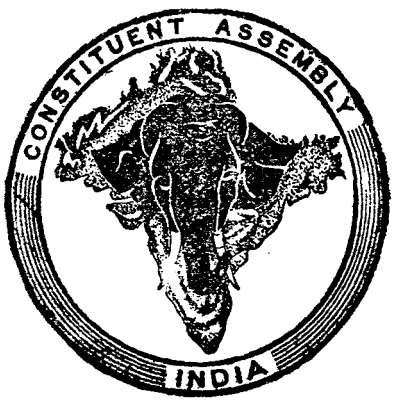
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Wednesday
1st December
1948

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 1st December 1948

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

DRAFT CONSTITUTION—(*contd.*)

Article 12—(*contd.*)

Shri H. V. Kamath (C. P. & Berar:-General): Sir, before we proceed with the business of the day, may I request you to be so good as to see that my learned friend, Shri Alladi Krishnaswami Ayyar, who is frequently called upon to give us the benefit of his sage counsel is allotted a seat somewhere in the centre of the hall, neither too much to the right nor to the left so that he may be heard and appreciated in the House?

Mr. Vice-President (Dr. H. C. Mookherjee): We shall try to meet the wishes of the House.

We finished our discussion on Article 12 and Dr. Ambedkar gave his reply. I am sorry I cannot accommodate those Members who want to reopen it. I shall now put the different amendments to the vote one after the other.

Mr. Vice-President: The question is:

"That in clause (1) of article 12, after the word 'title' the words 'not being a military or academic distinction' be inserted."

The motion was adopted.

Mr. Vice-President: The question is:

"That in clause (1) of article 12, after the words 'be conferred' the words 'or recognised' be inserted."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (1) of article 12, after the word 'State' the words 'and the State shall in no way recognize any title conferred by the British Government on any citizen of India prior to August 15, 1947' be inserted."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (1) of article 12, after the word 'conferred' the words 'or recognised' be inserted."

The motion was negatived.

Mr. Vice-President: The question is:

"That for clause (2) of article 12, the following clause be substituted:-

'(2) No title conferred by any foreign State on any citizen of India shall be recognised by any State.' "

The motion was negatived.

Mr. Vice-President: The question is:

"That article 12, as amended, stand part of the Constitution."

The motion was adopted.

Article 12, as amended, was added to the Constitution.

Article 13

Mr. Vice-President: We shall now take up article 13 for consideration.

Shri Damodar Swarup Seth (United Provinces: General): Sir, I beg to move:

"That for article 13, the following be substituted:

'13. Subject to public order or morality, the citizens are guaranteed—

(a) freedom of speech and expression;

(b) freedom of the press;

(c) freedom to form association or unions;

(d) freedom to assemble peaceably and without arms;

(e) secrecy of postal, telegraphic and telephonic communications.

13-A. All citizens of the Republic shall enjoy freedom of movement throughout the whole of the Republic. Every citizen shall have the right to sojourn and settle in any place he pleases. Restrictions may, however, be imposed by or under a Federal Law for the protection of aboriginal tribes and backward classes and the preservation of public safety and peace.'

Sir, article 13, as at present worded, appears to have been clumsily drafted. It makes one significant omission and that is about the freedom of the press. I think, Sir, it will be argued that the freedom is implicit in clause (a), that is, in the freedom of speech and expression. But, Sir, I submit that the present is the age of the Press and the Press is getting more and more powerful today. It seems desirable and proper, therefore, that the freedom of the Press should be mentioned separately and explicitly.

Now, Sir, this article 13 guarantees freedom of speech and expression, freedom to assemble peaceably and without arms, to form association and unions, to move freely throughout the territory of India, to sojourn and settle in any territory, to acquire and hold and dispose of property, and to practise any profession or trade or business. While the article guarantees all these freedoms, the guarantee is not to affect the operation of any existing law or prevent the State from making any law in the general interests of the public. Indeed, Sir, the guarantee of freedom of speech and expression which has been given in this article, is actually not to affect the operation of any existing law or prevent the State from making any law relating to libel, slander, defamation, sedition and other matters which offend the decency or morality of the State or undermine the authority or foundation of the State. It is therefore clear, Sir, that the rights guaranteed in article 13 are cancelled by that very section and placed at the mercy or the high-handedness of the legislature. These guarantees are also cancelled, Sir, when it is stated that, to safeguard against the offences relating to decency and morality and the undermining of the authority or foundation of the State, the existing law shall operate. This is provided for in very wide terms. So, while certain kinds of freedom have been allowed on the one hand, on the other hand, they have been taken away by the same article as I have just mentioned. To safeguard against "undermining the authority or foundation of the State" is a tall order and makes the fundamental right with regard to freedom of speech and expression virtually ineffectual. It is therefore clear that under the Draft Constitution we will not have any greater freedom of the press than we enjoyed under the cursed foreign regime and citizens will have no means of getting a sedition law invalidated, however flagrantly such a law may violate their civil rights.

Then, Sir, the expression 'in the interests of general public' is also very wide and will enable the legislative and the executive authority to act in their own way. Very rightly, Sir, Shri S. K. Vaze of the Servants of India Society while criticising this article has pointed out that if the *mala fides* of Government are not proved—and they certainly cannot be proved—then the Supreme Court will have no alternative but to uphold the restrictive legislation. The Draft Constitution further empowers the President, Sir, to issue

proclamations of emergency whenever he thinks that the security of India is in danger or is threatened by an apprehension of war or domestic violence. The President under such circumstances has the power to suspend civil liberty.

Now, Sir, to suspend civil liberties is tantamount to a declaration of martial law. Even in the United States, civil liberties are never suspended. What is suspended there, in cases of invasion or rebellion, is only the *habeas corpus* writ. Though individual freedom is secured in this article, it is at the same time restricted by the will of the legislature and the executive which has powers to issue ordinances between the sessions of the legislature almost freely, unrestricted by any constitutional provision. Fundamental rights, therefore, ought to be placed absolutely outside the jurisdiction, not only of the legislature but also of the executive. The Honourable Dr. Ambedkar, Sir, while justifying the limitations on civil liberties, has maintained that what the Drafting Committee has done is that, instead of formulating civil liberties in absolute terms and depending on the aid of the Supreme Court to invent the doctrine or theory of police powers, they have permitted the State to limit civil liberties directly. Now, if we carefully study the Law of Police Powers in the United States, it will be clearly seen that the limitations embodied in the Draft Constitution are far wider than those provided in the United States. Under the Draft Constitution the Law of Sedition, the Official Secrets Act and many other laws of a repressive character will remain intact just as they are. If full civil liberties subject to Police Powers, are to be allowed to the people of this country, all laws of a repressive character including the Law of Sedition will have either to go or to be altered radically and part of the Official Secrets Act will also have to go. I therefore submit that this article should be radically altered and substituted by the addenda I have suggested. I hope, Sir, the House will seriously consider this proposal of mine. If whatever fundamental rights we get from this Draft Constitution are tempered here and there and if full civil liberties are not allowed to the people, then I submit, Sir, that the boon of fundamental rights is still beyond our reach and the making of this Constitution will prove to be of little value to this country.

Mr. Vice-President: Do I understand that amendment No. 441 will not be moved? I shall not allow any discussion but I shall put it to vote. Do I understand that the mover does not intend to move this amendment?

(Amendment 441 was not moved.)

(Amendments No. 413 and No. 414 were not moved.)

Mr. Vice-President: Amendments Nos. 415 and 418. They are the same. I will allow amendment No. 415 to be moved. It stands in the names of Pandit Lakshmi Kanta Maitra and others, including Mr. Kamath.

Shri Mihir Lal Chattopadhyay (West Bengal: General): Sir, I beg to move:

"That in clause (1) of article 13, the words 'Subject to the other provisions of this article' be deleted."

Various provisos have been mentioned in this Section in clauses (2), (3), (4), (5) and (6). Therefore the words "subject to the other provisions of this article" are unnecessary.

Mr. Nazirudd'n Ahmad (West Bengal: Muslim): I submit that this is a drafting amendment.

Mr. Vice-President: Proceed, Mr. Chattopadhyay.

Shri Mihir Lal Chattopadhyay: Moreover, this section deals with Fundamental Rights and there should be positive enumeration of these rights and privileges at the beginning and it should not begin with provisos. Each proviso should in the natural course come afterwards. I therefore move this amendment.

(Amendment No. 419 was not moved.)

Mr. Vice-President: Then we come to amendment No. 416 standing in the name of Prof. K. T. Shah.

Prof. K. T. Shah (Bihar: General): Mr. Vice-President, Sir, I beg to move:

"That in clause (1) of article 13, for the words, 'the other provisions of this article' the words 'this constitution and the laws thereunder or in accord therewith at any time in force' be substituted, and after the words 'all citizens shall have' the words 'and are guaranteed' be added."

The article, as amended, would read:

"Subject to this Constitution and the laws thereunder or in accord therewith at any time in force, all citizens shall have and are guaranteed the right" etc.

Sir, my purpose in bringing forward this amendment is to point out that, if all the freedoms enumerated in this article are to be in accordance with only the provisions of this article, or are to be guaranteed subject to the provisions of this article only, then they would amount more to a negation of freedom than the promise or assurance of freedom, because in everyone of these clauses the exceptions are much more emphasised than the positive provision. In fact, what is given by one right hand seems to be taken away by three or four or five left hands; and therefore the article is rendered nugatory in my opinion.

I am sure that was not the intention or meaning of the draftsmen who put in the other articles also. I suggest therefore that instead of making it subject to the provisions of this article, we should make it subject to the provisions of this Constitution. That is to say, in this Constitution this article will remain. Therefore if you want to insist upon these exceptions, the exceptions will also remain. But the spirit of the Constitution, the ideal under which this Constitution is based, will also come in, which I humbly submit, would not be the case, if you emphasise only this article. If you say merely subject to the provisions of this article, then you very clearly emphasise and make it necessary to read only this article by itself, which is more restrictive than necessary. I am aware it might be said that, under the rules of interpretation, the whole Constitution will have to be read together and not only one clause of it. If so, I ask where is the harm in then saying, as you have said in many other articles, "subject to the provisions of this Constitution", and "subject also to the laws in force at any time and the laws thereunder"? Those laws which have not been abrogated or abolished under this article or any other article will be enforced. Those new laws which you make in accordance with this article will also be enforced, so that all the safeguards that you wish to introduce, and which you may wish to maintain against any abuse of the freedoms guaranteed or granted by this Constitution, will be available.

Why then should we draw attention and emphasize only this article, which is more full, I repeat, of exceptions and delimitations of freedom than of freedom itself? The freedoms are curtly enumerated in 5, 6 or 7 items in one sub-clause of the article. The exceptions are all separately mentioned in separate sub-clauses. And their scope is so widened that I do not know what cannot be included as exception to these freedoms, rather than the rule. In fact, the freedoms guaranteed or assured by this article become so elusive that one would find it necessary to have a microscope to discover where these freedoms are, whenever it suits the State or the authorities running it to deny them. I would, therefore, repeat that you should bring in the provisions of the whole Constitution, including its preamble, and including all other articles and chapters where the spirit of the Constitution should be more easily and fully gathered than merely in this article, which, in my judgment, runs coun-

ter to the spirit of the Constitution. Somebody described yesterday the Constitution as a paradise for lawyers. All written Constitutions, and even un-written ones, do admit themselves to legal chicanery of a very interesting type. Constitutions of Federal States are generally more so. But whether or not it was deliberately intended to be so, this particular Draft seems to be a very fertile ground for legal ingenuity to exercise. And that will, of course, be at the expense of the Community. Whether the State wins or loses, the public, the country in any case, will lose to one small section, that of the legal practitioners.

I also suggest that it would not be enough to enumerate these freedoms, and say the citizen shall have them. I would like to add the words also that by this Constitution these freedoms are *guaranteed*. That is to say, any exception which is made, unless justified by the spirit of the Constitution, the Constitution as a whole and every part of it included, would be a violation of the freedoms guaranteed hereby.

For instance, sub-clause (5) uses such a wide expression as to make anything come within the scope of the exception, and suffice to deny the practical operation of the freedoms that by one big clause you are supposed to guarantee. I, therefore, think that it is necessary to make the substitution I have suggested in this article, that the words "this Constitution and the laws thereunder or in accord therewith at any time in force" may be substituted for the words "the other provisions of this article" and after the words "all citizens shall have" the words "and are guaranteed" be added. I hope the amendment will prove acceptable to the House.

Mr. Vice-President: Amendment Nos. 417 and 418 are of similar import. I can allow No. 417 to be moved. This amendment stands in the name of Mr. Lari.

An Honourable Member: He is not in the House.

Mr. Vice-President: Then amendment No. 418 which stands in the name of Shri Mukut Behari Lal Bhargava.

The amendment was not moved.

Mr. Vice-President: Amendment Nos. 420, 421, and 424 are of similar import and I suggest that the House should consider them together. I suggest that amendment No. 421 be moved. This stands in the name of Prof. K. T. Shah.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That in sub-clause (a) of clause (1) of article 13, after the word 'expression;' the words 'of thought and worship; of press and publication;' be added."

so that the article as amended would read:

"Subject to the other provisions of this article, all citizens shall have the right—

(a) to freedom of speech and expression; of thought and worship; of press and publication;"

In submitting this amendment, I must confess to a feeling of amazement at the omission, whether it is by oversight or deliberate, I do not know, of these very essential and important items in what are known as Civil Liberties. The clause contents itself merely with the freedom of speech and of expression. I do not know what type of freedom of speech the draftsman had in mind when he adds to it the freedom of expression separately. I thought that speech and expression would run more or less parallel together. Perhaps

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"expression" may be a wider term, including also expression by pictorial or other similar artistic devices which do not consist merely in words or in speech.

Allowing that that is the interpretation, or that is the justification for adding this word "expression", I still do not see why freedom of worship should have been excluded. I am not particularly a very worshipful man myself. Certainly I do not indulge in any overt acts of worship or adoration. But I think a vast majority of people feel the need and indulge in acts of worship, which may often be curtailed or be refused or in other words be denied unless the Constitution makes it expressly clear that those also will be included. All battles of religion have been fought—and it must be very well known to the draftsman that they are going on even now—in connection with the right of free worship. The United States itself owes its very origin to the denial of freedom of worship in their original home to the Fathers of the present Union some 300 odd years ago. That is why in most modern constitutions, the freedom of worship finds a very clear mention. I certainly feel therefore that this omission is very surprising, to say the least. Unless the Drafting Committee is in a position to explain rationally, is in a position to explain effectively why this is omitted, I for one would feel that our Constitution is lacking and will remain lacking in a most essential item of Civil Liberties if this item is omitted.

The same or even a more forceful logic applies to the other "freedom of the press, and freedom of publication." The freedom of the press, as is very well known, is one of the items round which the greatest, the bitterest of constitutional struggles have been waged in all constitutions and in all countries where liberal constitutions prevail. They have been attained at considerable sacrifice and suffering. They have now been achieved and enshrined in those countries. Where there is no written constitution, they are in the well established conventions or judicial decisions. In those which have written constitutions, they have been expressly included as the freedom of the press.

Speaking from memory, I am open to correction, although I think it would not be necessary, even the United Nations Charter gives good prominence and special mention of freedom of the press. Why our draftsmen have omitted that, I find beyond me even to imagine. I dare say they must have very good reasons why the freedom of the press has not found specific mention in their draft. But, unless and until they give the reasons and explain why it has been omitted, I feel that an amendment of the kind I am proposing is very necessary.

The Press may be liable to abuse; I feel there may have been instances where the press has gone, at least in the mind of the established authority, beyond its legitimate limits. But any curtailment of the liberty of the press is, as one of the present Ministers, who was then a former non-official member, called, a "black Act," in the last but one session of the legislature when there was an attempt to curtail the liberty of the press under certain circumstances. This endeared him at least so much to me that in spite of many differences with him, I felt he had done yeoman service, though singly opposing even at the third reading of the Bill.

With the presence of such men in this House, I am amazed that in this Constitution a very glaring omission has taken place in the draft by leaving out the freedom of the press. I cannot imagine, why these draftsmen, so experienced and so seasoned, should have felt it desirable to leave out the freedom of the press, and leave it to the charity of the administrators of the Constitution when occasion arose to include it by convention or implication, and not by express provision. Freedom of the press, I repeat, is apt to be mis-

understood, or, at any rate, apt to be regarded as licence which you may want to curtail. There are many ways by which laws can be passed or laws can be administered whereby you can regard the liberty as verging upon licence and as such to be curtailed. To omit it altogether, I repeat, and I repeat with all the earnestness that I can command, would be a great blemish which you may maintain by the force of the majority, but which you will never succeed in telling the world is a progressive liberal constitution, if you insist on any amendment being rejected.

Mr. Vice-President: Amendment No. 420. Is it pressed?

(Mr. Naziruddin Ahmad rose in his seat to speak.)

You need not come. I only want to know whether you intend to press this, in which case, I shall put it to the vote.

Mr. Naziruddin Ahmad: Sir, I wish to speak on this.

Mr. Vice-President: You can speak in the course of the general discussion, provided, of course, you get a chance.

You have given me the power to rule out; take your seat, please; it will be put to the vote.

Mr. Naziruddin Ahmad: Without any debate, Sir?

Mr. Vice-President: Amendment No. 422.

(Shri Lakshminarayan Sahu came to the rostrum.)

You are not allowed to speak. Do you want to press it?

Shri Lakshminarayan Sahu (Orissa: General): Yes, Sir.

(Amendment No. 424 was not moved.)

Mr. Vice-President: Amendment No. 423 is disallowed.

(Amendment No. 425 was not moved.)

Mr. Vice-President: Amendment No. 426.

Giani Gurmukh Singh Musafir (East Punjab: Sikh): *[I do not wish to move my amendment, as it is covered by clause (1) of the Explanation to article 19.]

Mr. Vice-President: I cannot follow what he is saying.

An Honourable Member: He is not moving the amendment.

(Amendment No. 427 was not moved.)

Mr. Vice-President: Amendments numbers 428, 429, 430 and 432 are of similar import and are therefore to be considered together. Amendment No. 428 may be moved.

Mr. Naziruddin Ahmad: Sir, am I to move all the amendments and speak on all of them?

Mr. Vice-President: On amendment No. 428 only.

Mr. Naziruddin Ahmad: Will all the others be put to the vote?

Mr. Vice-President: Of course.

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

"That at the end of sub-clause (c) of clause (1) of article 13, the words 'for any lawful purpose' be inserted."

The Honourable Shri K. Santhanam (Madras: General): Sir, on a point of order, sub-clause (4) covers exactly this position in greater detail.

Mr. Naziruddin Ahmad: I had carefully thought about this objection, Sir, and I was just going to mention the difficulty of that view. That is the only reason why I have come here to move the amendment.

*[ ] Translation of Hindustani Speech.

Mr. Vice-President: Proceed.

Mr. Naziruddin Ahmad: Sir, all that I wish to convey by means of this amendment is that the people's freedom of speech, freedom of forming associations or unions, and moving freely throughout the territory and residing in any place, should be subject to the condition that they do it for a lawful purpose.

So far as Mr. Santhanam is concerned, he does not quarrel with the principle. His contention is that these conditions are sufficiently expressed in the clauses (2), (3), (4), (5) and (6). I shall draw the attention of the House and particularly of Mr. Santhanam to sub-clause (b) of clause (1) of article 13. It gives the right to assemble 'peaceably and without arms'. The words 'peaceably and without arms' should be objectionable from the point of view of Mr. Santhanam because it may be argued that the words are unnecessary and the condition is sufficiently provided for in clause (3). I submit that the amendments which stand in my name are merely an application of this method of draftsmanship to the other sub-clauses. I submit if we have them in the sub-clauses (b), they should also be in (a), (c), (d), (e), (f) and (g). If we introduce the words "for any lawful purpose" there, they will be beyond the scope of any legislature to interfere. But if we are satisfied with clauses (2), (3), (4), (5) and (6), they can be interfered with by the Legislature. So there is this difference that with the inclusion of the words in the sub-clauses as I suggest, they would be part of the Fundamental Right. That is, if any one speaks, he should do so for a lawful purpose; if he forms associations and unions, he should do it in a lawful manner, i.e., he should not join or form into a conspiracy or other forbidden things of the sort. Then if he wants to move throughout the territory of India, I think this should be also limited by the condition that it should be for a lawful purpose. No male person should enter a female compartment in railway carriage or enter into lady's dressing room: and then somebody might say "I shall reside in this Assembly Hall"; there must be limiting conditions. My point is if you insert them in sub-clauses (a), (c), (d), (e), (f) and (g), as you have already inserted specifically in sub-clause (b)—if you insert them in these sub-clauses, then they will be part of the Fundamental Right and clauses (2), (3), (4), (5), and (6) will not give any power to the Legislatures to abrogate them. This is the reason which induced me to move this amendment. Sir, this point of view should be carefully considered.

(Amendments No. 431 and Nos. 433 to 437 were not moved.)

Mr. Vice-President: No. 438 and first part of 443. Mr. Kamath.

Shri H. V. Kamath: Mr. Vice-President, I move:

"That after sub-clause (g) of clause (1) of article 13 the following new sub-clause be added:

I move this amendment, as amended by my own amendment No. 79 in List No. II, which runs thus:

"That for amendment No. 438 of the List of Amendments, the following be substituted:

'That after sub-clause (g) of clause (1) of article 13, the following new sub-clause be added:—

(h) to keep and bear arms;

and the following new clause be added after clause (6):

(7) Nothing in sub-clause (h) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing, in the interests of public order, peace and tranquillity, restrictions on the exercise of the right conferred by the said sub-clause.'"

Sir, I feel a little pardonable pride in moving this amendment before the House today. Considering as I do that it puts an end or brings to an end one phase of our ignominious past, the past of more than a hundred years, and

in view of the importance of this matter involved in the amendment, may I appeal to you, Sir, to give me a little latitude in the matter of time, because I want to put the case in its entirety before the House? And may I also make a personal request to Dr. Ambedkar or whoever it may be that will reply on behalf of the Drafting Committee, to pay close attention to what is going on in the House? Yesterday we found at the fag end of the day Dr. Ambedkar —perhaps he was a bit fagged out and tired—I felt that he had not followed the debate on titles.

Mr. Vice-President: I will not allow you to make any reference to what happened yesterday.

Shri H. V. Kamath: Before I come to the amendment itself may I say a word as to an important omission which has been made before article 13? I find from the Report of the Fundamental Rights Sub-Committee over which the Honourable Sardar Patel presided, the rights from 13 upto 18 have been titled or designated as the Rights of Freedom. This sub-title 'Rights of Freedom' has been omitted from the draft as presented to the Assembly now. In this report which I am reading—Report of the Committee—First Series from December 1946 to July 1947—the sub-title is 'Rights of Freedom' just before we come to article 13.

Then, Sir, I come to the amendment itself. It is common knowledge to all of us who have lived and worked in India during the last thirty years or more that this has been a universal demand emanating from all sections of the population, firstly as a protest against the degrading and humiliating Arms Act passed by the British Government in the last century, and secondly, Sir, as a guarantee of the right of self-defence. This demand has been embodied in various Congress Resolutions during the last two decades. The most important Resolution and most historic, the most momentous was the Resolution on Fundamental Rights passed at Karachi. I read, Sir, from that Resolution the relevant extracts:

"This Congress is of opinion that to enable the masses to appreciate what Swaraj as conceived by the Congress will mean to them, it is desirable to state the position of the Congress in a manner easily understood by them. In order to end the exploitation of the masses, political freedom must include real economic freedom of the starving millions. The Congress, therefore, declares that any constitution.

Mark these words—*any constitution.*

* * * which may be agreed to on its behalf, should provide or enable the Swaraj Government to provide for the following . . . . . ."

and various fundamental rights are enumerated, among them being this one—

"Every citizen has the right to keep and bear arms in accordance with Regulations and reservations made in that behalf."

I find, Sir, from this list of Fundamental Rights, adopted at the Karachi session of the Congress, almost all of them have been incorporated in this Draft Constitution, except this one, and this is a very serious omission.

I might also make an observation about this amendment, that I am in a very good company, because amendment No. 443 which is similar to my amendment has been tabled by the General Secretaries of the Congress—Shri Shankar Rao Deo and Acharya Jugal Kishore.

Mr. Vice-President: Do you suggest that it is the work of the Congress only? I thought it is the co-operative work of all the parties.

Shri H. V. Kamath: But, Sir, all will agree that the dominant party in this House is the Congress Party, and if this party is not going to stand by its past professions, if it is going to prove false to its past, and not implement its resolution of the past, what has that party come to? If the fundamental idea of this resolution passed at Karachi is to be given the go-by, I ask this House, shall we not fall in the estimation of the people of the country? Sir, this demand has not been a mere demand. I very well remember that in Nagpur

[Shri H. V. Kamath]

in 1923 or 1924 there was a Satyagraha movement against the Arms Act and this Satyagraha movement attracted Satyagrahis from all over India. That went on for six months, and the Congress put its seal of approval on this Satyagraha movement against the Arms Act. Today we may say that conditions have changed and we do not want this sort of thing to be incorporated in our fundamental rights. But, Sir, I will come to that argument a little later.

I can appreciate the force of the argument that this absolute right should not be conceded today. Perhaps there is a lurking fear in the minds of those in power that the right may be abused. For that reason I have given this proviso in conformity with and in line with the other provisos which have been embodied in this article. I am personally not very much in favour of these elaborate provisos. Here again, I would like to draw the attention of the Honourable Dr. Ambedkar to pages 21 and 29 of this Report of the Committees' First Series. On page 21, we have the Report of the Fundamental Rights Sub-Committee presided over by the Honourable Sardar Patel, and later on the same report was discussed in the Assembly and modifications were made in that, and the elaborate provisos which appeared in the original report of the Fundamental Rights Committee do not find a place in the resolution on the report which was adopted by the Constituent Assembly. This perhaps needs an explanation from Dr. Ambedkar.

Reverting to the subject matter of the amendment. I have already said that I do not want to make this right absolute. That is why I have tabled this proviso, imposing restrictions in the interests of public order, peace and tranquillity. It may be said that saboteurs and other elements are abroad in the country and these may abuse this privilege and take advantage of this privilege conferred upon the ordinary citizen. But may I tell the House that saboteurs and other evil elements, villains and criminals have managed and will always manage to get arms, Arms Act or no Arms Act; and it is the law-abiding citizen who has always suffered in the bargain, and it is he who has to be protected against these elements. The history of the last twelve months has proved this to us most unmistakably, that those who suffer in these criminal riots and disturbances are not the violent elements or the saboteurs, but the law-abiding citizens, and these have to be protected.

Again, the argument may be put forward that we should incorporate only such rights about which there is fear that they might be denied to the citizen. But if we examine this argument a little closely, and also this article, in the light of this argument, we will find that rights like free movement throughout India, freedom to reside and settle in any part of India, and such other rights about which there is no doubt or fear that they will be denied, have been incorporated in this article. But this one right, to keep and bear arms has not found a place in this article. If this very diluted proposal of mine, if even this very abridged freedom to bear arms is not acceptable to the House, I am afraid it will create a most unfortunate impression on our countrymen that the Government does not trust the people, that the Government has no faith in the people, that the Government is afraid of the people. It is all right, Sir, for Ministers of Government to say, "We are here to protect you". But, with security guards outside their bungalows, it is very well for them to put forward this plea. But the ordinary citizen has no armed guard about him, no guards standing outside his house. If the Government wishes to convey the impression to the people that the Government has no faith in them, that it is afraid of them, if that is the attitude of the Government, then it is welcome to say so. It will prove to the people that you are not a popular government, that you are a government which has no faith in the people. If you are a popular government, this is the least that you can do today to put an end to this ignominy of the past one hundred years.

It may be argued also that the Congress and Mahatma Gandhi, and our leaders have taught us to defend ourselves by Ahimsa, and not by Himsa, by non-violence and not by violence. But, Sir, may I, in all humility remind the House that Mahatma Gandhi used to say, "Resist, defend, non-violently, if possible, but violently, if necessary. What I hate is cowardice." And this doctrine, Sir, has been propagated recently by the Honourable Sardar Patel himself who has been going about the country asking the people never to run away, never to be cowards, but to resist violently if necessary, not to run away from the assassin, from the hooligan, from the criminal. Defend yourself by all means and at all costs. I find my honourable Friend Mr. Shankar Rao Deo laughing in his seat. He is welcome to smile or laugh but I may tell him that he laughs best who laughs last. He has tabled an amendment here. I do not know whether he is serious about it. In the end I will only say that if we of the Congress party who are in a majority desire to prove true to our past, if we have the desire in us to implement all the resolutions that we have adopted in the past, if we do not want to live with the lie in our soul, I appeal to the House to accept this amendment and put an end to one of the most disgraceful phases of our ignominious past of over a hundred years.

Mr. Vice-President: May I ask whether the first part of amendment No. 443 is going to be pressed?

Shri Shankarrao Deo (Bombay: General): No, Sir.

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I want to give my wholehearted support to the motion of my honourable Friend who has just moved his amendment... ....

Mr. Vice-President: May I suggest that instead of starting the general discussion we postpone it till all the amendments have been moved? We shall try our best to give the Maulana Sahib an opportunity to speak. Will he kindly resume his seat? (Laughter)

Order, order. The Maulana Sahib is perfectly within his rights if he wants to speak. I am sorry, Maulana Sahib, to ask you to go back to your seat. It is regrettable to greet an old Member of this House in this fashion.

Mr. Mohamed Ismail Sahib (Madras: Muslim): Sir, I move:

"That after sub-clause (g) of clause-(1) of article 13, the following new sub-clause be added:—

'(h) to follow the personal law of the group or community to which he belongs or professes to belong.

(i) to personal liberty and to be tried by a competent court of law in case such liberty is curtailed'."

Shri C. Subramaniam (Madras: General): On a point of order, Sir, the House has already passed an article in the Part on directive principles that there should be a uniform civil code. Here the Honourable Member wants to move that everybody should have the liberty to follow the personal law of the group or community to which he belongs or professes to belong. This is going contrary to the article which has already been passed. We have already decided that as far as possible personal law should come under a uniform civil code and this amendment is against the principle of that article.

As regards the other part of the amendment, it should be discussed when we take up article 15.

Mr. Vice-President: It is no point of order. Mr. Mohamed Ismail Sahib may continue his speech.

Mr. Mohamed Ismail Sahib: It is really true that I made a similar proposal when the directive principles were under discussion. I made it clear that this question of personal law ought really to come under the chapter Fundamental Rights and I also said that I shall, when the opportunity came, move this amendment at the proper time.

[Mr. Mohamed Ismail Sahib]

Person law is part of the religion of a community or section of people which professes this law. Anything which interferes with personal law will be taken by that community and also by the general public, who will judge this question with some commonsense, as a matter of interference with religion. Mr Munshi while speaking on the subject previously said that this had nothing to do with religion and he asked what this had to do with religion. He as an illustrious and eminent lawyer ought to know that this question of personal law is entirely based upon religion. It is nothing if it is not religious. But if he says that a religion should not deal with such things, then that is another matter. It is a question of difference of opinion as to what a religion should do or should not. People differ and people holding different views on this matter must tolerate the other view. There are religions which omit altogether to deal with the question of personal law and there are other religions like Hinduism and Islam which deal with personal law. Therefore I say that people ought to be given liberty of following their personal law.

It was also stated by Dr. Ambedkar on the floor of this House that the question of following personal law was not immutable. There were, as a matter of fact, sections of Muslims who do not follow the personal law prescribed by Is'am, but that is a different matter. It is not reasonable to say that simply because a section of people do not want to follow a certain law of a certain religion or a certain part of that religion that other people also should not follow the law and that sections of people should be compelled not to follow that part of the religion which certain other sections of the same community are not following.

That is not really reasonable, Sir, and it is really immutable to the people who follow this law and this religion, because people, as they understand it, have not got the right to change their religion as they please. There may be people who contravene their own religion, but that is a different matter and we cannot compel others also to contravene their religion. Here the question of personal law affects only the people who follow this law. There is no compulsion exercised thereby on the general community or the general public. This House will remember that on another question, which is really a religious question—I mean the question of cow-slaughter—an obligation has been placed upon other communities than the one which considers the prohibition of cow-slaughter as a religious matter. But then, Sir, respecting the views and feelings of our friends, the minority communities who have got the right and privilege of slaughtering and eating the flesh of cows have agreed to the proposal put before the House, though that is going beyond affecting one particular community alone. Here, Sir, observance of personal law is confined only to the particular communities which are following these personal laws. There is no question of compelling any other community at all.

Pandit Thakur Dass Bhargava (East Punjab: General): Is the honourable Member aware of the restrictions of cow-slaughter in Pakistan?

Mr. Vice-President: Will the honourable Member kindly address the Chair?

Mr. Mohamed Ismail Sahib: I cannot hear him properly. I do not know what my friend is trying to say.

Mr. Vice-President: Do not pay any attention to that. Will the Honourable Member continue?

Pandit Thakur Dass Bhargava: I was enquiring of the honourable Gentleman if he knows that there is a restriction on cow-slaughter in Pakistan, in Afghanistan and in many Muhammadan countries. In India also the Muhammadan kings placed such a restriction.

Mr. Mohamed Ismail Sahib: They might have or not have made a provision of that sort. My point is that this is a question which affects a particular community, but because that community wanted to prevent that slaughter the other community, which need not prohibit that slaughter, has agreed to that proposal. But with regard to personal law, it concerns a particular community which is following a particular set of personal laws and there is no question of compelling other people to follow that law and it is the question of the freedom of the minority or the majority people to follow their own personal law. As a matter of fact, I know there are an innumerable number of Hindus who think that interference with the personal law is interference with their religion. I know, Sir, that they have submitted a monster petition to the authorities or to the people who can have any say in the matter. Therefore it is not only Muslims but also Hindus who think that this is a religious question and that it should not be interfered with. The personal law of one community does not affect the other communities. Therefore, Sir, what I urge is that the freedom of following the personal law ought to be given to each community and it will not interfere with the rights of any other community.

Again, Mr. Munshi stated that Muslim countries like Egypt or Turkey have not any provision of this sort. Sir, I want to remind him that Turkey is under a treaty obligation. Under that treaty it is guaranteed that the non-Muslim minorities are entitled to have questions of family law and personal status regulated in accordance with their usage. That is the obligation under which Turkey has been placed and that is obtaining in Turkey now.

Then again with regard to Egypt, no such question of personal law arose in that country. But what is to be noted is that whatever the minorities in that country wanted has been granted to them: in fact more than what they wanted has been granted. And if personal law had also been a matter in which they wanted certain privileges, that would also have been granted.

Then there are other countries. Yugoslavia has agreed to give this privilege to the Muslims in following their family law and personal law.

Therefore, what I am asking for is not a matter which is peculiar to myself or to the minority community in this country. It is a thing, Sir, well understood in other parts of the world also.

Sir, I also move:

"That after clause (6) of article 13, the following new clauses be added:

'(7) Nothing in the clauses (2) to (6) of this article shall affect the right guaranteed under sub-clause (h) of clause (1) of this article.' "

This is consequential. The personal law is presumed to be guaranteed by the previous amendment, that is the new sub-clause (h) to clause (1) of article 13, and this clause (7) seeks to preclude any interference with the question of personal law as a result of clauses (2) to (6).

Then coming to the new clause (i), it reads thus:

"to personal liberty and to be tried by a competent court of law in case such liberty is curtailed."

This has nothing to do with the minority or the majority. It concerns itself with the right of every citizen. Personal liberty is the core of the whole freedom. It is the basis upon which the freedom of the land must be built. But here, Sir, in this bulky Constitution this question of personal liberty is left almost as an orphan. Only one mention is made of personal liberty, i.e., in article 15 and it is left there, it is left to be taken care of by 'procedure established by law'. I do not here enter into the controversy whether it should be "by due process of law", or "by procedure established by law". But what I want to say is that only a mention has been made in the Constitution with regard to personal liberty. But personal liberty is the most fundamental of

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the fundamental rights and it ought not to be dealt with in such a cursory manner, as it has been done in the Constitution.

I request your permission to read a quotation to illustrate how the Constitutions of other countries have dealt with this all-important question of personal liberty.

Much smaller countries than India have taken a more serious and, if I may say so, a sacred view of this question. The Polish Constitution says, among other things: 'If in any case the judicial order cannot be produced immediately'—(it is only on a judicial order, that a man's liberty can be curtailed)—'it must be transmitted within 48 hours of the arrest stating the reasons for the arrest. Persons who have been arrested, and to whom the reasons for the arrest have not been communicated within 48 hours, in writing, over the signature of judicial authorities, shall be immediately restored to liberty.'

'The laws prescribe the means of compulsion which may be employed by the administrative authority to secure the carrying out of their order.'

Then again, the same Constitution says; "No law may deprive a citizen, who is the victim of injustice or wrong, of judicial means of redress."

Sir, another State, viz., Yugoslavia, in regard to this matter goes even further. It has provided:

"A man after he is informed of the reasons for the arrest or detention has got the right....."

Shri C. Subramaniam: Questions of personal liberty come only under article 15. They are irrelevant under this article. It is article 15 that deals with personal liberty thus: "No person shall be deprived of his life or personal liberty except according to procedure established by law; nor shall any person be denied equality before the law or the equal protection of the laws within the territory of India." Therefore what is the use of discussing the question of personal liberty under article 13?

Mr. Mohamed Ismail Sahib: I have already referred to this point. Of course it is mentioned there. But to say that because it is mentioned there it is necessary that the matter should be discussed only there is not correct. I am of the view that this subject is more appropriately brought under article 13 which speaks of the various freedoms of the citizen. Of these freedoms, this is the most important. Therefore there is nothing wrong in my saying that this all-important question must be brought under article 13. With that view I have tabled this amendment and I am speaking on this amendment.

Sir, my amendment, which I have moved with your permission, says that the citizen shall be guaranteed his personal liberty. As I was saying, the Constitution of Yugoslavia has provided: "No person may be placed under arrest for any crime or offence whatever save by order of a competent authority given in writing stating the charge. This order must be communicated to the person arrested at the time of arrest or within 24 hours of the arrest. An appeal against the order for arrest may be lodged in the Competent Court within three days. If no appeal has been lodged,—(this is important)—'within this period, the police authorities must as a matter of course communicate the order to the competent court within 24 hours following. The court shall be bound to confirm or annul the arrest within 2 days of the communication of the order and its decision shall be given effect forthwith. Public officials who infringe this provision shall be punished for illegal deprivation of liberty".

Sir, ours is a bulky Constitution. Our friends congratulated themselves in having produced the bulkiest Constitution in the world. And this Constitution from which I read out an extract just now contains only 12 articles. It is a much smaller Constitution than ours and yet in the matter of personal

liberty it has made such an elaborate provision as that I mentioned. This bulky Constitution of ours does not find more than a few words where this all-important question of personal liberty is concerned.

Now, Sir, there are various Public Safety Acts enacted and enforced in the various provinces of the country. Here, personal liberty as it stands is almost a mockery of personal liberty. A man is being arrested at the will and pleasure of the executive. He is put in prison and he does not even know for what he has been imprisoned or for what charge he has been detained. Even where the law puts the obligation on the Government to reveal to him the reasons for which he has been detained, the executive takes its own time to do so. There are cases in which the persons concerned were not informed of the charge for weeks and months and when the charges were communicated, many of them were found to be of such a nature that they could not stand before a court of law for a minute. No right has been given to a detenu or a person arrested or detained to test the validity of the order before a court of law. This kind of administration of law was not known even under foreign rule, that is, under British rule.

Now, Sir, another contention is being indulged in, and that is that it was different when the Britisher, the foreigner was in the country and that now its is our own rule. True, but that does not mean that we can deal with liberty of the citizens as we please. Bureaucracy is bureaucracy, whether it is under foreign rule or self-rule. Power corrupts people not only under foreign rule, but also under self-government. Therefore, Sir, the citizen must be protected against the vagaries of the executive in a very careful manner as other self-governing countries have done. In almost every country in the world, they have made elaborate provision for protecting the personal liberty of the citizen. Why should India alone be an exception, I do not understand. Therefore, the framers of the Constitution, I hope, will reconsider this question and make suitable provisions for the protection of the liberty of the person.

Sir, in this amendment of mine I have not gone elaborately into the question of personal liberty. I only want the citizen concerned to be given the right of going to, and being tried by, a court of law, if his personal liberty is curtailed. That one precious right I want to be given to every citizen of India.

May I also, Sir, move the other consequential amendments included in amendment No 502. I have moved only the one on page 53 of the List of Amendments, namely new sub-clause (7). That relates to personal law. May I move now the other portion of the amendment relating to new clauses (8) and (9) on page 54 of the List?

Mr. Vice-President: The Honourable Member may do so, but without making a speech.

Mr. Mohamed Ismail Sahib: Sir, I move that the following new clauses be added:

"(8) Nothing in clauses (2) to (6) shall affect the right guaranteed under sub-clause (i) of clause (1) of this article.

(9) No existing law shall operate after the commencement of this Constitution so far as the same affects adversely the right guaranteed under sub-clause (i) of clause (1) of this article and no law shall be passed by the Parliament or any State which may adversely affect the right guaranteed under sub-clause (i) of clause (1) of this article."

These are only consequential amendments.

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Mr. Vice-President: We shall now go on to amendments Nos. 442, 499, the second part of 443, 468 and 501. These are all of similar import. I hold that the only two amendments which can be moved under the new regulations are amendments Nos. 442 and 499. The others will be voted on.

Shri M. Ananthasayanam Ayyangar (Madras: General): All these relate to free choice in the election of representatives. In a sense this is a new subject and may on that account be held over for consideration.

Mr. Vice-President: What about 499?

Pandit Thakur Dass Bhargava: That also relates to the same subject.

Mr. Vice-President: The whole group will be held over for consideration.

(Amendment No. 444 was not moved.)

Mr. Vice-President: Amendment No. 445.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That the following new clause be added after clause (1) of article 13:

'Liberty of the person is guaranteed. No person shall be deprived of his life, nor be arrested or detained in custody, or imprisoned, except according to due process of law, nor shall any person be denied equality before the law or equal protection of the laws within the territory of India.' "

Sir, this again is of the same species of amendments which I am trying my best to place before the House, that is to say, the enunciation and incorporation of those elementary principles of modern liberal constitutions in which it is a pity our Constitution seems deliberately to be lacking. The liberty of the person, ever since the consciousness of civil liberties, has come upon the people, has been the main battleground of the autocrats and those fighting against them. In no single instance other than this has the power of autocracy wanted to assert itself against the just claims of the individual to be respected in regard to his personal freedom. The liberty of the person to fight against any arbitrary arrest or detention, without due process of law, has been the basis of English constitutional growth, and also of the French Constitution that was born after the Revolution. The autocrat, the despot, has always wished, whenever he was bankrupt of any other argument, just to shut up those who did not agree with him. It was, therefore, that any time the slightest difference of opinion was expressed, the slightest inconvenience or embarrassment was likely to be caused by any individual, the only course open to those who wanted to exercise autocratic power was to imprison or arrest or detain such a person without charge or trial. It has been in fact in many modern constitutions among the most cardinal articles that the liberty of the person shall be sacred, shall be guaranteed by the Constitution. We are covering new ground and should not omit to incorporate in our Constitution those items which in my opinion ought to be sacrosanct, which would never lose anything by repetition, and which would also add to our moral stature.

This Constitution, Sir, was drafted at a time when people were going through extraordinary stress and strain. The tragic happenings of some twelve or fourteen months ago were no doubt responsible for influencing those who drafted this Constitution to feel that in the then prevailing goonda raj it was necessary to restrict somehow the freedom of the individual. Therefore it is that the freedom of the individual, the sacredness and sanctity of personal liberty has been soft-pedalled in this Constitution. But now after an interval of fourteen months, I would suggest to this House that these sad memories should be left to the limbo where they deserve to remain. We have had no doubt the unfortunate experiences in which individuals moved by whatever sentiments had tried to exert violence and do

injury to their fellows which no civilised State can put up with. It was therefore at the time necessary that such individuals should be apprehended immediately. In emergencies like this, in cases like this, if you wait for performing the due processes of law, if you wait for reference to a magistrate for the issue of a proper warrant, or compliance with all the other formalities of legal procedure to be fulfilled, it is possible that the ends of justice may not be served, it is possible that the maintenance of law and justice may be endangered. But, Sir, I venture to submit to this House that that was an extraordinarily abnormal situation which we hope will not recur. Constitution should be framed, not for these abnormal situations, but normal situations and for reasonable people who it must be presumed will be normally law-abiding and not throw themselves entirely to the mercy of these goondas. We are making a constitution, Sir, for such types of people and not for those exceptions, the few who might have temporarily lost the possession of their senses, and who therefore may be dealt with by extraordinary procedure.

We have in this Constitution as we have in many other Constitutions provisions relating to a state of emergency where the normal Constitution is suspended. I am not at all enamoured of these extraordinary exceptions to the working of constitutions; but even I might conceive that in moments of emergency it may be necessary, however regrettable it may be, to suspend constitutional liberties for the time being. But we must not, when framing a constitution, always assume that this is a state of emergency, and therefore omit to mention such fundamental things as civil liberties.

I, therefore, want to mention categorically in this Constitution that the liberty of the person shall be respected, shall be guaranteed by law, and that no person shall be arrested, detained or imprisoned without due process of law. That process it is for you to provide. That process it is for laws made under this Constitution to lay down. And if and in so far as that process is fulfilled, there is no reason to fear that any abuse of such individual liberty will take place. Why then deny it, why then omit the mention of personal liberty that has all along been the mark of civilised democratic constitutions against the autocratic might of unreasoning despots? I am afraid, looking at the fate of most of my amendments, that I may perhaps be hurling myself against a blank wall. But I will not prejudice my hearers and certainly not the draftsmen by assuming that they are unreasoning until they prove that they are guilty of utterly unreasoning opposition.

Mr. Vice-President: Amendments Nos. 446, 447 and 448. These are all of similar import. Amendment No. 448 may be moved. It stands in the joint names of Shrimati Renuka Ray, Dr. Keskar, Shri Satish Chandra and Shri Mohanlal Gautam.

(Amendments Nos. 448 and 446 were not moved.)

Mahboob Ali Baig Sahib Bahadur: (Madras: Muslim): Sir, there is another amendment in my name, amendment No. 451: that is for the deletion of clauses (2), (3), (4), (5), and (6).

Mr. Vice-President: That comes under another group which will be dealt with hereafter.

Mahboob Ali Baig Sahib Bahadur: Then, alternatively, I shall move amendment No. 447. Sir, I move:

"That clauses (2) to (6) of article 13 be deleted and the following proviso be added to clause (1):

'Provided, however that no citizen in the exercise of the said right, shall endanger the security of the State, promote ill-will between the communities or do anything to disturb peace and tranquillity in the country'."

[Mahboob Ali Baig Sahib Bahadur]

Mr. Vice-President, Sir, to me it looks as if the fundamental rights are listed in clause (1) only to be deprived of under clauses (2) to (6), for in the first place, these fundamental rights are subject to the existing laws. If in the past the laws in force, the law-less laws as I would call them, the repressive laws, laws which were enacted for depriving the citizens of their human rights, if they have deprived the citizens of these rights under the provisions under clauses (2) to (6), they will continue to do so. The laws that I might refer to as such are the Criminal Law Amendment Acts, the Press Acts and the several Security Acts that have been enacted in the Provinces. And these clauses (2) to (6) further say that if the existing laws are not rigorous, repressive and wide enough to annihilate these rights, the States as defined in article 7 which covers not only legislatures, executive Governments and also the local bodies, nay, even the local authorities can complete the havoc. I am not indulging in hyperbole or exaggeration. I shall presently show that there is not an iota of sentiment or exaggeration in making this criticism. Fundamental rights are fundamental, permanent, sacred and ought to be guaranteed against coercive powers of a State by excluding the jurisdiction of the executive and the legislature. If the jurisdiction of the executive and the legislature is not excluded, these fundamental rights will be reduced to ordinary rights and cease to be fundamental. That is the import, the significance of fundamental rights.

Then, Sir, it is said by Dr. Ambedkar in his introductory speech that fundamental rights are not absolute. Of course, they are not; they are always subject to the interests of the general public and the safety of the State, but the question is when a certain citizen oversteps the limits so as to endanger the safety of the State, who is to judge? According to me, Sir, and according to well recognised canons, it is not the executive or the legislature, but it is the independent judiciary of the State that has to judge whether a certain citizen has overstepped the limits so as to endanger the safety of the State. This distinction was recognised by the framers of the American Constitution in that famous Fourteenth Amendment which clearly laid down that no Congress can make any law to prejudice the freedom of speech, the freedom of association and the freedom of the press. This was in 1791, and if the American citizen transgressed the limits and endangered the State, the judiciary would judge him and not the legislature or the executive.

Even in the case of Britain where there is no written constitution two prominent and effective safeguards were there. They were governed by the law of the land. The law of the land is the law which gave them freedom of thought, freedom of expression and they cannot be proceeded against without due process of law. These were the two safeguards. It is only in the German Constitution that we find restrictions such as those in clauses (2) to (6). It is only in the German Constitution that the fundamental rights were subject to the provisions of the law that may be made by the legislature. That means that the citizens could enjoy only those rights which the legislature would give them, would permit them to enjoy from time to time. That cuts at the very root of fundamental rights and the fundamental rights cease to be fundamental. I dare say, Sir, you know what was the result. Hitler could make his legislature pass any law, put Germans in concentration camps without trial under the provisions of law made by the legislature of Germany. We know what the result was. It was regimentation, that every German should think alike and anybody who differed was sent to concentration camps. Totalitarianism, fascism was the result.

(Mr. Vice-President rang the time bell.)

I would request you to give me some time more. I am just developing the point.

Mr. Vice-President: Sorry, you cannot have time without my permission. At the proper time, I would request you to finish and take your seat. I hope you will respect my wishes.

Mahboob Ali Baig Sahib Bahadur: Sir, it is these wide considerations that were responsible for the deletion of such clauses by this august Assembly on the 30th April, 1947, when Sardar Patel who was the Chairman of the Committee to report on Fundamental Rights, presented these Fundamental Rights. He moved for the deletion of all these provisos and in the discussion on the 30th of April 1947, many prominent men including Pandit Jawaharlal Nehru took part, and all these provisos were deleted. The proceedings can be found on pages 445 to 447. Here, the Prime Minister of India says:

"A fundamental right should be looked upon, not from the point of view of any particular difficulty of the moment, but as something that you want to make permanent in the Constitution."

Therefore, Sir, in this august Assembly on the 30th of April 1947, after discussion in which prominent men including Mr. Munshi took part, these provisos were deleted. This departure now to re-introduce these provisions, I submit, with great respect, is a departure which is retrograde and I submit, Sir, that we ought not to allow it. My submission is that the existence of these three provisos is the very negation of the Fundamental Rights. I would request you to consider this question from three or four points of view.

(Mr. Vice-President again rang the time-bell.)

With your permission, Sir,.....

Mr. Vice-President: No; there are many more speakers. I must now insist upon your obeying my orders.

Mahboob Ali Baig Sahib Bahadur: A few more minutes, Sir.

Mr. Vice-President: I have given you enough time. There are other speakers. I have an obligation towards them also.

Now, we shall go to the next two amendments. One is amendment No. 449 and the other is amendment No. 453. Of these two, I think amendment No. 453 is more comprehensive and may be moved. It stands in the joint names of Dr. Pattabhi Sitaramayya and others. There is also an amendment to that amendment.

Shri M. Ananthasayanam Ayyangar: Sir, I submit that this amendment No. 453* which stands in our joint names may be taken as formally moved. I find in the order sheet, in list No. IV a further amendment to this amendment. I accept that amendment, Sir. If you kindly give permission to move that amendment, I shall accept it and it is not necessary to move this amendment.

Mr. Vice-President: Mr. Munshi.

Shri H. V. Kamath: On a point of order, Sir, unless this amendment is moved, no amendment can be moved to this. This cannot be taken as moved.

Mr. Vice-President: Do you want that he should read over the amendment? I overlooked it. Mr. Munshi.

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* That for clause (2) of article 13, the following be substituted:—

"Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law relating to libel, slander, defamation, offences against decency or morality or sedition or other matters which undermine the security of the State."

Shri K. M. Munshi: (Bombay: General): Mr. Vice-President, Sir, I beg to move amendment No. 86 in the additional list which runs as follows:

That for amendment No. 453 of the list of Amendments, the following be substituted:

"That for clause (2) of article 13, the following be substituted:—

'(2) Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law relating to libel, slander, defamation, or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State.'"

Sir, before I go to the merits of the amendment, I should like to point out a verbal error which I am sure my honourable Friend Dr. Ambedkar will permit me to correct. After the words, "shall affect the operation of any existing law", I propose that the words "in so far as it relates to" should be added; because, that connects this clause with "to libel, etc.". This would make the meaning clear and I am sure my honourable Friend will accept it.

As regards the merits, the changes sought to be made are two. In the original clause, the word 'sedition' occurs. The original clause reads as follows: "relating to libel, slander, defamation, sedition or any other matter....." The amendment seeks to omit the word 'sedition' Further, the amendment seeks to substitute the words "undermines the authority or foundation of the State" by the words.....

Mr. Naziruddin Ahmad: On a point of order, Sir, we have not got this amendment at all. In list IV the number does not tally at all. I believe, Sir, it was circulated today and it cannot be taken up. We should be given some breathing time in order to understand what is going on.

Mr. Vice-President: I think amendments to amendments can be permitted up to the time when the amendment is moved. I understand that this was placed on the table before each member.

Shri K. M. Munshi: Really speaking, the original amendments numbers 458 and 461 have been brought under a single amendment. There is nothing new in this amendment, Sir.

Mr. Vice-President: Go on, Mr. Munshi.

Pandit Hirday Nath Kunzru: (United Provinces: General): Sir, may I request Mr. Munshi to read out his amendment, once again? What is it an amendment to?

Shri K. M. Munshi: This is an amendment to amendment No. 453, on page 49. In effect, it combines two amendments which are already on the list. This is how it reads:

"That for clause (2) of article 13, the following be substituted:—

'(2) Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law relating to libel, slander, defamation.'"

Then, the change comes: the word 'sedition' is omitted.

"or any matter which offends against decency or morality:"

Then comes another change.

"or which undermines the security of, or tends to overthrow the State."

That is exactly the wording of amendment No. 461.

The object of.....

Shri Mahavir Tyagi (United Provinces: General): May I take it that the word 'morality' has been taken out?

Shri K. M. Munshi: I read the word 'morality'.

Mr. Vice-President: You need be under no sort of apprehension so far as that is concerned.

Shri K. M. Munshi: The House will not permit me to do anything of the sort. Sir, the importance of this amendment is that it seeks to delete the word 'sedition' and uses a much better pharseology, viz., "which undermines the security of, or tends to overthrow, the State." The object is to remove the word 'sedition' which is of doubtful and varying import and to introduce words which are now considered to be the gist of an offence against the State.

Shri Amiyo Kumar Ghosh: (Bihar: General): On a point of information. I want to know whether without moving the original amendment, an amendment, to it can be moved?

Mr. Vice-President: The amendment was moved formally.

Shri K. M. Munshi: I was pointing out that the word 'sedition' has been a word of varying import and has created considerable doubt in the minds of not only the members of this House but of Courts of law all over the world. Its definition has been very simple and given so far back as 1868. It says "Sedition embraces all those practices whether by word or deed or writing which are calculated to disturb the tranquillity of the State and lead ignorant persons to subvert the Government". But in practice it has had a curious fortune. A hundred and fifty years ago in England, holding a meeting or conducting a procession was considered sedition. Even holding an opinion against, which will bring ill-will towards Government, was considered sedition once. Our notorious Section 124-A of Penal Code was sometimes construed so widely that I remember in a case a criticism of a District Magistrate was urged to be covered by Section 124-A. But the public opinion has changed considerably since and now that we have a democratic Government a line must be drawn between criticism of Government which should be welcome and incitement which would undermine the security or order on which civilized life is based, or which is calculated to overthrow the State. Therefore the word 'sedition' has been omitted. As a matter of fact, the essence of democracy is Criticism of Government. The party system which necessarily involves an advocacy of the replacement of one Government by another is its only bulwark; the advocacy of a different system of Government should be welcome because that gives vitality to a democracy. The object therefore of this amendment is to make a distinction between the two positions. Our Federal Court also in the case of Niharendu Dutt Majumdar Vs King, in III and IV Federal Court Reports, has made a distinction between what 'Sedition' meant when the Indian Penal Code was enacted and 'Sedition' as understood in 1942. A passage from the judgment of the Chief Justice of India would make the position, as to what is an offence against the State at present, clear. It says at page 50:

> "This (sedition) is not made an offence in order to minister to the wounded vanity of Governments but because where Government and the law ceases to be obeyed because no respect is felt any longer for them, only anarchy can follow. Public disorder, or the reasonable anticipaiton or likelihood of public disorder is thus the gist of the offence. The acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency."

This amendment therefore seeks to use words which properly answer to the implication of the word 'Sedition' as understood by the present generation in a democracy and therefore there is no substantial change; the equivocal word 'sedition' only is sought to be deleted from the article. Otherwise

[Shri K. M. Munshi]

an erroneous impression would be created that we want to perpetuate 124-A of the I.P.C. or its meaning which was considered good law in earlier days. Sir, with these words, I move this amendment.

Shri H. V. Kamath: On a point of clarification, may I ask my learned friend Mr. Munshi to examine whether the deletion of the word 'other' from the phrase 'any other matter' will not create some doubt or difficulty about the meaning of this amendment? Because if he will look up article 13 in the Draft Constitution, he will find that the phrase used is "any other matter". Here the word 'other' is deleted which will mean that so far as slander, defamation and libel are concerned, they cannot offend against decency or morality, but only some other matter can. Is it the contention of Mr. Munshi that neither defamation, slander nor libel offends against decency and morality?

Shri K. M. Munshi: In the original clause of this article as drafted the words were—"libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines the authority or foundation of the State." Here we have omitted the word 'sedition'. Slander and defamation need not be necessarily connected with a violation of decency or morality nor do they undermine the authority of the State: the words "any matter" indicate an independent category. One category is libel, slander and defamation. The other category is any matter which offends against the State. The word 'other' therefore would be inappropriate.

Shri H. V. Kamath: In the draft article the antecedents of the words 'other' matter were libel, slander, defamation and sedition, all of them.

Shri K. M. Munshi: I cannot agree with my honourable friend.

Mr. Vice-President: Do you press amendment 449?

Mr. Naziruddin Ahmad: Yes.

Mr. Vice-President: It will be put to vote. We next come to 450, 451, 452, 453, 465 and 478—all are of similar import and should be considered together. Amendment 450 is allowed.

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

"That clauses (2), (3), (4), (5) and (6) of article 13 be deleted."

Sir, in article 13(1), sub-clauses (a), (b) and (c), they give constitutional protection to the individual against the coercive power of the State, if they stood by themselves. But sub-clauses (2) to (6) of article 13 would appear to take away the very soul out of these protective clauses. These lay down that nothing in sub-clauses (a), (b), (c) of article 13 shall effect the operation of any of the existing laws, that is, the various laws that abrogate the rights envisaged in sub-clause (1) which were enacted for the suppression of human liberties, for instance, the Criminal Law Amendment Act, the Press Act, and other various security Acts. If they are to continue in the same way as before, then where is the change ushered in and so loudly talked of? The main purpose of declaring the rights as fundamental is to safeguard the freedom of the citizen against any interference by the ordinary legislature and the executive of the day. The rights detailed in article 13(1) are such that they cannot be alienated by any individual, even voluntarily. The Government of the day is particularly precluded from infringing them, except under very special circumstances. But here the freedom of assembling, freedom of the press and other freedoms have been made so precarious and entirely left at the mercy of the legislature that the whole beauty and the charm has been taken away. It is

not only the existing laws that have been subjected to this clause, but the State has been further armed with extraordinary powers to make any law relating to libel, slander etc. It may be said that every State should have the power and jurisdiction to make laws with regard to such matters as sedition, slander and libel. But in other countries like America it is for the Supreme Court to judge the matter, keeping in view all the circumstances and the environments, and to say whether individual liberty has been sufficiently safeguarded or whether the legislature has transgressed into the freedom of the citizen. The balance is kept in the hands of the judiciary which in the case of all civilized countries has always weighed honestly, and consequently protected the citizen from unfair encroachment by legislatures. But a curious method is being adopted under our Constitution by adding these sub-clauses (2) to (6). The Honourable Mover defended these sub-clauses by remarking that he could quote at least one precedent for each of these restrictions. But it is here that the difference lies, that whereas in those countries it is the judiciary which regulates the spheres of these freedoms and the extent of the restrictions to be imposed, under article 13, it is the legislature that is being empowered with these powers by sub-clauses (2) to (6). The right to freedom of speech is given in article 13(1)(a), but it has been restricted by allowing the legislature to enact any measure under 13(2), relating to matters which undermine the authority or foundation of the State; the right to assembly seems guaranteed under 13(1)(b), but it has been made subject to the qualification that legislation may be adopted in the interest of public order—13(3). Further under 13(4) to 13(6), any legislation restricting these liberties can be enacted "in the interest of the general public". Now who is to judge whether any measure adopted or legislation enacted is "in the interest of the general public" or "in the interest of public order", or whether it relates to "any matter which undermines the authority or foundation of the State"? The sphere of the Supreme Court will be very limited. The only question before it would be whether the legislation concerned is "in the interest of the public order". Only the bona-fides of the legislature will be the main point for decision by the Court and when once it is found by the court that the Government honestly believed that the legislation was needed "in the interest of the public order", there would be nothing left for its interference. The proviso in article 13(3) has been so worded as to remove from the Supreme Court its competence to consider and determine whether in fact there were circumstances justifying such legislation. The actual provisions and the extent of the restrictions imposed would be out of the scope of judicial determination.

For further illustration we may take the law of sedition enacted under 13(2). All that the Supreme Court shall have to adjudicate upon would be whether the law enacted relates to "sedition" and if it does; the judiciary would be bound to come to a finding that it is valid. It would not be for the Judge to probe into the matter whether the actual provisions are oppressive and unjust. If the restriction is allowed to remain as it is contemplated in 13(2), then the citizens will have no chance of getting any law relating to sedition declared invalid, howsoever oppressive it might be in restricting and negativing the freedom promised in 13(1)(a). The "court" would be bound to limit its enquiry within this field that the Parliament is permitted under the Constitution to make any laws pertaining to sedition and so it has done that. The constitution is not infringed anywhere. and rather, the draft is declaring valid in advance any law that might be enacted by the Parliament—only if it related to sedition. Similar is the case of other freedom posed in article 13(1) but eclipsed and negatived in clauses (2) to (6).

It may be argued that under a national government, the legislature, representative of the people and elected on adult franchise, can and should be trusted for the safe custody of citizens' rights. But as has been aptly remarked, "If the danger of executive aggression has disappeared, that from legislative interference has greatly increased, and it is largely against this danger that the

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modern declarations of fundamental rights are directed, as formerly they were directed against the tyranny of autocratic kings."

The very object of a Bill of Rights is to place these rights out of the influence of the ordinary legislature, and if, as under clauses (2) to (6) of article 13, we leave it to this very body, which in a democracy, is nothing beyond one political party, to finally judge when these rights, so sacred on paper and glorified as Fundamentals, are to be extinguished, we are certainly making these freedoms illusory.

If the other countries like the U.S.A. have placed full confidence in their Judiciary and by their long experience it has been found that the confidence was not misplaced, why should we not depend upon similar guardians to protect the individual liberties and the State interests, instead of hedging round freedom by so many exceptions under these sub-clauses ?

Sir, I commend this amendment to the House.

Mr. Vice-President: The next amendment on the list is the alternative amendment No. 451, in the same of Mr. Mahboob Ali Baig.

Mahboob Ali Baig Sahib Bahadur: Sir, I move:

"That the following words be inserted at the beginning of clauses (2), (3), (4), (5) and (6) of article 13 :—

'Without prejudice and subject to the provisions of article 8.' "

My purpose in moving this amendment is twofold. Firstly, I want to know the mind of Dr. Ambedkar and the Drafting Committee how article 8 stands in relation to these provisos. It may be asked whether these clauses (2) to (6) are governed by article 8 or not. If these clauses are governed by article 8, may I refer to article 8 itself. It 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."

The words "inconsistent with the provisions of this part" do not affect the existing laws relating to libel, the existing laws relating to restrictions on the exercise of the rights with regard to association or assembly. That means that the existing laws mentioned in clauses (2) to (6) are not all rendered void under Article 8. The intention is clear from the footnote that is appended to article 15, where the reason for the inclusion of the word "personal" is given. There it is said:

"The Committee is of opinion that the word 'liberty' should be qualified by the insertion of the word 'personal' before it, for otherwise it might be construed very widely so as to include even the freedom already dealt with in article 13."

Thus it is very clear that if the existing law relates to libel, if it relates to meetings or associations, or freedom of speech or expression, then that existing law stands in spite of the fact that article 8 says that any law in force which is inconsistent with the fundamental rights is void. So we come to this position. In the past the existing laws, for instance, the Criminal Law Amendment Acts, the Press Acts or the Security Acts laid down restrictions which are inconsistent with the liberties mentioned in clause (1). They shall be in operation and they are not rendered void. That seems to be the meaning that can naturally be attached to this.

The second point which I wish to submit is this. By the constitution certain powers are given to the legislature or the executive. Whether a court can question the validity or otherwise of such action, order or law is another question. My opinion is that where there is a provision in the constitution itself giving power to the legislature or in this case the State covering the legisature,

executive, local bodies and such other institutions, the jurisdiction of the court is ousted, for the court would say that in the constitution itself power is granted to the legislature to deprive, restrict or limit the rights of the citizen and so they cannot go into the validity or otherwise of the law or order, unless as it is said there is *mala fides*. It is for the authorities to judge whether certain circumstances have arisen for which an order or law can be passed. Anyhow I pose this question to the Chairman of the Drafting Committee whether in these circumstances, viz., where there is in existence a provision in the constitution itself empowering the legislature or the executive to pass an order or law abridging the rights mentioned in clause (1), the court can go into the merits or demerits of the order or law and declare a certain law invalid or a certain Act as not justified. In my view the court's jurisdiction is ousted by clearly mentioning in the constitution itself that the State shall have the power to make laws relating to libel, association or assembly in the interest of public order, restrictions on the exercise of. . . . . .

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, if I might interrupt my honourable friend, I have understood his point and I appreciate it and I undertake to reply and satisfy him as to what it means. It is therefore unnecessary for him to dilate further on the point.

Mahboob Ali Baig Sahib Bahadur: The third point which I would submit is this. The new set up would be what is called parliamentary democracy or rule by a certain political party, by the party executive or party government and we can well imagine what would be the measure of fundamental rights that the people would enjoy under parliamentary democracy or rule by a party. In these circumstances is it not wise or necessary in the interest of the general public that the future legislatures ruled by a party or the executive ruled by a party are not given powers by this very constitution itself ? For as has been said 'power corrupteth' and if absolute power is placed in the hands of party government by virtue of the terms of this constitution itself, such legislature or executive will become absolutely corrupt. Therefore, I move that if at all these provisos are necessary, they must be subject to the provision that no law can be passed, no law would be applicable, which is inconsistent with the freedoms mentioned in sub-clause (1). Sir, I move.

Mr. Vice-President: The next group consists of amendments Nos. 454,455, 469, 475, 481, and the first part of 485. They are of similar import and I allow amendment No. 454 to be moved. There are certain amendments to the amendment also.

Pandit Thakur Dass Bhargava: Sir, I move:

"That in clauses (2), (3), (4), (5) and (6) of article 13 the words "affect the operation of any existing law, or" be deleted."

To this clause an amendment has been given by the Honourable Dr. Ambedkar.

Mr. Vice-President: May I suggest that when you move amendment No. 454 you move it along with your new amendment ?

Pandit Thakur Dass Bhargava: I have moved No. 454, to which an amendment stands in the name of the Honourable Dr. Ambedkar. To this latter I have given an amendment which is No. 3 in today's list. I have also given two other amendments to amendment No. 454. So I shall, with your permission, move them in one bloc.

Sir, I move:

"That with reference to amendment No. 49 of list 1 of the Amendment to Amendments—

(i) in clause (2) of article 13 for the word 'any' where it occurs for the second time the word 'reasonable' be substituted and the word 'sedition' in the said clause be omitted.

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(ii) that in clauses (3), (4), (5) and (6) of article 13 before the word 'restrictions' the word 'reasonable' be inserted."

The net result of these amendments is the following: I want that the words "affect the operation of any existing law or" be deleted and also that before the word "restrictions" in clauses (3), (4), (5) and (6) the word "reasonable" be placed. I also want that in clause (2) for the word 'any' where it occurs for the second time, the word 'reasonable' be substituted.

If my suggestion is accepted by the House then clause (3) would read:

"Nothing in sub-clause (b) of the said clause shall prevent the State from making any law, imposing in the interests of public order reasonable restrictions on the exercise of the right conferred by the said sub-clause."

As regards the effect of amendment No. 454, if the following words are taken away—

"Affect the operation of any existing law, or"

the result will be that, not that all the present laws which are in force today will be taken away, but only such laws or portions of such laws as are inconsistent with the fundamental rights according to article 13, will be taken away, and article 8 will be in force.

Now I will deal with these amendments separately. I want to deal with 454 first.

You will be pleased to observe that so far as article 8 is concerned, it really keeps alive all the laws which are in force today, except such portions of them as are inconsistent with the fundamental rights conferred by Part III. These words—"affect the operation of any existing law, or".....

Mr. Vice-President: How can you deal with a thing unless it is moved by Dr. Ambedkar?

Pandit Thakur Dass Bhargava: In the first instance, a resolution has been passed by this House that all amendments shall be taken as moved without being formally moved. Secondly, if you allow me another chance to speak on the amendment when moved by Dr. Ambedkar, I will be content to move my amendment then. Only with a view to save time, I have taken this course and, I had asked for your permission, though it was unnecessary to do so.

Mr. Vice-President: All right.

Pandit Thakur Dass Bhargava: Thank you. I was speaking of the effect of the words—"affect the operation of any existing law, or" and I submitted to the House that so far as the words of article 8 go, even if these words are not there, all the present laws shall be alive. They shall not be dead by the fact that article 8 exists in Part III. The article reads thus:

"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."

So that the real effect which this Constitution wants to give is that, so far as those laws are inconsistent, they should be made inoperative. The rest will continue. So if these words are not there—"affect the operation of any existing law, or"—that would make no difference. If you examine the amendment to be moved by Dr. Ambedkar, the result is the same because in his amendment the words "in so far as it imposes" appear. Thus article 8 governs article 13 according to my amendment as well as his. The amendment of Dr. Ambedkar is unnecessary if the House accepts my amendment No. 454.

Mr. Vice-President: It seems to me that if Dr. Ambedkar moves his amendment, then your amendment will not be necessary at all.

Pandit Thakur Dass Bhargava: My amendment will still be necessary as it deals with other matters also.

Mr. Vice-President: I do not wish to discuss the matter with you.

Pandit Thakur Dass Bhargava: There are several clauses in this Constitution in which an attempt has been made to keep the present laws alive as much as possible. Article 8 is the first attempt. According to article 8 only to the extent of inconsistency such laws will become inoperative. Therefore, any further attempt was unnecessary.

In article 27 an attempt has again been made to keep alive certain of the laws that come within the purview of article 27 in the proviso. Then again not being content with this, another section is there in the Constitution, namely, article 307, which reads:

"Subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority."

The laws in force are defined in Explanation No. 1 and there is clause (2) which deals with certain aspects of the question. Even if these sections were not there, even then the general principle is that the law would continue in force unless repealed by any enactment or declared illegal by any Court. Therefore, so far as the continuance of the present law is concerned, the words "affect the operation of any existing law, or" are surplus, unnecessary and futile. But I would not have submitted this amendment before the House if these words were only surplus. They have another tendency and that has been emphasized by the previous speaker. There are good many amendments in the list of amendments to the same effect. I have received representations from various bodies and persons who have said in their telegrams and letters that these words should be removed, because the apprehension is that as article 8 is part of the Constitution, so is article 13 part of the Constitution. In sequence article 13 comes later and numerically it is of greater import. If article 8 is good law, so is article 13. As a matter of fact article 13 is sufficient by itself, and all the present laws, it may and can be argued, must be continued in spite of article 8. This is the general apprehension in the public mind and it is therefore that Dr. Ambedkar has also been forced to table an amendment No. 49 to my amendment No 454.

This interpretation and argument may be wrong; this may be unjustifiable; but such an argument is possible. In my opinion the law must be simple and not vague and ununderstandable. Therefore these mischievous and misleading words should be taken away. As they have further the effect of misleading the public I hold that these words, unless taken away, shall not allay public fear.

When I read these different sections from 9 to 13 and up to 26, and when I read of these Fundamental Rights, to be frank I missed the most fundamental right which any national in any country must have viz., the right to vote.

Mr. Vice-President: That is not the subject matter of the present discussion. The honourable Member should confine his remarks to his amendment.

Pandit Thakur Dass Bhargava: In considering article 15 also the House will come to the conclusion that the most important of the Fundamental Right of personal liberty and life has not been made justiciable nor mentioned in article 13. If the House has in its mind the present position in the country, it will come to the conclusion that the present state of things is anything but satisfactory. Freedom of speech and expression have been restricted by sub-clause (2). Fortunately the honourable Member Mr. Munshi has spoken

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before you about deletion of the word sedition. If these words 'affect the operation of existing laws' are not removed the effect would be that sedition would continue to mean what it has been meaning in spite of the contrary ruling of the Privy Council given in 1945. If the present laws are allowed to operate without being controlled or governed by article 8 the position will be irretrievably intolerable. Thus my submission is that in regard to freedom of speech and expression if you allow the present law to be continued without testing it in a court of law, a situation would arise which would not be regarded as satisfactory by the citizens of India.

Similarly, at present you have the right to assemble peaceably and without arms and you have in 1947 passed a law under which even peaceable assemblage could be bombed without warning from the sky. We have today many provisions which are against this peaceable assembling. Similarly in regard to ban on association or unions.

The Honourable Dr. B. R. Ambedkar: Is it open to my honourable Friend to speak generally on the clauses?

Mr. Vice-President: That is what I am trying to draw his attention to.

The Honourable Dr. B. R. Ambedkar: This is an abuse of the procedure of the House. I cannot help saying that. When a member speaks on an amendment, he must confine himself to that amendment. He cannot avail himself of this opportunity of rambling over the entire field.

Pandit Thakur Dass Bhargava: I am speaking on the amendment; but the manner in which Dr. Ambedkar speaks and expresses himself is extremely objectionable. Why should he get up and speak in a threatening mood or domineering tone?

Mr. Vice-President: Everybody seems to have lost his temper except the Chair. (*Laughter*). I had given a warning to Mr. Bhargava and, just now, was about to repeat it when Dr. Ambedkar stood up. I am perfectly certain that he was carried away by his feeling. I do not see any reason why there should be so much feeling aroused. He has been under a strain for days together. I can well understand his position and I hope that the House will allow the matter to rest there.

Now, I hope Mr. Bhargava realises the position.

Pandit Thakur Dass Bhargava: I will speak only on the amendment. But when a Member speaks on an amendment, it is not for other members to decide what is relevant and what is not.

Mr. Vice-President: I was about to say so, but I was interrupted.

Pandit Thakur Dass Bhargava: Sir, I repeat that unless and until these offending words are removed and if the present law is allowed to continue without the validity of the present laws being tested in any court, the situation in the country will be most unsatisfactory. I am adverting to the present law in order to point out that it is objectionable and if it continues to have the force of law, there will be no use in granting Fundamental Rights. Therefore I am entitled to speak of the Fundamental Rights. I will certainly not speak if you do not allow me, but I maintain that whatever I was and am saying is perfectly relevant. (Hon. Members: 'Go on'). Sir, if I do not refer to the situation in the country and to the fact that this law does not allow the present state of tension in the country to be moved, what is the use of the Fundamental Rights, I ask.

Mr. Vice-President: Kindly remember one thing which is that you may refer to it in a general manner and not make that the principal point of your speech on this occasion. You may refer to all that in such a way as to adopt a *via media* where your purpose will be served without taking up more time than is actually necessary.

Pandit Thakur Dass Bhargava: I am alive to the fact that it is a sin to take up the time of the House unnecessarily. I have been exercising as much restraint as possible. I thank you for the advice given by you. I will not refer to the present situation also if you do not like it.

But a few days ago the Honourable Sardar Patel, in a Convocation Address delivered by him, told the whole country that the labourer in the field and the ordinary man in the street has not felt the glow of India's freedom. Nobody feels that glow today, though India is free. Why? If the Fundamental Rights are there and if they are enjoyed by the people, why is there not this glow of freedom? The reason is that these offending words seem to nullify what article 8 seems to grant in respect of the present laws and people do not take us seriously. That is the cause of the general apathy of the people. If I referred in connection with this matter to the present situation, my object was only to emphasise that the present situation is very unsatisfactory. I will leave the matter at that.

As regards the amendment for the addition of the word 'reasonable' I will beg the House kindly to consider it calmly and dispassionately. We have heard the speeches of Sardar Hukam Singh and Mr. Mahboob Ali Baig. Both of them asked what would happen to the Fundamental Rights if the Legislature has the right to substantially restrict the Fundamental Rights? That is quite true. Are the destinies of the people of this country and the nationals of this country and their rights to be regulated by the executive and by the legislature or by the courts? This is the question of questions. The question has been asked, if the Legislature enacts a particular Act, is that the final word? If you consider clauses (3) to (6) you will come to the conclusion that, as soon as you find that in the Statement of Objects and Reasons an enactment says that its object is to serve the interests of the public or to protect public order, then the courts would be helpless to come to the rescue of the nationals of this country in respect of the restrictions. Similarly, if in the operative part of any of the sections of any law it is so stated in the Act, I beg to ask what court will be able to say that, as a matter of fact the legislature was not authorised to enact a particular law. My submission is that the Supreme Court should ultimately be the arbiter and should have the final say in regard to the destinies of our nationals. Therefore, if you put the word 'reasonable' here, the question will be solved and all the doubts will be resolved.

Sir, one speaker was asking where the soul in the lifeless article 13 was? I am putting the soul there. If you put the word 'reasonable' there, the court will have to see whether a particular Act is in the interests of the public and secondly whether the restrictions imposed by the legislatures are reasonable, proper and necessary in the circumstances of the case. The courts shall have to go into the question and it will not be the legislature and the executive who could play with the fundamental rights of the people. It is the courts which will have the final say. Therefore my submission is that we must put in these words "reasonable" or "proper" or "necessary" or whatever good word the House likes. I understand that Dr. Ambedkar is agreeable to the word "reasonable". I have therefore put in the word "reasonable" to become reasonable. Otherwise if words like "necessary" or "proper" had been accepted, I do not think they would have taken away from but would have materially added to the liberties of the country. Therefore I respectfully request that the amendment I have tabled may be accepted so that article 13 may be made justiciable. Otherwise article 13 is a nullity. It is not fully justiciable

[Pandit Thakur Dass Bhargava]

now and the courts will not be able to say whether the restrictions are necessary or reasonable. If any cases are referred to the courts, they will have to decide whether restriction is in the interests of the public or not but that must already have been decided by the words of the enactment. Therefore the courts will not be able to say whether a fundamental right has been infringed or not. Therefore my submission is that, if you put in the word "reasonable", you will be giving the courts the final authority to say whether the restrictions put are reasonable or reasonably necessary or not. With the words, I commend this amendment to the House.

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

"that with reference to amendment No. 454.....'"

Shri H. V. Kamath: On a point of order, Sir, has amendment No. 454 been moved?

Mr. Vice-President: Please continue.

The Honourable Dr. B. R. Ambedkar:

"with reference to amendment No. 454 of the List of Amendments—

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

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

Syed Abdur Rouf (Assam: Muslim): On a point of order, Sir, I think that Dr. Ambedkar's amendment cannot be an amendment to amendment No. 454. Amendment No. 454 seeks to delete clauses (2), (3), (4), (5) and (6), whereas Dr. Ambedkar's amendment seeks to insert some words in those clauses and cannot therefore be moved as an amendment to an amendment.

Mr. Vice-President: It seems to me that what Dr. Ambedkar really seeks to do is to retain the original clauses with certain qualifications. Therefore I rule that he is in order.

Shri H. V. Kamath: This will have the effect of negativing the original amendment.

Mr. Vice-President: Kindly take your seat.

The Honourable Dr. B. R. Ambedkar: From the speeches which have been made on article 13 and article 8 and the words "existing law" which occur in some of the provisos to article 13, it seems to me that there is a good deal of misunderstanding about what is exactly intended to be done with regard to existing law. Now the fundamental article is article 8 which specifically, without any kind of reservation, says that any existing law which is inconsistent with the Fundamental Rights as enacted in this part of the Constitution is void. That is a fundamental proposition and I have no doubt about it that any trained lawyer, if he was asked to interpret the words "existing law" occurring in the sub-clauses to article 13, would read "existing law" in so far as it is not inconsistent with the fundamental rights. There is no doubt that that is the way in which the pharse "existing law" in the sub-clauses would be interpreted. It is unnecessary to repeat the proposition stated in article 8 every time the phrase "existing law" occurs, because it is a rule of interpretation that for interpreting any law, all relevant sections shall be taken into account and read in such a way that one section is reconciled with another. Therefore the Drafting Committee felt that they have laid down in article 8 the full and complete proposition that any existing law, in

so far as it is inconsistent with the Fundamental Rights, will stand abrogated. The Drafting Committee did not feel it necessary to incorporate some such qualification in using the phrase "existing law" in the various clauses where these words occur. As I see, many people have not been able to read the clause in that way. In reading "existing law", they seem to forget what has already been stated in article 8. In order to remove the misunderstanding that is likely to be caused in a layman's mind, I have brought forward this amendment to sub-clauses (3), (4), (5) and (6). I will read for illustration sub-clause (3) with my amendment.

"Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law, imposing in the interests of public order."

I am accepting Mr. Bhargava's amendment and so I will add the word "reasonable" also.

"imposing in the interests of public order reasonable restrictions on the exercise of the right conferred by the said sub-clause."

Now, the words "in so far as it imposes" to my mind make the idea complete and free from any doubt that the existing law is saved only in so far as it imposes reasonable restrictions. I think with that amendment there ought to be no difficulty in understanding that the existing law is saved only to a limited extent, it is saved only if it is not in conflict with the Fundamental Rights.

Sub-clause (6) has been differently worded, because the word there is different from what occurs in sub-clauses (3), (4) and (5). Honourable Members will be able to read for themselves in order to make out what it exactly means.

Now, my friend, Pandit Thakur Dass Bhargava entered into a great tirade against the Drafting Committee, accusing them of having gone out of their way to preserve existing laws. I do not know what he wants the Drafting Committee to do. Does he want us to say straightaway that all existing laws shall stand abrogated on the day on which the Constitution comes into existence?

Pandit Thakur Dass Bhargava: Not exactly.

The Honourable Dr. B. R. Ambedkar: What we have said is that the existing law shall stand abrogated in so far as they are inconsistent with the provisions of this Constitution. Surely the administration of this country is dependent upon the continued existence of the laws which are in force today. It would bring down the whole administration to pieces if the existing laws were completely and wholly abrogated.

Now I take article 307. He said that we have made provisions that the existing laws should be continued unless amended. Now, I should have thought that a man who understands law ought to be able to realize this fact that after the Constitution comes into existence, the exclusive power of making law in this country belongs to Parliament or to the several local legislatures in their respective spheres. Obviously, if you enunciate the proposition that hereafter no law shall be in operation or shall have any force or sanction, unless it has been enacted by Parliament, what would be the position? The position would be that all the laws which have been made by the earlier legislature, by the Central Legistative Assembly or the Provincial Legislative Assembly would absolutely fall to pieces, because they would cease to have any sanction, not having been made by the Parliament or by the local legislatures, which under this Constitution are the only body which are entitled to make law. It is, therefore, necessary that a provision should exist in the Constitution that any laws which have been already made shall not stand

[The Honourable Dr. B. R. Ambedkar]

abrogated for the mere reason that they have not been made by Parliament. That is the reason why article 307 has been introduced into this Constitution. I, therefore, submit, Sir, that my amendment which particularises the portion of the existing law which shall continue in operation so far as the Fundamental Rights are concerned, meets the difficulty, which several honourable Members have felt by reason of the fact that they find it difficult to read article 13 in conjunction with article 8. I therefore, think that this amendment of mine clarifies the position and hope the House will not find it difficult to accept it.

