member took the pledge and signed the register :—

Shri M. R. Masani (Bombay General).

Mr. President : We have now to take up the consideration of the Draft Constitution.

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†**The Honourable Dr. B. R. Ambedkar** (Bombay General) : Mr. President, Sir, I have to present the report of the Drafting Committee together with the Draft Constitution of India as revised by the Committee under rule 38-R of the Constituent Assembly rules. Sir, I move—

“That the amendments recommended by the Drafting Committee in the Draft Constitution of India be taken into consideration.”

Sir, I do not propose to make any very long statement of the report or on the recommendations made by the Drafting Committee for the purpose of revising or altering the articles as they were passed at the last session of this Assembly. The only thing that I wish to say is that I would not like to apologise to the House for the long list of corrigenda which has been placed before the House or the supplementary list of amendments included in list II. In my judgement it would have been much better if the Drafting Committee had been able to avoid this long list of corrigenda and the supplementary list of amendments contained in List II, but the House will realise the stress of time under which the Drafting Committee had been working. It is within the knowledge of all the Members of the House that the last session of the Constituent Assembly ended on the 17th of October. Today is the 14th of November. Obviously there was not even one full month available for the Drafting Committee to carry out this huge

*CAD, Official Report, Vol. X, 14th November 1949, p. 459

†*Ibid.*, pp. 462-464.

task of examining not less than 395 articles which are now part of the Constitution. As I said, the Drafting Committee had not even one month, but that even is not a correct statement, because according to Rule 38-R and other rules, the Drafting Committee was required to circulate the Draft Constitution as revised by them five days before this session of the House. As a matter of fact the Constitution was circulated on the 6th of November, practically eight days before the commencement of this session. Consequently the time available for the Drafting Committee was shorter by eight days. Again, it must be taken into consideration that in order to enable the Drafting Committee to send out the Draft Constitution in time, they had to hand over the draft they had prepared to the printer some days in advance to be able to obtain the copies some time before they were actually despatched. The draft was handed over to the printer on the 4th of November. It will be seen that the printer had only one day practically to carry out the alterations and the amendments suggested by the Drafting Committee. It is impossible either for the printer or for the Drafting Committee or the gentleman in charge of proof corrections to produce a correct copy of such a huge document containing 395 articles within one day.

That in my judgement, is a sufficient justification for the long corrigenda which the Drafting Committee had to issue in order to draw attention to the omissions and the mistakes which had been left uncorrected in the copy as was presented to them by the printer on the 5th. Deducting all these days, it will be noticed that the Drafting Committee had barely ten days left to them to carry out this huge task. It is this shortness of time, practically ten days, which in my judgement justifies the issue of the second list of amendments now embodied in List II. If the Drafting Committee had a longer time to consider this matter they would have been undoubtedly in a position to avoid either the issue of the corrigenda or the Supplementary List of Amendments, and I hope that the House will forgive such trouble as is likely to be caused to them by having to refer to the corrigenda and to the Second List of Amendments for which the Drafting Committee is responsible.

Sir, it is unnecessary for me to discuss at this stage the nature of the amendments and changes proposed by the Drafting Committee in the Draft Constitution. The nature of the changes have been indicated in paragraph 2 of the Report. It will be seen that there are really three classes of changes which the Drafting Committee has made. The first change is merely renumbering of articles, clauses, sub-clauses and the

