CONSTITUENT ASSEMBLY OF INDIA

Thursday, 25th November, 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

DRAFT CONSTITUTION—*contd.*

Article 39-A

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

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

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

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

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

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

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

[The Honourable Dr. B. R. Ambedkar]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Pandit Hirday Nath Kunzru]

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

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

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

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

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

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

[The Honourable Pandit Jawaharlal Nehru]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Dr. Bakshi Tek Chand]

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

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

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

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

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

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

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

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

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

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

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

Mr. Vice-President : The question is:—

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

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

The motion was adopted.

Mr. Vice-President : The question is:

That article 39-A stand part of the Constitution.

The motion was adopted.

Article 39-A was added to the Constitution.

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

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

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

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

[Mr. Mohd. Tahir]

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

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

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

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

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

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

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

The amendment was negatived.