(Amendment No. 50 to amendment No. 454 was not moved.)

(Amendments Nos. 455, 469, 475 and 481 were not moved.)

Mr. Vice-President: Then we shall take up amendment No. 485, first part. The House can well realize that I am going through a painful process in order to shorten the time spent on putting the different amendments to the vote.

Syed Abdur Rouf: I want the first part of the amendment to be put to the vote.

Mr. Vice-President: Then we come to another group, 456, 472, 484 and 495.

(Amendments Nos. 456, 472, 484 and 495 were not moved.)

Mr. Vice-President: The next group consists of amendments Nos. 457, 466, 473 and 494.

(Amendments Nos. 457, 466, 473 and 494 were not moved.)

Mr. Vice-President: Then amendment No. 458 standing in the name of Mr. Mohd. Tahir and Saiyid Jafar Imam.

Shri M. Ananthasayanam Ayyangar: That has already been covered by Mr. Mahboob Ali Baig's amendment.

Mr. Vice-President: Still, it would depend upon the Mover.

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

"That in clause (2) of article 13, after the word 'sedition' the words 'communal passion' be inserted."

Now, Sir, we find that under this clause we are giving powers to the State to make laws as against certain offences such as libel, slander, defamation, sedition and similar offences against the State. Now I want that these words "communal passion" be also added after the word "sedition"—which means, agitating or exciting the minds of one community as against the other.

These words, Sir, libel, slander, defamation, sedition, are the common words found in the Indian Penal Code and fortunately or unfortunately, we find that this word does not find a place in the Indian Penal Code. The reason is very simple, because, the Indian Penal Code and the old laws were framed by a Government which was foreign to us. Now, this is the time when we must realise our merits and demerits. We know that the agitation and the excitement of communities against communities have done a great loss and disservice to our country as a whole. Therefore, Sir, I think that the addition of this word is necessary. To tell the truth, I would say that if in our country which is now an independent country, we are really sincere to ourselves, this word also must find a place in the Constitution. I would request and appeal to Dr. Ambedkar and the House as a whole to give sound reasoning and due consideration for the addition of this word.

At the end, Sir, I may submit that an amendment has been moved by Mr. Munshi and I do not know whether it is going to be accepted or not. In case that amendment is going to be accepted by the House, I would appeal that this word may be given a place in that amendment or wherever it is found suitable. With these words, Sir, I move.

Mr. Vice-President: We come next to amendment No. 459. It is in the name of Mr. Thomas. It is verbal and therefore disallowed.

Next we take up amendments nos. 460, 461 and the second part of 462. I would allow amendment No. 461 to be moved because that I regard as most comprehensive of the three. That is covered by Mr. Munshi's amendment. Is amendment No. 460 moved?

Pandit Thakur Dass Bhargava: I do not want to move it.

Mr. Vice-President: Amendment No. 462: Mr. Kamath.

Shri H. V. Kamath: It is covered by amendment No. 461.

Mr. Vice-President: Amendment No. 462, first part. I was dealing with the second part just now. The first part is more or less a verbal amendment and is disallowed.

Then, amendments Nos. 463 and 464 coming from two different quarters are of similar import. Amendment No. 464, standing in the name of Shri Vishwambhar Dayal Tripathi may be moved.

(Amendment No. 464 was not moved.)

Mr. Vice-President: What about amendment No. 463, in the name of Giani Gurmukh Singh Musafir?

Giani Gurmukh Singh Musafir: Not moving, Sir.

Mr. Vice-President: Then, we take up amendments nos. 467 and 474. Amendment no. 467 may be moved. It stands in the name of Mr. Syamanandan Sahaya.

Shri Syamanandan Sahaya (Bihar: General): Sir, I beg to move:

"That in clause (3) of article 13, the word 'restrictions' the words 'for a defined period' be added."

Sir, in moving this amendment before the House, what was uppermost in my mind was to see whether actually even in the matter of the three freedoms so much spoken of, namely, the freedom of speech, freedom of association and freedom of movement, we had really gone to the extent that everyone desired we should. I must admit that I did not feel happy over the phraseology of the clauses so far as this general desire in the mind of everybody, not only in this House, but outside, obtained. I will, Sir, refer to the wording of sub-cause (b) of clause (1) of article 13. This sub-clause lays down that all citizens shall have the right to assemble peaceably and without arms. This is the Fundamental Right which we are granting to the people under the Constitution. Let us see how this fits in with clause (3) of article 13 which is the restricting clause. Clause (3) lays down that nothing in sub-clause (b) of the said clause (1) shall affect the operation of any existing law, or prevent the State from making any law, imposing in the interests of public order restrictions on the exercise of the right conferred by the said sub-clause. Sir, the only right which we are giving by sub-clause (b) is the right to assemble peaceably and without arms. This right to assemble is not a general right of assembly under all conditions. To assemble peaceably is the first condition precedent and there is also a second condition. That condition is that the assembly should be without arms. On the top of these conditions we are laying down in sub-clause (3) that there shall be a further restricting power in the hands of the State. I would much rather that clauses (3) and (4) did not form part of our Constitution. But, if the Drafting Committee and the other people who have considered the matter carefully think that it is necesary to lay down restrictions even in the matter of assembling peaceably and without

[Shri Syamanandan Sahaya]

arms, I might respectfully submit that it would be necessary to further restrict this restricting power by saying that any law restricting this power must be for a specified period only. I do not think the House will agree that any State should place on the statute book a permanent law restricting this Fundamental Right of peaceful assembly.

The most that the Constitution could accommodate a particular Government at a particular time under a particular circumstance was to give it the power to restrict this right under these conditions but for a specified and defined period only and that I submit, Sir, is the purpose of my amendment. The best interpretation that one could put on this clause is that the Drafting Committee has erred too much on the cautious side in this matter and they have probably kept the Government too much and the citizens too little, in view. I will submit that both in sub-clauses (3) and (4) the words 'for a defined period' should be added in order that if a State at any time has to pass legislation to restrict these rights, they may do so only for a period. It does not mean that once a State has passed such a legislation it is debarred from following it up by a second legislation in time if necessary but we must lay down in the Constitution that we shall permit of no such restrictive law to be a permanent feature of the law of the land. A State should not be empowered to pass a legislation restricting permanently peaceful assembly and assembly without arms. I think such a general power in the armoury of any State, however popular or democratic, would not be desirable. In the larger interests of the country, and particularly at the formative stage of the country, to give such wide powers in the hands of the State and with regard to such Fundamental Rights as, freedom of speech, freedom of assembly and freedom of movement would, I believe, be harmful and result in the creation of a suffocating and stuffy atmosphere as opposed to the free air of a truly free country. Sir, I move the amendment and commend it to the acceptance of the House.

(Amendment No. 470 was not moved.)

Mr. Vice-President: 471 is disallowed as verbal. Nos. 476 and 477 are of similar import. I allow 476.

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

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

These words are inappropriate in that clause.

Mr. Vice-President: 477 is identical. 479, 480 and 486 are of similar import.

(Amendments Nos. 479, 480, and 486 were not moved.)

Mr. Vice-President: 482 and 483.

(Amendment No. 482 was not moved.)

Mr. Vice-President: 483—Sardar Hukam Singh.

Sardar Hukam Singh: Sir, I beg to move:

"That in clause (5) of article 13, after the words 'existing law' the word 'which is not repugnant to the spirit of the provisions of article 8' be inserted."

The Honourable Dr. Ambedkar has rightly appreciated our fears and we feel that is the object of most of the amendments that have been moved. Certainly there are fears in our minds that if these articles stand independently—articles 8 and 13,—then there is a danger of different constructions being put on them. Dr. Ambedkar has emphasised that if relevant articles of the Constitution are in question, all those articles that relate to one subject shall be taken into consideration when some construction is going to be put by any Court and then article 8 would govern because it says that "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". That we have adopted, and this

is what we feel that it should be made clear that certainly those parts which are inconsistent would be void to that extent. If that is the object as Dr. Ambedkar has explained, then why not make it clear in this section as well. Where is the harm? I do not see that we would lose anything or that it would change the beauty of the phraseology even if we make it clear that these provisions are subject to article 8. This is to be admitted that there are certain laws in force just at present that restrict the liberty of the people. For instance I can quote the Land Alienation Act in Punjab. That allows only certain castes to purchase land of their own caste and precludes other castes to purchase that land. If this distinction were based on some economic ground, if it were to be enacted that all small tillers' rights would be safeguarded and their small lands would not be alienable, we could understand that alright and such a provision would be welcome. But when the discrimination is there, we too feel that such a law should stand abrogated so far as it is inconsistent with the provision in clause (5) of article 13. Because that gives freedom to acquire hold and dispose of property and if that law remains—Land Alienation Act, as it is and definition is not changed of the "agriculturist", there would be a conflict and there might be certain constructions by Court which would be unfair. So if that is the object as Dr. Ambedkar has explained that article 8 would govern, then we should make it clear and that is why I have suggested that after the words 'existing law' the words 'which is not repugnant to the spirit of the provisions of article 8' be inserted. That is my object and it should be made clear beyond any doubt.

Mr. Vice-President: Then we come to amendment No. 485, second part, standing in the name of Syed Abdur Rouf, and the first part of amendment No. 488 standing in the joint names of Dr. Pattabhi Sitaramayya and others. The latter seems to be the more comprehensive of the two and may be moved.

(Amendment No. 488 was not moved.)

Mr. Vice-President: Then in that case, the second part of amendment No. 485, standing in the name of Syed Abdur Rouf may be moved.

Syed Abdur Rouf: Sir, I beg to move:

"That in clause (5) of article 13, for the word 'State', the word 'Parliament' be substituted."

Sir, in sub-clauses (d), (e) and (f), we have got the most valuable of our Fundamental Rights. But clause (5) seems to take away most of our rights, because States have been given power to restrict, to abridge and even to take away the rights if and when they like. We remember the word 'State' has been defined as to include even local authorities etc. within the territory of India or under the control of the Government of India. Even village panchayats, small town, committees, municipalities, local boards all these, to a certain extent become States, and it has been left to these States to deal with these valuable Fundamental Rights. Sir, I will bring one instance before you. Suppose, due to political views, a particular village or panchayat area is divided between the majority and the minority. Now, if the majority of the Panchayat by a resolution asks the minority not to move freely in the area or to reside there, or to dispose of their property, which law will prevent the majority from doing so, and which law is there to safeguard the interests of the minority? As these are most valuable rights, the State should not be trusted with making laws regarding these rights. In my opinion, Sir, it is only the Parliament which can to the satisfaction of the people, deal with these questions. As it is very dangerous to leave this power in the hands of the small States, which will comprise even village panchayats, we must be very careful and, therefore, I suggest that in place of 'State', the word 'Parliament' should be substituted.

Mr. Vice-President: Then amendments Nos. 487, 489 and 490 are of similar import. No. 487 may be moved.

(Amendment No. 487 was not moved.)

Mr. Vice-President: Amendment No. 489 standing in the joint names of Mr. Mohd. Tahir and Saiyid Jafar Imam.

Mr. Mohd. Tahir: Sir, I beg to move:

"That in clause (5) of article 13, the word 'either' and the words 'or for the protection of the interests of any aboriginal tribe' be omitted."

Sir, I am not going to make any speech in this connection, but want only to submit that the removal of these words would make the clause of a general character, which certainly includes the safeguards of the interests of the aboriginal tribes as well. I understand the Drafting Committee was also of this opinion, but I do not know why this clause was worded in this manner. Anyhow, I think it better to delete the words in the manner I have suggested.

Mr. Vice-President: Amendment No. 490 is the same as the one just moved, and it need not be moved.

Amendment No. 488, second part, and No. 491 are of similar import. Amendment No. 491, standing in the name of Dr. Ambedkar may be moved.

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

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

When the Drafting Committee was dealing with the question of Fundamental Rights, the Committee appointed for the Tribal Areas had not made its Report, and consequently we had to use the word 'aboriginal', at the time when the Draft was made. Subsequently, we found that the Committee on Tribal Areas had used the phrase "Scheduled Tribes" and we have used the words "scheduled tribes" in the schedules which accompany this Constitution. In order to keep the language uniform, it is necessary to substitute the word "Scheduled" for the word "aboriginal".

Mr. Vice-President: There is, I understand, an amendment to this amendment, and that is amendment No. 56 of List I, standing in the name of Shri Phool Singh.

(Amendment No. 56 of list I was not moved.)

Mr. Vice-President: That means this amendment No. 491 stands as it is.

Then we come to amendment No. 488.

(Amendment No. 488 was not moved.)

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

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

The words 'public order, morality or health' are quite inappropriate in that particular clause.

Mr. Mohd. Tahir: *[Mr. President, my amendment No. 500 is as follows:

"That after clause (6) of article 13, the following new clause be added.

'(7) The occupation of beggary in any form or shape of person having sound physique and perfect health whether major or minor is totally banned and any such practice shall be punishable in accordance with law.'"

Sir, I have moved this amendment for this reason that, if the House agrees with this amendment surely it will result in solving to a great extent the difficulties of labour which exist in our country. Our industries, which are very vital and in many places have failed due to lack of labour, can flourish to a great extent. Besides, I would like to state that in our country thousands, *lakhs* pay *crores* of human beings will imbibe the spirit of self-reliance and self-respect. We see that in our country many able-bodied persons who

* [ ] Translation of Hindustani speech.

can work and can earn their livelihood, are to be found begging on road sides. If you tell them that they can work, that they can maintain themselves by earning their livelihood and can do good to their country by their labour, they would say in reply "Sir, this is our ancestral profession and we are forced to do it". I would like to say that there are so many countries on this earth: but if you look around, you will find this ugly spot only on the face of our country. Therefore, I want that there should be some such provision in our Constitution as would be beneficial to our country. Obviously, those that are helpless, for instance many of our unfortunate countrymen, who are blind lame and cannot use their hands and feet, really deserve some consideration. In such cases begging on these and other similar grounds may be justified. But even in this matter, I would submit that the State should be responsible and some such institution or home be founded in some places where they might be brought up, while those that are able-bodied and healthy should be forced to work. By doing so, our labour problem will be solved to a great extent and crores of human beings, who have taken to begging as profession, would be prevented from doing so. This will create in them the spirit of self-respect and self-reliance. Therefore, I hope that Dr. Ambedkar will accept this amendment of mine and the House will also help me by accepting it. With these words, I submit this amendment for the consideration of the House.]

The Assembly then adjourned till Half Past Nine of the Clock on Thursday, the 2nd December 1948.

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Volume VII
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Thursday
2nd December
1948

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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[Articles 13 and 14 considered.]

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CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 2nd December 1948

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

DRAFT CONSTITUTION—(*Contd.*)

Article 13—*contd.*

Mr. Vice-President (Dr. H. C. Mookherjee): We shall resume discussion of Article 13.

I should like to know the views of the House as to the way we should deal with the following amendments—we postponed consideration of these amendments yesterday:

Amendments No. 442, No. 499, second part of No. 443, No. 468 and No. 501.

Shri M. Ananthasayanam Ayyangar (Madras: General): May I suggest that in as much as these relate to the free choice of vote and some other matters which are not already prescribed in article 13, these may stand over and be allowed to be moved as a separate clause later on in the Fundamental Rights, and that we need not delay the passing of article 13, amendments with respect to which have already been moved, and the discussion may start?

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

Honourable Members: Yes, yes.

Mr. Vice-President: Then we shall proceed with the general discussion of the article. A large number of honourable Members desire to speak on this article. Therefore, with the permission of the House, I would like to limit the duration of the speeches to ten minutes each ordinarily. I shall extend the time wherever I consider necessary. Have I the permission of the House to fix this time-limit?

Honourable Members: Yes.

Shri H. V. Kamath (C. P. and Berar: General): On a point of order, Sir. Two amendments have been held over. Unless they are moved, how can general discussion on the article as a whole go on?

Mr. Vice-President: What are those amendments please?

Shri H. V. Kamath: No. 499 and No. 442.

Mr. Vice-President: They will form part of a new clause.

Sardar Bhopinder Singh Man (East Punjab: Sikh): *[Mr. Vice-President, I regard freedom of speech and expression as the very life of civil liberty, and I regard it as fundamental. For the public in general, and for the minorities in particular, I attach great importance to association and to free speech. It is through them that we can make our voice felt by the Government, and can stop the injustice that might be done to us. For attaining these rights the country had to make so many struggles, and after a grim battle succeeded in

*[ ] Translation of Hindustani speech.

[Sardar Bhopinder Singh Man]

getting these rights recognised. But now, when the time for their enforcement has come, the Government feels hesitant; what was deemed as undesirable then is now being paraded as desirable. What is being given by one hand is being taken away by the other. Every clause is being hemmed in by so many provisos.

To apply the existing law in spite of changed conditions really amounts to trifling with the freedom of speech and expression. From the very beginning we have stood against the existing laws, but now you are imposing them on us. You want to continue the old order so that there should be no opportunity of a trial, of putting up defence and of an appeal. If a meeting is held, then for breaking it up lathis may be used, and people may be put into jail without trial; their organisations may be banned and declared illegal. We do not like this shape of things. If you want to perpetuate all that, then I would like to say that by imposing all these restrictions you are doing a great injustice. There are a few rights to which I attach very great importance. You have included them in the articles relating to directive principles of State policy, and so we cannot go to a Court of law for their enforcement. You are diluting these rights with the result that nothing solid remains.

Mr. Vice-President, I want that these rights should not be restricted so much, and all opposition that is peaceful and not seditious should get full opportunity, because opposition is a vital part of every democratic Government. To my mind, suppression of lawful and peaceful opposition means heading towards fascism.]

Seth Govind Das (C. P. and Berar: General): *[Mr. Vice-President, article 13 is the most important of all the articles concerning Fundamental Rights. The rights that have been granted to us by these articles are all very important. Yesterday Shri Damodar Swarup Seth and Shri K. T. Shah moved their amendments in this House. The purport of the amendments is that the rights which have been given to us with one hand are being taken away by the other hand. This may be true to some extent but if we consider the present national and international situation as also the fact that we have achieved freedom only recently and our government is in its infancy, we shall have to admit that it was necessary for the government to retain the rights it has done after granting these fundamental rights. We should see what is happening in our neighbouring country, Burma. We should also keep in view what is happening in another great country of Asia—I mean war-torn China. In view of what is happening in our neighbouring countries and of the situation in our own country, we should consider how necessary it is that the Government should continue to have these powers.

I would have myself preferred that these rights were granted to our people without the restrictions that have been imposed. But the conditions in our country do not permit this being done. I deem it necessary to submit my views in respect to some of the rights. I find that the first sub-clause refers to freedom of speech and expression. The restriction imposed later on in respect of the extent of this right, contains the word 'sedition'. An amendment has been moved here in regard to that. It is a matter of great pleasure that it seeks the deletion of the word 'sedition'. I would like to recall to the mind of honourable Members the first occasion when section 124 A was included in the Indian Penal Code. I believe they remember that this section was specially framed for securing the conviction of Lokamanya Bal Gangadhar Tilak. Since then, many of us have been convicted under this section. In this connection many things that happened to me come to my mind. I belong to a family which was renowned in the Central Provinces for its loyalty. We had a tradition of being

* [ ] Translation of Hindustani speech

granted titles. My grandfather held the title of Raja and my uncle that of Diwan Bahadur and my father too that of Diwan Bahadur. I am very glad that titles will no more be granted in this country. In spite of belonging to such a family I was prosecuted under section 124 A and that also for an interesting thing. My great grandfather had been awarded a gold waist-band inlaid with diamonds. The British Government awarded it to him for helping it in 1857 and the words "In recognition of his services during the Mutiny in 1857" were engraved on it. In the course of my speech during the Satyagraha movement of 1930, I said that my great-grandfather got this waist-band for helping the alien government and that he had committed a sin by doing so and that I wanted to have engraved on it that the sin committed by my great-grandfather in helping to keep such a government in existence had been expiated by the great-grandson by seeking to uproot it. For this I was prosecuted under section 124 A and sentenced to two years' rigorous imprisonment. I mean to say that there must be many Members of this House who must have been sentenced under this article to undergo long periods of imprisonment. It is a matter of pleasure that we will now have freedom of speech and expression under this sub-clause and the word 'sedition' is also going to disappear.—

The next matter to which I would like to draw your attention is sub-clause (b) of this article. The expression "to assemble peacefully without arms", occurs in it. I want to draw your attention to the words "without arms" in particular. I agree that we should have the right of assembling in this way without arms only. We had accepted the creed of non-violence and through it we have achieved freedom. It is true that in the present world situation we are compelled to maintain armies. But I hold that the welfare of humanity can be secured by means of non-violence alone. We should have a right of assembling but assembling without arms.

I would also like to draw your attention to the two following sub-clauses and these are sub-clauses (f) and (g) which run as follows:

"to acquire, hold and dispose of property;" and

"to practise any profession or to carry on any occupation, trade or business."

Speaking for myself I may say that just as I hold that humanity cannot achieve its welfare except through non-violence so also I do believe that there cannot be stable peace, unless and until private property is abolished. I am not a socialist or a communist but at the same time I hold that what the big capitalists, traders, zamindars, talluqdars have to do to protect their property does not allow of their enjoying true happiness. It is not true to say that people lacking wealth alone are unhappy. They are no doubt unhappy but in the present economy the moneyed are more unhappy than the moneyless, and this band of gold is today crushing the richman's neck. This wealth has been in their possession for long and that is why they are anxious to retain it. It is not for pleasure that they want to keep it. If they are forcibly deprived of their wealth, socialism or communism would not be established. The example of Russia bears testimony to it. Individual property was expropriated there by force and the result has been that it could not be destroyed. On the other hand it is increasing. But if we make an effort to change values in this country and the world and bring about such a psychological atmosphere as makes people eager to rid themselves of the burden of property, we would have reached the desired goal and there would then be the possibility of the establishment of a true socialistic state. There has been change in values in the world from time to time. It is a historical fact that at one time man devoured man. At that time the man who had the capacity of devouring the greatest number

[Seth Govind Das]

of men, must have been worshipped by the society, because he must have been recognised as the bravest among them. Times changed to usher in the epoch of slave-trade. Respectability was judged by the number of slaves one had. Those conditions changed. Today the capitalists are characterised by our society as plunderers and dacoits. They no doubt make such remarks about capitalists, but I may be excused for saying that the majority of the socialists are such that if they were to get hold of this property, they would forsake socialism. The necessity is for a change in outlook. If there is a change in values by the propagation of these ideas in society and if the capitalists are looked down upon as thieves and pilferers by everyone they would not like to keep their wealth. Such a change of mind and heart can be brought about only through non-violence. I hope that in time to come the articles concerning property will not find a place in the Constitution.

I heartily support the whole of the article 13 on the Fundamental Rights.]

Shri Jaipal Singh (Bihar: General): Mr. Vice-President, Sir. So far as I am concerned, this particular article in no way frightens me, although the various fundamental rights have been hedged in by so many exceptions. To me it is obvious that whatever we put into the Constitution, its value, its use to us will depend upon the way we work all these things. But there are one or two things on which I would like Dr. Ambedkar to enlighten me. The first point on which I would like his clarification is, in regard to the amendment which he has moved, amendment No. 491, wherein he seeks to substitute the word "aboriginal" by the word "scheduled". Sir, I am always at a disadvantage whenever anything affecting aboriginals has to be discussed at this stage for the obvious reason that the two reports of the Tribal sub-committees have not been fully discussed on the floor of this House, with the result that the House has not been able to obtain its collective view point or arrive at a collective decision as has been the case with all the other articles, that is to say, articles which affect the non-tribals of our country.

Take the question of this word 'tribal'. As far as I know neither of the sub-committees had gone into the work of scheduling. I know it for a fact that the sub-committee of which I was a member did nothing of the sort and, in fact, bodily the Drafting Committee has just put into the Draft Constitution whatever obtained in the Government of India Act. Now, look at the list.

My second point that I want to have clarified is whether the advisory councils or the regional councils, which are envisaged in the recommendations of the two sub-committees, will operate outside the so-called scheduled areas. If they do not, then I want to know from Dr. Ambedkar what is going to happen to the Adibasis, who are in millions, outside those scheduled areas. As far as I can understand the language of the Constitution, the regional councils and the advisory councils are to advise the Governor to participate as it were in the legislation of the State only in regard to the scheduled areas. Well, once it is accepted that the regional councils and the advisory councils may operate also outside the scheduled areas then my point is met.

Take the case of West Bengal. In West Bengal, according to what is proposed, there shall be no scheduled areas; in West Bengal there are 16 lakhs of Adibasis. I want to know what is going to happen to them. There is no regional council; there will be no advisory council there. Who is going to advise the Governor in regard to their welfare, in regard to whatever should be done or should not be done, what act may operate for them or against them? I think that is a point that has to be clarified.

Sir, the Tribes inventory that is in this Draft Constitution is most unsatisfactory. I will exemplify one or two cases. Sir, you yourself come from West Bengal. Bengal has been carved into three provinces, Bengal united, now West Bengal, Bihar and then Orissa. The British had their own arguments for their territorial boundaries. At the present moment, you know it only too well that none of these three provinces seems to be satisfied with the boundary alignment. West Bengal wants something of Bihar; Bihar also wants something of West Bengal. Orissa also is clamouring for some more territory from Bihar. That is the present political situation, but, how does it affect the Adibasis? Now the Tribal Sub-Committee in a way has been outmoded to this extent that lakhs and lakhs of States people have been integrated into provinces. Take the question of Orissa. When the Tribal Sub-Committee went to Orissa it had to deal only with those areas that were excluded or partially excluded. The present position is that about 24 States have been integrated into Orissa and several others into the Central Provinces. Most of these States are overwhelmingly populated by Adibasis. What happens in regard to them? Whatever scheduled areas the Sub-Committee has recommended is really insignificant. It does not cover the whole Adibasis population, particularly of the two provinces of the Central Provinces and Orissa.

I would like Dr. Ambedkar, therefore, to tell me quite clearly that whatever provisions, whatever little concessions that he desires this Constitution should have, will apply also to those areas that are not particularly specified within the scheduled areas.

Then I come to article 13 (1) (b), namely, to "assemble peaceably and without arms". I have to point out that this matter of the Arms Act has been very mischievously applied against the Adibasis. Certain political parties have gone to extremes to point out that because Adibasis carry bows and arrows, lathis or axes, which they do daily as a normal part of their life, which they have done for generations and generations, and what they are doing today they have done before, that they are preparing for trouble.

Let me give you the instance of the Oraons. We have in this Assembly only one Oraon member. Now the Oraon group of Adibasis constitutes the fourth largest block of Adibasis in India. Just about now, they have what we call Jatras or Melas. These are annual occasions for their cultural activities. They have a certain ceremony in which the head of the Oraon village will carry the flag and the rest of them carry lathis with them and proceed into the various akhadas or villages. It is a festival for the people; they have done it in a harmless way for generations and generations and, now we have been told last year and the year before last that we should not carry weapons. I do not mind pointing out there are several Members here from Bihar who will never be able to get back to their homes unless they are escorted with people and with arms. In my own part, we live in the jungles and every one, even women, may I point out, carry what might be designated arms, but they are not arms in that sense. Whenever we have to hold meetings, if people come with their own usual things, I want to know whether it is going to be interpreted that we are assembling unpeaceably and carrying arms for an unlawful purpose. These are the only points, Sir, that I want to have clarified.

I will give one more instance. Every seven years, it is the custom in Chota Nagpur to have what they call. Era Sendra, Janishikar. Every seven years, the women dress as men and hunt in the jungles—dressed as men, mind you. That is the occasion when naturally women like to show masculine prowess. They arm themselves like men with bows and arrows, lathis, belas and so forth. Now, Sir, according to this particular article in the Constitution, the Government might interpret that women every seven years were getting together for a dangerous purpose. I urge the House to do nothing that is going to upset the simple folk. They have been among the most peaceful citizens in our

[Shri Jaipal Singh]

country and we should be very very cautious in doing anything which might be misunderstood by them and lead to trouble.

Sir, I have, as I have said, no difficulty in accepting this particular article, but I thought I should seek clarification from Dr. Ambedkar on these two particular points.

Mr. Vice-President: Mr. Hanumanthaiya.

Kazi Syed Karimuddin: (C. P. & Berar: Muslim): I have not caught your eye, Sir.

Mr. Vice-President: Unfortunately, I have only two eyes. They will be turned to your side the next time.

An Honourable Member: Why do you not have a third eye, Sir?

Mr. Vice-President: Why can you not come to the front Bench? I say it is the fault of the House that they unanimously chose an old man as the Vice-President. His eye-sight is not as good as that of younger men. Mr. Hanumanthaiya.

Shri K. Hanumanthaiya (Mysore): Mr. Vice-President, Sir, this article incorporates some of the most cherished rights of us all. For the last sixty and odd years during which the freedom movement was taking shape, we made innumerable speeches and sacrifices in order to win the fundamental rights that are incorporated in this article. But, the point of view of many members here as well as the opinion of some people outside is that these fundamental rights have been so much curtailed that their original flavour is lost. Sir, every law, whether it is in the form of a right or a duty, takes shape according to the condition of the society then prevailing. We went through a course of suffering and sacrifice which were imposed upon us by the repressive laws of British imperialism; this naturally made us votaries of unadulterated fundamental rights and that was our hope. But, ultimately when we emerged out of those innumerable difficulties, we are faced, within our own society, with elements who want to take advantage of those rights in order to do violence to men, society and laws. Hence it is that the Drafting Committee as well as the Governments in the various provinces and the Centre, are hard put to safeguard these rights in their pristine purity. No man who believes in violence and who wants to upset the State and society by violent methods should be allowed to have his way under the colour of these rights. It is for that purpose that the Drafting Committee has thought it fit to limit the operation of these fundamental rights.

The question next arises whether this limiting authority should be the legislature or the court. That is a very much debated question. Very many people, very conscientiously too, think that the legislature or the executive should not have anything to do with laying down the limitations for the operation of these fundamental rights, and that it must be entrusted to courts which are free from political influences, which are independent and which can take an impartial view. That is the view taken by a good number of people and thinkers. Sir, I for one, though I appreciate the sincerity with which this argument is advanced, fail to see how it can work in actual practice. Courts can, after all, interpret the law as it is. Law once made may not hold good in its true character for all time to come. Society changes; Governments change; the temper and psychology of the people change from decade to decade if not from year to year. The law must be such as to automatically adjust itself to the changing conditions. Courts cannot, in the very nature of things, do legislative work; they can only interpret. Therefore, in order to see that the law automatically adjusts to the conditions that come into being in times to come, this power of limiting the operation of the fundamental rights is given to the

legislature. After all, the legislature does not consist of people who come without the sufferance of the people. The legislature consists of real representatives of the people as laid down in this Constitution. If, at a particular time, the legislature thinks that these rights ought to be regulated in a certain manner and in a particular method, there is nothing wrong in it, nothing despotic about it, nothing derogatory to these fundamental rights. I am indeed glad that this right of regulating the exercise of fundamental rights is given to the legislature instead of to the courts.

Then, Sir, here in article 13, about seven fundamental rights are incorporated. I wholeheartedly feel the Drafting Committee has done well in incorporating the first four freedoms, freedom of speech and expression, freedom to assemble peaceably and form associations, and to move freely throughout the territory of India. The next three clauses, to reside and settle in any part of the country, to acquire, hold and dispose of property, and to practise any profession, or to carry on any occupation, trade or business, Sir, in my opinion do not take the character of fundamental rights. They are not really fundamental rights. They are matters incidental to legislation, that can be passed either by the Parliament or the legislatures of the Units. I find these three rights which are incorporated as fundamental rights in this article 13 are not so treated by any other country except, perhaps, Ireland and Switzerland. In America, we do not find these three rights incorporated as fundamental rights. To acquire property, to settle down in a particular town, to practise any trade or profession in any part of the country he likes, are not really fundamental rights. I may be pardoned if I say this that the men who did the work of shaping these constitutional proposals, a majority of them, have come from the uppermost strata of society. After all, they can think of what suits their psychology and their class or their strata of society. It is from that point of view they have framed these three rights. Really speaking, whether these three rights are fundamental or not, we ought to judge from the point of view of the people of the villages and people of the Units. I for one feel that these are rather not rights, but liabilities that are sought to be imposed upon the people of the villages and of the Units. I very much wish that the Drafting Committee and this Assembly could now delete these three rights and relegate them to the discretion of the legislature of the Units but now it is too late and we have to accept them somehow or anyhow. Here arises a conflict in the future that the Units in order to safeguard the rights and interests of the people within their respective areas, may try to circumvent these three rights that are conferred by this Constitution. It will happen. I have no doubt whatsoever in my mind, that here arises a plentiful source of litigation. Yesterday I happened to read Sir Ivor Jennings' opinion about our Fundamental Rights. He says, the rights conferred in this Chapter and especially in this section are so complicated, are worded in such a verbose manner, that it will be a fruitful source of income to constitutional lawyers. There is a good deal of truth in it. The enunciation of the Fundamental Rights and the exceptions added on by provisos are so worded—and they had to be like that because it is impossible to foresee all exigencies, and make provision for them now alone—that there will be litigation on a scale which none of us have ever seen or contemplated. Every man who feels aggrieved can go to any Court of Law and the Supreme Court will be full of cases between individuals and individuals, between individuals and State, between State and State, between the Central Government and State Governments. This litigation—I do not suppose—will be helpful to the interest of the country. Litigation—I need not argue about it—litigation surely ruins both the Parties to it. There is a Kannada proverb the meaning of which is "a successful party in a case is as good as defeated and a defeated party in a case is as good as dead". And whenever there arises litigation in interpreting these clauses, political controversies also arise conferring

[Shri K. Hanumanthaiya]

fundamental rights in this manner—especially the last three clauses—will continuously raise political storms in the shape of litigation in regard to interpretation of these Fundamental Rights.

Kazi Syed Karimuddin: Mr. Vice-President, Sir, there is no denying the fact that this article is the very life of the Draft Constitution. Without this article the Constitution will be a dead letter. It must also be understood that the Rights contemplated under article 13 are admittedly inalienable rights and the point involved is whether these rights can be delegated to the Governments or we are going to lay down principles which cannot be subject matter of legislation or the vagaries of the legislatures. My submission is that these are Fundamental Rights regarding individuals as contemplated under article 13 which cannot be made subject matter of the vagaries of the Legislatures. Clauses (2) to (6) of this article rob the people of the only guarantee which will make them secure and my submission is that clauses (2) to (6) are very dangerous clauses. Suppose, in a State there is a political party, which is hostile to the Central Government and they frame laws to the great detriment of the political minority or the religious minorities. What can be done? People have to suffer and there would be untold miseries. Particularly the wording 'subject to operation of existing laws' is very unjust. What is the situation today in India? Practically there is a state of siege. There are Goonda Public Safety Act, etc. in all the provinces in which there is neither appeal, nor any warrant is necessary for arrest, and searches can be made without justification. In spite of this, the article lays down that the existing laws will be recognized. These unjust laws which do not provide appeals and which do not provide any proper representation will be recognized under article 13. There is no doubt that we are living in an emergency period but that does not mean that article 13 should be in consonance with emergencies. Another part of the article is the right to assemble peacefully and without arms. What greater restriction could have been laid down by the framers of the Constitution than this and in spite of that the Legislatures of the States are empowered to have more restrictions as embodied in clauses (3) and (4). Now the point is whether a particular legislation is in the interest of the people, or whether that can be delegated to the judiciary or to the States' Legislatures. My submission is that you must realise that we cannot entrust the interpretation of these clauses in the Fundamental Rights to the vagaries of legislatures. In the State Legislatures the majority is capable of practically oppressing the minorities, political or communal. The very purpose of this Fundamental Right is being defeated. The Fundamental Rights are being enacted only with a view to placing restrictions on the legislation. By these clauses (2) to (6) we are enlarging the scope of this article 13 and we are enlarging the scope of the powers of the Provincial Legislatures or States. This is entirely to the detriment of the political or religious minorities. If this article as it stands is passed, my submission is that it will be taking away those rights which are given in article 8 of the Constitution. There is no parallel to these restrictions in any Constitution of the world. In the American Constitution all these rights have been entrusted to the judiciary simply because the political parties who are elected from time to time cannot be entrusted with the interpretation of laws. The main principle should have been whatever is not forbidden should have been allowed. Apart from that, two amendments have been moved, one by Mr. Mohamed Ismail and the other by Mr. Tahir. My submission is that both these amendments are very innocent and both these are very necessary for the protection of the minorities. Mr. Ismail's amendment advocates that personal law should be respected and this should be embodied in this Constitution. The people outside and the Members of the Constituent Assembly must realize that a Muslim regards the personal law as part of the religion and I really assure you that there is not a single Muslim in the country—at least I have not seen one—who

wants a change in the mandatory provision of religious rights and personal laws and if there is any one who wants a change in the mandatory principle, or religion as a matter of personal law, then he cannot be a Muslim. Therefore if you really want to protect the minorities—because this is a secular State it does not mean that people should have no religion—if this is the view of the minority Muslims or any other minority that they want to abide by personal law, those laws have to be protected. The amendment of Mr. Tahir is very important and I feel that every Member of the Constituent Assembly must realize that it is important because we have seen after 15th August, whether Muslims are responsible or the Hindus are responsible for communal passion, it has eaten away everything that is good in society. It was really a canker that was destroying the society and would have done so but for the Central Government. Then communal passion should be made an offence. In my opinion this is a very vital amendment that has been moved and it should be accepted by Dr. Ambedkar; Sir, as I have said even Dr. Ambedkar in his book 'States and Minorities' has said—

"No law shall be made abridging the freedom of the press, of association and of assembly except for consideration of public order and morality."

In 1947 he was agreeable that only the first part of article 13 should be enacted in our Constitution and within a year he is so changed that he has placed so many restrictions that take away what has been given under article 8.

Mr. Vice-President: You seem to make the mistake that Dr. Ambedkar is responsible for everything connected with this Draft Constitution. There was the whole Drafting Committee.

Kazi Syed Karimuddin: My submission is that if you take the opinion of the minorities in this House—a Sikh representative has spoken, and I am speaking now—and if you take votes, you will find that the minorities in the country will say that article 13 is not sufficient protection for them. Therefore, I earnestly plead for deletion of clauses (2) to (6). I strongly support the other two amendments to which I have referred. If article 13 is passed as it stands, it is not acceptable to the minorities. It is no freedom of speech that you are guaranteeing It is no freedom of the press that you are giving. You are giving by one hand and taking it away by the other.

Chaudhari Ranbir Singh (East Punjab: General): Mr. Vice-President, Sir, I am not in agreement with those who are for abolition of these provisions from the text during the transitional period. This is why I gave notice of two more provisions to article 13. They are as under:

"That the following new clauses (7) and (8) be added to article 13:

'(7) Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law or prevent the State from making any law imposing restrictions on non-agriculturists to acquire and hold agricultural land, for the protection of the interests of the tillers of the soil or the peasantry.

(8) Nothing in sub-clauses (d), (e) and (f) of the said clause shall prevent the State from making laws to declare the minimum of economic holdings of land inalienable'."

Sir, after further consideration, I changed my mind and did not move these amendments, because I think in sub-clause (5) of the article, the words "in the interests of the general public" denote, mean and cover my point that whenever the imposition of restrictions is found to be necessary for the protection of the interests of the tillers of the soil and labourers, the governments will have the right to impose the necessary restrictions on any section of the society, or may allow to continue such laws as are already in existence, which the Governments think are necessary for the protection of the interests of the peasantry or labourers.

I come from East Punjab, and there is a law which is known as the Land Alienation Act, according to which certain classes are debarred from acquiring

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land, by law. I agree with my Friends, specially Harijans who advocate that the Harijans and other persons who are actually the tillers of the soil should have the right to acquire land. But I fail to understand the argument that each and every person whether he is a tiller of the soil or not, should be put on a par with the tillers of the soil, and should have the liberty to acquire agricultural land. If that is to be the case, then we will be creating a new problem —the problem of zamindaries,—the same problem of zamindaries which we are abolishing or have promised to abolish from our country. In several provinces, laws for the abolition of the zamindari system have already been enacted. As regards the Punjab, I am of the view, that it cannot be denied that the absence of zamindari system in the Punjab in its acute form as it exists in other provinces is the result of the Land Alienation Act, and this is the real reason why the agriculturists are in a more advanced position in the Punjab than in other provinces. I therefore, feel very strongly and rightly that the legislatures of the State and the various governments should have the full liberty to impose restrictions on the non-tillers of the soil on acquiring or holding agricultural lands, and to declare a minimum economic holding of land inalienable, for the protection of the interests of the tillers of the soil or the peasantry.

Moreover, the overwhelming majority of the population of our country depends on agriculture and they are the tillers of the soil. So the words "general public interests" can mean only the interests of the peasantry and the labourers, and not only the interests of the vocal middle intelligentia and vested people.

Mr. Vice-President: Maulana Hasrat Mohani, (*Cheers*) I am glad the House recognises the excellent services rendered by Maulana Hasrat Mohani to this country. He was the first to stand for total independence of our Mother-Land.

Maulana Hasrat Mohani (United Provinces: Muslim): *[Mr. Vice-President, when I rose to speak, my first impulse was to support whole-heartedly the amendment moved by Mr. Kamath and even now I have come here with that idea. In the later speeches and amendments, one amendment has been moved by Mr. Muhammad Ismail of Madras and I give my full support to it. Besides, I also support the amendment of Mr. K. T. Shah. Mr. Muhammad Ismail in the second part of his amendment has made mention of personal liberty. Mr. K. T. Shah's amendment is also of similar nature. I shall speak at the end about his amendment. First of all, I would like to give full support to Mr. Kamath's amendment. Mr. Kamath has said that every one should have the right to bear arms. This is a test amendment. If Dr. Ambedkar and his committee are honest, then surely they ought to accept this section and include it in the article at once. If he wavers or raises any objection as I know he is capable of doing, as Dr. Ambedkar's legal abilities are established, and if he wishes, he can turn night into day and day into night and can prove it conclusively,—then I would like to tell him that this is a test amendment and, if you do not include it, it would mean that your tendency is the same as that of the British Government. You know what the Britishers had done. They had promulgated the Arms Act in India. The result was that all the inhabitants of Hindustan were kept as imbeciles. If you also have the same design, then it is a different matter. But if there is any national Government and an Indian Government, then there is no reason why you should deprive anybody of this right. If you too will forge an Arms Act and will deprive the people of this right, then I would say that your attitude and way of doing things is much worse than that of the Britishers. It will be much worse. The Arms Act enforced by the British Government, was applicable to one and all with the exception of the ruling class. We were under the impression that under our own Government this restriction will be removed. Unfortunately at present here we have

* [ ] Translation of Hindustani speech.

a party Government and they want to retain it, so that the Act may be applied against their political opponents and may not be enforced against their own party men.

On the basis of my own experience, I would like to say something about U.P. In particular I would tell you about Kanpur city which I represent. The U.P. Government there have singled out the Socialists, the Communists, Independent-Socialists,—including Muslims—Forward Blockists and even those who were suspected of standing against them as rival candidates in the elections and put restrictions on them, and on one plea or the other they were brought under the provision of the Defence of India Act. Some were branded as Goondas, others were stamped as Communists, there were others who were told that they were supporting Hyderabad and collecting funds. There were yet others who were told that they were connected with those members of the Communist Party who are working under-ground and they were sent to jails. In short, they applied this Act against all rival parties, and such was the ill-treatment against the Muslims that every Muslim of position at Kanpur was house-searched and even if a kitchen-knife was found in his house, the Arms Act was applied and he was sent to jail. Some of them have been released and some are still in jails. Therefore, I would like to submit that for you, who are a party Government, this is a test amendment. You ought to accept Mr. Kamath's amendment and give the right of bearing arms to everybody. If you are not prepared to do this, then you will be setting an Indian bureaucracy in place of the English bureaucracy.

Another point which I should like to submit is that the amendments of both Mr. Ismail and Prof. Shah are of similar nature. As regards personal rights and liberty I would like to say that so long as you do not prove anything openly against anybody in a court of law, it should not be lawful to detain anybody under Defence of India Rules, be he your rival party man or any other. If you send somebody to jail under Defence of India Act or under some other ordinance, then what would happen to the right of *Habeas Corpus*, and who would give that right, since the High Court will have no jurisdiction over it? And even if High Court interferes in one or two cases, it does not mean that it will be possible in all cases. Therefore, I submit that this should not be included and that everybody should have personal liberty.

I would like to submit my third point in few words, namely, regarding Mr. Ismail's amendment which has been supported by several members. I would like to say that any party, political or communal, has no right to interfere in the personal law of any group. More particularly I say this regarding Muslims. There are three fundamentals in their personal law, namely, religion, language, and culture which have not been ordained by human agency. Their personal law regarding divorce, marriage and inheritance has been derived from the Qoran and its interpretation is recorded therein. If there is any one, who thinks that he can interfere in the personal law of the Muslims, then I would say to him that the result will be very harmful.]

I say from the floor of this House that they will come to grief. Mussalmans will not submit to any interference in their personal law, and if anybody has got the courage to say so then I declare. . .

Mr. Vice-President: Order, order.

Maulana Hasrat Mohani: He should remain convinced—and I declare in the House—that Mussalmans will never submit to any interference in their personal

[Maulana Hasrat Mohani]

law, and they will have to face an iron wall of Muslim determination to oppose them in every way.

(Interruption)

Shri Vishwambhar Dayal Tripathi (United Provinces: General): Will you give the right of human sacrifice to those who believe in it and may claim it under the pretext of their personal law ?

(More interruptions)

Mr. Vice-President: Will honourable Members please take their seats?

Shri Brajeshwar Prasad (Bihar: General): I rise to support article 13 with all its reservations and safeguards. These restrictions are necessary in our national interest. Let me adduce the reasons for saying so.

An Honourable Member: Is the honourable Member reading his speech?

Mr. Vice-President: He is reading his speech and I have given him permission to do so.

Shri Brajeshwar Prasad: Personal freedom has to be curtailed if the menace of capitalism is to be met. Nation-states of the nineteenth century were not confronted with even a small part of the dangers that confront a modern state. Political conspiracies of international dimensions were unknown. The political criminal in the pursuit of his nefarious designs resorted to methods and anties very well known to the administrators of old. The laws and judicial institutions were strong enough to grapple with these problems. The technique and methods widely employed by modern law-breakers cannot effectively be checked by judicial institutions and ordinary laws of the nineteenth century. The state must be vested with wide discretionary powers and the freedom of the individual must be seriously curtailed if the parasitical class that thrives on profit and exploitation is to be liquidated and the communists are to be checked from endangering the safety and existence of all the institutions of our modern life.

Shri Rohini Kumar Chaudhari (Assam: General): The honourable Member is reading his speech so swiftly that we cannot follow him. May I suggest that his speech should be taken as read?

Mr. Vice-President: Do you agree, Mr. Brajeshwar Prasad, that it should be taken as read?. (After a pause) Mr. Brajeshwar Prasad does not agree to the suggestion made by the Honourable Member Shri Rohini Kumar Chaudhari.

Shri Brajeshwar Prasad: It is wrong to regard the State with suspicion. Today it is in the hands of those who are utterly incapable of doing any wrong to the people. It is not likely to pass into the hands of the enemies of the masses. And constitutional guarantees of individual freedom will not for long remain sacrosanct if the machinery of the State passes into the hands of the reactionaries. If you want to prevent the political reactionaries from gaining political power and ascendancy, the rulers of the land must be vested with large discretionary powers.

In a modern progressive State there is not much conflict between the individual and the State. For the State is composed of individuals. It is we ourselves purged and purified of our selfishness. The individual has no power of his own, separate and distinct from the State. The State and the individual are the two sides of the same coin.

In the nineteenth century the executive authority had not developed the technique and mechanism of the modern State. It had very little part to play in the life of its citizens. The executive authority in the modern State has a dominant part to play. It is not handicapped by any lack of technique.

The needs of modern life, of socialism and collectivism cannot be fulfilled if the State is not vested with ample powers. The trend of modern politics is towards regimentation of ideas and conduct. The doctrines of Mill and Spencer have become thoroughly unrelated to the needs and demands of the age. It is the society and not the individual which has become the object of primary concern and loyalty both of political theorists and actual administrators. The objective conditions of our modern life have relegated the individual from the Olympian heights of honour and glorification accorded by the individualist school to a position of utter insignificance and neglect.

Individual freedom is risky in a community where more than 80 per cent of the people are sunk in the lowest depths of poverty, illiteracy, communalism and provincialism.

It is sheer illusion to think that the personal rights of the individual can be firmly secured if these are laid down in the Constitution in clear language without any reservations and safeguards. The enjoyment of these rights is dependent upon the fulfilment of certain social conditions outside the scope of any constitution. Man can never enjoy the blessings of personal freedom as long as society remains organized on the basis of capitalism, as long as the menace of war and foreign intervention looms large on the horizon, as long as poverty, illiteracy, communalism and provincialism remain in our midst. It is only with the decline of the forces of organized religions and the establishment of a World State based on the ideals of economic equality and political liberty that man will be able to achieve the content of personal freedom.

It is not entirely due to the wickedness or ignorance of constitution-makers that there are restrictions on individual rights. The legacy of centuries of backwardness and foreign misrule cannot be wiped out by one stroke of the pen. The concomitants of the age cannot be brushed aside by any constitutional guarantees. Constitutional guarantees merely facilitate the achievement of personal rights, which are essentially of an inward character, to be secured by the exercise of reason and proper conduct. We must think, speak and act properly if we are to obtain and enjoy the rights of personal freedom. It is only with the growth and development of education to communal dimensions that the foundations of personal liberty can be securely laid.

Shri H. V. Kamath: Sir, may I request my Friend to have a few full-stops if not other punctuation marks ?

Mr. Vice-President: The Honourable Member's time is up. But what Mr. Kamath said has certainly not added to the dignity of the House.

Prof. Yashwant Rai (East Punjab: General): *[Mr. Vice-President, Sir, the Harijans of the Punjab are very much indebted to the Chairman of the Drafting Committee for having included article 13 in the Constitution. At present it is the custom in the Punjab that only one particular community can purchase land and take to agriculture. But the Harijans, 90 per cent of whom are cultivators, are not permitted to purchase land to cultivate, or to build houses. When this article receives the assent of the House, they will have the facility of purchasing land for building their houses, as also land for agricultural purposes if they have the capacity to do so. I hope that the many handicaps from which the Harijans suffer in Punjab, causing the clashes that are taking place in almost every village between them and the landlords, as a result of which they are kept confined to their houses in some villages, as also their other difficulties will not have to be faced by them in future. They find themselves in their present plight though they thought that the Congress Government would be a national Government and on coming to power it would permit them to purchase land and would remove all their difficulties. Our

* [ ] Translation of Hindustani speech.

[Prof. Yashwant Rai]

Indian National Congress was wedded to the creed that on establishing its Government every one will get house-building and agricultural facilities and no one will have any difficulty on these accounts. People are also realising that now the Congress is in power all these facilities will have to be afforded to the Harijans.

Therefore clause (f) of article 13 is very necessary because it provides the facilities we wanted. I think that the difficulties with which we are faced today will soon disappear. I therefore support this article.]

Shri Rohini Kumar Chaudhari: Mr. Vice-President, Sir, I must congratulate the House for having decided to drop the word "sedition" from our new Constitution. That unhappy word "sedition" has been responsible for a lot of misery in this country and had delayed for a considerable time the achievement of our independence.

While on this article, I should also like to draw the attention of the House to the unhappy condition which had prevailed so far as the relations between us and the people of the tribal areas were concerned. The British Government wanted to keep these regions as their own preserve, not having imagined for a moment that they will have at any time to quit this country. They wanted to keep the tribal people completely under them for all ages to come and they wanted to have the hills as their own place of preserve and therefore they had introduced rules which prevented the ordinary people of the plains from mixing with their brethren in the hills. I am glad, Sir, that in this article we have laid down that all people will be able to travel freely throughout the territory of India. But it is most unfortunate that we cannot do away with the proviso to say that a particular State may lay down a law by which this freedom of movement can be restricted. Sir, I can only draw the attention of the House to a very unfortunate incident which took place even after the achievement of independence. A few months ago some Members of the Central Legislature headed by our friend the Honourable Mr. Santhanam had occasion to pay a visit to the Manipur State. Although the officers of the Provincial Government had allowed us to go there freely, we were held up there for more than an hour by the orders of the Manipur State. I believe that after the passing of this Constitution such a state of things will never occur and that immediately after the passing of this Constitution steps will be taken to allow us free ingress and egress to those parts of the States which are now inhabited by the scheduled tribes. There should be greater friendliness between the scheduled tribes and the people of the plains and all steps should be taken to remove the barriers to our movement in those places.

Then, Sir, I am glad to find in this article that people will be free to carry on their profession in any part of India. That is quite good in so far as it stands on paper, but many times the British Government said they would never allow a lawyer to practise in any of these hills. I believe, Sir, after the passing of this article of the Constitution, steps will be taken to remove any restriction on any professional man practising in any part of India.

It is now my misfortune to have to say a few words about Professor Shah's amendment No. 416. It is very easy, I should say much easier, to deal with one who writes out his amendments and thinks over them. But it is very difficult and dangerous to deal with one who carries all his amendments, thousand and one of them, in his brain and then directly pours them out from his brain on the floor of this House. Sir, amendment No. 416 introduces certain words about things being subject to the provisions of this Constitution, and all those things. On the one hand we find that the House has practically agreed to remove these words "subject to the provisions of this Constitution".

But we find the Professor Sahib has put that jumble of words in that amendment. Does he want to use these words to rhyme in the Constitution? Poets are fond of using several words just for the sake of rhyming. If it is intended for the sake of rhyming to use all those words, I can understand it, but otherwise I think they are meaningless. I would also warn my friends against the use of the word 'guaranteed'. We have seen, Sir, advertisements of all and sundry articles promising guarantee. I have myself been a victim of such an advertisement. A big full-page advertisement of a certain medicine guaranteed that if you use that medicine for seven days you will benefit your health and become strong like Sandow. The word 'guarantee' was actually there. But what I found after using that medicine for seven or fourteen days was that the medicine had no effect. It did not bring about any improvement in my health. Also in the case of a lot of jewellery in the market, though they were all chemical jewels, the merchants offer guarantee to the effect that the jewellery will retain its brightness and quality. But after a fortnight the brightness disappears and the thing becomes black in colour. So, the use of the word 'guarantee' is very perilous. It is not necessary to use that word in this country. We in India are so much used to this word that when we see it used we begin to suspect it. When we see anything guaranteed, we understand that it is not guaranteed and is not genuine. Therefore it is better to leave the Constitution as it is without the word 'guarantee'. Without that word we can understand it better. Then we shall know that there is no attempt to cover-up anything not wanted. The clause, as it is without the word 'guarantee' is quite all right.

Sir, this article with the amendments which have been accepted has my whole-hearted acceptance.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. Vice-President, this article may be truly stated to be the charter of our liberties and this is probably the most important article in the whole Draft Constitution. In the original form in which it was presented to this House, it was open to many criticisms and they were justified. Now I think it has been materially altered. The promise made by Dr. Ambedkar to accept the amendment of Mr. Bhargava and others gives me hope that this article in its final form will be a real charter of our liberty.

Sir, let us analyse the criticisms made in some of the amendments moved by my friends. First of all, the criticism is that all the provisos were meant to nullify the liberties given in the first clause. But if we carefully examine each of the sub-clauses, we will find that this criticism is not justified. In clause (2), the word 'sedition' has been taken away, and the word 'authority' has been dropped. So that, what remain in clause (2) are the exemptions of laws relating to libel, slander, defamation, or any matter which offends against decency or morality or undermines the foundation of the State. These alone will remain on the Statute Book.

As was pointed out yesterday, even in America where the courts are given absolute power, the Supreme Court has been obliged to limit it. What we are doing is that instead of the Supreme Court we ourselves are limiting this thing. This limitation in the present form is less wide than it originally was. I think this should satisfy the House.

In this connection I only want to say one word more. Clause (1) (a) says that every citizen shall have the right to freedom of speech and expression. As proposed in one of my amendments we should bring in here the freedom of the Press. I hope Dr. Ambedkar would bring in some amendment to include freedom of the press in this sub-clause.

As regards clause (3), I am glad that after the addition of the word 'reasonable' it has become a much wider charter of liberty. It now reads:

[Prof. Shibban Lal Saksena]

"Nothing in sub-clause (b) of the said clause shall affect the operation of any law, or prevent the State from making any law, imposing in the interests of public order 'reasonable' restrictions on the exercise of the 'right conferred by the said sub-clause'."

Under this, the existing laws, in so far as they impose restrictions which are not in the interests of public order or morality, are nullified. Everybody will admit that public order has to be provided for. The sub-clause as amended is much better than what it was. The Supreme Court could now lay down what offends against public order and what does not.

Coming to clause (4), I must say that labour will now feel that today they have got their charter of liberty. They can now form unions subject to reasonable restrictions in the interests of public order or morality. So, labour today will thank Dr Ambedkar for accepting amendments which modified the original clause. In the original form you could not hold a meeting because it would be against the wishes of the general public. Now you will have to prove that the decision to ban a meeting is in the public interest or morality. This is the great charter of liberty for labour.

Then I come to clause (5). This qualifies sub-clauses (d), (e) and (f). It says: "Nothing in sub-clauses (d), (e) and (f), shall affect the operations etc. etc." "or for the protection of the interests of the Scheduled Castes". We have added the word 'reasonable' therein. It is very important. The rights such as freedom to move about throughout the country are very important. Some friends pointed out that there are many laws at present in existence in the East Punjab, for instance, which are really very bad and that this clause will not nullify many of them.

And then there is clause (6) which relates to carrying on of professions. After the amendments that have been accepted this clause also has become much better.

One thing more I want to say. Mr. Kamath in his amendment wants the right to bear arms. In most Constitutions throughout the world this right has been recognised. We ourselves throughout recent history have asked that this should be our right. In fact I remember, when Mahatma Gandhi wrote to Lord Irwin in 1930 about the Eight Points, which he wanted to be accepted, one was about this right to bear arms. The question of this right to bear arms dates back to 1878 when, after the mutiny, the British Government disarmed the Nation. I think that after freedom we should at least allow this thing, as only an armed people can support the Government. I hope Dr. Ambedkar will do something about it.

Then as regards sedition, our great leaders like Lokmanya Tilak and others were the victims of section 124-A. I congratulate Dr. Ambedkar for having put in the clause as it has emerged.

Shri H. J. Khandekar (C.P. and Berar: General): *[Mr. Vice-President, I rise to submit to the House my views on article 13. I believe that if the man-in-the-street were to read this article upto sub-clause (g) he would most likely begin to believe that this country has secured its freedom and that every individual within it has also been granted the right of freedom. But if the same person were to proceed further in his study of this article and goes through the sub-clauses (2), (3), (4), (5) and (6) he would revise his opinion and become fully convinced that our country has not as yet attained Swaraj in its correct sense. It would mean that what had been granted by the right hand has been taken away by the left, in the succeeding sub-clauses.

* [ ] Translation of Hindustani speech.

I believe that a majority of the Members of this House hold the same view in this respect as I do.

If we confine ourselves to an examination of clause (1), we find, Sir, that the rights granted to the citizens of India under this article are many. Sub-clause (a) specifically grants freedom of speech and expression—for securing which, as you and the majority of the Members of this House are aware, we resorted to individual Satyagraha under the leadership of Mahatma Gandhi in the year 1941, and as a consequence thousands, nay, hundreds of thousands of people of this country had to rot in the prisons. At that time all of us believed that when Swaraj is established every citizen of this country would also secure for himself the right of freedom of speech and expression. We, no doubt, find that article 13 grants this freedom of speech and expression. But all this has been taken away indirectly by clause (2).

I may point out that the Provincial Governments have recently enacted many repressive laws. I am afraid that article 13 will allow these laws to remain in force even in the future. What is worse, this article leaves scope for the enactment of further repressive laws in future. In several provinces such laws as the Goonda Act, Essential Services Act, and Public Safety Act have been passed. It may come as a surprise if I inform the House that, since the advent of the Popular Ministries, Section 144 has been constantly reigning in the big cities of this country. Consequently there cannot be a public gathering of even five or seven persons in cities, nay, not even for carrying on conversation among themselves or giving vent to their ideas and feelings. If this situation continues also in the future, I am afraid that the freedom which he had been wishing to establish in this country, the freedom that has been granted in Clause (1) (a) of article 13, will be entirely lost under clause (2) of that article.

I feel, Sir, that I should discuss before you each of these sub-clauses, one by one, so that I may be in a position to request you in the end that this article should be sent back to the Drafting Committee with a request that, after having carefully reconsidered it and having put in it what is really required in the circumstances of the country, it should resubmit it to the House. I believe that the House would then pass it with pleasure. But I am afraid that all would be lost if the article is passed as it is today.

Again sub-clause (b) of clause (1) grants, Sir, the right "to assemble peacefully and without arms." But clause (3) of the article takes away the entire significance of this sub-clause. Similarly sub-clause (c) grants the right 'to form associations or unions'. Thus we are given the impression that we would have the right to form associations or unions and thus to carry on organised agitation. For instance, we are given to believe that we could carry on organised agitation for the welfare of Labour, that we can make, in an organised fashion, a demand for the grant of bonus, and if necessary can assemble in public meetings to back up this demand. The truth is that the law restricting the right of holding public meetings would be enforced. Consequently in view of such a law or laws of this kind to be passed in future it may not be possible to hold any public meeting. Thus it is clear that the Government would be in a position to prevent if it so desires, any agitation by Labour for demanding bonus, since all these restrictive laws would be applicable to the workers also. I, therefore, fail to see the significance of the right of forming associations when I find that its substance is taken away by clause (4). I submit that this article is neither for the good of labour nor of the general community.

Further we read of the right to 'move freely throughout the territory of India'. This is sub-clause (d). Under it every citizen of India would have

[Shri H. J. Khandekar]

the right to move freely into any province or any village of India. But the substance of this right is taken away by clause (5). I would make this clear by an illustration. It is a matter of great amazement that in this country there is a law known as the Criminal Tribes Act under which a person is considered a criminal from the moment of his birth. There are also some unfortunate communities in this country whose members would not have the right to move freely in the territory of India granted under this sub-clause to every citizen of India. I believe, Sir, that you are aware that under the Criminal Tribes Act the people following pastoral occupations cannot go to any particular part of India they would like to go. Now they do not have that freedom. We have in our province a tribe known as Mang Garodi. If it has to go from the village of Khape to the village of Janwanver it is followed by the Police who sees to it that it goes only to the latter village and nowhere else. Similarly if it goes from Janwanver to Katol the Police of the former place would go up to Katol to entrust the Police of the latter place to keep watch over it. Thus they have no freedom of movement, whatever freedom of movement is now given under sub-clause (d) is taken away by clause (5) of the same article. If the intention is not to give to the criminal tribes, who are also citizens of India, the freedom which they are entitled to, it is something extremely unjust.

Similarly further on we find the right 'to acquire, hold and dispose of property'. My friend Prof. Yashwant Rai has said with reference to this freedom that there is an unfortunate section—the scheduled castes—in the Punjab who cannot purchase land on account of the provisions of the Land Alienation Act. Moreover the right that you have granted by this sub-clause to every citizen has been taken away by the clause which permits the Land Alienation Act to remain in force even in future. Thus the right which the Harijans should also, like other citizens, get under this Constitution would not be available to the Harijans of the Punjab on account of the Land Alienation Act of the Punjab.

Pandit Thakur Dass Bhargava (East Punjab: General): *[This article would most certainly confer this right.]

Shri H. J. Khandekar: By what article please?

Pandit Thakur Dass Bhargava: It will be conferred by this very article 13.

Shri H. J. Khandekar: I do not find this specified here. If this article is passed as it is, the rights that the Harijans of the Punjab should get will not be available to them.

Mr. Vice-President: May I point out to you that it would be better if you address the Chair and not carry on conversation among yourselves?

Shri H. J. Khandekar: Very well, Sir. Sub-clause (g) grants the right to practise profession or to carry on any business etc. But all these rights are taken away by clause (6). I would like to place before you, Sir, the difficulty we would be placed in by these provisions. The most unfortunate people in this country, in my opinion, are the sweepers. Whatever we may talk about the grant of rights to these unfortunate sweepers the fact remains that these unfortunate people have never been given any rights by any person in India nor have they ever enjoyed any right said to have been granted to them. To talk of their "freedom to practise any profession or trade" is a mockery to them. I do not know of the conditions prevailing in other provinces but I know what happens in my province. If a sweeper working

*[ ] Translation of Hindustani speech.

under a Municipal Committee desires to give up his work, in my province, he would have to give a notice in writing addressed to the District Magistrate of his intention to do so and can leave his service only if that officer agrees to release him. I am of the view that even the very name of sweeper is a matter of contempt by people. I have consequently held the opinion and have repeatedly said to the sweepers, and I would like again to communicate this opinion through you, Sir, to the sweepers of this country, to give up their present occupation which makes them looked down upon as untouchable by the people of the country, because their work is considered to be so dirty and polluting. I advise them to take to such occupations as are followed by other people. If the sweepers of the whole country were to leave, on my advice, their present occupation, and which they could in exercise of the freedom granted by the clause (8), I am sure that they would invite against them the objection of clause (6) which refers to service in the interest of public or as now Dr. Ambedkar seeks to amend 'service in public interest'. The fact is that if all the sweepers of Delhi, or Bombay or Calcutta were to stop cleaning latrines, sweeping the streets, they would be said to be acting against public interest; and under this law and under the Essential Services Act they would be compelled to do this work. Then how can you say that all human beings shall have equal rights under this sub-clause? The handicaps from which we suffer, from which the peasant suffers, from which the workers suffer, from which the sweepers suffer would continue to remain even under this article, if it remains as it is. It is, therefore, my submission, and I believe that the House after having heard what I have already said, would consider it proper, that this article should be referred back to the Drafting Committee for being amended. It may then be placed before the House for adoption. This is my proposal. With these words I resume my seat.]

Shri Algu Rai Shastri (United Provinces: General): [*Mr. Vice-President, all the important aspects of fundamental freedom have been dealt with in article 13. From this point of view this article is very important. It is going to be accepted with some minor amendments. Many friends have attacked its provisions on the grounds that the fundamental rights conferred by this article have been taken away by the limitations imposed therein. I feel that along with freedom responsibility is essential. The friends who urge that the rights given in this article have been taken away under the sub-clauses (2), (3), (4), (5) and (6), have not taken into consideration the people who will elect members to the legislatures which have been authorised under these provisions to apply these restrictions, and the people who would compose these legislatures. I submit that those who would sit in the legislatures would be representatives of the people and they will impose only those restrictions which they consider proper. Such restrictions would be in the interest of the people. Only those restrictions will be imposed which would be necessary in the interest of public health, unavoidably necessary for the maintenance of public peace and desirable from the viewpoint of public safety. No restriction will be imposed merely to destroy the liberties of the people.

Freedom is a great art—even greater than the art of music and dancing. One who is adept in music or dancing keeps his voice under control and maintains restraint and control over his bodily movement, and on the movement of his feet. He has to move in accordance with certain recognised rules of music and dancing. He cannot sing and dance out of tune and time, in an unrestrained manner. He remains fully bound to the rules. Full freedom is being conferred upon us but it can never mean that we should not be under any restrictions whatsoever. Freedom of speech does not mean

* [ ] Translation of Hindustani speech.

[Shri Algu Rai Shastri]

that we can give expression to whatever comes to our mind without observing any limitation or rule in this respect. In legislatures we have to follow certain rules and regulations. We are here as the representatives of the sovereign people but even then there are hundreds of restrictions upon us. Freedom by its nature implies limitations and restrictions.

'KAVIHIN ARTH AKHAR BAL SANCHA, KARTAL TAL GATIHIN NAT NACHA'

The dancer dances to the measure of clapping. The poet is bound by the significance of words. A dancer dances according to certain fixed timings and never makes a false movement. His movements are in harmony with the tal. When a nation or a community attains freedom, it begins to bear a great responsibility on its shoulders. We cannot therefore say that the restrictions that have been imposed will retard our progress.

One of my friends made a reference to the Bhangi community. I have been working amongst them since 1924. I have thus a personal experience extending over a period of twenty four years. There can be no doubt about the indescribable wretchedness of the Bhangis and of our other so-called untouchable brethren. It is indeed very deplorable. But the restrictions provided for in article 13 do not imply that Bhangis will continue to remain bound to their present occupation. Under this article there would be no compulsion for any person to follow any particular occupation. This article as a matter of fact, instead of prescribing the compulsory pursuit of any occupation, provides for unrestricted freedom to every individual to follow any vocation he pleases. I think that the freedoms granted under sub-clauses (f) and (g) need clarification. In sub-clause (f) is specified the right of a person to acquire, hold and dispose of property; while in sub-clause (g) it is stated that there is freedom of a person to practise any profession or to carry on any occupation, trade or business or other means of livelihood of one's choice. It is true that the State has been authorised to restrict this freedom in sub-clauses (5) and (6). But a little reflection would show that it was necessary to limit the freedom so widely provided for in sub-clauses (f) and (g) of clause (1) of article 13. Such unrestricted freedom as is provided in these two sub-clauses could not be free from grave danger. For instance, we have in our society the practice of prostitution. Is this to continue in future also as it has done till now? It should not in any circumstances be permitted to continue. Evidently there must be some provision whereby its practice may disappear by providing for a profession worthy of being adopted. Evidently restrictions have to be imposed on it.

Again, there is freedom in our society to earn one's livelihood by selling intoxicants. In the directive Principles we have now included a provision for the introduction of Prohibition but in the Fundamental Rights we have given every one the unrestricted rights to earn his livelihood. Both the provisions appear to be contradictory to each other. Thus it is necessary to provide that no one shall be permitted to earn a living by selling intoxicants except for medicinal purposes.

Again begging is a common profession in our society today. Should it be permitted to continue as it is? I submit that there should be a good arrangement for bringing it to an end.

We have now attained freedom. We should do nothing which may endanger it. It is our duty to be good citizens. We have also to see that freedom is not misused. Up till now we were under foreign rule. Indian subjects received step-motherly treatment from the rulers. In England no intoxicant can be mixed with any medicine other than in the prescribed proportion but here bottles of country wine are being sold openly in the market. Our 'Freedom'—our own mother—can never permit us—her children—to have this because she cannot permit her children to go astray.

Good citizenship implies restrictions:

"SATYAM BRUYAT PRIYAM BRUYAT NA BRUYAT SATYAMAPRIYAM"

Be truthful and sweet in speech, but do not speak out the unpleasant truth. Anyone has the freedom to state the truth, but not the freedom to speak out the unpleasant truth. This is a restriction and good citizens have to accept this restriction. I beg, therefore, to express my appreciation of article 13 read with the amendment moved by Dr. Ambedkar and which already been referred to.

I would like to make another observation. I feel that the rights guaranteed in sub-clauses (f) and (g) are rather too wide. I have already said something about freedom of making a living.

I shall resume my seat after saying a few words about the right to acquire property. The type of freedom being guaranteed implies that the capitalists and feudal aristocrats would have full rights to acquire and dispose of property. But the mode in which property is being acquired and held is such as permits the property owners to have all the benefits while workers who create this property have all the toil as their share. 'The ox produces and the horse consumes'—this saying is being fulfilled. Of course, this should not be so. I submit that this right of property should be so interpreted in future as to permit the transformation of individualistic capitalism into State capitalism. All the means of production and the distribution of the commodity should be owned and controlled by the State and not by the individual. "Unless the individual ownership yields place to collective ownership—social ownership—there cannot be real Swaraj."

To reach this goal it is necessary that these restrictive provisions should be interpreted in this way. With these words I express my support for this article.]

Shri Amiyo Kumar Ghosh (Bihar: General): Mr. Vice-President, Sir, we are dealing today with one of the most important clauses of this Constitution We are dealing with the freedom of citizens. That is to say what rights the Indian people have under this Constitution. On reading the entire clause, I feel that the rights which have been recognised under sub-clause (1) of this article have been to a great extent abrogated by the subsequent provisos. In a Constitution, there are two important points. namely what are our rights and what form of Government we are going to have. These are the two important subjects in a Constitution and others flow from them and therefore one expects that so far as the rights of the people are concerned, they should be expressed in clear, simple and straight language, so that a common man when he reads the Constitution can understand exactly and precisely what are his rights and what are the checks to his rights. I do not propose to say that at times of emergencies or grave needs, freedom does not require to be checked to a certain extent. I believe in checks and balances, but at the same time, I must say that those checks should be very precise, and clear and should not be couched in ambiguous language and left to courts for decisions.

Now you will find, Sir, that in all these sub-clauses (2), (3), (4), (5) and (6) we have used the words "interest of general public", 'general public interest

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'public order' and 'property' without defining them and I think it will take centuries for the Supreme Court to exactly say what really these words mean. By incorporating such words in the sub-clauses, wide powers have been given to the Central and the Provincial Legislatures to frame laws by which they can restrict the freedom which has been given to the people under sub clause (1) of this article. I do not like to enter into any criticism of this article, but the only thing I want to say is that the entire clause is very disappointing.

Specially, I will draw the attention of the Honourable Dr. B. R. Ambedkar to sub clause (5). Now, Sir, in this sub-clause (5) the rights which have been recognised in sub-clauses (1) (d), (e) and (f) above have been practically negatived and have given rise to grave anxiety in the minds of many regarding the exact position in matters of residence, acquisition and disposition of properties. The exact significance of clause (5) in respect of (e) and (f) requires further clarification. Next I cannot understand why in this clause, the words "for the protection of the interests of any aboriginal tribe" have been incorporated. What it exactly means I fail to understand. Does it mean the 'tribal area' or does it mean that wherever any aboriginal tribe lives, irrespective of their numbers the legislatures can frame laws safeguarding their interest as, for instance, if there be 15 aboriginals living in Delhi, can the Central Legislature frame a law by which they can restrict the rights of other people in the interests of these fifteen or sixteen aboriginals? I could understand that, if that had been in respect of the tribal area, but one cannot understand that wherever there may be some aboriginals the legislature can make a law, by which they can restrict the rights of all others for the protection of those few.

Sir, I feel the position is ambiguous and clumsy and should be made clear I fail to understand why clause (d) has been tacked with sub-clause (5). Free movement has been restricted by that sub-clause. My own personal view is that there should not have been any restriction regarding movement. The citizens should have been given a free right to move. Only on administrative or political grounds the Central or provincial legislatures could be empowered to frame laws judiciously by which they can restrict the movement of the people and this power should be worked sparingly and in very emergent circumstances. In every matter of freedom, restrictions have been imposed in the interest of general public. What this interest is, we do not know and has not been stated anywhere. Such words can be interpreted differently in different States and the Centre and may give rise to separate and conflicting laws. Sir, this would create great confusion. Therefore, I submit, if this article is read and viewed, it only gives rise to disappointment, and with a little more effort and with a slight inclination this article could have been framed in such a language that it would have been a model article in the whole of the Constitution.

Mr. Vice-President: Mr. T. T. Krishnamachari.

Shri Mahavir Tyagi: May I know, Sir, is it by reference to the slips that you are calling the speakers?

Mr. Vice-President: I am not prepared to give you information as to how I conduct my work.

Shri Gopal Narain (United Provinces: General): So that we need not stand every time. Have we to stand every time or send slips, Sir?

Mr. Vice-President: The remedy lies in your hands; you can do both, you can send a slip and stand, or you can do neither.

Shri T. T. Krishnamachari (Madras: General): Sir, as the speaker that spoke before me said, this is perhaps the most important article in this Part

and one which enumerates the rights for the attainment of which we in India have undergone all the troubles to obtain our freedom. Actually, Sir, it is in the manner in which the State is going to allow the people to use the rights enumerated in this particular article that the people can feel that all that they have done in the past and the sacrifices that they have made in the past to obtain freedom was worth while.

Sir, I do not say that this article is perfectly worded; nor can I maintain that the exceptions to parts of this article provided by clauses (2), (3), (4), (5) and (6) do not curtail the liberty and the right conceded to individual citizens in clause (1). But, as a student of politics, I have to realise that there can be no absolute right and every right has got to be abridged in some manner or other under certain circumstances, as it is possible that no right could be used absolutely and to the fullest extent that the words conveying that right indicate. It is merely a matter of compromise between two extreme views. Having got our freedom only recently, it is possible that we want all the rights that are possible for the individual to exercise, unfettered. That is one point of view. The other view is that having got our freedom, the State that has been brought into existence is an infant State which has to pass through various kinds of travail, and what we could do to ensure that the State continues to function un-impaired should be assured even if it entails an abridgment of the rights conferred by this article. I have no doubt in my mind that, though I have had to say something perhaps harsh on certain occasions in regard to what the Drafting Committee has done generally, in this article, the Drafting Committee has chosen the golden mean of providing a proper enumeration of those rights that are considered essential for the individual, and at the same time, putting such checks on them as will ensure that the State and the Constitution which we are trying to bring into being today will continue unhampered and flourish.

Sir, language is always rather a diffieult affair. What language conveys to me it may not convey to another person, and as my honourable Friend Dr. Ambedkar put it, we are legislating in a language which is foreign to us, the exact import of which we do not understand. Should we do it in one of our own languages? The difficulty would be all the greater for the reason that the language of one set of people is not the language of another set of people. Besides, precise thinking in our own language so that we could adopt it for constitutional purposes has not yet developed. Actually we have to depend for the interpretation of the particular restrictions that are enumerated herein on the Supreme Court or some other authority that would come into being in the future, to ensure that the peoples' rights are not abridged.

Speaking today in the context of the situation in which we are placed, we cannot but envisage that those rights will be abridged in order to maintain the stability of the State. This State that has now been brought into being has been put to a lot of travail in the first eighteen months of its existence and every Member of this House knows it. Special powers are needed by the Government to meet not merely with the refugee problem, not merely with the fact that there are various forces in this country which do not like this State to grow in the present form, but also with the various economic troubles that now face this country. Are we to build up our Constitution, putting in these restrictions which are necessary today in the light of things that stand as they stand today, or are we to visualise a time when things will be normal and when it will not be necessary for the State to use these powers, is the problem. Again, I think, the Drafting Committee and my honourable Friend Dr. Ambedkar have chosen the golden mean in this particular matter.

There is one other matter on which I would like to lay stress before I sit down. We in this House, though the bulk of us belong to one party, have got

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different ideas on economic matters. We were all together in one particular fact that the British should go; we are all united in the desire that we should have a stable constitution which will ensure to the common man what he needs most, what he did not obtain in the former regime. But, in the achievement of that goal in the methodology to be adopted for the achievement of that goal our ideas vary considerably, and vary from one end to the other. I am happy to see that the Drafting Committee has chosen to avoid importing into this particular article the economic implications in the enumeration of fundamental rights that obtain in other constitutions. I think it has been a very wise thing. I know a friend of mine in this House has objected to one particular sub-clause (f) of article 13, namely, to acquire, hold and dispose of property. I would like to assure him and those who hold the opinion that he holds that this does not really mean that there is any particular right in regard to private property as such, no more than what any person even in an absolutely socialistic regime will desire; that what he possesses, what are absolutely necessary for his life, the house in which he lives, the movables that he has to possess, the things which he has to buy, should be secured to him, which I think any socialistic regime, unless it be communistic, will concede, is a right that is due to an individual.

Actually the economic significance that attaches to any enumeration of Fundamental Rights, such as the rights conceded in the Bill of Rights in the American Constitution and the addition to these in the Fourteenth Amendment, finds no place so far as this particular Constitution is concerned, and I am able to say that that is one of the bull features of this Draft Constitution. We have chosen to avoid as far as possible, in spite of the fact that the vested interests are still with us and they have a certain amount of influence—we have chosen to avoid as far as possible laying that stress on the importance of the economic surroundings which is a significant feature of the American Constitution, and I do hope that my honourable Friend, who objected to a particular sub-clause in this article namely clause (f), will now realise that it has no meaning so far as property rights are concerned except in something that is dear to an individual and which is very necessary to concede in an enumeration of rights of this nature.

Sir, the future what it is going to be none of us really know, but we all most of us—envisage that the future will be one which will be bright, the future will be one where the State is going to be progressive, where the State is going to interfere more and more in the economic life of the people not for the purpose of abridgment of rights of individuals, but for the purpose of bettering the lot of individuals. That is the State that I envisage, a State which will not be inactive, but will be active and interfere for the purpose of bettering the lot of the individual in this country; and I do feel, Sir, that as it is a well known canon that in any Constitution that is forged there should be a reconciliation of past political thought which will at once pave the way for a new level of thinking, a new level of progressive and critical thinking. I think those conditions are at any rate possible in an enumeration of the Rights such as is found in article 13. Sir, there is no use our comparing this particular article which happens to be the crux of the Fundamental Rights with either what obtains in the commentaries of the English Constitution or what obtains in the text of the American Constitution or any other Constitution, for the reason that the setting is totally different. There is no use anybody saying that a particular feature is not found in the English Constitution. English jurisprudence is something totally different for the reason that English Parliament does not provide for the enumeration of all these rights which is absolutely based on custom on which you cannot depend for ever because Parliament there is sup-

reme and can make laws contravening every recognised custom. They do not have to have a Constitutional amendment for that purpose. Parliament can promulgate new laws which might cut right across the conventions, and the usages of the Constitution established over centuries. But so far as the American example is concerned—and certainly there are other examples which are modelled on the American example—there is one distinction between our own way of thinking and what the Founding Fathers in America thought and what was sustained in America until recently, *viz.*, the economic basis of the American Constitution is something totally different from what we envisage to be the economic basis of our Constitution. So any analogy is only applicable up to a point, and therefore any of our friends who seek to import particular provisions of the American Constitution or particular words either in this particular article or in later articles, have to recognize that the bulk of the opinion of this House is something totally different from the economic bias that more or less determined the American Constitution, right at the inception and later on as well, on which bias legal literature has built up several conventions attached to that Constitution.

Sir, I would like to say this that the amendments proposed by my honourable Friend Dr. Ambedkar particularly to clauses (4), (5) and (6) are a great improvement on the original draft and my own view is that they do take away the lacunae that existed in the original draft. But I should like to lay emphasis on one particular amendment moved by my Friend Mr. Munshi who is not here. The value of that amendment happens to be only, to a very large extent, sentimental. The word 'sedition' does not appear therein. Sir, in this country we resent even the mention of the word 'sedition' because all through the long period of our political agitation that word 'sedition' has been used against our leaders, and in the abhorrence of that word we are not by any means unique. Students of Constitutional law would recollect that there was a provision in the American Statute Book towards the end of the 18th Century providing for a particular law to deal with sedition which was intended only for a period of years and became more or less defunct in 1802. That kind of abhorrence to this word seems to have been more or less universal even from people who did not have to suffer as much from the import and content of that word as we did. But all the same the amendment of my honourable Friend Mr. Munshi ensures a very necessary thing so far as this State is concerned. It is quite possible that ten years hence the necessity for providing in the Fundamental Rights an exclusion of absolute power in the matter of freedom of speech and probably freedom to assemble, will not be necessary. But in the present state of our country I think it is very necessary that there should be some express prohibition of application of these rights to their logical end. The State here as it means in the amendment moved by my honourable Friend Mr. Munshi as I understand it, means the Constitution and I think it is very necessary that when we are enacting a Constitution which in our opinion is a compromise between two possible extreme views and is one suited to the genius of our people, we must take all precautions possible for the maintenance and sustenance of that Constitution and therefore I think the amendment moved by my honourable Friend Mr. Munshi is a happy mean and one that is capable of such interpretation in times of necessity, should such time unfortunately come into being so as to provide the State adequate protection against the forces of disorder.