revision of punctuation. This has been done largely because it was felt that the articles as they emerged from the last session of the Constituent Assembly were scattered in different places and could not be grouped together under one head of subject-matter. It was therefore held by the Drafting Committee that in order to give the reader and the Members of the House a complete idea as to what the articles relating to any particular subject-matter are, it was necessary to transpose certain articles from one Part to another Part, from one Chapter to another Chapter so that they may be conveniently grouped together and assembled for a better understanding and a better presentation of the subject-matter of the Constitution. The second set of changes as are described in the report are purely formal and consequential, such as the omission of the words "of this Constitution" which occurs in the draft articles at various places. Sometimes capital letters had been printed in small type and that correction had to be made. Other alterations such as reference to Ruler and Rajpramukh had to be made because these changes were made towards the end when we were discussing the clauses relating to definition. The other changes may be compendiously called 'necessary alterations.' Now those necessary alterations fall into two classes, alterations which do not involve a substantial change in the article itself. These are alterations which are necessary because it was found that in terms of the language used when the articles were passed in the last session, the meaning of some articles was not clear, or there was some lacuna left which had to be made good. That the Drafting Committee has endeavoured to do without making any substantial change in the content of the articles affected by those changes. There are, however, other articles where also necessary changes have been made, but those necessary changes are changes which to some extent involve substantial change. The Drafting Committee felt that it was necessary to make these changes although they were substantial, because if such substantial changes were not made there would remain in the article as passed in the last session various defects and various omissions which it was undesirable to allow to continue, and the Drafting Committee has therefore taken upon itself the responsibility of suggesting such changes which are referred to in sub-clause (d) of paragraph 2 and I hope that this House will find it agreeable to accept those changes. As to the substantial alterations that have been made, in regard to some of them sufficient explanation has been given in paragraph 4, and I need not repeat what has been said in the report in justification of those changes.

AMENDMENTS OF ARTICLES

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But, Sir, I propose to say something more which will show that the Drafting Committee has really not travelled beyond the provisions as they were passed at the last session of the Constituent Assembly. I would ask my honourable Freund Pandit Kunzru to refer to article 280-A, clause (5), and article 306-B. Article 280-A, clause (5), and the provisions contained in the concluding portion of the main part of 306-B are now

[†]CAD, Official Report, Vol. X, 15th November 1949, pp. 507-509

embodied in article 365. To that extent, article 365 cannot be regarded as a new article interpolated by the Drafting committee. If my honourable Friend....*

Pandit Hirday Nath Kunzru : May I interrupt my honourable Friend ? Article 306-B relates only to the power of the Central Executive over Governments of the States included in Part B of the first Schedule. My honourable Friend has extended that power of the Central Executive over all State Governments.

The Honourable Dr. B. R. Ambedkar : If my honourable Friend would allow me to complete, I would like to read article 280-A, not of the present draft, but of the old, as was passed at the second reading. These are financial provisions. Clause (5) of the article 280-A says : “Any failure to comply with any directions given under clause (3) of this article shall be deemed to be a failure to carry on the Government of the State in accordance with the provisions of this Constitution.” Therefore, article 365 merely seeks to incorporate this clause (5) of the article 280-A. My honourable Friend, If he refers again to article 306-B....†

Pandit Hirday Nath Kunzru : Will my honourable Friend allow me to interrupt him again ?

The Honourable Dr. B. R. Ambedkar : I think it would be better if he speaks after I have completed my argument. If he refers to article 306-B which deals again with the power to issue instructions and directions to States in Part III which are now States in Part-B of the First Schedule, he will see that the last portion says : “any failure to comply with such directions shall be deemed to be a failure to carry on the Government of the State in accordance with the provisions of this “Constitution.” Therefore my contention is that article 365 does not introduce any new principle at all. It merely gathers together or assembles the different sections in which the power to issue directions is given and states in general terms that wherever power is given to issue directions and there is a failure, it would be open to the President to deem that a situation has arisen in which there has been a failure to carry out the provisions of this Constitution. The only articles in which such a power to deem that there has been a failure to carry on the Government in accordance with the provisions of the Constitution was not specifically mentioned were articles 256 and 257. It merely said that the Centre had the power to give directions. Therefore, if there is at all any extension of

*Dots indicate interruption.