Sir, one other matter which I would like to mention before I sit down is this. Sub-clause (c) of art. 13 (1) is very important. I do not know if people really realise as they would know in other countries and particularly in U.S., labour has had to undergo an enormous amount of trouble to obtain elementary rights on matters of the recognition of their rights, in the matter of the

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right to assemble together as a Union: I do not think that in my view clause (4) of this particular article unnecessarily abridges the rights conferred by sub-clause (c) of clause (1). My own feeling is that we have more or less sought to cut across the difficulties which the other countries have faced in this particular matter and we have ensured for labour the very legitimate right to come together, to agitate and to obtain for themselves and for the members of their Union the rights that are justly theirs. That I think is more or less a charter for workers in this country and I am happy to see that the vested interests have not tried in any way to abridge this particular right. On the whole, Sir, this particular article, with the amendments proposed by my honourable Friend Mr. Munshi and the three amendments proposed for clauses (4), (5) and (6) by Dr. Ambedkar and also the addition of the word 'reasonable' which has been brought in by my honourable Friend Mr. Thakur Dass Bhargava, represents in my opinion a fairly reasonable enumeration of our rights and a fairly conservative abridgment of those rights. The working of these particular rights depends upon the genius of our people, upon how we develop ideas of liberty which are still today in a very undeveloped state. It is no doubt true that our leaders are sometimes hasty, they want more powers, when they are faced with difficult situations and they think the only way in which they could deal with them is to have more powers. They do not recognize that they are leaders of the people the chosen leaders of this country each one with a personality of his own and the aggregate effect of their personality and their influence can cut right across the necessity for any drastic powers. That kind of confidence will come only later on—at the moment they merely want to follow in the footsteps of people who preceded us in the government of this country, who had no touch or contact with the people, who could never get on to a platform and persuade the people to do any particular thing, who only wanted powers which could be exercised through the medium of the bureaucracy. That mentality will change, and will surely change, because our leaders are very eminent people. Surely, the House will realise that the Prime Minister and the Deputy Prime Minister, if they get upon a platform can sway millions of people if they could only get their voices to reach them. It only depends upon the type of leaders that we get for the abridgment of these rights which are enumerated here to become a dead letter, and that is in the lap of the gods. For the time being we have done the very best possible which human ingenuity can devise.

Sir, I support the article before us.

Shri Lakshmi Narayan Sahu (Orissa: General): *[Mr. Vice President, I would like to make an observation with regard to article 13 which is now under discussion. The article confers certain rights on the citizens, but the words 'subject to the other provisions of this article' occurring in the very beginning of the article, serve as a warning to us that the article confers freedom, no doubt, but that it is only within a limited sphere. Moreover the sub-clauses (2), (3), (4), (5) and (6) that follow, re-emphasise that unless the freedom granted is enjoyed within the prescribed limits, people would get into great difficulty. I feel, however, that both the words 'subject to other provisions of this article' and the sub-clauses (2), (3), (4), (5) and (6) should be deleted from the article. We shall be able to visualize the true picture of our freedom only when this has been done. So long as the sub-clauses remain, we can not have a correct picture of our freedom. Moreover I feel that liberty has been considerably narrowed during the drafting process. It is just like the narrowing of the size of a temple as a consequence of its main entrance being made too large during the process of constructing the temple. It is of no

*[ ] Translation of Hindustani speech.

use whatever. There is an Oriya proverb which is meant for such a situation. It is—

Ghare na pasuna chal vaguchi Devalku Mukhashala Bil Gala.

It means that it is no use making a house with so small an entrance that one's entry into the house is rendered difficult without striking his head against the door-frame. Though there has been considerable discussion on the article, we wish that we discuss it more thoroughly and that the Drafting Committee gives more consideration to it. Thus, whatever drawback we find in the article should be removed. In my opinion sub-clauses (2), (3), (4), (5) and (6), must be deleted. Unless this is done we shall not have the taste of freedom and shall continue to remain in a condition of fear. Those who till recently were seeking to organise disobedience of laws are, being today in the seat of power, apprehensive of the violation of laws by other people, and under this apprehension, are seeking to make the law so comprehensive and rigid as to prevent any one outside the ruling group from going beyond its control. I would like to say that article 13 which is now under discussion betrays an ununderstandable apprehension on the part of authority. The fact is that there are many provisions in this Draft Constitution which would prevent the citizens from committing any disorder. Thus article 25 provides that "The right to move Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed". I submit, therefore, that all the restrictive provisions contained in article 13 should be deleted. My belief is that article 25 will be as helpful to the government as to good citizens. Unless the restrictive provisions of this article are deleted, we cannot properly enjoy our National Freedom. Moreover it had always been our loud assertion that self-government is better than good government. Now we have grown indifferent to self-government and are raising the slogan of good government. With so many rigid provisions what good government can you have and for whom?

Those who are in power at present are apprehensive that the people and political parties other than those of the ruling group would practise disobedience of laws. That is why so many restrictive provisos have been included in the Draft Constitution. It is precisely why I insist that the Fundamental Rights should be treated as fundamental and inviolable. It is not proper therefore to delimit them by so many restrictive clauses and sub-clauses.

There is one observation I would like to make about the Adibasis. I agree to a certain extent with what Shri Jaipal Singh has said. Adibasis move about with arms. This article lays down that all citizens shall have the right "to assemble peaceably and without arms". We should therefore consider whether or not this clause takes away from the Adibasis their customary right to bear arms. In view of the provisions contained elsewhere in the constitution. I think, this will not affect the right of Adibasis to bear arms. If this view be correct Adibasis need not fear the loss of their right. Though I have no objection to the words "assemble peaceably and without arms" being put in here, yet I feel that nowhere in the Draft Constitution can be found any provision regarding the repeal of the Arms Act and the grant of the right to the people to bear arms—a right which is essential to make our people fearless. Therefore, I would like that a provision for the repeal of the Arms Act and making it permissible to the people to bear arms be included in the Draft. I would not like to say anything more about this matter.

We often talk of minorities today but we should stop this kind of talk now. What is a minority? When we are going to make one and the same provision for all, I fail to see who remains to constitute the minority. It may be said against this view that the Depressed Classes are a minority, the

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aboriginals are in a minority and the Muslims are in a minority. But once it is conceded that a particular group is a minority there is the danger that many other groups would begin to clamour for being considered as minorities. Formerly in the political sphere the Muslims were considered a minority. But then the Depressed Classes got themselves included in this category. I am afraid that among the Depressed Classes themselves new groups would begin demanding the status of a new minority. The same is, in my opinion, the case of the aboriginals. I would, therefore, like that the word 'minority' wherever it occurs in the Draft Constitution should be deleted and the article 13 should be so drafted that all may feel that they have got real Swaraj and that they have no cause for apprehension and that they have as unrestricted a freedom as any one else.

Shri Deshbandhu Gupta (Delhi): *[Mr. Vice-President, I have had an opportunity once before of representing my views on the recommendations of the Drafting Committee. I was not at that time in a position to congratulate my Friend, Dr. Ambedkar and the Drafting Committee, on certain of the recommendations, which related to the Chief Commissioners' Provinces. But today, I feel that on article 13, which relates to our Fundamental Rights, and particularly after this amendment as it stands, the Drafting Committee deserves our hearty congratulations.

Some of my friends here have objected saying that what has been given by one hand has been taken away by the other. But if you ponder a little, you will find that it is not so. If some one is given a freedom by which the freedom of the other is curtailed, then I would say, that such a demand is not for the right type of freedom. For example, it has been stated that restrictions have been imposed on the movement of people belonging to the criminal tribes. I would like to ask, why should not restrictions be imposed on the movement of the criminal-tribe people, when they are a source of danger to other law-abiding citizens? Could anyone be serious in saying that restrictions and conditions imposed on the criminal tribes should not have been imposed at all? Or that the presence of those restrictions and conditions has in any way curtailed our freedom? Similarly in respect of land, it has been stated that henceforth our Harijan brethren would not be able to purchase any land for themselves and the Land Alienation Act would continue to stand as it is. It is perfectly correct to say that the most objectionable feature of the Land Alienation Act was that certain castes had been mentioned therein. For example, a Bania or a Brahmin or a Harijan could not purchase land. It was wrong. But in fact, that restriction is being swept aside today by the conferment of the Fundamental Right that all citizens shall have the right to acquire property. From now on, if any restriction is imposed, it would have to be proved whether it is proper or improper. That question would be decided, under the provisions of this section, by the Supreme Court. It is a big gain. Formerly, the phraseology of the article was defective, but that defect has been removed by the acceptance of the amendment of my Friend, Pandit Thakur Dass Bhargava, which seeks to add the word 'reasonable'. Now, there is nothing to warrant the imposition of any undue restriction. If there would be any, then against that an appeal could be preferred, and that would be decided by our Supreme Court which would be composed of great experts in India. That is why I feel that we should welcome this article and that it would be wrong to give an impression that it curtails our freedom in any sense. We should realise that our country is now a free country. I agree with my Friend, Shri Algu Rai Shastri that, along with rights, certain obligations and responsibilities have also come upon

* [ ] Translation of Hindustani speech.

us. If we do not stand by those obligations then our freedom would be the freedom of the jungle. That freedom, I think, would not be such as to merit a welcome from us. Therefore, I think, this article as amended, should be accepted by us. We should realise that it forms the basis of our constitution, and it is a thing of which we can rightly feel proud and which will raise us in the estimation of the whole world.]

Shri M. Ananthasayanam Ayyangar (*Madras: General*): Sir, I consider article 13 as the most important article, as it deals with some of the fundamental rights which are common to all free countries and all free citizens in the world. A number of amendments have been moved to this article which can all be classified under three heads. Some want to remove all restrictions on the rights that have been set out in clause (1). The fundamental rights guaranteed in clause (1) of article 13 are freedom of speech and expression, assembly and association, right to move freely inside the territory, right to practise any profession, right to reside—these are the fundamental rights that have been guaranteed. There are exceptions to these fundamental rights that have been set out in this clause and they are to be found in the subsequent clauses (2), (3), (4), (5) and (6). Some of the amendments are for the deletion of the clauses; and some to make improvements so that these provisos may not take away the rights that have been guaranteed under clause (1).

Pandit Thakur Dass Bhargava has moved an amendment saying that if any restrictions have to be imposed upon these rights that have been guaranteed in clause (1), they must all be reasonable. I believe that that amendment would sufficiently meet the situation.

Regarding freedom of speech we have improved upon the restriction that has been imposed in clause (2). The word 'sedition' has been removed. If we find that the government for the time being has a knack of entrenching itself, however bad its administration might be, it must be the fundamental right of every citizen in the country to overthrow that government without violence, by persuading the people, by exposing its faults in the administration, its method of working and so on. The word 'sedition' has become obnoxious in the previous regime. We had therefore approved of the amendment that the word 'sedition' ought to be removed, except in cases where the entire state itself is sought to be overthrown or undermined by force or otherwise, leading to public disorder; but any attack on the government itself ought not to be made an offence under the law. We have gained that freedom and we have ensured that no government could possibly entrench itself, unless the speeches lead to an overthrow of the State altogether.

Then there are certain amendments which have been given for adding to the fundamental rights that have been set out. They require some detailed consideration. The foremost of those amendments relates to guaranteeing that every citizen shall have the right to exercise his personal law. Let us see what this means. We have already discussed personal law at some length in the Directive clause where a direction has been given that a uniform code of civil law must be evolved early or late. Amendments have been moved that unless a provision is made in the Fundamental Rights there is no safety and that the majority community may introduce its own personal law or flagrantly violate the personal law of any community. Let us take the communities. There are three main religions. Let us take Muhammadanism. There is absolutely no provision in the Fundamental Rights that you ought to ride rough-shod over their personal law. The law of the land as it exists today gives sufficient guarantee so far as that is concerned. But our friends who moved the amendments wanted a double guarantee that their personal law ought not to be interfered with. My submission is that it is impracticable, for, in an advanced society, even the members who belong

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to a particular community may desire their personal law to be changed. Let us take the Muhammadan law. I would only refer to two or three amendments that have been made to that law as set out in the Shariat. As recently as in 1939 the Central Legislature passed a law for enabling the dissolution of Muslim marriages under certain circumstances. You will be pleased to note that under the Muslim Law, a man has got the unilateral right to declare a marriage void by pronouncing the word *talak* and there is another form of divorce called *kulamp*. Woman normally has no right to dissolve a marriage. She has to go to a court of law and various matters have to be set out such as impotency and so on. All that has been made easy now. Another consideration is that a woman who cannot lead a family life with the husband in the same household is entitled under certain conditions to separation. These have hitherto not been envisaged nor provided for in the Dissolution of Muslim Marriages Act. As a member of the Assembly I was a member of one of the committees that considered this question. We left the question entirely for the Muslim Members concerned to settle. The Shariat Law was introduced in the Assembly and an Act was passed bringing into line with the Shariat Law the different pieces of legislation in the provinces of India. This was done four years ago. The Wakf Validation Act was passed in 1930. A time may come when members belonging to the particular community may feel that in the interests of the community progressive legislation has to be enacted. But if we make a provision here that the personal law shall not be interfered with, there will not be any right to the members of that community itself to modify that law. Therefore it is not necessary that we should introduce it as a fundamental right. There is absolutely nothing in this Constitution which allows the majority to override the minority. This is only an enabling provision. Without the consent of the minority that is affected, no such law will be framed. I therefore feel it is unnecessary to include it in the Fundamental Rights.

Then my friend, Mr. Kamath, wanted that we should have the right to bear arms and that this right should be put in the Fundamental Rights. It is true that for a long time the Congress has been from year to year passing resolutions that we must have the right to bear arms. The situation has changed now. We were then slaves and wanted to equip ourselves sufficiently so that in case of need we can use the arms for getting out of the foreign yoke. But, today, in the civilised world I should like to ask my honourable Friend if he feels that everbody should be allowed to fight even to defend himself. Except in extreme circumstances no force should be used. Even when force has to be used, it must be concentrated in the State. The State it is that must stand between man and man and citizen and citizen when they want to fight. No individual citizen ought to be allowed to attack another. Very often the right to bear arms is abused.

Shri H. V. Kamath: Not even in self-defence?

Shri M. Ananthasayanam Ayyangar: Very often defence is offence in the hands of strong young men whose blood is very warm like that of my friend Mr. Kamath's defence very often means offence.

Shri H. V. Kamath: I strongly protest against that remark, Sir.

Shri M. Ananthasayanam Ayyangar: I am sorry, Sir.

Mr. Vice-President: He has expressed his regret.

Shri M. Ananthasayanam Ayyangar: I have the greatest regard for my young friend and his youthful enthusiasm.

So far as the communal point is concerned, there is an amendment here which requires it to be included as a fundamental right. I am afraid it is

not possible to do so. There is provision made in the Penal Code under sections 153 and 155-A for the purpose. That is ample.

As regards freedom of thought, I am surprised to see an amendment moved saying that freedom of thought ought to be allowed. Nobody can prevent freedom of thought. It is a fundamental right. It is only freedom of expression that has to be allowed. Now, freedom of press means freedom of expression. As regards the secrecy of telegraphic and telephonic communications, it is a debatable point and we ought not to allow any change in the existing provision.

Now, therefore, except the amendments which are acceptable to Dr. Ambedkar, the others should not be accepted. They are objectionable and ought not to find a place in the Constitution.

Shri Satyanarayan Sinha (Bihar: General): I move that the question be now put.

Mr. Vice-President: An enquiry was made of me as to how I have tried to conduct the proceedings of this House. I refused to supply the information at that time, because I thought it might be left to my discretion to explain how I conduct the proceedings. I see that I have not been able to satisfy all the members who desire to speak. At the present moment I have here 25 notes from 25 different gentlemen all anxious to speak. There is no doubt that each one of them will be able to contribute something to the discussion. But the discussion cannot be prolonged indefinitely. This does not take into account those other gentlemen equally competent to give their opinion who stand up and who have denied to themselves the opportunity of sending me notes. I have tried to get the views of the House as a whole. If Honourable Members will kindly go through the list of speakers who have already addressed the House they will find that every province has been represented and every so-called minority from every province has been represented. In my view, in spite of what Pandit L. K. Maitra says, Bengalees are a majority. In my view therefore the question has been fully discussed. But, as always, I would like to know whether it is the wish of the House that we should close this discussion.

Honourable Members: Yes, yes.

Mr. Vice-President: Then I call upon Dr. Ambedkar to reply.

The Honouabrle Dr. B. R. Ambedkar (Bombay: General): Mr. Vice-President, Sir, among the many amendments that have been moved to this article 13, I propose to accept amendment No. 415, No. 453 as amended by amendment No. 86 of Mr. Munshi, and amendment No. 49 in list I as modified by Mr. Thakur Dass Bhargava's amendment to add the word 'reasonable'.

Mr. Vice-President: Will you kindly tell us how you propose to accept amendment No. 415.

The Honourable Dr. B. R. Ambedkar: The amendment which seeks to remove the words 'subject to the other provisions of this article'.

Mr. Vice-President: And then?

The Honourable Dr. B. R. Ambedkar: Then I accept No. 453 as modified by amendment No. 86, and amendment No. 49 in List I as modified by the amendment of Pandit Thakur Dass Bhargava which introduces the word 'reasonable'.

Now, Sir, coming to the other amendments and the point raised by the speakers in their speeches in moving those amendments, I find that there are just a few points which call for a reply.

With regard to the general attack on article 13 which has centred on the sub-clauses to clause (1), I think I may say that the House now will be in a

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position to feel that the article with the amendments introduced therein has emerged in a form which is generally satisfactory. My explanation as to the importance of article 8, my amendment to the phrase "existing laws" and the introduction of the word "reasonable" remove, in my judgment, the faults which were pointed out by honourable members when they spoke on this article, and I think the speeches made by my friends, Professor Shibban Lal Saksena and Mr. T. T. Krishnamachari and Mr. Algu Rai Shastri, will convince the House that the article as it now stands with the amendments should find no difficulty in being accepted and therefore I do not want to add anything to what my friends have said in support of this article. In fact I find considerable difficulty to improve upon the arguments used in their speeches in support of this article.

I will therefore take up the other points. Most of them have also been dealt with by my friend, Mr. Ananthasayanam Ayyangar and if, Sir, you had not called upon me, I would have said that his speech may be taken as my speech, because he has dealt with all the points which I have noted down.

Now, the only point which I had noted down to which I had thought of making some reference in the course of my reply was the point made by my friend, Professor K. T. Shah, that the fundamental rights do not speak of the freedom of the press. The reply given by my friend, Mr. Ananthasayanam Ayyangar, in my judgment is a complete reply. The press is merely another way of stating an individual or a citizen. The press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of a press, or the manager are all citizens and therefore when they choose to write in newspapers, they are merely exercising their right of expression, and in my judgment therefore no special mention is necessary of the freedom of the press at all.

Now, with regard to the question of bearing arms about which my friend Mr. Kamath was so terribly excited, I think the position that we have taken is very clear. It is quite true and everyone knows that the Congress Party had been agitating that there should be right to bear arms. Nobody can deny that. That is history. At the same time I think the House should not forget the fact that the circumstances when such resolutions were passed by the Congress no longer exist.

Shri H. V. Kamath: A very handy argument!

The Honourable Dr. B. R. Ambedkar: It is because the British Government had refused to allow Indians to bear arms, not on the ground of peace and order, but on the ground that a subject people should not have the right to bear arms against an alien government so that they could organise themselves to overthrow the Government, and consequently the basic considerations on which these resolutions were passed in my judgment have vanished. Under the present circumstances, I personally myself cannot conceive how it would be possible for the State to carry on its administration if every individual had the right to go into the market and purchase all sorts of instruments of attack without any let or hindrance from the State.

Shri H. V. Kamath: On a point of clarification, Sir, the proviso is there restricting that right.

The Honourable Dr. B. R. Ambedkar: The proviso does what? What does the proviso say? What the proviso can do is to regulate, and the term 'regulation' has been judicially interpreted as prescribing the conditions, but the conditions can never be such as to completely abrogate the right of the citizen to bear arms. Therefore regulation by itself will not prevent a citizen who wants to have the right to bear arms from having them. I

question very much the policy of giving all citizens indiscriminately any such fundamental right. For instance, if Mr. Kamath's proposition was accepted, that every citizen should have the fundamental right to bear arms, it would be open for thousands and thousands of citizens who are today described as criminal tribes to bear arms. It would be open to all sorts of people who are habitual criminals to claim the right to possess arms. You cannot say that under the proviso a man shall not be entitled to bear arms because he belongs to a particular class.

Shri H. V. Kamath: If Dr. Ambedkar understands the proviso fully and clearly, he will see that such will not be the effect of my amendment.

The Honourable Dr. B. R. Ambedkar: I cannot yield now. I have not got much time left. I am explaining the position that has been taken by the Drafting Committee. The point is that it is not possible to allow this indiscriminate right. On the other hand my submission is that so far as bearing of arms is concerned, what we ought to insist upon is not the right of an individual to bear arms but his duty to bear arms. (An Honourable Member: *Hear, hear.*) In fact, what we ought to secure is that when an emergency arises, when there is a war, when there is insurrection, when the stability and security of the State is endangered, the State shall be entitled to call upon every citizen to bear arms in defence of the State.' That is the proposition that we ought to initiate and that position we have completely safeguarded by the proviso to article 17.

Shri H. V. Kamath: (rose to interrupt).

Mr. Vice-President: You do not interrupt, Mr. Kamath. You cannot say that I have not given you sufficient latitude.

The Honourable Dr. B. R. Ambedkar: Coming to the question of saving personal law, I think this matter was very completely and very sufficiently discussed and debated at the time when we discussed one of the Directive Principles of this Constitution which enjoins the State to seek or to strive to bring about a uniform civil code and I do not think it is necessary to make any further reference to it, but I should like to say this that, if such a saving clause was introduced into the Constitution, it would disable the legislatures in India from enacting any social measure whatsoever. The religious conceptions in this country are so vast that they cover every aspect of life, from birth to death. There is nothing which is not religion and if personal law is to be saved, I am sure about it that in social matters we will come to a standstill. I do not think it is possible to accept a position of that sort. There is nothing extraordinary in saying that we ought to strive hereafter to limit the definition of religion in such a manner that we shall not extend beyond beliefs and such rituals as may be connected with ceremonials which are essentially religious. It is not necessary that the sort of laws, for instance, laws relating to tenancy or laws relating to succession, should be governed by religion. In Europe there is Christianity, but Chistianity does not mean that the Christians all over the world or in any part of Europe where they live, shall have a uniform system of law of inheritance. No such thing exists. I personally do not understand why religion should be given this vast, expansive jurisdiction so as to cover the whole of life and to prevent the legislature from encroaching upon that field. After all, what are we having this liberty for? We are having this liberty in order to reform our social system, which is so full of inequities, so full of inequalities, discriminations and other things, which conflict with our fundamental rights. It is, therefore, quite impossible for anybody to conceive that the personal law shall be excluded from the jurisdiction of the State. Having said that, I should also like to point out that all that the State is claiming in this matter is a power to legislate. There is no obligation upon the State to do away with personal laws. It is only giving a power. Therefore, no one need be apprehensive

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of the fact that if the State has the power, the State will immediately proceed to execute or enforce that power in a manner that may be found to be objectionable by the Muslims or by the Christians or by any other community in India.

We must all remember—including Members of the Muslim community who have spoken on this subject, though one can appreciate their feelings very well—that sovereignty is always limited, no matter even if you assert that it is unlimited, because sovereignty in the exercise of that power must reconcile itself to the sentiments of different communities. No Government can exercise its power in such a manner as to provoke the Muslim community to rise in rebellion. I think it would be a mad Government if it did so. But that is a matter which relates to the exercise of the power and not to the power itself.

Now, Sir, my friend, Mr. Jaipal Singh asked me certain questions about the Adibasis. I thought that that was a question which could have been very properly raised when we were discussing the Fifth and the Sixth Schedules, but as he has raised them and as he has asked me particularly to give him some explanation of the difficulties that he had found, I am dealing with the matter at this stage. The House will realize what is the position we have laid down in the Draft Constitution with regard to the Adibasis. We have two categories of areas,—scheduled areas and tribal areas. The tribal areas are areas which relate only to the province of Assam, while the scheduled areas are areas which are scattered in provinces other than Assam. They are really a different name for what we used in the Government of India Act as 'partially excluded areas'. There is nothing beyond that. Now the scheduled tribes live in both, that is, in the scheduled areas as well as in the tribal areas and the difference between the position of the scheduled tribes in scheduled areas and scheduled tribes in tribal areas is this: In the case of the scheduled tribes in the scheduled areas, they are governed by the provisions contained in paragraph V of the Fifth Schedule. According to that Schedule, the ordinary law passed by Parliament or by the local Legislature applies automatically unless the Governor declares that that law or part of that law shall not apply. In the case of the scheduled tribes in tribal areas, the position is a little different. There the law made by Parliament or the law made by the local legislature of Assam shall not apply unless the Governor extends that law to the tribal area. In the one case it applies unless excluded and in the other case, it does not apply unless extended. That is the position.

Now, coming to the question of the scheduled tribes and as to why I substituted the word "scheduled" for the word "aboriginal", the explanation is this. As I said, the word "scheduled tribe" has a fixed meaning, because it enumerates the tribes, as you will see in the two Schedules. Well, the word "Adibasi" is really a general term which has no specific legal *de jure* connotation, something like the Untouchables. It is a general term. Anybody may include anybody in the term 'untouchable'. It has no definite legal connotation. That is why in the Government of India Act of 1935, it was felt necessary to give the word 'untouchable' some legal connotation and the only way it was found feasible to do it was to enumerate the communities which in different parts and in different areas were regarded by the local people as satisfying the test of untouchability. The same question may arise with regard to Adibasis. Who are the Adibasis? And the question will be relevant, because by this Constitution, we are conferring certain privileges, certain rights on these Adibasis. In order that, if the matter was taken to a court of law there should be a precise definition as to who are these Adibasis, it was decided to invent, so to say, another category or another term to be called 'Scheduled tribes' and to enumerate the Adibasis under that head. Now I think my friend, Mr. Jaipal Singh, if he

were to take the several communities which are now generally described as Adibasis and compare the communities which are listed under the head of scheduled tribes, he will find that there is hardly a case where a community which is generally recognised as Adibasis is not included in the Schedule. I think, here and there, a mistake might have occurred and a community which is not an Adibasi community may have been included. It may be that a community which is really an Adibasi community has not been included, but if there is a case where a community which has hitherto been treated as an Adibasi Community is not included in the list of scheduled tribes, we have added, as may be seen in the draft Constitution, an amendment whereby it will be permissible for the local government by notification to add any particular community to the list of scheduled tribes which have not been so far included. I think that ought to satisfy my friend, Mr. Jaipal Singh.

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

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

Mr. Vice-President: I shall now put the amendments which have been moved, which number thirty, to the vote one by one. Amendment No. 412.

The question is:

"That for article 13, the following be substituted :—

"12. Subject to public order or morality the citizens are guaranteed—

(a) freedom of speech and expression;

(b) freedom of the press;

(c) freedom to form association or unions;

(d) freedom to assemble peaceably and without arms;

(e) secrecy of postal, telegraphic and telephonic communications.

13-A. All citizens of the Republic shall enjoy freedom of movement throughout the whole of the Republic. Every citizen shall have the right to sojourn and settle in any place he pleases. Restrictions may, however, be imposed by or under a Federal law for the protection of aboriginal tribes and backward classes and the preservation of public safety and peace."

The amendment was negatived.

Mr. Vice-President: Amendment No. 415. I understand it has been accepted by Dr. Ambedkar.

The question is:

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

The amendment was adopted.

Mr. Vice-President: Second part of amendment No. 416. The first part of the amendment has been already blocked as amendment No. 415 has been accepted.

The question is:

"That in clause (1) of article 13, after the words "all citizens shall have" the words "and are guaranteed" be added."

The amendment was negatived.

Mr. Vice-President: Amendment No. 420.

The question is:

"That before sub-clause (a) of clause (1) of article 13, the following new sub-clause be inserted:—

"(a-1) to freedom of thought;"

The amendment was negatived.

Mr. Vice-President: Amendment No. 421.

The question is:

"That in sub-clause (a) of clause (1) of article 13, after the word "expression", the words "of thought and worship; of press and publication;" be added."

The amendment was negatived.

Mr. Vice-President: Amendment No. 422.

The question is:

"That at the end of sub-clause (a) of clause (1) of article 13 the words "both in the Press and the Platform" be inserted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 428.

The question is:

"That at the end of sub-clause (c) of clause (1) of article 13, the words "for any lawful purpose" be inserted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 429.

The question is:

"That in sub-clause (d) of clause (1) of article 13, after the words "move freely" the words "in a lawful manner" be inserted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 430.

The question is:

"That in sub-clause (e) of clause (1) of article 13, after the words "and settle" the words "in a lawful manner" be inserted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 432.

The question is:

"That in sub-clause (g) of clause (1) of article 13, after the words "or business" the words "in a lawful manner" be inserted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 438 as modified by amendment No. 79 of List II.

The question is:

"That for amendment No. 438* of the List of amendments, the following be substituted :—

"That after sub-clause (g) of clause (1) of article 13, the following new sub-clause be added :—,

"(h) to keep and bear arms;"

and the following new clause be added after clause (6) :—

"(7) Nothing in sub-clause (h) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing, in the interests of public order, peace and tranquillity, restrictions on the exercise of the right conferred by the said sub-clause."

The amendment was negatived.

Mr. Vice-President: Amenrment No. 440.

The question is:

"That after sub-clause (g) of clause (1) of article 13, the following new sub-clause be added :—

(h) to follow the personal law of the group or community to which he belongs or professes to belong.

(i) to personal liberty and to be tried by a competent court of law in case such liberty is curtailed."

The amendment was negatived.

Mr. Vice-President: Amendment No. 502.

The question is:

"That after clause (6) of article 13, the following new clauses be added :—

"(7) Nothing in clauses (2) to (6) of this article shall affect the right guaranteed under sub-clause (h) of clause (1) of this article.

"(8) Nothing in the clauses (2) to (6) shall affect the right guaranteed under sub-clause (i) of clause (1) of this article.

"(9) No existing law shall operate after the commencement of this Constitution so far as the same affects adversely the right guaranteed under sub-clause (i) of clause (1) of this article and no law shall be passed by the Parliament or any State which may adversely affect the right guaranteed under sub-clause (i) of clause (1) of this article."

The amendment was negatived.

Mr. Vice-President: Amendment No. 445. I shall explain one thing. Honourable Members will note that I am calling out the amendments in the **order in which they were moved. That is why the numbers are not consecutive. Amendment No. 445.**

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*"That after sub-clause (g) of clause (1) of article 13, the following new sub-clause be added :—

(h) to keep and bear arms in accordance with regulations or reservations made by or under Union Law."

[Mr. Vice-President]

The question is:

"That the following new clause be added after clause (1) of article 13 :—

"Liberty of the person is guaranteed. No person shall be deprived of his life, nor be arrested or detained in custody, or imprisoned, except according to due process of law, nor shall any person be denied equality before the law or equal protection of the laws within the territory of India."

The amendment was negatived.

Mr. Vice-President: Amendment No. 447.

The question is:

"That clauses (2) to (6) of article 13 be deleted and the following proviso be added to clause (1) :—

"Provided, however, that no citizen in the exercise of the said right, shall endanger the security of the State, promote ill-will between the communities or do anything to disturb peace and tranquillity in the country."

The amendment was negatived.

Mr. Vice-President Amendment No. 453 as modified by amendment No. 80 of List IV. I understand it has been accepted by Dr. Ambedkar.

The question is:

"Tha for clause (2) of article 13, the following be substituted :—

"(2) Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to libel, slander, defamation or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State."

The motion was adopted.

Mr. Vice-President: Amendment No. 449.

The question is:

"That after clause (1) of article 13, the following new clause be inserted :—

"(1-A) Nothing in sub-clause (a) shall affect the operation of any existing law or prevent any State from making any law relating to sedition or conspiracy."

The amendment was negatived.

Mr. Vice-President: Amendment No. 450.

The question is:

"That clauses (2), (3), (4), (5) and (6) of article 13 be deleted."

The amendment was negatived.

Mr. Vice-President: The second alternative in amendment No. 451.

The question is:

"That the following words be inserted at the beginning of clauses (2), (3), (4), (5) and (6) of article 13 :—

"Without prejudice and subject to the provisions of article 8."

The amendment was negatived.

Mr. Vice-President: Amendment No. 452.

The question is:

"That clauses (2), (3), (4), (5) and (6) of article 13 be deleted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 458.

The question is:

"That in clause (2) of article 13, after the word "sedition" the words "communal passion" be inserted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 465.

The question is:

"That clauses (3) and (4) of article 13 be deleted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 478.

The question is:

"That clause (5) of article 13 be deleted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 454 as modified by amendment No. 49 of List I. I understand it has been accepted by Dr. Ambedkar.

The question is:

"That with reference to amendment No. *454 of the List of amendments—

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

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

The motion was adopted.

Mr. Vice-President:

The question is:

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

The amendment was adopted.

Mr. Vice-President: Amendment No. 485.

The question is:

"That in clause (5) of article 13, the words "affect the operation of any existing law, or" be deleted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 467.

The question is:

"(1) That in clause (3) of article 13, after the word "restrictions" the words "for a defined period" be added."

I think the 'Ayes' have it.

But before I declare the result finally I must point out that there is some kind of misunderstanding. Let me read the amendment. It was moved by Mr. Syamanandan Sahaya:

"That in clause (3) of article 13, after the word "restrictions" the words "for a defined period" be added."

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*"That in clauses (2), (3), (4), (5) and (6) of article 13, the words "affect the operation of any existing law, or" be deleted."

[Mr. Vice-President]

I definitely remember that several people spoke against it. I am going to put the amendment once again. Amendment No. 467.

The question is:

"(1) That in clause (3) of article 13, after the word "restrictions" the words "for a defined period" be added."

The amendment was negatived.

Mr. Vice-President: I trust that in future, honourable Members will take more care before they give their verdict.

Mr. Vice-President: I put amendment No. 474 to vote.

The question is:

"That in clause (4) of article 13 after the word "restrictions" the words "for a defined period" be added."

The amendment was negatived.

Mr. Vice-President: Amendment No. 476.

The question is:

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

The amendment was adopted.

Mr. Vice-President: Amendment No. 483.

The question is:

"That in clause (5) of article 13, after the words "existing law" the word "which is not repugnant to the spirit of the provisions of article 8" be inserted."

The amendment was negatived.

Mr. Vice-President: I put No. 485 (second part), to vote.

The question is:

"That in clause (5) of article 13, for the word "State" the word "Parliament" be substituted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 489.

The question is:

"That in clause (5) of article 13, the word 'either' and the words 'or for the protection of the interests of any aboriginal tribe' be omitted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 491.

The question is:

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

The amendment was adopted.

Mr. Vice-President: Amendment No. 497.

The question is:

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

The amendment was adopted.

Mr. Vice-President: I put amendment No. 500 to vote.

The question is:

"That after clause (6) of article 13, the following new clause be added:

'(7) The occupation of beggary in any form or shape for person having sound physique and perfect health whether major or minor is totally banned and any such practice shall be punishable in accordance with law.' "

The amendment was negatived.

Mr. Vice-President: The question is:

"That article 13 in the form in which it emerges after the different amendments which have been passed here stand part of the Constitution."

Article 13, as amended, was adopted.

Article 13, as amended, was added to the Constitution.

Article 14

Mr. Vice-President: We come to new article 14.

(Amendment No. 504 was not moved.)

Shri H. V. Kamath: What about 13-A? That is, amendments 89, 90 and 92 of List V.

Mr. Vice-President: That has been held over. I was referring to No. 504.

Now the motion is:

"That article 14 form part of the Constitution."

Honourable Members have been supplied with a list which indicates the manner in which I propose to conduct the proceedings of the House. No. 505 has been disallowed as being verbal. 506 may be moved.

Pandit Thakur Dass Bhargava: May I take the liberty of pointing out that my amendment (No. 505) is not merely verbal? It is an amendment of substance also.

Mr. Vice-President: Then I will give my ruling later on. Mr. Naziruddin Ahmad will carry on his work.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. Vice-President, I beg to move:

"That in clause (1) of article 14, after the words "greater than", the words "or of a kind other than' be inserted."

Sir, clause (1) provides—I am reading only the material part—

"No person shall be subjected to a penalty greater than that which might have been inflicted under the law at the time of the commission of the offence."

It guards against any punishment 'greater than' is provided to be inflicted upon a person. I have attempted to insert after the words 'greater than' the words 'or other than' that which might have been inflicted. There are many cases where a punishment of fine only is provided. Suppose a man is fined one lakh of rupees. An Appellate Court may turn it to an imprisonment during the sitting of the Court. That will violate the provision that where fine alone is provided for, an imprisonment may be substituted on the ground that it is not greater than' that. My amendment seeks to limit the powers of Courts to inflict punishment not only as to the extent but also to the kind. There are different kinds of punishments—fine, imprisonment, whipping, forfeiture and hanging and the like where only a particular kind of punishment is specifically provided, you should not award any punishment other than that. That is in short the effect of this amendment. Where whipping alone is provided, you cannot award a fine. Where fine alone is provided, you cannot award imprisonment or whipping or forfeiture. Where forfeiture of moveables only is provided, you cannot forfeit immovables Where forfeiture of articles relating to which

[Mr. Naziruddin Ahmad]

crime has been committed is provided, you cannot forfeit other kinds of things. So if we leave the powers of the Court as in the clause it gives the Court the power to give any punishment not sanctioned by law. If clause (1) is to be retained, the Court should also be limited to the class of punishment provided. To me it seems that there is here a lacuna—rather oversight which should be corrected.

Mr. Vice-President: As regards amendment No. 505, I can allow the Member to move the second part of it. Pandit Thakur Dass Bhargava.

Pandit Thakur Dass Bhargava: Sir, I beg to move.

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

Sir, if you kindly examine the definition of the expression 'law in force' as given in the explanation under article 307, it would appear that the words 'the law' and the words 'the law in force' have different meanings. Moreover as the words in the previous part of the article also appear as 'law in force', it is very necessary and proper in this juxtaposition that the amendment that I have suggested should be accepted. That is all I have to submit.

Mr. Vice-President: Amendments Nos. 507, 508 and 511 are of the same import. The most comprehensive one, i.e., No. 507, may be moved.

(Amendments Nos. 507, 508 and 511 were not moved.)

Amendments Nos. 509 and 510 are of similar import and may be moved together. They are in the name of Mr. Naziruddin Ahmad.

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

"That at the end of clause (2) of article 14, the words 'otherwise than as permitted by the Code of Criminal Procedure, 1898" be added."

Sir, I am moving these amendments with considerable anxiety in my mind. The first anxiety is that I may perhaps overstep my time limit; the second anxiety is that there are a large number of observant and powerful eyes directed against me and I am afraid that a point of order may be taken at any time; and the third anxiety is the huge 'No' against me will be echoed by honourable Members and this will reverberate as thunder clap under which my feeble 'Aye' will be lost.

Then the other difficulty is that I have to crave the indulgent attention of the Honourable the Chairman of the Drafting Committee to the point I am raising. I shall restrict my point strictly to the limits of relevancy.

Sir, the words which I seek to insert deals with an important principle of criminal procedure. Clause (2) which I seek to amend runs as follows:

"(2) No person shall be punished for the same offence more than once."

A very sacred sentiment has prompted the introduction of this clause; but considered from the point of view of criminal law, it has its loop-holes.

Clause (2) seems to be rather sweeping. There are cases where a man may be legally punished twice for the same offence, and I shall submit the circumstances, with the relevant laws. Sir, the principle which deals with this subject finds a place in section 403, sub-section (1) of the Code of Criminal Procedure. The point is this. The law of punishment twice has been enacted.

Shri T. T. Krishnamachari: Sir, on a point of order. Can any Member of this House move an amendment referring to an enactment made by a legislature subordinate to this House? I am afraid the amendment itself is out of order.

Mr. Naziruddin Ahmad: Anything else may be out of order, but not the amendment. We have already referred to and saved 'existing laws'—enactments of subordinate legislatures in article 9 and in other places. I was only referring for handy consideration to the Criminal Procedure Code. I cannot pretend to submit that Section 403, or any principle embodied in it, or any sound principle even is binding upon this House, not even the soundest of propositions, because this is a sovereign House.

I was submitting for consideration certain principles of the Criminal Procedure, not that I suggested at all that they will be binding on this House, but only that they are worthy of consideration.

Sir, it often happens—I shall submit examples from general principles because I think they would be more acceptable to Mr. Krishnamachari—it often happens that a man is punished by a Court which has no jurisdiction; It is a very ordinary experience in criminal Courts that the Judge on appeal or the High Court or the Privy Council—and now the Federal Court and later on the future Supreme Court—may and does find that the conviction is without jurisdiction. Meantime, the man has been convicted. If you say that he cannot be convicted twice, then orders of re-trial by appellate and revisional Courts would be absolutely out of the question. If a man is tried by a Magistrate or a Court having no jurisdiction, and if he is punished, that is the first punishment.

And then if it is found that the Court had no jurisdiction to try the case, what is often done is that there is a re-trial. But if you enact the principle of clause (2) that a man shall not be punished for the same offence more than once, the effect would be that if a man is punished by a Court of competent jurisdiction but there is a lacuna in the trial, or by a Court of competent jurisdiction, the result will be to shut out any further trial at all. A re-trial after a conviction is an ordinary incident of daily experience in criminal Courts.

Sometimes, Sir,.....

(After a pause)

Sir, I desire to monopolise the attention of the Honourable Member the Chairman of the Drafting Committee; otherwise it will be useless to argue. If he says "No", the whole House will echo him.

Mr. Vice-President: Dr. Ambedkar, Mr. Naziruddin demands your wholehearted attention. He says that if you say "No", the House will say "No". (*Laughter*).

Mr. Naziruddin Ahmad: The point which I was submitting is a point of general importance. The point is that if a man is convicted by a court of law —that is the first conviction—it may be that there is some lacuna in the trial. The accused appeals to the Court of Sessions. The Court finds that there was a lacuna in the trial or that the Court had no jurisdiction. But it may order a re-trial. Clause (2) which would effectively prevent further trial because it may involve a second conviction. There may be a first conviction of an offender in the hands of a Court, and this clause will effectively prevent a re-trial order by a superior court. This is one of the simplest examples. The principle should be not merely *convicted*, but the principle should be that a man cannot be *tried* again, tried twice, if he is acquitted or convicted by a Court of competent jurisdiction, while the conviction or acquittal stands effective. In fact, it is not the first conviction that is important; it is the ultimate legality and finality of the conviction that has to be respected; the finality should attach not only to conviction but also to acquittal. What are you going to do with regard to a person who is finally acquitted *after a fair*

[Mr. Naziruddin Ahmad]

trial, and when the acquittal is not set aside and is therefore final and binding? You say nothing about that. You simply say that a man should not be convicted twice for the same offence. A man acquitted shall also not be liable to be tried again. You say nothing about that but confine your attention to the bogey of double punishment. I submit that the so-called theory of double punishment is not all and does not give a complete picture. Take for example, a man fined Rs. 50 for an offence by a Magistrate having no jurisdiction; then he appeals to an appellate Court. The appliate Court will, by virtue of clause (2), be precluded from sending it for re-trial on any technical ground, even on the ground that the Court had no jurisdiction.

The relevant section which caused some amount of suspicion in the mind of a distinguished Member of the House, Mr. T. T. Krishnamachari, I shall with his permission and with your permission, Sir, and with the permission of the House, read. Not that it is binding, but it is a crystallised wisdom which has been handed down to us from generation to generation. Sub-section (1) of section 403 says:

"A person who has been once tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence, shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence".

I think, Sir, this is the proper form. It may be argued that the Criminal Procedure Code is a sufficient safeguard against injustice, but if you introduce it here it is a justiciable right, and we have already provided that any violation of any fundamental right is justiciable and would nullify all existing laws contrary, and therefore it will have the effect of abolishing or rather nullifying the wholesome law as laid down in sub-section (1) of section 403. I submit that the clause has got to be very carefully considered and, if necessary, should be re-drafted.

I submit that double punishment for the same offence in such cases does not in fact work injustice. What happens in such cases is that the punishment already suffered or inflicted is taken into account or adjusted in giving the final punishment in a re-trial. That is the effect of this amendment.

Mr. Vice-President: Do you intend to move amendment No. 509?

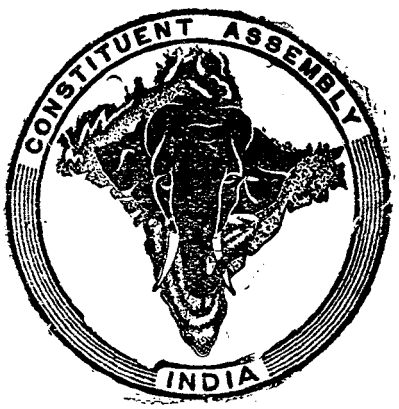
Mr. Naziruddin Ahmad: No, Sir. It deals with the same principle and I do not wish to move it.

Mr. Vice-President: I have found from the last two days' experience that 9.30 A.M. is too early an hour for many Members of the House. They seem to think that others will come at the proper time and they need not come with the result that there is difficulty in starting our work at the proper time. I have therefore decided that from tomorrow we shall start at 10 A.M. and break up at 1-30 P.M.

The Assembly then adjourned till Ten of the Clock on Friday the 3rd December, 1948.

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1948

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

Friday, the 3rd December 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.

STATEMENT *RE.* EIRE ACT

Mr. Vice-President (Dr. H. C. Mookherjee): When our Prime Minister laid before the House the conditions which govern the entry, or rather, the withdrawal of Ireland from the United Kingdom, there were a few Members ... ... (*Interruption*).

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): May I say something on this, Sir?

Mr. Vice-President: Yes.

The Honourable Pandit Jawaharlal Nehru: I merely wish to state that I have placed on the Table of the House a telegram that I have received from the Foreign Minister of Eire. In the course of some discussion, I remember—I forget who it was—when an honourable Member wanted to have a copy of the new Bill which is being considered by the Irish Parliament, I said I would enquire. I asked for it by telegram; we do not have it here. We have been informed that the actual Bill is coming by air mail, but by telegram they have sent us the text of the Bill which is a very short one, four or five Sections of a line each. That is laid on the Table of the House for such Members as wish to see it.

Shri S. V. Krishnamurthy Rao (Mysore State): Will you please have it cyclo-styled and circulated to all members?

The Honourable Pandit Jawaharlal Nehru: No, Sir. I object. The telegram is laid on the Table and members can see it.

Mr. Vice-President: Before we begin the business of the House, I would like to inform honourable Members that I have received a letter from our President informing me that he is making rapid improvement and that it is very likely that he will be able to resume his duties from the 27th. He has expressed his regret on account of his inability to preside over the deliberations of this House and I have informed him already that we are fully aware of the circumstances which are responsible for his absence. I understand from the papers that he reaches his 64th year today. May I, with the permission of the House, send him our congratulations and at the same time assure him how much we feel his absence? In this connection, I shall also tell him that though I am fully aware of my many lapses from the technicalities of parliamentary practice, I have been able to carry on so far with the goodwill of the House.

Honourable Members: Certainly.

DRAFT CONSTITUTION—*contd.*

Article 14—contd.

Mr. Vice-President: We shall now resume discussion of article 14. Amendment 510 was moved. 509 will be put to vote. So we next come to 512.

Kazi Syed Karimuddin (C. P. & Berar: Muslim): Mr. Vice-President, Sir, I beg to move—

That in article 14, the following be added as clause (4):—

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

This is a very important amendment. You will be pleased to find that this finds place as article 4 in the American Constitution and in the Irish Constitution there are clauses (2) and (5) which are similar and in the German Constitution there are articles 114 and 115 on the same lines. In the book of Dr. Ambedkar—Minorities and States—on page 11, item No. 10, a similar provision has been made. Thus, this is an amendment, the correctness of which cannot be challenged. What is the situation in India today? In India, in parctically every province, there are Goonda Act and Public Safety Act which do not provide for any appeals or representations, and which give no opportunity to the persons concerned to defend themselves. Arrests are made without warrant and searches without justification. We are being governed by lawless laws and there is no remedy for the redress of grievances on account of unauthorised arrests and searches.

We have seen in 1947, and in the beginning of 1948, that hundreds of thousands of people were arrested and houses were searched merely on suspicion. The result is that the morale of the members of the Muslim minority community was undermined and they were treated just like criminals in the country. I will give the house one very important instance. Whenever we went to an aerodrome to go to Delhi, our belongings were searched without any reason, without any cause and without any warning. I will now give another instance. When there was police action in Hyderabad, every Muslim worth the name was arrested without any justification in the adjoining provinces. If those Muslims were really traitors they ought to have been prosecuted, punished and hanged. But people who had nothing whatever to do with Hyderabad were arrested under the pretence that they were taken only under protective custody. Well, if they were taken under protective custody, why were their women and children who were outside not taken under this protective custody?

Therefore my submission is that unless this fundamental right that I have asked for in this amendment is guaranteed, there will be no end to these arrests without warrants and to these searches without justifications. I have moved this amendment in the earnest hope that it would be accepted.

Mr. Vice-President: The next amendment in the List is the one standing in the name of Mr. Kakkan.

Shri P. Kakkan (Madras: General): Sir, I do not want to move it. But, with your permission I wish to speak on it.

Mr. Vice-President: That I cannot permit. I can give the honourable Member an opportunity to speak in the course of the general discussion on

article 14. I think, as there are no other amendments to this article, the House can now take up the general discussion of this article. Mr. Kakkan may now make the speech he wanted to.

Shri P. Kakkan: Mr. Vice-President, I had given notice of an amendment to this article only with a view to speak on it.

Sir, what I have got to say concerns the jail administration. In the jails they make a distinction between prisoners and prisoners in allotting duties in the jails. If a prisoner belongs to the Harijan community he is compelled to do scavenging work, no matter what his class or rank or education is. Prisoners belonging to other communities are not similarly forced to do scavenging work. On this occasion I desire to express my opinion and my feeling that this distinction in the matter of the allotment of work to prisoners inside the jails should be removed forthwith. Sir, I know from experience that the members of the Harijan community are treated in jails very cruelly, as if they are God's creatures and that He created them for doing scavenging work. I earnestly hope that this distinction will be removed hereafter and that Harijans will get impartial treatment everywhere. It is with this object that I have stated in my amendment that no person convicted for any offence shall be compelled to work in jail (*castewar*) in respect of religion, caste, race or class. I thank you, Sir, for giving me this opportunity to speak.

Shri T. T. Krishnamachari (Madras: General): Mr. Vice-President, Sir, the point I have to place before the House happens to be a comparatively narrow one. In this article 14, clause (2) reads thus: 'No person shall be punished for the same offence more than once'. It has been pointed out to me by more Members of this House that this might probably affect cases where, as in the case of an official of Government who has been dealt with departmentally and punishment has been inflicted, he cannot again be prosecuted and punished if he had committed a criminal offence; or, *per contra*, if a Government official had been prosecuted and sentenced to imprisonment or fine by a court, it might preclude the Government from taking disciplinary action against him. Though the point is a narrow one and one which is capable of interpretation whether this provision in this particular clause in the Fundamental Rights will affect the discretion of Government acting under the rules of conduct and discipline in regard to its own officers, I think, when we are putting a ban on a particular type of action, it is better to make the point more clear.

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

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

Honourable Members: Yes.

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

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, with regard to the amendments that have been moved to this article, I can say

[The Honourable Dr. B. R. Ambedkar]

that I am prepared to accept the amendment moved by Mr. T. T. Krishnamachari. Really speaking, the amendment is not necessary but as certain doubts have been expressed that the word 'punished' may be interpreted in a variety of ways, I think it may be desirable to add the words "prosecuted and punished".

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

Mr. Naziruddin Ahmad: It is No. 510.

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

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

An Honourable Member: It was not moved.

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

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

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

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

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

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

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

The amendment was adopted.

Mr. Vice-President: Amendment No. 506. The question is:

"That in clause (1) of article 14, after the words "greater than" the words "or of a kind other than" be inserted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 510. The question is:

"That at the end of clause (2) of article 14, the words 'otherwise than as permitted by the Code of Criminal Procedure, 1898' be added."

The amendment was negatived.

Mr. Vice-President: Amendment No. 512 moved by Kazi Syed Karimuddin and accepted by Dr. Ambedkar. The question is:

That in article 14, the following be added as clause (4):—

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

I think the 'Ayes' have it.

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

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

I think the 'Ayes' have it.

Shri T. T. Krishnamachari: No, Sir, the Noes have it.

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

(The Division Bell was rung.)

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

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

The Honourable Pandit Jawaharlal Nehru: Mr. Vice-President, Sir, as apparently a slight confusion has arisen in many members' minds on this point, I think, Sir, that the suggestion made is eminently desirable, that we might take up this matter a little later, and we may proceed with other things. It will be the wish of the House that will prevail. of course. I would suggest to you, Sir, and to the House that your suggestion be accepted.

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

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

Honourable Members: Yes.

Article 15

Mr. Vice-President: Then we shall pass on to the next article. The next amendment is No. 514 but as Mr. Lari is absent, I shall pass on to the next article.

Shri T. T. Krishnamachari: May I suggest that discussion of this article be postponed, as it is being examined and the Members of the House would like to take some more time for the consideration of this particular article?

Article 15-A

Mr. Vice-President: Very well: Then I pass on to article 15-A (New article). Amendment No. 534 seeks to rule out capital punishment. I think it is blocked in view of the fact that a similar amendment was put to vote and rejected.

(Amendments Nos. 535 and 536 were not moved.)

Article 16

Mr. Vice-President: The motion before the House is that article 16 form part of the Constitution.

An Honourable Member: What about article 15?

Mr. Vice-President: Article 15 has been held over—Honourable Members must have been inattentive not to hear the suggestion made by Mr. T. T. Krishnamachari and accepted by the Chair. Amendment No. 537 I rule out of order as it is a negative amendment.

(Amendments Nos. 538, 539 and 540 were not moved.)

Amendment No. 542 is already covered by the provision relating to ban on cow-killing passed by the House previously.

Shri C. Subramaniam (Madras: General): Mr. Vice-President, Sir, I find some difficulty in accepting this article as an article coming under fundamental rights. The article reads: "Subject to the provisions of article 244 of this Constitution and of any law made by Parliament, trade, commerce and intercourse throughout the territory of India shall be free." Before referring to the difficulty, which I feel, I will refer the House to the sections in the Draft Constitution which deals with trade and commerce.

There are three articles 243, 244 and 245 which deal with this subject 'inter-state trade and commerce' in the body of the Draft. Then in the list of legislative powers in the Union list, we find in article 73 "inter-state trade and commerce subject to the provisions of entry 33 of List No. II". Then item 32 in List II is "trade and commerce within the state; markets and fairs"; and item 33 refers to the "regulation of trade, commerce and intercourse on other States for the purposes of the provisions of article 244 of this Constitution." Therefore, you will find inter-state trade and commerce, subject to article 244, is a Union subject. Parliament can deal with it. Trade and commerce within the state and inter-state commerce as provided in article 244 are given to the State Legislatures. You will find, Sir, that in article 244, even though it might be inter-state trade and commerce, the State Legislature is given certain powers to impose certain taxes and impose certain restrictions. Having this in mind, if we come to article 16, we find the words "subject to the provisions of article 244 of this Constitution", that is, even in respect of inter-state trade and commerce, the State Legislature has been given certain powers and that is not touched by this article. Therefore leaving that, the article would read "subject to the provisions of any law made by Parliament, trade and commerce and intercourse through the territory of India shall be free". I really fail to understand how this can be a fundamental right and whether there is any right at all reserved. The very conception of a fundamental right is that there is a certain right taken out of the province of the legislature either of the Union or of the State. To put it in other words, the sovereignty vests in the public, but that sovereignty is delegated to the legislatures or the sovereignty is expressed through the legislatures in respect of certain subjects.

But, in respect of certain fundamental rights we say the Parliament or the Government shall have no power of interference. So much so, the

sovereignty of the people is absolute in that respect. It is neither delegated, nor is anybody else authorised to deal with that sovereignty. If we examine this article in that view, what is the residue of right left which could not be touched either by the legislature of the Union or by the legislature of the State ? You find stated here, "Subject to the provisions of any law made by Parliament, trade, commerce and intercourse throughout the territory of India shall be free". Here, the sovereignty of the Parliament is absolute. There is no right which is taken out of the province of the legislatures. The right which is reserved here as a Fundamental right should be one, which neither the Union Legislature nor the State Legislature can touch. There is no such right left here. Mind you, here the wording in article 16 is, 'Subject to any law made by Parliament' without any limitation whatsoever. So much so, it comes to this: there shall be free trade throughout the territories of India, subject to the powers of Parliament. I respectfully submit that that would not be a fundamental right.

I know there are certain friends of mine who think that the vesting of powers in the Parliament as against the State itself is a fundamental right. That was what was expressed by certain friends. If that logic is extended to its conclusion, all the subjects dealt with in List I would be fundamental rights ! : That is not the case. The very conception of a fundamental right is that neither the Parliament, nor the State legislatures shall have power to interfere. Here, you make the Parliament sovereign. Only subject to the powers of Parliament, there shall be free trade, commerce and intercourse throughout the territories of India. I find it difficult to see what is the right which has been taken out of the province of the legislatures, either the Parliament or the State legislatures, and which has been reserved here as a fundamental right. It may be all right to say that in respect of free trade, only the Parliament shall have power. That is allocation of administrative powers or legislative powers between the Union legislature and the State legislature. Certainly that is not a fundamental right. As one of my friends pithily put it, it is a fundamental right in favour of the Parliament; it is not a right in favour of any citizen or class of citizens. In these circumstances, I wish the honourable Mover, though I find him preoccupied with other things, —I do not know whether he has followed my speech—to explain how this comes under the Chapter on Fundamental Rights, and what is the right reserved.

Mr. Vice-President: May I suggest, Mr. Subramaniam, that you make a definite suggestion so that Dr. Ambedkar may be in a position to reply ?

Shri C. Subramaniam: The definite suggestion is this. For the sake of Dr. Ambedkar, I shall state my point again. My complaint in regard to article 16 is this. There is no right which has been taken out of the province of the legislature, either of the Union or of the States, to say that a fundamental right has been reserved in article 16. Because, you will find it is stated here, "Subject (leaving alone reference to article 244) to the provisions of any law made by Parliament, trade and commerce and intercourse throughout the territory of India shall be free". You see the right is subject to any law made by Parliament without any restrictions whatsoever. You have secured the sovereignty of the Parliament in respect of this subject, and Parliament can do anything. To be a fundamental right, it should have been taken out of the province of the legislatures, either of the Union or of the States. I find there is left no residue of any right which could not be touched either by Parliament or by the State legislature and as such, it would not properly come under the Chapter on Fundamental Rights. It may be a matter of allocation of powers between the Parliament and the State legislatures in saying that the Parliament alone shall deal with subjects relating to free trade within the territories

[Shri C. Subramaniam]

of India. We can as well put in entry 73 of List I. You can also make some restriction in entries 32 and 33 of List II, that it shall be subject to matters relating to free trade in India. I would request the Honourable mover, to enlighten me whether, as a matter of fact, there is any right left which has been taken out of the province of the legislatures and the Government and whether it will be proper to have article 16 here, in this chapter dealing with fundamental rights.

The Honourable Shri K. Santhanam (Madras: General): Sir, the only way to test whether article 16 is necessary is to find out the consequences of deleting article 16. Suppose article 16 is not there, what will happen? According to the lists in the schedule, the Centre will have the right to legislate on all matters of trade between the various provinces, and according to article 243, no province can make any discrimination against any province or State. According to article 244, there can be no discrimination taxation. According to article 244 (b), every State (this includes every provincial legislature) will have the right to impose by law such reasonable restrictions on the freedom of trade, commerce or intercourse with that State as may be required in the public interests. Therefore, each provincial legislature and each State legislature will have the right to impose restrictions on the freedom of trade, commerce or intercourse. Supposing a variety of restrictions are imposed by all the legislatures and it is found desirable to rationalise them, to bring them into some kind of uniformity, there will be no power vested in any agency. Article 16 gives that power to the Parliament. It cannot interfere with the provincial jurisdiction so far as trade and commerce are concerned within that particular province.

Shri C. Subramaniam: That authority is provided for in article 245.

The Honourable Shri K. Santhanam: Article 245 says: "Parliament may by law appoint such authority as it considers appropriate for the carrying out of the provisions of articles 243 and 244 of this Constitution and confer on the authority so appointed such powers and such duties as it thinks necessary". This is only for the purpose of regulation; it does not provide any legislative power for any co-ordination, correlation or standardisation of all the restrictions that may be imposed by the various legislatures, and therefore, that power is contained in article 16. Mr. Subramaniam asks, then it means that the whole power is taken out of the hands of the province. I say, it is not.

Shri C. Subramaniam: My point is this: A fundamental right is not a question of conferring power on Parliament or on the State legislature; it is taking away both from the Union Parliament and from the State legislature; that alone is a fundamental right. Fundamental rights do not deal with allocation of powers at all.

The Honourable Shri K. Santhanam: I do not think Mr. Subramaniam is correct. A fundamental right may consist of this provision that the State legislature shall not interfere in one matter and that that matter can be interfered with only by Parliament; or a fundamental right may be that the Parliament shall not interfere with a matter and only the State legislature may do it. Distribution of powers and the consequent results on the citizens are as much matters of fundamental rights which accrue to the individual. If all the clauses on fundamental rights are scrutinised you will find that in many cases, we have made provision that in this matter, the Parliament may interfere, but the State legislature may not interfere. Therefore, I think that in the interests of freedom of trade, article 16 is absolutely essential and without article 16, the whole structure may become so complicated that almost fancy restrictions and fancy laws may be made by the provincial legislatures, and the internal trade

of India may become clogged and obstructed. Therefore, I suggest that article 16 should continue.

Shri M. Ananthasayanam Ayyangar: (Madras: General): Sir, I do not find any inconsistency nor do I find article 16 unnecessary. I agree with my friend Mr. Subramaniam that if there is nothing left and the whole sphere of inter-state commerce can be regulated either by the States concerned or by the Parliament, there is no need for Fundamental right but I do not agree that there is nothing left as he expects or as he is afraid. Some rights of freedom of speech etc. are given under article 13. Article 16 ensures freedom of trade, commerce and intercourse throughout the territory of India. That is the Fundamental Right. Exceptions are made under article 244 in favour of the States and of any law made by Parliament under the other article. So far as laws made by Parliament are concerned, Parliament can act only in so far as certain powers are conferred on it under list I. So far as the States are concerned they can come under list II. Entry No. 32 in the State List refers to trade and commerce within the States. Now so far as trade and commerce within the State is concerned, it is the exclusive jurisdiction of the States. I am only giving an instance as to why this article is necessary in the Chapter on Fundamental Rights.

In my presidency there are two districts; one is in the north and the other is in the south, growing cotton, one is in the Andhra and the other is in the Tamil Nad. Today the district in the south is a progressive district and it has a number of cotton mills and is utilising all cotton and is sending out yarn and cloth to other parts of the Presidency. There is a move in the northern district which grows cotton to establish certain spinning mills. We will assume that the Madras Government tries to impose certain restrictions and says that the new spinning mill that is going to be established in Cuddappah shall not send any of its yarn to any of the districts which have been already served by the Coimbatore mills. There is absolutely no provision here which prevents this. Unless a proviso is given to that extent, there is nothing preventing any State or any particular State making discrimination between one district and another. Under article 243 we cannot make any distinction between one state and another. But within the State itself there is nothing preventing a State from exercising its right by way of discrimination. There is a possibility. Let us take Bombay Presidency. Ahmedabad has got textile mills. Bombay also has got some mills. Now it is open to the legislature to prevent, as it is, the Southern portion of the Bombay Presidency from developing its resources altogether by imposing a restriction that it shall not send any of its produce or products to any other part of the Bombay Presidency.

Shri C. Subramaniam: May I point out it is covered by 13(g)?

Shri M. Ananthasayanam Ayyangar: 13 (g) says:—

"to practice any profession or to carry on any occupation, trade or business."

You are allowed to carry on an occupation by manufacturing this but it is not as if you can carry on a business irrespective of any other consideration.

Pandit Lakshmi Kanta Maitra (West Bengal: General): It deals with commerce and intercourse.

Shri M. Ananthasayanam Ayyangar: It deals with commerce and trade and there is a third word 'intercourse' also. I am coming to it. So far as commerce and trade is concerned I beg to submit that it is not covered by article 13(g). Let us now refer to sub-clause (6) which says—

"(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing in the interests of public order, morality or health, restrictions on the exercise of the right conferred by the said sub-clause and in particular prescribing or empowering any authority to prescribe, the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business."

[Shri M. Ananthasayanam Ayyangar]

But it does not mean that you can impose any sort of restriction. It comes under clause (g). It comes under clause (6) of article 13 and therefore there is necessity for an independent clause like article 16, which gives to every man freedom of trade, commerce and intercourse throughout the length and breadth of India.

As regards the word 'intercourse' also, apart from trade and commerce, for various purposes intercourse from one province to another is necessary. That is also not provided for in the Fundamental rights either in article 13 or elsewhere.

Shri C. Subramaniam: That is purely the province of the Parliament.

Shri M. Ananthasayanam Ayyangar: With reference to States, what happens?

Shri C. Subramaniam: You cannot discriminate.

Mr. Vice-President: I am afraid there is a lot of infringment of Parliamentary procedure and of irregularity among people who have more experience than I have.

Shri M. Ananthasayanam Ayyangar: Article 243 says—

"No preference shall be given to one State over another nor shall any discrimination be made between one State and another by any law or regulation relating to trade or commerce, whether carried by land, water or air."

This prevents discrimination between one State and another State. There is no article here which says that you ought not to discriminate between one part of a State and another part of the State. This is also covered by article 16; I beg to submit, Sir, that so far as discrimination between one area of the State and another is concerned there is no provision: and if not for any other reason, at least for this, this article is necessary.

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

Now, I quite appreciate the argument that this article 16 is out of place in the list of fundamental rights, and to some extent, I agree with Mr. Subramaniam. But I shall explain to him why it was found necessary to include this matter in the fundamental rights. My Friend, Mr. Subramaniam will remember that when the Constituent Assembly began, we began under certain limitations. One of the limitations was that the Indian States would join the Union only on three subjects—foreign affairs, defence and communications. On no other matter they would agree to permit the Union Parliament to extend its legislative and executive jurisdiction. So he will realise that the Constituent Assembly, as well as the Drafting Committee, was placed under a very serious limitation. On the one hand it was realised that there would be no use and no purpose served in forming an All-India Union if trade and commerce throughout India was not free. That was the general view. On the other hand, it was found that so far as the position of the States was concerned, to which I have already made a reference, they were not prepared to allow trade and commerce throughout India to be made subject to the legislative authority of the Union

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

With regard to the other argument, that since trade and commerce have been made subject to article 244, we have practically destroyed the fundamental right, I think I may fairly say that my friend Mr. Subramaniam has either not read article 244, or has misread that article. Article 244 has a very limited scope. All that it does is to give powers to the provincial legislatures in dealing with inter-state commerce and trade, to impose certain restrictions on the entry of goods manufactured or transported from another State, provided the legislation is such that it does not impose any disparity, discrimination between the goods manufactured within the State and the goods imported from outside the State. Now, I am sure he will agree that that is a very limited law. It certainly does not take away the right of trade and commerce and intercourse throughout India which is required to be free.

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

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

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

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

The question before us is that:—
Article 16 stand part of the Constitution.

The motion was adopted.

Article 16 was added to the Constitution.

Article 17

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

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

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

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

(Interruption by Mr. Kamath.)

[Mr. Vice-President.]

Yes, Mr. Kamath, you are observing that there are other amendments?

Shri H. V. Kamath (C. P. and Berar: General): Yes, Sir. No. 544.

Mr. Vice-President: But I have not called out that. I was dealing with No. 543, and amendment No. 93 to amendment No. 543.

Shri H. V. Kamath: But Sir, that has not been moved. How can an amendment to that amendment be moved or even called?

Mr. Vice-President: Are you pointing out my mistake? Have I not already confessed that I am innocent of all these rules? Is it necessary to rub it in every time, Mr. Kamath?

Now, we come to amendment No. 544, standing in the name of Kazi Syed Karimuddin.

Shri H. V. Kamath: I do not in the least presume to advise you, Sir.

Kazi Syed Karimuddin: Mr. Vice-President, Sir, I move:

That for article 17, the following be substituted:

"17. Neither slavery nor involuntary servitude such as *begar* except as a punishment for crime shall exist within the Union State."

Sir, there is not much of a change in the amendment I am moving. But article 17(1) does not cover cases in which prisoners are asked to work, a prisoner is asked to work against his own free will. If this article is allowed to remain as it is, then the jail authorities will not be allowed to take work from the prisoners. Therefore I have mentioned the words "except as a punishment for crime". I may point out that such an article finds a place in the American Constitution also.

Mr. Vice-President: Amendment No. 545. Shri Damodar Swarup Seth.

Shri Damodar Swarup Seth (United Provinces: General): Sir, I move:

"That the following words be added at the beginning of clause (1) of article 17:—

'*Servitude and serfdom in all forms as well as*'."

I do not think this is a point on which one is required to speak at length. I will therefore, only like to submit that in some States serfdom and servitude in some form or another prevails. Moreover, in the South customs like devadasis have taken root.

Pandit Lakshmi Kanta Maitra (West Bengal: General): What is serfdom as distinguished from servitude?

Mr. Vice-President: The Honourable Member wants to know from you what is the meaning of serfdom.

Shri Damodar Swarup Seth: It is a form of servitude or I may say, 'slavery' that prevails in States.

Mr. Vice-President: Probably it is his idea with respect to this distinction between serfdom and servitude.

The next three amendments are Nos. 546, 547 and 548, of which the most comprehensive is No. 546, standing in the name of Prof. K. T. Shah.

Prof. K. T. Shah (Bihar: General): Sir, I move:

"That in clause (1) of article 17, for the words 'Traffic in human beings and *begar*', the words 'Traffic in human beings or their dedication in the name of religion to be Devadasis or be subject to other forms of enslavement and degradation and *begar*' be substituted."

In commending this motion I should like to point out that by "Traffic in human beings" I understand the possibility of buying and selling, as if these human beings were chattels, and as such ought to be prohibited. The

common understanding interprets these words to mean slavery as it was practised in olden countries, and, until recent times, even in the so-called civilized countries of Europe or America. It is but right that such traffic should be abolished.

But the traffic in human beings is not confined only to what was known as slavery in recent times. It happens,— and perhaps it happens on a much larger scale than innocent Members of this House may be aware—in what is known as White Slave traffic, namely, the buying and selling of young women for export or import, from one set of countries to another; and their permanent enslavement or servitude to an owner or proprietor of the establishments of commercialised vice probably for life.

This is covered no doubt by ordinary forms of legal contract, where the contracting parties are presumed to be free agents. How far such legal contracts are truly lawful if interpreted in the spirit of the law, I cannot say. But that these contracts offend very much against the common sense of all civilized humanity, I am prepared to assert.

Accordingly, I would like it very clearly to be understood by this amendment that "traffic in human beings" does not consist only of buying and selling of what were formerly known as slaves: but also this new type of slavery which in effect is a very large scale commercialised vice that the so-called civilized countries have popularised, or, may I say, have made an industry of.

This may not perhaps have been in the minds of the draftsmen of this clause. But I think the House would do well to bear it in mind, and to accept this amendment by which such a practice would be perfectly clearly and expressly prohibited.

I have, no doubt, worded my amendment with reference to a particular form of slavery which prevails in this country to a large extent, namely, dedication, in the name of religion, of young women to be *Devadasis*, and as such devoted to immoral traffic almost from an immature age. This also I think ought to be stopped. The name or cloak of religion should not help all those who indulge in such traffic; and the Constitution should make no bones about prohibiting this, if I am right in reading the spirit of this article which would prohibit all kinds of traffic in human beings.

Forced labour is no doubt an evil; and the peculiar form of it, which is known by the word "begar", that is to say of compulsory work without payment, and work at command, should also be stopped. But more than anything else, I would like by this amendment to emphasize this highly immoral, and; I was going to say, inhuman traffic, which prevails on a very large scale, much larger than perhaps the House realizes, and as such I commend this amendment to the House.

Mr. Vice-President: Amendment No. 547.

Shri B. Das (Orissa: General): Sir, I do not move but I wish to speak.

Mr. Vice-President: I cannot allow you to speak. Do you want that it should be put to the vote?

Shri B. Das: No Sir, I do not move. Could you not allow me to say a word?

Mr. Vice-President: I cannot because that will create a general flutter in the House. You will have to take your chance.

Mr. Vice-President: Amendment No. 548.

Giani Gurmukh Singh Musafir (East Punjab: Sikh): Sir, my amendment reads:

"That in clause (1) of article 17, after the words, 'human beings' the words 'including prostitution' be inserted."

Mr. Vice-President: Do you want to move it?

Giani Gurmukh Singh Musafir: *[I merely want to say something.

Mr. Vice-President: I cannot say that every Member who has sent in an amendment would find time to speak. I must make this clear, because we have to hurry.

(Amendments 549, 550 and 552 were not moved.)

Amendment No. 551: This is a verbal amendment and therefore it is disallowed.

(Amendment 553 was not moved.)

Amendment No. 554: This is a verbal amendment and therefore it is disallowed.

Amendments Nos. 555, 558 and 560 are to be considered together. I can allow No. 555 to be moved.

Shri Jaspat Roy Kapoor (United Provinces: General): I am not moving amendment No. 555.

Sardar Bhopinder Singh Man (East Punjab: General): Mr. Vice-President, Sir, I move—

"That in clause (2) of article 17, after the words "caste or class" the words "and shall pay adequate compensation for it" be inserted."

Sir, with the addition of my amendment clause (2) will read thus:

"Nothing in this article shall prevent the State from imposing compulsory service for public purposes and shall pay adequate compensation for it."

Begar is a sort of forced work from labourers and we have sought to abolish it and prohibit it in the country. The idea is that the worker should not be made to work against his will, but however an exception is made that the State can impose compulsory service for public purposes. Now, supposing the State requires any property and deprives any citizen of it, there is the accepted principle that it shall pay compensation, adequate price, for it. Similarly, when the State deprives a worker of his labour, (and I believe his labour is his property for the labourer) then I want that the State should pay compensation for it.

Shri H. V. Kamath: Mr. Vice-President, Sir, I beg to move—

"That in clause (2) of article 17, for the word "public" the words "social or national" be substituted."

At the outset, may I just say that the non-English word in this article—*begar*—has nowhere been defined and it will be better if we define it somewhere in the Constitution, if not in this article itself. Now, coming to the amendment, to my mind the word "public" does not bring out the meaning or significance of the purport of clause (2) of this article as much as the word "social" or "national" will. We all know that the services of the State—Government services—are referred to as "public services", but "national service" or "social service" has got a wider and a higher, a more comprehensive connotation than the word "public service". I remember very well that during the proceedings of the National Planning Committee, which was brought into being by Netaji Subhas Chandra Bose and presided over by Pandit Jawaharlal Nehru and to which my friend Prof. K. T Shah rendered yeoman service for a period of well over three or four years, in that report it was suggested that all citizens should be conscripted for some social service; and Pandit Nehru when speaking on this subject went to the length of saying that no student should be awarded his academic

*[ ] Translation of Hindustani Speech.

degree unless and until he puts in six months or a year of some kind of social service. The word used there was "social service", not "public service". The word "national" has got even a still higher connotation than the word "social". My friend Dr. Ambedkar yesterday referred to this type of national service. When there is a war; when there is an emergency; when the stability of the State is threatened; when there is an insurrection; then in particular the question of national service will arise and then also will arise, as he referred to yesterday, the duty of the citizens to bear arms. In these cases, I say there must be conscription, I do not mean for military service only but for some kind of service in the national cause. Even conscientious objectors must be asked to do some kind of service, though not necessarily to bear arms and go to the front line.

Here, I would also suggest that not merely there should be no discrimination of religion, race, caste or class, but there should be no discrimination of sex either. In this connection, however I would like to sound a note of caution and that is, against the unqualified enforcement of the duty to bear arms. The duty to bear arms, to my mind, without the corresponding right to bear arms, is one of the characteristics of a totalitarian State, a police raj or a military dictatorship, and not of a democratic State which the Preamble says our future India is going to be. The enforcement of the duty to bear arms is only the outward expression of the idea or doctrine of "dying" for the State. We must die for the State. The expression of this doctrine is the duty to bear arms. But every citizen has a higher duty to perform, and that is to "live" for the State—live for the State, and not merely die for the State—and this doctrine of "live for the State" is connected with the right to bear arms.

In the end I suggest that clause (2) of this article may be re-worded, and for the word "public service" the words "social or national" should be substituted. I would have had no objection if they had said just "public service", but "service for public purposes" is hardly appropriate, and to my mind the significance and meaning of this clause would be better expressed if we say that "nothing in this article shall prevent the State from imposing compulsory service for social or national purposes". Sir, I move.

(Amendment No. 557 was not moved.)

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move—

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

This, Sir, is a very small, but in my opinion, a very important amendment. If it is accepted the clause would read:

".....in imposing such service the State shall not make discrimination on the ground only of race, religion caste or class."

The significance of this is so clear that, even though I have moved it, I trust the Draftsmen will accept it.

Mr. Vice-President: The clause is now open for general discussion. Giani Gurmukh Singh will now speak. I give him five minutes.

Giani Gurmukh Singh Musafir: *[Mr. Vice-President, article 17 is a useful provision in the Constitution, but there are one or two short-comings which should be removed. In this connection I had given notice of an amendment but I could not get an opportunity to speak on it. I would like to say that prostitution is not in accord with the Indian civilization.

It was imported from the West and with the departure of Western rulers it must come to an end. In clause (1) of article 17, after the words

* [ ] Translation of Hindustani speech.

[Giani Gurmukh Singh Musafir]

"Traffic in human beings" the word "Prostitution" must be included, for then alone the dignity of this clause will be increased, and defect removed. Another suggestion has been moved by Sardar Bhopendra Singh Man. It is a very good suggestion that, if the Government imposes compulsory service in the public interest, then the workers must get adequate compensation. It is good to specify in clause (2) of this article that in imposing compulsory service no discrimination on the ground of race, religion, caste or class shall be made. The right of imposing compulsory service conceded to the Government by this clause, is more or less absolutely vested in them. Even now, the government officials through their influence impose compulsory service. If provision is made to pay compensation, then this defect will disappear and the usefulness of this clause will be enhanced. Hitherto the practice of 'Begar' was a source of oppression to the poor. Now this clause would not fit in, if it is passed without providing for payment of compensation. I do not propose to say more, as the Vice-President has already ruled; and therefore, without taking much of the time of the House, I shall mention only two points, firstly that the curse of prostitution should go from this country and secondly, compensation must be paid for compulsory service.

Shrimati G. Durgabai (Madras: General): Mr. Vice-President, let me assure you that I will take up only one or two minutes of the valuable time of the Assembly. I want to say a few words on this article. There is the amendment of Professor Shah intended to substitute in clause (1) 'Traffic in human beings or their dedication in the name of religion to be *Devadasis* or be subject to other forms of enslavement and degradation as well as begar', for the words 'Traffic in human beings and begar.'

Sir, if any province has suffered from this bad practice of dedication of *devadasis* in the name of religion, it is the province of Madras. The worst form of this custom existed in Madras for a long time. I do not know whether this custom of dedication exists in any other province in any form. But we all know that in several ways this was practised. But, I do not think, while appreciating the object of Professor Shah in bringing forward this amendment and while being thankful to him for having realised the necessity for removing this evil, that this amendment is necessary. Madras has already prohibited this practice under a law passed a few years ago. It is no more in vogue there. Though some relics of that system still exist, these, I am sure, will disappear in course of time. I should mention in this connection my appreciation of the efforts put in by reformers like Mrs. Muthulakshmi Reddi. It is mainly on account of her efforts that this evil is no more there. Our deep debt of gratitude is due to her for her efforts. As I said, Madras has passed a law prohibiting this custom. I do not therefore think it necessary to include this provision in article 13, although I very much appreciate the spirit which has actuated Professor Shah to move this amendment.

Mr. Vice-President: I now call upon Shri B. Das to speak. He is almost the father of the House and must set an example of brevity.

Shri B. Das: Sir, on the previous occasion when we were discussing the Fundamental Principles I pointed out the need for including in the Draft Constitution the removal of this great social evil, the traffic in women. This traffic means use of force to compel women to life of prostitution. When we talk of traffic in women—which is a great social evil all over the world—I did dilate upon it last time and said that we should not be prudes and attempt to hide the fact that there existed this traffic in women in India. Sir, I bow to the decision elsewhere that I should not move my amendment which sought to add the words 'particularly in women' after the words 'Traffic in human beings'.

Sir, let us confess and admit that there is this traffic in women for which men everywhere are responsible. Women were often removed from Orissa. I pointed out that in the great Bengal disaster in 1943-44, lakhs of women were spirited away to the Punjab and North-West Frontier Province. Sir, young women were taken away by the alien Government into the camps of soldiers and they were thus lost to humanity, lost to family, lost to us as good citizens. So, we mere men should not fight shy of this and feel that by including an amendment of this kind we will be confessing the existence of this traffic in women in this country. That is why I gave notice of the amendment. If the House is willing to accept Shrimati Durgabai's amendment or even the amendment of Professor Shah who has confined his amendment to the Devadasi system and has not thought of the influence of dances before temples which preserve our national art and music from time immemorial.

Shri H. V. Kamath: Has Shrimati Durgabai given notice of any amendment to this article, Sir?

Mr. Vice-President: She has not.

Shri B. Das: She has sent in one to Dr. Ambedkar.

Mr. Vice-President: I have no knowledge of it.

Shri B. Das: I am sorry, I misunderstood. However, I think we will not be justifying our constitution on fundamental rights if we do not accept and admit our great sins by including the words "traffic in women" and try to save the situation now and hereafter.

Shri Raj Bahadur (United State of Matsya): Mr. Vice-President, Sir, *begar* like slavery has a dark and dismal history behind it. As a man coming from an Indian State, I know what this *begar*, this extortion of forced labour, has meant to the down-trodden and dumb people of the Indian States. If the whole story of this *begar* is written, it will be replete, with human misery, human suffering, blood and tears. I know how some of the Princes have indulged in their pomp and luxury, in their reckless life, at the expense of the ordinary man, how they have used the down-trodden labourers and dumb ignorant people for the sake of their pleasure. I know for instance how for duck shooting a very large number of people are roped in forcibly to stand all day long in mud and slush during cold chilly wintry days. I know how for the sake of their game and hunting people have been roped in large numbers for beating the lion so that the Princes may shoot it. I have also seen how poor people are employed for domestic and other kinds of labour, no matter whether they are ailing or some members of their family are ill. These people are paid nothing or paid very little for the labour extorted from them. This is not the whole story. As I said in the beginning, it would make really a terrible reading if the whole story is told. I know that very often these tyrannies are perpetrated upon poor people by the petty officials. Not only do these petty officials perpetrate such tyrannies but they also extort bribes from the labourers who want to escape the curse of this *begar*. While making my observations on this article, I would like to say that I am opposed to the amendment which has been moved by Sardar Bhopindra Singh Man providing for compensation in case of compulsory labour on works for public purposes, because I feel that there is a possibility that, if this amendment is accepted, it may be misused and people might be forced against their will.

Summing up, I may add that article 13 constitutes the charter of freedom for the common man, and this article is a sort of complement to that charter of freedom. This frees the poor, down-trodden and dumb people of the Indian

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States—I cannot say anything of other provinces—from this curse of *begar*. This *begar* has been a blot on humanity and has been a denial of all that has been good and noble in human civilisation. Through the centuries this curse has remained as a dead weight on the shoulders of the common man like the practice of slavery. The members of the Drafting Committee and this Constituent Assembly are entitled to the grateful thanks of the dumb down-trodden millions who would be freed by this article from this curse of *begar*.

Shrimati Renuka Ray (West Bengal: General): Mr. Vice-President, Sir, I shall try to be as brief as possible.

The awakened conscience of women in India and the world is fully alive to the problem of the traffic in women and cannot tolerate its continuance. Sir, if we do not accept the amendment of Mr. B. Das, it is not because we do not appreciate his purpose. We realise that he wishes to place particular emphasis on the problem of the traffic in women, but I do think that the article as it stands does cover it. I am merely pointing this out because it may be thought that the women members of this House are not alive to this problem. It is one of the most urgent of all problems on which women's organisations in this country, have focussed their attention for some time past.

As for the amendment that my honourable Friend, Mr. K. T. Shah, moved, I agree with Shrimati Durgabai that legislation has covered this problem in regard to Madras, but I think that if Mr. Shah's amendment could be accepted by this House so that the Devadasi system—the dedication of women in temples—is abolished by a categorical provision in the Constitution, it would be better procedure as the custom still lingers in some areas. Otherwise it is to be hoped that legislation abolishing the custom in other parts where it still exists will soon come in. I want to stress the fact that women are fully alive to the fact that it is the dual standards of morality that have led to traffic in women. It is when society realises fully the need for doing away with dual standards of morality that this article that is being adopted can really come into effect and become a reality and not merely a paper provision in the Constitution.

Acts for the prevention of immoral traffic in women do exist already in this country but their operation is not effective and even if legal flaws are amended, these can only become really effective when men's minds change towards this problem, whereby a section of women are at the mercy of exploiters whereby the very dignity of womenhood is lowered.

Mr. Vice-President: Mr. Nagappa, please show that you deserve the confidence that the House has placed in you by limiting yourself to five minutes.

Shri S. Nagappa (Madras: General): I will not take much time, Sir.

This practice of *begar* is prevalent in my own part of the country, especially among the Harijans. I am glad that the Drafting Committee has inserted this clause to abolish *begar*. Sir, whenever cattle die; the owner of the cattle wants these poor Harijans to come and remove the dead cattle, remove the skins, tan them and make chappals and supply them free of cost. For this, what do they get? Some food during festival days. Often, Sir, this forced labour is practised even by the government. For instance, if there is any murder, after the postmortem, the police force these people to remove the dead body and look to the other funeral processes. I am glad that hereafter this sort of forced labour will have no place. Then, Sir, this is practised in zamindaries also. For instance, if there is a marriage in the zamindar's family, he will ask these poor people, especially the Harijans, to come and white wash his whole house, for which they will be given nothing except food for

the day. This sort of forced labour is still prevalent in most p s of the presidency.

Another thing that I want to bring to the notice of the House is that whenever the big zamindar's lands are to be ploughed, immedi tely he will send word for these poor people, the Harijans, the previous day, and say: "All your services are confiscated for the whole of tomorrow; you will have to work throughout the day and night. No one should go to any other work." In return, the zamindar will give one morsel of food to these poor fellows. Sir, this sort of forced labour is in practice in the 20th century in our so-called civilised country. I am very thankful to this Drafting Committee. I support this article.

Shri T. T. Krishnamachari (Madras: General): Mr. Vice-President, Sir, I am here primarily to oppose the amendment moved by my honourable Friend, Prof. K. T. Shah, in that it imports into the consideration of this article facts which ought not to be taken into account in a consideration of the fundamental rights that are to be incorporated in the Constitution.

Sir, if the House would permit me a moment to deal with the general principles which are the basis of this particular Part, it is that we want to ensure certain amount of rights to the individual, so that he will be ennobled. We also want to bar legislation from creeping in into those rights, which it is absolutely necessary should be maintained intact so that the individual's status might be protected. There is no point in our trying to import into this particular Part reform of all the abuses, which our society is now heir to. If those abuses are such where vested interests are likely to seek perpetuation of those abuses, well, I think we have to provide against them, but if public opinion is sufficiently mobilised against those abuses, I do not think we ought to put a blot on the fair name of India, possibly, by enacting in our constitution a ban on such abuses. Abuses which will disappear in course of time cannot disappear all at once by our putting a ban on them in the constitution. Looking as I do at such matters in that light, I wish most of my honourable Friends in this House will not try to import into these fundamental rights age-old peculiarities of ours that still persist, bad as they are in particular parts of society which can be made to disappear by suitable legislation in due course, perhaps in two, three or four years. My honourable Friend Shrimati Durgabai pointed out that this system of *Devadasis* obtaining in India has been abolished by legislation in Madras. There is nothing to bar other provinces from following suit and I think public opinion is sufficiently mobilised for all provinces undertaking legislation of that type. Why then put it into the fundamental rights, a thing which is vanishing tomorrow? I think the same principle might be adopted in the rest of the article that would come before the House in this particular part, namely, what we could achieve in the matter of social reform by normal legislation, we need not seek to put into the fundamental rights, but if it is a matter where the vested interests for purposes of economic gain want to perpetuate a particular anti-social custom that obtains amongst us, well, I think, it is perfectly right that we should put it into the Fundamental Rights. I think some form of forced labour does exist in practically all parts of India, call it 'begar' or anything like that and in my part of the country, the tenant oftentimes is more or less a helot attached to the land and he has certain rights and those are contingent on his continuing to be a slave.

We are trying to root it out, and by putting it in the fundamental rights it will hasten legislation to wipe out evils of that kind as it will then become an obligation of the State. I would only mention to the House that let us not seek to enlarge the scope of these articles by putting in evils which can be wiped out by legislation, on which public opinion is sufficiently mobilised,

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but only import into it such considerations against which vested interests might conceivably take a firm stand. Sir, I support the article that is being considered by the House.

Shri Mahavir Tyagi: May I seek your permission, Mr. Vice-President. I want to clear some doubts which arise in my mind in regard to this article.

Mr. Vice-President: I am sorry, it is too late.

Shri Mahavir Tyagi: I must be told as to how I can catch your eye or draw your attention.

Honourable Members: Order, order.

Mr. Vice-President: The House has pronounced its decision.

Shri Mahavir Tyagi: Can anyone, by handing over slips or by standing everytime, catch your eye, Sir?

Mr. Vice-President: The House has pronounced its decision.

Shri Mahavir Tyagi: What is the decision?

Mr. Vice-President: You ask the House.

Shri Mahavir Tyagi: I feel it is very unfair.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, I should like to state at the outset what amendments I am prepared to accept and what, I am afraid, I cannot accept. Of the amendments that have been moved, the only amendment which I am prepared to accept is the amendment by Prof. K. T. Shah, No. 559, which introduces the word "only" in clause (2) of article 17 after the words "discrimination on the ground". The rest of the amendments, I am afraid, I cannot accept. With regard to the amendments which, as I said, I cannot accept one is by Prof. K. T. Shah introducing the word '*devadasis*'! Now I understand that his arguments for including '*devadasis*' have been replied to by other members of the House who have taken part in this debate, and I do not think that any useful purpose will be served by my adding anything to the arguments that have already been urged.

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

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

In this clause, it may be seen that non-payment of compensation could not be a ground of attack; because the fundamental proposition enunciated in

sub-clause (2) is this: that whenever compulsory labour or compulsory service is demanded, it shall be demanded from all and if the State demands service from all and does not pay any, I do not think the State is committing any very great inequity. I feel, Sir, it is very desirable to leave the situation as fluid as it has been left in the article as it stands.

Shri H. V. Kamath: On a point of information, Sir, is Dr. Ambedkar's objection to my amendment merely on the ground that it consists of two words in place of one? In that case, I shall be happy if the wording is either 'social' or 'national' in place of 'public'.

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

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

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

Mr. Vice-President: It was not moved.

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

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

The question is:

"That for article 17, the following be substituted:—

"17. Neither slavery nor involuntary servitude such as *begar* except as a punishment for crime shall exist within the Union State."

The amendment was negatived.

Mr. Vice-President: Amendment No. 545 standing in the name of Shri Damodar Swarup Seth.

The question is:

"That the following words be added at the beginning of clause (1) of article 17:

"Servitude and serfdom in all forms as well as."

The amendment was negatived.

Mr. Vice-President: Amendment No. 546 standing in the name of Professor K. T. Shah.

The question is:

"That in clause (1) of article 17, for the words "Traffic in human beings and *begar*", the words "Traffic in human beings or their dedication in the name of religion to be Devadasis or be subject to other forms of enslavement and degradation as well as *begar*" be sustituted."

The amendment was adopted.

Mr. Vice-President: Amendment No. 560 standing in the name of Sardar Bhopinder Singh Man.

The question is:

"That in clause (2) of article 17, after the words "caste or class" the words "and shall pay adequate compensation for it" be inserted."

Sardar Bhopinder Singh Man: Sir, I request the permission of the House to withdraw it.

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

Mr. Vice-President: Amendment No. 556 standing in the name of Mr. Kamath.

The question is:

"That in clause (2) of article 17, for the word "public" the words "social or national" be substituted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 559 standing in the name of Professor K. T. Shah, accepted by Dr. Ambedkar.

The question is:

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

The amendment was adopted.

Mr. Vice-President: I shall now put the article as a whole as modified by amendment No. 559 to vote.

The question is:

That article 17 as modified by amendment No. 559 form part of the Constitution.

The motion was adopted.

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

Article 18

Mr. Vice-President: We now go to the next article.

The motion is that Article 18 form part of the Constitution.

The first amendment is No. 561. This is negative and therefore, it is out of order.

Amendments numbers 562 and 564: No. 562 standing in the name of Professor Shibban Lal Saksena and 564 standing in the name of Shri Damodar Swarup Seth and others are of similar import and have therefore to be considered together. Amendment No. 562 is allowed to be moved.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, I am not moving the amendment; but I would like to speak on the article.

Mr. Vice-President: Then, I will allow amendment No. 564 to be moved.

Shri Damodar Swarup Seth: Sir, I beg to move:

"That the following be added at the end of article 18:

'Nor shall women be employed at night, in mines or in industries detrimental to their health.' "

Sir, it is a matter of great satisfaction that in article 18 protection has been afforded to children of minor age. But, unfortunately, for reasons not known to me, no protection has been provided for the fairer and softer sex, who had been in the past, employed in mines even at night time and in industries which are injurious to their health. I therefore think, Sir, that it is just and desirable that the addition suggested should be made in this article so that women may also be provided with due protection and may not be employed in mines at night and in industries which are not suited to their delicate health and position in society. I therefore hope that the House will accept this amendment of mine.

Mr. Vice-President: Then, comes amendment No. 563.

(Amendments 563 and 565 were not moved.)

The article is open for general discussion.

Prof. Shibban Lal Saksena: Sir, I am very glad that this article has been placed among fundamental rights. In fact, one of the complaints against this charter of liberty is that it does not provide for sufficient economic rights. If we examine the fundamental rights in the Constitutions of other countries, we will find that many of them are concerned with economic rights. In Russia particularly, the right to work is guaranteed; the right to rest and leisure, the right to maintenance in old age and sickness etc., are guaranteed. We have provided these things in our Directive Principles, although I think, properly, they should be in this Chapter. Even then, this article 18 is an economic right, that no child below the age of fourteen shall be employed in any factory. I feel, Sir, that the age should be raised to sixteen. In other countries also the age is higher; we want that in our country also this age should be increased; particularly on account of our climate, children are weak at this age and the age should be raised.

So also, I want that women should not be employed in the night or after dusk and before dawn in the factories. In fact all the progressive countries in the world have forbidden female labour after dusk and before dawn. This question was debated at length during the discussion on the Factory Act in the Parliament. I think that this is a question of very fundamental importance and this should be laid down in the Fundamental Rights that the States shall not employ women after dusk or before dawn. Sir, if this important thing had been done, we would have been hailed by innumerable women workers in the country—especially as it is a question of employing women in mines and factories. You know there was a great furore in the country during the war when women were allowed to work in mines, and I personally think that this must be considered as something very important and I hope Dr. Ambedkar will see his way to include it.

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

Mr. Vice-President: I put the amendment No. 564 to vote.

The question is:

"That the following be added at the end of article 18 :—

'Nor shall women be employed at night, in mines or in industries detrimental to health.' "

The amendment was negatived.

Mr. Vice-President: Now I put the motion—

The question is:

"That article 18 stand part of the Constitution."

The motion was adopted.

Article 18 was added to the Constitution.

Article 18-A

Mr. Vice-President: Now we come to a new article in the form of amendment No. 566.

Prof. K. T. Shah: Mr. Vice-President, I beg to move:

"That the following new article be inserted under the heading "Rights relating to Religion" occurring after article 18 :—

'18-A. The State in India being secular shall have no concern with any religion, creed or profession of faith; and shall observe an attitude of absolute neutrality in all matters relating to the religion of any class of its citizens or other persons in the Union.' "

This, Sir, ought not to be a controversial matter at all. We have proclaimed it time and again that the State in India is secular; and as such it should

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have no concern—I should think that would follow logically—with the affairs of any religion, with the profession of any particular faith, creed or belief.

By this I do not wish to suggest that the neutrality of the State in matters of religion should mean the utter ignorance or neglect of institutions or services which may, in the name of religion or belief, be conducted by people professing a particular form of faith. All I wish to say is that with the actual profession of faith or belief, the State should have no concern. Nor should it, by any action of it, give any indication that it is partial to one or the other. All classes of citizens should have the same treatment in matters mundane from the State. And even those who may not be citizens of this State, by living within it, should receive the same treatment.

The citizens of this Union obviously belong to all professions, a wide variety of faiths or religious beliefs. To take one or the other, or even to suggest that one or the other is favoured or assisted or aided by the State in its mundane affairs at any time—if I may put it so,—would not be in the interest of the State. For it would give any other section of the people professing another belief, the impression that any particular section is preferred.

If the State can—and I believe it can very easily—promote all mundane services, all worldly activities and utilities which are for the benefit of the community collectively— no matter by what section they are carried on—then, according to my amendment, there ought to be no objection. But if the State is associated in any way with the promotion of any particular form of profession or faith, then I think it would be highly objectionable for a secular organization to do so.

Accordingly I am suggesting that "The State in India being secular shall have no concern with any religion, creed or profession of faith". I am again and again emphasising this aspect of religion because that is by its very essence, a non-worldly activity, and as such the State which is—may I say it without any disrespect—essentially an earthly organization, should have no concern.

One could dilate upon this matter for an indefinite period. I do not regard occasions of this kind, or debates of this nature to be opportunities for unconscious self-revelation or deliberate professions of one's own attitude. I therefore will not take the time of the House in going further into this subject which I am sure would interest everybody sufficiently, at any rate, to consider favourably my amendment.

(Amendment No. 567 was not moved.)

Mr. Vice-President: No. 568.

Shri T. T. Krishnamachari: May I point out that this amendment relates to a matter more or less akin to 13-A which you were good enough to keep in abeyance for the time being?

Mr. Vice-President: Then it may stand over.

(Amendment No. 569 was not moved.)

Mr. Vice-President: I put amendment No. 566 to vote.

The question is:—

"That the following new article be inserted under the heading "Rights relating to Religion" occurring after article 18:

'18-A. The State in India being secular shall have no concern with any religion, creed or profession of faith; and shall observe an attitude of absolute neutrality in all matters relating to the religion of any class of its citizens or other persons in the Union.' "

The amendment was negatived.

New articles 19 to 22.

Mr. Vice-President: Then we go to No. 570.

The first part is naturally disallowed.

Prof. Shibbanlal Saksena: First put the article to vote.

Mr. Vice-President: The article has been put to vote and passed. Now the second alternative is the same as No. 591 and will be considered along with that. The third amendment or alternative is the same as 618 and will be considered along with the other one. The last amendment has a negative effect.

Shri Lokanath Misra (Orissa: General): I do not think, Sir.

Mr. Vice-President: I am afraid you are challenging the competence of the Chair which you are not entitled to do under the Rules.

Shri Lokanath Misra: The first part of my alternative is not the same as 591, because in that I wanted to drop the word 'propogate' while it is different in 591.

Article 19

Mr. Vice-President: That was considered when the decision was made. The motion before the House is:

"That article 19 form part of the Constitution."

I shall go over the amendments one by one.

(Amendment No. 571 was not moved.)

No. 572, first alternative.

Mr. Tajamul Husain (Bihar: Muslim): Sir, I do not wish to move part one of my amendment. I have put my amendment in two parts, and with your permission, Sir, I would like to move the second part.

Mr. Vice-President: You can do that later.

Mr. Tajamul Husain: But then, Sir, later on comes the amendment No. 573 in the name of my Friend Mr. Himatsingka, and if that is not moved, then my amendment which is similar to it also goes out.

Mr. Vice-President: No, if he does not move it then you will get your chance. And if No. 573 is moved, even then you can have your say during the general discussion. Nos. 573, 576, 577 and lastly 582 may be considered together. Of them, I take, No. 573 standing in the name of Mr. Himatsingka. Is he in the House?

(The Member was not present and Amendment No. 573 was not moved.)

The next would be No. 572, second part.

Mr. Tajamul Husain: Sir, I beg to move—

"That in clause (1) of article 19, for the words "practise and propagate religion" the words "and practise religion privately" be substituted."

Sir, under article 19, clause (1) all persons are entitled to freedom of conscience and the right freely to progress, practise and propagate religion. I agree, Sir, that people should have the right to freely profess and practise religion, but I am afraid, it will be wrong to allow people to propagate religion in this country. Sir, my speech will be brief, because I have been seriously ill and I feel the strain while speaking.

I feel, Sir, that religion is a private affair between oneself and his Creator. It has nothing to do with others. My religion is my own belief, and your religion, Sir, is your own belief. Why should you interfere with my religion, and why should I interfere with your religion? Religion is only a means for

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the attainment of one's salvation. Supposing I honestly believe that I will attain salvation according to my way of thinking, and according to my religion, and you, Sir, honestly believe that you will attain salvation according to your way, then why should I ask you to attain salvation according to my way; or why should you ask me to attain salvation according to your way? If you accept this proposition, then, why propagate religion? As I said, religion is between oneself and his God. Then, honestly profess religion and practise it at home. Do not demonstrate it for the sake of propagating. Do not show to the people that this is your religion for the sake of showing. If you start propagating religion in this country, you will become a nuisance to others. So far it has become a nuisance.

I submit, Sir, that this is a secular State, and a secular state should not have anything to do with religion. So I would request you to leave me alone, to practise and profess my own religion privately. That is all I wish to say, Sir, because I am not keeping good health. I commend my amendment to the Honourable House and especially to the Honourable Dr Ambedkar, hoping that he will accept it. With these words, I sit down.

Mr. Vice-President: Amendment No. 570 in the name of Mr. Misra. Do you want it to be put to the vote?

Shri Lokanath Misra: Sir, I wanted to move it.

Mr. Vice-President: I know. But that has been disallowed. I want to know if you want it to be put to the vote.

Shri Lokanath Misra: Yes, Sir.

(Amendment Nos. 576, 577, First Part of 582 and 575 were not moved.)

Mr. Vice-President: Then the next amendment is No. 578 in the name of Mr. Naziruddin Ahmad. This is disallowed as being a verbal amendment. Then I come to amendments No. 579 and No. 580. They are almost identical, and therefore I am asking the mover to move No. 579. That also stands in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: Sir, I move:

"That in clause (1) of article 19, for the words 'are equally entitled to freedom of conscience and the right', the words 'shall have the right' be substituted."

It is almost a verbal amendment.

Mr. Vice-President: Do you want me to put amendment No. 580 to the vote?

Mr. Naziruddin Ahmad: Yes, Sir.

Mr. Vice-President: Amendments Nos. 574, 581, 582 (second part), 587, 588 and 589 are of similar import and are to be considered together. Amendment No. 581 is allowed to be moved.

Mr. Naziruddin Ahmad: I am not moving it.

[Amendments Nos. 574, 582 (second part) and 587 were not moved.]

Mr. Tajamul Husain: Sir, I beg to move:

"That Explanation to clause (1) of article 19 be deleted and the following be inserted in that place :—

'No person shall have any visible sign or mark or name, and no person shall wear any dress whereby his religion may be recognised.'"

Mr. Naziruddin Ahmad: On a point of order. Does the Honourable Member refer to invisible signs or marks or names? By banning visible signs, does he prefer invisible signs and marks? How can there be invisible names?

Mr. Vice-President: Do you like to say anything?

Mr. Tajamul Husain: I have not been able to follow my honourable Friend, Mr. Naziruddin Ahmad. He seeks clarification on the point as to how there could be invisible signs. My intention is that there should be no visible sign, or mark or name by which a person shall be recognised. You have a name "Pershad", by which you know a person is a 'Kayasth'. You have the name "Syed" by which you know that a person is a Muhammadan. My amendment may be badly worded but my friend Mr. Naziruddin only knows about commas, semi-colons and full-stops.

Mr. Vice-President: You need not dilate on it.

Mr. Tajamul Husain: I wish to point out that religion is a private affair between man and his God. It has no concern with anyone else in the world. What is the religion of others is also no concern of mine. Then why have visible signs by which one's religion may be recognised? You will find, Sir, that in all civilized countries—and civilized countries now-a-days are the countries in Europe and America—there is no visible sign or mark by which a man can be recognised as to what religion he professes. In this country unfortunately, you can find out a man's religion by his visible sign or mark. I need not dilate on this. I will only give the points. In civilized countries people have family names, namely, Disraeli or Birkenhead. From these names you cannot say that Disraeli was a Jew and Birkenhead was a Christian. If you hear the name of Lord Reading, you cannot say to what religion he belongs. There was a man in England whose name was Lovegrove. You cannot say to what religion he belongs, though I know he was a Muslim. There are many Christians in England who have become Muhammadans. So in those countries you cannot find out to what religion a man belongs simply by his name. In this country, of course, I have told you, Sir, from a person's name you can find out his religion. You hear of the name of Pershad. In my province it means a Kayasth. If you hear of Ojha or Jha you know that the person is a Brahmin. In Bengal you know that a person of the name of Mookerjee must be a Brahmin, and so forth. So I do not want these things. I know I am 100 years ahead of the present times. But still, I shall have my say.

In civilized countries in England there was a time when there was no uniformity of dress. In this country you find all sorts of dresses.

You find dhoties, you find pyjamas, you find kurtas, you find shirts,—and again, no shirts, no dhoties, nakedness, all sorts of things. That was the same thing in England at one time.

Maulana Hasrat Mohani: On a point of order,—whatever Mr. Tajamul Husain is suggesting, he must adopt it himself first. He must change his own name, because seeing his name one can say he is a Muslim.

Mr. Tajamul Husain: I am sorry for the interruption of the Maulana. My name I will change when the whole country adopts my resolution. Then, he will not be able to find out what I am and who I am.

Now, Sir, I was talking about dress. There was a time in England when there was no uniformity, but the Honourable the Law Minister will agree with me that an Act was actually passed in Parliament by which there was uniformity of dress and now in England and in the whole of Europe and in America there is uniformity of dress. We are one nation. Let us all have one kind of dress; one kind of name; and no visible signs. In conclusion, I say we are going to be a secular State. We should not, being a secular State, be recognised by our dress. If you have a particular kind of dress, you know at once that so and so is a Hindu or a Muslim. This thing should be done away with. With these words, I move my amendment.

(Amendments 589 and 583 were not moved.)

Prof. K. T. Shah: Mr. Vice-President, I beg to move—

"That the following proviso be added to clause (1) of article 19:

"Provided that no propaganda in favour of any one religion, which is calculated to result in change of faith by the individuals affected, shall be allowed in any school or college or other educational institution, in any hospital or asylum, or in any other place or institution where persons of a tender age, or of unsound mind or body are liable to be exposed to undue influence from their teachers, nurses or physicians, keepers or guardians or any other person set in authority above them, and which is maintained wholly or partially from public revenues, or is in any way aided or protected by the Government of the Union, or of any State or public authority therein."

Sir, the main article gives the right of freedom of propaganda. I have no quarrel with the right that anybody professing any particular form of belief should be at liberty, in this Liberal State, to place the benefits or beauties of his particular form of worship before others. My only condition—and the amendment tries to incorporate that—is that this freedom should not be abused, as it has been in the past. In places or institutions, where people of tender age or those suffering from any bodily or mental infirmity, are exposed to undue influence, they are liable to be influenced more by the personality of those in authority above them than by the inherent advantages and unquestionable reasoning in favour of a particular religion, and as such result in conversion. That is not a genuine change of opinion, but is the result of undue influence that ought to be stopped.

I have no quarrel at all with those who would change their opinion after full and mature consideration of such material as may be available to them regarding the beliefs that they inherit from their parents. Most of the religious beliefs in this world are not,—may I say without any offence—a matter of reasoned conviction; they are an acquired habit or an inherited prejudice which may not stand the strain of conviction on the opposite side, or reasoning on the controverting side. Accordingly, anybody who desires the mind of the public to be alert free from prejudic and open to conviction, will not object to permitting such freedom of propaganda that may result in conversion.

I have no objection therefore to anybody speaking, writing, preaching, in any place of public resort, in any open space, in parks, gardens, theatres or any other public place, even to people of tender age or even to people of unsound mind or body; because in those places they are not suffering from any disability, nor are those who are teaching or preaching in those public places in a place of authority, in a place where they can exercise undue influence; and as such it can be presumed that it is rather the force of their argument, the strength of their reasoning that has resulted in proselytising without any undue influence, or unfair authority, upon those people. But when, as in a school or a college, in an hospital or asylum, those who are set in authority as teacher or preacher, physician, guardian or nurse, take advantage of their peculiar position to influence them, to place before them another way of looking at life and its purpose than that they have had from birth, then I think undue influence is exercised and as such objectionable.

Even that may be permitted so far as that particular Institution does not benefit in any way from public revenues, or is not aided, protected or encouraged by any public authority in the Union or in any part of it. I hope the House realises the extreme moderation of my amendment, and the tightness of the restriction that I have put so far as this proviso is concerned, namely, that it will operate only on people in a place or institution where they are suffering from some kind of disability, whether of age or of unsound mind or body, and where, therefore, their change of belief if it is brought about would be open to suspicion.

That is one reason. Then again, the preaching or propaganda which may be objected to is by or from people who are set in authority above the young,

the helpless, disabled or of unsound mind, that is, as teacher or nurse or guardian. That is also a very substantial limitation.

Thirdly, the institutions or places carrying on propaganda of this kind resulting in conversion from one religion to another to which we object are places which are maintained wholly or partly by public revenues. They may be receiving financial grant; or they may be receiving recognition, which is perhaps more valuable than a direct money grant, and charging fees from the public, so that they may benefit even though nominally they may not be taking any grants from public revenues, or they may be aided or protected by any public authority.

With these three very substantial restrictions I am sure nobody would quarrel or object to my amendment, especially to the idea of propaganda of a kind which is calculated to change the religion or form of belief or worship inherited with one's parentage, if that propaganda is done by people in authority above them; and they in the meantime are suffering from some kind of disability of the type I have illustrated.

I know, Sir, this is liable to excite strong feeling. There are religions which are professedly proselytising. There are religions which leave the matter of religion to every person's own conscience, and do not indulge in proselytising. Whatever that be, without quarrelling with the freedom of preaching one's religion, I hold that it is the most moderate form of request to the professors or preachers of those religions, which want to proselytise, that they should at least observe this much self-restraint, viz., that any institutions maintained by any form of public assistance or receiving any form of public encouragement should not be utilised by them for propaganda or proselytisation, so that the minds not quite free from other influences, minds suffering from some kind of handicap, shall not be unduly influenced.

Sir, I have tried to use no expression in the course of these few remarks which might give the slightest occasion for anybody to feel alarmed at the restraint which I am suggesting should be put upon their right to propagate religion. I have not quoted a single instance which may be found in plenty, where undue advantage has been taken to effect conversions in a manner which may be regarded as most reprehensible. Those who are blinded by their faith are welcome to their belief. But I would beg them to realise that, in suggesting that those who are suffering from disabilities shall be free from activities of this kind, they will not misunderstand me when I say that I have not the slightest objection to their holding their beliefs and even propagating them but that they should not indulge in this illicit form for carrying on their religious activity.

Professing no particular religion myself, I can give an assurance to the House that I am not actuated by any feeling of partiality for one or opposition to another. I only wish that this may be left as a matter of purely personal concern. When you meet at a social gathering or congregational union this much decency should be observed that you shall not carry on your influence in an undue manner, but only rely upon the convincing character of your arguments. Sir, I commend the motion to the House.

The Honourable Shri Ghanshyam Singh Gupta: (C. P. and Berar: General): Sir, I move:

That in the Explanation to clause (1) of article 19, for the word 'profession', the word 'practice' be substituted.

Article 19, Sir, is very comprehensive. It says: "All persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion." Now, as to freedom of conscience: It means that a man is free either to have a religion or no religion. If a man has a religion,

[The Honourable Shri Ghanshyam Singh Gupta]

then he is free to profess whatever religion he likes, either Islam, or Hinduism, or Buddhism or Sikhism and so on. Then, professing that religion, he is free to practise the dictates of that religion. For instance, if Islam requires that there should be a *namaz*, a Muslim is free to practise it and also to propagate it. What I would humbly submit is this: The wearing of kirpan may more appropriately be called the practice of religion than the profession of the Sikh religion. This is all I have to say.

Mr. Vice-President: It seems that there is an amendment to this amendment. As I understand that it is not going to be moved, the next one that can be moved is only 591 standing in the name of Shri Lokanath Misra.

Shri Lokanath Misra: Mr. Vice-President, if you will permit me to speak on the general discussion of the article as a whole I would not move this amendment at all.

Mr. Vice-President: How can I guarantee that? I must observe a time-table. Whether you get a chance or not will depend upon the shape the debate takes. You are at liberty to move this amendment.

Shri Lokanath Misra: I beg to move—

"That at the end of Explanation to clause (1) of article 19, the words "and for the matter of that of any other religion" be inserted."

I would have been very glad if I had a chance to speak generally on article 19 and not move this amendment. To my mind, if article 13 of this Draft Constitution is a Charter for liberty, article 19 is a Charter for Hindu enslavement. I do really feel that this is the most disgraceful Article, the blackest part of the Draft Constitution. I beg to submit that I have considered and studied all the constitutional precedents and have not found anywhere any mention of the word 'propaganda' as a Fundamental Right, relating to religion.

Sir, We have declared the State to be a Secular State. For obvious and for good reasons we have so declared. Does it not mean that we have nothing to do with any religion? You know that propagation of religion brought India into this unfortunate state and India had to be divided into Pakistan and India. If Islam had not come to impose its will on this land, India would have been a perfectly secular State and a homogenous state. There would have been no question of Partition. Therefore, we have rightly tabooed religion. And now to say that as a fundamental right everybody has a right to propagate his religion is not right. Do we want to say that we want one religion other than Hinduism and that religion has not yet taken sufficient root in the soil of India and do we taboo all religions? Why do you make it a Secular State? The reason may be that religion is not necessary or it may be that religion is necessary, but as India has many religions, Hinduism Christianity, Islam and Sikhism, we cannot decide which one to accept. Therefore let us have no religions. No. That cannot be. If you accept religion, you must accept Hinduism as it is practised by an overwhelming majority of the people of India.

Mr. Vice-President: We shall resume the discussion on Monday. A request has come to me from my Muslim brethren that as today is Friday we should now adjourn. I think we ought to show consideration to them and adjourn now to meet again on Monday at Ten of the clock.

Mr. Misra may then deliver the rest of his speech.

The House then adjourned till Ten of the Clock on Monday, the 6th December 1948.

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1948

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

Monday, the 6th December 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.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the Pledge and signed the Register:—

Shri K. Chengalaraya Reddy (Mysore).

DRAFT CONSTITUTION—(*Contd.*)

Article 19—(Contd.).

Mr. Vice-President (Dr. H. C. Mookherjee): We shall now resume discussion on article 19.

Shri Lokanath Misra (Orissa: General): Sir, it has been repeated to our ears that ours is a secular State. I accepted this secularism in the sense that our State shall remain unconcerned with religion, and I thought that the secular State of partitioned India was the maximum of generosity of a Hindu dominated territory for its non-Hindu population. I did not of course know what exactly this secularism meant and how far the State intends to cover the life and manners of our people. To my mind life cannot be compartmentalised and yet I reconciled myself to the new cry.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): Sir, are manuscripts allowed to be read in this House?

Mr. Vice-President: Ordinarily I do not allow manuscripts to be read, but if a Member feels that he cannot otherwise do full justice to the subject on hand, I allow him to read from his manuscript.

The Honourable Pandit Jawaharlal Nehru: May I know what is the subject?

Mr. Vice-President: Mr. Lokanath Misra is moving an amendment to article 19. I ask the indulgence of the House because Mr. Lokanath Misra represents a particular point of view which I hold should be given expression to in this House.

Shri Lokanath Misra: Gradually it seems to me that our 'secular State' is a slippery phrase, a device to by-pass the ancient culture of the land.

The absurdity of this position is now manifest in articles 19 to 22 of the Draft Constitution. Do we really believe that religion can be divorced from life, or is it our belief that in the midst of many religions we cannot decide which one to accept? If religion is beyond the ken of our State, let us clearly say so and delete all reference to rights relating to religion. If we find it necessary, let us be brave enough and say what it should be.

Shri S. Nagappa (Madras: General): The honourable Member is reading so fast that we are not able to follow him.

Mr. Vice-President: Order, order.

Shri Lokanath Misra: But this unjust generosity of tabooing religion and yet making propagation of religion a fundamental right is somewhat uncanny and dangerous. Justice demands that the ancient faith and culture of the land should be given a fair deal, if not restored to its legitimate place after a thousand years of suppression.

[Shri Lokanath Misra]

We have no quarrel with Christ or Mohammad or what they saw and said. We have all respect for them. To my mind, Vedic culture excludes nothing. Every philosophy and culture has its place but now the cry of religion is a dangerous cry. It denominates, it divides and encamps people to warring ways. In the present context what can this word 'propagation' in article 19 mean? It can only mean paving the way for the complete annihilation of Hindu culture, the Hindu way of life and manners. Islam has declared its hostility to Hindu thought. Christianity has worked out the policy of peaceful penetration by the back-door on the outskirts of our social life. This is because Hinduism did not accept barricades for its protection. Hinduism is just an integrated vision and a philosophy of life and cosmos, expressed in organised society to live that philosophy in peace and amity. But Hindu generosity has been misused and politics has overrun Hindu culture. Today religion in India serves no higher purpose than collecting ignorance, poverty and ambition under a banner that flies for fanaticism. The aim is political, for in the modern world all is power-politics and the inner man is lost in the dust. Let everybody live as he thinks best but let him not try to swell his number to demand the spoils of political warfare. Let us not raise the question of communal minorities any more. It is a device to swallow the majority in the long run. This is intolerable and unjust.

Indeed in no constitution of the world right to propagate religion is a fundamental right and justiciable. The Irish Free State Constitution recognises the special position of the faith professed by the great majority of the citizens: We in India are shy of such recognition. U.S.S.R. gives freedom of religious worship and freedom of anti-religious propaganda. Our Constitution gives the right even to propagate religion but does not give the right to any anti-religious propaganda.

If people should propagate their religion, let them do so. Only I crave, let not the Constitution put it as a fundamental right and encourage it. Fundamental rights are inalienable and once they are admitted, it will create bad blood. I therefore say, let us say nothing about rights relating to religion. Religion will take care of itself. Drop the word 'propagate' in article 19 at least. Civilisation is going headlong to the melting pot. Let us beware and try to survive.

Mr. Vice-President: There are two amendments in my list, i.e., 592 and 593. They are of similar import and may be considered together. Of these two, amendment No. 593 standing in the name of Mr. Kamath is more comprehensive and I allow it to be moved.

Shri H. V. Kamath (C. P. & Berar: General): Mr. Vice-President, Sir, I move:—

That after clause (1) of article 19, the following new sub-clause be added:—

"(2) The State shall not establish, endow, or patronize any particular religion. Nothing shall however prevent the State from imparting spiritual training or instruction to the citizens of the Union."

The amendment consists of two parts, the first relating to the disestablishment or the separation of what you may call in Western parlance the Church from the State, and the second relates to the deeper import of religion, namely, the eternal values of the spirit.

As regards the first part of the amendment, I need only observe that the history of Europe and of England during the middle ages, the bloody history of those ages bears witness to the pernicious effects that flowed from the union of Church and State. It is true enough that in India during the reign of Asoka, when the State identified itself with a particular religion, that is, Buddhism, there was no 'civil' strife, but you will have to remember that at that time in India, there was only one other religion and that was Hinduism. Personally,

I believe that because Asoka adopted Buddhism as the State religion, there developed some sort of internecine feud between the Hindus and Buddhists, which ultimately led to the overthrow and the banishment of Buddhism from India. Therefore, it is clear to my mind that if a State identifies itself with any particular religion, there will be rift within the State. After all, the State represents all the people, who live within its territories, and, therefore, it cannot afford to identify itself with the religion of any particular section of the population. But, Sir, let me not be misunderstood. When I say that a State should not identify itself with any particular religion, I do not mean to say that a State should be anti-religious or irreligious. We have certainly declared that India would be a secular State. But to my mind a secular state is neither a God-less State nor an irreligious nor an anti-religious State.

Now, Sir, coming to the real meaning of this word 'religion', I assert that 'Dharma' in the most comprehensive sense should be interpreted to mean the true values of religion or of the spirit. 'Dharma', which we have adopted in the crest/or the seal of our Constituent Assembly and which you will find on the printed proceedings of our debates: धर्मचक्र प्रवर्तनाय ("Dharma Chakra pravartanaya")—that spirit, Sir, to my mind, should be inculcated in the citizens of the Indian Union. If honourable Members will care to go just outside this Assembly hall and look at the dome above, they will see a sloka in Sanskrit:

न सा सभा यत्र न संति वृद्धा वृद्धा न ते ये न वदन्ति धर्मम्

"Na sa Sabha yatra na santi vriddha

Vriddha na te ye na vadanti dharmam:"

That 'Dharma', Sir, must be our religion. 'Dharma' of which the poet has said

येनेदं धार्यते जगत्

Yenedam dharyate jagat (that by which this world is supported.)

That, Sir, which is embodied which is incorporated in the great sutras, the Mahavakyas of our religions, in Sanskrit, in Hinduism, the Mahavakya 'Aham Brahma Asmi', then 'Anal Haq' in Sufism and 'I and my Father are one'—in the Christian religion—these doctrines, Sir, if they are inculcated and practised to-day, will lead to the cessation of strife in the world. It is these which India has got to take up and teach, not merely to her own citizens, but to the world. It is the only way out for the spiritual malaise, in which the world is caught today, because the House will agree, I am sure, with what has been said by the Maha Yogi, Sri Aurobindo, in one of his famous books, where he says:

"The master idea that has governed the life, the culture, social ideals of the Indian people has been the seeking of man for his true, spiritual self and the use of life as a frame and means for that discovery and for man's ascent from the ignorant natural into the spiritual existence."

I am happy, Sir, to see in this Assembly today our learned scholar and philosopher, Prof. Radhakrishnan. He has been telling the world during the last two or three years that the malaise, the sickness of this world is at bottom spiritual and therefore, our duty, our mission, India's mission comes into play.

If we have to make this disunited Nations—so called United, but really disunited nations—really United, if we have got to convert this Insecurity Council into a real Security Council, we have to go back to the values of the spirit, we have to go back to God in spirit and truth, and India has stood for these eternal values of the spirit from time immemorial.

Coming to the second part of the amendment, which reads: "Nothing shall however prevent the State from imparting spiritual training or instruction to the citizens of the Union", I attach great importance to the same. India has stood through the ages for a certain system of spiritual discipline,

[Shri H. V. Kamath]

spiritual instruction, which has been known throughout the world by the name of "Yoga"; and Sri Aurobindo, the Maha Yogi, has said again and again, that the greatest need today is a transformation of consciousness, the upliftment of humanity to a higher level through the discipline of Yoga.

May I, Sir, by your leave, read what a Western writer, Arthur Koestler has written in one of his recent books called "'Yogi or commissar''? "Yogi" stands for spirituality and "commissar" stands for materialism. In that book the writer observes: "Will mankind find a doctor or a dictator? Will he be yogi or commissar? The yogi does in order to be; the commissar, the capitalist, does in order to have; Western democracy needs more yogis"; that is the conclusion reached by this Western author.

Here, Sir, I would like to draw the attention of the House to the value and the importance that all our teachers, from time immemorial, from the Rishis and the Seers of the Upanishads down to Mahatma Gandhi and Netaji Subhas Chandra Bose have attached to spiritual training and spiritual instruction. Netaji Subhas Chandra Bose went to the length of prescribing spiritual training and spiritual instruction to the soldiers of the Azad Hind Fouj. In the curriculum, in the syllabus of the Azad Hind Fouj, this item of spiritual instruction was included. When I say, Sir, that the State shall not establish or endow or patronise any particular religion, I mean the formal religions of the world; I do not mean religion in the widest and in the deepest sense, and that meaning of religion as the highest value of the spirit, I have sought to incorporate in the second part of the amendment. That is, the State shall do all in its power to impart spiritual training and spiritual instruction to the citizens of the Union.

In the end, I would only say this. We are living in a war-torn, war-weary world, where the values of the spirit are at a low ebb, or at a discount. Nemesis has overtaken the world which has lost its spiritual value, and unless this world returns to the Spirit, to God in spirit and in truth, it is doomed. Sir, I commend my amendment to the acceptance of the House.

Mr. Vice-President: Amendment Nos. 594 and 595 are identical. I can allow amendment No. 595 to be moved.

(Amendments Nos. 595 and 594 were not moved.)

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

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

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

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

Mr. Vice-President: There are a number of amendments to this amendment. The first is amendment No. 11 of list I, standing in the name of Pandit Thakur Dass Bhargava.

(Amendments Nos. 11 and 12 in list I were not moved.)

Amendment No. 13 standing in the name of Mr. Naziruddin Ahmad is disallowed. For the words "the State" he wants the words "any State" to be substituted.

(Amendments Nos. 597, 598, 599 and 600 were not moved.)

Amendment No. 601, Prof. K. T. Shah.

Prof. K. T. Shah (Bihar: General): Mr. Vice-President, Sir, I beg to move:

"That in sub-clause (a) of clause (2) of article 19, for the words "regulating or restricting any economic, financial, political or other secular activity" the words "regulating,

restricting or prohibiting any economic, financial political or other secular activity' be substituted."

The clause as amended would read:

"Nothing in this article shall affect the operation of any existing law or preclude the State from making any law—

(a) regulating, restricting or prohibiting any economic, financial, political or other secular activity which may be associated with religious practice;....."

These are the words that I have ventured to add, and I think they are necessary. If the State has to have its supreme authority asserted as against, or in relation to, any Religion, which, merely in the name of religion, carries on practices of a secular kind whether it is financial, economic or political, it is necessary that those words be added and form part of the article.

I am not content with merely "regulating or restricting" them; I should like the State also to have the power positively and absolutely "to prohibit" any such practice. Such practices in my opinion, only degrade the very name of religion. Nothing has caused more the popular disfavour of some of the most well-known and most widely spread religions in the world than the association of those religions with secular activities, and with excesses that are connected with those activities. Material possessions, worldly wealth and worldly grandeur are things which have been the doom of many an established Church. Many a well-known Religion, which has ceased to follow the original spirit or the precepts of its Founders, has, nevertheless, carried on, in the popular eye, business, trade, and political activity of a most reprehensible character. The State in India, if it claims to be secular, if it claims to have an open mind, should have, in my opinion, a right not merely to regulate and restrict such practices but also absolutely to prohibit them.

I do not wish to hurt anybody's feelings by citing specific examples of religious heads or those claiming to be acting in the name of religion, carrying on a number of worldly activities of a most undesirable kind. They not only minister to the benefit or aggrandisement of the particular sect or class to which they belong, but, more often than not, they relate to the particular individual who for the moment claims to be the head or representative of that religion. The association of private property, the possession of material wealth, and the possibility of developing that wealth by trading, by speculation, by economic activity, which many of those carry on in the name of religion, or in virtue of their being heads of religion, are productive of evils of which perhaps the innocent Members of this House have no conception.

The facts are well-known, however, to those who have at all discerned in this matter not only that the heads of religions in the name of their religion claim exemption from income-tax out of the receipts of their own domain, but also right of any further gains that they may make by open or illicit trading, speculation, investments, or what not. I suggest that it is absolutely necessary and but right and proper, in the interests of the State, and more so in the interests of the general policy and principles on which the State is founded in India, that power be reserved in this Constitution absolutely to prohibit any such non-religious, non-spiritual activity, that in the name of religion, may be carried on, to the grave prejudice of the country as a whole, and even to the same religion of which they claim to be heads.

I have no desire as observed already, to cite illustrations. I know in advance the fate of my amendment, and, therefore, it is unnecessary for me to make the House wiser than it is by citing examples, and incurring for me the further displeasure of particular classes affected thereby.

Mr. Vice-President: Professor Shah—I cannot allow you to indulge in these remarks—I mean referring to the fate of your amendments and casting reflections on particular groups.

Prof. K. T. Shah: I was only trying to say that I know the fate of my amendments in advance; but I would not make it worse by citing examples which might affect particular classes, and might incur for me their displeasure. If I have said anything improper I am sorry and I would apologize for it.

Mr. Vice-President: I did not say "improper". But it is bound to affect the calmness of the House and I would implore you...

Prof. K. T. Shah: Sir, I would obey all your commands and even if you put them in the name of requests, I would treat them as commands. But with the experience that I have had of my amendments—however good they are I was entitled to say this. If you think otherwise, I will submit to your ruling and take my seat.

(Amendments Nos. 602 and 603 were not moved.)

Mr. Vice-President: Nos. 604, 605, 607 and 608 are similar. I allow 604 and 607 to be moved.

Mr. Vice-President: No. 607—Prof. K. T. Shah.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move—

"That in sub-clause (b) of clause (2) of article 19, after the words "or throwing open Hindu" the words "Jain, Buddhist, or Christian" be added."

The clause as I suggest would read—

"....for social welfare and reform or for throwing open Hindu, Jain, Buddhist or Christian religious institutions of a public character to any class or section of Hindus."

Sir, I do not see why this right or obligation should be restricted only to Hindu Religious institutions to be thrown open to public. I think the intention of this clause would be served if it is more generalised; and made accessible or made applicable to all the leading religions of this country, whose religious institutions are more or less cognate, and who therefore may not see any violation of their religious freedom, or their religious exclusiveness, by having this clause about throwing open their places of worship to the public.

I think, Sir, that the freedom of religion being guaranteed by this Constitution, and promised as one of the Fundamental Rights, the possibility of all religious institutions being accessible and open for all communities is a very healthy sign, and would promote harmony and brotherhood amongst the peoples following various forms of beliefs in this country, and therefore I think, Sir, that this amendment at any rate should find acceptance from those who have sponsored this clause.

(Amendments Nos. 606 and 608 were not moved.)

Shrimati G. Durgabai (Madras: General): Mr. President, Sir, I beg to move the following amendment:—

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

Sir, if my amendment is accepted, the clause would read thus:—

"That nothing in this article shall affect the operation of any existing law or preclude the State from making any law for social welfare and reform or for throwing open Hindu religious institutions of a public character to all classes and sections of Hindus."

Sir, the object of my amendment is to enlarge the scope of the clause as it stands. The clause as it stands, reads thus—

"..... for social welfare and reform or for throwing open Hindu religious institutions of a public character to any class or section of Hindus."

Sir, in my view the clause as it stands is restricted in its scope, and the object of my amendment is to secure the benefit in a wider way and to make it applicable to all classes and sections.

Sir, though we are not able to make a sweeping reform or a more comprehensive reform in this direction, I feel that no distinction of any kind should be made between one class of Hindus and another.

Now, with regard to the Hindu religious institutions of a public character, we are all aware that there are various classes of these institutions, such as temples, religious *maths*, and educational institutions or *Pathasalas* conducted by these institutions, or attached to these institutions. So far as temples are concerned, I am sure that all of us are aware that almost all of the provinces, including some States, have already passed law throwing open temples to all classes or sections of Hindus. But I am equally sure that some distinction does still exist in regard to the other forms of religious institutions, such as *Pathasalas*, educational institutions and others managed or conducted by these religious institutions. As I have already explained, my object is to enlarge the scope of this clause, and to include within it all classes and sections of Hindus. If my amendment is accepted, then that object will be fulfilled. As I have already explained, there should not be any distinction between one class and another class of Hindus.

I think these few words will suffice to explain the object of my amendment. I commend my amendment to the House for its acceptance. Sir, I move.

Mr. Vice-President: Amendment No. 610 is disallowed because it has already been covered by something allied, under the Directive Principles.

(Amendment No. 611 was not moved.)

No. 612, standing in the joint names of Mr. Mohamed Ismail Sahib and Mr. Pocker Sahib.

The Honourable Shri K. Santhanam (Madras: General): Sir, on a point of order. This particular amendment No. 612 is not relevant to this article 19. The amendment refers to personal law, but here we are dealing only with freedom of religion. The matter touched by the amendment has already been raised in a previous article, and also in the Directive Principles.

Mohamed Ismail Sahib (Madras: Muslim): Sir, I beg to submit, that my amendment is quite in order under this article, because this article speaks of the religious rights of the citizens, and personal law is based upon religion. I have made it quite clear on a previous occasion that persona law is part of the religion of the people who are observing that personal law. I only want to make it clear that this article shall not preclude people from observing their personal law. I am putting it in a negative form, because here, the article says—

"Nothing in this article shall affect the operation of any existing law or preclude the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;"

This practice of personal law may, by a stretch of imagination, be brought under the secular activities associated with religion. Therefore, I propose to make it clear that so far as personal law is concerned, this article shall not affect the observance thereof by the people concerned. That is my point.

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

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

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

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

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

Mr. Mohamed Ismail Sahib: On a previous occasion I put it in the positive form and here I put it in the negative form. So far as the Directive Principles are concerned, they speak of the attempts which the Government have to make in evolving a uniform civil code. Suppose they have exempted personal law, that does not mean that there can be no uniform civil code in the country. Whatever that may be, here I say under this article, in the matter of religion, people are given certain rights and this question of personal law shall not be brought in. That is what I say. The question of personal law shall not be affected when this article comes into operation. That is my point.

Mr. Vice-President: I do not know whether I am technically correct or not; but in view of the peculiar circumstances in which our Muslim brethren are placed, I am allowing Mr. Mohamed Ismail Sahib to say what he has to say and to place his views before the House.

Mr. Mohamed Ismail Sahib: Thank you very much, Sir, for giving me another opportunity to put my views before the House on this very important matter. I beg to move:

"That after clause (2) of article 19, the following new clause be added:
'(3) Nothing in clause (2) of this article shall affect the right of any citizen to follow the personal law of the group or the community to which he belongs or professes to belong.'"

Sir, this provision which I am suggesting would only recognise the age-long right of the people to follow their own personal law, within the limits of their families and communities. This does not affect in any way the members of other communities. This does not encroach upon the rights of the members of other communities to follow their own personal law. It does not mean any sacrifice at all on the part of the members of any other community. Sir, here what we are concerned with is only the practice of the members of certain families coming under one community. It is a family practice and in such cases as succession, inheritance and disposal of properties by way of wakf and will, the personal law operates. It is only with such matters that we are concerned under personal law. In other matters, such as evidence, transfer of property, contracts and in innumerable other questions of this sort, the civil code will operate and will apply to every citizen of the land, to whatever community he may belong. Therefore, this will not in any way detract from the desirable amount of uniformity which the State may try to bring about, in the matter of the civil law.

This practice of following personal law has been there amongst the people for ages. What I want under this amendment is that that practice should not be disturbed now and I want only the continuance of a practice that has been going on among the people for ages past. On a previous occasion Dr. Ambedkar spoke about certain enactments concerning Muslim personal law, enactments relating to Wakf, Shariat law and Muslim marriage law. Here there was no question of the abrogation of the Muslim personal law at all. There was no revision at all and in all those cases what was done was that the Muslim personal law was elucidated and it was made clear that these laws shall apply to the Muslims. They did not modify them at all. Therefore those enactments and legislations cannot be cited now as matters of precedents for us to do anything contravening the personal law of the people. Under this amendment what I want the House to accept is that when we

speak of the State doing anything with reference to the secular aspect of religion, the question of the personal law shall not be brought in and it shall not be affected.

Sir, by way of general remarks I want to say a few words on this article. My friend Mr. Tajamul Husain brought forward certain amendments, Nos. 572 and 588. To tell you the truth, Sir, I did not know at that time nor do I know now whether he was serious at all when he made those proposals and what were the points which he urged in favour of his proposals I could not understand. I did not take him, and I make bold to say that the House also did not take him, seriously and therefore I do not want to waste the time of the House in replying to him.

The question of professing, practising and propagating one's faith is a right which the human being had from the very beginning of time and that has been recognised as an inalienable right of every human being, not only in this land but the whole world over and I think that nothing should be done to affect that right of man as a human being. That part of the article as it stands is properly worded and it should stand as it is. That is my view.

Another honourable Member spoke about the troubles that had arisen as a result of the propagation of religion. I would say that the troubles were not the result of the propagation of religion or the professing or practising of religion. They arose as a result of the misunderstanding of religion. My point of view, and I say that that is the correct point of view, is that if only people understand their respective religions aright and if they practise them aright in the proper manner there would be no trouble whatever; and because there was some trouble due to some cause it does not stand to reason that the fundamental right of a human being to practise and propagate his religion should be abrogated in any way.

Mr. Vice-President: The clause is now open for discussion.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Sir, I feel myself called upon to put in a few words to explain the general implications of this article so as to remove some of the misconceptions that have arisen in the minds of some of my honourable Friends over it.

This article 19 of the Draft Constitution confers on all persons the right to profess, practise and propagate any religion they like but this right has been circumscribed by certain conditions which the State would be free to impose in the interests of public morality, public order and public health and also in so far as the right conferred here does not conflict in any way with the other provisions elaborated under this part of the Constitution. Some of my Friends argued that this right ought not to be permitted in this Draft Constitution for the simple reason that we have declared time and again that this is going to be a secular State and as such practice of religion should not be permitted as a fundamental right. It has been further argued that by conferring the additional right to propagate a particular faith or religion the door is opened for all manner of troubles and conflicts which would eventually paralyse the normal life of the State. I would say at once that this conception of a secular State is wholly wrong. By secular State, as I understand it, is meant that the State is not going to make any discrimination whatsoever on the ground of religion or community against any person professing any particular form of religious faith. This means in essence that no particular religion in the State will receive any State patronage whatsoever. The State is not going to establish, patronise or endow any particular religion to the exclusion of or in preference to others and that no citizen in the State will have any preferential treatment or will be discriminated against simply on the ground that he professed a particular form of religion. In other words in the affairs of the State the professing of any particular religion will not be taken into consideration at all. This I consider to be the essence of a se-

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cular state. At the same time we must be very careful to see that in this land of ours we do not deny to anybody the right not only to profess or practise but also to propagate any particular religion. Mr. Vice-President, this glorious land of ours is nothing if it does not stand for lofty religious and spiritual concepts and ideals. India would not be occupying any place of honour on this globe if she had not reached that spiritual height which she did in her glorious past. Therefore I feel that the Constitution has rightly provided for this not only as a right but also as a fundamental right. In the exercise of this fundamental right every community inhabiting this State professing any religion will have equal right and equal facilities to do whatever it likes in accordance with its religion provided it does not clash with the conditions laid down here.

The great Swami Vivekananda used to say that India is respected and revered all over the world because of her rich spiritual heritage. The western world, strong with all the strength of a materialistic civilisation, rich with the acquisitions of science, having a dominating position in the world, is poor today because of its utter lack of spiritual treasure. And here does India step in. India has to import this rich spiritual treasure, this message of hers to the west. If we are to do that, if we are to educate the world, if we are to remove the doubts and misconceptions and the colossal ignorance that prevails in the world about India's culture and heritage, this right must be inherent,—the right to profess and propagate her religious faith must be conceded.

I have lisitened to some of the speeches that have been made in connection with this article. It has been objected to and it has been said that the right to propagate should be taken away. One honourable Member suggested that if we conceded the right, the bloody upheaval which this country has witnessed of late would again recur with full vehemence in the near future. I do not at all share that pessimism of my honourable Friend. Apparently my honourable Friend has not given special consideration to the conditions that are imposed in this article. The power that this article imposes upon the State to intervene on certain occasions completely demolishes all chances of that kind of cataclysm which we have seen.

It has also been said, and I am very sorry that an observation was made by an honourable Member of considerable eminence and standing, that the Christian community in its proselytising zeal has sometimes transgressed its limits and has done acts which can never be justified. An instance of Bombay was cited in defence of his position.

Mr. Vice-President: I am afraid you are making a mistake there. No particular instance, so far as I remember, was cited.

Pandit Lakshmi Kanta Maitra: Anyway I believe that was at the back of his mind. I am sorry if I have not got at it correctly. I want to say that a good deal of injustice will be done to the great Christian community in India if we go away with that impression. The Indian Christian community happens to be the most inoffensive community in the whole of India. That is my personal opinion and I have never known anybody contesting that proposition. This Indian Christian community, so far as I am aware, spend to the tune of nearly Rs. 2 crores every year for educational uplift, medical relief and for sanitation, public health and the rest of it. Look at the numerous educational institutions, dispensaries and hospitals they have been running so effectively and efficiently, catering to all classes and communities. If this vast amount of Rs. 2 crores were utilised by this Christian community for purposes of seeking converts, then the Indian Christian community which comprises only 70 millions would have gone up to . . . . .

Mr. Vice-President: You are mistaken there: it is only 7 millions.

Pandit Lakshmi Kanta Maitra: I beg your pardon. From 7 millions it would have gone to 70 millions. But the point, Mr. Vice-President, is not in the figures. The point of my whole contention is that the Christian community in India has not done that proselytising work with that amount of zeal and frenzy with which some of our friends have associated it. I am anxious to remove that mis-conception. Sir, I feel that every single community in India should be given this right to propagate its own religion. Even in a secular state I believe there is necessity for religion. We are passing through an era of absolute irreligion. Why is there so much vice or corruption in every stratum of society? Because we have forgotten the sense of values of things which our forefathers had inculcated. We do not at all care in these days, for all these glorious traditions of ours with the result that everybody now acts in his own way, and justice, fairness, good sense and honesty have all gone to the wilderness. If we are to restore our sense of values which we have held dear, it is of the utmost importance that we should be able to propagate what we honestly feel and believe in. Propagation does not necessarily mean seeking converts by force of arms, by the sword, or by coercion. But why should obstacles stand in the way if by exposition, illustration and persuasion you could convey your own religious faith to others? I do not see any harm in it. And I do feel that this would be the very essence of our fundamental right the right to profess and practise any particular religion. Therefore this right should not be taken away, in my opinion. If in this country the different religious faiths would go on expounding their religious tenets and doctrines, then probably a good deal of misconception prevailing in the minds of people about different religions would be removed, and probably a stage would be reached when by mutual understanding we could avoid in future all manner of conflicts that arise in the name of religion. From that point of view I am convinced that the word 'propagate' should be there and should not be deleted.

In this connection I think I may remind the House that the whole matter was discussed in the Advisory Council and it was passed there. As such I do not see any reason why we should now go back on that. Sir, the clause as it is has my whole-hearted support, and I feel that with the amendments moved by my honourable Friend Dr. Ambedkar and Shrimati Durgabai this clause should stand as part of the Constitution.

Shri L. Krishnaswami Bharathi (Madras: General): Mr. Vice-President, after the eloquent and elaborate speech of my respected Friend Pandit Maitra I thought it was quite unnecessary on my part to participate in the discussion. I fully agree with him that the word 'propagate' ought to be there. After all, it should not be understood that it is only for any sectarian religion. It is generally understood that the word 'propagate' is intended only for the Christian community. But I think it is absolutely necessary, in the present context of circumstances, that we must educate our people on religious tenets and doctrines. So far as my experience goes, the Christian community have not transgressed their limits of legitimate propagation of religious view, and on the whole they have done very well indeed. It is for other communities to emulate them and propagate their own religions as well. This word is generally understood as if it referred to only one particular religion, namely, Christianity alone. As we read this clause, it is a right given to all sectional religions; and it is well known that after all, all religions have one objective and if it is properly understood by the masses, they will come to know that all religions are one and the same. It is all God, though under different names. Therefore this word ought to be there. This right ought to be there. The different communities may well carry on propaganda or propagate their religion and what it stands for. It is not to be understood that when one

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propagate his religion he should cry down other religions. It is not the spirit of any religion to cry down another religion. Therefore this is absolutely necessary and essential.

Again, it is not at all inconsistent with the secular nature of the State. After all, the State does not interfere with it. Religion will be there. It is a personal affair and the State as such does not side with one religion or another. It tolerates all religions. Its citizens have their own religion and its communities have their own religions. And I have no doubt, whatever, seeing from past history, that there will not be any quarrel on this account. It was only yesterday His Excellency the Governor-General Sri Rajaji spoke on this matter. It is very necessary that we should show tolerance. That is the spirit of all religions. To say that some religious people should not do propaganda or propagate their views is to show intolerance on our part.

Let me also, in this connection, remind the House that the matter was thoroughly discussed at all stages in the Minorities Committee, and they came to the conclusion that this great Christian community which is willing and ready to assimilate itself with the general community, which does not want reservation or other special privileges should be allowed to propagate its religion along with other religious communities in India.

Sir, on this occasion I may also mention that you, Mr. Vice-President, are willing to give up reservation of seats in the Assembly and the local Legislatures of Madras and Bombay, and have been good enough to give notice of an amendment to delete the clause giving reservation to the Christian community. That is the way in which this community, which has been thoroughly nationalist in its outlook, has been moving. Therefore, in good grace, the majority community should allow this privilege for the minority communities and have it for themselves as well. I think I can speak on this point with a certain amount of assurance that the majority community is perfectly willing to allow this right. I am therefore strongly in favour of the retention of the word 'propagate' in this clause.

The Honourable Shri K. Santhanam: Mr. Vice-President, Sir, I stand here to support this article. This article has to be read with article 13, article 13 has already assured freedom of speech and expression and the right to form association or unions. The above rights include the right of religious speech and expression and the right to form religious association or unions. Therefore, article 19 is really not so much an article on religious freedom, but an article on, what I may call religious toleration. It is not so much the words "All persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion" that are important. What are important are the governing words with which the article begins, viz., "Subject to public order, morality and health".

Hitherto it was thought in this country that anything in the name of religion must have the right to unrestricted practice and propagation. But we are now in the new Constitution restricting the right only to that right which is consistent with public order, morality and health. The full implications of this qualification are not easy to discover. Naturally, they will grow with the growing social and moral conscience of the people. For instance, I do not know if for a considerable period of time the people of India will think that purdah is consistent with the health of the people. Similarly, there are many institutions of Hindu religion which the future conscience of the Hindu community will consider as inconsistent with morality.

Sir, some discussion has taken place on the word 'propagate'. After all, propagation is merely freedom of expression. I would like to point out that the word 'convert' is not there. Mass conversion was a part of the activities of the Christian Missionaries in this country and great objection has been taken

by the people to that. Those who drafted this Constitution have taken care to see that no unlimited right of conversion has been given. People have freedom of conscience and, if any man is converted voluntarily owing to freedom of conscience, then well and good. No restrictions can be placed against it. But if any attempt is made by one religious community or another to have mass conversions through undue influence either by money or by pressure or by other means, the State has every right to regulate such activity. Therefore I submit to you that this article, as it is, is not so much an article ensuring freedom, but toleration—toleration for all, irrespective of the religious practice or profession. And this toleration is subject to public order, morality and health.

Therefore this article has been very carefully drafted and the exceptions and qualifications are as important as the right it confers. Therefore I think the article as it stands is entitled to our wholehearted support.

Shri Rohini Kumar Chaudhari (Assam: General): Sir, I am grateful to you for giving me this opportunity for making a few observations on this very important article. It struck me as very peculiar that, although as many as four articles have dealt with religion, there is no mention of God anywhere in the whole Chapter. At first I considered it extremely strange, but after going through the matter more carefully, I found every justification for it. From the way in which the world is progressing, there is very little doubt that a time will come when we may be in a position to dispense with God altogether. That has happened in other more advanced countries and therefore I believe, in order to make room for such a state of things, the word "God" has been purposely avoided in dealing with religion itself.

It reminds me of a story, Sir, which I had heard in my student life. There was a great scientist who presented to the king something like a globe in which the whole solar system, the sun, moon and everything, was shown. Then the king who had some faith in God asked the scientist, "Where have you placed God ?". The scientist said, "I have done without him". That is exactly the position today. We are framing a Constitution where we speak of religion but there is no mention of God anywhere in the whole chapter. Sir, my honourable Friend Mr. Kamath introduced 'God' in his speech but at the same time he spoke about spiritual matters. The term "spiritual training" is somewhat ambiguous. The word "spirit" is defined in the Chambers Dictionary as a 'ghost'. There are people in this world who do not fear God but they fear ghosts all the same because ghosts bring troubles while God does not. The term 'spiritual training' is very difficult for me to follow. What did my honourable Friend Mr. Kamath, mean by spiritual training? What is the spiritual training to which he is referring? Is it training to believe in ghosts or to avoid them or is it the training to have more recourse to spirit to keep up your spirits in the evening. What actually he meant by spiritual training is very difficult to follow. Does he mean the teaching of the great books like the Bible, the Koran and the Gita in all institutions and that the State should be in a position to endow any insititution which is dealing only with the teaching of the Koran, or the Bible or the Gita? I do not think that that is the aim. That point ought to be made clear.

Another point is the propagation of religion. I have no objection to the propagation of any religion. If anyone thinks that his religion is something ennobling and that it is his duty to ask others to follow that religion, he is welcome to do so. But what I would object to is that there is no provision in this Constitution to prevent the so-called propagandist of his religion from throwing mud at some other religion. For instance, Sir, in the past we remember how missionaries went round the country and described Sri Krishna in the most abominable terms. They would bring up particular activities of Sri Krishna and say, "Look here, this is your Lord Krishna and this is his conduct". We also remember with great pain how they used to decry the worship

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of the idols and call them names. Sir, in the new Constitution we must make it perfectly clear that no such thing will be tolerated. It is not necessary in the course of propagating any particular religion to throw mud at other religions, to decry them and bring out their unsatisfactory features according to the particular supporters of a particular religion. There should be a provision in the law, in the Constitution itself that such conduct will be met with exemplary punishment. With these words, Sir, I support the amendment subject to such verbal alterations as have been suggested by Shrimati Durgabai and the Honourable Dr. Ambedkar.

Shri T. T. Krishnamachari (Madras: General): Mr. Vice-President, Sir, I am here to support the motion before the House, viz., to approve of article 19. Many speakers before me have emphasised the various provisions of this particular article and the background in regard to the framing of this article. What I would like to stress is this: Sir, we are not concerned here with compromises arrived at between the various communities. We are not really concerned with whether some advantage might be derived from the wording of this article later on by certain communities in regard to the furtherence of their own religious beliefs and practices, but I think emphasis should be laid on the fact that a new government and the new Constitution have to take things as they are, and unless the *status quo* has something which offends all ideas of decency, all ideas of equity and all ideas of justice, its continuance has to be provided for in the Constitution so that people who are coming under the regime of a new government may feel that the change is not a change for the worse. In achieving that particular object, I think this article has gone a long way.

Sir, objection has been taken to the inclusion of the word "propagate" along with the words "profess and practise" in the matter of religion. Sir, it does not mean that this right to propagate one's religion is given to any particular community or to people who follow any particular religion. It is perfectly open to the Hindus and the Arya Samajists to carry on their Suddhi propaganda as it is open to the Christians, the Muslims, the Jains and the Bhuddists and to every other religionist, so long as he does it subject to public order, morality and the other conditions that have to be observed in any civilised government. So, it is not a question of taking away anybody's rights. It is a question of conferring these rights on all the citizens and seeing that these rights are exercised in a manner which will not upset the economy of the country, which will not create disorder and which will not create undue conflict in the minds of the people. That, I feel, is the point that has to be stressed in regard to this particular article. Sir, I know as a person who has studied for about fourteen years in Christian institutions that no attempt had been made to convert me from my own faith and to practise Christianity. I am very well aware of the influences that Christianity has brought to bear upon our own ideals and our own outlook, and I am not prepared to say here that they should be prevented from propagating their religion. I would ask the House to look at the facts so far as the history of this type of conversion is concerned. It depends upon the way in which certain religionists and certain communities treat their less fortunate brethren. The fact that many people in this country have embraced Christianity is due partly to the status that it gave to them. Why should we forget that particular fact? An untouchable who became a Christian became an equal in every matter along with the high-caste Hindu, and if we remove the need to obtain that particular advantage that he might probably get—it is undoubtedly a very important advantage, apart from the fact that he has faith in the religion itself—well, the incentive for anybody to become a Christian will not probably exist. I have no doubt, Sir, we have come to a stage when it does not matter to what religion a man belongs, it does not matter to what sub-sect or community in a particular religion a man belongs, he will be equal

in the eyes of law and in society and in regard to the exercise of all rights that are given to those who are more fortunately placed. So I feel that any undue influence that might be brought to bear on people to change their religion or any other extraneous consideration for discarding their own faith in any particular religion and accepting another faith will no longer exist; and in the circumstances, I think it is only fair that we should take the *status quo* as it is in regard to religion and put it into our Fundamental Rights, giving the same right to every religionist, as I said before, to propagate his religion and to convert people, if he felt that it is a thing that he has to do and that is a thing for which he has been born and that is his duty towards his God and his community.

Subject to the overriding considerations of the maintenance of the integrity of the State and the well-being of the people,—these conditions are satisfied by this article—I feel that if the followers of any religion want to subtract from the concessions given herein in any way, they are not only doing injustice to the possibility of integration of all communities into one nation in the future but also doing injustice to their own religion and to their own community. Sir, I support the article as it is.

Shri K. M. Munshi (Bombay: General): Mr. Vice-President, Sir, I have only a few submissions to make to the House. As regards amendment No. 607, moved by my honourable Friend, Prof. K. T. Shah, I entirely agree with him that the word 'Hindu' used in this section should be widely defined. As a matter of fact, the Hindu Bill which is now before this House in its legislative capacity has defined 'Hindu' so as to include the various sub-sections, but it will be more appropriate to have this definition in the interpretation clause than in this.

I have only a few words to say with regard to the objections taken to the word "propagate". Many honourable Members have spoken before me placing the point of view that they need not be afraid of the word "propagate" in this particular article. When we object to this word, we think in terms of the old regime. In the old regime, the Christian missionaries, particularly those who were British were at an advantage. But since 1938, I know, in my part of Bombay, the influence which was derived from their political influence and power has disappeared. If I may mention a fact within my knowledge in 1937 when the first Congress Ministry came into power in Bombay, the Christian missionaries who till then had great influence with the Collectors of the Districts and through their influence acquired converts, lost it and since then whatever conversions take place in that part of the country are only the result of persuasion and not because of material advantages offered to them. In the present set up that we are now creating under this Constitution, there is a secular State. There is no particular advantage to a member of one community over another; nor is there any political advantage by increasing one's fold. In those circumstances, the word 'propagate' cannot possibily have dangerous implications, which some of the Members think that it has.

Moreover, I was a party from the very beginning to the compromise with the minorities, which ultimately led to many of these clauses being inserted in the Constitution and I know it was on this word that the Indian Christian community laid the greatest emphasis, not because they wanted to convert people aggressively, but because the word "propagate" was a fundamental part of their tenet. Even if the word were not there, I am sure, under the freedom of speech which the Constitution guarantees it will be open to any religious community to persuade other people to join their faith. So long as religion is religion, conversion by free exercise of the conscience has to be recognised. The word 'propagate' in this clause is nothing very much out of the way as some people think, nor is it fraught with dangerous consequences.

Speaking frankly, whatever its results we ought to respect the compromise. The Minorities Committee the year before the last performed a great achievment by having a unanimous vote on almost every provision of its report.

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This unanimity created an atmosphere of harmony and confidence in the majority community. Therefore, the word 'propagate' should be maintained in this article in order that the compromise so laudably achieved by the Minority Committee should not be disturbed. That is all that I want to submit.

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

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

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

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

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

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

The question is:

"That in clause (1) of article 19, for the words 'practice and propagate religion' the words 'and practise religion privately' be substituted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (1) of article 19, for the words 'practise and propagate' the words 'and practise' be substituted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (1) of article 19, for the words 'are equally entitled to freedom of conscience and the right', the words 'shall have the right' be substituted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (1) of article 19, the words 'freedom of conscience and' be omitted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That Explanation to clause (1) of article 19 be deleted and the following be inserted in that place:—

"No person shall have any visible sign or mark or name, and no person shall wear any dress whereby his religion may be recognised.".

The amendment was negatived.

Mr. Vice-President: The question is:

"That the following proviso be added to clause (1) of article 19:—

"Provided that no propaganda in favour of any one religion which is calculated to result in change of faith by the individuals affected, shall be allowed in any school or college or other educational institution, in any hospital asylum or in any other place or institution where persons of a tender age, or of unsound mind or body are liable to be exposed to undue influence from their teachers, nurses or physicians, keepers or guardians or any other person

set in authority above them, and which is maintained wholly or partially from public revenues, or is in any way aided or protected by the Government of the Union, or of any State or public authority therein."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in the Explanation to clause (1) of article 19, for the word 'progession' the word 'practice' be substituted."

The Honourable Shri Ghanshyam Singh Gupta: (C.P. & Berar: General): Sir, I wish to withdraw the amendment.

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

Mr. Vice-President: The question is:

"That at the end of Explanation to clause (1) of article 19, the words 'and for the matter of that any other religion' be inserted."

The amendment was adopted.

Mr. Vice-President: The question is:

"That after clause (1) of article 19, the following new sub-clause be added :—

"(2) The State shall not establish, endow or patronize any particular religion. Nothing shall however prevent the State from imparting spiritual training or instruction to the citizens of the Union."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in article 19, the following be inserted as clause (1a) :—

"(1a) The Indian Republic shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

The amendment was negatived.

Mr. Vice-President: The question is:

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

The amendment was adopted.

Mr. Vice-President: The question is:

"That in sub-clause (a) of clause (2) of article 19, for the words "regulating or restricting any economic, financial, political or other secular activity" the words "regulating, restricting or prohibiting any economic, financial, political or other secular activity" be substituted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in sub-clause (b) of clause (2) of article 19, after the words 'or throwing open to Hindu' the words 'Jain, Buddhist or Christian' be added."

The amendment was negatived.

Mr. Vice-President: The question is:

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

Have you accepted it, Dr. Ambedkar?

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

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

The amendment was adopted.

Mr. Vice-President: The question is:

"That after clause 2; of article 19, the following new clause be added :—

"(3) Nothing in clause (2) of this article shall affect the right of any citizen to follow the personal law of the group or the community to which he belongs or professes to belong".

The amendment was negatived.

Mr. Vice-President: I shall now put article 19, as amended by amendments numbers 596 and 609 to vote. The question is:

"That article 19, as amended, form part of the Constitution."

The motion was adopted.

Article 19, as amended, was added to the Constitution.

Article 14—(*contd.*)

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

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

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

Mr. Naziruddin Ahmad: With regard to amendment No. 512 I have a point of order, Mr. Vice-President.

You will be pleased to remember, Sir, that amendment No. 512 was moved in the House. It was accepted by Dr. Ambedkar and then it was put to the vote. The shouts according to your estimate were in favour of its acceptance. Then some trouble arose and then shouts were again called. The shouts according to your estimate were again in favour of the amendment. What is very important in this connection, Sir, is that you declared the amendment to be carried.

Mr. Vice-President: Did I declare the amendment to be carried?

Mr. Naziruddin Ahmad: Yes, Sir. I remember.

Mr. Vice-President: Do the records show that?

Mr. Naziruddin Ahmad: The shorthand notes may be referred to. My recollection is it was declared carried (*Interruption*).

Mr. Vice-President: Kindly, in order to preserve the diginity of the House, do not interrupt Mr. Naziruddin Ahmad only because he is putting forward a point of view which may not be agreeable to a certain section of the House.

(To Mr. Naziruddin Ahmed) Kindly confine your remarks to the business on hand.

Mr. Naziruddin Ahmad: Sir, I do not wish to obstruct the majority in dealing with this amendment in any way they please. I simply suggest that if it is carried, it cannot be put again. It is against the Rules. But I have a way out, which I shall suggest and which will be constitutional. There is a rule, in our Rules, that with the consent of twenty five per cent of the Members of the House, any resolution that has been carried may be re-opened. I suggest, Sir, that if I am right that it was declared to be carried, then, it should be re-opened in the regular constitutional manner.

Mr. Vice-President: The official records of the deliberations read this way:

"Just before the voting was called, however, Shri Mahavir Tyagi made a suggestion, which was later supported by the Prime Minister, that the voting on this particular amendment be postponed as there appeared to be some confusion as to the full implications of this provision. The House agreed to the suggestion and voting on this amendment and on the article as a whole was accordingly postponed."

That shows that your whole objection falls to the ground.

(Mr. Naziruddin Ahmad rose to speak.)

Please do not argue.

I want to make certain other things clear to the House. I want to make clear the point of view from which I regard this. As I have said already, the House is the ultimate authority in this as in all matters. The House has laid down certain Rules for the conduct of the business. These Rules have been laid down mainly because the aim of the House is that the work should proceed smoothly. The smooth working of the House I regard as the really essential thing, and much more important than sticking to the Rules which the House has made and which the House can un-make at any time. When there was this confusion, to use the language of Mr. Naziruddin Ahmad, I made a reference to the House and the House agreed that the matter should be reconsidered. The House is fully competent to do so and if the House is still of that view, then the matter will be considered here and now.

Maulana Hasrat Mohani: (United Provinces: Muslim): May I know, Sir, whether the House has reconsidered or whether it is a mandate from the Congress Party who has issued a whip that it should be opposed? Do you decide to allow the House to reconsider or is it only a mandate from the Congress Party? I have got a copy of that whip in my hand, that this must be opposed.

Shri Mahavir Tyagi: (United Provinces: General): Sir, I protest against the language used and the honourable Member's referring to the whip of the Congress Party.

Mr. Vice-President: You have done your duty as a Congress man; now I shall do my duty as the presiding officer here.

Maulana Hasrat Mohani: Sir, I stick to what I have said.

Mr. Vice-President: I am sorry.....

Shri Mahavir Tyagi: Will you please ask him to give back the whip, which the honourable Member has no right to handle?

Mr. Vice-President: You are always the stormy petrel. While I am trying to bring peace and good humour you are interfering. I will not allow you to do so again.

As I was saying, I am very sorry that an old and experienced public man like Maulana Hasrat Mohani should have permitted himself to make references to things which are no concern of this House. As I have said more than once, though I belong to a particular political party, so long as I am in the Chair, I recognise no party at all. It is in that spirit that proceedings of this House are being conducted. I regret very much that anything should have been said challenging the way in which the proceedings have been conducted or are going to be conducted.

I ask the permission of the House once again as to whether I can re-open the matter.

Honourable Members: Yes.

Mr. Vice-President: Thank you. I am going to put amendment No. 512 to the vote.

The Honourable Shri Ghanshyam Singh Gupta: Sir, there is no question of re-opening. You had not finally said that the amendment was carried or was not carried. I want to impress upon the House that the Chair had not declared that it was either carried or it was not carried and therefore there is no question of re-opening at all. The matter is absolutely in the discretion of the Chair now. The Rules are quite clear. A vote is taken. Once it is challenged, the division bell rings. After the division bell

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rings, the Chair again puts it to the vote and then sends Ayes and Noes to the lobbies. The Teller counts the votes and after that, it is declared that a certain motion is lost or is carried. This was not done at all. In fact, it was in the process of declaration by the Chair that the motion is or is not carried that the Chair was pleased to say that this thing stands over. Anybody who says that the Chair finally declared that that motion was carried or lost is wrong.

Mr. Vice-President: It merely shows the depth of my ignorance. I used the word which should not have been used. I used the word 'reopen'. I am glad that the matter has been set right. I only wish that I had sufficient—what shall I say—ability to act in the way in which the Honourable Mr. Gupta has done. I now put amendment No. 512 to vote.

The question is:

"That in article 14, the following be added as clause (4):—

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

The amendment was negatived.

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

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

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

The question is:

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

The amendment was adopted.

Mr. Vice-President: Now the question is:

"That article 14, as amended, stand part of the Constitution."

The motion was adopted.

Article 14, as amended was added to the Constitution.

Article 15

Mr. Vice-President: Now the motion before the House is: that article 15 form part of the Constitution.

We shall go over the amendments one after another. 515 is ruled out of order. Nos. 516, 517, 518 and 532 are similar and of these I can allow 516 to be moved as also 517 both standing in the name of Shri Brajeshwar Prasad.

Shri Brajeshwar Prasad: (Bihar: General): Sir, I am not moving 516 and 517.

(Amendments Nos. 518, 532, 519 and 520 were not moved.)

Mr. Vice-President: No. 521 is blocked. Then 522, 523, 524, 525, 528 and 530 are similar. I can allow 523 to be moved.

Kazi Syed Karimuddin (C.P. & Berar: Muslim): Mr. Vice-President, Sir, if the proposed amendment by the Drafting Committee is accepted and the article is allowed to stand as it is:—

"No person shall be deprived of his life or personal liberty except according to procedure established by law.....".

then in my opinion, it will open a sad chapter in the history of constitutional law. Sir, the Advisory Committee on Fundamental Rights appointed by the Constituent Assembly had suggested that no person shall be deprived of his life or liberty without due process of law; and I really do not understand how the

words "personal" and "according to procedure established by law" have been brought into article 15 by the Drafting Committee.

Shri Lakshmi Kanta Maitra: Sir, is the honourable Member moving his amendment or not?

Mr. Vice-President: In order to meet the requirements of technicalities, please move your amendment first.

Kazi Syed Karimuddin: Sir, I beg to move—

"That in article 15, for the words "No person shall be deprived of his life or personal liberty except according to procedure established by law" the words "No person shall be deprived of his life or liberty without due process of law" be substituted.

Continuing my arguments Sir, if the words "according to procedure established by law" are enacted, there will be very great injustice to the law courts in the country, because as soon as a procedure according to law is complied with by a court, there will be an end to the duties of the court and if the court is satisfied that the procedure has been complied with, then the judges cannot interfere with any law which might have been capricious, unjust or iniquitous. The clause, as it stands, can do great mischief in a country which is the storm centre of political parties and where discipline is unknown. Sir, let us guarantee to individuals inalienable rights in such a way that the political parties that come into power cannot extend their jurisdiction in curtailing and invading the Fundamental Rights laid down in this Constitution.

Sir, there is an instance in the American Constitutional law in a case reported, Chambers *vs.* Florida where an act was challenged in a court of law on the ground that the law was not sound and that it was capricious and unjust. Therefore, my submission is that if the words "according to procedure established by law" are kept then it will not be open to the courts to look into the injustice of a law or into a capricious provision in a law. As soon as the procedure is complied with, there will be an end to everything and the judges will be only spectators. Therefore, my submission is, first, that the words "except according to procedure established by law" be deleted, and then that the words "without due process of law" be inserted.

Sir, actually I had sent two amendments, one about the word "personal" before the words 'liberty', and the other about substitution of the words "without due process of law" for the words "except according to procedure established by law". But somehow or other, these two amendments have been consolidated, and I am required to move one amendment. Even if my amendment about "personal liberty" is not accepted by the Drafting Committee or Dr. Ambedkar, I do not mind; but the second portion of my amendment should be accepted.

(Amendment No. 524 was not moved.)

Mr. Vice-President: Amendment No. 525. Mr. Naziruddin Ahmad. Do you want to press it?

Mr. Naziruddin Ahmad: Sir, there is a printing mistake which I want to point out.

Mr. Vice-President: All right. Then we come to No. 528 standing in the names of Shri Upendranath Barman, Shri Damodar Swarup Seth and Shri S. V. Krishnamurthy Rao.

Kazi Syed Karimuddin: Sir, I have to raise a point of order here. I said in my speech that I have tabled two separate amendments, one regarding the word 'personal' and the other regarding 'due process of law'. Both these amendments have been consolidated by mistake of the Secretariat. So I have had to move the second part of my amendment. But then, according to the list supplied to us, No. 528 has been bracketted with No. 523—that is my

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amendment. I have moved mine; and so No. 528 cannot be moved now, but only put to vote, according to the practice followed in this House.