†Ibid.,

the principle embodied in articles 280-A(5) and 306-B in the new article 365 it is with regard to some of the articles in which this fact was not positively stated. My submission is that when the Constitution does say that with respect to certain articles where the power to issue directions is given, the president shall be entitled or it shall be lawful for the President to deem that there has been a failure to carry on the Government in accordance with the provisions of the Constitution, it seems difficult to justify that certain other articles in which also the power to issue directions has been given should have been omitted from the purview of article 365. The object of article 365 is to make the thing complete and to extend the express provision contained in article 280-A and article 306-B which have been passed by the House already. Therefore, I submit that there is no innovation of any kind at all. It merely makes good the omission which had taken place with regard to some of the article which are, I submit, on the same footing as article 280-A, clause (5) and 306-B.

Pandit Hirday Nath Kunzru : May I point out the reference by Dr. Ambedkar to article 280-A and 306-B in the Draft Constitution as amended by the Constituent Assembly is not to the point ? Article 280-A refers only to financial emergencies. The power conferred on the President under that article can be exercised only when he has declared that the financial stability or credit of India or any part thereof is threatened. The scope of that article therefore is very limited. There is another article in the Constitution which enables the President to issue a proclamation of emergency. Such a proclamation can be issued only when India is threatened by war or internal disturbances. But, these articles do not justify the extension of the power that the Central Executive may exercise in certain emergencies to all cases. Article 306-B is definitely limited to the case of State mentioned in Part B of the First Schedule. Such a provision was not made in the Constitution in reference to States mentioned in Part A of the First Schedule. Dr. Ambedkar has himself admitted that he has extended the provisions of article 306-B and article 280-A. He has generalised them and brought even the States mentioned in Part A of the First Schedule under the wider exercise of the powers of the Central Executive referred to in articles 306-B and 280-A. I submit, Sir, that the analogy is unjustified and, in any case, incomplete. Whatever the Assembly may have done in the case of States mentioned in Part B of the First Schedule, it does not follow from this that the same provisions must be extended to the States mentioned in Part A of the first Schedule. I submit, therefore, that the language of article 365 goes beyond the

express decisions of the Constituent Assembly. A certain difference has to be maintained between the States mentioned in Part A of the First Schedule and part B of the First Schedule. The difference cannot be obliterated simply because the Drafting Committee desires that they should be removed.

Pandit Balkrishna Sharma (United Provinces : General): May I offer some remarks ?

Mr. President : On the point of order ?

Pandit Balkrishna Sharma : Yes, Sir.

Mr. President : Dr. Ambedkar has already replied.

The Honourable Dr. B. R. Ambedkar : I would like to draw your attention that even in the present Government of India Act there is a provision to the same effect contained in section 126, which empowers the Governor-General to give directions to the provinces and if it appears to the Governor-General that effect has not been given to any such directions he can in his discretion issue orders to the Governor who was to act in his discretion in the matter of carrying out the directions given by the Governor-General. This provision, if I may say so, is very necessary because we all know—those of us who were Ministers during the time of the war—how these mere powers of giving directions turned out to be infructuous when the Punjab Government would not carry out the food policy of the Government of India. The whole Government can be brought to a standstill by a province not carrying out the directions and the Government of India not having any power to enforce those directions. This is a very important matter and I submit that the change made is not only consequential but very necessary for the very stability of the Government.

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***Pandit Hirday Nath Kunzru :** ...I should like Sir, to refer to one more point before I sit down. The Drafting Committee has referred to a number of articles in this Constitution in justification of the language of article 365. Now, one of the articles so referred to this article 371 which corresponds to the old article 306-B. Had that article been omitted, then there might have been some justification for article 365, but article 306-B has not been omitted from this Constitution. It figures as article 371 but I have not been able to compare the languages of article 371 in the Constitution as revised by the Drafting Committee and article 306-B in the Constitution as amended by the Constituent Assembly last month....

*CAD, Official Report, Vol. X, 15th November 1949, p. 519.