Mr. Vice-President: All right. We need not move No. 528.

Shri S. V. Krishnamurthy Rao (Mysore): But there is a difference, in that in No. 528 there is no reference to the word 'personal', whereas No. 523 refers to deletion of this word.

Mr. Vice-President: But they are of similar import and I have already given my decision. We shall put No. 528 to vote.

Then No. 530 in the name of Mr. Z. H. Lari. Do you want it to be put to the vote?

Mr. Z. H. Lari: (United Provinces: Muslim): Yes, Sir.

Mr. Vice-President: Then in my list come No. 524, second part, No. 526 and No. 527. These are almost the same. No. 526 may be moved.

Mahboob Ali Baig Sahib Bahadur (Madras: General): Sir, I beg to move:

"That in article 15 for the words "except according to procedure established by law" the words, "save in accordance with law" be substituted."

In the note given by the Drafting Committee, it is stated that they made two changes from the proposition or article passed by this Assembly in the month of August, April or May of 1947. The first is the insertion of the word 'personal' before liberty, and the reason given is that unless this word 'personal' finds a place there, the clause may be construed very widely so as to include even the freedoms already dealt with in article 13.

That is the reason given for the addition of the word 'personal'. As regards why the original words "without due process of law" were omitted and the present words "except according to procedure established by law" are inserted, the reason is stated to be that the expression is more definite and such a provision finds place in article 31 of the Japanese Constitution of 1946. I will try to confine myself to the second change.

It is no doubt true that in the Japanese Constitution article 31 reads like this but if the other articles that find place in the Japanese Constitution (viz., articles 32, 34 and 35) had also been incorporated in this Draft Constitution that would have been a complete safeguarding of the personal liberty of the citizen. This Draft Constitution has conveniently omitted those provisions.

Article 32 of the Japanese Constitution provides that "no person shall be denied the right of access to the court." According to the present expression it may be argued that the legislature might pass a law that a person will have no right to go to a court of law to establish his innocence. But according to the Japanese Constitution article 32 clearly says that "no person shall be denied the right of access to the court". Is there such a corresponding provision in this Draft Constitution? That is the question. It does not find any place at all.

Article 34 of the Japanese Constitution provides that "no person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel, nor shall be detained without adequate cause and upon demand of any such person such cause should be immediately shown in open court in his presence and in the presence of his counsel." Such a clear right has not been given in these draft provisions.

Further, article 35 provides that the right of all persons to be secured in their homes and against entry, searches, etc. shall not be impaired, except upon warrant issued only for probable cause and so on. If for the sake of clarity and definiteness you have imported into this Draft Constitution article 31 of the Japanese Constitution you should in fairness have incorporated the

other articles of the Japanese Constitution, which are relevant and which were enacted for safeguarding the personal liberty of the honest citizen. May I ask the Drafting Committee through its Chairman whether it is clear from this Constitution that a man who has been arrested and detained has got the right to resort to a court and prove his innocence? It may be said that the expression "except according to procedure established by law" covers the point but the expression means "procedure established by law" of the legislature and it will competent for the legislature to lay down a provision that in the matter of detention of persons whether for political or other reasons, the jurisdiction of the courts is ousted. We know the decisions of the High Courts of India, especially of Madras and some other High Courts, where it has been laid down by these courts that it is open to the legislature to say that the courts shall not interfere with the action taken by the Government in the case of certain citizens whom they consider to be committing an offence or about to commit an offence or are likely to commit an offence. It is not open to the court to go into the merits or demerits of the grounds on which a person has been detained. The only extent to which the courts can go is to find out whether there is *bona fides* or *mala fides* for the action of the Government, and the burden is laid upon the person to prove that there is *mala fides* on the part of the Government in having issued a warrant of detention or arrest. Therefore the words "except according to procedure laid down by law" would mean, and according to me it does mean, that the future legislature might pass a law by which the right of a citizen to be tried by a court to establish his innocence could be taken away. I do not by this mean to convey that under certain circumstances it may not be necessary for Government to prevent a persons from committing an offence and to take the precaution of arresting him and thus prevent him from committing an offence. But I submit that there must be the right of the citizen to go to a court to prove that the ground on which he has been arrested is wrong and he is innocent. That is the elementary right of the citizen as against the executive which might be clothed with power by a party legislature, which might pass a law saying that the executive is empowered to take away the liberty of a person under certain circumstances and he will have no right to go to court and prove his innocence. If the framers of the Draft Constitution are able to tell us that these words "except according to procedure established by law" do not deprive a person of his right to go before the court and establish his innocence and he is not prevented from such a course, then it will be another matter. But we must understand that the words "without due process of law" have been held in England and other countries to convey the meaning that every citizen has got the right, when an action has been taken against him depriving him of his personal liberty, to go before the court and say that he is innocent. That right is given under the expression "without due process of law" or "save in accordance with law". In England the law of the land does not deprive a man of this fundamental and elementary right. All laws that may be made are subject to the relevant principle that no man shall be convicted and no man shall be deprived of his liberty without a chance being given to him to prove that he is innocent. Therefore it must be a law, as I have submitted, which will hear him before it condemns a man.

The only reason which has been advanced in the footnote is that this is more definite and that it finds a place in the Japanese Constitution. As I have already stated, let us not sacrifice the liberty of the subject to prove his innocence, by resorting to the provisions of the Japanese Act and not complete that right of the citizen to be tried—that liberty—by omitting the other provisions of the Japanese Act. I shall be satisfied if all the provisions of the Japanese Constitution find a place here, because the other provisions

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clearly state that no person can be deprived of his liberty without his being given the chance to go to court and all assistance given to him. I therefore object to the words "except according to procedure established by law." If by any other method which may be said to be definite provision they can ensure that the citizen cannot be condemned without being heard by a court, I shall be satisfied. That is my reason for moving this amendment.

Mr. Vice-President: Amendments Nos. 529 and 531 are disallowed as verbal amendments.

(Amendment No. 533 was not moved.)

We can now proceed with the general discussion on article 15.

Pandit Thakur Dass Bhargava (East Punjab: General): Sir, I sent an amendment No. 525, which I wanted to amend by amendment No. 9 on List No. I (Third week). This and amendment No. 528 are the same. The amendment which has been moved by Mr. Karimuddin differs from these in so far as that the word "personal" before the word "liberty" does not appear in his amendment. I am opposed to the amendment of Mr. Karimuddin. The section as it is, with this amendment namely, the substitution of the words "without due process of law" for the words "except according to procedure established by law", is the one which I wish to support.

In this connection the first question that arises is what is the meaning of the word 'law'? According to the general connotation of the word, so widely accepted and the connotation which has been given to this word by Austin, law means an Act enacted by the legislatures whereas I submit that when Dicey used his words "law of the land" he meant law in another meaning.

Similarly, when the Japanese Constitution and other Constitutions used this word in the broad sense they meant to convey by the word 'law' universal principles of justice etc.

According to the present section procedure is held sacrosanct whereas the word 'law' really connotes both procedural law as well as substantive law. I have used the word 'law' in the general sense. Though these words "without due process of law" which are sought to be substituted for the words in the section have not been defined anywhere, their meanings and implications should be understood fully. By using these words "without due process of law" we want that the courts may be authorised to go into the question of the substantive law as well as procedural law. When an enactment is enacted, according to the amendment now proposed to be passed by this House, the courts will have the right to go into the question whether a particular law, enacted by Parliament is just or not, whether it is good or not, whether as a matter of fact it protects the liberties of the people or not. If the Supreme Court comes to the conclusion that it is unconstitutional, that the law is unreasonable or unjust, then in that case the courts will hold the law to be such and that law will not have any further effect.

As regards procedure also, if any legislature takes it into its head to divest itself of the ordinary rights of having a good procedural law in this country, to that extent the court will be entitled to say whether the procedure is just or not. This is within the meaning of the word 'law' as it is used in this amendment and as it is generally used. The word 'law' has also not been defined in this Constitution. For the purpose of article 8 the word 'law' has been defined. Otherwise it has not been defined. I would therefore submit that if the words as used in the section remained, namely 'procedure established by law', we will have to find out what is the meaning of the word 'law'. These words would remain vague and it will result in misconceptions and misconstructions. Therefore, unless and until we understand the meaning

of "due process of law" we will not be doing justice to the amendment proposed. I therefore want to suggest that the words "due process of law" without being defined convey to us a sense as used in the American law as opposed to other laws. What will be the effect of this change? To illustrate this I would refer the House to Act XIV of 1908 called the Black Law under which thousands, if not hundreds of thousands of Congressmen were sent to jail. According to Act XIV of 1908 the Government took to themselves the powers of declaring any organisation illegal by the mere fact that they passed a notification to that effect. This Act, when passed, was condemned by the whole of India. But the Government of the day enacted it in the teeth of full opposition. When the non-co-operation movement began it was civil disobedience of this law with which the Congress fought its battle. The Courts could not hold that the notification of the Government was wrong. The courts were not competent to hold that any organisation or association of persons was legal though its objects were legal. The objects of the Congress were peaceful. They wanted to attain self-government but by peaceful and legitimate means. All the same, since the Government had notified, the courts were helpless. This legislation demonstrates the need of the powers of "due process."

Similarly I will give another illustration, and that is Section 26 of the Defence of India Act. We know that the Federal Court held this Section to be illegal and a new Ordinance had to be issued. Unless and until therefore you invest the court with such power and make this Section 15 really justiciable there is no guarantee that we will enjoy the freedoms that the Constitution wants to confer upon us.

The House has already accepted the word "reasonable" in article 13. At least 70 per cent. of the Acts which can evolve personal liberty have now come under the jurisdiction of the courts, and the courts are competent to pronounce an opinion on such laws, whether they are reasonable or not. The House is now estopped from adopting another principle. In regard to personal property and life the question is much more important. So far as the question of life and personal liberty are concerned they must be also under the category of subjects which are within the jurisdiction of the courts.

Therefore it is quite necessary that the House should accept this amendment. There are two ways, as suggested by the previous speakers: either you must put all the sections as in the Japanese Constitution, and we should pass many of the amendments tabled by Messrs. Lari and Karimuddin one of which you were pleased to declare carried in the first instance and which was later declared lost. They seek to introduce into the Constitution principles which the legislature will in future be unable to contravene. All those amendments regarding Fundamental Rights will be carried *ipso facto* if this one amendment of "due process" is accepted. Another thing which will be achieved by the acceptance of this one amendment is a recognition in this Constitution of the real genius of the people. In the old days we have heard of seven or eight *Rishis*, all very pious and intelligent people, holding real power in the land. To them, well versed in the Shastras, the ministers and the ancient kings went for advice. Those *Rishis* controlled the whole field of administration. This old ideal will practically be achieved if the full bench of the Supreme Court Judges well versed in law and procedure and possessing concentrated wisdom had the final say in regard to peoples' rights.

Mr. Vice-President: The honourable Member's time is up.

Pandit Thakur Dass Bhargava: I have to say many things more, Sir. I know the argument against this amendment is that these words 'due process of law' are not certain or clear. But may I know what is the exact

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meaning of the word 'morality' put in this Constitution.

Mr. Vice-President: I ask the indulgence of the honourable Member. I intimated to him twice that he has exhausted his time. I have half a dozen notes from people competent to speak on this point. I am quite certain that it is not the wish of the honourable Member to curtail the time which I can allow them.

Pandit Thakur Dass Bhargava: I do not want to curtail the time of the others.

Mr. Vice-President: Then you may have two minutes more.

Pandit Thakur Dass Bhargava: Thank you, Sir.

Shri Upendranath Barman: (West Bengal: General): May I say a few words at this stage, Sir?

Mr. Vice-President: I am sorry I cannot oblige the honourable Member.

Pandit Thakur Dass Bhargava: As I was saying, Sir, many other words used in this Constitution have an uncertain meaning. The words 'decency' and 'morality' have not got a definite meaning.

Then, Sir, it is said that this will tend to weaken the administration by the uncertainties which will be imported if this amendment is carried. But, Sir, our liberties will be certain through the particular law which may be reviewed by the court may become uncertain. The administration will not be weakened thereby. I grant that it may probably be that the administration will not have its way. But we want to have a Government which will respect the liberties of the citizens of India. As a matter of fact, if this amendment is carried, it will constitute the bed-rock of our liberties. This will be a *Magna Carta* along with article 13 with the word 'reasonable' in it. This is only victory for the judiciary over the autocracy of the legislature. In fact we want two bulwarks for our liberties. One is the Legislature and the other is the judiciary. But even if the legislature is carried away by party spirit and is sometimes panicky the judiciary will save us from the tyranny of the legislature and the executive.

In a democracy, the courts are the ultimate refuge of the citizens for the vindication of their rights and liberties. I want the judiciary to be exalted to its right position of palladium of justice and the people to be secure in their rights and liberties under its protecting wings.

I commend my amendment and beg the House to pass it.

Shri Chimanlal Chakkubhai Shah [United States of Kathiawar (Saurashtra)]: Mr. Vice-President, Sir, the right conferred by article 15 is the most fundamental of the Fundamental Rights in this Chapter, because it is the right which relates to life and personal liberty without which all other rights will be meaningless. Therefore it is necessary that in defining this right, we must make it clear and explicit as to what it is that we want to confer and not put in restrictions upon the exercise of that right which make it useless or nugatory. I therefore support the amendment which says that the words 'without due process of law' should be substituted for the words 'except in accordance with the procedure established by law.' Sir, the words 'without due process of law' have been taken from the American Constitution and they have come to acquire a particular connotation. That connotation is that in reviewing legislation, the court will have the power to see not only that the procedure is followed, namely, that the warrant is in accordance with law or that the signature and the seal are there, but it has also the power to see that the substantive provisions of law are fair and just and not unreasonable or oppressive or capricious or arbitrary. That means that the judiciary

is given power to review legislation. In America that kind of power which has been given to the judiciary undoubtedly led to an amount of conservative outlook on the part of the judiciary and to uncertainty in legislation. But our article is in two respects entirely different from the article in the American Constitution. In the American Constitution, the words are used in connection with life, liberty and property. In this article we have omitted the word 'property', because on account of the use of this word in the American Constitution, there has been a good deal of litigation and uncertainty. There has been practically no litigation and no uncertainty as regards the interpretation of the words "due process of law" as applied to 'life' and 'liberty'.

Secondly, Sir, in the word 'liberty' that we have used, we have added the word 'personal' and made it 'personal liberty' to make it clear that this article does not refer to any kind of liberty of contract or anything of that kind, but relates only to life and liberty of person. Therefore, it would be wrong to say that the words 'due process of law' are likely to lead to any uncertainty in legislation or unnecessary interference by the judiciary in reviewing legislation.

Sir, in all Federal Constitutions, the judiciary has undoubtedly the power which at times allows it to review legislation. This is inherent in all Federal Constitutions. In England, for example, the judiciary can never say that a law passed by Parliament is unconstitutional. All it can do is to interpret it. But in Federal Constitutions the judiciary has the power to say that a law is unconstitutional. In several articles of this Constitution, we have ourselves provided for this and given express powers to the judiciary to pronounce any law to be unconstitutional or beyond the powers of the legislature. I have no doubt in my mind that this is a very salutary check on the arbitrary exercise of any power by the executive.

Sir, at times it does happen that the executive requires extraordinary powers to deal with extraordinary situations and they can pass emergency laws. The Legislature, which is generally controlled by the executive—because it is the majority that forms the executive—gives such powers to the executive in moments of emergency. Therefore it is but proper that we should give the right to the judiciary to review legislation.

It may be said that the judiciary may, in times of crisis, not be able to appreciate fully the necessities which have required such kind of legislation. But I have no such apprehension. I have no doubt that the judiciary will take into account fully the necessities of a situation which have required the legislature to pass such a law. But it has happened at times that the law is so comprehensive that the individual is deprived of life and liberty without any opportunity of defence. What is the worst that can happen in an article like this if we put in the words 'without due process of law'? Some man may escape death or jail if the judiciary takes the view that the law is oppressive. Sir, is it not better that nine guilty men may escape than one innocent man suffers? That is the worst that can happen even if the judiciary takes a wrong view.

But, in these days, the executive is naturally anxious to have more and more powers and it gets them. And we have developed a kind of legislation which is called delegated legislation in which the powers are given to subordinate officers to issue warrants and the like. For example, under the Public Safety Measures Acts, if a Commissioner of Police is satisfied that a particular man is acting against the interests of the State or is dangerous to public security, he could detain the man without trial.

We know it to our cost that even the Commissioner of Police does not look into these matters personally as he is expected to do and signs or issues

[Shri Chimanlal Chakkubhai Shah]

warrants on the reports of subordinate officials. It is better under such circumstances that there is some check upon the exercise of such powers if they are arbitrarily used. I therefore fully support the amendment which seeks to substitute the words "without due process of law" in place of the words which have been used in the Article. As Mr. Mahboob Ali Baig has rightly pointed out, these words are taken from the Japanese Constitution but the Drafting Committee has omitted the other provisions which give meaning to these words. Mr. Baig's amendment which seeks to substitute the words "save in accordance with law", I am afraid, will not serve his own purpose. If he has in mind that the full import of all the provisions of the Japanese Constitution read along with the one which the Drafting Committee has put in, should be brought out here, it is better that he accepts the words, "without due process of law", rather than the words "save in accordance with law" which are taken from the Irish Constitution and which probably have the same meaning as the words put in by the Drafting Committee. I therefore fully support amendment No. 528.

Shri Krishna Chandra Sharma (United Provinces: General): Mr. Vice-President, Sir, my amendment No. 523 sought the substitution of the words "without due process of law" for the words "except according to procedure established by law". This article guarantees the personal liberty and life of the citizen. In democratic life, liberty is guaranteed through law. Democracy means nothing except that instead of the rule by an individual, whether a king or a despot, or a multitude, we will have the rule of the law. Sir, the term "without due process of law" has a necessary limitation on the powers of the State, both executive and legislative. The doctrine implied by "without due process of law" has a long history in Anglo-American law. It does not lay down a specific rule of law but it implies a fundamental principle of justice. These words have nowhere been defined either in the English Constitution or in the American Constitution but we can find their meaning through reading the various antecedents of this expression. As a matter of fact, it can be traced back to the days of King John when the barons wrung their charter from him, i.e., the *Magna Carta*. The expression "Per Legum Terrea" in the *Magna Carta* have come to mean "without due process of law". Chapter 39 of the Charter says:—

"No free man shall be taken, or imprisoned, disseised, or outlawed, exiled, or in any way destroyed; nor shall we go upon him, nor send upon him, but by the lawful judgment of his peers or by the law of the land."

These words were used again in 1331, 1351 and 1355. Statute No. 28 during the reign of Edward III says:—

"No man of what state or condition so ever he be, shall be put out of his lands or tenements, nor taken, nor imprisoned, nor indicted, nor put to death, without he be brought to answer by due process of law".

Sir, in the American Constitution, these words were first used in 1791:—

"Nor shall any person .....be deprived of life, liberty or property, without due process of law".

What this phrase means is to guarantee a fair trial both in procedure as well as in substance. The procedure should be in accordance with law and should be appealable to the civilised conscience of the community. It also ensures a fair trial in substance, that is to say, that substantive law itself should be just and appealable to the civilised conscience of the community. Sir, various decisions of the American Supreme Court, when analysed, will stress the four fundamental principles that a fair trial must be given, second, the court or agency which takes jurisdiction in the case must be duly authorised by law to such prerogative, third that the defendant must be allowed an opportunity to present his side of the case and fourth that certain assistance

including counsel and the confronting of witnesses must be extended. These four fundamental points guarantee a fair trial in substance.

As to social progress, my Friend Pandit Bhargava has already spoken and I need not repeat the argument here; but for your enlightenment I would like to read a judgment which clarifies the position. The judgment runs (from Willoughby on the Constitution of the United States, p.1692):

"Thus, for example, in 1875, in Loan Association *v.* Topeka the Court said:

'It must be conceded that there are such rights in every free government beyond the control of the state,—a government which recognised no such rights, which held the lives, the liberty and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power is, after all, a despotism..... The theory of our governments, state or municipal, is opposed to the deposit of unlimited power anywhere. The executive, the legislative and the judicial branches of these governments are all of limited and defined powers. There are limitations on such power which grow out of the essential nature of all free governments—implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name. No court, for instance, would hesitate to declare void a statute which enacted that A and B who were husband and wife to each other should be so no longer, but that A should thereafter be the husband of C, and B the wife of D, or which should enact that the homestead now owned by A should henceforth be the property of B."

Sir, with these words I support the amendment.

Shri H. V. Pataskar (Bombay: General): Mr. Vice-President, I have come forward only to take a few minutes of the House for supporting the amendment No. 528 which wants to substitute "except according to procedure established by law" by the words "without due process of law". Already the legal aspect of this matter has been discussed at length in this House, but I want to place it before the House from another point of view. We are, Sir, at the present moment in a state which is going to be a democracy. Now, democracy implies party Government and party Government, in our country, is rather new and we have instances which lead us to think that the party machine at work is likely to prescribe procedures which are going to lead to the nullification of the provisions which we have made in the Fundamental Rights, which are being given to the people. We know from experience that in certain provinces there are already legislations which have been enacted and which prescribe certain procedures for detention, which have come in for criticism by the public in a very vehement manner. I therefore, submit, Sir, that it is very essential from the point of view of the right of personal liberty, that the words "due process of law" should be particularly there. With these words, Sir, I support the amendment and would not like to repeat what has been said in favour of this amendment already.

Shri K. M. Munshi: Mr. Vice-President, Sir, I want to support amendment No. 528 which seeks to incorporate the words "without due process of law" in substitution of the words "except according to procedure established by law". In my humble opinion, if the clause stood as it is, it would have no meaning at all, because if the procedure prescribed by law were not followed by the courts, there would be the appeal court in every case, to set things right. This clause would only have meaning if the courts could examine not merely that the conviction has been according to law or according to proper procedure, but that the procedure as well as the substantive part of the law are such as would be proper and justified by the circumstances of the case. We want to set up a democracy; the House has said it over and over again; and the essence of democracy is that a balance must be struck between individual liberty on the one hand and social control on the other. We must not forget that the majority in a legislature is more anxious to

[Shri K. M. Munshi]

establish social control than to serve individual liberty. Some scheme therefore must be devised to adjust the needs of individual liberty and the demands of social control. Eminent American constitutional lawyers are agreed on the point that no better scheme could have been evolved to strike a balance between the two. Of course, as the House knows, lawyers delight to disagree and there is a certain volume of opinion against it in America, but as pointed out by my honourable Friend, Mr. C. C. Shah, we have made drastic changes in the American clause. The American clause says that no person shall be deprived of his life, liberty or property without due process of law. That clause created great difficulties with regard to laws relating to property. That word has been omitted. The word 'liberty' was construed widely so as to cover liberty of contract and, that word has been qualified. This clause is now restricted to liberty of the person, that is, nobody can be convicted, sent to jail or be sentenced to death without due process of law. That is the narrow meaning of this clause which is now sought to be incorporated by amendment No. 528.

Now, the question we have to consider, I submit, is only this. What are the implications of this 'due process'? 'Due process' is now confined to personal liberty. This clause would enable the courts to examine not only the procedural part, the jurisdiction of the court, the jurisdiction of the legislature, but also the substantive law. When a law has been passed which entitles Government to take away the personal liberty of an individual, the court will consider whether the law which has been passed is such as is required by the exigencies of the case, and, therefore, as I said, the balance will be struck between individual liberty and the social control. In the result, Governments will have to go to the court of law and justify why a particular measure infringing the personal liberty of the citizen has been imposed. As a matter of fact, the fear that in America the 'due process' clause has upset legislative measures, is not correct. I have not got the figures here, but I remember to have read it somewhere in over 90 per cent. of the cases on the 'due process' clause which have gone to the American courts, action of the legislatures has been upheld. In such matters involving personal liberty Governments had to go before the court and justify the need for passing the legislation under which the person complaining was convicted. In a democracy it is necessary that there should be given an opportunity to the Governments to vindicate the measures that they take. Apart from anything else, it is a wholesome thing that a Government is given an opportunity to justify its action in a court of law.

I know some honourable Members have got a feeling that in view of the emergent conditions in this country this clause may lead to disastrous consequences. With great respect I have not been able to agree with this view. (Interruption). Take even our Public Safety Acts in the provinces. In view of the condition in the country they would certainly be upheld by the court of law and even if one out of several acts is not upheld, even then, I am sure, nothing is going to happen. Human ingenuity supported by the legislature and assisted by the able lawyers of each province will be sufficient to legislate in such a manner that law and order could be maintained.

Therefore, my submission is that this clause is necessary for this purpose and is not likely to be abused. We have, unfortunately, in this country legislatures with large majorities facing very severe problems, and naturally, there is a tendency to pass legislation in a hurry which give sweeping powers to the executive and the police. Now, there will be no deterrent if these legislations are not examined by a court of law. For instance, I read the other day that there is going to be a legislation, or there is already a legislation, in one province in India which denies to the accused the assistance of lawyer. How is that going to be checked? In another province, I read that the certificate

or report of an executive authority—mind you it is not a Secretary of a Government, but a subordinate executive—is conclusive evidence of a fact. This creates tremendous difficulties for the accused and I think, as I have submitted, there must be some agency in a democracy which strikes a balance between individual liberty and social control. Our emergency at the moment has perhaps led us to forget that if we do not give that scope to individual liberty, and give it the protection of the courts, we will create a tradition which will ultimately destroy even whatever little of personal liberty which exists in this country. I therefore submit, Sir, that this amendment should be accepted.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. Vice-President, Sir, the debate on this article reveals that there seems to be a leaning on the part of a good number of members in this House in favour of the expression 'due process' being retained and not for substituting the expression 'procedure established by law', which is the expression suggested by the Drafting Committee in its last stage. I am using the words 'in its last stage' because my honourable Friend Mr. Munshi has taken the opposite view.

Sir, at least in justification of the change suggested by the Drafting Committee, I owe it to myself, to my colleagues and the respected Chairman of the Drafting Committee, to say a few words, because, up to the last moment, presumably, the House is open to conviction.

The expression 'due process' itself as interpreted by the English Judges connoted merely the due course of legal proceedings according to the rules and forms established for the protection of rights, and a fair trial in a court of justice according to the modes of proceeding applicable to the case. Possibly, if the expression has been understood according to its original content and according to the interpretation of English Judges, there might be no difficulty at all. The expression, however, as developed in the United States Supreme Court, has acquired a different meaning and import in a long course of American judicial decisions. Today, according to Professor Willis, the expression means, what the Supreme Court says what it means in any particular case. It is just possible, some ardent democrats may have a greater faith in the judiciary than in the conscious will expressed through the enactment of a popular legislature. Three gentlemen or five gentlemen, sitting as a court of law, and stating what exactly is due process according to them in any particular case, after listening to long discourses and arguments of briefed counsel on either side, may appeal to certain democrats more than the expressed wishes of the legislature or the action of an executive responsible to the legislature. In the development of the doctrine of 'due process', the United States Supreme Court has not adopted a consistent view at all and the decisions are conflicting. One decision very often reversed another decision. I would challenge any member of the Bar with a deep knowledge of the cases in the United States Supreme Court to say that there is anything like uniformity in regard to the interpretation of 'due process'. One has only to take the index in the Law Reports Annotated Edition for fifteen years and compare the decisions of one year with the decisions of another year and he will come to the conclusion that it has no definite import. It all depended upon the particular Judges that presided on the occasion. Justice Holmes took a view favourable to social control. There were other Judges of a Tory complexion who took a strong view in favour of individual liberty and private property. There is no sort of uniformity at all in the decisions of the United States Supreme Court.

Some of my honourable Friends have spoken as if it merely applied to cases of detention and imprisonment. The Minimum Wage Law or a Restraint on Employment have in some cases been regarded as an invasion of personal liberty and freedom, by the United States Supreme Court in its earlier decisions, the theory being that it is an essential part of personal liberty that every

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person in the world be she a woman, be he a child over fourteen years of age, or be he a labourer, has the right to enter into any contract he or she liked and it is not the province of other people to interfere with that liberty. On that ground, in the earlier decisions of the Supreme Court it has been held that the Minimum Wage Laws are invalid as invading personal liberty. In recent times I quite realise, after the New Deal, the swing of the pendulum has been other way. Even there, there has not been any consistency or any uniformity. I hope that if this amendment is carried, in the interpretation of this clause our Supreme Court will not follow American precedence especially in the earlier stages but will mould the interpretation to suit the conditions of India and the progress and well-being of the country. This clause may serve as a great handicap for all social legislation, for the ultimate relationship between employer and labour, for the protection of children, and for the protection of women. It may prove fairly alright if only the Judges move with the times and bring to bear their wisdom on particular issues. But since the British days we have inherited a kind of faith in lawyers, legal arguments, legal consultations and in courts; I, for my part, having flourished in the law, have no quarrel with those people who believe in the lawyer. In the earlier stages of American history, lawyers ranged themselves on the side of great Trusts and Combines and in favour of Corporations who were in a position to fee them very well, sometimes in the name of personal liberty, sometimes in the name of protection of property. After all the word 'personal liberty' has not the same content and meaning as is imported into it by some of our friends who naturally feel very sensitive about people being detained without a proper trial. I equally feel it but that is not the meaning of personal liberty attributed by the American Courts in the context of 'due process'. I trust that the House will take into account the various aspects of this question, the future progress of India, the well-being and the security of the States, the necessity of maintaining a minimum of liberty, the need for co-ordinating social control and personal liberty, before coming to a decision. One thing also will have to be taken into account, viz., that the security of the State is far from being so secure as we are imagining at present. Take for example the normal detention cases. I may tell you as a lawyer, I am against the man being detained without his being given an opportunity; but an opportunity is not necessarily given in a court of law, as a result of argument, as a result of evidence, as a result of examination or cross-examination. Today I know in Madras a Special Committee has been appointed consisting of a Judge of the High Court, the Advocate-General of Madras and another person to go into the cases of detention and to find out whether there are proper materials or not. Now all these cases might have to go to Courts of law and possibly it is a good thing for lawyers. Though I am getting old I do not despair of taking part in those contests even in the future.

The support which the amendment has received reveals the great faith which the Legislature and Constitution makers have in the Judiciary of the land. The Drafting Committee in suggesting "procedure" for "due process of law" was possibly guilty of being apprehensive of judicial vagaries in the moulding of law. The Drafting Committee has made the suggestion and it is ultimately for the House to come to the conclusion whether that is correct, taking into consideration the security of the State, the need for the liberty of the individual and the harmony between the two. I am still open to conviction and if other arguments are forthcoming I might be influenced to come to a different conclusion.

Mr. Z. H. Lari: Mr. Vice-President, the last speaker who has spoken on this article has drawn the attention of the House to dangers to the State which are likely to arise if the article as it stands is amended by the amendment No. 528 or 530. I have not got that experience which the learned

speaker has but with the little knowledge of the working of the Legislatures during the last ten years, I can say that it is necessary not only in the interest of individual liberty but in the interest of proper working of legislatures that such a clause as due process of law clause should find a place in the Constitution. It is open to that speaker at the fag end of his life as a lawyer to have a fling at the profession of law but I can say that assistance of lawyers is absolutely essential to secure justice.

Shri Alladi Krishnaswami Ayyar: On a point of order. I had no fling at the profession of law.

Mr. Z. H. Lari: I stand corrected.

I feel that two things are necessary. We all know that the State, these days, is all-powerful. Its coercive processes extend to the utmost limits but still there is a phase of life which must be above the processes of Executive Government, and that is individual liberty. In America no such word as 'personal' existed. There the word liberty alone existed and possibly in that state of things, it was possible to interpret it in such a way as to extend the scope of due process of law to other spheres of life but when the word 'personal liberty' has been definitely inserted in the clause, I doubt whether any Court which is conscious of the requirements of a State as well as conscious of the necessities of individual liberty, will be so uncharitable to the interest of the State as to interpret it in a way to thwart the proper working of the State. My friend admitted that in the latter rulings in America itself there has been a recognition of the necessities of the State and the word has been interpreted in such a way as not to obstruct the proper working of the State. My submission would be that in this land our Supreme Court will recognise the limits of individual liberty as well as the necessities of the State and interpret it in such a way as to ensure individual liberty of a man.

Pandit Thakur Dass Bhargava: The Drafting Committee also said so in their note.

Mr. Z. H. Lari: My friend is right; and the only reason which was given by the Drafting Committee of which the honourable Speaker who preceded me was a member also, was that the words 'due process of law' is not specific and the word as was used in the Japanese Constitution is more specific. No doubt the words as they stand in the Japanese Constitution are specific because the procedure is indicated and definitely laid down there. What is the essence of the due process of law? I think they are two. First is, enquiry before you condemn a man. And then there is judgment after trial. If any procedure which is adopted by any legislature provides for the hearing of a person who is suspected or is accused, and then after a proper hearing, enables him to get the benefit of a judgment based on that enquiry, my submission is, that the requirements of the due process of law are complied with. And I would beg of the House to consider whether in any country, however emergent and however unstable its conditions, is it necessary or is it not necessary that every individual citizen should feel that he will be heard before he is condemned, and that he will be dealt with in the light of the judgment based on the enquiries and not be subject to arbitrary detention? The House will also remember that lately there was the question of drafting human rights, and already such a draft has been prepared. And one of the clauses therein is that nobody should be subjected to arbitrary detention. Now, what is the way to prevent arbitrary detention? If you have the words in this clause, as they stand at present, namely, 'procedure established by law' it means that the legislature is all-powerful and whatever procedure is deemed proper under the circumstances will be binding upon the courts. But, Sir, there are certain procedures which are the inherent rights of man and they should not be infringed upon by any legislative Assembly. Men as well as

[Mr. Z. H. Lari]

assemblies, or any mass of people are subject to passing emotions, and you will realise that in the present state of things, particularly keeping in view the constitution that we are going to have, namely, a parliamentary government, the legislature is controlled by a Cabinet, which means by the executive. You have also the provisions about having ordinances which means that the cabinet—a body consisting of eight to ten persons—decide upon a particular course of action, issue as an ordinance, and, the legislature then has to approve of it, otherwise it would amount to a vote of censure. Therefore the legislature in the last analysis means only the cabinet or the executive and nothing but the executive. The question before us is whether you are going to give such powers to the Executive which can infringe even the elementary rights of a person, the elementary rights of personal liberty, or whether you should not put certain checks on the executive which can be done only if you accept the amendment which has been moved by a Congress member, i.e., amendment No. 528. My amendment No. 530 is exactly similar.

My friend who spoke on the other side gave instances of legislation in the British period, of rights which were curtailed, and of innocent persons jailed. But I submit with all humility, that every legislature and every government is liable to do such things which the British Government did. You cannot excuse excess of law simply because those excesses are committed by a popularly elected legislature. That is why there are two domains, one is the domain of individual liberty, and the other domain is where the State comes in to regulate our life. What do you leave to the State? You leave to the State everything except personal liberty. As to stability of the State my submission would be that if there are classes or communities which are prone to violence, there are sufficient provisions in this Constitution to deal with them—they are in article 13. There, the State can come in and curtail the liberty of such persons, and even nullify their activities. What can an individual do? If there are parties which have got objectives which run counter to the stability of the State, you have already got enough provisions whereby the State can declare those bodies unlawful. But this particular clause deals with a very small sphere of action, namely, personal liberty. My submission is that our State is not so weak as to be subverted by the activities of a particular individual, and mark that, that individual will not have the liberty to do everything. He can be brought before a court. He can be judged in a court of law; no doubt, he will have the assistance of counsel and the Government will have the obligation to produce evidence against him. Does this amount to curtailing the powers of the State? Does this amount to subverting the State? Does it amount to annihilating the State? With all respect to the previous speaker, I feel he took a very uncharitable view of the citizens of our State, and took a still more uncharitable view of the strength of the State which will emerge after the promulgation of the new Constitution. No doubt, we have to go by realities. We have to take into consideration stern facts. But I may remind the House of one thing. In America, this clause is accepted and is reproduced in the Japanese Constitution. You know the Americans have been responsible for framing the Japanese Constitution. A constitution for a fascist country, a country where individuals are prone to violence—they wanted to overthrow the peace of the world—when they were drafting a constitution for such a country, composed of such citizens, they laid down clauses 31, 32, 33 and 34 which say that nobody shall be denied *access to courts, nobody shall be arrested unless causes are shown against* him, and nobody shall be denied the privilege of the assistance of counsel. May I say that if the framers of this latest constitution, based on experience and knowing the nature of the people living in Japan, who are not a very peace-

loving people as was demonstrated in the last war, have accepted these provisions, that means that these provisions have stood the test of time and have safeguarded the liberty of the individual and also guaranteed the integrity of the state. There are two things by which we have to go. One is experience of others. No doubt, every clause can be criticised in one way or other. But we have to be guided by experience. Here is the experience of other countries, and this has shown that the words 'due process of law' can exist without jeopardising the existence of the State. Secondly, we know that not only here, but throughout the world every assembly is likely to misuse its power. It is bound to happen. Power corrupts. We should profit by the experience of other countries and by what has been observed for centuries. Or should we go by the *ipse dixit* of X,Y,Z who says that there seems to be some germ of disruption in this clause? My submission is that it is only making a bogey out of nothing. We should not be led away by this bogey into accepting this clause. If this clause is accepted, then the whole Constitution becomes lifeless. The article, as it stands, is lifeless and it makes also the whole Constitution lifeless. Unless you accept this amendment, you would not earn the gratitude of future generations. Therefore, Sir, I pray that this motion which has been supported by several members should be accepted.

With these words, Sir, I support the amendment.

Mr. Vice President: The House stands adjourned till 10 A.M. to-morrow.

The Constituent Assembly then adjourned till ten of the Clock on Tuesday the 7th December, 1948.

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1948

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 7th December, 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 15—*Contd.*

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

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

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

Honourable Members: Yes.

Article 20.

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

"That article 20 form part of the Constitution."

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

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

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

Sir, it was just an omission. Honourable Members will see that these words also govern article 19; as a matter of fact they should also have governed article 20 because it is not the purpose to give absolute rights in these matters relating to religion. The State may reserve to itself the right to regulate all these institutions and their affairs whenever public order, morality or health require it.

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

(Amendment No. 616 was not moved.)

Mr. Vice-President: There is, I understand, an amendment to amendment No. 614 in List No. VI. Is that amendment to amendment being moved?

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

"That for amendment No. 614 of the List of Amendments, the following be substituted, namely :—

That article 20 be numbered as clause (1) of that article and the following new clause be added at the end, namely :—

'(2) Nothing in clause (1) of this article shall affect the operation of any existing law or prevent the State from making any law for ensuring public order, public morality and public health.' "

[Mr. Naziruddin Ahmad]

Sir, the amendment moved by Dr. Ambedkar just now is also to the same effect. I should think that instead of the expression "subject to public order, morality and health" this expression would be better. The expression "ensuring public order etc.," is perhaps better than "subject to public order etc.". This type of draftsmanship has been adopted in other places in the Constitution.

(Amendments Nos. 15 and 16 in List I and Nos. 615 and 617 were not moved.)

Shri Lokanath Misra (Orissa: General): Sir, I move:

"That in clause (a) of article 20, after the word 'maintain' the words 'manage and administer' be inserted."

One who has a right to establish and maintain an institution for religious and charitable purposes ought also to have the right, unless such institutions offend against public order and morality or any established law, to manage and administer the same. Otherwise, there will be difficulty.

Syed Abdur Rouf (Assam: Muslim): Sir, I beg to move:

"That in clause (a) of article 20, for the words 'religious and charitable purposes', the words 'religious, charitable and educational purposes' be substituted."

We are dealing here with a subject which empowers religious denominations to have the right to establish and maintain institutions for religious and charitable purposes only. Religious education is as important as religion itself. Without religious education the charitable purposes or religious purposes would lose all meaning. Therefore, I hope my amendment would be accepted by the House.

(Amendments Nos. 17 of list 1, 620 and 622 were not moved.)

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

"That in clause (c) of article 20, for the words 'and immovable property' the words 'immovable and incorporeal property' be substituted."

Clause (c) provides for acquisition of movable and immovable property. It does not mention incorporeal property. Copyright is incorporeal property. It is neither movable nor immovable. The amendment would perhaps fill in a lacuna.

(Amendments Nos. 623 to 625 were not moved.)

Mr. Vice-President: Article 20 is for general discussion.

Shri Jaspat Roy Kapoor: (United Provinces: General): Mr. Vice-President, Sir, while I accord my support to article 20, I must confess that I do not feel happy over the phraseology of it or the scope of it. I very much wish that in clause (a) thereof, the words 'and charitable'; were deleted. The article then should have read:

"Every religious denomination or any section thereof shall have the right: (a) to establish and maintain institutions for religious purposes." Sir having conceded the right of free profession of religion and propagation of religion, surely, it is a necessary corollary that the right to establish and maintain religious institutions should be also conceded. But to concede it as a fundamental right that any religious denomination or section thereof can maintain a charitable institution exclusively for its own benefit and deny its benefit to any other section of society is certainly repugnant to the idea of fraternity and common nationality.

Let us clearly understand what the implications, the mischievous implications I should say, of this article are. It means that I, as a member of the Hindu religious community or even as a member of a section of that community called Khatris, have the right, derive the right under this article 20, to establish say *piao* or place where water is served to all. Under this article. I will have it as a fundamental right to establish a *piao* and serve therein water only to the Khatris or to other caste Hindus and not to other sections of the Hindu community, much less to Muslims or Christians. This means that there can be a Christian hospital where only Christians may be admitted and a non-Christian, however badly he might need medical service and even if he were lying at the door of the Christian hospital dying there, may be refused admission in the Christian hospital. It means that the upper class Hindus shall have it as a fundamental right to establish a *piao*, refusing at the same time water to members of the Scheduled castes. It means, Sir, that the Muslims in a Muslim 'sabil' may impose restrictions for the service of water to non-Muslims. I have been always told that serving free water to all without distinction of caste or creed is a very religious act according to Islamic law. I wonder if my Muslim friends want that they should be conceded this as a fundamental right. I wonder if my depressed or Scheduled caste friends would like that the upper caste Hindus should have this as a fundamental right that they can establish a *piao* where members of the Scheduled castes shall be denied water. I am sure neither my Muslim friends nor my Scheduled caste friends want to concede this as a fundamental right.

One of my Christian friends, Sir, for whom I have very great respect, and I may also say, very great affection—he may not be knowing it—told me the other day that a particular section of the Christians would like to have a hospital of their own where at the time of their death or at their last moments they may get the service of Christian priests. Sir, it is not my intention that they should not have this privilege and facility. They can have this privilege and facility not only in their own hospitals but in every hospital in the country. The question is not whether they should have this facility in their own hospital or in other hospitals; but it is whether it should be open to a Christian hospital to say that no non-Christians shall be allowed entry therein. I am not a Christian; but I have very great respect for the Christian religion, and I make bold to say that such an act on the part of any Christian management would certainly be a non-Christian act. Why then, Sir, should such a right be conceded as a fundamental right?

Our society already stands disunited today. There are so many castes and creeds and communities in it. We have been tolerating these communal institutions and we may have to tolerate them for sometime more. The deletion of the words 'and charitable', let there be no mistake about it, will not take away the existing right or the existing concession. This is not a right. This is rather a concession to the weakness of the society. So, let this concession continue until society as a whole voluntarily realises that this is something which is against the interests of the country as a whole, something which is against the unity of the Nation and something which is against the idea of fraternity and brotherhood. Until Society voluntarily realises it, let the concession remain. But the question is, must this right or concession hereafter be recognised by a statutory law, and not only *recognised* as a right, but be granted also the sanctity, the glory and the dignity of fundamental right?

I would appeal to the honourable Members to realise the grave implications of the existence of the words 'and charitable'. I will quote an instance from my own place which may perhaps bring home to honourable Members the

[Shri Jaspat Roy Kapoor]

gravity of the situation that might arise after we have passed the present article in its present form. In my place, a number of years ago, an upper class Hindu established a *piao* in a particular locality and service of water therein to the Scheduled castes was prohibited. This led to great resentment amongst us, particularly amongst Congressmen. They approached the orthodox section of the Hindu community and entreated them to remove this restriction. The orthodox people refused to agree. Ultimately, as a result thereof, there was a communal riot. Thereafter, partly by our appeal and partly by pressure, we could make them withdraw those restrictions. But, Sir, if the Constituent Assembly includes in the list of Fundamental Rights this very restriction or right of exclusion as a fundamental right, these orthodox people will fling this sacred book of our Constitution at our face and say: "How foolishly you are talking after giving us the right to impose such restrictions in respect of our *piao*"

The highest body in the land, the sovereign constitution making body of the land having conceded it as a fundamental right, what business have you now to tell us that we are in the wrong and that we should throw open our *piaos* to all sections of the Hindu community? Therefore, Sir, I would respectfully appeal to this House to agree to delete these words.

I am told, Sir, that the retention of these words is in the interests of the minority communities. I fail to see how it is in the interests of any minority community. I fail to see how it is in the interests of even the majority community. The minority communities, it will be readily conceded, are not so rich as the majority community. Probably all the minorities put together are not so rich as the majority community. So the majority community, if it so wishes, can establish charitable institutions in much larger numbers than the minority communities and if such majority charitable institutions restrict their use, their benefit, to the members of the majority community, surely it is the minority communities who will suffer and not the majority community, though the majority may have this thing as a black spot on their face; but that is another thing. I would, therefore, appeal to the members of the minority communities here to agree to the deletion of these words. If they agree to the deletion of these words, I am sure the House will unanimously agree to delete these words and improve this article. If they do not agree to this, we must accept this article as it stands as we must not do anything which is not agreeable and acceptable to them. With these words, Sir, I support article 20, not of course with any great pleasure but with some regret and disappointment, making a last minute appeal to the House to agree to the deletion of these words. If need be, Sir, I would appeal to my honourable Friend, Dr. Ambedkar, to postpone the final disposal of this clause and consult members of the minority communities whose champion he undoubtedly is whether they are agreeable to the deletion of these words and then amend the article accordingly.

One more point, Sir, one more reason for suggesting the deletion of these words, though this may not be of any great strength. Sir, at the last moment I am urging this poor argument because it does sometimes happen that when strong arguments fail, weak and poor arguments prevail. The heading of this sub-chapter is "Rights Relating to Religion" and surely, Sir, these words "and charitable" do not properly fit in in this chapter at all. If for no other reason, at least on the grounds of technicality, I would appeal to my honourable Friend, Dr. Ambedkar, to agree to the deletion of these words. With these words, Sir, I support article 20.

Mr. Tajamul Husain (Bihar: Muslim): Mr. Vice-President, Sir, I had no intention of speaking on this article but I find that my honourable Friends who

have just spoken have been appealing to the minorities. I want to tell the House, Sir, that there is no minority in this country. I do not consider myself a minority. In a secular State, there is no such thing as minority. I have got the same rights, status and obligations as anybody else. I wish those who consider themselves as the majority community would forget that there is any minority today in this country. (An honourable member: *Hear, hear.*) Now, Sir, with regard to article 20, as far as I understood, my honourable Friend the last speaker wants clause (a) to be *deleted*. I will just read clause (a) of article 20: —

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

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

Now, Sir, this article gives the right to everybody—it does not matter to what religion he belongs or what religion he professes—to have his own private religious institutions, if he so wants. If a person has got money and at the time of his death he wants to make a will and dedicate his property to some charitable purpose or religious purpose of a private nature, I do not think, Sir, that people should object to it. After all, as I have said already, religion is a private matter between the individual and his Creator, and if I, Sir, wish that my property should be utilised for a particular purpose after my death, I see no reason why the State should interfere with it. It is not a matter of public interest. After all it is a private individual who wishes that his religion should be observed in a particular manner.

Kazi Syed Karimuddin (C. P. and Berar: Muslim): What does the honourable Member have in his mind, a private or public institution?

Mr. Tajamul Husain:

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

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

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

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

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

The question is:

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

The amendment was adopted.

Mr. Vice-President: The question is:

"That article 20 be numbered as clause (1) of that article and the following new clause be added at the end, namely :—

'(2) Nothing in clause (1) of this article shall affect the operation of any existing law or prevent the State from making any law for ensuring public order, public morality and public health.' "

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (a) of article 20, after the word "maintain" the words "manage and administer" be inserted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (a) of article 20, for the words 'religious and charitable purposes' the words 'religious, charitable and educational purposes' be substituted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (c) of article 20, for the words "and immovable property" the words 'immovable and incorporeal property' be substituted."

The amendment was negatived.

Mr. Vice-President: The question is:

That article 20, as amended, be adopted.

The motion was adopted.

Article 20, as amended, was added to the Constitution

New Article 20-A

Mr. Vice-President: Now we come to amendment No. 626 by Mr. Mahboob Ali Baig. I disallow this because two similar amendments have been rejected by this House. These two amendments are No. 612 and No. 440. We now pass on to article 21.

Article 21

Mr. Vice-President: We shall consider the amendments one by one.

Amendment No. 627 is out of order as it has the effect of a negative vote.

(Amendments Nos. 628, 629, 630, 634, and 631 were not moved.)

Amendment No. 632. The first part of this amendment standing in the name of Syed Abdur Rouf is disallowed as being nothing but a verbal amendment. So far as the second part is concerned, I can allow it to be moved.

Syed Abdur Rouf: Sir, I beg to move:

"That in article 21, after the word 'which' the words 'wholly or partly' be inserted."

If my amendment is accepted, Sir, the article will read like this: "No person may be compelled to pay any taxes, the proceeds of which wholly or partly are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination." If my amendment is not accepted, a person may be compelled to pay taxes, the proceeds of which will partly be appropriated for religious purposes. This is certainly not desirable, and I think that unless my amendment is accepted, the very intention of this article will be frustrated. Therefore, Sir, I hope that my amendment will be accepted by the House.

Mr. Naziruddin Ahmad: Mr. Vice-President, Sir, I beg to move:

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

Sir, the purpose of the previous amendment will be served by my amendment and they must be considered together. The article says "No person may be compelled to pay any taxes the proceeds of which etc." If my amendment is accepted, it would read like this: "No person may be compelled to pay any taxes on any income etc." Sir, taxes are paid not on the proceeds, but on the income. Proceeds rather imply the gross receipts. Taxes do not apply to proceeds, but really to income. In fact, there is the further limitation of this 'proceeds' which are specifically appropriated for payment of the expenses

for the promotion or maintenance of any particular religious or charitable denomination. My point is that you do not appropriate the *gross proceeds* of any undertaking or any property to any religious or charitable denomination. The reason is that what you appropriate for religion or religious denomination is the income, that is, the gross receipts *minus* collection expenses and other things. I submit, Sir, that the word 'income' is the more appropriate word, and if this is accepted, the difficulty pointed by Mr. Syed Abdur Rouf, while moving his amendment No. 632, will also be met. In fact, he and I felt that there is some difficulty in the context and the amendments are directed towards the same purpose.

(Amendments nos. 635 and 636 were not moved.)

Mr. Vice-President: The article is now open for general discussion.

Shri Guptanath Singh (Bihar: General): *[Mr. Vice-President, I am surprised at the fact that today we are going to perpetuate by article 21 the innumerable atrocities that have been perpetrated in India in the name of religion. It states that the property, which a person holds in the name of religious institutions, would be exempted from all taxation. I hold that the property in India which stands in the name of some religion or some religious institutions such as temples, mosques and churches, is extremely detrimental to the interests of the country. That property is of no use to the Society. I would like that in our Secular State such type of folly be ended once for all in our country. The State is above all gods. It is the God of gods. I would say that a State being the representative of the people, is God himself. Therefore it should certainly have the right of taxing every type of property. Therefore, the property held in the name of religion and by religious institutions should certainly be taxed. I fear that if this article is not deleted from the Constitution, the majority of capitalists and Zamindars will try to donate their property for the advancement of religion and posing as the champions of religion would continue to perpetrate highhandedness in the name of religion. Our state will become bankrupt as a consequence of the drying up of the source of taxation. I, therefore, pray that we should not make this constitution in such a way as to benefit only the Mullas, the Pandits and the Christian priests. I do not think I have any thing more to add what I have already said in this connection.]

Shri M. Ananathasayanam Ayyangar (Madras: General): Sir, I oppose both the amendments. The article says that no tax shall be imposed the proceeds of which will be specifically ear-marked for supporting any religious denomination. Syed Abdur Rouf's amendment desires that we should use the words "wholly or partly". I believe, the whole includes the part, and therefore, that amendment is unnecessary. The other amendment moved by Mr. Naziruddin Ahmad (amendment No. 633) absolutely is inconsistent with the object of the article. The article says that unlike in the past where particular kings imposed a kind of tax to give importance to the religion which they professed, the article is intended to see that no such tax is imposed in any name or form, the proceeds of which will be ear-marked for encouraging any particular denomination or sect.

Mr. Naziruddin Ahmad, on the other hand, wants by his amendment to exempt the income of all temples and religious endowments. This has no bearing at all to the matter on hand. What article 21 requires is that no tax shall be imposed by the State the proceeds of which are to be appropriated for the maintenance of any particular religious denomination. I request that the article may be allowed to stand as it is. In the past we have had various Kings belonging to various denominations levying taxes in various shapes and forms. The Muhammadan Kings recovered a particular kind of tax for sup-

* [ ] Translation of Hindustani speech.

[Shri M. Ananthasayanam Ayyangar]

porting Mosques. The Christians did not do so in this country. The ancient Hindu Kings collected a cess called the Tiruppani cess for supporting a particular temple or temples in my part of the country. In a secular State where the State is expected to view all denominations in the same light, and not give encouragement to any one particular denomination at the expense of others, this provision is absolutely necessary. This is part and parcel of the Charter of liberty and religious freedom to see that no particular denomination is given any advantage over another denomination. This article is very important and it safeguards the interests of all minorities and religious pursuits. I therefore, appeal to the members who have moved these amendments not to press them and to accept the article as it stands.

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

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

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

The question is:

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

The amendment was negatived.

Mr. Vice-President: The question is:

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

The amendment was negatived.

Mr. Vice-President: The question is:

"That article 21 stand part of the Constitution."

The motion was adopted.

Article 21 was added to the Constitution.

Article 22

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

"That article 22 form part of the Constitution."

The first amendment is No. 637. It is out of order as it has the effect of a negative vote. Amendment No. 638, first part, is disallowed as it has the effect of a negative vote. Amendment No. 638, second part may be moved.

(Amendments Nos. 638 and 639 were not moved.)

Amendment No. 640. You can move only one alternative.

Mr. Mohamed Ismail Sahib (Madras: Muslim): I shall move the first alternative, Sir.

Sir, I beg to move:

"That for article 22, the following be substituted :—

'22. No person attending an educational institution maintained, aided or recognised by the State shall be required to take part in any religious instruction in such institution without the consent of such person if he or she is a major or without the consent of the respective parent or guardian if he or she is a minor.' "

Sir, article 22 in the Draft Constitution as it stands puts a taboo on all religious instruction being given in State-aided schools or State educational institutions. It is not necessary for a secular State to ban religious education

in State institutions. Sir, it will not be in contravention of the neutrality or the secular nature of the State to impart religious instruction. It will be going against the spirit of the Secular State if the State compels the students or pupils to study a religion to which they do not belong. But, if the pupils or their parents want that religious instruction should be given in the institutions in their own religion, then, it is not going against the secular nature of the State and the State will not be violating the neutrality which it has avowedly taken in the matter of religion. My amendment purports to make a leeway in case religious instruction is required to be given in the schools; it puts the matter in a negative form. It does not say that religious instruction must be imparted at all costs in education institutions; it only says, no compulsion shall be put upon anybody to study in any school, a religion, to which he or she does not belong. Therefore, my amendment is quite harmless and it does not go in any way against the spirit of the Constitution.

Sir, the necessity of imparting religious instruction has been recognised in many countries which are non-religious in nature. They have made religious instruction even compulsory, that is, compulsory with regard to those people who want such instruction to be given to the children in the religion to which they belong. They have not thought it fit to ban religion altogether from their Secular State. Therefore, I hold that we shall not be doing anything in violation of the secular nature of our State if we do not ban religious instruction altogether. As my amendment proposes, we shall leave the matter to the future, to the Parliament. According to my amendment, we are not saying anything now positively about religious instructions; we are only saying, no body shall be compelled to have religious instructions in a religion to which he does not belong. Whether to give religious instructions or not may be left to Parliament. According to my amendment, that is my proposal, Sir.

Prof. Shibban Lal Saksena (United Prowinces: General): Mr. Vice-President, Sir, the amendment which stands in my name is further sought to be amended by me in amendment No. 19 of List I. I will therefore formally move the amendment as it is. The amendment which I had originally given is this—

"That for article 22, the following be substituted :—

'22. The State shall not compel anyone to have religious instruction in a religion not his own in schools against his wishes, but the State shall endeavour to develop religious tolerance and morality among its citizens by providing suitable courses in various religions in schools.'"

To this, Sir, I have given notice of an amendment No. 19 in List I which says—

"That clauses (1) and (3) of article 22 be deleted."

I find that deletion of clause (1) is not accepted by Dr. Ambedkar but I would like to say what I really want to say on this.

Mr. Vice-President: What about amendment No. 20?

Prof. Shibban Lal Saksena: I am not moving it. This gives freedom to impart religious instructions in certain educational institutions outside its working hours. Now, Sir, what is really intended is this, that no minority community shall be compelled to have religious instruction in a religion not his own. That is the real purpose. But although I fully appreciate the purpose, I find that this clause is worded in too general terms and it will preclude the majority community from even imparting any religious instruction to their children because of the minorities. While minorities should not be compelled to have religious instructions against their wishes, they should be provided facilities for having their religious education if the number of their children is sufficient. It should not be forbidden to provide religious education

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by the State. Now, after partition of this country, about 30 to 33 crores will be the majority community and if these people want that their children should have education in their religion, they will not be able to have it if this article is passed. This is not fair. What I want is that they should be enabled to have instruction in their religion provided the same facilities they are prepared to afford to children of other denominations if the number is sufficiently large. This is the second alternative of Mr. Mohd. Ismail's amendment but he has moved the first alternative. The second was a good one. This clause as it stands will really preclude the majority from giving religious education to their children. For example the District Board in Gorakhpur will not be able to teach Gita to children in the schools. I think this should not be so. These big scriptures of the world are really meant to develop the morality and tolerance and they should be taught and I do not wish that anything in the Fundamental Rights should forbid this. I discussed this with Dr. Ambedkar and I have said that clauses (1) and (3) should be deleted, so that this would prevent anybody from forcing any instructions against their wishes, but it would not have precluded the State from imparting instruction in religion to the children of various denominations if the number was sufficient. Clause (3) is absolutely useless. It only says—

"Nothing in this article shall prevent any community or denomination from providing religious instruction for pupils of that community or denomination in an educational institution outside its working hours."

But I want that clause (1) also should be deleted because in that case it will be possible for the State to impart instruction in religion, in Gita, in Sermon on the Mount etc., to the children in the schools but not force this instruction on anybody against his wishes. So I want that only clause (2) should remain and it should be permissible to the State to give instruction in religion to children according to their desire and choice and if their guardians permit. This is what I wish but if it is not acceptable, I am not insisting on the deletion of the first part. But clause (3) should be deleted. But I would request Dr. Ambedkar to see that the clause does not forbid the institutions in the State from giving religious instruction. This clause is too wide and should be redrafted to include this.

Mr. Vice-President: Amendment Nos. 642 and 647 are of similar import and should be considered together. No. 642 may be moved.

(Amendment No. 642 was not moved.)

Amendment No. 647—Prof. K. T. Shah.

Prof. K. T. Shah (Bihar: General): Sir, I beg to move—

"That in clause (1) of article 22, after the words "in any educational institution wholly" the words "or partly" be added."

Sir, the clause as amended would be thus—

"No religious instruction shall be provided by the State in any educational institution wholly or partly maintained out of State funds;".

Sir, with all the goodwill in the world I cannot understand the reason for this particular wording that the authors of the original clause have adopted. Their stressing the word 'wholly' is, in my eyes, very intriguing. If they had not said 'wholly' and simply stated 'maintained out of public funds' one could have understood. But if they say that 'religious instruction is to be provided in any institution completely, or wholly maintained out of State funds', then I begin to question what could conceivably be the intention of the Draftsmen in putting forward these particular words. Is it the intention of the Draftsmen,

that if every single pie of expenditure in connection with a given institution is met exclusively out of State funds, then, and then only, should religious instruction be prohibited there?

An Honourable Member: Yes.

Prof. K. T. Shah: If that is your intention, as somebody I hear says, then I am afraid it is impossible to agree; and I venture to submit that the principle enunciated by the opening words would be strangely belied by that wording. If, for instance, there are in the educational institution some scholarships which come from private endowments, so that the total bill is met as to 99 per cent out of State funds, and as to 1 per cent out of these endowments, then it could be said that it is not wholly maintained by the State; and, on the strength of that 1 per cent of endowments or grant or donation, you will have to open the door to the provision of religious instruction. By such religious instruction is, of course, generally meant Denominational Instruction, in a public institution.

Surely that could not have been and that should not be allowed to be the meaning and interpretation of a Section like this. All institutions, or most of them, subject to the exception that is added by way of proviso—to which I will come later in another amendment—all institutions or most of them are maintained wholly or partly out of public revenues, whether they are in the form of the entire bill footed by the State, or in the shape of some grants, or in the shape of fees, etc. received from the public by regular charge: and, as such, no public institutions, as I understand it, would be free from an incursion of any particular Religious Instruction of a denomination—and even, may I say of a controversial character.

If you permit one, you will make it impossible to refuse admission to another. That means that in a public institution, any number or any section of people who are being educated there, if only one donor can be found for each to endow a particular scholarship, or to provide for some particular item of expenditure, let us say, library grant, or some item of laboratory equipment, or some small donation for general purposes, and couple it with the condition that Religious Instruction shall be provided therein for that particular sect to which the donor belongs, then I am afraid, your educational institutions will be converted into a menagerie of faiths. There will be unexpected conflicts and controversies; and the very evil which you are out to stop by the opening words, (which seem to me to enshrine a sound principle), would be all the more encouraged and supported so to say, by public countenance.

That is a state of things, which I, for one, thought must have been farthest from the intention of the draftsmen. But it seems to me, from the voice I heard a minute ago, that it is not quite as far from the intentions of the draftsmen, as in my innocence I had assumed, and it appears there is some sort of ulterior motive or *arriere pensee* which has guided the draftsmen in introducing the present wording.

Speaking for myself, if not for any considerable section of the House, I would like entirely to dissociate the State in India from any such interpretation as this. If you desire to exclude, as I think is but right, Religious Instruction from public institutions maintained from common funds, whether they be the entire expenditure of such institution, or whether they be a part only by way of a grant or by way of fees, or scholarships, or endowments of any kind met by the State out of public revenues, then it would be absurd,—I think it would be inconsistent with the basic principle of this constitution, to permit Religious Instruction on the excuse that part of the expenditure is met by other than State funds.

The term "state funds" itself is very suspicious in my eyes. What exactly is meant by State funds? The draft, as I have complained more than once, is peculiarly defective in that there is a woeful lack of any definitions, so that

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words can be used in any sense that the occasion may require, or the vagaries of the interpreter might suggest. In the absence of any definition, specially in this connection, one is entitled to put whatever interpretation seems to one to be reasonable, to have been probably intended by the draftsmen. And in the light of that assumption, I feel that this clause needs amendment by the addition of the words "wholly *or partly* maintained from public revenues or State funds."

I would not object to the words "state funds" as such so much as I would object to the omission of the word "partly", which I think, must be inserted if this basic principle, if our governing ideal, is to be fully carried out, namely, that no Religious Instruction, which is inevitably of a Denominational character, should be imparted in any public educational institution maintained wholly or partly out of public funds.

I think, Sir, that the intrinsic commonsense, the intrinsic honesty and clearness of this amendment, are so great that no objection would be raised to it, and I trust I would not be disappointed in that respect.

Mr Vice-President: Amendment No. 643, standing in the name of Sardar Hukam Singh.

Sardar Hukam Singh (East Punjab: Sikh): Sir, I beg to move—

"That in clause (1) of article 22, after the words "shall be provided" the words "or permitted" be inserted."

Sir, I am conscious that the definition of the words "the State" as given in article 7 is very comprehensive and it includes all authorities whether of the Centre or of the States, and it does include local bodies as well. Even then, I feel that the object would not be fulfilled, if we do not add these words "or permitted" as I have proposed. We are going to build a secular State. The object of this article, so far as I have understood it, is to prohibit all religious instructions in those institutions which are maintained by the State. If the article were to stand as it is, then it would mean that the State would not provide or I might say, any authority would not provide any religious instruction in such institutions. I presume the object is not economic; we are not safeguarding against the State spending funds on imparting religious instructions, but we are providing, rather, against imparting religious education in these institutions. And in that case, our object cannot be served unless we definitely prohibit that in these institutions. Even if no provision is made for the imparting of such religious education, it should also not be permitted. I may say that the staff might take it into its head though the State has not made any provision, the imparting of such instruction, and might start imparting such religious instructions; or a particular teacher, say, might begin in his class the imparting of such instructions. Then, so far as the article stands, it would not be offended against by the action of the teacher or the staff. That object can only be achieved if we definitely ban the imparting of such instructions, when we are making the State a secular one. Therefore, I move that after the words "shall be provided", the words "or permitted" should be added, so that there would be no chance for such religious instruction being imparted in any case, in institutions that are to be controlled and subsidised by the State.

Mr. Vice-President: Amendment No. 644, standing in the name of Sardar Bhopinder Singh Man.

Sardar Bhopinder Singh Man (East Punjab: Sikh): Mr. Vice-President, Sir, I beg to move:

"That in clause (1) of article 22, the word "educational" be omitted;"

and allow the sub-clause to run as follows:—

"No religious instruction shall be provided by the State in any institution wholly maintained out of State funds:"

and thus keep up the strict neutrality of the State so far as religious matters are concerned, and to maintain the secular character of the State. Sir, I, as a member of the minority community, wholeheartedly welcome it and I believe that the State should function along that principle laid down in this article, and that in all spheres of State activity, the members of the minority community shall be left no cause of apprehension or fear and that it will happen very soon. However, Sir, I wonder why this article is permitted to remain so incomplete, because only educational institutions are mentioned here. Probably educational institutions were mentioned because in the popular opinion, they are the only places where religious instructions are given. But I may point out that there are other places or institutions which are completely and wholly maintained by State funds and which in modern times can be used as a vehicle for religious or communal propaganda very effectively. To mention one such vehicle, there is the radio. We all know how effectively it can be used as a platform for religious propaganda day after day. I want that this article should conform to its own logical conclusion and that it should be made complete, and that religious or communal propaganda should be prohibited in all state-owned institutions. Otherwise, to me it looks useless that you should prohibit communal or religious propaganda in one institution but allow it to go full blast in other spheres of activity. For example, take the Army itself; religious and communal propaganda can very easily be imparted there. I want that religious instruction should expressly be prohibited not only in educational institutions but in all institutions which are maintained by the State.

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

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

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

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

Mr. Tajamul Husain: Mr. Vice-President, Sir, I move:

"That in clause (1) of article 22, the words "by the State" and the words "wholly maintained out of State funds" be deleted."

Clause (1) of this article reads thus:—

"No religious instruction shall be provided by the State in any educational institution wholly maintained out of State funds."

This means that religious instruction can be provided in any educational institution which is partly maintained out of State funds or which are not maintained out of State funds at all. The result would be that all private and aided schools and colleges and *pathshalas* and *maktabs* will impart religious instruction to boys and girls. I submit that this should not be allowed in a secular State. Much has been said on this subject by the previous speaker and I do not wish to go into detail, but the only thing I would like to say is, what is the use of calling India a secular State if you allow religious instruction to be imparted to young boys and girls? By this article you do not prevent if parents want to give religious instruction to their children—they are at liberty to do so at home, and nobody will object to it. In fact, every parent gives his child education well before he goes to school; generally what

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happens in this country is that all religious instruction is given to a boy before he attends the school; and that should be done, it is the duty of the parents to educate their children according to their own ways. But I object to a public institution, whether maintained by Government or partly maintained by Government, imparting religious instruction.

With these words, I commend my amendment to the House.

Mr. Vice-President: Amendment No. 648 is disallowed as being verbal.

(Amendments Nos. 649, 650 and 652 were not moved.)

Amendment No. 651 is disallowed as being verbal.

There is amendment No. 653 standing in the name of Prof. K. T. Shah.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That at the end of the proviso to clause (1) of article 22, the following be inserted :

'and the income from which trust or endowment is sufficient to defray the entire expenditure of such institution.' "

The proviso as amended would read:—

"Provided that nothing in this clause shall apply to an educational institution which is administered by the State but has been established under an endowment or trust which requires that religious instruction shall be imparted in such institution *and the income from which trust or endowment is sufficient to defray the entire expenditure of such institution.*"

I would refer in this connection also to some of the arguments that I advanced previously, namely, that it could and should not be the intention or meaning of this proviso, that anybody who endows, say, a Chair, a Library, a Laboratory, or some department in a College or School, should be able to say that Religious Instruction should be provided in his behalf or of his type, even though his Trust or Endowment is not enough to meet the entire expenditure of that institution.

It would be a simple proposition, as I understand this proviso to the clause as it stands, for anybody to make a Trust or Endowment, sufficient, let us say, to meet part of the cost, *e.g.*, building and furniture; then divest himself of the care and responsibility of managing that institution, hand it over to the State, earn cheap immortality and the title of being a munificient donor, and then ask the State to carry on the institution and also to provide Religious Instruction therein, negativing the principle on which the clause to which this is a proviso was founded.

The idea, as I have understood this clause, would be defeated and the clause turned into a grotesqueness I think, if such should be the result. Perhaps, it was not intended to be so twisted out of the intention; My amendment, therefore only seeks to make it clear and explicit.

Even so, I am, for my part, not entirely satisfied that any excuse should be left to provide Religious Instruction of a particular character in any public institution managed by the State, and of which only a part, or even the whole of the expenditure is coming from the grant, Trust fund or Endowment that a donor has made.

This will be the negation, I repeat, of the basic principle on which this clause is based. The omission of the words "by the State", under an amendment just moved by the Chairman of the Drafting Committee would, if adopted—and I suppose it *will* be adopted—make the position still more complicated, unless it be that by a consequential amendment the authorities themselves would see that the words "by the State" here are also omitted.

I do not know that they would be omitted here. I am just suggesting a possibility or conveying a hint which may reconcile, to some extent, the main clause with the proviso.

Whether or not these words are deleted from the main clause, and whether or not these words are retained in this proviso, the objection I am urging will apply all the same. I hold that it should not be open to anybody to make a trust for an educational institution in the first instance and then hand over its management to the State and demand that in that institution, simply on the ground that the founder has been providing the capital or recurring cost of that institution, there shall be religious instruction of the type favoured by him or professed by him.

I still believe that it could not be really the intention of the authors of this clause; and this proviso which would permit any such irregularity or exception should be made explicit in the way I am trying by this amendment to do. I trust that common sense, if not legal sense, will assert itself; and the substance, if not the actual form, of my amendment will be accepted.

(Amendments Nos. 654, 655 and 657 were not moved.)

Mr. Vice-President: Amendment No. 656 is disallowed as being verbal.

Shri H. V. Kamath (C.P. and Berar: General): Mr. Vice-President, I move—

"That in clause (2) of article 22, the words "recognised by the State or" be deleted."

I move this amendment with a view to obtaining some clarification on certain dark corners of these two articles—articles 22 and 23. I hope that my learned Friend Dr. Ambedkar will not, in his reply, merely toe the line of least resistance and say "I oppose this amendment", but will be good enough to give some reasons why he opposes or rejects my amendment, and I hope he will try his best to throw some light on the obscure corners of this article. If we scan the various clauses of this article carefully and turn a sidelong glance at the next articles too, we will find that there are some inconsistencies or at least an inconsistency. Clause (1) of article 22 imposes an absolute ban on religious instruction in institutions which are wholly maintained out of State funds. The proviso, however, excludes such institutions as are administered by the State which have been established under an endowment or trust—that is, under the proviso those institutions which have been established under an endowment or trust and which require, under the conditions of the trust, that religious instruction must be provided in those institutions, about those, when the State administers then, there will not be any objection to religious instruction. Clause (2) lays down that no person attending an institution recognised by the State or receiving aid out of State funds shall be required to take part in religious instruction. That means, it would not be compulsory. I am afraid I will have to turn to clause 23, sub-clause (3) (a) where it is said that all minorities, whether based on religion, community or language, shall have the right to establish and administer educational institutions of their choice. Now, is it intended that the institutions referred to in the subsequent clause which minorities may establish and conduct and administer according to their own choice, is it intended that in these institutions the minorities would not be allowed to provide religious instruction? There may be institutions established by minorities which insist on students' attendance at religious classes in those institutions and which are otherwise unobjectionable. There is no point in my judgment in withdrawing State recognition. I can understand the point about State aid, but I cannot certainly understand why the State should refuse recognition to those institutions established by minorities where they insist on compulsory attendance at religious classes. Such interference by the State I feel is unjustified and unnecessary. Besides, this conflicts with the next article to a certain extent. If minorities have the right to establish and administer

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educational institutions of their own choice, is it contended by the Honourable Dr. Ambedkar that the State will say: 'You can have institutions, but you should not have religious instructions in them if you want our recognition'. Really it beats me how you can reconcile these two points of view in articles 22 and 23. The minority, as I have already said, may establish such a school for its own pupils and make religious instruction compulsory in that school. If you do not recognise that institution, then certainly that school will not prosper and it will fail to attract pupils. Moreover, we have guaranteed certain rights to the minorities and, it may be in a Christian school, they may teach the pupils the Bible and in a Muslim school the Koran. If the minorities, Christians and Muslims, can administer those institutions according to their choice and manner, does the House mean to suggest that the State shall not recognize such institutions? Sir, to my mind, if you pursue such a course, the promises we have made to the minorities in our country, the promises we have made to the ear we shall have broken to the heart. Therefore I do not see any point why, in institutions that are maintained and conducted and administered by the minorities for pupils of their own community the State should refuse to grant recognition, in case religious instruction is compulsory. When once you have allowed them to establish schools according to their choice, it is inconsistent that you should refuse recognition to them on that ground. I hope something will be done to rectify this inconsistency.

Shri Jaspat Roy Kapoor: Sir, I beg to move:

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

My reasons are four. Firstly, this clause is in conflict with clause (1) of article 22 which reads: "No religious instruction shall be provided in any educational institution wholly maintained out of State funds:" I am of course reading clause (1) as it will stand after the amendment moved by Dr. Ambedkar is incorporated. So that, while clause (1) lays down that no religious instruction shall be imparted in any institution which is maintained wholly by the State, clause (3) lays down that such religious instruction can be imparted out of working hours. Obviously, therefore, these two are in conflict with each other. If clause (1) is to remain, clause (3) must go. Clause (3) cannot stand in the face of clause (1).

My second reason is that the retention of clause (3) is likely to lead to conflict between the different religious denominations, because different religious denominations may claim the right to impart religious instruction to their pupils in any institution at the same time and in the same premises. That will certainly lead to a good deal of conflict. The convenient time for imparting religious instruction, after working hours, is very limited and several religious denominations may like to impart religious instruction to their pupils in the same premises and at the same convenient hour. This will place the head of the educational institution concerned in a very embarrassing position. He may be in a dilemma as to whom he should grant permission and to whom not. If a particular denomination is refused permission it might make a very serious grievance of it and, even may, in order to exercise the fundamental right granted to that community, seek forcible entry into that institution. This is likely to lead to communal and religious riots. The retention of this clause being full of mischievous potentialities, it must be deleted.

My third reason is that the management of a denominational institution may not like that religious instruction in a different religion from its own should be imparted there. A Muslim school which may perhaps be run within the precincts of a mosque would surely not like religious instruction to Hindus being imparted there in Vedic Dharma. So also, an educational institution run by Arya Samajists would surely not like religious instruction in Koran

being imparted in the premises of that institution. For this reason also this clause must go.

My fourth reason is that it is absolutely unnecessary in view of clause (2). Clause (2) already provides that religious instruction can be imparted by the management of an educational institution provided of course the students agree to it or if they are minors their guardians agree to it. Such instruction can be provided not only during working hours, but even outside working hours. So it is unnecessary in view of clause (2). For these reasons I submit that clause (3) should be deleted.

Mr. Mohamed Ismail Sahib: Mr. Vice-President, I beg to move:

"That in clause (3) of article 22, for the word 'providing', the words 'being permitted to provide' be substituted and, after the words "educational institution", the words "in, or" be inserted."

Clause (3) of article 22 refers mainly to institutions envisaged in clause (1) thereof. Therefore I think that instead of the word 'providing', the words "being permitted to provide" will be more appropriate. I say this because, the institutions being State institutions, permission ought to be sought for and given for making any provision for imparting religious instruction in the schools. A religious denomination or community cannot go straightaway and say: "We are providing religious instruction in such and such schools". That is not possible. Therefore to make it more intelligible and reasonable, I want the substitution of the word "providing" by the words "being permitted to provide".

Then, Sir, I want the insertion of the words "in, or" after the words "educational institution" with these words the clause will read as follows:—

"Nothing in this article shall prevent any community or denomination from being permitted to provide religious instruction for pupils of that community or denomination in an educational institution in or outside its working hours."

I want that permission should be given to a community for providing religious instruction in as well as outside working hours. It is only with the permission of the authorities of the institution that such provision will be made. Therefore, if the authorities find it practicable to include religious instruction inside the working hours, there is no harm. Such provision is really to be made in the interests of the pupils as a whole. As I said, this clause (3) has a bearing on clause (1) which deals with State institutions. Now, Sir, what is the objection to State institutions banning religious instruction altogether and for all time? The situation is this: Now, almost all the primary schools will become State institutions shortly and if no religious instruction is to be given in State schools, the position will be that up to fourteen or fifteen years of age boys and girls shall have no opportunity of getting religious instruction. To say that religious instruction should be given in their own homes or outside school hours is an impracticable proposition. Educational experts will readily agree that giving religious instruction outside school hours will be a burden which should not be placed on pupils of tender age. Moreover, we know what sort of instruction can be given outside school hours. Therefore, Sir, this important matter of religious instruction ought not to be treated in this stepmotherly fashion. People talk of trouble arising on account of religion. As I have been saying more than once, it is not really religion that is the source of trouble. It is the misunderstanding of religion that is the source of trouble. The point is that pupils must be made to understand what religion really is and for that purpose you must not leave them to learn their religion here and there in the nooks and corners of a village or a city. If religious instruction is to be in the interests of the pupils as well as the State, it should be given in public educational institutions where the followers of every religion will do their best to present their religion in the best light. This can

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be done, Sir, only if religious instruction is allowed to be given in the public State-owned institutions, where people will compete with each other to show the best of their religions to the world and thereby undesirable rivalries, competitions, bickerings and heartburnings will really be eliminated. Sir, the second world war has turned people back to religion. Many European writers say that because people went away from religion, discarded religion, because they did not allow religion to be imparted to their children in their tender age, this calamity happened. Therefore, many political writers themselves are now stressing the need for religious instruction in State schools; moreover, we find that several constitutions in European countries have provided for the compulsory imparting of religious instruction in their respective countries. Therefore, I say not only that it is not harmful but I say that it is necessary, that it is very essential that every pupil must be taught his or her own religion in their proper age and that can be done only when they are in the primary schools. Therefore, when all these primary schools are going to be State schools, the State should not ban religious instruction altogether. As I said in a previous amendment, this must be left to the Parliament. There may be practical difficulties with regard to certain communities but these difficulties must be left to Parliament to be dealt with according to circumstances. Because there may be difficulties for some people, certain other communities should not be deprived of their right of imparting religious instruction to their children. I once again want to stress the fact that it is in the interest of the State to give a grounding to children in religion. What is wanted for the stability of society as well as the State is moral grounding, moral background, and the only way to give this moral background is through religion. The world has so far failed in its experiences to find another substitute for religion. Even the hardboiled politicians are now turning their faces towards religion. When the whole world is returning to religion, we are here discarding religion; we belonging to people who think that religion is an inalienable part of our lives. If we want to avoid all the distressing experiences that the West has experienced, we should allow religious instruction to be imparted to pupils in the primary schools. If this is done, everything will be well and there will be happiness for all. That is why I say that permission should be given at least to the religious communities to arrange for religious instruction in or outside school hours as the case may be according to circumstances. That may be left to the future legislature.

(Amendment No. 663 was not moved.)

Mr. Vice-President: Amendment No. 664. Professor K. T. Shah.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That in clause (3) of article 22, for the words "outside its working hours" the following be substituted :

'maintained by that community from its own funds provided that no educational institutions, nor any education or training imparted therein shall be recognised unless it provides instruction or training in courses laid down for public instruction in the regular system of education for the country and complies in all other respects with methods, standards, equipment and other requirements of the national system of education.' "

Sir, the whole group of clauses lays down a principle of "no religious instruction in public educational institutions" and then seeks, as it seems to be the case, throughout this Chapter to find holes and crevices by which it can creep in like a thief in the dark, and undo the very basis and foundation of the structure we are seeking to erect.

I am free to confess that, apart from the variety of exceptions, exemptions or limitations, all sought to be imposed by this article upon its basic principle,— there is the difficulty of ambiguity of expression, the lack of clarity or insufficiency

in the terms used, which makes it very difficult to devise an amendment, which might be effective in substance as well as in form, and bring out the idea more clearly and expressly than the draftsman seems to have done.

I mention one instance of ambiguity in terms, which, unfortunately, occurs also in the amendment which I am proposing, though there is, I think, no ambiguity in the term used in my amendment containing the expression 'State funds'. The term fund, as I have understood it, means in common parlance, and I venture to submit, even in legal technical terminology, not revenue or recurring income. That term means something static, something accumulated and existing, something that is what the lawyers would call 'corpus', even if they understand the Latin term in the Latin sense, 'Revenue' is something different.

Now take the clause about Institutions maintained from State funds. I for one find it very difficult to understand what 'funds' are meant here as intended by the draftsman for the maintenance of institutions. I am, of course, not anxious to read Bhagvat before buffaloes. But I must say that in trying to understand the meaning of this article, I feel it necessary to at least expose my own difficulties and handicaps in understanding precisely the terminology used, and seek clarification from those who have the handling, the making, and drafting of this Constitution in their hands.

I make no secret of the fact that I am against public educational institutions being used for providing Religious Instruction in this country, or any country, but in this country particularly, because of the variety of sects and denominations. They are, of course, called each a religion; but they very often forget the basic truth of all religon, and exalt each its own particular brand or variety of it, as any advertizer in the market lauds his own wares. But even assuming that that is permissible, outside office hours so to say, outside the normal school hours, care must at least be taken that that is not done at the expense of the normal education, and all the requirements of that education and training, in the shape of building, staff, equipment, standards, methods etc.

Now, it is by no means clear, at least in this clause (3), as it stands, that even if instruction is permitted or suffered to be provided outside the normal hours, whether that may be done at the expense of the ordinary curriculum. That will have to be, I take it, enforced in every school, whether maintained by public funds, or not. I insist, therefore, in this Amendment, that whoever wishes to provide such instruction, whatever community desires to provide such instruction, may do so, if you so agree, by its own funds. But they must be sufficient to meet the full cost; and in the full sense of the term, it must be after the school hours, in such a manner that there is no prejudice whatsoever of the ordinary curriculum prescribed standards of attainment, methods of instruction, equipment, etc.

This, in my opinion, is liable very seriously to be sacrificed and endangered if you do not introduce some such safeguard as I am seeking to make by my amendment. Our only weapon is that, if any community so desires to insist upon the pre-eminence if not exclusive importance being given to religious instruction, and is prepared to spend monies thereafter, let it do so. But the State should certainly not recognise any education given in such an institution, and in training equipment provided by that institution, unless it conforms to the public standards, and public requirements of such education and training being given up to a prescribed degree.

I have some experience of educational institutions trying to ignore, in one respect or another, one or all of these requirements. Those who have had experience of inspecting these institutions and reporting upon them to the appropriate authorities will realize what I mean when I say that the greatest

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difficulty lies in keeping these institutions up to a given mark, and to see from time to time that these standards are maintained.

In countries where a common standard prevails, this difficulty also exists. But in countries where there are conflicting ideals, namely secular education, material considerations in professional training and technical training, and at the same time there is, so to say, the demand of specialized religious instruction, I am afraid one or the other of these may suffer in order that the former or the latter may succeed. I feel it is imperative to require that not only shall all the funds for the provision of such instruction be supplied by the community which desired to provide it, but in addition, on pain of its education being not recognized, on pain of its degrees, diplomas and certificates not being accepted as sufficient qualification for its alumni when they seek any post or office, they shall see to it that the standards, equipment, buildings, staff and other requirements of the national system of education, and its code of regulations are fully complied with. If that is done, then probably the great evil which I find in the provision of religious instruction in a country like this would be mitigated, if not eliminated altogether.

(Amendment No. 665 was not moved.)

Mr. Vice-President: The clause is now open for general discussion.

Shrimati Renuka Ray (West Bengal: General): Mr. Vice-President, Sir, while supporting this article, there are one or two points on which I should like some elucidation. Prof. K. T. Shah has brought forward a point which really needs to be cleared up. Part (1) of this article says: "No religious instruction shall be provided in any educational institution wholly maintained out of state funds". There is likelihood of this being misinterpreted in the future, so as to nullify its very object. As he has pointed out even if a small donation is paid to a public school, it can be held that such a school is not wholly maintained out of State funds, and therefore denominational religious instruction may be given. I hope that when Dr. Ambedkar speaks, he will clear up this point because it is a very important one. If such interpretation can be given then it is necessary to have safeguards against it.

In this country we have seen the exploitation, and the prostitution of what we call religion and we have seen to our bitter cost what is done in the name of denominational religion. It has not only led to the dis-memberment and division of our country, but it has also led to the worst horrors that could be perpetrated in the name of religion. Now, when we are building for the future, we must build in such a manner that we are able to do so untrammelled by the legacy of the past. The only real way in which this could be done is to see that the next generation are educated in such a manner that they are not actuated by motives that divide and disintegrate man from man, but that the religion of humanity is much greater to them than religious dissensions on a denominational religious basis. If that is to be so, we must be very careful, now that we are building up the Constitution for the future, that there shall not be in the fundamental rights any kind of confusion as to the kind of instruction that is to be given at least in those institutions that are maintained out of public funds. If we use this word "wholly", there is likely to be this confusion that has been already pointed out and I would like to hear from Dr. Ambedkar if it is possible for him either to accept this amendment or at least to assure the House that no such interpretation will be possible in the future.

I would again urge that he should accept in particular the amendment for the deletion of clause (3) which has been moved by Mr. Jaspat Roy Kapoor, because as he has pointed out there is no doubt that if this clause remains, there is likelihood that in a certain area where there may be a small number

of schools or only one school, a fight between the various denominations as to which particular type of religious instruction should be given out of school hours may ensue. Therefore, it is much better that clause (3) be deleted from this article.

I am sure that all those in this House and the country outside will agree with me that above all things, it is necessary that the instruction that is given to the citizens of the future shall be such that the idea of a Secular State in which all citizens are equal comes into being, and the provision for this, adopted in our Constitution becomes a living reality. This can only be done if education which is the very basis on which we build our Society is so imparted to the young that they do not learn to realise the distinctions which separate man and man, but rather to learn that the underlying unity of humanity is more fundamental and the basis of religion to which they must adhere.

Shri V. I. Muniswami Pillai: (Madras: General): Mr. Vice-President, Sir, when we are on the very important work of evolving a secular State for this country, I feel that the second clause in article 22 is a very important one and I welcome it.

Sir, it will be in the knowledge of this sovereign body that certain institutions in the past, due to the aid that was given by the former Government, under the garb of imparting education to the masses, have taken a different stand. This has led to masses of the unfortunate communities embracing a religion that was not their own. This article makes it clear that any educational institution receiving aid from the State should not indulge in matters of religious education. This mostly helps those unfortunate communities that have fallen a prey in this respect.

Sir, further it goes to say that in the case of a minor, unless the parent has given his consent, he should not be given religious instruction or required to attend any religious worship. I feel, Sir, it is not always possible for the parents to give this consent and the institutions that are working in the rural areas and outskirts of towns will not get the genuine consent of the parents in this respect. This important duty of seeing whether the consent given is genuine and true, falls upon the local authorities who will have to verify and create agencies so that the students or pupils that are attending any institutions of certain denominations are not converted to other religions. This is my emphatic plea and I am hopeful that the local Governments will take care about what is said about consent. I entirely welcome the provisions of this article 22 of the Constitution.

Shri V. S. Sarwate: [United States of Gwalior-Indore-Malwa (Madhya Bharat)]: Mr. Vice-President, Sir, I rise to support this article as it stands except clause (3). As I see it, I think articles 20, 21 and 22 are to be read together. Certain propositions evolve out of them. The first is that the State is secular and it shall not impart any religious education in schools maintained by itself. Further, clause (1) of article 22 lays down that the State shall not give any religious instruction in such schools as are entirely maintained out of State funds and these shall not be allowed to give religious education. This is the first proposition. But, it does not follow that the State either bans religion or despises it. Its attitude is perfectly neutral. Article 20 allows any religious denomination to have its own schools. As I read article 21, I understand it to mean that if any particular community wants to tax itself for the purpose of imparting religious education, the Government would help it by undertaking to collect such a tax. What is done by article 21 is this: that the State will not force anybody to pay such a tax. But, it may collect and pay over to such communities, if the communities agree to pay a particular tax for the purpose of imparting religious education. As I see from the word 'wholly' I do think that if the State wants to partially aid any school which

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is imparting religious instructions, it is enabled to do so and I think it is right. If any community does maintain a school and imparts particular religious education and it deserves help from the State, the State should be in a position to give such aid. Therefore, the word 'wholly' is necessary and I oppose the other amendment which has been moved inserting the words 'or partly'. One need not be obsessed by what happened in the past. I know and I have read in schools and colleges where certain religious education was imparted. I am grateful for the teachings which I received there but there were certain objectionable features. In one educational institution there was a religious instruction imparted in the first hour and if we did not attend in that hour, we were marked absent for the rest of the periods. In another college where I learnt, it was necessary that we attended a religious worship and if we did not attend it, we were subjected to certain fines. These were objectionable features and these are to be removed. They are removed by clause (2). Nobody is required to attend such religious worship or to attend such classes where religious education is given. But it does not prohibit the State from giving aid to such institutions; what is only meant is nobody against his will will be required or forced and compelled to receive such education or attend such religious worship, and I think this is a very salutary provision and also the permission which is given to the State to aid such institutions is also necessary. Otherwise I believe, certain very good institutions in the country would suffer.

Kazi Syed Karimuddin: Mr. President, Sir, in my opinion the provisions of article 22 except clause (3) are very salutary and I really do not understand how these provisions have been opposed by Mr. Ismail from Madras. In the state of things as they stand today, in my opinion, it is much better for the minorities to avoid religious controversies, conflicts and religious dogmas to be taught in the schools and we have seen in the past, as several speakers the other day have said, that in Missionary schools people were persuaded to have conversion from one faith to the other because of the undue influence or monetary gains. Now in a Secular State, where religion will be a personal matter, my submission is that in educational institutions wholly managed or wholly aided by the Government or State, religious education should not be provided. It is said, Sir, that unless religious education is given in the schools financed by the State it would not be possible for the minorities to be educated in their religion. My submission is that if the communities want that their children should be educated or should be given religious education, then it will be their duty to educate their children in *Patasalas* or schools. The amendment moved by Professor Shah in my opinion cannot be acceptable at the present stage. His amendment is that no religious instruction should be provided by the State in any educational institution wholly or partly maintained out of public funds. Today as things stand in India there is Aligarh University, there is Banaras University and there are several colleges run by the Christian Missionaries which are aided by the Government. If his amendment is accepted today there will be hundreds and thousands of institutions which will be closed down immediately. Let us proceed very cautiously. For that the provision in clause (2) is very salutary. In aided schools or institutions in which there will be no compulsion on the students to take a particular religious education. I think the opposite point of view can be partially met by clause (2). It has also been stated that the word 'educational' should be removed from clause (1) and it is stated that Radios may be used to propagate and teach a particular religion. This is a State which has been declared to be secular and if a secular State decides to propagate a particular religion throught radios, it will not be worth the name that it is a secular State. In my opinion it is

more a question of administrative policy and the word 'educational' need not be taken away from clause (1).

Sir, it has been stated that religious education should be given at home. I also oppose this. In aided schools run by communities religious education can be given and the amendment of Mr. Tajamul Husain cannot be accepted that religious education should be given at home. I contemplate a position that if parents are atheists—for instance Mr. Tajamul Husain by another amendment demands that the people should have no name and they should not have any particular dress—in that case, there will be no religious education in their houses; and if people are only to be known by numbers and not by names, then it will be very difficult for them to be educated or instructed in religious theology. Therefore my submission is that article 22 as it stands is not to the disadvantage or detriment of the minorities.

But I really object to clause (3). What has been given in clauses (1) and (2) has been taken away in clause (3). It says—

"Nothing in this article shall prevent any community or denomination from providing religious instruction for pupils of that community or denomination in an educational institution outside its working hours."

But who would be responsible for imparting the religious education in such institutions? Any outside agencies who would be giving religious instructions to the boys may not be acceptable to the authorities and moreover much mischief will be done if this religious education is given in outside hours by people who are irresponsible and by people who will be recklessly teaching boys that may be to the detriment of the nation. Therefore I support article 22 as it stands with the deletion of clause (3).

Shri M. Ananthasayanam Ayyangar: Sir, I support the article as it stands without clause (3). Instead of Professor Saksena's amendment, I would urge that the House may accept amendment No. 661. Mr. Saksena's amendment originally as it stands is that both clauses (1) and (3) of this article may be omitted but when moving the amendment he gave up the portion relating to clause (1) and pressed his amendment in regard to clause (3). Instead of that, amendment No. 661 relating exclusively to the deletion of clause (3) may kindly be accepted. Sir, in supporting this clause in this article, I am very much pained that religious instruction is not to be taught in any school in a country which is full of religion. Inside our schools, we may refuse to teach religion to the children. But outside the schools we cannot forget our denominations. Religion, according to me, is the basic foundation of any society; all morality, and all good principles have to be traced to religion. But situated as we are, it is unfortunate that we are not able to come to any arrangement regarding the teaching of religion to our children in our schools.

Sir, there are two sets of amendments moved regarding this article. One requires that various provisions for the teaching of religion in the schools must be made for all the children. Another set of amendments wants that the stringent provisions of today against the teaching of religion should be made even tighter, and that even in cases where educational institutions are not exclusively run by the State and where the State does not maintain the institution wholly, no religious instructions should be imparted, and that even in institutions which are partly aided by the State or are recognised by the State, religion ought not to be taught. That is another set of amendments. I, Sir, feel that neither the one nor the other set is possible in the circumstances in which we are situated today. We are pledged to make the State a secular one. I do not, by the word 'secular', mean that we do not believe in any religion, and that we have nothing to do with it in our day-to-day life. It only means that the State or the Government cannot aid one religion or give

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preference to one religion as against another. Therefore it is obliged to be absolutely secular in character, not that it has lost faith in all religions. Not even members in charge of the Government have lost faith in religion. I am sure none of us is to that extent an iconoclast or non-believer. We all do believe in some religion or other, including those who have spoken and taken part in the deliberations about this article in the Constitution. But it is regrettable that we have not been able to evolve a universal religion, a religion where the religions practices need not cloud the issues. We all believe in the existence of one God, in prayer, in meditation and so on. We all believe in the ultimate surrender to Him and that by sacrifice and service alone can we hope to realise Godhead. These are common to all religions. The Bhagavat Gita lays down that by sacrifice and service we have to see Godhead in humanity, that service to humanity is the essence of God. I will not go into all the details; suffice it to say that I regret that in the circumstances in which we are, we are not able to teach religion to our children. If we introduce the teaching of one religion, even if there is only one boy belonging to another religion in that school, we have to make provision for the teaching of his religion also. And we know very well that even under one religion there are sects and subsects. There are Hindus of various sects. And then there is Jainism, Buddism, Christianity, and there are the Muslims, the Parsis and so on. Therefore it is not possible, it is physically impossible for the State to make provisions for the teaching of all the religions. The only thing, under the circumstances that we can do is to avoid religious instructions in State-aided schools. If a small contribution is made by some agency and religious instruction is provided, it will all the same, be controlled by the local authority, and if the teaching is rabid, and if hatred is being taught in the school, certainly the grant can be withheld and other measures adopted to stop that kind of thing. It is not obligatory upon the State to give its grants irrespective of the way in which the educational institution is being run. So we need not think that religious instruction will be given in an institution where the major portion is contributed by the State and a small contribution—may be a farthing—is contributed by some other agency. We need not make it part and parcel of the Constitution here. I am sure no government would contribute 99 per cent and allow an educational institution to impart religious education because 1 per cent comes from some other source. Therefore, we need not accept either the one set of amendments or the other set, but confine ourselves to amendment No. 661 and amendment No. 645.

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

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

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

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

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

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, out of the amendments that have been moved, I can persuade myself to accept only

amendment No. 661 moved by Mr. Kapoor to omit sub-clause (3) from the article, and I am sorry that I cannot accept the other amendments.

It is perhaps, desirable, in view of the multiplicity of views that have been expressed on the floor of the House to explain at some length as to what this article proposes to do. Taking the various amendments that have been moved, it is clear that there are three different points of view. There is one point of view which is represented by my friend Mr. Ismail who comes from Madras. In his opinion, there ought to be no bar for religious instruction being given. The only limitation which he advocates is that nobody should be compelled to attend them. If I have understood him correctly, that is the view he stands for. We have another view which is represented by my friend Mr. Man and Mr. Tajamul Husain. According to them, there ought to be no religious instruction at all, not even in institutions which are educational. Then there is the third point of view and it has been expressed by Prof. K. T. Shah, who says that not only no religious instruction should be permitted in institutions which are wholly maintained out of State funds, but no religious instruction should be permitted even in educational institutions which are partly maintained out of State funds.

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

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

The second difficulty is much more real than the first, namely the multiplicity of religions we have in this country. For instance, take a city like Bombay which contains a hetrogeneous population believing in different creeds. Suppose, for instance, there was a school in the City of Bombay maintained by the Municipality. Obviously, such a school would contain children of the Hindus believing in the Hindu religion, there will be pupils belonging to the Christian community, Zoroastrian community, or to the Jewish community. If one went further, and I think it would be desirable to go further than this, the Hindus again would be divided into several varieties: there would be the *Sanatani* Hindus, Vedic Hindus believing in the Vedic religion, there would be the Buddhists, there would be the Jains—even amongst Hindus there would be the Shivites, there would be the Vaishnavites, Is the educational institution to be required to treat all these children on a footing of equality and to provide religious instruction in all the denominations? It seems to me that to assign such a task to the State would be to ask it to do the impossible.

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

Now, with regard to the second clause I think it has not been sufficiently well-understood. We have tried to reconcile the claim of a community which has started educational institutions for the advancement of its own children either in education or in cultural matters, to permit to give religious instruction in such institutions, notwithstanding the fact that it receives certain aid from the State. The State, of course, is free to give aid, is free not to give aid; the only limitation we have placed is this, that the State shall not debar the institution from claiming aid under its grant-in-aid code merely on the ground that it is run and maintained by a community and not maintained by a public body. We have there provided also a further qualification, that while it is free to give religious instruction in the institution and the grant made by the State shall not be a bar to the giving of such instruction, it shall not give instruction to, or make it compulsory upon, the children belonging to other communities unless and until they obtain the consent of the parents of those children. That, I think, is a salutary provision. It performs two functions . . .

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

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

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

Pandit Lakshmi Kanta Maitra: May I put the honourable Member one question? There is, for instance, an educational institution wholly managed

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Now, Sir, there is one other point to which I would like to make reference and that is the point made by Prof. K. T. Shah that the proviso permits the State to continue to give religious instruction in institutions the trusteeship of which the State has accepted. I do not think really that there is much substance in the point raised by Prof. Shah. I think he will realise that there have been cases where institutions in the early part of the history of this country have been established with the object of giving religious instruction and for some reason they were unable to have people to manage them and they were taken over by the State as a trustee for them. Now, it is obvious that when you accept a trust you must fulfil that trust in all respects. If the State has already taken over these institutions and placed itself in the position of trustee, then obviously you cannot say to the Government that notwithstanding the fact that you were giving religious instruction in these institutions, hereafter you shall not give such instruction. I think that would be not only permitting the State but forcing it to commit a breach of trust. In order therefore to have the situation clear, we thought it was desirable and necessary to introduce the proviso, which to some extent undoubtedly is not in consonance with the original proposition contained in sub-clause (1) of article 20. I hope, Sir, the House will find that the article as it now stands is satisfactory and may be accepted.

Mr. Vice-President: I am now putting the amendments to vote one after another. First of all, I put the first alternative in amendment No. 640.

The question is:

"That for article 22, the following be substituted :—

'22. No person attending an educational institution maintained, aided or recognised by the State shall be required to take part in any religious instruction in such institution without the consent of such person if he or she is a major or without the consent of the respective parent or guardian if he or she is a minor'."

The amendment was negatived.

Mr. Vice-President: Next we come to No. 641 as amended by No. 19 of list No. 1. I shall first put No. 19 of list No. 1.

The question is:

"That for amendment No. 641 of the List of Amendments, the following be substituted :—

'That clauses (1) and (3) of article 22 be deleted'."

The amendment was negatived.

Mr. Vice-President: I shall now put amendment No. 641.

The question is:

"That for article 22, the following be substituted :—

'22. The State shall not compel anyone to have religious instruction in a religion not his own in schools against his wishes, but the State shall endeavour to develop religious tolerance and morality among its citizens by providing suitable courses in various religions in schools'."

The amendment was negatived.

Mr. Vice-President: The next one is amendment No. 647.

The question is:

"That in clause (1) of article 22, after the words 'in any educational institution wholly' the words 'or partly' be added."

The amendment was negatived.

Mr. Vice-President: Now amendment No. 643.

The question is:

"That in clause (1) of article 22, after the words 'shall be provided' the words 'or permitted' be inserted."

The amendment was negatived.

Mr. Vice-President: The next one is No. 644.

The question is:

"That in clause (1) of article 22, the word 'educational' be omitted."

The amendment was negatived.

Mr. Vice-President: The next one is No. 645.

The question is:

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

The amendment was adopted.

Mr. Vice-President: The next one is the No. 646.

The question is:

"That in clause (1) of article 22, the words, 'by the State' and the words 'wholly maintained out of State funds' be deleted."

The amendment was negatived.

Mr. Vice-President: The next one is No. 653.

The question is:

"That at the end of the proviso to clause (1) of article 22, the following be inserted :—

'and the income from which trust or endowment is sufficient to defray the entire expenditure of such institution'."

The amendment was negatived.

Mr. Vice-President: The next one is 658.

The question is:

"That in clause (2) of article 22, the words 'recognised by the State or' be deleted."

The amendment was negatived.

Mr. Vice-President: The next one is No. 661. This has been accepted.

The question is:

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

The amendment was adopted.

Mr. Vice-President: The next one is No. 662.

The question is:

"That in clause (3) of article 22, for the word 'providing' the words 'being permitted to provide' be substituted and after the words 'educational institution' the words 'in, or' be inserted."

The amendment was negatived.

Mr. Vice-President: The last one is 664.

The question is:

"That in clause (3) of article 22, for the words 'outside its working hours', the following be substituted :—

'maintained by that community from its own funds provided that no educational institutions, nor any education or training imparted, therein shall be recognised, unless it provides instruction or training in courses laid down for public instruction in the regular system of education for the country and complies in all other respects with methods, standards, equipment and other requirements of the national system of education'."

The amendment was negatived.

Mr. Vice-President: The question is:

"That article 22, as amended, stand part of the Constitution."

The motion was adopted.

Article 22, as amended, was added to the Constitution.

(Amendment No. 666 was not moved.)

Article 22A (New Article)

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

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

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

It may not be, perhaps, very commonly known that Heads of Religious organisations are in the enjoyment of certain extra-territorial or extra-civil privileges. They enjoy civic immunities, privileges or exemptions, which mark them out as a class apart, but which cause in many instances heavy losses to the public purse, and gravely prejudice public interest.

I do not of course object to the nominal or formal privilege enjoyed by them of titles, precedence, honorifies and the like. Some of these Heads of Religion are considered to be equal in rank to ruling princes. They are accordingly given a salute of eleven guns, at their own cost of course if fired; and are in a position to demand that that honour be paid to them. As I said just now, I do not object to that, because each time they ask for such a mark of respect, they would themselves pay for it. But there are immunities and exemptions which mark them out as apart from the rest of the citizens of the land; and as such offend the simple principle that all citizens of this country are amongst themselves equal, without any distinction of rank, or birth, or faith or sex.

This I consider to be objectionable in principle, because the inequality thereby created is of a character which has a direct and material bearing on the rights guaranteed by the constitution to the citizens. Religious Headship, if it is truly to be so regarded in the spirit, in the essence, in which it was conceived, would make the holder of that position entirely apart from.....

Shri Krishna Chandra Sharma (United Provinces: General): To whom is the honourable Member proposing to give such rights? This is a Chapter on Fundamental Rights. This proposal has nothing to do with those rights.

Prof. K. T. Shah: That is for the Chair to say.

Mr. Vice-President: Professor Shah may go on.

Prof. K. T. Shah: Sir, I am stating that this is a violation of the Fundamental Rights granted. I am not asserting any new rights. I would mention one or two illustrations of such exemptions, which used to be allowed, and

which I think are still being allowed, such as for instance exemption from Income-Tax and Customs Duties on goods imported from abroad for the use of the religious heads. These exemptions from customs duties under the Sea Customs Act and the Income-tax Act are claimed by virtue of the traditional privileges conceded to them as a matter of courtesy in a class society. I am not able to tell what precisely is the loss that the State has to suffer from the grant of these privileges to the several Heads of the several communities, who have sufficient fondness for outside goods or foreign articles to be constantly importing them on a large scale. Though these are articles of luxury, and though the heads of religious sects have sufficient income, they escape customs duties, and they demand exemption from income-tax.

Mr. Vice-President: Order: There is too much noise inside the House.

Prof. K. T. Shah: In that regard also, Sir, I am not able to give the exact amount of loss that this country suffers from this source today. In view of the very high level of taxation now prevailing on incomes, such exempted incomes ought to bring in substantial sums. For many Heads of Religion, have usually incomes running into lakhs, even crores, and, as such, if the same rate of taxation were imposed on them as on others, if the same manner of tax collection was adopted with reference to them also; if the same rigid and exacting technique was followed in regard to tax collection from these people, I should imagine the public exchequer would benefit very substantially. Under the existing rate an income of a crore of Rupees will yield a tax of Rs. 92½ lakhs; and if there are 10 heads of religions like the Aga Khan, they would keep away from the public Treasury 9·25 crores or more.

It is not perhaps so much the amount of money which is lost to the State by the existence of these privileges and immunities of the Heads of Religion which may attract your attention. It is the essentially mundane character, the essentially worldly nature of these privileges, and, may I say, the consequent degradation of religion by such means which only mean material objects and material prosperity that ought to be objected to. As such these privileges and immunities should be disallowed after or on the passing of this Constitution. I hope the point appeals to the House and will be accepted.

Mr. Vice-President: Amendments Nos. 668 and 669 relate to language and script and have therefore to be postponed for the present.

Shri Damodar Swarup Seth may now move his amendment No. 670.

Mr. Z. H. Lari (United Provinces: General): On a point of order, Sir. The article in respect of which an amendment was moved previously is quite different from the article which is sought to be inserted by the later amendment.

Mr. Vice-President: I thought it would save time if the amendments are moved one after another.

Mr. Z. H. Lari: But there cannot be a discussion on two Articles simultaneously. One article has to be disposed of before another is taken up for consideration.

Mr. Vice-President: Does the honourable Member want to discuss the thing now?

Mr. Z. H. Lari: Yes.

Mr. Vice-President: That can come later.

Mr. Z. H. Lari: But these two are different articles and the amendments are distinct ones.

Mr. Vice-President: When the honourable Member comes up to speak, he can say that he is discussing such and such article or amendment. Or, if he wants, I can ask Mr. Damodar Swarup to speak later.

Mr. Z. H. Lari: That would be the proper procedure.

Mr. Vice-President: That is right technically. But I would save the time of the House by proceeding in the manner I have done. I am indifferent whether you start this way or that way.

Shri R. K. Sidhva (C. P. and Berar: General): May I know whether it is your ruling or Mr. Lari's ruling?

Mr. Vice-President: I know that the honourable Member Mr. Lari will be quite willing to accept my ruling. But I want to please everybody. That is my weakness. Does Mr. Lari abide by my request?

Mr. Z. H. Lari: I bow to your decision, Sir.

Shri Damodar Swarup Seth (United Provinces: General): Sir, I beg to move:

"That the following new article be inserted after article 22 :—

'22-A. The use of religious institutions for political purposes and the existence of political oragnisation on religious basis is forbidden'."

The Draft Constitution very rightly and justly guarantees to all citizens.....

The Honourable Dr. B. R. Ambedkar: Article 19 (2) (a) covers this.

Mr. Vice-President: I am told that article 19 (2) (a) covers your point.

Shri H. V. Kamath: Article 19 (2) (a) regulates or restricts political or other secular activities associated with religion, while Seth Damodar Swarup's amendment forbids them altogether. Between a complete taboo and mere regulation there is a lot of difference.

Pandit Thakur Dass Bhargava (East Punjab: General): There was an amendment to article 19 (2) seeking to add 'prohibiting' and the amendment was not accepted by the House.

Mr. Vice-President: It practically means the same thing as Seth Damodar Swarup's amendment. I am afraid this thing has already been covered. I cannot allow it.

Amendment No. 671. This is about cow slaughter. Already covered.

Amendment No. 672 is about language and script. So it means that we have only one amendment No. 667, and the objection of Mr. Lari has been met automatically. Amendment No. 667 of Professor K. T. Shah is now for general discussion.

Shri Krishna Chandra Sharma: Mr. Vice-President, Sir, I do not see any meaning in Professor Shah's amendment with regard to the fundamental rights. The amendment runs thus:—

"All privileges, immunities or exemptions of heads of religious organisations shall be abolished."

To say that such and such a man shall not have such and such a right is no right given. Therefore I fail to understand where the question of fundamental right arises in this proposal and how it can find a place in the chapter on fundamental rights. This proposal, I beg to submit, is out of place and as such should not find a place in this chapter of the Constitution.

Secondly, I beg to submit that Professor Shah seems to be very much afraid of religion. What is wrong with religion is not the religion itself but its wrong propagation or its propagation by inefficient or undesirable persons. Religion as such is the basis of all morality, all social and ethical values and all human

institutions. I do not find what is wrong with religion itself. There might be something wrong with religion if it is handled by wrong people, if it is propagated by incompetent people.

Shri Rohini Kumar Chaudhari (Assam: General): Sir, I oppose the motion which was moved by my honourable Friend Professor Shah. I do not understand why he should be so much against religious heads. My honourable Friend, I think, knows that there are provisions in the Civil Procedure Code whereby even ex-Ministers may be exempted from appearing in court for some months. In our part of the country there are Shatradhikars who are exempted generally speaking from appearing in any court. It would revolutionise the minds of their disciples if by any chance they are made to appear in any court and give evidence. When Professor Shah is not saying any word against the privileges which are now enjoyed by some privileged persons like high officials and Ministers of the State, why is he so anxious to curtail the privileges of heads of religious organisations in the Constitution itself, instead of allowing it to the discretion of the courts to extend the exemptions or privileges in some cases which are really necessary?

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

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

Mr. Vice-President: The question is:

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

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

The motion was negatived.

Article 23

Mr. Vice-President: We shall now proceed to the next article. The first amendment is No. 673 which is disallowed for the obvious reason that it practically amounts to a negative vote. Then we come to amendment No. 674.

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

"That for article 23, the following article be substituted :—

'23. Without detriment to the spiritual heritage and the cultural unity of the country, which the State shall recognise, protect and nourish, any section of the citizens residing in the territory of India or any part thereof, claiming to have a distinct language, script and culture shall be free to conserve the same'."

Sir, in moving this substitution for the existing article No. 23, I am speaking nothing new nor anything against what has been said in article 23. It is a fact and it has been rightly recognised in article 23 that we have different scripts, different languages and even different cultures in the territory of India and they have been recognised and, preserved and they must flourish, but I should say, as all roads lead to Rome and ought also to lead to Rome, all these cultures, all these languages and all these scripts must be taken as a means to a common end, which the State must recognise, nourish and protect. In fact, it has been our desire and it has been the very soul of the birth of our freedom and our resurgence that we must go towards unity in spite of all the diversity that has divided us. I, therefore, submit to the House that although we have many languages, many cultures, many scripts, many religions, it may not yet be impossible for us to find out if there is something common for India bequeathed even from the hoary past, which has been running on till today, vitalizing and inspiring us. Just as there is the ocean to which all the rivers go, to the cultural ocean, to the spiritual ocean, that is India, that has been our heritage, all our rivers of culture, language and script, hopes and aspirations must go and from a mighty ocean ever full. Sir, this article 23 which is an article recognising diversity must find out a way for our unity and unless we have that unity, the state administration or the state rolling machine, just a rule of external law, cannot bring us to unity. Therefore for a real unity, for a homogeneous unity, and natural unity, we must evolve a certain philosophy, a certain culture, and a certain language which will contain and carry everything and still be more than everything and must at the same time be running from the ageless past to the eternal future. I therefore, submit, Sir, this amendment, which I am suggesting will find favour with the House and the House will realize that, without developing this unity which can be brought about only on a very high plane, on the plane where we are one, inspite of the appearance that we are many and in the plane of the heart, which is the home of the spirit and also in the sphere of culture, which we have all been nourishing, there cannot be a real unity and we will have no real contribution to the world civilization or the amity of man, his peace and prosperity. I therefore commend this amendment to the favourable consideration of this House.

Maulana Hasrat Mohani (United Provinces: Muslim): May I suggest that we keep this amendment for a decision afterwards or till such time as we decide what shall be the language which will be accepted as the universal language for the whole country and which is the script? May I suggest that this amendment shall stand over?

Mr. Vice-President: Maulana Sahib, I have not been able to make out what you wish to say. Do you mean amendment No. 674 or the whole article?

Maulana Hasrat Mohani: This amendment, Sir.

Mr. Vice-President: Mr. Lokanath Misra says "without detriment to the spiritual heritage and cultural unity of the country which the State shall recognise, etc." Therefore, the question of language and script does not occur anywhere. It is quite possible to think of cultural unity, though the languages

used in different parts of India may be different. So I do not quite see your objection.

Shri Lokanath Misra: What I referred to are our hopes and aspirations, the future to which we will go in our pilgrimage. I do not say that we do something here and now.

Maulana Hasrat Mohani: I think that this amendment should stand over as you have decided in the case of many other amendments. We cannot possibly decide this, unless we decide which will be the language of the whole country and which will be the script. How can we say that now?

Mr. Vice-President: This amendment has nothing to do with the national language or the script. It is quite in order here.

(Amendment No. 675 was not moved.)

Mr. Z. H. Lari: Mr. Vice-President, Sir, I move:

"That for clause (1) of article 23, the following be substituted :—

'(1) Minorities in every unit shall be protected in respect of their language, script and culture, and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect'."

This amendment which I have moved is not a new motion. It is really a motion to restore the original decision of this House taken in April 1947. You will remember, Sir, I was not then a Member, but I find from the reports of the Committee, First series, 1947, that the Committee on Fundamental Rights reported that this clause should run in the way in which I have put. At page 30 of that report, the clause runs thus:

"Minorities in every unit shall be protected in respect of their language, script and culture, and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect."

This recommendation of the Committee on Fundamental Rights was approved by this August House in April 1947. But curiously enough, the Drafting Committee.....

Mr. Vice-President: Is it a sub-committee of the Fundamental Rights Committee?

Mr. Z. H. Lari: Yes; it was a sub-committee and it was approved by this House as well, but the Drafting Committee which was charged with the duty of framing the Draft Constitution on the basis of resolutions adopted by this House changed the phraseology and the present sub-clause stands thus now:

"Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script and culture of its own shall have the right to conserve the same."

The reasons which have led me to move this amendment in order to restore it to its original condition can be briefly stated.

Sir, I believe it is accepted on all hands that cultural and educational rights have to be protected and this is the intention of article 23. There can be no gainsaying on that point. The clause as it originally stood and as it was approved by this House intended to lay down that no laws, no regulations shall be passed which would adversely affect a minority in maintaining and fostering their own culture and language. That is to say, no such laws shall be passed which would nullify a right which was being conceded to a linguistic minority. If the clause were to stand as I have put it and as the House originally approved, the result would be that there will be adequate remedy at the disposal of a minority, to see that the intentions of this House are carried into effect. But, if you look to the language used in the Draft Constitution, it comes to this only that the minority or a section of the citizens shall be en-

tled to conserve its own language. What does it mean? What is its effect? It simply means this, that a body of citizens shall be entitled to use their own language in their private intercourse. But the question is whether they will be entitled to use their own language in elementary education given at the state expense. No doubt, under another clause of this article, a minority can establish institutions of its own and by virtue of this clause (1), it will be open to that minority to impart, say, elementary education through its own mother tongue. But if the State were to establish institutions as it would do,—naturally there will be so many minorities which will not be in a position to start institutions of their own—, then the question arises, will it be possible for the minority to demand that, in those institutions which are being established by the State, in pursuance of any legislation, municipal or provincial, which makes free elementary education compulsory, elementary education be imparted through the medium of their own language?

An Honourable Member: Impossible.

Mr. Z. H. Lari: There is a voice which says it is impossible. If it is impossible and if the intention of the House is that even while receiving elementary education, it will not be necessary for the State to make adequate arrangements, then, my submission would be that the whole clause will be a "paper transaction and nothing more. Any way, at present I am drawing the attention of the House to its own decision and beg of them to consider whether there is any reason why their decision, arrived at after due consideration, should be set at nought. If the language were an improvement on the original clause, I would necessarily submit that improvement is permissible. But the question is, does the changed phraseology of this clause improve on the intention of the House, does it give effect to the intention of the House, or does it nullify the intention of the House? For the time being, I would request the Members to concentrate on this point. If it be the opinion of Dr. Ambedkar that really, by the changed and different phraseology, the intentions, the import of that article are not changed and the same remains, then I have no objection. But my submission is this: the clause as it stands becomes innocuous: it is of no effect at all. It states a truism; it is not a fundamental right at all. Who can prevent any minority or any class of citizens from using their own culture and language to the extent that it is possible for them to do so irrespective of legislation or regulation that may be made by the State? The House will recognise that the field of education will be entirely covered by state institutions and unless the old clause is put in, I think there will be great difficulty. This is not the only place where such a clause was sought to be placed on the statute book. I may refer to article 113 of the German Constitution which runs like this:

"Sections of the population of the Reich speaking another language may not be restricted whether by way of legislation or administration in their free racial development. This applies specially to the use of their mother tongue in education as well as in the question of internal administration and the administration of justice."

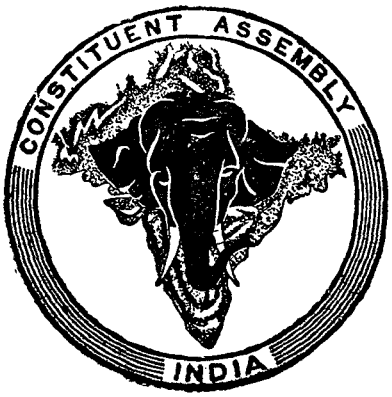
Therefore, it is not a new thing that this House has done, or the Committee on Fundamental Rights had proposed. Considering the import of this article, my submission would be that the original clause should be restored and this changed phraseology should not be accepted by this House.

With these words, Sir, I move.

Mr. Vice-President: The House stands adjourned till 10 A.M. tomorrow.

The Assembly then adjourned till Ten of the Clock on Wednesday, the 8th December, 1948.

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Volume VII
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8th December
1948

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 8th December 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.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Members took the Pledge and signed the Register:—

Shri Manikya Lal Verma (United State of Rajasthan).
Shri Gokal Lal Asawa (United State of Rajasthan).

DRAFT CONSTITUTION—(*contd.*)

Article 23—(*contd.*)

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

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

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

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

Mr. Vice-President: There is an amendment to this amendment—No. 25 of List No. I in the name of Mr. Naziruddin Ahmad.

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

"That with reference to amendment No. 678 of the List of Amendments, in clause (1) of article 23, for the words "residing in the territory of India or any part thereof" the words "residing in any part of the territory of India" be substituted."

Sir, the text says: 'a section of the citizens residing in the territory of India or any part thereof'. The expression 'or any part thereof' implies, if the passage is fully written out 'a section of the citizens residing in the *whole* of the territory of India or *any part* thereof'. I submit that no part of the citizens can reside in the 'whole' of the territory of India. It must necessarily reside in a part of India. So the words 'in the territory of India or any part thereof' would be inappropriate implying a false suggestion. I submit that if we say—'residing in any part of the territory of India', that would be quite enough. Perhaps the phraseology used in the context was due to an oversight. It gives an illogical appearance or a false suggestion that a people or a group of citizens can possibly reside in the whole of India. The further conditions of a part of India having a 'distinct language, script or culture' in the article really limit the purpose to any part of India.

Mr. Vice-President: Amendment No. 679.

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

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

Mohamed Ismail Sahib (Madras: Muslim): Yes.

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

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

Mr. Vice-President: The second part of amendment No. 681 may now be moved.

Prof. K. T. Shah: Sir, I beg to move part (2) of my amendment which says—

"That in clause (1) of article 23, after the word "conserve" the word "develop" be added."

The amendment portion would then be that—

"Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve and develop the same."

Sir, I look upon culture of mankind, and the culture of every section of mankind, as not merely a static phenomenon but as a progressive and developing fact. To my mind, therefore, even more important than conserving it at some stage to which it has risen, is the need to develop it. And the culture of a country or a community is much wider and larger and deeper, than its script or language, as I shall show below; and hence this amendment.

Speaking of the languages of the various sections of the country, they have, in recent years, especially during the last two or three generations, been developed and cultivated up to a point at which many of them have become suitable, in my judgment, to become the vehicles for the imparting of any state of instruction, right up to the University standard. Nevertheless, there can be further development; and they ought to be further studied and promoted and developed and expanded, so as to be suitable means of expression, intercourse, and instruction or education to a much wider scale than is the case today. I, therefore, think that if you grant the right to its conservation you must also grant the right for its development, its progressive improvement and expansion.

Speaking of culture, I think that is not a single item, either of area, language or script. It is a vast ocean, including all the entirety of the heritage of the past of any community in the material as well as spiritual domain. Whether we think of the arts, the learning, the sciences, the religion or philosophy, Culture includes them all, and much else besides. As such, it is progressive, and should be regarded as being capable of constant growth as any living organism. If, therefore, you include in the Fundamental Rights this section, i.e., the right to "conserve" the same, whether or not there is any attack or danger for the mere preservation of it, I see no reason why you should not couple with the right to conserve the right to develop. That is why the suggestion that I am putting forward, namely, the right to develop. Side by side with the right to conserve there must also be the right to develop the culture of any community.

You cannot hit at this amendment, you cannot negative it, without at the same time annulling the remaining portion of the clause, namely, conservation of a static position. But development is more progressive, more dynamic; and as such should commend itself to those who have the drafting and piloting of the Constitution in their hands.

Mr. Vice-President: Then comes No. 682 which stands in the name of Seth Govind Das; but I think it should stand over seeing that it relates to national language and script.

Then we come to amendment No. 683.

(Amendment No. 683 was not moved.)

As amendment No. 683 was not moved, amendment No. 52 of List III is disallowed. Then comes amendment No. 684 in the name of the Maharaja of Parlakimedi. He is absent.

(Amendment No. 684 was not moved.)

Amendment No. 685 standing in the name of Shri Algu Rai Shastri.

Shri Algu Rai Shastri (United Provinces: General): Sir, my amendment relates to the property clause, article 24, and I shall move it when that article is taken up. It does not belong to this article and it is by a misprint that it happens to be here.

Mr. Vice-President: Then shall I take it that you want it to stand over?

Shri Algu Rai Shastri: It can be taken up at the proper place.

Mr. Vice-President: No. 686 also in the name of Shri Algu Rai Shastri.

Shri Algu Rai Shastri: I am not moving it, but I want to make a few observations on it.

Mr. Vice-President: You can do that during the general discussion. Then I come to amendment No. 687, standing in the names of Prof. N. G. Ranga and Shri Ananthasayanam Ayyangar. And then there is the first part of No. 688 of Shri Jaspat Roy Kapoor, and No. 705 also in the name of Shri Jaspat Roy Kapoor. These are to be considered together as they are of similar import. I can allow No. 687 to be moved.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, I beg to move:—

That in clause (2) of article 23 for the words "No minority" the words "No citizen or minority" be substituted.

I want that all citizens should have the right to enter any public educational institution. This ought not to be confined to minorities. That is the object with which I have moved this amendment.

Mr. Vice-President: As regards the first part of amendment No. 680, I want to know whether Mr. Kapoor wants it to be voted.

Pandit Thakur Dass Bhargava (East Punjab: General): But Sir, there is my amendment No. 26 to amendment No. 687.

Mr. Vice-President: Yes, I stand corrected. There are certain amendments to these amendments which I shall take up one after the other. One is No. 26 in List I in the names of Shri T. T. Krishnamachari and Pandit Thakur Dass Bhargava. Do you move it Mr. Bhargava ?

Pandit Thakur Das Bhargava: Sir, I beg to move.

That for amendment No. 687 of the List of amendments, the following be substituted:—

"That for clause (2) of article 23, the following be substituted :—

"(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them."

and sub-clauses (a) and (b) of clause (3) of article 23 be renumbered as new article 23-A".

Sir, I find there are three points of difference between this amendment and the provisions of the section which it seeks to amend. The first is to put in the words 'no citizen' for the words 'no minority'. Secondly that not only the institutions which are maintained by the State will be included in it, but also such institutions as are receiving aid out of state funds. Thirdly, we have, instead of the words "religion, community or language", the words, "religion, race, caste, language or any of them".

Now, Sir, it so happens that the words "no minority" seek to differentiate the minority from the majority, whereas you would be pleased to see that in the Chapter the words of the heading are "cultural and educational rights", so that the minority rights as such should not find any place under this section. Now if we read Clause (2) it would appear as if the minority had been given certain definite rights in this clause, whereas the national interests require that

[Pandit Thakur Dass Bhargava]

no majority also should be discriminated against in this matter. Unfortunately, there is in some matters a tendency that the minorities as such possess and are given certain special rights which are denied to the majority. It was the habit of our English masters that they wanted to create discriminations of this sort between the minority and the majority. Sometimes the minority said they were discriminated against and on other occasions the majority felt the same thing. This amendment brings the majority and the minority on an equal status.

In educational matters, I cannot understand, from the national point of view, how any discrimination can be justified in favour of a minority or a majority. Therefore, what this amendment seeks to do is that the majority and the minority are brought on the same level. There will be no discrimination between any member of the minority or majority in so far as admission to educational institutions are concerned. So I should say that this is a charter of the liberties for the student-world of the minority and the majority communities equally.

The second change which this amendment seeks to make is in regard to the institutions which will be governed by this provision of law. Previously only the educational institutions maintained by the State were included. This amendment seeks to include such other institutions as are aided by State funds. There are a very large number of such institutions, and in future, by this amendment the rights of the minority have been broadened and the rights of the majority have been secured. So this is a very healthy amendment and it is a kind of nation-building amendment.

Now, Sir, the word "community" is sought to be removed from this provision because "community" has no meaning. If it is a fact that the existence of a community is determined by some common characteristic and all communities are covered by the words religion or language, then "community" as such has no basis. So the word "community" is meaningless and the words substituted are "race or caste". So this provision is so broadened that on the score of caste, race, language, or religion no discrimination can be allowed.

My submission is that considering the matter from all these standpoints, this amendment is one which should be accepted unanimously by this House.

Mr. Vice-President: There are two other amendments standing in the name of the honourable Member, namely, Nos. 27 and 28.

Pandit Thakur Dass Bhargava: I do not propose to move either of them. I want to move No. 31.

Mr. Vice-President: That comes in another category. So the honourable Member is not moving Nos. 27 and 28.

[Amendments Nos. 705, 691 and 688 (second part) were not moved.]

Maulana Hasrat Mohani (United Provinces: Muslim): I had an amendment to this amendment of the Honourable Dr. B. R. Ambedkar because I thought he was sure to move it. Now that he has withdrawn it, where am I to go?

Mr. Vice-President: You can only take your seat. Such things happen in political life.

So all the amendments to amendment 691 fall through.

We now come to No. 692.

Pandit Thakur Dass Bhargava: What happens to amendment No. 690?

Mr. Vice-President: That will come later on. These are being taken together as being of similar import. I am trying to ascertain whether these are to be put to vote or not.

I am afraid I cannot allow amendment 692 to be moved because it is covered by the amendment to amendment No. 687.

Mr. Vice-President: Amendment No. 689: this is a verbal amendment and therefore it is disallowed.

(Amendments Nos. 693, 694, 696, 697 (first part) and 698 were not moved.)

We now come to Amendment No. 690 which is in the name of Pandit Thakur Dass Bhargava.

Pandit Thakur Dass Bhargava: I propose to move an amendment to this. Sir, I move:

"That for amendment 690 of the list of amendments, the following be substituted:

"That in clause (3) of article 23, the word 'community' wherever it occurs be deleted."

This is an amendment to amendment No. 690. There is not much to be said. The word "community" as I said before has no meaning. No common characteristic can differentiate one community from another which is not covered by the words "religion or language". These words sufficiently cover the field that is sought to be covered by the word "community". Therefore the word "community" has no meaning in that provision and therefore it should be deleted.

Mr. Vice-President: Amendment No. 695: this is a verbal amendment and therefore it is disallowed.

[Amendments Nos. 697 (second part) and 699 were not moved.]

Amendment No. 700 is disallowed as it is covered by another amendment regarding the Directive Principles.

Amendments Nos. 701 and 702 are to be considered together as they are of similar import.

(Amendments Nos. 701, 702 and 703 were not moved.)

Amendment No. 704 is more comprehensive and may be moved.

Shri Damodar Swarup Seth (United Provinces: General): Sir, I beg to move:

That for sub-clause (a) of clause (3) of article 23 the following be substituted:—

"(a) Linguistic minorities shall have the right to establish, manage and control educational institutions for the promotion of hte study and knowledge of their language and literature, as well as for imparting general education to their children at primary and pre-primary stage through the medium of their own languages."

While in sub-clause (a) of clause (3) of article 23, obviously minorities based on religion and community have been recognised, my amendment recognises only minorities based on language. I feel, Sir, that in a secular state minorities based on religion or community should not be recognised. If they are given recognition then I submit that we cannot claim that ours is a secular state. Recognition of minorities based on religion or community is the very negation of secularism. Besides Sir, if these minorities are recognised and granted the right to establish and administer educational institutions of their own, it will not only block the way of national unity, so essential for a country of different faiths, as India is, but will also promote communalism, and narrow antinational outlook as was the case hitherto, with disastrous results. I therefore submit that only minorities based on language should be recognised and be granted the right to establish and administer educational institutions and that too for the purpose of promotion of their language and literature and for imparting primary and pre-primary education in their own language. Higher studies are to be conducted in the national language of the

[Shri Damodar Swarup Seth]

state. I therefore submit, Sir, that this amendment is most harmless and innocent and hope that it will be accepted by the House quite unreservedly.

(Amendment No. 706 was not moved.)

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

That the following proviso be added to sub-clause (a) of clause (3) of article 23:—

"Provided that no part of the expenditure in connection with such institutions shall fall upon or be defrayed from the public purse; and provided further that no such institution, nor the education and training given therein shall be recognised, unless it complies with the courses of instruction, standards of attainment, methods of education and training, equipment and other conditions laid down in the national system of education."

Substantially speaking, it seems to be the same amendment or similar to the one I moved yesterday or the day before, viz., amendment No. 564. Only, there it was in a more positive form and here it is in a negative form, making it more clear that whatever be the foundation or endowment, in the first instance, of any such national institutions, no part of the expenditure should fall upon the public purse—neither partly nor wholly.—This I consider is necessary to provide specifically in view of the possibility of any party taking advantage of the positive provision made above. I should not like to waste the time of the House beyond just pointing out that this in reality is not identical, but that in substance it is the same. I am afraid I have not much hope of making the House change its viewpoint within 48 hours, and therefore I do not wish to take any more time of the House by speaking on it.

(Amendment No. 713 was not moved.)

Mr. Z. H. Lari (United Provinces: Muslim): Sir, I beg to move:

That after clause (3) of article 23, the following new clause be inserted:—

"(4) Any section of the citizens residing in the territory of India or any part thereof having a distinct language and script shall be entitled to have primary education imparted to its children through the medium of that language and script."

A notice of an amendment to this amendment has been given by Mr. Karimuddin. I would gladly accept it when it is moved. That amendment is for the addition of the words 'in case of substantial number of such students being available.'

The first question that arises in this connection is whether it is necessary, either in the interests of a minority or of society, that primary education should be imparted through the medium of one's mother tongue. It is a very legitimate question to ask and I propose to give an answer to it. Only recently, the Government of India accepted a Resolution and published it in the Gazette of August 14, 1948. In the course of that Resolution they say:

"The principle that a child should be instructed in the early stages of its education through the medium of the mother tongue has been accepted by the Government. All educationists agree that any departure from the principle is bound to be harmful to the child and therefore to the interests of society."

That resolution further goes on to say, 'Conditions like these make it impossible for any State or Province to adopt any single language as the medium of instruction. An attempt to adopt one language in a province where groups of people speaking different languages reside and to impose it on all is bound to lead to discontentment and bitterness. It will affect inter-provincial relations and set up vicious circles of retaliation.'

And, towards the end they say:

"The Government of India is of opinion that in the larger interests of the country, it is desirable that the policy enunciated above should be followed by all provincial and State Governments".

Therefore, according to this very Resolution it is accepted that it is essential in the interests of society as well as of the minority that its children should be imparted primary education through the medium of the mother tongue.

I would refer this House, at this stage, to a reply given by the Honourable Maulana Abul Kalam Azad, the Education Minister in the Dominion Parliament at its session held in September last.

The Honourable Shri K. Santhanam (Madras: General): May I point out to the honourable Member that his amendment implies that every child has got the right to primary education immediately? Without that right this right cannot be sought. Therefore we have given a Directive.....

Mr. Z. H. Lari: That is a different question. I will deal with it afterwards. I am here drawing the attention of the House to a reply given by the Education Minister to a question put in the Dominion Parliament.

Mr. Vice-President: I suggest that Mr. Lari keeps in mind the point of view put forward by Mr. Santhanam.

Mr. Z. H. Lari: I would. But here is the report of the interpellation. Replying to Shri S. V. Krishnamurti Rao, Maulana Abul Kalam Azad, the Education Minister said that the mother tongue of the child would be the medium of instruction in primary schools, i.e., up to junior basic stage from the age of six to eleven as stated in the Resolution of the Government on the subject and added: "The Central Advisory Board of Education in their report on post-war educational development in India, published in 1944, recommended that the medium of instruction in the secondary stage should be the mother tongue of the pupils."

Therefore, so far as the necessity of such a provision is concerned, it cannot be denied.

The next question is, does this right partake of a fundamental character so as to find a place in this Chapter. The first Constitution of a Free India that was framed was the Nehru Report under the able guidance of that prince among patriots, Pandit Motilal Nehru. One of the Fundamental rights suggested therein ran as follows:

"Adequate provision shall be made by the State for imparting public instruction in primary schools to the children of members of minorities through the medium of their own language and in such script as is in vogue among them."

The nature and the fundamental character of this right has been accepted by that very Resolution of the Government of India to which I referred earlier. Therein they say:

"All provincial languages are Indian languages and there is little reason why any province in India should seek to deprive the children inhabiting that province of their fundamental right to receive education through the medium of the mother tongue."

Therefore even the nature and character of this right has been fully accepted by the present Government of India as well as by those seven leaders who framed the Nehru Report.

Now the third question arises. It is also very relevant. Is it necessary to put in in this Chapter, after the clear acceptance of such a policy by the Government of India for the time being? I have personal experience of my province, which shows that it is absolutely necessary. I would give an instance in this regard. The House will note that the United Provinces is a bilingual province. Therein two languages, namely, Hindi and Urdu have been used and widely read by members belonging to different communities. If I only give you the figures of students appearing at the two examinations, viz., high school and middle school, you will find that at least one third of the

[Mr. Z. H. Lari]

students offered Urdu as their language. In 1944 the students who took Hindi numbered 11,617 while those who offered Urdu numbered 7,167;

In 1945	do.	12,423	do.	7,426;
1946	do.	14,222	do.	8,244;
1947	do.	18,302	do.	13,080.

Therefore you will see that two-thirds of the students who appeared at the high school examinations offered Hindi and one-third offered Urdu.

But, now what happens? All of a sudden in May last, a curriculum was published the result of which, according to my reading, was absolute elimination of Urdu. I was assured that that was a misapprehension. But when the classes opened in July 1948, I find that my reading was correct. My child of six, came and said: "Today my master asked me that I should do all the sums in Hindi and Hindi only." He was further told not to bring Urdu Book. I was surprised. On enquiry I found the same condition in all schools. I wrote letters to all concerned and I was assured again that a G. O. was being issued to the effect that wherever there was a demand by students for being taught in Urdu, this should be done. Subsequently I wrote a letter to the Principal of the College to make arrangements for teaching Urdu. I received a reply in the negative. He said no such arrangement can be made. Ultimately, when I forwarded that letter to the Minister for Education, the reply came in October to the effect that arrangements can be made only when the majority of the guardians want that education in Urdu should also be imparted. The Resolution of the Government of India and all the answers given were intended for the facility of a minority which is less than 50 per cent, but that facility was denied and made dependent on will of the majority. The result is that in a Province wherein to use the words of that noble soul, our own Prime Minister, "began the process which was to continue for several centuries for the development of a mixed culture in North India; Delhi and what are known now as the United Provinces became the Centre of this just as they had been and still continue to be the Centre of Old Aryan culture. They are the seat of the old Hindu culture as well as of the "Persian culture", teaching of Urdu, the moinspring of Muslim culture has been banned. In Lucknow and in Allahabad, where Urdu-nowing public is of sufficient strength in fact in most places, so far as primary education is concerned, no arrangement has been made for teaching through the medium of one's own mother tongue. I know of Allahabad positively and of Lucknow too which is considered to be the centre of Urdu, so far as primary education is concerned, in those two places no arrangement exists whatsoever for teaching the children of the minorities through their mother tongue. Therefore this experience of mine in my own province shows that there is necessity for such a provision, and that such a provision should find a place in the Constitution. But I am conscious of one difficulty, rather two difficulties. One difficulty is, supposing the numbers of students who want to have a particular language as the medium of instruction were few in number. That difficulty has been obviated by the amendment which has been given notice of by Kazi Syed Karimuddin.

There is another difficulty which has been pointed out. I have said here, "any section of the citizens". It may be that people of one province, very few in number, residing in another province may claim that their children should be given instruction through the medium of their own language. But that objection can be met by substituting the word 'minority' for the words "section of the citizens". I think Begum Aizaz Rasul has given notice of that amendment.

After these two amendments, the clause will read—

"Any minority residing in the territory of India or any part thereof having a distinct language and script shall be entitled to have primary education imparted to its children through the medium of that language and script in case of substantial number of such students being available."

Now to take up the objection of Mr. Santhanam. In the Directive Principles we say that the State shall endeavour to provide education up to the age of fourteen and so on and so forth. You remember, Sir, that that clause as it originally stood was—

"Every citizen is entitled to free primary education and the State shall endeavour to provide....." etc.

The words "Every citizen is entitled to free primary education" were deleted and the speaker, when moving that deletion, said that this was of a fundamental character and therefore such a clause could hardly find a place in that chapter. That is why I have given notice of another amendment which says that there should be an article in the fundamental rights that every citizen is entitled to receive primary education. So far as the clause in the Directive Principles is concerned, it does not relate to primary education only but relates to secondary education as well. Anyhow, we are dealing with the cultural and educational rights of the minorities here, and the educational right that I want to have inserted here is that primary education should be imparted through the medium of the mother tongue. It does not say that they must be given primary education but if there is any arrangement for primary education, then that primary education should be imparted through the medium of one's mother tongue. There is thus no legal obstacle. With these words, Sir, I move my amendment.

Mr. Vice-President: Amendment No. 53 of List III standing in the name of Kazi Syed Karimuddin.

Kazi Syed Karimuddin (C. P. & Berar: Muslim): Mr. Vice-President, Sir, it is unnecessary for me to explain the scope of the amendment moved by Mr. Lari. I have an amendment to move to the amendment of Mr. Lari which runs like this:

"That in amendment No. 714 of the List of Amendments, in the proposed clause (4) of article 23, the following words be added at the end :—

'in case of substantial number of such students being available'."

Sir, according to the fundamental rights, freedom of movement and freedom of trade and commerce have been granted and it is just possible that people may be moving freely from one part of the country to another and settling in other provinces. Moreover, there would always be Government servants who would be transferred from one province to another. Take for example the case of the city of Delhi. There are Madrasis; there are Bengalees; there are Muslims; there are Telugu people also in Delhi. If no provision is made for their education in the primary schools, it would be very difficult for their children to be educated in their own mother tongue at least in the primary stage of schooling. Therefore my submission is that Mr. Lari's amendment is not only important from the Muslim point of view, from the minorities' point of view, but also from the point of view of those who come from Bengal and Madras or other provinces. Therefore the amendment of Mr. Lari with my amendment should be accepted.

Mr. Vice-President: There is a short notice amendment standing in the name of Begum Aizáz Rasul.

Begum Aizaz Rasul (United Provinces: Muslim): Sir, I beg to move—

"That in the amendment moved by Mr. Lari for the words 'section of the citizens' the word 'minority' be substituted."

[Begum Aizaz Rasul]

The clause will then read—

"Any minority residing in the territory of India or any part thereof having a distinct language and script shall be entitled to have primary education imposted to its children through the medium of that language and script."

Sir, my amendment speaks for itself, and after hearing Mr. Lari, I do not think it is very necessary for me to go into details about this. The word "minority" has been defined in the Draft Constitution. I think that it is necessary that minorities who have a distinct language and script should have this right guaranteed to them by the State, that the children of these minorities will have all facilities provided to them to have primary education imparted to them in their mother tongue. Sir, It is an accepted principle all over the world that a child in the primary stages of education should have that education imparted to it in its mother tongue. I do not think that there can be any difference of opinion regarding this matter. It is impossible for a child who belongs to a section of the people whose language and script is different to that of the State to receive education in another language, because that militates against the very principle of learning. You cannot burden the mind of the child by forcing him to receive his primary education in an alien tongue and script. Sir, the object of this amendment is in no way meant to debar the children of minorities from learning the language of the State. It is in the interests of the children of the minorities themselves that they should learn the language of the State, whatever that language may be, as their economic future as well as entry in services, etc., depends that they should be well conversant with the language of the State. Therefore it should not be taken that I am in any way opposing the idea of the children of minorities learning the language of the State—but mine is a fundamental point because on good foundations of learning can education be effective. Sir, I do not think that it would have been necessary to have moved this amendment at this stage, but there are practical difficulties which we have experienced and therefore it is necessary that in the fundamental rights some provision should be made which would make the position clear and which would guarantee to the children of the minorities living in the territory of India the right to be given instruction in their own mother tongue in the primary stages. With these words, Sir, I move this amendment and hope that it will be accepted.

(Amendment No. 715 was not moved.)

Mr. Vice-President: The article is open for general discussion.

Shri Mihir Lal Chattopadhyay (West Bengal: General): Mr. Vice-President, Sir, this particular article 23 of the Draft Constitution is a definite guarantee to the minorities that their language, culture and script will be protected in every way. There are different kinds of minorities in this country and all these minorities based on language, script and culture will really find a great protection in this article. It is true that in different provinces of this country there are minorities living who have languages different from the language of the majority and it is a fact that in many provinces in India the minorities based on language are subjected to various types of disabilities and as a result, for some time past, there is a subdued voice in the country about the tyranny and imperialism of language. The other day, Mr. T. T. Krishnamachari made a reference about the Imperialism of language. I have no quarrel with him on this matter but I do not know how long it will take for a citizen of this country to accept joyfully a national language that is the language of this country, but it must be acknowledged that a minority having a definite and distinct language of its own, but residing in a province, where the provincial language is different, ardently seeks to maintain its language and its culture without being interfered in any way. It is true that this country is divided into different provinces and each and every

province has got a provincial language of its own, but unfortunately, in the matter of demarcating the provinces, the British Government did not take much care about demarcating on the basis of language and for that matter in almost every province there are minorities and there has really arisen some danger of the language and culture of the minorities in the different provinces being put under numerous disabilities.

This article 23 gives an assurance to the minorities that their languages will be guarded, the minorities will be able to conserve their own languages and not only conserve, but a definite development also can be made by them. The minorities also will find no discrimination made in the matter of Government aid for the protection and development of their languages. This article 23, is, therefore in every way a great charter of right for the different linguistic minorities in the different provinces of India. It is necessary that the minorities living in a province should not all the time feel themselves isolated and consider themselves as something definite and distinct from the nationals of that province in civic life. The minorities have also to adopt themselves to the language and the culture of the provinces they live in to a large extent. No minority should live in a province as a foreigner as the British people or their half-brothers in India have lived all these years; but the majority also should have maximum consideration for the minorities in the provinces so far as their language and culture are concerned. In fact a new example has been set by the Congress the other day when the Congress directed some of the Provincial Congress Committees that the minority having a language different from the language of the province, will be allowed to carry on correspondence with the provincial Congress Committees in the language of that minority.

The demand which is being heard from various quarters about realignment of provinces or rather redistribution of provinces on linguistic basis, will be satisfied to a large extent by the provisions of this article in the Draft Constitution. The minorities are mightily afraid of their languages being put out of existence by the aggression of the majorities, who might be very unsympathetic towards the minorities in these matters. The minorities are zealous about guarding their own language and culture, and quite naturally they should be so. The majority must have some sympathetic understanding about the feeling and outlook of the minorities. By that alone, in the different provinces, the cry that has arisen about the redistribution of territories on a linguistic basis will stop to a large extent. We all know that soon after the partition of India into two parts, the question of redistribution of provinces on linguistic basis is beset with many difficulties. It is a problem that will take a long time to settle. But, it is to be remembered that if minorities are subjected to tyranny and oppression and aggression by the majority in the matter of language and culture, there will be trouble in this country and the Governments in the provinces will be faced with difficulties. Therefore, this article 23 is a clear direction to the majority in the different provinces to look after the interests of the minorities so far as language and culture are concerned. If the majority in dealing with the minorities tries to understand their view point and tries to safeguard their interests so far as language and culture is concerned. I think the voice that has risen in India about the immediate re-distribution of provinces on linguistic basis will be consoled to a large extent.

I wholeheartedly support this article.

Shri R. K. Sidhwa: (C. P. & Berar: General): Sir, regarding this article on education based on religion or otherwise, I would have certainly preferred a very clear and unambiguous provision. Sir, some of the provisions of this

[Shri R. K. Sidhwa]

article are contradictory. While the Constitution has recognised that all communities have a right to give education on religion, article 22 states that where State aid is given, there shall be no religious education provided. Again, there is a proviso that communities which do not expect any State aid shall have a right to give education on religion according to their choice and custom. Personally, Sir, I feel that as far as religious education is concerned, it should have been mentioned in unambiguous terms that wherever an educational institution receives State aid, there shall be no religious education taught in those institutions. My objection is not because I am averse to religion. I believe in religion, Sir, I believe in the existence of God. But, I do feel today that the religious books of the various communities are translated by various authors in a manner which has really brought disgrace to several religions. The authors have translated some of the very beautiful original phrases in their own language to suit their own political ends, with the result that today on religious grounds we know the country has broken into various pieces. I therefore desire, Sir, that in the matter of education, which is the fundamental basis of our future, it should have been clearly stated that under the existing circumstances, there shall be no religious education provided in any institution which receives State aid.

As I have stated, Sir, while the State has not recognised any religion, they have allowed those institutions which do not receive State aid to impart religious education in their institutions. I do not want to go into the various phases of the religious scriptures which are being taught in the various schools. I know of instances where in the name of religion communal hatred has been taught. I do not know whether in this new era when we will be functioning under this Constitution, the same type of religious education would be taught. There is no restriction regarding that kind of religious instructions that are being given in various schools. I can quote them; but I do not want to create any kind of ill-feeling between community and community. I only wish that in this matter the Constitution should have made it clear as to what education means as far as religious education is concerned. On that matter, this chapter is silent; not only silent, but I apprehend that in the name of religion, there will be the same type of religious education taught in the institutions. I have been reading and re-reading these two chapters and I feel that there is no kind of control over such kind of schools and colleges. On the contrary, it will be stated that the Constitution has given them freedom to teach religion in any manner they like. Knowing fully well, as we do, what religion in this country means to various communities, this chapter, I feel, Sir, should have been more clear.

As far as the suggestions and amendments that where various communities and minorities reside, education should be in their language. I find clause (b) is clear, although I would certainly have preferred the amendment of Damodar Swarup Seth, which is very clear. I do not think the State denies this even in this Constitution. Here, the minorities must not be misunderstood to mean religious minorities; minorities mean various classes of people. For instance, in Bombay, there are eighteen classes of people. Just now four lakhs of Sindhis are in Bombay. The Corporation have recognised the Sindhi language. Although they have not recognised the Sindhi language, they have opened schools for them. I do feel there is provision in this Constitution wherever there are such classes or linguistic communities or sub-communities, the State shall provide all facilities to them. If the State were to deny that, that State will not be discharging their duty. I am quite clear that the Constitution has made provision to that effect. In the Directive principles also we have stated that every child, no matter to whatever class he belongs, shall be imparted education compulsorily by the State.

There is no fear as far as this is concerned, that all children, whether they belong to any small minority or linguistic minority, would be provided education in their own mother tongue. Mr. Lari's amendment therefore is out of place. I am clear that the Constitution has provided for this and if such education is not provided, I would state that the State and the provinces and the provincial Governments would be failing in their duty and not discharging their duty by providing that kind of education which it is their duty to provide.

Shri Jaipal Singh (Bihar: General): Mr. Vice-President, Sir, I have great pleasure in welcoming this article, more so as it has been suitably amended by Dr. Ambedkar, and I hope his amendment will be accepted by the House. Sir, to me this article seems to open a new era for India. Recently there has been such a lot heard about linguistic provinces, and, my friend from West Bengal has already hinted that this particular article opened a way for a realignment of provincial boundaries, for the creation of fresh provinces. Sir, I do not look upon this article in that light. I do not believe that provinces should be carved out purely on a linguistic basis. There are other factors also that must be considered. There is the administrative convenience; there may be the geographical argument; there may be the economic demand and various other factors which must be taken into account before the linguistic argument can be given the emphasis that is demanded of people who feel aggrieved that they are a linguistic minority in any particular province. I do hope that once this article is passed by this Assembly, all the Governments of the provinces will see to it that its spirit is implemented immediately. They need not wait till the Constitution as a whole is brought into existence. Already in my part of the world there is a tremendous—a very unhealthy—linguistic warfare going on. It is assuming dangerous proportions, in my own case, in Chota-Nagpur hitherto—on the ground of language, attempts are being made to snatch a bit to the east, snatch a bit to the south, snatch a bit to the west. No consideration whatever is given to the fact that there are other grounds also which have to be taken into consideration, e.g., the question whether administratively this or that portion should be taken out of a particular area. I urge, and I have urged this before elsewhere also, that language by itself is no argument for the creation of new provinces or for realignment of boundaries. I do hope in my part of the world—particularly the Provinces of Bihar, Orissa and West Bengal will now see a new way of approaching this linguistic problem. In Bihar, for example, the Bengali-speaking people have always made the grievance that they were being victimised by the Hindi-speaking majority of the province. Sir, much has happened in the past—it is an ugly chapter—but I do hope now that this particular article will be in the Constitution that even the linguistic minorities may look forward to a confident future where they will have opportunities of conserving and developing their own particular languages. Sir, when we talk of languages, we generally think of languages that have a highly developed literature, that have a script and so forth. I would like to urge that languages that have not a script also deserve to be conserved and, to use Prof. Shah's amendment,—'developed'. I have been trying to look through the figures in the language census that has been provided us and I find that the languages of this country have been divided into five main divisions and in this division I find that the aboriginal languages have been classified separately. Now take the language which is known as the Mundari group of languages. According to the census I find there are very nearly 5 million people who speak the Mundari language. How many members are there in this House really who know that Mundari is a very rich language, that there is the Mundari Encyclopaedia—14 volumes of it? Yet, can it be said that in Mundari speaking areas that language is being encouraged? Is it not the practice that

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every ruling class tries to drown whatever language there is in the country? We have had instances where a ruler has been an Oriya, he has forced Oriya upon the people of his State. The British came and they tried to thrust English down our throats. May be in Bengali-speaking areas, Bengali is insisted upon. Sir, I accept that, whatever be the provincial language, every person must learn that language. We have yet to decide what the rashtrabshasha will be—what shall be our national language. Everyone of us must learn that language. I want to urge that the languages must be conserved and developed. I realize that, in many instances, particularly of the aboriginal people, it would mean their learning three languages, viz., their own, the provincial language and also the rashtrabhasha or the national language. But I do not think it would be too much of a strain. After all the mother tongue is such that it does not exact the speaker much, but the main thing is this that all the provinces wherever there are linguistic minorities—I hate to use the word 'minority' in that sense—wherever there are linguistic minorities, the provinces should take a positive step in encouraging, in conserving, in developing all the languages that are capable of being conserved and developed. There are certain languages that will go under. I do not think there is much point in trying to keep alive a language that has not enough vitality in itself, that could not on its own momentum compete against other languages. I am not trying to defend those languages that have come and gone but I am thinking of languages that have survived through thousands and thousands of years and, if they are developed, they are capable of teaching us much about the past. I may give an instance. Now we know very little about ancient Indian history. That is largely because the most ancient stock of people who lived in this country, their languages have not been studied by the new-comers. It is a sad fact today that most of the aboriginal languages have been studied by foreigners. I doubt if there is a single Prime Minister of any province who can speak the aboriginal language of the majority of the aboriginals in his province. I doubt if there is a single minister in this country today who can speak any aboriginal language. If we are to develop these pre-Aryan languages, we shall find revelations from the 'Asurs' for example, we shall know more of the early days of the incoming of the Arya-speaking people. There are many things yet to be learnt about the ancient past, not only of the people but of the country as a whole. I look at article 23 from various angles. Sir, I have great pleasure in welcoming this article and I do hope that the Provincial Governments will act according to the spirit of this article long before the Constitution actually comes into existence so that the bitterness that there is in the provinces on account of this linguistic warfare may gradually disappear and all linguistic minorities may feel that their languages will not be victimised, that they may develop their languages as they like and that their language has a rightful place in the country.

The Honourable Shri K. Santhanam: Mr. Vice-President, Sir, this article deals with one of the most difficult problems which free India will have to face. The problems of religious minorities and of scheduled castes are legacies of the past and I expect that in the near future they will simply lapse owing to the lapse of time and owing to circumstances. But the question of the linguistic minorities will be a problem for many decades to come and I am afraid it is going to cause the country a great deal of trouble.

Sir, I have great sympathy with Mr. Lari and others who plead that more categorical assurances should be given by the Constitution for the linguistic minorities. But I am afraid it is not possible to go further than what the article tries to do. It protects them in three different ways. Clause (1) of article 23 gives the right to every minority to conserve its own culture.

Maulana Hasrat Mohani: This is no right. What is it?

The Honourable Shri K. Santhanam: Sir, you will remember that throughout Europe, after the first World War, all that the minorities wanted was the right to have their own schools, and to conserve their own cultures which the Fascist and the Nazis refused them. In fact, they did not want even the State schools. They did not want State aid, or State assistance. They simply wanted that they should be allowed to pursue their own customs and to follow their own cultures and to establish and conduct their own schools. Therefore I do not think it is right on the part of any minority to depreciate the rights given in article 23(1).

Sir, in clause (2) of article 23 they are protected against discrimination. It is just possible that there may be many provinces based on language and therefore the Government, the ministry and the legislature will be composed dominantly by members of the majority language. This right of non-discrimination will then become fundamental and valuable.

And then in clause (3) of this article, it is provided that when the State gives aid to education, it shall not discriminate against any educational institution, on the ground that it is under the management of a minority, whether based on community or on language, and this will be particularly applicable to the linguistic minorities. In every province, there are islands of these linguistic minorities. For instance, in my own province of Tamil Nad there are islands, in almost every district, of villages where a large number of Telugu-speaking people reside. In this connection we have to hold the balance even between two different trends. First of all, we have to give to large linguistic minorities their right to be educated—especially in the primary stages—in their own language. At the same time, we should not interfere with the historical process of assimilation. We ought not to think that for hundreds and thousands of years to come these linguistic minorities will perpetuate themselves as they are. The historical processes should be allowed free play. These minorities should be helped to become assimilated with the people of the locality. They should gradually absorb the language of the locality and become merged with the people there. Otherwise they will be aliens, as it were, in those provinces. Therefore, we should not have rigid provisions by which every child is authomatically protected in what may be called his mother-togue. On the other hand, this process should not be sudden, it should not be forced. Wherever there are large numbers of children, they should be given education —primary education—in their own mother-togue. At the same time, they should be encouraged and assisted to go to the ordinary schools of the provinces and to imbibe the local tongue and get assimilated with the people. I feel this clause does provide for these contingencies in the most practicable fashion.

Sir, Mr. Lari wanted an amendment which seeks to provide that every child, rather that every section of the citizens, shall be entitled to have primary education imparted to its children through the medium of the language of that section. I suppose what he means is that wherever primary education is imparted at the expense of the State, such provisions should be made. But this, I think, would give the minority or section of people speaking a language the complete and absolute right to have primary education which the people of this country do not have today. In the directives we have provided that in fifteen years' time there should be universal primary education. But no one knows whether the financial and other conditions in the country would permit of universal primary education to be established even then. Today no one in India can ask for primary education as a right as only ten per cent. of the population get primary education. Therefore, it is not possible to accept Mr. Lari's amendment, because that would lead to all kinds of difficulties. If it were passed,

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then anyone can go to the Supreme Court and say that his child must get education in a particular language. That is not practicable, and I do not think even his intention is at all that.

At the same time, I think, what he has pleaded for must be kept in mind as a general policy. It should be the direction of the Central and the Provincial Governments to see that wherever there are congregations of boys and girls having a distinct mother tongue, schools should be provided in that language. I hope that will be the policy adopted all over the country, especially as, if there is going to be new linguistic revisions of the boundaries, all the border areas will be full of this problem. I hope the report of the Linguistic Provinces Commission will contain some wise provisions to be adopted in this behalf. There should be no difficulty or hardship whatsoever in provinces when they are rearranged on a linguistic basis. For instance, if a Telugu goes to one area or the other, he should not have any hardship. As I said, this is a most difficult and complicated problem and it cannot be dealt with in detail in the fundamental rights. This article 23 provides as much security as can be done in the Constitution. Other securities will have to be provided for both by Parliamentary and provincial legislation, and I hope it will be done in due course.

Mr. Z. H. Lari: May I know what machinery he would suggest for the enforcement of those general principles he has just enunciated?

The Honourable Shri K. Santhanam: I have got my own ideas, but it is not for the Constitution to incorporate them. When we meet in Parliament, I shall be glad to put forward my proposals in this direction. For instance, there can be a special linguistic commission to look after these linguistic minorities, to be appointed by Parliament and this commission can tour round the country and look into grievances wherever they may be felt and make suggestions.

Mr. Z. H. Lari: But let me remind that according to the Minister for Education, U. P., it is a provincial subject and he cannot be guided by a resolution of the Government of India.

The Honourable Shri K. Santhanam: I may remind Mr. Lari that wherever people are self-governing, you have to persuade them, even when they are in the wrong; otherwise there is no machinery or commission which can be imposed from outside, either on the provincial ministry or on the central ministry.

Mr. Vice-President: I cannot allow arguments inside the House. Mr. Santhanam, you had better go to your seat. Mr. Biswanath Das.

Shri Biswanath Das (Orissa: General): Sir, I wish I were able to congratulate our Honourable colleagues—the members of the Drafting Committee, but I am sorry I cannot do anything except disapproving portions of this article.

Sir, we have been accustomed to the notion of having two cultures, namely the oriental and the occidental cultures. But our honourable friends the wise men of the Drafting Committee, have not only given us idea of multicultures but also perpetuated cultural zones; they have not only given scope to perpetuate these cultural zones, but they have also given scope for various kinds of linguistic and script difficulties, not only in India, but also in the Provinces to come in. Thanks to Pakistan it has created a refugee problem for India, a refugee problem where friends migrating not in thousands and lakhs, but in millions are to be distributed all over India. I would appeal to you, to visualise the difficulties of provinces, wherein people from different linguistic areas like Sind, Frontier and East Bengal are to be distributed in various provinces and States in India. Are you going to give them a right to perpetuate their script and their language irrespective of the fact how small or how few they may be?

I should appeal to you to consider this question cooly and seriously. Are your finances so very extensive as to provide for anything that is called upon to be done, even for a small percentage of people? For myself, personally, I

have no objection because I yield to none in my anxiety to give all necessary facilities in India to linguistic minorities and groups. But are you going to give this latitude as called upon here?

It was probably in the year 1938, the Honourable Prime Minister of Madras, who now adorns the gaddi of our mighty ancestors, Indraprastha, I mean His Excellency Rajagopalachariar, told a deputation of Oriya gentlemen at Berhampore railway station that "Well, the time will come when you and your people living in Madras will have to learn in the language of the province. Each minority population distributed in a province has to learn the language of the province."

A different principle has been enunciated altogether in this article. Those who know say there are Oriyas in Andhra and Andhras in Orissa who know the language of the place in which they are staying. So also is the case with people living in Gujrat, the U.P., in Bengal and such like places. Are you, gentlemen, going again to revive the whole thing in all its freshness? This is a serious question and I want you to think seriously over this.

I thank my friend, Mr. Jaipal Singh, for having given a full picture of what his demand is going to be. I want you also to consider that aspect of the question. These are not easy things taken away by snap words. I would therefore appeal to you to consider the whole question in its entirety with all the repercussions it might bring on the future of India.

Shri T. T. Krishnamachari (Madras: General): On a point of order: is the honourable Member addressing the Chair or a public meeting?

Shri Biswanath Das: I know this more than my honourable Friend, having had a longer period of legislative experience. My own misfortune is that I am not able to face you however much I would like. Therefore from the nature of things I am called upon to address my friends however much the rules desire that I should address you. There need therefore be no attempt at coaching in this respect.

Mr. Vice-President: Will you please go back to your own work?

Shri Biswanath Das: Thank you very much. He should save himself and me from advising. The British Government had given us religious minorities. What are those religious minorities? I claim that my Muslim brothers are blood of my blood and bone of my bone. They are mine and I belong to them and they belong to me. There is absolutely no difference so far as their culture is concerned. The culture is ours. It is oriental culture, I do not again see any reason why any trouble would come in on the score of language. So far as my Muslim brethren are concerned, I may say that no less a person than the ex-Prime Minister of Bengal had told me during his visit to Orissa that he was surprised to see that some Muslims in Orissa could talk better Hindi than he himself could do. That is the position of Muslim friends in our country. Go to the South, and you find Muslims in Andhara, Tamilnad and the rest talking Telugu and Tamil and not Urdu. Therefore, their language and culture are one. I would therefore appeal to the honourable Members of this House to look at that aspect of the question.

Having said so much on (1) and (2), I come to (3)(b) which states that the State shall not in granting aid to educational institutions discriminate against any educational institution on the ground that it is under the management of a minority whether based on religion, community or language. Therefore, hereafter be it clearly understood that every minority, living in the remotest village, will claim a special aid for an institution in his language, and that has to be conceded: otherwise both the High Courts and the Supreme Court are his places of refuge. That is a serious thing and I appeal to you to consider this very seriously.

[Shri Biswanath Das]

Having stated so much about this, I come to the question of linguistic provinces, which has been referred to by my friend. It took my breath away to hear Mr. Jaipal Singh giving out his dicta on the question of linguistic division of provinces. Orissa was first in the field to begin this agitation for linguistic provinces.

Mr. Vice-President: I cannot permit you to take up the time of the House with the question of linguistic provinces.

Shri Biswanath Das: I am not. But this was stated and I am replying to it. Orissa first began agitation for linguistic provinces. Others followed us. Therefore the people and the Government of India had to think about this question and the result was that the Government of India in their despatches of 1911 enunciated accepting the principle which was subsequently adopted by Congress in 1921, namely, the linguistic division of provinces and the Federation of India above them. That was the principle that was accepted not only by an alien Government, who never had sympathy for our aspirations but also by all the thinking minds of India, belonging to all schools of thought, including Muslims, Christians and other religious denominations. Therefore, it comes too late in the day in the mouth of my honourable Friend, Mr. Jaipal Singh now to decry this position. If you want an Adibasi-stan, by all means demand it and those who want to concede it let them say so openly. I am not here to side-track issues. The difficulties such as those pointed out should be borne in mind and I appeal to my friends to take a serious view of the difficulties that I have placed before them and the finances that are required to put into operation article 23 in this regard. Though I bow down to the joint wisdom of the House and my party, I must clearly state before the honourable Members of this House that I do protest against some of these provisions and I have already stated my arguments.

Shri O. V. Alagesan (Madras: General): Sir, this clause seeks to conserve the scripts and languages of sections of citizens. It is very necessary, in view of the fact that the various provincial scripts are now being threatened with extinction, if I may say so.

There is a point of view put forward that the Devanagiri script should be substituted for all the provincial scripts. The All India University Teachers Convention which recently met in Delhi under the chairmanship of a well known political leader has passed a resolution that there should be a common script for all the Indian languages. When it is recognised that the various provincial languages of India are more ancient, more developed and richer in content and expression than the common language, Hindi, it will be realised that this step will cause great dissatisfaction and heart-burning. It is said that there is no organic unity between the script and the language. I do not know. It is for eminent educationists to offer their opinion on the matter. All I can say is that there are certain special sounds in every language which can be expressed only by the ancient script with which the language has been associated. It is not possible otherwise.

This idea was even mooted by Mahatma Gandhi once but he at once saw the inherent contradiction in the position that obtained in the country. We have got for one and the same language two scripts. For Hindi or Hindustani there are two scripts, namely the Arabic or Persian and the Devanagri scripts. So he gave up the idea and began himself learning the various provincial scripts.

In this matter of scripts and languages I say that the Government of the Union should follow an enlightened policy, similar to that being followed in the U.S.S.R. There they did not countenance the idea of imposing the Russian language or script on the other linguistic minorities. They called such imposition by the name of Russian Chauvinism. I do not want Devanagri

Chauvinism to be countenanced in this country also. In the U.S.S.R. there were languages without scripts. They went out of the way to provide scripts for them. They did not provide the Russian script but they provided the Latin script. Similarly in India there are languages without scripts. The Konkani language which is spoken by the honourable Father De Souza, an eminent member of the House, is without a script. Tulu is another spoken language without a script and I think many of the Adi Vasi languages are without scripts and for each of these languages the Government should provide the alphabet. This clause should be interpreted rather liberally and we should provide scripts for languages without scripts, in which case I have no objection if the Devanagri script is provided for such languages. But to say that we will provide Tamil, for instance, with the Devanagri script is something understandable and inconceivable; and what is the object with which such a proposition is propounded? The object is to achieve inter-provincial unity. Instead of achieving inter-provincial unity I know such a step will hamper it. So it is necessary, when we are going to evolve or decide upon a common All-India language for governmental and administrative purposes, we should not aggravate the situation by saying anything about the script or by speaking of the abolition of the various provincial scripts. By trying to preserve and conserve and advance the provincial scripts and languages we will, I think, evolve greater national solidarity and unification. Sir, I commend this clause for the acceptance of the House.