The Honourable Dr. B. R. Ambedkar: Before my honourable Friend proceeds further, I would like to point out that the words “and any failure to comply with such directions shall be deemed to be a failure to carry on the Government of the State in accordance with the provisions of this Constitution” have been omitted from article 371 which corresponds to the original article 306-B.

Pandit Hirday Nath Kunzru : Then I stand corrected in that respect. If article 365 is deleted as proposed by my honourable Friend, Pandit Thakur Das Bhargava, then the Drafting Committee can revert to the old draft of article 306-B. Apart from this, Sir, since this question has been referred to by Dr. Ambedkar, I should like to point out that article 306-B in the Constitution as amended by the Constituent Assembly, which corresponds to article 371 in the present Draft of the Constitution that we are discussing now, is of limited duration. It will remain in operation for ten years only, and this provision cannot be referred to as a justification for introducing a new provision in the Constitution that will be permanent.

Sir, I was referring to articles 353 and 360 when my honourable Friend, Dr. Ambedkar, pointed out to me the change that had been made in the draft of article 306-B.

Shri H. V. Kamath : May I point out that article 371 provides for a period longer than ten years also ?

The Honourable Dr. B. R. Ambedkar : “Notwithstanding anything in this Constitution ‘during a period of ten years from the commencement thereof, or during such longer or shorter period as Parliament may be law provide...” etc.‡

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***Shri Mahavir Tyagi :** Sir, I hope President means the President of the Constituent Assembly, and not the ‘Governmental President’.

Mr. President: There is no other President except the President of the Union.

The Honourable Dr. B. R. Ambedkar : I propose to explain this matter in my reply. Mr. Sidhva may conclude his remarks.

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

“That in sub-clause (b) of clause (1) of article 72, for the words ‘offence under any law’ the words ‘offence against any law’ be substituted.”

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*CAD, Official Report, Vol. X, 15th November 1949, p. 525.

†*Ibid.*, p. 536.

‡Dots indicate interruption.

***Shri R. K. Sidhva :** If we get an answer to any doubts it will be helpful.

The Honourable Dr. B. R. Ambedkar : Sir, If my friend Mr. Sidhva were to refer to clause (12) of article 366 in the draft as revised by the Drafting Committee, he will notice that there is really nothing new in sub-clause (3) of article 367 which is the subject-matter of amendment No. 562-A. Article 366 is a definition article and clause (12) there attempts to define what a foreign State is within the meaning of the Constitution. It was felt that clause (12) of article 366 as passed by the Assembly was rather cryptic and too succinct and that it was desirable to give it a more elaborate shape and form. Consequently the Drafting Committee thought that the best way would be to delete clause (12) of article 366. This is done by amendment No. 497 and it is sought to be replaced now by the present amendment No. 562-A. In the draft as presented to the House with the report the main provision was that it was open to the President to declare by an order that a certain country was not a foreign State so far as India was concerned. The main part of clause (3) of article 367 is just the same. The only thing that has been added is that Parliament may legislate on this subject and, while legislating, endow the President with power to proclaim by an order what country is not a foreign State. It was further felt by the Drafting Committee that it was not desirable to confer this power in such rigid terms as would follow from the proviso if the words "for such purposes as may be specified in the order" were not there. The President and Parliament may then be confronted with two inescapable alternatives, either to say that a foreign country was a foreign State or to say that a certain country was not a foreign State with the result that the subjects of the country which is declared not to be a foreign State would become automatically citizens of India and be entitled to all the rights which the citizens of India are entitled to under this Constitution. It may be in the interests of this country that, while it might be desirable to recognize a certain foreign country as not a foreign State, it should be limited to such purposes as may be specified in the order so that while making the order the President would have his position made perfectly elastic enabling him to say that while we declare that a certain country is not a foreign State the subjects of that foreign State will be entitled only to certain rights and privileges which are conferred upon the citizens of India and not to all. It is for that purpose and in order to make a

*CAD, Official Report, Vol. X, 15th November 1949, pp. 550-551.