The Honourable Pandit Govind Ballabh Pant (United Provinces: General): Sir, I am sorry that I have to intervene in this debate. I had no such intention. I had imposed a self-denying ordinance upon myself and have as a rule refrained from encroaching upon the time of the House. I want the time that we have at our disposal to be economised and the Constitution to be adopted as speedily as may be possible. But for the remarks made by one of the speakers I would not have come to the microphone today. The observations made by Mr. Lari have compelled me to make a few remarks which I think will remove any misunderstanding that his speech might otherwise have created.

So far as this clause is concerned I fully support it. Luckily Mr. Lari has not said that anything has been done in my province against the letter or spirit of this clause. So far as that goes he has not made any assertion or insinuation.....

Mr. Z. H. Lari: I was speaking on the amendment, and had to confine myself to that.

The Honourable Pandit Govind Ballabh Pant: So you admit that so far as this particular clause that has been accepted by the Union Powers Committee and the Drafting Committee is concerned there is nothing that is being done which can be said even by Mr. Lari as being against the letter or spirit of this clause. He thinks that it is not adequate enough for his purpose and therefore he wants it to be amended.

Mr. Z. H. Lari: No, I could say a lot but had no occasion.

The Honourable Pandit Govind Ballabh Pant: So far as his amendment goes, I think many speakers have commented on it and have controverted the arguments advanced by him. I do not consider it necessary to add to the weight of the arguments that have been put forward by them. I should, however, like to mention some facts and some principles which have to be borne in mind. We in this Union of India owe a duty to all citizens who live in this land and we have to do things in such a way as would enable us to make the maximum use of the resources that are available today or that may be available tomorrow. Mr. Lari cannot expect us to feed the fad of anybody at the expense of the tax-payer. In our country, vast numbers are illiterate and they have to be given the benefit of at least primary education. Primary education, in order that it may be made even universal, will cost millions and millions. Now, how are

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our schools to be established and how are our schools to be run? If every school should have two or three sets of teachers, one knowing Nagari and the other knowing Urdu, indiscriminately regardless of the number of students interested in either are we capable of providing for that financially? If such a policy were followed, then we would not be able to introduce universal primary education,—not to talk of compulsory primary education,—till Doomsday. Obviously, you have to examine the situation in every place and then provide such machinery as would yield maximum results.

Sir, so far as my own province is concerned, I do not think there is any linguistic division based on religion. (Honourable Members: 'Nowhere'.) whether it be Hindi, or Hindustani or Urdu, there are many among Hindus who can speak in what is called Urdu and who can write Urdu and some who perhaps can write Urdu alone. There are many Muslims, especially in the villages, who use only Devnagri character and speak in Hindi only and know nothing else.

Maulana Hasrat Mohani: In the villages nobody speaks Hindi.

Mr. Vice-President: That is an interruption of a privileged individual. Do not mind that.

The Honourable Pandit Govind Ballabh Pant: He may rest assured that after the assurance that I have received from the Chair, I will not take notice of his remarks (*Laughter*). As I was saying, once you bear in mind that there is no particular language attached to the followers of any particular religion, then the question of language with reference to or *vis-a-vis* any minority, does not arise at all. No language is the language of the Hindus and no language is the language of Muslims. (Honourable Members: *'hear, hear'*.) Especially so far as primary education is concerned and primary classes are concerned, where education of an elementary type is given, there can be no room for any difference of opinion regarding the principle that I have just enunciated. For, in those schools only elementary ideas are propounded and they are propounded in a form which is ordinarily intelligible to everyone. So, there is no question of anything being done that might be prejudicial to any minority as such.

There are men who know Hindi and whose children may be learning Urdu. There are Hindus who know Urdu and there are Muslims who, as I said, know Hindi and Nagari character, and Nagari character and Hindi alone. So, to present it as a communal problem or as a minority problem, while the question of Fundamental Rights is being discussed, is to give it a wrong colour. I submit that the question does not arise in this connection at all.

Then Mr. Lari made some astounding remarks. He said that in Lucknow and in Allahabad, there was no place where Muslims could receive education of a primary character in Urdu. There are Islamia schools and there are Madrassas and also Government schools and there are Muslim schools and Muslim colleges in both the places and therein hundreds of Muslim boys are receiving education. I cannot understand how Mr. Lari could have made himself responsible for such an inaccurate statement.

Mr. Z. H. Lari: I have got before me the letter from the Principal of the Basic College itself. No arrangement exists in any Government or Municipal school.

The Honourable Pandit Govind Ballabh Pant: I am coming to that. Have a little patience. So far as I am aware there has been no reduction in the number of Muslim students in our schools and colleges in the province during this year. I may also state that there has been no general complaint about any inconvenience having been caused to any class of boys by the system that is in force today. Mr. Lari had some controversy with our Minister for

Education and certain communications were published in the press. The view of Mr. Lari was controverted by some respected Muslims of my province and some Members of the Legislature disagreed with him and gave expression to their views in the columns of newspapers. He is probably aware of that. Mr. Ismail Ahmed's note was probably seen by him. He says no. It is not right to notice only what suits one. (*Laughter*). From that one can see what is his method of examination of public questions and of forming opinions thereon.

Now, the boys are taught in primary schools in their mother-tongue, and the mother-tongue of Hindus and Muslims and all boys is more or less the same. There is no difference whatsover. Those who, in the olden days, were obsessed by the idea of separatism have not been able to shed it off even now, (Honourable Members: '*Hear, hear*') and the ghost of 'Two *nations*' seems to be lingering somewhere, even within the precincts of this very august Chamber. Otherwise, I think, such a bogey would not have been raised here.

I had received a letter from Mr. Lari in this connection and I consulted our Deputy Secretary and Deputy Director Mr. Ibadur Rahman Khan. I gathered from the latter that the arrangements that had been made were quite satisfactory. In the circumstances I think I am entitled to rely on the advice and information of those who know more about every school in the Province than Mr. Lari.

I may also inform honourable Members that we are still giving considerable sums by way of grants for the Islamia schools and the Madrassas to which only Muslim boys have access. So, to insinuate here that any discrimination was being made against Muslim students is hardly fair, much less can it be said to be charitable.

Coming now to the specific case of Mr. Lari's son, I tried to find out the facts and was told that there are very few boys in that class who wanted to have Urdu as their script. They were mostly, excepting perhaps a few—perhaps Mr. Lari's son was the solitary exception—satisfied with the arrangements. Mr. Lari can say how many boys were there in that class who shared his view or whose guardians shared his view and wanted.....

Mr. Z. H. Lari: All shared my view, but the principal said: 'Nothing of the sort'. "No option was permissible".

The Honourable Pandit Govind Ballabh Pant: So far as I am aware his boy is the only one in the class who desired this separate arrangement (*Laughter*). Now, there are no doubt schools in Allahabad where Devanagari character which has been accepted as the National script of the Province is in use.

He could however have sent his boy to one of the other Islamia schools and to other schools where the Urdu script is adopted and training in the form and in the manner which would have suited Mr. Lari is given. Does he expect the House to accept that where there is one boy, where there are ten boys, there should be two sets of teachers, one for nine hundred or a thousand boys and the other for ten? If so, how is the cost to be met? How are we to explain this to the taxpayer? Then, one has to take into account also the fact that there are not only men who want this script or what they regard as high-flown Urdu to be adopted in the schools but we have also certain cosmopolitan cities where we have fair numbers of Maharashtrians, Gujaraties and others. Should we then have, because there are five or ten Bengali boys or because there are five or ten Gujarathi boys, different sets of teachers who will give instruction in Bengali or in Marathi or in Gujarathi or in Telugu for the benefit of the few boys that are there? Nobody can accept, that and they have never asked for it. They have accepted the position and

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they have always been contented with the arrangements that have been made. Now, if anyone presses here for an arrangement under which anyone wishing to give preference to Urdu should be provided with a new set of teachers in every school to give training in that script and in that language, I am afraid the government will not be able to meet his wishes. It is not possible for any Government to do that, and Mr. Lari has himself accepted the amendment, so far as I understand, that was moved here that such arrangements should be made only where there are substantial numbers. I think that amendment was moved by Kazi Syed Karimuddin.

"in case of substantial number of such students being available."

Now, these are exactly our instructions that where substantial numbers of such students are available, arrangements should be made; where the numbers are not substantial, then we cannot incur such expenditure. Can anything be more equitable, can anything be more generous? The fundamental article that we are adopting here does not require us to make any provision like that at all. It only gives freedom to the followers of a language which is different from the national language, from the State language, to preserve their language. It does not require the government to make any special provision for them. But we have gone much beyond that, and we have given special privileges. We have made necessary arrangements for them. There are thousands and thousands of such boys who are receiving instruction today and we are spending large amounts on their education. We want to encourage education among them, to attract even larger numbers, to make things as easy as may be possible, but there is a limit beyond which no government can go, and I sometimes find myself in a very difficult position and feel a little distressed, if not dismayed, by the charges that are glibly made in utter disregard of attempts sincerely and earnestly made by us to accommodate every section of the people and to give every possible facility to every single individual in the province. We hope that such statements of an irresponsible character will not be made and more than that, that nobody here will allow himself to be misled by the sort of remarks which are neither based on facts, nor are correct, and which ignore the duty of the State to the general body of citizens and the obligations that the State owes to the vast majority of people living under its protection. In a case like this, to raise a linguistic problem in a manner like this as though it was a communal problem is most unfortunate. Instead of helping the cause which I would like to assist to the best of capacity, it will create difficulties and hurdles. I hope greater care will be taken in dealing with such questions in future.

An Honourable Member: The question be now put.

Mr. Vice-President: Motion for closure has been moved and I would call upon Dr. Ambedkar to speak. Or do you want to prolong the discussion?

Honourable Members: No.

Maulana Hasrat Mohani: Sir, an exception should be made in my case and I will be glad if you will give me some time to speak. I gave notice of an amendment but I was cheated by Dr. Ambedkar. Please allow me to have my say.

Mr. Vice-President: All right, please come to the mike.

Maulana Hasrat Mohani: *[Sir, my intention was simply to move an amendment to amendment No 691 here which sought to amend the amendment to be moved by Dr. Ambedkar. But later on when other amendments were also moved, one of these amendments, No. 676 was moved by Mr. Lari. I whole-heartedly support it. The reason is, as Mr. Lari stated, that the Sub-committee which was appointed by this House to deal with the Fundamental Rights had unanimously laid down the following principle:—

"Minorities in every Unit shall be protected in respect of their script and culture and no laws regulating them may be enacted".

This is a comprehensive principle. I fail to understand how Dr. Ambedkar could frame a new principle and introduce an altogether different proposal in the Draft. Mr. Lari had raised serious objections to it. I, too, seriously protest against it. He should not have done so. It was passed by the Committee in May 1947, and was adopted by the House.

Now, I would like to say something about the amendment which I had moved in this connection. As certain events have occurred and Mr. Pant, the Premier of my province and Mr. Santhanam have said something about this, I would like to reply to them briefly. It is this: Mr. Santhanam has said that the amendment of Mr. Lari, namely, amendment No. 676, would certainly give us protection. He also stated that language and script are included in it and when after fifteen years, this question will be settled, then we shall consider it. Then again, when Mr. Lari raised the point as to what would be done in our province; the reply was: "The decision of the Central Government is not binding as Education is a provincial subject." That is why the Advisory Committee has not accepted it. It is not going to accept it. The reply given was: "you will have to flatter the majority of your province. They will decide." I say: What is the idea of fixing a time limit of fifteen years? I would like to mention what the attitude of the Government has been in the United Provinces up till now. Wherever Englishmen came, they introduced English, but it was only higher education which was imparted through the medium of English. Justice demands that we should 'give the devil its due'. I will praise them to this extent that they had fixed English only for the purpose of higher education. So far as secondary and primary education was concerned, they had introduced the same system which is in vogue in our province uptill now. There was separate vernacular educational institution for Vernacular Middle Education. There were high schools for imparting education through the medium of English. That is to say, for those who wanted to accept English as medium of instruction in higher education, the high school medium of instruction used to be English. For those who did not want it, there were Vernacular schools everywhere in the districts. Mr. Pant asked how it was possible to bear double and triple expenses. How have we been doing it uptill now? Was not Vernacular in use up till now? Was not this arrangement made in every town, in every village and in every district? And is it not a fact that those whose mother tongue was Urdu, if they wanted to use Urdu script up to secondary stage, were allowed to do so upto the Middle Standard? This was adopted even by those who claimed Hindi as their mother tongue and in fact they used to speak in Hindi. Those who wanted to go up to Intermediate and B.A. Classes for learning English, they used to get themselves admitted in high schools. The least that I would demand of my provincial government is this: Leave the question of fixing a common language to the Union. I have absolutely no concern with that. You may decide to have Hindustani or Hindi or Sanskrit as your interprovincial language. Do whatever you like, but the question of medium of instruction and language to be followed in each province should

* [Translation of Hindustani speech.

[Maulana Hasrat Mohani]

be distinct. If you want to accept Hindi for the United Provinces I have no objection. But so far as medium of instruction is concerned, as long as Urdu is our mother tongue, it is ours by right and forms part of the Fundamental Rights. Today, if it is demanded of the Government to provide education for the people through the medium of their mother tongue and their script, arrangements shall have to be made in Government Schools and if you will not do it—then.....]

An Honourable Member: You may go to Pakistan.

Maulana Hasrat Mohani: *[You may go to Hindukush and settle there from where you have come. Why we should go? We have come from Central Asia.]

Mr. Vice-President: It is cruel on the part of honourable Members to bait an old gentleman.

Maulana Hasrat Mohani: *[If it is so, then in reply I would tell both Mr. Pant and Mr. Santhanam, as they too have asked where the money is to come from and how it would be possible to make duplicate arrangements, in case there is only one student, I say that the assertion just made that the Muslims residing in villages speak Hindi language is totally wrong. I challenge Pandit Pant or anyone else, who so desires, to accompany me to any village and talk to a Muslim on any subject in Hindi. He will get the reply in Urdu. They speak cent per cent Urdu. It is another thing that we say 'Khushi' while they may pronounce it as 'Khusi'. We say 'Hafiz' while they may pronounce it as 'Hafij'. We say 'Gharib', and they may say 'garib'. We say 'Naqd', and they may say 'Nagad'. Beyond that, there is no other difference. I will accept your contention that Hindi is the mother tongue of the village people only when you go to any village and ask this question to a villager: "Kya 'Barsat' shuru ho gai?" His reply would be, "Barkha shuru ho gai". But that is pure Urdu. I shall accept your assertion if he replies that 'Barkha arambh ho gai hai'. If he uses the word 'arambh' I will agree that Hindi is his mother tongue. If he uses the word 'shuru' then that would be Urdu. My claim is that cent per cent people of U.P. speak Urdu. Those who say that the language spoken by the U.P. Muslim is Hindi, are totally in the wrong. I challenge you to hold a referendum on this issue. If you cannot do that, then look to the language used in the villagers' programmes by the A.I.R. It would reveal to you that they pronounce 'Khushi' as 'Khusi'. Seldom a Sanskrit word is used in their language. If that is so, how can you say that the language of the rural areas is Hindi? Therefore, I challenge you on the point. You have no right to say that Hindi is the language of U.P. villages. So much about the amendment of Mr. Lari.

I would appeal to Honourable Dr. Ambedkar to accept, as being the decision of the House, and of our Fundamental Rights Committee, amendment No. 676 which has been moved by Mr. Lari. You may accept or reject it. It depends on your sweetwill. You have a majority with you which consists mainly of one party.

I oppose the amendment; put it to the vote. Where is the use of having the farce of this Constituent Assembly?]

Mr. Vice-President: I cannot allow you to use this expression (Interruption): Kindly take your seat. I am quite able to maintain order in the House without your assistance. Maulana Saheb, you have already taken ten minutes; I will give you only two minutes more.

Maulana Hasrat Mohani: *[I want only five minutes. I will finish within five minutes.]

Mr. Vice-President: All right.

* [ ] Translation of Hindustani speech.

Maulana Hasrat Mohani: *[Now I want to say a few words about my amendment, which is an amendment to the amendment, not yet moved by Dr. Ambedkar. As my amendment has been declared out of order, I want to say something about it.

After great deliberation I submitted my amendment to Dr. Ambedkar's amendment No. 691 because it so happens that an amendment or any other thing put forth by him is generally accepted and so along with that mine too might have been accepted and Honourable Vice-President too, who has been vested with discretionary powers to allow or disallow a motion, selected No. 691 out of so many others, viz., out of 691, 692, 693, 694, 696, 697 and 698, which are all of similar import, to be moved in the House. Is it justice not to allow me to move it now? Why does not Dr. Ambedkar move his amendment? I think it has not been moved because thereby the minorities would have got their right in full.

It is made clear that every important minority shall have the right to receive education in its own mother tongue and script.]

Pandit Thakur Dass Bhargava: *[Maulana Sahib! May I tell you that article 23(2) has nothing to do with language or script. It is regarding the right of admission into the educational institutions.]

Mr. Vice-President: Pandit Thakur Dass Bhargava, you should address the Chair. I am sorry I should have to point this out to you.

Maulana Sahib, I have given you another five minutes.

Maulana Hasrat Mohani: *[Only two or three sentences, Sir. I am finishing. Therefore I want to state that the Advisory Board too have decided that every one has the right to receive education in his own mother tongue. In relation to University Education also it has been decided that medium of the mother tongue would be retained. Hence, you have got no right to avoid it.

The question of language and script is of very great importance. The fall of Turkish Empire was because it attempted to force their language upon others. As their rule has come to an end, similarly you will also not be able to rule.]

Shri Satyanarayan Sinha (Bihar: General): The question be now put, Sir.

Mr. Vice-President: Two more requests have been made. I do not think I can allow this discussion to continue. Dr. Ambedkar.

Pandit Hirday Nath Kunzru (United Provinces: General): Sir, this subject is an important one. Will you be so indulgent as to allow me to speak?

Mr. Vice-President: We are always prepared to hear you. Our only regret is you do not speak very often.

Pandit Hirday Nath Kunzru: Mr. Vice-President, Sir, the subject that we are discussing today is one of fundamental importance. We are dealing with Fundamental Rights. We have tried to approach this subject in such a way as to ensure the people of India in general and the members of various classes and communities in particular that their basic rights will be fully safeguarded by the State. One of the most important rights that any community can claim relates to language and culture. I am not surprised therefore that clause 23 has led to a prolonged discussion. The article as it is gives such minorities as have a distinct language, script and culture, the right to conserve them. But it is not clear whether in the primary schools started by Government the languages and scripts of the minorities will be taught in case the parents of a substantial number of the pupils demand that their children should be given instruction in their own languages.

*[Translation of Hindustani Speech.

[Pandit Hirday Nath Kunzru]

Sir, this is a subject of the utmost importance. Anyone acquainted with the history of Eastern Europe knows what conflicts the denial of the claims of the minorities on this subject have led to. One of the most important questions that engaged the attention of the League of Nations was the protection not merely of the general civil rights of the minorities but also of their right to use their own language in areas where they formed a substantial proportion of the population. The amendment moved by my friend Mr. Lari as amended by Mr. Karimuddin's amendment seems to be one that deserves the serious and sympathetic consideration of the House. Though put forward in the interests of the Muslim community it will afford protection to all minority communities. India is not the only country where there is a diversity of languages. There are other countries too where people speak more than one language. The most notable case is that of Russia. There is one language that serves as the *Lingua Franca* of the territories ruled over by the Russian Government and that is Russian. But at the same time the development of the local languages is encouraged and every effort is being made to raise the culture of the local communities to a high pitch. Russia has gone so far in this direction as to give a script even to those communities under its rule that possessed none before. It has thus assured all the communities subject to it that it proposes to grant them complete protection in regard to all those distinctive things that they value, to all those things that enable them to take pride in their own history and achievement, in all those things that make them feel that they have not merely received benefits from other communities but have also been in a position to place something of value before them. If our Muslim friends today, actuated by a similar feeling, demand that their children should be given instruction in primary schools through their own lauguage and script, where a sufficient number of them asks for this, the demand cannot be considered as extravagant. It is a demand which we should, if we are actuated by justice, be ready to grant.

Pandit Thakur Dass Bhargava: Who is opposing this demand?

Pandit Hirday Nath Kunzru: In view of the heated discussion that has taken place and my inability to understand whether the amendment was going to be accepted or not, I have thought it necessary to place my own views before the House. If my Friend Pandit Thakur Dass Bhargava has guessed the feeling of the House accurately, no one will be happier than myself.

Pandit Thakur Dass Bhargava: The Honourable Pandit Govind Ballabh Pant has accepted the principle in his speech.

Pandit Hirday Nath Kunzru: I was not in the House when Pandit Govind Ballabh Pant spoke but my information is that the amendment moved by Mr. Lari as amended by Kazi Karimuddin has not been accepted by Pandit Pant, or Dr. Ambedkar.

Pandit Thakur Dass Bhargava: It has not been accepted because it is not justiciable as the right to primary education itself is not justiciable at present.

Pandit Hirday Nath Kunzru: Sir, now my honourable Friend Pandit Thakur Dass Bhargava shifted his ground. He says that the amendment has not been accepted because the right is not justiciable. Does this mean that he too is going to oppose the amendment of article 23 in the sense demanded by Mr. Lari? If he is, then what was the point of his question? How did he get up and ask, who was opposing the amendment?

Mr. Vice-President: I am sorry I permitted the first interruption. It is leading to endless trouble.

Pandit Hirday Nath Kunzru: Sir, I am grateful to you for permitting it, for it has enabled me to clarify my position and to understand where my honourable Friend Pandit Thakur Das Bhargava stands. If the only objection of the House to the insertion of Mr. Lari's amendment to article 23 is that

it is not justiciable, will Government give an undertaking that this amendment will form part of the Chapter containing the Directive Principles of State Policy?

An Honourable Member: There is no Government here.

Pandit Hirday Nath Kunzru: After all Dr. Ambedkar who is the Chairman of the Drafting Committee is the Law Minister of the Government of India.

Mr. Vice-President: That is accidental.

Pandit Hirday Nath Kunzru: If he is prepared to say that the principle underlying the amendment will be included in Part IV, I for one shall be perfectly satisfied. But an Honourable Member says that he is not prepared to accept it. It should be obvious now to my friend Pandit Thakur Dass Bhargava that it is necessary for one who is for full tolerance in the matter of language, script and culture, to stand before this House and place his convictions before it. I am very sorry, indeed, to find from the interruptions of a number of my friends that the general feeling in the House is against Mr. Lari's amendment. Frankly, Sir, I cannot understand members standing up for full rights for the minorities objecting to the claim put forward on behalf of the Muslim community, by Mr. Lari. The amendment put forward by him might have seemed to be too wide, for if it were accepted, it would enable the Muslim community to claim that Urdu should be taught even when there was one boy in a school who wanted to learn it. But the amendment of Mr. Karimuddin has completely removed that fear, and Mr. Lari, I understand, has accepted that amendment.

Mr. Z. H. Lari: Yes.

Pandit Hirday Nath Kunzru: It is therefore, clear that the Muslim community will be able to exercise the right asked for by Mr. Lari only where a substantial number of Muslim students are available to profit by instruction in Urdu. I ask the House whether on any ground of justice and tolerance, they can deny such a reasonable claim. It does not interfere in the least with the establishment of a *lingua franca* for the whole of India. (Honourable Member: it does, it does.). It does not, in the least. If my honourable Friend reads the history of Eastern Europe and of Russia with a dispassionate mind (Honourable Members: Why not Indian history?), he will find that his fears are completely groundless. The dissatisfaction of the minorities has risen to a dangerous pitch only in those countries where their just claims in respect of the preservation and promotion of their culture have been denied. But those countries that have treated the minorities justly in this respect have received their full support in the political sphere. I ask my countrymen to profit by these examples and take a warning from the history of Eastern Europe. Comparative peace was restored in Eastern Europe only when the League of Nations was able to intervene as far as was practicable in the circumstances to protect the language and culture of the minorities. Do we want, in utter disregard of this history, to pursue the dangerous path of fanatical nationalism as the majorities in Eastern Europe did for a number of years? An honourable Member asks me what led to the second world war. I have never claimed that there has been only one cause of conflict throughout the world. Many causes have led to wars in the past, and are still keeping the nations of the world estranged from one another. But does that mean that we may thoughtlessly add to these causes and deny elementary justice to the minorities, because we have it in our power to pass any measures that we like? The mere fact that that power is in our hands should make us pause, and go out of our way to treat the minorities generously. My friends, I request you with all the earnestness at my command, I request you as a humble servant of the

[Pandit Hirday Nath Kunzru]

mother-land, I request you as one of your sincere well-wishers to think seriously before you reject Mr. Lari's reasonable amendment. It does not go beyond the necessities of the case; and we shall be putting ourselves hopelessly in the wrong if we use our majority tyrannically to turn it down. I hope that the House, notwithstanding the feeling that the discussion has excited, will consider the matter dispassionately and in a spirit of justice, toleration and generosity accept Mr. Lari's amendment.

Mr. Vice-President: Dr. Ambedkar.

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

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

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

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

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

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

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

The first point that I would like to submit to the House as to why the Drafting Committee thought it necessary to alter the language of paragraph 18 of the Fundamental Rights is this. On reading the paragraph contained in the original Fundamental Rights, it will be noticed that the term "minority" was used therein not in the technical sense of the word "minority" as we have been accustomed to use it for the purposes of certain political safeguards, such as representation in the Legislature, representation in the services and so on. The word is used not merely to indicate the minority in the technical sense of the word, it is also used to cover minorities which are not minorities in the technical sense, but which are nonetheless minorities in the cultural and linguistic sense. For instance, for the purposes of this article 23, if a certain number of people from Madras came and settled in Bombay for certain purposes, they would be, although not a minority in the technical sense, cultural minorities. Similarly, if a certain number of Maharashtrians went from Maharashtra and settled in Bengal, although they may not be minorities in the technical sense, they would be cultural and linguistic minorities in Bengal. The article intends to give protection in the matter of culture, language and script not only to a minority technically, but also to a minority in the wider sense of the term as I have explained just now. That

is the reason why we dropped the word "minority", because we felt that the word might be interpreted in the narrow sense of the term, when the intention of this House, when it passed article 18, was to use the word "minority" in a much wider sense, so as to give cultural protection to those who were technically not minorities but minorities nonetheless. It was felt that this protection was necessary for the simple reason that people who go from one province to another and settle there, do not settle there permanently. They do not uproot themselves from the province from which they have migrated, but they keep their connections. They go back to their province for the purpose of marriage. They go back to their province for various other purposes, and if this protection was not given to them when they were subject to the local Legislature and the local Legislature were to deny them the opportunity of conserving their culture, it would be very difficult for these cultural minorities to go back to their province and to get themselves assimilated to the original population to which they belonged. In order to meet the situation of migration from one province to another, we felt it was desirable that such a provision should be incorporated in the Constitution.

I think another thing which has to be borne in mind in reading article 23 is that it does not impose any obligation or burden upon the State. It does not say that, when for instance the Madras people come to Bombay, the Bombay Government shall be required by law to finance any project of giving education either in Tamil language or in Andhra language or any other language. There is no burden cast upon the State. The only limitation that is imposed by article 23 is that if there is a cultural minority which wants to preserve its language, its script and its culture, the State shall not by law impose upon it any other culture which may be either local or otherwise. Therefore this article really is to be read in a much wider sense and does not apply only to what I call the technical minorities as we use it in our Constitution. That is the reason why we eliminated the word "minority" from the original clause.

But while omitting this word "minority" I think my Friend, Mr. Lari forgot to see that we have very greatly improved upon the protection such as was given in the original article as it stood in the Fundamental Rights. The original article as it stood in the Fundamental Rights only cast a sort of duty upon the State that the State shall protect their culture, their script and their language. The original article had not given any Fundamental Right to these various communities. It only imposed the duty and added a clause that while the State may have the right to impose limitations upon these rights of language, culture and script, the State shall not make any law which may be called oppressive, not that the State had no right to make a law affecting these matters, but that the law shall not be oppressive. Now, I am sure about it that the protection granted in the original article was very insecure. It depended upon he goodwill of the State. The present situation as you find it stated in article 23 is that we have converted that into a Fundamental Right, so that if a State made any law which was inconsistent with the provisions of this article, then that much of the law would be invalid by virtue of article 8 which we have already passed.

My Friend, Mr. Lari and the Maulana will therefore see that there has been from their point of view a greater improvement than what was found in the original article. Certainly there has been no deterioration in the position at all as a result of the change made by the Drafting Committee.

Coming to the other question, namely, whether this Constitution should not embody expressly in so many terms, that the right to receive education in the mother tongue is a Fundamental Right: Let me say one thing and that is

[The Honourable Dr. B. R. Ambedkar]

that I do not think that there can be any dispute between reasonably-minded people that if primary education is to be of any service and is to be a reality it will have to be given in the mother tongue of the child. Otherwise primary education would be valueless and meaningless. There is no dispute, I am sure, about it and in saying that I do not think it necessary for me to obtain the authority of the Government to which I belong. It is such a universally accepted proposition and it is so reasonable that there cannot be any dispute on the principle of it at all. The question is whether we should incorporate it in the law or in the Constitution. I must frankly say that I find some difficulty in putting this matter into a specific article of the Constitution. It is true, as my honourable Friend Pandit Kunzru observed, that the difficulty that might be felt in administering such a Fundamental Right is to some extent mitigated or obviated by the amendment moved by my Friend Mr. Karimuddin viz., that such a principle should become operate in the case a substantial number of such students were available. I would like to draw the attention of my friend Mr. Karimuddin that his amendment does not really solve the difficulty, which stands in the way of his accepting the principle. First, who is to determine what is a substantial number? Let me give an illustration. Supposing the matter is to be left to the Executive, as it must be, and the Executive made a regulation that unless there were 49 per cent. of such children seeking education in a primary school, then and then only it will be regarded as a substantial number. Will that satisfy him if such an authority was left with the Executive? Then supposing you make this matter a justiciable matter, as it undoubtedly would be when you are introducing it as a Fundamental Right and no Fundamental Right is fundamental unless it is justiciable, is it proper, is it desirable that the question whether in any particular school a substantial number was available or not should be dragged into a court of law, to be determined by the court? I cannot see any other way out of the difficulty. Either you must leave the interpretation of the word "substantial" to the Executive or to the judiciary and in my judgment neither of the methods would be a safe method to enable the minority to achieve its object. Therefore my submission is that we should be satisfied with the fact that it is such a universal principle that no provincial government can justifiably abrogate it without damage to a considerable part of the population in the matter of its educational rights. Therefore I submit that the article as amended should be accepted by the House.

Mr. Vice-President: The question is:

That for article 23, the following article be substituted:—

"23. Without deteriment to the spiritual heritage and the cultural unity of the country, which the State shall recognise, protect and nourish, any section of the citizens residing in the territory of India or any part thereof, claiming to have a distinct language, script and culture shall be free to conserve the same."

The motion was negatived.

Mr. Vice-President: The question is:

That for article 23, the following article be substituted:—

"(1) Minorities in every Unit shall be protected in respect of their language, script and culture, and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect."

The motion was negatived.

Mr. Vice-President: The question is:

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

The motion was adopted.

Mr. Vice-President: The question is:

That with reference to amendment No. 678 of the List of Amendments,

clause (1) of article 23, for the words "residing in the territory of India or any part thereof" the words "residing in any part of the territory of India" be substituted.

The motion was negatived.

Mr. Vice-President: The question is:

That in clause (1) of article 23, after the word "conserve" the word "develop" be added.

The motion was negatived.

Mr. Vice-President: The question is:

That in clause (3) of article 23, the word "community" wherever it occurs be deleted.

The motion was adopted.

Mr. Vice-President: The question is:

That for clause (2) of article 23, the following be substituted:—

"No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them";

and sub-clauses (a) and (b) of clause (3) of article 23 be renumbered as new article 23-A."

The motion was adopted.

Mr. Vice-President: The question is:

That for sub-clause (a) of clause (3) of article 23 the following be substituted:—

"(a) Linguistic minorities shall have the right to establish, manage and control educational institutions for the promotion of the study and knowledge of their knowledge and literature, as well as for imparting general education to their children at primary and pre-primary stage through the medium of their own languages."

The motion was negatived.

Mr. Vice-President: The question is:

That the following proviso be added to sub-clause (a) of clause (3) of article 23:—

"Provided that no part of the expenditure in connection with such institutions shall fall upon or be defrayed from the public purse; and provided further that no such institution, nor the education and training given therein shall be recognised, unless it complies with the courses of instruction standards of attainment, methods of education and training, equipment and other conditions laid down in the national system of education."

The motion was negatived.

Mr. Vice-President: Does the Honourable Member, Mr. Lari accept amendment No. 53 on List III standing in the name of Kazi Karimuddin?

Mr. Z. H. Lari: Yes, Sir, I do.

Mr. Vice-President: Does he also accept the amendment of Begum Aizaz Rasul?

Mr. Z. H. Lari: I do not.

Mr. Vice-President: Then I shall put to the House amendment No. 714 as amended by amendment No. 53 on List III standing in the name of Kazi Karimuddin.

Shri Rohini Kumar Chaudhari (Assam: General): On a point of order, Sir, I would ask whether in the absence of the Member who has moved the amendment; his amendment could be put to vote.

Mr. Vice-President: Is Mr. Chaudhari certain that the absence of Kazi Syed Karimuddin from the House would automatically close his amendment from being voted upon?

Shri Rohini Kumar Chaudhari: No, because it is acceptable to Mr. Lari who is in the House and whose amendment is being voted upon.

Mr. Vice-President: I am going to put the question now.

Pandit Thakur Dass Bhargava: Before you put the question, I want to raise a point of order. In my humble opinion, the subject matter of this amendment No. 714 cannot be judiciable because we have not made primary education itself justiciable. Therefore this amendment is itself out of order. When the primary right to primary education is not justicable or capable of being enforced in a court of law, this ancillary right cannot be made justiciable and hence this amendment cannot be put to the House. It is out of order, and no Fundamental Right can be based upon it.

Shri L. Krishnaswami Bharathi (Madras: General): It is now too late to raise this point of order.

Mr. Vice-President: That is what I was going to say. It is too late now to raise this objection.

Pandit Thakur Dass Bhargava: I raised this objection earlier, when Pandit Kunzru was speaking.

Mr. Vice-President: I am going to put the amendment to vote.

The question is:

That after clause (3) of article 23, the following new clause be inserted:—

"(4). Any section of the citizens residing in the territory of India or any part thereof having a distinct language and script shall be entitled to have primary education imparted to its children through the medium of that language and script in case of substantial number of such students being available."

The motion was negatived.

Maulana Hasrat Mohani: I call for a Division.

Mr. Vice-President: I cannot allow a Division because the voices are quite decisive. I want honourable Members not to do anything by which the time of the House would be wasted. I am very sorry and regret that my request—a very reasonable one—was not accepted.

Mehboob Ali Baig Sahib Bahadur (Madras: Muslim): May I speak at this stage, Sir?

Mr. Vice-President: It is too late now.

Now, before putting the amendment of Begum Aizaz Rasul to vote, as it was not circulated to Members, I shall read it out:

In the amendment of Mr. Lari, No. 714, for the words "section of the citizens" after the word "Any", substitute the word 'minority'.

The question is:

That the amendment be adopted.

The motion was negatived.

Mr. Vice-President: Now I shall put the article, as amended, to vote.

Pandit Hiday Nath Kunzru: I am sorry to interrupt the proceedings. But if some Members of the House want a Division on this question with a view to finding out how many are for and how many are against the motion of Mr. Lari, I do not think the time of the House will be wasted if you grant their request. Just by a show of hands the number of those who vote either way could be known.

Mr. Vice-President: It can be done if there is a sufficiently large demand for it. Still, I would impress upon you one fact and that is it is good to preserve the goodwill of the House. And this is not the way to do it. I would request you to consider my proposal once again. Wherever possible, I have given every possible facility to every minority and so much time that the majority has sometimes been deliberately reduced to a minority by me. I expect

sincerely that the minorities will accept what I say. This is one of the ways in which I would request them to co-operate with me. If not, I am prepared to accede to their request. What is your decision?

Honourable Members: Yes.

Mr. Vice-President: Now I shall put the article, as amended, to vote.

The question is:

That article 23, as amended, stand part of the Constitution.

The motion was adopted.

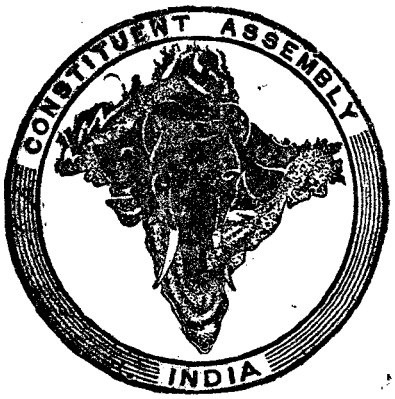
Article 23, as amended, was added to the Constitution.

Mr. Vice-President: Thank you, Gentlemen. The House stands adjourned to Ten of the Clock on Thursday the 9th December 1948.

The Assembly then adjourned till Ten of the Clock on Thursday, the 9th December 1948.

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CONSTITUENT ASSEMBLY DEBATES

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[New article 23-A and articles 25, 25-A, 26 and 27 considered.]

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CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 9th December, 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.*)

New Article 23-A

Mr. Vice-President (Dr. H. C. Mookherjee): Our work for today starts with the consideration of amendment No. 716. It stands in the name of Professor K. T. Shah.

Prof. K. T. Shah (Bihar: General): Mr. Vice-President, Sir, I beg to move:

"That under the heading "Right to Property" the following new article be added:

"23-A. All forms of natural wealth, such as land, forests, mines and minerals, waters of rivers, lakes or seas surrounding the coasts of the Union shall belong to the people of India. No private property shall be allowed in any of these forms of the country's wealth; nor shall they be owned, worked, managed or developed, except by public enterprise exclusively.'"

Shri B. Das (Orissa: General): On a point of order, Sir, how can 23-A about nationalisation of property be moved when we have not dealt with article 24 which deals with the right of property. I would respectfully suggest that, if you allow Professor Shah to move article 23-A, it may be moved after we have dealt with article 24.

Prof. K. T. Shah: I would point out, Sir, . . .

(Shri B. Das rose to speak.)

Mr. Vice-President: I want to hear what Professor Shah has to say.

Prof. K. T. Shah: There is a misapprehension on the part of Mr. Das. This does not talk of nationalising all existing private property. I am only enunciating a principle which may in legal parlance be called the right of eminent domain of the State. Therefore it is merely an assertion that natural wealth belongs to the people, to the State. That does not mean that that which is already in private possession is to be nationalised. Nor does it exclude the possibility of lands, forests, etc. being held, as delegated owners, by the present holders or subsequent holders under the eminent domain of the State. I see no difficulty in this.

Shri B. Das: My view is that article 24 deals with right to property, whether it belongs to a private citizen or to the State. This amendment can only be discussed when we discuss article 24 and Professor Shah can move his amendment afterwards.

Shri R. K. Sidhwa (C. P. & Berar: General): Mr. Vice-President, I think that what my honourable Friend Mr. Das said is quite correct. We are discussing article 23—cultural and educational rights—and if this article is passed . . .

Mr. Vice-President: The honourable Member need not repeat what Mr. Das has already said.

Shri R. K. Sidhwa: I am only emphasising it, Sir, to draw your attention.

Syed Muhammad Saadulla (Assam: Muslim): Mr. Vice-President, Sir, may I draw your attention to the motion itself as I read it at page 75 of the notice of amendments? Prof. Shah's amendment runs as follows: "That under the heading 'Right to Property', the following new article be added" and "Right to Property" is the heading of article 24 and not of 23.

Mr. Vice-President: I rule that Prof. Shah be allowed to move this amendment under 24-A. So far as amendments Nos. 717 and 718 are concerned, they are already covered by the earlier decisions of this House relating to Directive Principles.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Those rights which are not justiciable are covered but those in connection with fundamental rights have not been covered at all. At that time an understanding was reached that this will be considered along with the Fundamental Rights.

Mr. Vice-President: Is it your contention that these both should go under the Directive Principles and also here? That is not possible. I rule it out of order.

Article 24

Shri T. T. Krishnamachari (Madras: General): It is the desire of many Honourable Members of this House that this article should not be taken up now, but taken up later, because we are really considering various amendments to it so as to arrive at a compromise and Dr. Ambedkar will bear me out in regard to this fact.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Yes, Sir. I request that article No. 24 be kept back.

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

Honourable Members: Yes.

Mr. Z. H. Lari (United Provinces: Muslim): Then what about article 15, Sir?

Mr. Vice-President: The consideration of that article has been postponed for the time being.
(To Mr. Kamath.) You want to say something about the amendment dealing with Military training in article 24?

Shri H. V. Kamath (C. P. & Berar: General): There are those amendments which do not relate to "Right to Property", and which have been given notice of as new articles to be inserted after article 24. What about these?

Mr. Vice-President: They will be taken up after article 24.

Article 25

Kazi Syed Karimuddin (C. P. and Berar: Muslim): Mr. Vice-President, Sir, article 25 lays down in clause 4 "The rights guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution." Now I move my amendment:

"That the consideration of article 25 be postponed till the consideration of Part XI of this draft constitution."

In article 280, it is laid down "Where a Proclamation of Emergency is in operation, the President may by order declare that the rights guaranteed by article 25 of this Constitution shall remain suspended for such period not extending beyond a period of six months after the proclamation has ceased to be in operation as may be specified in such order."

If article 25 is passed today, then we are accepting the provisions of article 280 because clause (4) of article 25 says that "the rights guaranteed by this article shall not be suspended except otherwise provided for by this Constitution." We have very serious objections to the passing of article 280. The emergency Provisions contained in articles 275 to 280 are of an extraordinary nature and some of them militate against the fundamental principles of federalism and do not find any parallel in any world constitutions and there are several amendments to be moved to articles 275 to 280. So by acceptance of this article, we will be accepting the provisions of articles 275 to 280. Moreover, this article says "as otherwise provided for by this Constitution." This article cannot be considered at all unless the provisions in articles 275 to

280 are taken into consideration. Therefore, my submission is that before articles 275 to 280 are passed, we are incompetent to consider the provisions of article 25.

The Honourable Dr. B. R. Ambedkar: Sir, I do not think that because this article is subject to the provisions of the other articles to which my honourable Friend, Mr. Karimuddin has referred, it is not possible for us to consider this article now, because, as will be seen, supposing we do make certain changes in article 285 or others relating to that matter, we could easily make consequential changes in article 25. Therefore, it will not be a bar. Therefore, it is perfectly possible for us to consider article 25 at this stage without any prejudice to any consequential change being introduced therein. Supposing some changes were made in the articles that follow. . .

Kazi Syed Karimuddin: Then why not postpone this?

The Honourable Dr. B. R. Ambedkar: No.

Mr. Vice-President: I am going to put this amendment to vote, because if it is carried, then the consideration of all the amendments will be postponed.

Mr. Vice-President: The question is:

"That the consideration of this clause be postponed till the consideration of Part XI of this Draft Constitution."

The motion was negatived.

Mr. Vice-President: Amendment No. 782 is disallowed. Amendment No 783, standing in the name of Mr. Naziruddin Ahmad.

The Honourable Shri K. Santhanam (Madras: General): On a point of order, Sir, this amendment suffers from vagueness. There is no particular meaning.

Mr. Vice-President: Let us hear what Mr. Naziruddin Ahmad has to say.

Mr. Naziruddin Ahmad: Mr. Vice-President, Sir, I beg to move:

"That for clause (1) of article 25, the following clause be substituted, namely:

'(1) Every person shall have the right by appropriate proceedings to enforce the rights conferred by this Part.' "

Sir, it is suggested by Mr. Santhanam that the amendment is vague. I submit that it is not vague.

The Honourable Shri K. Santhanam: Appropriate proceedings,—judicial, administrative or executive?

Mr. Naziruddin Ahmad: Proceedings in a Court.

The Honourable Shri K. Santhanam: Where is the Court?

Shri M. Ananthasayanam Ayyangar (Madras: General): Neither the procedure nor the forum is indicated in the amendment.

Mr. Naziruddin Ahmad: Perhaps there is some mis-print; I do not know. If there is no mis-print, it is certainly open to the comment that it is vague.

The only point that I had in mind was that the right to move the Supreme Court by appropriate proceedings is guaranteed. I wanted to allow the people to move other Courts also. If there is a fundamental right granted here, and if any poor man is forced to move the Supreme Court. . . .

The Honourable Dr. B. R. Ambedkar: See sub-clause (3).

Mr. Naziruddin Ahmad: That sub-clause empowers some other specified Courts to deal with this subject; but I wanted to make it more general, that the fundamental rights should be capable of being enforced by a motion in any Court. In fact, all Courts should be open to the people. If there is a fundamental right which is violated, and if the man whose right is violated is a poor man, it would be wrong to drive him to the Supreme Court or some other Court duly empowered in this behalf, which will be some superior Court. I want to see that all Courts have the power to decide fundamental rights or breaches of fundamental rights and this should be given to all Courts civil or

[Mr. Naziruddin Ahmad]

criminal. If a difficult point of constitutional right is raised in any civil or criminal Court in a small case, then, that Court should be enabled to decide it immediately. Instead of that, this clause (1) would force the party to move the Supreme Court or some other selected Court duly empowered in this behalf.

I admit fully that the drafting of this amendment is certainly open to the comment that it is a little vague; but I am suggesting the principle. If the principle is acceptable, then, the amendment may be changed accordingly. This point is at the back of my mind; perhaps in a hurry, I made a mistake; it should be, "by appropriate proceedings *in any Court*". In fact, the actual wording of the amendment is not very important.

Mr. Vice-President: There is an amendment to this amendment. No. 43 standing in the name of Mr. V. S. Sarwate.

Shri V. S. Sarwate (United State of Gwalior-Indore-Malwa Madhya Bharat): Sir, I shall move the amendment after Dr. Ambedkar has moved his.

Mr. Vice-President: Yours is an amendment to amendment No. 783.

Shri V. S. Sarwate: And also, alternatively to amendment No. 794.

Mr. Vice-President: You want to move it when we come to amendment No. 794. Is that your wish?

Shri V. S. Sarwate: Yes, Sir.

(Amendment No. 784 was not moved.)

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

"That in clause (1) of article 25, for the words 'Supreme Court', the words 'Supreme Court or any other Court empowered under clause (3) to exercise the powers of the Supreme Court' be substituted."

Sir, we have in clause (3) already attempted to provide the authority to Courts other than the Supreme Court to exercise those rights. This is consequential upon clause (3).

(Amendment No. 786 was not moved.)

Mr. Vice-President: Amendments Nos. 787, 788 and 793 are of similar import and will be considered together. Amendment No. 788 seems to be the most comprehensive.

(Amendment No. 788 was not moved.)

Mr. Vice-President: Then, we can take up amendment No. 787 standing in the name of Mr. Kamath.

Shri H. V. Kamath: Mr. Vice-President, I move amendment No. 787 of the List of amendments as amended by amendment No. 64 in List 4 (III week). I move:

"That for clause (2) of article 25, the following be substituted :

'(2) The Supreme Court shall have power to issue such directions or orders or writs as it may consider necessary or appropriate for the enforcement of any of the rights conferred by this part.'"

At the outset let me make it clear that I am a mere layman and not a professional lawyer or a legal or constitutional expert like my Friend Dr. Ambedkar; but I know a bit of law though not very much of it, and I will have my say on the basis of the little knowledge of law which I possess. This clause of article 25 relates to the power of the Supreme Court to issue orders for the enforcement of any of the Fundamental Rights mentioned in Part III. I think that so far as the Supreme Court is concerned, it is not necessary to lay down what particular writ it should issue. After all, Sir, it may be that with the growth of legal and constitutional precedents, other writs than these mentioned here in this article may be evolved, and whenever a particular case comes up before the Supreme Court, it may be that the Court will take all the aspects of the case into consideration and issue such a writ—might be one of these, or a new writ may be evolved. I think this particular clause

of the article is a very regrettable instance to my mind of what is called in legislation—'Legislation by reference'. When we are dealing with the Supreme Court consisting of eminent judges and jurists, it is not wise for us nor desirable to lay down what particular writs the Supreme Court should issue in a particular case. Therefore, all things considered, I feel that so far as the Constitution is concerned, we should just say this much that the Supreme Court should issue such orders or directions or writs as the Court may consider necessary or appropriate in any particular case. I therefore move, Sir, that for clause (2) of this article the following be substituted:

"The Supreme Court shall have power to issue such directions or orders or writs as it may consider necessary or appropriate for the enforcement of any of the rights conferred by this part."

I hope that Dr. Ambedkar will tell us why he thinks it necessary to specify the particular writs here and not just leave it to the Supreme Court to decide what particular writs or orders or directions it should issue in any particular case. I hope he will not merely stand on prestige or some such consideration but will give satisfactory and valid reasons why we should insist on mentioning these particular writs in this clause of the article.

(Amendment No. 788 was not moved.)

Mr. Vice-President: Nos. 789 and 790 are similar and I allow 790 to be moved.

(Amendment No. 790 was not moved.)

The Honourable Dr. B. R. Ambedkar: Sir, I understand that Mr. M. A. Baig is not in the House. Will you permit me to move 789. I am going to accept this amendment. It shall have to be moved formally.

Mr. Naziruddin Ahmad: I desire to move it if that is acceptable to the House.

Mr. Vice-President: Does the House permit Mr. Naziruddin Ahmad to move this?

Honourable Members: Yes.

Mr. Naziruddin Ahmad: Sir, I move:

"That in clause (2) of article 25, for the words 'in the nature of the writs of' the words 'or writs, including writs in the nature of' be substituted."

Sir, this is a red letter day in my life in this House, that this is a single amendment which is going to be accepted. This amendment is a foster-child of mine and that is why perhaps the honourable Member is going to accept it. It requires no explanation.

Shri H. V. Kamath: On a point of order. Is my Friend right in saying it is going to be accepted when it is only moved.

Mr. Naziruddin Ahmad: I heard a rumour that it is going to be accepted.

Mr. Vice-President: Nos. 791 and 792 are disallowed as verbal amendments.

(Amendment No. 793 was not moved.)

Mr. Vice-President: Nos. 794, 795 and 799 are similar and are to be considered together. 794 is allowed to be moved.

The Honourable Dr. B. R. Ambedkar: With your permission I will just make one or two corrections to some words which crept into the drafting by mistake. Sir, with those corrections, my amendment will read as follows:

"That for the existing sub-clause (3) of article 25, the following clause be substituted:

'*Without prejudice to* the powers conferred on the Supreme Court by clauses (1) and (2) of this article, Parliament may by law empower any other Court to exercise *within the local limits of its jurisdiction all* or any of the powers exercisable by the Supreme Court under clause (2) of this article.'"

The reason for inserting these clauses (1) and (2) is because clauses (1) and (2) refer to the Supreme Court.

Mr. Vice-President: There are two amendments to this amendment. One is No. 44 and the other is 45 of List I (III week) and Mr. Sarwate's amendment No. 43. Mr. Sarwate.

Shri V. S. Sarwate: Sir, the amendment which I move stands thus:

"That at the end of amendment No. 794 of the list of amendment, the following be added:

'*Explanation.*—The Supreme Court, in deciding matters arising out of this article, shall have the power to go into questions of fact.' "

Sir, the scheme which we have adopted in this Chapter regarding Fundamental Rights consists, first, that the rights themselves are enumerated in broad terms and then by clauses which follow, the Legislature has been given power to put restrictions on the rights in certain matters specified in those clauses. Lest the legislature should exceed its powers, or makes legislation in excess of the requirements of the case, a safeguard is provided by the present article. Now, it is possible to argue that the court can only see whether the legislature has passed an Act in respect of that matter, without going into the details, or it may be argued that the court has no power to go into the details, and to determine the issues whether a particular case required or necessitated or justified the passing of that particular legislation. It is necessary to provide for such a contingency, because by article 13, the legislature has been given power to make 'any law'. The terms are wider than if it had been expressed in the way that the legislature has power to penalise such and such matters. The expression used is 'any law' which is wider than if it had been only power to penalise. Therefore it is necessary in each case for the court to see whether the particular legislation meets exactly the requirements of the case, whether it does not exceed the requirements of the case. Getting panicky a legislature may pass a legislation, where it may not be necessary to have any such legislation. Therefore I have added this explanation. The very wording of the explanation shows that it does not add anything to or substract anything from the original clause, but it only explains something. It may be argued that this is already implied in the clause as it is. But as I said in the beginning, there may be a certain doubt expressed in this respect, and so to remove and to avoid such doubts being raised, and to make it more specific and more outside the pale of any doubt, I have tried to add this explanation. I commend it to the House and to the Mover, for acceptance.

Mr. Vice-President: Then amendment No. 44 and amendment No. 45 in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: Sir, I do not want to move No. 45 because it is open to some objection. I shall move only No. 44.

Sir, I beg to move:

"That in amendment No. 794 of the list of Amendments, in the proposed clause (3) of article 25, the words 'without prejudice to the powers conferred on the Supreme Court by clause (2) of this article' be deleted."

Sir, the original article tries to confer powers on *any other Courts*, powers which may be exercised by the Supreme Court, under clause (1). As we have already stated in this clause, Parliament may by law empower any other Court. The words "any other court" indicates that this is a supplementary power to be given to other courts, without any prejudice to the powers of the Supreme Court. The powers of the Supreme Court are defined very precisely as absolutely supreme over all other Courts. So the words "without prejudice to the powers of the Supreme Court" would be unnecessary. In fact, there is no possibility of any doubt that the Supreme Court has over-riding powers. In these circumstances, the words seem to me to be unnecessary. Therefore, they should be deleted. In fact, the powers of the Supreme Court are very specific in this respect. The very name—Supreme Court—indicates that it is supreme in all matters. If we keep the words, we would suggest that the rights of the Supreme Court are not supreme, it really indicates some doubt

that the Supreme Court is not perhaps supreme in legal matters. That is the reason for asking for the deletion of these words.

(Amendments Nos. 795 and 799 were not moved.)

Mr. Vice-President: Amendment No. 796 is disallowed on the ground that it is only a formal amendment.

(Amendments Nos. 797, 798, 800 were not moved.)

Amendment No. 801 standing in the joint names of Shri Kamath and Mr. Tajamul Husain.

Shri H. V. Kamath: I shall make way for Mr. Tajamul Husain.

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

"That clause (4) of article 25 be deleted."

Sir, under article 9, the State shall not discriminate against any citizen on the grounds of religion, caste, etc. That means that a citizen is allowed to enter any shop, restaurant, hotel etc. He is allowed to use wells, tanks, roads and other things. Under article 13, the citizen is allowed to practise his profession, and carry on his trade in any way he likes. Under article 25, a citizen can move the Supreme Court for the enforcement of his rights mentioned above, and the Supreme Court can issue order in the nature of *Habeas Corpus* or *Mandamus* etc. But Sir, clause (4) of article 25 speaks of the suspension of the rights of citizens which I have just now mentioned. Article 280 says that where a proclamation of emergency is in operation the President can suspend the fundamental rights guaranteed to the citizens. This, I submit, should not be allowed. If such a right is allowed to the President, under the Constitution, then the right of equality as mentioned in article 9 will cease to exist for the time being. And citizens will not be allowed to use wells, tanks, roads, etc. Freedom of speech will have to be suspended; right to practise one's profession will also go; protection of life as guaranteed under article 15 will go; freedom of conscience will go; the right to move the Supreme Court will go. I think it is very dangerous to give all these powers to the President. After all what are we? We are only the representatives of the people—we are the people. When we have framed the Constitution we will dissolve ourselves and another set of people will come. They will also be the representatives of the people. They will be the same as ourselves—there can be no difference between us. Have we got the right to bind down those people? Can we say to them 'Thou shalt not do this; thou shalt do this'? It is a free country. If the people want to have revolution, let them have revolution. What right have we to prevent that? Therefore I say that no power should be given to any person, however big—to the President of the Republic or to anybody else—to suspend any Fundamental Rights guaranteed under this Constitution. With these words I commend my amendment to the House.

Kazi Syed Karimuddin: Mr. Vice-President, Sir, I move:

"That in clause (4) of article 25, for the words "as otherwise provided for by this Constitution" the words "in case of rebellion or invasion and when State of Emergency is proclaimed under Part XI of this Constitution" be substituted."

Sir, I cannot agree to the amendment moved by Mr. Tajamul Husain saying that the whole of clause (4) should be deleted. There are occasions in the country when actually there is an invasion and rebellion inside and no President will be so foolish as to restrict activities which have no concern with the invasion or rebellion like discrimination between man and man and even untouchability. Therefore in order to maintain peace and tranquility in the country, it would be necessary to suspend some of the provisions under articles 13 and 25, but to say that every clause and sub-clause under articles 13 and 25 will be suspended as soon as there is invasion or war is, I think, unimaginable. My amendment lays down that the rights guaranteed by this article shall

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be suspended only when there is invasion because the provisions in articles 275 to 280 lay down that even if there is an immediate danger of war articles 13 and 25 will be suspended not only for the period of the emergency but six months even beyond that period of emergency. It has been laid down under article 280 that 'where a Proclamation of Emergency is in operation, the President may by order declare that the rights guaranteed by article 25 of this Constitution shall remain suspended for such period not exceeding beyond a period of six months after the proclamation has ceased to be in operation as may be specified in such order.' I was pleading very earnestly that the provisions of article 25 should be passed over and considered after the passing of the provisions under articles 275 to 280. Now we are taking into our hands the question of suspending the provisions of articles 13 and 25 when we do not know the picture that would emerge under the provisions of articles 275 to 280. Now the rights are to be suspended in consideration of provisions that are yet to be made and which have not been accepted by the House. I thought that Dr. Ambedkar would oppose this proposal. But I bow to the decision of the House. Now the position before us is that we are going to accept clause (4), if at all it is accepted, for considerations and provisions which are not yet passed, and the House may reject them. In reply to that it has been stated that necessary changes will be made. Well, I have made the necessary change and it is before the House to accept or reject. And it is this, namely, that in case of rebellion or invasion and when a State of Emergency is proclaimed under Part XI of the Constitution—that is, articles 275 to 280—these rights can be suspended. My submission is that unless there is a declaration of a State of Emergency and unless there is actual invasion or rebellion inside, the rights granted under articles 13 and 25 should not be suspended. For example, suppose a party in a province which is hostile to the party in power at the Centre comes into power in the province. And suppose there is a quarrel between the Provincial Government and the Central Government and the party disobeys some of the orders issued from the Centre. Immediately the President, thinking that there is domestic violence inside the province, can suspend that part of the Constitution according to the emergency law. The result would be that every right of the individual citizen under article 13 will be suspended. Therefore, the two conditions which I have laid down in my amendment are that in cases of invasion and rebellion these rights should be suspended. I do not say that these rights should never be suspended, although in England and America there is no such provision for suspending such rights. But our country is passing through a transition and through a crisis; and if these rights are not suspended during such times there will be great turmoil in the country. I therefore plead that the amendment which I have moved should be accepted.

Mr. Vice-President: Amendment No. 803 is a verbal amendment and is disallowed.

(Amendment No. 804 was not moved.)

Mr. Naziruddin Ahmad: I shall move amendment No. 805.

Shri M. Ananthasayanam Ayyangar: It is also a verbal amendment.

Mr. Naziruddin Ahmad: Sir, I move:

"That in clause (4) of article 25, for the word 'guaranteed', the word 'conferred' be substituted."

As Mr. Ananthasayanam Ayyangar has suggested that it is a verbal amendment, I shall at once explain the reason why I have moved it. I confess that it is very nearly a verbal amendment. But the only reason why I have moved it is because I have the authority of amendment No. 811 to the same effect, standing in the name of Dr. Ambedkar himself. In fact he has tried to change the word "guaranteed" by the word "conferred". My amendment is exactly the same as amendment No. 811. If No. 811 is acceptable

to the House, No. 805 should also be equally acceptable. May I submit that amendment No. 791 standing in my name is not a mere verbal amendment? It changes the sense altogether, and may I be permitted to move it in a one minute speech?

Mr. Vice-President: No.

Mr. Naziruddin Ahmad: It changes the meaning. I ask you to consider it. I will be willing to bow to your considered decision.

Mr. Vice-President: In that case you will not move it.

(Amendment No. 806 was not moved.)

As amendment No. 806 has not been moved, an amendment to it by Pandit Bhargava (No. 46 in the list) falls through.

(Amendment No. 807 was not moved.)

The article is now open for general discussion.

Shrimati G. Durgabai (Madras: General): Mr. Vice-President, Sir, I have great pleasure in supporting this article. While doing so, I wish to place a few points before the House for its consideration.

Sir, the right to move the Supreme Court by appropriate proceedings for the enforcement of a person's rights is a very very valuable right that is guaranteed under this Constitution. In my view this is a right which is fundamental to all the fundamental rights guaranteed under this Constitution. The main principle of this article is to secure an effective remedy to the fundamental rights guaranteed under this Constitution. As we are all aware, a right without an expeditious and effective remedy serves no purpose at all, nor is it worth the paper on which it is written. Therefore, as I have already stated, this article secures that kind of advantage that it will ensure the effective enforcement of the fundamental rights guaranteed to a person.

Sir, then, all of us are aware, and the Drafting Committee is quite alive to the fact, that in recent times in England the procedure under ancient writs has been considerably modified and a simple remedy by a petition has been substituted for writs in a recent enactment in England. Perhaps that is the reason why the Drafting Committee has put in this article directions or orders in the nature of writs of *habeas corpus* etc.

Another point is that the right that is vested in the Supreme Court in no way affects the right of the High Courts in any part of India to issue similar writs or to enable Parliament to make laws empowering any other Courts to exercise the same power within the local limits of its jurisdiction. The question might arise in this connection as to what happens if the High Court refuses to issue a writ, and whether in the absence of a specific provision to that effect, an application for the issue of a writ is barred to the Supreme Court. To that my answer is, "No", because I consider that in these matters there is no question of *res judicata*. A person can move any number of courts and before any judge an application for the issue of this writ, though the Supreme Court naturally takes into consideration the order passed either by the High Court or any other Court in granting or refusing to issue this writ. Therefore, the application is not barred.

There are some other points also to be mentioned in this connection, but I feel these are the two main questions that might arise in this connection. One is whether the right that is vested in the Supreme Court bars the right of the other High Courts to issue similar writs; that question, I think, I have answered. The other question is whether in the case of concurrent jurisdiction, that is if the High Court refuses to issue this writ, whether an application is barred to the Supreme Court. That also I have answered by stating that any number of times a person can go to any number of Courts and move this application.

[Shrimati G. Durgabai]

Sir, with these few words I have great pleasure in supporting this article. I commend it to acceptance of the House.

Rev. Jerome D'Souza (Madras: General): Mr. Vice-President, I too should like to join my distinguished colleague, Shrimati Durgabai, in expressing gratification at the passing of this very important article which may justly be considered to be of the gravest character, and of the most far-reaching importance. I am sure, Sir, that Members of this House will recall to their minds that today is exactly the second anniversary of the opening of this great Assembly, and surely it is not without some significance that, nearing the end of our discussion on the Fundamental Rights, this coping-stone of the structure of those rights should be placed today.

I should like to draw the attention of the House, Sir, to the implications of this article, implications which possibly are not obvious at the first reading. This House, and through this House the Legislatures that have to rule this country in future, by a laudable and significant act of self-denial or self-abnegation, places under the power of a Supreme Judicature the enforcement of certain laws and certain principles, and remove them from the purview and the control of the Parliaments which will be elected in future years. They wish to put these rights beyond the possibility of attack or change which may be brought about by the passions and vicissitudes of party politics, by placing them under the jurisdiction of judges appointed in the manner provided for later on in this Constitution. Sir, it is, because we all believe,—and that is the implication of this chapter of Fundamental Rights,—that man has certain rights that are inalienable, that cannot be questioned by any humanly constituted legislative authority, that these Fundamental Rights are framed in this manner and a sanction and a protection given to them by this provision for appeal to the Supreme Court.

As I said, Sir, the implication of this is that an individual must be protected even against the collective action of people who may not fully appreciate his needs, his rights, his claims. And the sacredness of the individual personality, the claims of his conscience, are, I venture to say, based upon a philosophy, an outlook on life which are essentially spiritual. Sir, if all our people and their outlook were entirely materialistic, if right and wrong were to be judged by a majority vote, then there is no significance in fundamental rights and the placing of them under the protection of the High Court. It is because we believe that the fullest and the most integral definition of democracy includes and is based upon this sacredness of the individual, of his personality and the claims of his conscience, that we have framed these rights.

I say, Sir, further that in the last analysis we have to make an appeal to a moral law and through the moral law to a Supreme Being, if the highest and the fullest authority is to be given and the most stable sanction to be secured for these fundamental rights. Sir, Mahatma Gandhi, in one of his unforgettable phrases, referring to the desire to have a secular Constitution and to avoid the name of the Supreme Being in it, cried out, "You may keep out the Name, but you will not keep out the Thing from that Constitution". And, Sir, I believe that these fundamental rights and their implications are really tantamount to a confession that beyond human agencies and human legislatures there is a Power which has to be submitted to, and there are rights which have to be respected.

Sir, we have introduced in these Fundamental Rights certain provisions—necessary perhaps in present conditions—that in Government institutions instruction in different religions may not be given, in order that the calm atmosphere of our institutions may not be disturbed by controversies. But I hope and pray that those provisos, prudent though they are, may not exclude the teaching of ethical principles based upon truths acceptable to all, upon the existence

of a Supreme Being and the rights of the individual conscience formed under His guidance. I am sure that religious controversies could be avoided on the basis of those universally accepted truths. It is certain that our national culture and civilization are based upon and permeated by this belief and this conviction; otherwise there would be no meaning in these fundamental rights. A speaker who preceded me asked: "Why is it that provision has been made to change this Constitution? Why should not these sacred rights be placed beyond the possibility of abrogation?" I would answer him: "If the convictions and the faith of our people go away, there is no use in trying to protect these rights by sanctions. The rights and the sanctions would be illusory. But if faith remains, no one will want to touch them."

By this article we give to our Supreme Judicature a power, a status and a dignity which will call from them the highest qualities of integrity and uprightness. The full meaning of this article should be borne in mind when we come to that Part of the Constitution beginning with article 103, when we shall have to scrutinise the steps by which an upright and absolutely fair judiciary will be established in this land. When we consider that Part, let us recall these Rights and make sure that all these various provisions will be enforced in a just and fearless manner.

I now pass on to the next consideration and I beg the indulgence of the House to permit me to say a few words about the manner in which the Minority rights and Fundamental Rights are inextricably mingled together in this Part of the Constitution. Sir, I believe this is a right and necessary mingling. After all, what the minorities ask is that the right of the individual may be safeguarded in an inescapable manner. If that is done, "minority rights" as such would not and need not exist. It is because in a democratic system of Government where a majority vote may do injustice to a minority, that certain specific references to the minorities have to be made. But ultimately, in the last analysis, if the individual's right to his religious convictions, to his cultural preferences, to the rights which accrue to him as a man endowed with free will and reason and charged with the obligation of personal salvation, if these are safeguarded, "minority rights" as such need not find expression. That is why, mingled with these general rights, references are made to minorities. I should like to say on behalf of my own community which I have the honour to represent here—I am sure I am also voicing the feelings of many others—that if these rights are really safeguarded in the manner in which they are sought to be safeguarded in this Constitution, if the Fundamental Rights including as they do minority rights, are assured in an absolutely indubitable manner, no kind of political safeguards will be necessary for us and we shall not demand them, as long as, I say, this part of the Constitution is enforced without any kind of "encroachment" or misinterpretation.

Sir, the desire of our country and of our leaders is to work for the political homogeneity of this vast country. Unfortunately that political homogeneity was threatened, and to some extent destroyed by the need to give political safeguards to minorities. But remember those safeguards were asked for or were deemed necessary for the sake of religious and cultural and individual rights and not merely for the sake of political privileges or any emoluments which might come from them. And, as long as these, cultural and personal rights are safeguarded, we do not need any other political safeguard. Therefore, Sir, I hope and beg that we may ever remember that in the measure that these fundamental rights, protected in the last analysis by the Supreme Court, are enforced and carried out integrally and honourably, to the last implications of them, the desire for political safeguards and to that degree of political separatism and partial autonomy which it implies will not arise in this country. We will do nothing to raise that slogan once again. As far as the small Christian community is concerned,

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we have gone a great way in giving up those political safeguards and we are prepared to go further and give up the reservations which have been made in certain provinces. And if we do so, it is because we know that in the spirit in which these fundamental rights have been guaranteed, there is for us an assurance of safety and a confidence which does not need to be propped up or further affirmed by political safeguards and privileges.

There are, I know, Sir, certain other safeguards still maintained in this Constitution, such as economic safeguards for backward communities and so forth. I believe that a transitory measure of this kind is necessary; it is wise and prudent to reassure many sections of our people in this way. But, Sir, I submit that the full and logical implications of what we are doing now is that a time should come when even the economic and other assistance to be given should not be based upon the claims of classes as a whole, but should be based upon the claims of the individual. I am sure, Sir, a time will come when all those who claim and need special assistance, will get it, without reservations and safeguards on the basis of communities; when our legislatures and the leaders of the country will be able to think out individual tests, in which the communal or social background may certainly be taken into account, but which will give that assistance or that concession to all individuals, without limiting it to particular castes or classes. It is only on this ground and on this understanding that class differences, in so far as they are dangerous politically and lead to political separatism, will be eliminated. If, on the other hand, cultural, religious and other rights of this nature are safeguarded, I do not see why the variety and the diversity of this country should not be a source of strength and glory rather than a source of political weakness such as they threatened to be in recent years. We earnestly trust that the spirit in which these rights will be enucleated, interpreted and enforced in future years by our Judges, the spirit in which the majority community will give effect to them, will allay all fears and encourage the minorities in the path which they have deliberately chosen now, of giving up political safeguards. Thus alone in the near future—I do not wait for a distant future—in the near future, will the political homogeneity of these three hundred and thirty million people be an accomplished fact, and the members of all communities standing shoulder to shoulder in their civic equality, but maintaining their right to their own faith, their convictions and their ideals, and drawing their individual strength from those beliefs and from those convictions will work together for the prosperity and greatness of our motherland. (*Applause*).

Shri M. Ananthasayanam Ayyangar: Mr. Vice-President, Sir, the Supreme Court according to me is the Supreme guardian of the citizen's rights in any democracy. I would even go further and say that it is the soul of democracy. The executive which comes into being for the time being is apt to abuse its powers, and therefore the Supreme Court must be there, strong and untrammelled by the day to day passions which may bring a set of people into power and throw them out also in a very short time. In less than three or four years during which a parliament is in being, many governments may come and go, and if the fundamental rights of the individual are left to the tender mercies of the Government of the day, they cannot be called fundamental rights at all. On the other hand, the judges appointed to the Supreme Court can be depended upon to be the guardians of the rights and privileges of the citizens, the majority and the minority alike. So far as the fundamental rights are concerned, my humble view is that there is no difference between the rights and privileges of individual citizens, whether they belong to the majority community or to the minority community. Both must be allowed to exercise freedom of religion, freedom of conscience, must be allowed to exercise their language and use the script which naturally belongs to them. These and other rights must be carefully watched and for this purpose the Supreme Court has been vested with the supreme ultimate jurisdiction.

So far as the rights of the minorities are concerned, some other provision has also been made in this Constitution in article 299, under which a special officer or officers are to be appointed to watch their interests and to report to the President of the Union, as also to the Governor, on how far the minority rights that have been enumerated in this and the other parts of the Constitution are being observed, and it is the duty of the President or the Governor to lay this report before the legislature. But this in itself will not do unless the Supreme Court is watchful and is allowed to pull up any executive government if it goes astray.

Sir, I agree with my predecessors who have spoken that this is the most important article in the whole constitution as it is the guardian of the people's rights. So far as I know, in recent years some provincial legislatures have passed laws abrogating the writ of *habeas corpus*. Such latitude with people's rights ought not to be allowed in any event.

Then as regards clause (4), my friend suggested that this clause ought to be removed. I do not agree with him, though I agree that the wording here is a little broad and is likely to be abused. I am sure that that amount of latitude ought to be given to the government of the day. If any emergency is proclaimed, I am sure that the rights guaranteed by this article will be suspended only for the period of the emergency but not for another six months after the emergency is over, though it is open to the President to allow the same state of affairs to continue for a period of six months after the emergency is over. It is equally open to the President to say that this clause will be abrogated only during the period of the emergency and not for a further period of six months after the expiry of the emergency.

Shri H. V. Kamath: On a point of clarification, Sir, may I invite my friend's attention to clause (4) of this article as well as article 280 and request him to read them together. Article 280 says that:

"the President may by order declare that the rights guaranteed by article 25 of this Constitution shall remain suspended for such period not extending beyond a period of six months after the proclamation has ceased to be in operation as may be specified in such order."

Is not clause (4) liable to be misconstrued, when it is read with article 280? Does article 280 cover all the fundamental rights ? Does it mean, Sir, that even such rights as rights of anti-untouchability, religious and cultural rights will also be suspended?

The Honourable Dr. B. R. Ambedkar: I will deal with this.

Shri M. Ananthasayanam Ayyangar: Article 280 does not mean that the President will have to suspend these rights. He is not bound to suspend them or suspend all of them. It is not obligatory on the President to suspend the rights enumerated in this part. Therefore article 280 need not create any apprehension. Moreover, the person who is clothed with this power is the President of the Union, who ranks along with the Supreme Court judges. The President is not in charge of the administration. It is his ministers who are in charge of the administration. He only intervenes when necessary. Under these circumstances I am sure that the rights that have been enumerated in this part are safe in the hands of the Supreme Court and also in the hands of the President. Therefore, so far as the amendments that have been tabled by my friend Mr. Naziruddin Ahmad are concerned, I do not agree with him. Nor is it necessary to include under clause (1) other courts also. Provision has been made in sub-clause (3) for clothing other courts with powers similar to the powers that have been conferred upon the Supreme Court. Clause (4) guarantees not only the rights that have been guaranteed in clause (1) but also those guaranteed in clause (3). My friend, Mr. Naziruddin Ahmad, wants to incorporate what is contained in clause (4) in clause (1). The wording as it stands seems to be enough, and his amendment is not necessary. It is also not definite. It is rather clumsy. Under these circumstances, I am

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opposing the amendments moved by Mr. Naziruddin Ahmad and also the amendment relating to the deletion of clause (4). The article as it stands may be accepted.

B. Pocker Sahib Bahadur (Madras: Muslim): Mr. Vice-President, Sir, I wish to speak a few words on this article. As was observed by Mr. Ananthasayanam Ayyangar, I would say that this is the most important article of the whole Constitution and we have to take care to see that the rights conferred by this article are not watered down or in any way modified by other articles or even by the other clauses of this very article. Now, Sir, recent experience after we gained independence has taught us that we have to be much more careful in safeguarding the individual liberties and the rights of the citizens now than when we were ruled by the foreigners. I must say that the recent behaviour of certain provincial governments has taught us that it is very necessary to take careful measures to see that they are not allowed to behave in the manner they have behaved. I am referring to the way in which the sacred rights and liberties of the person were being dealt with by certain provincial governments under the cloak of the powers that they are said to possess. Very often, Sir, it has become the fashion with these Provincial Governments to say: "Well, some state of emergency has arisen and therefore, in the public interest, we shall utilise the powers conferred by the Public Safety Act and we shall have to curtail the liberties of so many people and put them in jail". And this is done without those people knowing on what grounds they are arrested, what is the sin that they have committed against the State or against the peace of the country, in order to deserve the curtailment of their liberty in this irresponsible fashion; and they are kept in that state of mind for weeks and months, without even being told what the ground is on which they are arrested and detained, even though the Government is bound to furnish them with the reasons for their arrest and detention, under the provisions of the Act under which the Government proposed to arrest them.

Now, Sir, if we look at the irresponsible way in which things were done very recently, it is very necessary that we must have very strong safeguards against the misuse and abuse of the powers which may be conferred on these Governments. I would say, Sir, that one principle which we have to bear in mind and we should always keep in view in framing this Constitution is that ministries may come and ministries may go, but the judicial administration must go on unaffected by the vicissitudes in the lives of these ministries and the changes in the Government. It is more to preserve their own power, I mean, the power of the particular party or the clique in power that these measures are resorted to than for any public purpose. Such a state of affairs should never be allowed to be tolerated. I shall refer to one instance, Sir.

In Madras the legislature was in session and all of a sudden, one evening, a notification was issued that the legislature was prorogued. For what reason it was done, nobody knew, and the next morning an ordinance was issued. To what effect? Apart from so many other things, there was the Public Safety Act and under that Act many people were arrested and detained in jail, without even being told what they are arrested for and why they are detained. Well, they were forced to resort to such remedies as were available under the existing law and applications were pending in the High Court for issue of writs of *Habeas Corpus* and the High Court issued in deserving cases writs of *Habeas Corpus*. The moment a person was released by the order of the High Court, that very moment he was re-arrested and put in jail again. And not satisfied with all these apparently, the Government felt annoyed by the independent way in which the High Court was exercising the legal powers conferred on it, under Section 491 of the Criminal Procedure Code. What happened was that one evening the Legislature was prorogued and the next morning an ordinance was issued, even taking away the power of the High

Court to issue writs under section 491 of the Criminal Procedure Code. Now, Sir, is there any *bona fides* in this? Can any reasonable man say that this could be done with any *bona fides*? This is the most scandalous way in which the powers conferred on the Government were being exercised. Under the cover of the powers conferred on them, they have acted in the most irresponsible way. Therefore, it is that I say, Sir, that the powers of courts should not be made to depend upon the will and pleasure of the Government and they should under no circumstances be allowed to interfere with the powers that vest in courts of law. If the very guarantee of personal liberty on which democratic form of Government is based and the powers vested in courts of law to enforce such rights independently are allowed to be interfered with, no one is safe. Of course, it is not a question of majority community; it is not a question of minority community but the powers that be at the time clap in jail such of the individuals or groups of people, whom they do not like and whom they do not want to be at liberty, perhaps for the fear that they may undermine the power which they are enjoying. It is one thing to make safeguards on occasions when there is general disturbance of the peace of the country, but it is quite another thing to give full powers to the Governments to do anything they like under the guise of these 'emergency powers' and empower them to take away powers vested in Courts of Law to protect the personal liberty of citizens.

Now, Sir, I would only like to point out this, that this is certainly one of the very important rights which has been conferred under this Constitution, but I am afraid, Sir, that clause (4) takes away with one hand what is given by the other, and therefore, I would heartily support the amendment that has been moved for the deletion of this clause. There is no necessity for that clause at all. Of course, as regards the powers to be exercised in case of emergency, there is provision under section 280 and even that would require modification and we shall have to deal with it when we reach that article, but by the provisions of this clause whatever powers are given by the previous clauses are interfered with and I would strongly support the amendment for the deletion of this clause. There is no necessity for it and as has been already pointed out by one of the honourable Members this will lead to a conflict with article 280 and there will be complications arising out of it. With these few words, I support the amendment for the deletion of this clause.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. Vice-President, Sir, now we have come to this last part of this Chapter and this article 25 gives the right to every citizen in the country to see that all the liberties guaranteed in this chapter are made available to him. He can go to the Supreme Court and demand that these laws be enforced. Sir, this is the crowning section of the whole chapter. Without it, all the articles which we have passed will have no meaning. As my honourable Friend, Mr. Ayyangar, has said, this is the most important section in the Constitution. This is, in fact, what makes all the fundamental rights become real. Everybody can have his remedies if any wrong is done to him, under this article.

I think, Sir, the article as it has been worded is very proper, and the demand for the deletion of clause (4) is not a proper one, at the present stage of our national development; though as a matter of principle, it may be said to be correct. In America and England there are no provisions under which the fundamental rights can be suspended. In fact, in England we have no such rights; they are unwritten rights. Still, in the present stage of our development, when the State is in fact being built up, I think this provision for the suspension of the rights in an emergency, as provided in the Constitution, is necessary. There will be an occasion for us to examine those articles under which these articles can be suspended and we will see whether those provisions are reasonable. But to say that even in an emergency, in a rebellion or on other such occasions, there should be no power to the State to suspend

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this Part of the Constitution, will, I think, be going too far, especially at this time of our national development. I think very soon when our State becomes stable, we shall be able to drop clause (4).

Clause (3) empowers the Parliament to make laws to empower the local courts to decide this question. I think this is also taking away to some extent the rights conferred here. Sir, the Supreme Court is the final authority. I have in fact a very high respect for the Supreme Court. I want that the Supreme Court should be a sort of a body almost independent of the Parliament. It should not be interfered with by the Parliament as in America. I therefore, think that this clause (3) which says that the Parliament will have power to make laws empowering any other court to decide this thing should not have been here. If Parliament does not want that the full import of the rights should be granted, they may empower any court to deal with this subject. I hope that in the first ten or fifteen years during which we experiment with this Constitution, we shall realise whether any Parliament is so determined as to make these rights null and void.

Sir, clause (2) gives the famous rights which are given all over the world, writs of *habeas corpus* and others. I think everybody will agree that this is very important and very good. Therefore, I think the article as it is, can be accepted, though, I think in later years if clause (3) is against the fundamental principles, it may be dropped. When our State becomes stable, clause (4) may also be dropped. That I think would be the proper form of this article after some time, when our democracy has become stable.

Sir, when we consider this article as the operative part of this chapter, we may review what we have done. In fact, this is a Chapter on Fundamental Rights. We have guaranteed against discrimination of all sorts; we have guaranteed that untouchability shall be abolished, which will be the most historic act done by the Assembly so far; we have granted the Charter of Liberty in article 13. I hope we will also pass article 15 wherein personal liberty and equality before law shall be guaranteed. Then, we have provided safeguards to minorities, both religious and cultural. The right to property has yet to be finally adopted. I think all these rights are the most important rights, the most valued rights of any citizen. I also want to say to my friends who yesterday thought that they were not sufficient to guarantee the rights of minorities, that the ultimate right of the minority is the good will of the majority. I personally feel that the majority has gone to the farthest extent in this matter. I may also point out one thing. The Fundamental Rights Committee was appointed before the partition took place. In fact, these rights were written in this form before the partition had taken place. The minorities' rights were laid down on the basis that there will be no partition. Yet, we have not changed them. I am not letting out a secret when I say that our great leader Sardar Patel told us, "kindly do not interfere with these rights, religious and cultural, because they form part of an agreement arrived at before the partition." If anybody says that these rights are not enough, I think it is the height of ungratefulness. I think we have guaranteed rights which our people will, probably, tell us in the future that we bartered away these rights. We have now declared that no religious education shall be given in the schools. Thirty crores of our people are Hindus; yet they shall not have the right to be taught even the universal religious book, the Gita, in the schools. Why have we done that? Because, at that time, before the partition, it was thought that in view of the fact that there are various religions, let it not be done. Now, when only three crores out of thirty-three are the minority, still, the majority is denying itself the opportunity of teaching the children the religious precepts of its community. Yet, we have not changed these rights, because our leader has told us not to interfere with them. I think, the way in which the majority has tried to accommodate the minority will be taken note of and it shall not be right for anybody to come forward and loudly

accuse the majority that it has not provided sufficient safeguards. I think the real guarantee of the minority is the good will of the majority. I hope that with these fundamental rights, we will be able to produce in this country a State which shall be a State based and inspired by the ideals of the great leader, the Father of the Nation, so that we can have in our country a really secular State; a State based on the ideals of Mahatma Gandhi.

With these words, Sir, I support this article.

Prof. N. G. Ranga (Madras: General): Mr. Vice-President, Sir, I am unable to understand the line of argument advanced by those friends who want clause (4) to be deleted, and who do not want to vest in the President of the Republic the power to suspend these fundamental rights under article 280 in case of emergencies. Sir, it has been said by more than one speaker that this article is the greatest guarantee for individual liberty in our country and that the Supreme Court is being set up as the biggest champion of the liberties of our people. But, has it been considered by these friends that just as individuals and groups have their rights, the society as a whole has certain rights *vis-a-vis* individuals and groups which are bent upon destroying that society, subverting the social order and dissecting the social organisation through violent means? Is it not a fact, Sir, that in the recent decades of this century there have been such attempts made by organized groups and minorities in different countries to subvert the social order and destroy the social life of the majority of the people themselves? What is the guarantee then for the continuance of the social order and social rights of the majority of the peoples in the different countries if an organized violent effort is made by a tiny minority? No effort has been made in this Constitution and in this Chapter to safeguard such a society. It may be said that there is a safeguard for the State; but is it not a fact that in Germany and Italy, a group of people organized for violence were able to get at the State and then subvert the whole of the society and destroy the fundamental rights of the majority of the people themselves? Is it not also a fact that in Soviet Russia even today an organized minority is in the saddle and is in charge of the State and is able to deny the fundamental rights not only to the whole of the majority of the people there, but also the fundamental rights of these individuals, as are being detailed here? Therefore, Sir, it is as well for us all to keep in mind this extreme need that society as a whole should safeguard itself against the possibility of organised minorities based upon violence, intent upon the use of violence, trying to use that violence. My Friend Mr. Pocker has tried to create a sort of bogey out of what had happened in Madras. Similar things could easily have happened in other provinces also. Can we deny, Sir, or can anyone else deny the fact that there were people at that time in Madras Presidency who made it their business to use all possible violent means in order to subvert our own society in the South, in order to go to the aid of a gang of people who had made themselves the enemies of the society as a whole in India and of the State, the Indian State as well as the Provincial States? Sir, what is it that the Madras Government could have done except what it had actually done—just catch hold of those people, restrain their liberties for a temporary period in order to prevent them from going to the rescue or from abetting the violent means and methods adopted by the Razakar movement in a particular part of our country? It cannot be denied by these friends that many of these friends whose liberty had to be restrained for a time had been, directly or indirectly, in league with those people who had their contacts with the Razakar movement; and under those circumstances, how could it be possible for any society to safeguard itself except by telling these friends that they should hold themselves in check and if they could not do so voluntarily it would be the charge of the Society, of the State, to restrain the liberties of these people for a time?

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Secondly, Sir, let us not forget that there is a world-wide conflict today between two great ideologies. There is totalitarianism on the one side, and on the other side, there is democracy. In this conflict we have to decide what we are going to do. These Fundamental rights can come to be exercised only by that society and those individuals who have a due respect for law, who have a due respect for fundamental rights of other people along with themselves and who therefore are prepared to behave themselves with a due sense of responsibility and restraint. Wherever such conditions do not obtain and wherever there are groups and parties who organize and make it their business to destroy the State and try to capture the State, certainly it would not be possible for any State or Society to respect these fundamental rights. That is the first pre-requisite for the exercise of these fundamental rights. Sir, it is a well-known fact that these concepts of fundamental rights have emerged out of the terrible sufferings that people have had to go through during the last two centuries in different countries all over the world. These are all sacred rights, rights that are sanctified by the very experiences of people in different countries. It is all true but why are these rights being conceded and how are they being claimed? Because the personality of the individual is found to be inviolable. The individual is found to be just as violable as society. An individual's right to liberty has got to be safeguarded at all costs, in every possible manner by the society as well as the State. If the life of that society itself is endangered, then.

Maulana Hasrat Mohani (United Provinces: Muslim): What about the right to strike?

Mr. Vice-President: Maulana Saheb, please do not interrupt.

Prof. N. G. Ranga: Mahatma Gandhi himself has already answered it in regard to strikes. It is possible for anyone to be allowed to go on strike or groups of people to go on strike provided they keep themselves non-violent. The moment they over-step the bounds of non-violence and begin to exercise violence against others who do not believe in that line of action re less-strikes,—whether you call them strikes or lock-outs, they have got to be banned and the people who indulge in these lock-outs have got to be dealt with in the only way by which society can possibly do so in order to safeguard itself. Sir, let us remember that individuals can exist not in vacuum but in a society. Therefore, the first condition precedent for any individual for the exercise of fundamental rights is the existence of society, the fundamentals of which, the soundness of which is its own organization. Therefore, those individuals who do not believe in social life, who are anti-social, who are intend upon disrupting and destroying society necessarily cannot be expected to claim and enjoy these fundamental rights. This is a very fair condition that every individual has got to satisfy.

Another thing is, it is not the Supreme Court which is going to ensure the exercise of this fundamental right to individuals or groups as much as an individual's and group's own capacity to stand up to its own fundamental rights and make the necessary sacrifice. It can do so in one of two ways. One is that of the Western World, that is, resorting to violence. The other is that of Mahatma Gandhi—resorting to *Satyagraha*. Now, a *Satyagrahi* cannot at one and the same time be both non-violent and violent in his expression, in his activities, in his incitement of others, in the various other methods that he adopts in order to subvert the society. A *Satyagrahi* has necessarily to be a peculiar individual, an individual distinguished from other individuals by the degree to which he can restrain himself and also ask his own followers to restrain themselves and pursue a non-violent line of action both in word, thought and action. Now such a *Satyagrahi* can always safeguard his own fundamental rights. In view of the fact that everyone cannot be a *Satyagrahi* and ordinary people also have got to be safeguarded, these

fundamental rights are being enshrined in this particular chapter. Therefore those who wish to enjoy this fundamental right, to safeguard their enjoyment, have got to discharge particularly their duty towards society as a whole. There may be groups and there are groups in this country, there may be individuals and there are plenty of them in this country, who do not believe in their duties towards society, but who only wish to exploit to the uttermost possible extent these fundamental rights. We know, Sir, of certain pamphleteers; we know of certain organizations; also we know of certain other communal champions who wish to exploit these liberties. What is it that Society has got to do? If they are only of negligible importance, then it is open to the ordinary rule of law to restrain them. But if on the other hand they become sufficiently powerful and vociferous they have got to be dealt with by the State as such, and if they attain a province-wide or a nation-wide importance, it will be the duty of the President of the Republic to invoke article 280 and declare an emergency and suspend the operation of these fundamental rights and deal with these gentlemen as they deserve to be.

Shri H. V. Kamath: Does my honourable Friend, Prof. Ranga, propose to deal with even vociferous minorities?

Prof. N. G. Ranga: Yes, but only those people who are vociferous in abusing others, without any sense of responsibility, without any restraint and without any sense of morality; and we know that we have had plenty of such people who were the cause of lot of disturbances, and. .

Mr. Vice-President: The answer you have already given is sufficient.

Prof. N. G. Ranga: Thank you, Sir.

Then, Sir, it is true the majority also can go mad, and therefore the people have to be protected from their tyranny. The majority can go mad in an organized and in an unorganised fashion. If they go mad in an unorganized fashion, without any leadership from the State, or society or anybody, then it is the duty of the State to come into the arena and deal with those people as best as it might, even at the peril of its own existence. A state which is not prepared to restrain its own unorganized or disorganized majorities, who believe in inflicting private punishment upon various people, whether they are organised or not, such a state does not deserve to exist. But on the other hand, if the majority is organized and it begins to function through the State itself, then who is to guarantee and uphold these fundamental rights? It may be said that the Supreme Court would be expected to do so. It is also quite possible that when an organized majority is functioning through the State and begins to misbehave in this fashion, the Supreme Court might be set at naught as it happened in Nazi Germany and Fascist Italy. Then what is the guarantee for these individuals or groups? There is a book by Prof. Laski called "Liberty in the modern State" in which. .

Shri Krishna Chandra Sharma (United Provinces: General): But what is the point? What is the relevancy of all that you say now to the point under discussion?

Prof. N. G. Ranga: There he makes it perfectly clear that. .

Mr. Vice-President: Mr. Sharma wants to know to what extent what you say is relevant to the article under discussion.

Shri H. V. Kamath: Sir, it is for you to decide.

Mr. Vice-President: But I want to hear Prof. Ranga, I think there is some connection however slight.

Prof. N. G. Ranga: The Supreme Court expected to issue writs, *mandamus*, and various other things If there were an organised party which refuses to respect these writs issued by the Supreme Court, what is the guarantee then for these fundamental rights? That is the relevancy. My answer is, it is the

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duty of every group to offer Satyagraha, provided that Satyagraha is carried out, and is offered in the Gandhian fashion, in a non-violent manner, and in a self-sacrificing fashion; these are the conditions under which Satyagraha can be offered. That is the instrument that Mahatma Gandhi has fashioned for the country and.

Shri H. V. Kamath: Sir, is the right to offer Satyagraha a fundamental right?

Prof. N. G. Ranga: Sir, I can only say that it is basic to all your fundamental rights. But Satyagraha need not be enshrined in any constitution. It can be enshrined only in the capacity of the people to offer sacrifice, and to offer themselves also as sacrifice. This conception of fundamental rights has come into existence in the world only because there were so many people in the history of the world who were prepared to offer themselves to martyrdom in order to establish these rights, in order to get this conception accepted by the whole of the civilized world and by the whole of the democratic world as fundamental rights.

Lastly, Sir, I wish to sound a note of warning. Let us remember that we can exercise these rights only within the orbit or within the ambit of democracy, and whenever there is serious danger to the very concept of democracy, to the exercise of democratic functions, to the institutions of democracy, it must be the duty of the State as well as that of the President of our Republic to set aside these fundamental rights in order to safeguard our people. Our friends, of course, who claim to belong to some sort of minority are nervous about it. But let me warn them in this way. It may be that their religion countenances totalitarianism, may be their cult countenances totalitarianism, but there can be no place for totalitarianism in this country; and if ever any group or individual were to try to establish totalitarianism in this country, especially to establish a totalitarian State, then it will be the sacred duty of the Supreme Court as well as that of the President of the Republic of this country to see that this Constitution is maintained at all costs, and these fundamental rights are not allowed to be exercised by those people or groups in such a way as to jeopardise our society.

Mr. Vice-President: Shri Rohini Kumar Chaudhari. You will please be brief.

Shri Rohini Kumar Chaudhari (Assam: General): Mr. Vice-President, Sir, this is the first time that I have brought these books to my table, and the House need not be apprehensive because I have brought them here, that I will be unnecessarily long or irrelevant. I would only like to tell you, Sir, once again that I am rather short of hearing, so far as bell-rings are concerned, though I can hear all right where whispering accusations are made.

Mr. Vice-President: I wish I had known this before, I would have thought twice before calling you to the mike!

Shri Rohini Kumar Chaudhri: Sir, I welcome this article because the enunciation of these fundamental rights would be meaningless if this article were not here to enable us to get our justice from the Supreme Court. I can quite understand the coyness of my friend Mr. Naziruddin Ahmad while he was moving his amendment. After all the man who is always fond of finding out small faults of drafting has been caught napping, and it has been found, and he has himself admitted it, that the whole of his amendment is not explicit. But I would submit that what he intended to convey has been conveyed by the article itself. Every person will have the right to move the Supreme Court whenever he finds that a fundamental right has been infringed. Supposing we want to say that the Queensway is open to traffic, one need not say that every person shall have the right to go through

Queensway. Similarly, the article as it stands here is quite explicit and does not require the amendment tabled by Mr. Naziruddin Ahmad.

I also welcome the provision which has been made herein that in some cases the Supreme Court may delegate its powers to some other courts. That will be a blessing to distant places like Assam and Coorg, because people from such places will find it extremely difficult to come and seek relief in the Supreme Court which is bound to be located somewhere in the United Provinces or Delhi. But at the same time I would like to mention here that such power of delegation should be exercised very sparingly because after all the personnel of the Supreme Court would no doubt be more qualified than the personnel of a High Court. Therefore to shut out the possibility or the chance of any particular province from coming to the Supreme Court and of making the High Court to exercise the Supreme Court jurisdiction would be somewhat anomalous.

I now come to the fourth clause of article 25. I wish I had spoken before my honourable Friend Mr. Ananthasayanam Ayyangar had spoken because he would have been able to explain some of the difficulties which I feel about this clause. Furthermore, I as well as most members of the House look upon our honourable Friend Mr. Ananthasayanam Ayyangar as something akin to Guru Dronacharya of old who can, notwithstanding his personal feelings and opinions, give a proper interpretation of the provision as taken by the framers of this draft. Subject to correction I consider that clause (4) should have been omitted or there should be a substantial modification of this clause. The Fundamental Rights are in the very nature of them rights which should never be taken away from the people. According to this clause these Rights can be taken away in a state of emergency. Article 280 says that in a state of emergency the President can keep the whole of article 25 suspended. Let us see what will be the result of this suspension—what will be the evil effect and what may be the possible good effect of this suspension. The evil effect of this suspension would be that in a state of emergency you can ignore article 11 which deals with untouchability. That is to say we conceive a set of circumstances which would entitle the State or any person to infringe against article 11 and go without any punishment. Any state, or any temple or any authority can infringe article 11 in a state of emergency. Does this House support such a view? Will the House under any circumstances agree to a suspension of the Constitution in so far as article 25 is concerned, and allow people who infringe against it to go with impunity?

Let us take again article 17 where traffic in human beings has been prohibited. Does the House agree that a suspension of the Constitution should take effect so that the people can indulge in traffic in human beings with impunity? I say that such a state of things may actually take place. Remember the last war when actually traffic in human beings was carried on for the exigencies of the war. What is after all the Women's Volunteer Service? What was W. A. C.? Everybody knows for what purpose the Women's Volunteer and Auxiliary Corps were organised and what functions they carried on. Traffic in human beings was actually carried on there, and it was carried on during the war in different cities where women were actually engaged for dancing and other purposes in order to keep up the morale of the troops. Do you, by agreeing to a suspension of article 25, countenance the possibility of traffic in human beings of this kind in a state of emergency which is spoken of during the war? I therefore wish that this last clause—clause (4) —of this article should either be deleted or amended in such a manner that it is not possible to suspend the entire article at any time but it can be suspended under certain most unavoidable circumstances. But, as a matter of fact I cannot envisage any circumstance which would make it necessary for you to suspend this article in any respect. During a state of emergency

[Shri Rohini Kumar Chaudhari.]

what you may want to suspend is article 13 where freedom of speech, freedom of association and all these things have been mentioned. It may be necessary during a period of emergency or when war is actually going on, to restrict the freedom of speech and the freedom of movement and other rights which are mentioned in that article. But that article also contains in every phase of it provisos which empower the State to restrict those rights. So far as that article, provisions which are most essential during a state of emergency, is concerned you have already got limitations and restrictions mentioned in the article itself. For that purpose the suspension of article 25 is not necessary. Therefore in my humble opinion, and subject to corrections and explanations which might be given by my honourable Friend Dr. Ambedkar or by any other member in this House, I would submit that it would be better from every point of view to do away with this clause (4) altogether or to amend it in a suitable manner.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Do you suggest that article 280 should also be deleted?

Shri Rohini Kumar Chaudhari: I was referring to article 280 in my speech.

Mr. Vice-President: You are not called upon to answer that.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, of the amendments that have been moved to this article I can only accept amendment No. 789 which stood in the name of Mr. Baig but which was actually moved by Mr. Naziruddin Ahmad. I accept it because it certainly improves the language of the draft. With regard to the other amendments I shall first of all take up the amendment (No. 801) moved by Mr. Tajamul Husain and the amendment (No. 802) moved by Mr. Karimuddin. Both of them are of an analogous character. The object of the amendment moved by Mr. Tajamul Husain is to delete altogether sub-clause (4) of this article and Mr. Karimuddin's amendment is to limit the language of sub-clause (4) by the introduction of the words 'in case of rebellion or invasion'.

Now, Sir, with regard to the argument that clause (4) should be deleted, I am afraid, if I may say so without any offence, that it is a very extravagant demand, a very tall order. There can be no doubt that while there are certain fundamental rights which the State must guarantee to the individual in order that the individual may have some security and freedom to develop his own personality, it is equally clear that in certain cases where, for instance, the State's very life is in jeopardy, those rights must be subject to a certain amount of limitation. Normal, peaceful times are quite different from times of emergency. In times of emergency the life of the State itself is in jeopardy and if the State is not able to protect itself in times of emergency, the individual himself will be found to have lost his very existence. Consequently, the superior right of the State to protect itself in times of emergency, so that it may survive that emergency and live to discharge its functions in order that the individual under the aegis of the State may develop, must be guaranteed as safely as the right of an individual. I know of no Constitution which gave fundamental rights but which gives them in such a manner as to deprive the State in times of emergency to protect itself by curtailing the rights of the individual. You take any Constitution you like, where fundamental rights are guaranteed; you will also find that provision is made for the State to suspend these in times of emergency. So far, therefore, as the amendment to delete clause (4) is concerned, it is a matter of principle and I am afraid I cannot agree with the Mover of that amendment and I must oppose it.

Now, Sir I will go into details. My Friend Mr. Tajamul Husain drew a very lurid picture by referring to various articles which are included in the Chapter dealing with Fundamental Rights. He said, here is a right to take water, there is a right to enter a shop, there is freedom to go to a bathing

ghat. Now, if clause (4) came into operation, he suggested that all these elementary human rights which the Fundamental part guarantees—of permitting a man to go to a well to drink water, to walk on the road, to go to a cinema or a theatre, without any let or hindrance—will also disappear. I cannot understand from where my friend Mr. Tajamul Husain got this idea. If he had referred to article 279 which relates to the power of the President to issue a proclamation of emergency, he would have found that clause (4) which permits suspension of these rights refers only to article 13 and to no other article. The only rights that would be suspended under the proclamation issued by the President under emergency are contained in article 13; all other articles and the rights guaranteed thereunder would remain intact, none of them would be affected. Consequently, the argument which he presented to the House is entirely outside the provisions contained in article 279.

Shri H. V. Kamath: What about article 280?

The Honourable Dr. B. R. Ambedkar: All that it does is to suspend the remedies. I thought I would deal with that when I was dealing with the general question as to the nature of these remedies, and therefore I did not touch upon it here.

Taking up the point of Mr. Karimuddin, what he tries to do is to limit clause (4) to cases of rebellion or invasion. I thought that if he had carefully read article 275, there was really no practical difference between the provisions contained in article 275 and the amendment which he has proposed. The power to issue a proclamation of emergency vested in the President by article 275 is confined only to cases when there is war or domestic violence.

Kazi Syed Karimuddin: Even if war is only threatened?

The Honourable Dr. B. R. Amedkar: Certainly. An emergency does not merely arise when war has taken place—the situation may very well be regarded as emergency when war is threatened. Consequently, if the wording of article 275 was compared with the amendment of Mr. Karimuddin, he will find that practically there is no difference in what article 275 permits the President to do and what he would be entitled to if the amendment of Mr. Karimuddin was accepted. I therefore submit, Sir, that there is no necessity for amendments Nos. 801 and 802. So far as I am concerned, No. 801 is entirely against the principle which I have enunciated.

I will take up the amendments of my friend Mr. Kamath, No. 787 read with No. 34 in List III, and the amendment of my friend Mr. Sarwate, No. 783 as amended by No. 43. My friend Mr. Kamath suggested that it was not necessary to particularize, if I understood him correctly, the various writs as the article at present does and that the matter should be left quite open for the Supreme Court to evolve such remedies as it may think proper in the circumstances of the case. I do not think Mr. Kamath has read this article very carefully. If he had read the article carefully, he would have observed that what has been done in the draft is to give general power as well as to propose particular remedies. The language of the article is very clear:

"The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

The Supreme Court shall have power to issue directions or orders in the nature of the writs of....."

These are quite general and wide terms.

Shri H. V. Kamath: On a point of explanation, Sir. With the accepted amendment of my friend Mr. Baig, the clause will read thus:

"The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*,....."

The Honourable Dr. B. R. Ambedkar: Yes, the words "directions and orders" are there.

Shri H. V. Kamath: And "writs".

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

While the powers of the Supreme Court to issue orders and directions are there, the draft Constitution has thought it desirable to mention these particular writs. Now, the necessity for mentioning and making reference to these particular writs is quite obvious. These writs have been in existence in Great Britain for a number of years. Their nature and the remedies that they provided are known to every lawyer and consequently we thought that as it is impossible even for a man who has a most fertile imagination to invent something new, it was hardly possible to improve upon the writs which have been in existence for probably thousands of years and which have given complete satisfaction to every Englishman with regard to the protection of his freedom. We therefore thought that a situation such as the one which existed in the English jurisprudence which contained these writs and which, if I may say so, have been found to be knave-proof and fool-proof, ought to be mentioned by their name in the Constitution without prejudice to the right of the Supreme Court to do justice in some other way if it felt it was desirable to do so. I, therefore, say that Mr. Kamath need have no ground of complaint on that account.

My friend Mr. Sarwate said that while exercising the powers given under this article, the Court should have the freedom to enter into the facts of the case. I have no doubt about it that Mr. Sarwate has misunderstood the scope and nature of these writs. I therefore, think, that I need make no apology for explaining the nature of these writs. Anyone who knows anything about the English law will realise and understand that the writs which are referred to in the article fall into two categories. They are called in one sense "prerogative writs", in the other case they are called "writs in action". A writ of *mandamus*, a writ of prohibition, a writ of certiorari, can be used or applied for both; it can be used as a prerogative writ or it may be applied for by a litigant in the course of a suit or proceedings. The importance of these writs which are given by this article lies in the fact that they are prerogative writs; they can be sought for by an aggrieved party without bringing any proceedings or suit. Ordinarily you must first file a suit before you can get any kind of order from the Court, whether the order is of the nature of *mandamus*, prohibition or certiorari or anything of the kind. But here, so far as this article is concerned, without filing any proceedings you can straightaway go to the Court and apply for the writ. The object of the writ is really to grant what I may call interim relief. For instance, if a man is arrested, without filing a suit or a proceeding against the officer who arrests him, he can file a petition to the Court for setting him at liberty. It is not necessary for him to first file a suit or a proceeding against the officer. In a proceeding of this kind where the application is for a prerogative writ, all that the Court can do is to ascertain whether the arrest is in accordance with law. The Court at that stage will not enter into the question whether the law under which a person is arrested is a good law or a bad law, whether it conflicts with any of the provisions of the Constitution or whether it does not conflict. All that the Court can inquire in a *habeas corpus* proceedings is whether the arrest is lawful and will not enter into the question—at least that is the practice of the Court—of the merits of the law. When a person is actually arrested and his trial has commenced, it is in the course of those proceedings that the Court would be entitled to go into the facts and to come to a decision whether a particular law under which a person is arrested is a good law or a bad law. Then the court will go into the question whether it conflicts with the provisions of the Constitution. Consequently, the

amendment moved by my friend Shri V. S. Sarwate, if I may say so, is quite out of place. It is not here that such a provision could be made. If he refers to article 115, he will find that a provision for similar writs has been made there. But those are writs which could be issued in connection with questions of fact and law. They would certainly be investigated by the Courts.

Now, Sir, I am very glad that the majority of those who spoke on this article have realised the importance and the significance of this article. If I was asked to name any particular article in this Constitution as the most important—an article without which this Constitution would be a nullity—I could not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it and I am glad that the House has realised its importance.

There is however one thing which I find that the Members who spoke on this have not sufficiently realised. It is to this fact that I would advert before I take my seat. These writs to which reference is made in this article are in a sense not new. *Habeas corpus* exists in our Criminal Procedure Code. The writ of *Mandamus* finds a place in our law of Specific Relief and certain other writs which are referred to here are also mentioned in our various laws. But there is this difference between the situation as it exists with regard to these writs and the situation as will now arise after the passing of this Constitution. The writs which exist now in our various laws are at the mercy of the legislature. Our Criminal Procedure Code which contains a provision with regard to *habeas corpus* can be amended by the existing legislature. Our Specific Relief Act also can be amended and the writ of *habeas corpus* and the right of *mandamus* can be taken away without any difficulty whatsoever by a legislature which happens to have a majority and that majority happens to be a single-minded majority. Hereafter it would not be possible for any legislature to take away the writs which are mentioned in this article. It is not that the Supreme Court is left to be invested with the power to issue these writs by a law to be made by the legislature at its sweet will. The Constitution has invested the Supreme Court with these rights and these writs could not be taken away unless and until the Constitution itself is amended by means left open to the Legislature. This in my judgment is one of the greatest safeguards that can be provided for the safety and security of the individual. We need not therefore have much apprehension that the freedoms which this Constitution has provided will be taken away by any legislature merely because it happens to have a majority.

Sir, there is one other observation which I would like to make. In the course of the debates that have taken place in this House both on the Directive Principles and on the Fundamental Rights, I have listened to speeches made by many members complaining that we have not enunciated a certain right or a certain policy in our Fundamental Rights or in our Directive Principles. References have been made to the Constitution of Russia and to the Constitutions of other countries where such declarations, as members have sought to introduce by means of amendments, have found a place. Sir, I think I might say without meaning any offence to anybody who has made himself responsible for these amendments that I prefer the British method of dealing with rights. The British method is a peculiar method, a very real and a very sound method. British jurisprudence insists that there can be no right unless the Constitution provides a remedy for it. It is the remedy that makes a right real. If there is no remedy, there is no right of all, and I am therefore not prepared to burden the Constitution with a number of pious declarations which may sound as glittering generalities but for which the Constitution makes no provision by way of a remedy. It is much better to be limited in the scope of our rights and to make them real by enunciating remedies than to have a lot of pious wishes embodied in the Constitution I am very glad that this House has seen that

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the remedies that we have provided constitute a fundamental part of this Constitution. Sir, with these words I commend this article to the House.

Shri H. V. Kamath: On a point of clarification, Sir, as we are dealing with justiciable fundamental rights and the guaranteeing of these by the Supreme Court and in view of the fact that article 280 has also been invoked, will it not be more desirable to say that "the rights guaranteed by this article shall not be suspended wholly or in part"... or any similar set of words which the legal luminaries may choose?

The Honourable Dr. B. R. Ambedkar: "Shall not be suspended" covers both. It is unnecessary to specify it.

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

The question is:

"That for clause (1) of article 25, the following clause be substituted, namely:

'(1) Every person shall have the right by appropriate proceedings to enforce the rights conferred by this Part.' "

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (1) of article 25, for the words 'Supreme Court' the words "Supreme Court or any other Court empowered under clause (3) to exercise the powers of the Supreme Court" be substituted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 787 standing in the name of Mr. Kamath.

Shri H. V. Kamath: In view of the remarks made by Dr. Ambedkar on this matter, I do not wish to press it.

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

Mr. Vice-President: Then we come to amendment No. 789 standing in the name of Mr. Mahboob Ali Baig, but moved by Mr. Naziruddin Ahmad.

The question is:

"That in clause (2) of article 25, for the words 'in the nature of the writs of' the words 'or writs, including writs in the nature of' be substituted."

The amendment was adopted.

Mr. Vice-President: Amendment No. 794 standing in the names of Dr. Ambedkar, Mr. Madhava Rau and Mr. Saadulla.

The question is:

"That for existing clause (3) of article 25, the following clause be substituted:

'(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2) of this article, Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2) of this article.' "

The amendment was adopted.

Mr. Vice-President: Amendment No. 43 of List 1 standing in the name of Mr. Sarwate.

Shri V. S. Sarwate: I do not wish to press it.

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

Mr. Vice-President: Amendment No. 44 of List 1.

The question is:

"That in amendment No. 794 of the List of Amendments, in the proposed clause (3) of article 25, the words 'Without prejudice to the powers conferred on the Supreme Court by clause (2) of this article' be deleted.'

The amendment was negatived.

Mr. Vice-President: Amendment No. 801.

The question is:

"That clause (4) of article 25 be deleted."

The amendment was negatived.

Mr. Vice President: Amendment No. 802 standing in the name of Mr. Karimuddin. The question is:

"That in claus (4) of article 25, for the words 'as otherwise provided for by this Constitution' the words 'in case of rebellion or invasion and when State of Emergency is proclaimed under Part XI of this Constitution' be substituted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 805 by Mr. Naziruddin Ahmad. The question is:

"That in clause (4) of article 25, for the word 'guaranteed' the word 'conferred' be substituted."

The amendment was negatived.

Mr. Vice-President: I will now put to the vote article 25 as amended by amendments Nos. 789 and 794. The question is:

That article 25, as amended, stand part of the Constitution.

The motion was adopted.

Article 25, as amended, was added to the Constitution.

Article 25-A

Mr. Vice-President: We next come to article 25-A. Amendment No. 808 by Mr. Lari.

(The amendment was not moved.)

Article 26

Mr. Vice-President: We then come to article 26. The motion before the House is:

That article 26 form part of the Constitution.

Amendment No. 809 is of a negative character and therefore disallowed.

(Amendment No. 810 was not moved.)

Amendments Nos. 811 and 812 are of similar import. I should say they are almost identical. I allow 811 to be moved.

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

"That in article 26 for the words 'guaranteed in' the words 'conferred by' be substituted."

This part does not guarantee but only confers these rights. Therefore to bring the language in conformity, I propose this amendment.

Mr. Vice-President: There is an amendment to this amendment. No 18 of List I.

(The amendment was not moved).

(Amendment No. 813 was not moved.)

I shall now put article 26 to vote.

Shri T. T. Krishnamachari: How can the article be put to the vote before the amendment is put to the vote?

Mr. Vice-President: The question is:

"That in article 26 for the words 'guaranteed in' the words 'conferred by' be substituted."

The amendment was adopted.

Mr. Vice-President: The question is that:

That article 26, as amended stand part of the Constitution.

The motion was adopted.

Article 26, as amended, was added to the Constitution.

Article 27

(Amendments Nos. 814, 815 & 816 were not moved.)

Mr. Vice-President: Amendments Nos. 817 and 818 are to be considered together. 817 may be moved; it stands in the name of Dr. Ambedkar.

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

"That for clause (a) of article 27 the following be substituted :

'(a) with respect to any of the matters which, under clause (2a) of article 10, article 16, clause (3) of article 25 and article 26 may be provided for by leigslation by Parliament, and' "

The object of introducing this addition of clause (2a) of article 10 is because this is a new clause which was adopted by this House. It is, therefore, necessary to make a reference to it in this article.

Mr. Vice-President: There is an amendment to this amendment.

The Honourable Dr. B. R. Ambedkar: I have moved it as amended.

Mr. Vice-President: I see.

(Amendment No. 818 was not moved.)

Amendment No. 819 is a verbal amendment. Amendment No. 820 may be moved.

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

"That for the words 'to provide for such matters and for prescribing punishment for such acts' the words 'for prescribing punishment for the acts referred to in clause (b) of this article' be substituted."

Mr. Vice-President: Amendment No. 48 of List I standing in the name of Mr Naziruddin Ahmad. Does he wish to move it?

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

"That in amendments Nos. 820 and 822 of the List of Amendments, in article 27 and in the proviso to article 27, the words 'in this article', wherever they occur, and the words 'of this Constitution' in the Explanation be deleted."

Mr. Vice-President: It is very much like a verbal amendment.

Mr. Naziruddin Ahmad: Yes, Sir; because I was called, I had to obey the ruling of the Chair and that is why I came to the mike to move it, but this is verbal.

Mr. Vice-President: I am very grateful. I take it that you are not moving it.

Mr. Naziruddin Ahmad: No, Sir. I have already moved the amendment, but I do not wish to press it.

Mr. Vice-President: Amendments Nos. 822 and 823 are of similar import. No. 822 can be moved.

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

"That for the proviso and explanation to article 27, the following be substituted :

'Provided that any law in force immediately before the commencement of this Constitution in the territory of India or any part thereof with respect to any of the matters referred to in clause (a) of this article or providing for punishment for any act referred to in clause (b) of this article shall, subject to the terms thereof, continue in force therein, until altered or repealed or amended by Parliament.

'*Explanation.*—In this article the expression 'law in force' has the same meaning as in article 307 of this Constitution.' "

(Amendments Nos. 50 of List No. 1, 65 of List No. IV and 823 were not moved.)

Mr. Vice-President: The article is now open for discussion.

(At this stage Mr. Kamath rose to speak.)

Mr. Vice-President: I hope you will permit me to get the things through before we disperse, in which case, I shall adjourn the House at 1 o'clock.

Shri H. V. Kamath: I am equally anxious. Mr. Vice-President, I am here seeking only a little light from Dr. Ambedkar with regard to his amendment No. 820 moved by him. I fail to see clearly why the words in the article as it stands at present should be substituted by the words he proposes to. In case his amendment is accepted, it will mean that Parliament shall have power only for prescribing punishment for the acts referred to in clause (b). Then what about the Parliament's power to make laws with respect to any of the matters which under this power are required to be provided for by legislation in clause (a)? Does he intend by his amendment to take away the power which is sought to be conferred by clause (a) of this article? It is conceivable that there are certain matters about which there are not laws already in force. Therefore, if there be such matters with regard to which there is no law in force, does he intend by his amendment to take away the power sought to be conferred by clause (a) of this article, which is 'to make laws with respect to any of the matters which under this Part are required to be provided for by legislation by Parliament'? The amendment seeks to give power only for prescribing punishment and not for making laws with respect to the matters required to be provided for by legislation under this Part. I want to know exactly what the import of his amendment is and why this clause (a) is sought to be amended in this fashion.

The Honourable Dr. B. R. Ambedkar: I am sorry, Mr. Kamath has not been able to understand the scheme which is embodied in article 27. This article embodies three principles. The first principle is that wherever this Constitution prescribes that a law shall be made for giving effect to any fundamental right or where a law is to be made for making an action punishable, which interferes with Fundamental Rights, that right shall be exercised only by Parliament, notwithstanding the fact that having regard to the List which deals with the distribution of power, such law may fall within the purview of the State Legislature. The object of this is that Fundamental Rights, both as to their nature and as to the punishments involved in the infringement thereof, shall be uniform throughout India. Therefore, if that object is to be achieved, namely, that Fundamental Rights shall be uniform and the punishments involved in the breach of Fundamental Rights also shall be uniform, then, that power must be exercised only by the Parliament, so that there may be uniformity.

The second thing is this If there are already Acts which provide punishments for breaches of Fundamental Rights, unless and until the Parliament makes another or a better provision, such laws will continue in operation. That is the whole scheme of the thing. I do not see why there should be any difficulty in understanding the provisions contained in article 27.

Shri H. V. Kamath: I am sorry, Sir, that Dr. Ambedkar has not been able to follow me clearly. (*Laughter*)

The Honourable Dr. B. R. Ambedkar: It is quite possible.

Mr. Vice-President: Mr. Kamath, it may be the other way.

Shri H. V. Kamath: Sir, he has answered a different point from the one which I raised. My point was different. Perhaps he was not listening to me carefully. He was talking to some one else. If you will permit me, Sir, I shall try to explain the point.

Mr. Vice-President: Yes; but do not address the House; you must address the Chair.

Shri H. V. Kamath: I am addressing you, Sir, as I always do. The difficulty that arises is this. In the article as it stands at present, clause (a) gives Parliament alone the power. I do not question this; I agree Parliament and Parliament alone should have the right. You say here Parliament shall

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have power to make laws with regard to any of the matters. Further on, you say that Parliament shall, as soon as may be, after the commencement of this Constitution, make laws to provide for etc., etc. Now, Dr. Ambedkar wants to substitute this latter part by amendment No. 820. You want to omit the words "provide for such matters" and retain only the proviso as regards punishment. What about making laws for such matters? Why do you delete that portion? Why do you retain only the part regarding punishment? That was my point, but Dr. Ambedkar has answered a different point.

The Honourable Dr. B. R. Ambedkar: The reason why, for instance, I have introduced an amendment in clause (a) is because it is only in specific matters that Parliament has been given this penal authority and these articles are referred to in my amendment. My friend Mr. Kamath will see that clause (a) contains no reference to any of the articles which specifically give Parliament the power to make laws. It is to make that point clear that I thought it would be desirable to make a reference to clause (2a) of article 10, article 16, clause (3) of article 25 and article 26, because, these are the specific articles which are to be dealt with exclusively by Parliament.

Mr. Vice-President: I shall now put the amendments to vote. All of them stand in the name of Dr. Ambedkar.

Amendment No. 817 as amended by amendment No. 56 of List III.

The question is:

"That for clause (a) of article 27 the following clause be substituted:

'(a) with respect to any of the matters which under clause (2a) of article 10 article 16, clause (3) of article 25, and article 26, may be provided for by legislation by Parliament, and,'."

The amendment was adopted.

Mr. Vice-President: Amendment No. 820.

The question is:

"That for the words 'to provide for such matters and for prescribing punishment for such acts' the words 'for prescribing punishment for the acts referred to in clause (b) of this article' be substituted."

The amendment was adopted.

Mr. Vice-President: Amendment No. 822.

The question is:

"That for the proviso and explanation to article 27, the following be substituted:

'Provided that any law in force immediately before the commencement of this Constitution in the territory of India or any part thereof with respect to any of the matters referred to in clause (a) of this article or providing for punishment for any act referred to in clause (b) of this article, shall, subject to the terms thereof, continue in force therein, until altered or repealed or amended by Parliament.

Explanation.—In this article the expression 'law in force' has the same meaning as in article 307 of this Constitution.'"

The amendment was adopted.

Mr. Vice-President: The question before the House is:

"That article 27, as amended, stand part of the Constitution."

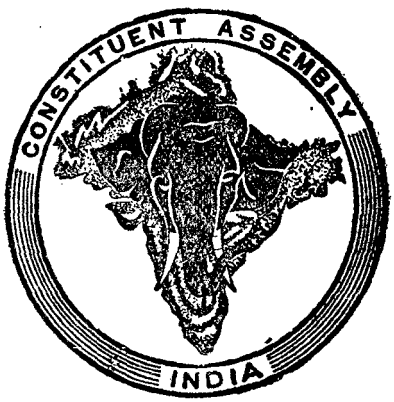
The motion was adopted.

Article 27, as amended, was added to the Constitution.

Mr. Vice-President: The House stands adjourned till Ten of the Clock tomorrow.

The Assembly then adjourned till Ten of the Clock on Friday the 10th December 1948.

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1948

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

Friday, the 10th December 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.

B. Pocker Sahib Bahadur (Madras: Muslim): Mr. Vice-President, Sir, may I have your permission to move that the House adjourn at one o'clock as to-day is Friday and the Muslim members have to attend their Jumma prayers?

Mr. Vice-President (Dr. H. C. Mookherjee): We shall adjourn at one o'clock. That much of consideration will be shown to our Muslim brethren and I am quite sure that the House agrees with me.

Honourable Members: Yes.

B. Pocker Sahib Bahadur: Thank you, Sir.

DRAFT CONSTITUTION—(*contd.*)

Article 27-A

Mr. Vice-President: We shall consider Amendment No. 824 to article 27-A.

(The amendment was not moved.)

Mr. Vice-President: Amendment No. 825 also in the name of Dr. Raghuvira. He is not in the House.

(Amendment No. 825 was not moved.)

Mr. Vice-President: Now we come to Part V. On page 106 of the printed list of amendments, we have amendment No. 1032 on the new articles 41—44 in the name of Shri Gopal Narain.

Prof. K. T. Shah (Bihar: General): Sir, may I remind you that an amendment of mine was held over—amendment No. 1030—which involves a big principle. By agreement it was held over with article 40-A. That is on page 105.

Mr. Vice-President: Yes, amendment No. 1030, Prof. K. T. Shah.

New Article 40-A

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That after article 40, the following new article be inserted:

'40-A. There shall be complete separation of powers as between the principal organs of the State, viz., the Legislative, the Executive, and the Judicial.'"

Sir, I regard this as the most important, the very basic requirement of what I would call a Liberal constitution. I am aware, Sir, that this Draft has been founded on the compromise between what are known as Presidential governments and Parliamentary governments. The Parliamentary government has a sort of link between the Executive, the Legislative and the Judiciary. The Presidential tries to keep no such link, and has complete separation of powers between the three principal organs of the state, each embodying the sovereignty of the people in the different aspects of a State's activities.

[Prof. K. T. Shah]

The ideal, however, and the reasons for that ideal, which have guided many modern States in basing their constitution upon a doctrine of complete separation have arisen from bitter past experience. In the constitutions like that of England centuries ago, the ultimate combination of all authority in the person of the King, had lead to many evils culminating in a Civil War, ending in the execution of one king, and a bloodless Revolution leading to the adbication or expulsion of another king. The arrangement which was evolved thereafter has been kept in conformity with the genius of the British people, not so much by a written Constitution, as by evolving constitutional conventions, supported by centuries of usage. And these have become even more sacred than the written word in a written constitution.

But I do not think this will be applicable to us in this country at this moment. I do not think that it would be easy to realise in new grounds, where new experiments of self-government are being tried on an imperial scale. As such I feel persuaded that when we start our own Constitution, when we make a beginning in this land, in the working of democracy, I think it would be best if we have complete separation of powers between the three principal organs of the State.

For one thing, Sir, if you maintain the complete independence of all the three, you will secure a measure of independence between the Judiciary, for example, and the Executive, or between the Judiciary and the Legislature. This, in my view, is of the highest importance in maintaining the liberty of the subject, the Civil Liberties and the rule of law. If there was contact between the Judiciary and the Legislature, for instance, if it was possible to interchange between the highest judicial officers and the membership of the legislature, then, I am afraid, the interpretation of the law will be guided much more by Party influence than by the intrinsic merits of each case. The Legislature in a democratic assembly is bound to be influenced by Party reasons rather than by reasons of principle.

I am not decrying Parties. Please do not misunderstand me. All I am saying is that after all, Parties are mundane, dealing with mundane things, and as such they are bound to attach much more importance to considerations of the moment, to merely transitory ideas, to importance of personalities, by which a Judiciary would not be affected. It is of the utmost importance that the Judiciary should be above suspicion, and, therefore, out of or above any contamination. I hope the word is not hard to anybody. It should be above contamination by political prejudices that are rife in all political parties.

If contact or connection is maintained between the Judiciary and the Executive organs of the State, there is also the possibility of undue influence, of misleading, of misdirecting and mis-influencing those who are appointed to interpret the Constitution, those who are appointed to be guardians of Civil Liberties, those who have to administer justice.

In the environment in which we are living, in the traditions under which our judicial system has been evolved, I am afraid justice is a very costly luxury. It is really not the easy privilege of the poor man. Though you have provided a number of appeals, though you have provided a hierarchy of powers, you have also evolved, side by side, a most costly, a most wasteful, a most extravagant system of legal advice and legal assistance by professional lawyers, which only those who have undergone protracted litigation know how costly it is, how confusing, and how almost prohibitive it is, to ordinary mortals.

But even so, even granting that justice must not be cheap and must be available to those who can pay for this luxury, let it not be tainted, I beg you, let it not be influenced by considerations other than the intrinsic merits of each case

When the chapter dealing with the Judiciary comes up before the House I may have occasion to move other amendments to point out where and how our present system suffers. But we should have the ideal of absolute purity of justice; even though it should happen to be class justice, let us make it at least free from taint of ulterior motives. The administrators of justice are unconsciously or sub-consciously coloured by their own inherited or acquired class prejudice. That cannot be helped all at once. But leaving that aside, and leaving aside even such a matter as was discussed yesterday in the House—of having the right to move the Supreme Court—I would say that, so long as you have not merely the combination of the Judiciary and the Executive, but also the possibility of translation from a high judicial office to an equally high or sonorous executive office; so long would your Judiciary be open to suspicion, so long your administration of justice would suffer by personal privileges or personal ambitions, and so long, therefore, you will not be able to maintain your civil liberties to the degree and in the manner of purity that is highly desirable in a country like this.

I would, therefore, suggest, in the first place, that the Judiciary should in any case be completely separated, and should attach regard only to the written letter of the law, irrespective, let us say, of the debates in this House at the time the Constitution itself was passed, irrespective of Party or personal considerations, irrespective of any other motives that might otherwise affect human and mundane things.

The same logic, in a different form, applies also to the case of the Legislature and the Executive. The less contact there is between them, the better for both, I venture to submit. The executive is in a position to corrupt the House; the executive is in a position to influence votes of the members, by the number of gifts or favours they have in their power to confer in the shape of offices, in the shape of Ministerships, in the shape of Ambassadorships, in the shape of Consulships, and any number of offices which the Executive has it in its power to bestow. We have come to a stage in political evolution when the old system called the "spoils system" is no longer upheld in any civilised country. But yet, in fact, it does happen that fifty, sixty, seventy, a hundred people may be open to be influenced by those who have it in their power to distribute even the highest offices of the State. In England, for instance, out of 615 Members of Parliament, something like 70 members are Cabinet Ministers or Parliamentary Secretaries, or other Ministers and so on. This on a minor scale—I hope the House will pardon me for saying so—we are trying to reproduce here, by creating Ministers and Ministers of State and Deputy Ministers, and I suppose Parliamentary Secretaries to come. These may be—and I am sure they are—all honourable people influenced entirely by the desire of offering their services and their talents to the service of the country. But still the fact remains that the influence of the Party system, the idea of favouring one's own people, those who agree with them and become their camp-followers, is a much more influential and important consideration, than the absolute and exclusive eye to the merits or the fitness or the appropriateness of an individual for an office.

It is the exigency of Parliamentary government, as it has been developed in the West and which we are copying, that the consideration most prominent in such appointments is how many votes can an individual bring if he is appointed to a given ministerial office rather than how much real service he would be able to render to the country. As such I for one unhesitatingly and unexceptionally condemn the system of Parliamentary Government, the system of a link between the Legislature and the Executive on which this Constitution is based.

I know that my voice almost appears as a voice in the wilderness. But I think it my duty to place this on record that, after a close study of the working of Constitutions elsewhere, after a close study stretching over perhaps thirty-five years of the development of political institutions in this country, and their

[Prof. K. T. Shah]

influence on our public life, on our public morality, on even our private relations, I venture to suggest that this is not a very healthy example we are copying; and that the sooner we get rid of the combination of executive, judiciary and legislature in some supreme Cabinet, in some supreme authority, the better for us it would be.

Lastly, Sir, I come to the division between the Executive and the Legislature. It has worked for over a hundred and fifty years in America, quite satisfactorily, where the Legislature and the Executive are kept wholly apart. They had before them, much more than we have before us, the model of the English Constitution where the combination had already been achieved to a degree of perfection, that was looked upon even by such students as Burke or Fox as the basis of their Civil Liberties, of the liberalism of the English Constitution.

Nevertheless, under the influence and aegis of scholars and thinkers of the type of Jefferson, they did devise a constitution which kept completely apart the Legislature, the Executive and the Judiciary. For a hundred and sixty years that Constitution has worked without any serious difficulty. Even in the midst of wars, and even under internal civil war, they have been able to maintain their freedom and their liberal constitution. That would not have been the case, if they had started on the same lines, and worked their Party system in the same manner that the Whigs used for perhaps a century.

I could go on saying a great deal on this subject without once repeating myself. But I am aware that the patience of the Chair is not unlimited; and I know the temper of the House is not very sympathetic; and so having said my say in this matter, I would commend my proposition such as it is to the House.

Shri K. Hanumanthaiya (Mysore): Sir, I listened with great respect to Prof. Shah's argument about his amendment. I fear the new clause he has moved is completely out of tune with the constitutional structure which this House has proposed and the Drafting Committee has adumbrated. We in this House have given our approval to parliamentary system of government, and what Prof Shah sponsors in his amendment is, I might say, the Presidential executive. Of course, we can argue about the merits and demerits of both the systems, but we have come to accept the parliamentary system to be suitable to this country and for very good reasons that system seems to be better adapted to conditions in India than Presidential executive. I think instead of having a conflicting trinity it is better to have a harmonious governmental structure. If we, as he says, completely separate the executive, judiciary and the legislature, conflicts are bound to arise between these three Departments of Government. In any country or in any Government, conflicts are suicidal to the peace and progress of the country. The first and foremost foundation on which a Government or society can work is peace to begin with and if there is separation—not separation but Prof. Shah wants complete separation—then conflicts are sure to arise between these three Departments of Government. Therefore, I say that in a Governmental structure it is necessary to have what is called "harmony" and not this three-fold conflict.

Then, it has become the fashion of the day with some people to decry the executive and make the judiciary look as if it is the paragon of all virtues. I would respectfully place this view before Prof. Shah and people of his way of thinking. Whereas judges no doubt are impartial and they have no sides to take, we must remember also that the executive governments in India or anywhere else in the world, have to work under very difficult circumstances. To carry on a government and to please people is not an easy matter. Many a time they work under difficult circumstances with danger to their lives. They will naturally incur displeasure. Some people are prone to take advantage of these conditions and displeasures to raise controversies and to decry the

executive. To continually decry the executive and the legislature and to exalt the judiciary is not doing service either to the judiciary or to the governmental structure. If I understand the term correctly, independence of the judiciary means that the executive or its officers should not interfere in the day to day administration of justice. That does not mean, as some people interpret it, that the judiciary must be the master of the executive or should be on a par with the executive government. Government in any country must govern. The powers of governing should vest with one set of people and it is unsafe for us to divide it into three equal parts and especially in the extreme degree that Prof. K. T. Shah contemplates. Even in America, though theoretically there is complete separation of powers between these three departments, we all know the party system of Government softens its rigours to a very great extent. In America there are two well organised parties and these parties determine what is to be done in their respective party meetings. At these meetings, conflicts which could have arisen between these three departments of Government, are softened, smoothened and ironed out so that the evils of this system are eliminated. Sometimes when one party has a majority in the Legislature and another in the executive, conflicts surely arise. In order to make the judiciary impartial it is unnecessary for us to exalt it to the position of the Government or the Legislature. It is wrong to argue that a few judges of the Supreme Court are better than four hundred Members of the Legislature, the duly chosen representatives of the people, or the accredited leaders of the nation. This is a topsy-turvy argument. The sooner we give up this psychology which is born of political controversies, the better. Therefore, I oppose the new clause. My main reason is that this House is wedded to a parliamentary system of democracy and this new clause is out of place in such a constitutional structure.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, I agree with my friend, Mr Hanumanthaiya that the clause as it stands here in the amendment will not be in its proper place in the Constitution. Yet I cannot help saying that I agree to a very great extent with the reasoning advanced by my learned friend, Prof. K. T. Shah. We have experimented with parliamentary democracy for so many years. Now I personally feel that, though Dr. Ambedkar in his original address very clearly told us that we have to choose between the British system and the American system, and said that the American system gives more security and the British system more responsibility, yet we had decided here to choose more responsibility; if it were left to his choice he would have preferred the American system. I agree to a very great extent about the evils of the present parliamentary system. We have seen parliamentary parties in so many provinces like in Sind, in Bengal and in other places, where Ministers try to keep their parties by giving bribes to the people who have even four or five votes so that the majority party may remain in being. I feel that this system wherein people have merely to keep the majority in power is being put to abuse. I know that in England they are working the system in a perfect manner. But they have a tradition of 700 years. They have developed their methods whereas we are just entering upon our democratic freedom and we cannot imitate it to perfection. It will have to wait until the whole national character changes and it is not possible that we can imitate England. Probably our slavery has led us to imitate the British system. If left to ourselves we would have copied the American system. In that system there is complete separation of the judicature from the legislature and the legislature from the executive. The legislature there can pass any laws which it thinks best for the country and the President has to obey them. Here the Leader of the majority party must have the House with him. The House will only pass those laws which the party thinks are necessary. The legislature cannot be independent of, but it has to be submissive to, the executive. In most places where the leaders are outstanding, the parties will say "ditto" to what they say and the real will of the majority will not be voiced. Therefore I think this

[Prof. Shibban Lal Saksena]

becomes more like a one-man Government than anything else. In America, people are free; they can pass laws even against the President. There have been cases where in spite of the laws passed by the legislature—the Congress—it has been set aside by the Supreme Court and the President has to see that any action of his is not against the fundamental laws of justice. The Supreme Court is far more powerful than anyone else. I, however, think that now we have gone too far to change the basis of our Constitution, because in the last two years we have passed everything in accordance with the British Constitution, and probably it is too late now in the day to change the whole system. But I do think that there is great force in what Prof. Shah has said and though this amendment is not in its proper place, still I do think that this House will remember that although we are all for a system which has been tried in England and is being worked out there in a satisfactory manner, still in our country we will have to be careful to develop traits which make that constitutional working possible. In England, they could throw out even Churchill in the new elections although he was the man who saved England and her freedom. Have we that sort of characteristic in our country where we can throw out anyone if we think he is not good enough? What is necessary for our country we must do, even though it may be against the will of the biggest person. Until then, we cannot work parliamentary democracy. I therefore think that this amendment has given this House an opportunity to express its doubt as to whether we have done wisely in accepting the present system. But I think it is now too late in the day to change the whole system and also that this amendment has no place at this time. It should have really come as a change of the whole system. But still, I think that where the Supreme Court is concerned, I wish it were appointed by the majority in the legislature and not by one single person. Everywhere, its independence must be guaranteed and I have given amendments that the Supreme Court must be completely independent of the judicature and the legislature. It must be the one body which should decide what is guaranteed with respect to our liberty, etc. I hope this amendment will at least help us to see that the Supreme Court's independence is not in any way minimised. In regard to this I heard one of the most eminent authorities in the Assembly say "Today the High Courts are not independent; they are influenced by the political consequences of their actions".

I hope in future our Supreme Court will be free from these influences and that they will do what is necessary and observe the principles inherent in this Constitution.

Kazi Syed Karimuddin (C.P. and Berar: Muslim): Sir, I am entirely in agreement with the amendment of Prof. K. T. Shah. I know that the system approved by the Constituent Assembly is a parliamentary system of government but even then I had urged the adoption of a non-parliamentary system of government in India. We have seen since 1920, that the working of the Government of India Act and other Local Self-Government Acts based on the Parliamentary system of Government has demonstrated a miserable failure. In the parliamentary system of government, it is as clear as daylight that the political opponents are practically crushed, neglected and ignored; we have no conventions and we have no discipline and it is very difficult for our people who are not trained in parliamentary system of government to put up with opposition in the country. What we have seen in India is this: that the Ministers are slaves of the legislature and they have to depend for their existence and for their continuance in office on the popular views of the people in the country. They cannot use their independent judgment; they cannot use their independent discretion; the result is that those who keep them in power influence the judgment and the discretion of the Ministers to the great detriment of those who are in opposition. In this country there are heterogeneous people, with different principles and with different programmes. We have seen in the

country, particularly in Noakhali, in Bihar and in the two Punjabs, arson, murders and looting. It has all happened because the Governments were based on parliamentary systems. The Ministers in both the Punjabs, in Noakhali and in Bihar did not take up a strong attitude partly because they cannot go against the popular frenzy of the people which was prevailing in Bihar, Noakhali and in the Punjabs. Therefore, if you want perfect peace in the country, if you want tranquillity in the country, if you want political parties or political opposition to thrive in the country, it is very necessary that there should be a non-parliamentary system of government.

Now, it has been practically accepted on the floor of the House that the judiciary here, under the parliamentary system of government, can never be independent and, if it is not independent, the guaranteeing of the Fundamental Rights about personal liberty and property will be only farcical. Unless the judiciary is independent of the executive and the legislature, it is impossible to have protection under the Fundamental Rights and to have decisions which will be based on independent considerations.

My friend from Madras, while opposing this amendment gave three reasons. He said that it is impossible to create a harmonious structure in which political parties can work together in a non-parliamentary system of Government. My submission is that under parliamentary system, it is not a harmonious structure, but a structure in which political opponents are crushed. A harmonious structure is one in which all parties are allowed to work in a harmonious way in which the opposition is accommodated. Therefore it cannot be said that in a parliamentary system of government, where there is no discipline or toleration, one can expect a harmonious structure.

Then, Sir, it was said that there would be a great conflict between the legislature, the executive and the judiciary, if there is a non-parliamentary system of government. My submission is that it will all be to the good if the judiciary is independent of the executive and disagrees with the excesses committed by the legislature. It would be a healthy sign in a democratic State. Then, it was said that the Ministers and the executive have to please the people. Well, that is exactly the reason why we want a non-parliamentary system of government. We want separation between the legislature, the executive and the judiciary only because in trying to please the people they commit such excesses that their opponents are killed, crushed, neglected and ignored. Therefore I say, the reasons advanced by my honourable Friend from Madras in favour of a parliamentary system of government go against him. We want a system of government in which there is minimum pleasing of the supporters. It is wrong to say that the system of Government which exists in England alone is based on democracy. There are other systems such as the American system based on democracy. It cannot be said that the American model is not based on democracy. If you really want a stable and a strong government, if you really want communalism to die out, you must create an atmosphere in which popular frenzy will have no room and in which political opposition will be tolerated. We do not want vacillating governments and ministers who have to please their supporters for their continuance in office. Therefore I very strongly support the amendment moved by Prof. K. T. Shah.

The Honourable Shri K. Santhanam (Madras: General): Mr. Vice-President, there is no doubt that Prof. Shah has raised a question of great constitutional importance. Unfortunately, however, he is a little too late. This Assembly has already discussed the question and taken a decision in favour of parliamentary system of government and, on the basis of that decision, the entire Constitution has been drafted by the Drafting Committee. So, unless a revolutionary change of opinion has taken place among the majority of Members, Prof. Shah's proposition is hardly a practicable one at the present moment. Therefore I do not want to go in detail into this question of the Presidential

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versus parliamentary executive. I may remark, Sir, that this so-called complete separation of legislative, executive and judicial powers is, even in the American Constitution, a myth to a considerable extent. Though the Supreme Court of the United States is said to be completely separate from the executive, we have seen how President after President has tried to manipulate the Supreme Court by appointing judges to suit his own views. Whenever there has been a conflict between the President and the Supreme Court, the President has had only to wait till some judge retired and then put in his own nominee in his place and get judgments in his own favour. Therefore, so long as the President is the ultimate appointing authority, the authority of the judiciary has to some extent to be dependent on the executive. But, so far as our Constitution is concerned, it lays down that our Supreme Court will be as independent of the executive and the legislature as the Supreme Court of the United States. To that extent Prof. Shah's desires have been fulfilled in the Constitution.

Prof. Shibban Lal Saksena: There the judges are appointed by the Congress and the Senate.

The Honourable Shri K. Santhanam: Where?

Prof. Shibban Lal Saksena: In the United States of America.

The Honourable Shri K. Santhanam: But it is the President who has to nominate them.

Prof. Shibban Lal Saksena: But he has to get the consent of the Senate.

The Honourable Shri K. Santhanam: Yes; whether with the consent of the Senate or not, the appointing authority is the President. Therefore the President will give the choice only to his nominee and so, whether it is A, B, C, or D, he will nominate only those people who conform to his views, especially on the most important questions. But barring the appointing authority, so far as the independence of the judiciary is concerned, we have provided for such independence in our Constitution as in any other Constitution. Therefore the real issue is regarding the merits of the presidential and parliamentary types of executive. Sir, two or three years ago I was myself strongly inclined towards the presidential type of executive for the Central Government of India, but after listening to the discussions and after further consideration, I am now convinced that it is not perhaps as desirable for the country as I once thought it was because, Sir, the future of this country is that of an economic State. If we are to be mainly a police State, certainly the separation of the executive and the legislature will be of great importance. If strength and stability are the only considerations or even the main considerations to be borne in mind in framing the Constitution of India, then I do think that there is a strong case for the presidential executive but today what is more important than stability or strength is quick economic progress. Even our stability, even our strength will be dependent upon the tempo in which the economic reconstruction of India can be proceeded with. I believe that Prof. K. T. Shah is very anxious that the Indian economy should be reconstructed on socialistic lines as quickly as possible, but if there is presidential executive, I think his desires in this respect will be greatly checkmated. One of the defects of the presidential system is that the executive and the legislature may be at loggerheads very frequently. This has been the case in the United States, and when they are at loggerheads for a period of three or four years till either the legislature is renewed or the President is re-elected, the whole thing will be a deadlock. Sir, I do not think in this country we could afford to lose even a period of three or four years in such conflicts. All the advantages of the presidential executive in the form of a free hand for the President and stability for the executive will be lost even if a small period of conflict arises. Sir, we have to socialise many industries, establish new corporations, create new forms of credit, for all of

which the daily co-operation of the executive and the legislature is of the greatest importance. Unless this co-operation is forthcoming at least in the formative period of Indian freedom, then our progress which has already been delayed by the foreign rule will be further delayed and popular impatience at the delay of economic reconstruction will break all bounds and ordered democracy may become impossible. Therefore, Sir, as the Central Government is going to be vested with more powers than I had thought, as we are to be a little more unitary than federal, it is all the more essential that the executive and the parliament at the Centre should form one integral whole and function as one unit. Unless they do so, the whole progress of the country will be delayed. If on the other hand we had trusted provincial autonomy to a far greater extent and left all constructive programmes and economic reconstruction to the units, then I would have been for responsible government in the provinces and presidential executive at the Centre, for then the Centre's business will be only to keep India safe and united and to allow the units to function in the economic sphere freely; but it has been considered desirable—and on very strong grounds—that the Central Government of India should have an active, continuous and formative part in the economic reconstruction of the whole country and for this purpose only a responsible Cabinet or the parliamentary executive will suffice. Therefore I hope Prof. K. T. Shah will reconsider his views and withdraw his amendment. In any case, I oppose the amendment.

Mr. Vice-President: I am well aware that there are many more Members who want to speak and who are fully competent to deal with this subject, but I think that it has been discussed sufficiently. Therefore I shall call upon Dr. Ambedkar. I am sorry to disoblige honourable Members, but I think they will recognise the fact that we have to make a certain amount of progress daily.

Shri Lokanath Misra (Orissa: General): But many points have been left untouched.

Mr. Vice-President: Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. Vice-President, Sir, this matter, as honourable Members will recall, was debated at great length when we discussed one of the articles in the Directive Principles which we have passed. It was at my instance that it was sought to incorporate in the Directive Principles an item relating to the separation of the executive and the judiciary. Originally the proposition contained a time limit of three years. Subsequently as a result of discussion and as a result of pointing out all the difficulties of giving effect to that principle, the House decided to delete the time limit and to put a sort of positive imposition upon the provincial governments to take steps to separate the executive from the judiciary. On that occasion, all this matter was gone into and I do not think that there is any necessity for me to repeat what I said there. There is no dispute whatsoever that the executive should be separated from the judiciary.

With regard to the separation of the executive from the legislature, it is true that such a separation does exist in the Constitution of the United States; but if my friend, Prof. Shah, had read some of the recent criticisms of that particular provision of the Constitution of the United States, he would have noticed that many Americans themselves were quite dissatisfied with the rigid separation embodied in the American Constitution between the executive and the legislature. One of the proposals which has been made by many students of the American Constitution is to obviate and to do away with the separation between the executive and the judiciary completely so as to bring the position in America on the same level with the position as it exists, for instance, in the U. K. In the U. K. there is no differentiation or separation between the executive and the legislature. It is advocated that a provision ought to be made in the Constitution of the United States whereby the members of the Executive shall be entitled to sit in the House of Representatives

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or the Senate, if not for all the purposes of the legislature such as taking part in the voting, at least to sit there and to answer questions and to take part in the legal proceedings of debate and discussion of any particular measure that may be before the House. In view of that, it will be realised that the Americans themselves have begun to feel a great deal of doubt with regard to the advantage of a complete separation between the Executive and the Legislature. There is not the slightest doubt in my mind and in the minds of many students of political science, that the work of Parliament is so complicated, so vast that unless and until the Members of the Legislature receive direct guidance and initiative from the members of the Executive, sitting in Parliament, it would be very difficult for Members of Parliament to carry on the work of the Legislature. The functioning of the members of the Executive along with Members of Parliament in a debate on legislative measures has undoubtedly this advantage, that the Members of the Legislature can receive the necessary guidance on complicated matters and I personally therefore, do not think that there is any very great loss that is likely to occur if we do not adopt the American method of separating the Executive from the Legislature.

With regard to the question of separating the Executive from the Judiciary, as I said, there is no difference of opinion and that proposition, in my judgement, does not depend at all on the question whether we have a presidential form of government or a parliamentary form of government, because even under the parliamentary form of Government the separation of the judiciary from the Executive is an accepted proposition, to which we ourselves are committed by the article that we have passed, and which is now forming part of the Directive Principles. I, therefore, think that it is not possible for me to accept this amendment.

Mr. Vice-President: I shall now put the amendment of Prof. K. T. Shah to vote.

Prof. K. T. Shah: Can I speak a few words in reply, Sir? This is a new article, and not an amendment.

Mr. Vice-President: Though it may be an article, it is an amendment to the Draft Constitution. This would create a very awkward situation. We have established a convention after a good deal of difficulty, and I am quite sure Prof. Shah would realize the difficulties of the Chair.

(Prof. Shah resumed his seat.)

Mr. Vice-President: Thank you. You are most reasonable and helpful.

The question is:—

"That after article 40, the following new article be inserted:

'40-A. There shall be complete separation of powers as between the principal organs of the State, viz., the Legislative, the Executive, and the Judicial.'"

The motion was negatived.

Mr. Vice-President: So far as I remember, our work commences with amendment No. 1033. This is disallowed as a formal amendment.

Amendment No. 1034 is I think blocked in view of the fact that a new article—39-A—has been already accepted by the House.

Then we come to article 41.

Article 41

Mr. Vice-President: After going through the amendments one by one, I find that amendments Nos. 1037, 1038 and 1039 are mainly concerned with the name our Motherland would bear. I think they ought to be held over for

the present. That pertains to article 1, the consideration of which we have postponed for the time being.

The Honourable Shri K. Santhanam: I want to know whether it is your ruling that these amendments are not relevant to these articles. If you decide to keep them over, then we cannot pass that article.

Mr. Vice-President: You are a pundit in these technicalities. Could we not transfer them to article 1 by some device or other, so that we could pass this article?

The Honourable Shri K. Santhanam: If the name is changed in article 1, the consequential changes will be made. These amendments may be ruled out for the present and may be taken up when you take up article 1.

Shri H. V. Kamath (C. P. & Berar: General): I did not hear a word of what the honourable Member said.

Mr. Vice-President: Mr. Santhanam, please come to the mike and explain the position. Please do not get impatient, Mr. Kamath.

Shri H. V. Kamath: We are impatient to hear him, Sir.

The Honourable Shri K. Santhanam: When we take a decision regarding the names to be used, even if we take a decision either in the title or in article 1, the consequential changes will be made throughout the Constitution. Therefore, I do not see any necessity that we should take it up at every point. If you want to pass this article, then all these things will have to be treated as not relevant to this particular article. Otherwise, every such article will be held up and these amendments would be kept pending and so long as they are not disposed of, we cannot pass the article. Therefore, I suggest that all such amendments should be taken as not pertaining to any particular article, but pertaining to the general Constitution.

Mr. Vice-President: I think that for practical reasons, we should adopt the procedure suggested by Mr. Santhanam.

Then we come to amendment No. 1035. This deals not only with the future name of our motherland, but is also concerned with the salary of the President. So it is ruled out.

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

"That for article 41, the following be substituted:—

'41. The Chief Executive and Head of the State in the Union of India shall be called the President of India.'"

I do not read the alternative, and I shall confine myself only to the main proposition.

In the title of the President, instead of the clause giving it barely as it stands, I should like that there be some indication of the status and power of the President. There shall be a President of India whose position and title should be made a little more clear and definite than it is at present. I therefore, describe him as "the Chief Executive and Head of the State".

I take it that there is no dispute regarding the status and position of the President as the Head of the State. That is, in a way different from the Head of the Governmen, which may be the Prime Minister or the President himself, as I had conceived it. But whether or not there is a separate head of the Government, there must be, for formal, ceremonial and solemn occasions, a representative of the people collectively embodying the sovereignty of the whole people and of the State as a whole. As such, I think, it would be better if my amendment is substituted for the original article, and the President is also described as the Chief Executive and Head of the State in the Union of India, called the President of India. I do not think I need take the time of the House

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by dilating upon this, because all that I can say would be a verbal expansion of the idea so briefly put forward in this amendment. Therefore, without taking further time, I commend it to the House.

Mr. Vice-President: You do not move the second part?

Prof. K. T. Shah: I do not move the second part.

Mr. Vice-President: Amendment No. 1037 has been ruled out for reasons already known to the House. Amendment No. 1038 has also been ruled out.

(Amendment No. 1039 was not moved.)

The article is now open for general discussion, although I do not think there is any need for it.

Shri Mahavir Tyagi: (United Provinces: General): Sir, I do not want to take up much of the time of the House: but since I have not taken any for the last week or more, I think I deserve taking a minute.

My only point is to emphasise the amendment tabled by Prof. K. T. Shah which points out a direction which is very important from the point of view of a discussion on the floor of this House. There is a lack in the constitution. He has rightly pointed out—I do not know whether this is the proper place to mention this idea—that we must define as to who is the representative of the people so far as sovereignty is concerned. He says: "the Head of the State in India represents the sovereignty of the people." We have not yet decided the question of the residence of sovereignty. I had moved an amendment on this point and it was promised that it would be taken up for consideration when we discuss the Preamble to the Constitution. I am waiting for that opportunity, Sir. But I feel that the Head of the State must also represent the sovereignty of the people. After all, how otherwise will the people express themselves? No Government in democratic countries can ever claim to be fully representative of the people as a whole. The Government here, although they represent the ambitions and aspirations of the people, and even though they are the most popular people in the country, it cannot be said that they are the representatives of the total population of India; they are not the representatives of the whole people because they have a party bias and a party manifesto on which they have been elected. The Government must as a rule represent the majority party in the country. A Government cannot therefore be the true spokesmen of the whole people. There must be some unit, some authority, some person in whom paramountcy or sovereignty should be vested, in whom the prerogatives of the people should be vested. I therefore submit, Sir, that it would have been a good idea if we had laid down that the President was not only the Executive Head of the State but also a symbol of the sovereignty of the people.

Sir, I want to make a distinction between people and the State. The State has always the bias of administration. In the problem of the governed and the governor, whether it be democracy or any other cracy, the State governs and the people are governed. It is therefore necessary that in a democratic State full chance of expression should be given to the minorities or opposition. Because, when the minorities speak in a House of Legislature or in a Parliament, they speak purely with the bias of the people. In this House, as it is, if it were sitting as Legislative Assembly—we are now the Constituent Assembly—Dr. Ambedkar and his colleagues would always represent the bias of the administration. They know the difficulties of administration; but the people want their own bias to be expressed irrespective of what the administrative difficulties are. Such expressions and demands always come through the mouthpiece of the opposition, which has to be protected against the majority rule.

Mr. Vice-President: Will you kindly explain how the question of the President comes in here?

Shri Mahavir Tyagi: I want to emphasise that it is an essential requirement of the Constitution that the sovereignty of the people must also be vested in some person or somebody other than the Government. I only want to press the argument that the Government, howsoever popular it may be, cannot claim to be sovereign. It would have been a good idea if the President were made a symbol of the people's will so that he could command respect and devotion from all alike. He could then stand between the people and the Government. In that case he would have the capacity not only of being the Executive Head, but also of being the representative of the sovereignty of the people so that in him the minorities also could find their reflection and protection. Sovereignty lies in the people; but how will it express itself? It cannot be expressed by the Government, because the Government is not the total people. Sometimes, it may be majority of only fifty one per cent and it may also be possible that a forty-nine per cent minority may go unrepresented altogether. If the House agrees to vest the paramountcy and all prerogative and sovereignty in the people, then there must be some authority wherefrom the sovereignty may flow and express itself.

The Honourable Shri K. Santhanam: On a point of information, Sir in this Constitution, Parliament is the repository of the sovereignty of the people. That is the scheme of all constitutions where we have the parliamentary executive.

Shri Mahavir Tyagi: My friend has taken me aback; I cannot immediately reply to his argument. But, I feel that sovereignty will not be represented by the Parliament because the Parliament also included the Council of States. I must submit that the Council of States is not representative of the people because as envisaged here, the Council of States will be the representative only of the majority parties in the provinces. That House will not come through the single transferable vote system of proportional representation; it will be a House of the States and the members thereof must represent the various States which in turn are again the representatives of the majority party. In these circumstances, the members of the Upper House will be representatives of their Governments and not of the people. There are to be 250 members of the Council of States. They will always be biassed by the difficulties of Governments in the various States. They will come here to represent their Governmental difficulties and to poise their demands from the points of view of their Governments. I submit.....

Shri T. T. Krishnamachari: (Madras: General): They will also be elected by the majority party.

Mr. Vice-President: Instead of being floored.....

Shri Mahavir Tyagi: I cannot be floored.

Mr. Vice-President: Instead of being floored.....

Shri Mahavir Tyagi: I am in possession of the floor myself.

Mr. Vice-President: Instead of being floored, will it not be better if you reserve these observations to the proper time?

Shri Mahavir Tyagi: I am aware of your anxiety to finish the discussion early. Sir, my friend Mr. T. T. Krishnamachari says that as the members of the Council of States will also be elected by the elected representatives of the people, they will represent the people. I claim they will not. For instance I have been elected by the people in my province as an M.C.A. but if I am deputed to be on the Public Service Commission, certainly in the Commission I shall act purely as a member of the Commission; I will not use my capacity as a representative. Likewise, when you elect members to the Council of

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States, they cannot use their representativeship of the people, they will represent their respective States. They are deputed to represent the Governments. I therefore submit that the Parliament will not be so ideal a representative of people's sovereignty, as the Parliament will always be run by the majority party. If those who are governed cannot express themselves direct, then let their mouth-piece—the President—speak for them and let him guard the interest of the minorities and also of the people as a whole. I submit, Sir, it is a question which warrants deep consideration. I therefore hope that the House will give due consideration to the suggestion made.

Shri H. V. Kamath: Mr. Vice-President, this article 41 shares the honour with article 1 as being the shortest article in the Constitution. This is a seven-word article and there need not be much disscussion on this very short article. I do not therefore propose to dilate upon the doctrine of Sovereignty which has been adumbrated by my friend Professor Shah and further adverted to by my friend Mr. Tyagi. I want, Sir, by your leave, to draw the attention of the House to the manner in which this article as it was adopted by this Assembly last year in August 1947 has been sought to be modified in the Draft Constitution. I hope, Sir, Dr. Ambedkar is paying attention. I wish to draw his attention to the modification that has been made in the article after it was adopted last year by this Assembly. I do not know what reasons the wise men of the Drafting Committee had to make such an alteration in this article. I have got the Reports of Committees—First Series and Second Series—both agree so far as the wording of this article is concerned. The original draft presented by the Committee over which Pandit Jawaharlal Nehru presided and of which Committee, I think, Dr. Ambedkar too was a member, of the Union Constitution Committee,—that report was presented by Pandit Jawaharlal Nehru on the 4th July 1947 and considered by the Assembly and adopted partly by this Assembly sometime in August 1947. If Dr. Ambedkar turns to this Report as adopted by the Assembly, he will see that the article corresponding to article 41 reads as follows:—

"The Head of the Federation shall be the President (Rashtrapati)."

Now in the draft the article has been modified to read as follows:—

"There shall be a President of India." On the Committee which presented this report to the Assembly last year, not merely Dr. Ambedkar but along with him some of the wise men of the Drafting Committee—the majority of the wisemen—were on the Committee. I think only Mr. Madhava Rao and Mr. Khaitan were not on the Union Constitution Committee. The others were all present in the Committee and they have not appended a minute or a note of dissent to the Report of the Constitution Committee presented by the Committee to the Assembly. I want to know from Dr. Ambedkar why this word 'Rashtrapati' has been deleted from the article which appears in the Draft Constitution today. Is it because, Sir, that we have now developed—latterly developed, cultivated a dislike—a new-fangled dislike of some Indian or Hindi words and try to avoid them as far as possible in the English draft of the Constitution? I have not in mind the word 'Pradesh'; but certainly we have adopted words like 'begar' and 'panchayat'. I wonder how many Britishers, how many Anglo-Americans know the words 'begar' and 'panchayat'—except those Britishers who have served in India. I therefore want to know the reason which actuated Dr. Ambedkar and the wise men of the Drafting Committee to delete this word 'Rashtrapati' from this article as it has been presented to the Assembly. Is the reason this, that that title or that name or designation, that appellation should be reserved exclusively for the Congress President, President of the Congress Organization which functions today, and perhaps will function even after this new Constitution has come into force? The argument may be advanced that the word 'Rashtrapati' is not

much in vogue, has not been in vogue in India for many years. I do not know whether Dr. Ambedkar has been very familiar or acquainted with this title or word 'Rashtrapati' during the last twenty-five years. During the last two generations, however, the word 'Rashtrapati' has gained common currency, has been in vogue to describe the person who is the Head of the Congress Organization, meaning the Head of the Nation. Or is it because that the wise men of the Drafting Committee when they shook themselves free of certain shackles—because when they were members of the Constitution Committee, Pandit Nehru was there who had been Rashtrapati himself but when they shook themselves free from the shackles of other members like Nehru, they got together as seven members of the Drafting Committee, did they think that this word 'Rashtrapati' is not very pleasant or well-sounding or is it because in their heart of hearts they did not have really much regard for this word apart from the person who used to be the Rashtrapati in former times?

Mr. Vice-President: You need not give the reasons for Dr. Ambedkar's action.

Shri H. V. Kamath: I just wanted to put forward the reasons that might have actuated Dr. Ambedkar and put forward my own point of view. So I would like to know from Dr. Ambedkar, in view of the article as passed by the Assembly last year unanimously, why he and his colleagues of the Drafting Committee have sought to delete this word 'Rashtrapati' from the article as it appears in the Draft Constitution.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, before I take up the points raised by Prof. K. T. Shah in moving his amendment, I would like to dispose of what I might say, a minor criticism which was made by Mr. Kamath. Mr. Kamath took the Drafting Committee to task for having without any warrant altered the language of the report made by the committee dealing with the Union Constitution. If I understood him correctly, he accused the Drafting Committee for having dropped the word "Rashtrapati" which is included in the brackets after the word President, in paragraph 1 of that committee's report. Now, Sir, this action of the Drafting Committee has nothing to do with any kind of prejudice against the word "Rashtrapati" or against using any Hindi term in the Constitution. The reason why we omitted it is this. We were told that simultaneously with the Drafting Committee, the President of the Constituent Assembly had appointed another committee, or rather two committees, to draft the constitution in Hindi as well as in Hindustani. We, therefore, felt that since there was to be a Draft of the Constitution in Hindi and another in Hindustani, it might be as well that we should leave this word "Rashtrapati" to be adopted by the members of those committees, as the word "Rashtrapati" was not an English term and we were drafting the Constitution in English. Now my friend asked me whether I was not aware of the fact that this term "Rashtrapati" has been in current use for a number of years in the Congress parlance. I know it is quite true and I have read it in many places that this word "Rashtrapati" is used, there is no doubt about it. But whether it has become a technical term, I am not quite sure. Therefore before rising to reply, I just thought of consulting the two Draft Constitutions, one prepared in Hindi and the other prepared in Hindustani. Now, I should like to draw the attention of my friend Mr. Kamath to the language that has been used by these two committees. I am reading from the draft in Hindustani, and it says:—

"HIND KA EK PRESIDENT HOGA..... "

The word "Rashtrapati" is not used there.

Then, taking the draft prepared by the Hindi Committee, in article 41 there, the word used is प्रधान (PRADHAN). There is no "Rashtrapati" there either.

Shri H. V. Kamath: But, Sir, the point I raised was that the article as adopted by this House had word "Rashtrapati" incorporated in it. The reports of the Hindi or Hindustani Committees are not before the House, and all that I wanted was that this word should find a place in the Draft Constitution now being considered here.

The Honourable Dr. B. R. Ambedkar: And I am just now informed that in the Urdu Draft, the word used is "Sardar". (*Laughter*).

Now, Sir, I come to the question which has been raised substantially by the amendment of Prof. K. T. Shah. His amendment, if I understood him correctly, is fundamentally different from the whole scheme as has been adopted in this Draft Constitution. Prof. K. T. Shah uses the word "Chief Executive and the Head of the State". I have no doubt about it that what he means by the introduction of these words is to introduce the American presidential form of executive and not the parliamentary form of executive which is contained in this Draft Constitution. If my friend Prof. Shah were to turn to the report of the Union Constitution Committee, he will see that the Drafting Committee has followed the proposals set out in the report of that Committee. The report of that Committee says that while the President is to be the head of the executive, he is to be guided by a Council of Ministers whose advice shall be binding upon him in all actions that he is supposed to take under the power given to him by the Constitution. He is not to be the absolute supreme head, uncontrolled by the advice of anybody, and that is the parliamentary form of government. In the United States undoubtedly, there are various Secretaries of State in charge of the various departments of the administration of the United States, and they carry on the administration, and I have no doubt about it, that they can also and do as a matter of fact, tender advice to the President with regard to matters arising under their administration. All the same, in theory, the President is not bound to accept the advice of the Secretaries of State. That is why the United States President is described as the Chief Head of the Executive. We have not adopted that system. We have adopted the parliamentary system, and therefore my submission at this stage is that this matter which has been raised by Prof. K. T. Shah cannot really be disposed of unless we first dispose of article 61 of the Draft Constitution which makes it obligatory upon the President to act upon the advice of the Council of Ministers. Do we want to say it or not, that the President shall be bound by the advice of his Ministers? That is the whole question. If we decide that the President shall not be bound by the advice of the Council of Ministers, then, of course, it would be possible for this House to accept the amendment of Prof. K. T. Shah. But my submission is that at this stage, the matter is absolutely premature. If we accept the deletion of article 61 then I agree that we would be in a position to make such consequential changes as to bring it into line with the suggestion of Prof. Shah. But at this moment, I am quite certain that it is premature and should not be considered.

Mr. Vice-President: I am now going to put the amendment to vote, amendment No. 1036, first part, standing in the name of Prof. K. T. Shah. The question is:

"That for article 41, the following be substituted :—

'The Chief Executive and Head of the State in the Union of India shall be called the President of India.'"

The motion was negatived.

Mr. Vice-President: The article will now be put.

The question is:

"That article 41 stand part of the Constitution."

The motion was adopted.

Article 41 was added to the Constitution.

Article 42

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

"That article 42 form part of the Constitution."

Shri H. V. Kamath: On a point of order, this article 42 is out of place. The order should have been "The President and his election"—the articles relating to this matter should have come first, and "powers of the President" should have come after the election of the President. My authority for this is the report of the Union Constitution Committee which the Assembly adopted last year. I should therefore think that this article 42 must be considered after article 43.

Mr. Vice-President: This matter can be mentioned when we come to the third reading of the Constitution.

Shri H. V. Kamath: But this should be noted by the Drafting Committee.

Mr. Vice-President: I see Dr. Ambedkar's pencil moving rapidly.

Now, to take up the amendments: Nos. 1043 and 1049 are disallowed as being verbal. Amendment No. 1040 by Prof. K. T. Shah.

Prof. K. T. Shah: Mr. Vice-President, I beg to move—

"That for clause (1) of article 42, the following be substituted:

'(1) The sovereign executive power and authority of the Union shall be vested in the President, and shall be exercised by him in accordance with the Constitution and in accordance with the laws made thereunder and in force for the time being.' "

or alternatively,

"(1) The executive authority, power and functions of Government shall be vested in the President and shall be exercised by him in accordance with the Constitution and the law with the advice and help of such ministers, officers or servants of the State as may be deemed necessary by him."

Before explaining the difference that there is between two alternative forms of the same idea, I should like to point out, if I may, that the argument which has been urged by the Chairman of the Drafting Committee about the appropriate place of any amendment or alteration suggested in this House is a little out of place itself. The reason is that after all this is an order settled by the Drafting Committee, and we can only give amendments on the order as it is.

An argument was also urged that if—and I agree with it—we go on holding over amendments and articles, their mutual correlation may be forgotten or overlooked; and therefore, it would be safest perhaps, and in the best interests of a full discussion, that a definite order is established. We submit most cheerfully to the suggestion you gave, at the very outset of the debate on an article that some stated amendments would be taken up and in the stated order.

That is a perfectly reasonable and proper thing to do. But when an amendment or article is placed before the House, and then suddenly a surprise is sprung upon Members that this is out of place or out of time, I think it is somewhat unfair. Let those who are responsible for drafting make up their mind in what order they will take Chapter by Chapter, and we can understand that and shall co-operate. The idea that we will, in the middle of discussions, switch over from one article to another or one section to another, makes it, I submit in all humility, a little difficult for those who are responsible for a number of amendments to keep track, and to marshal their own arguments. One comes prepared for a particular set of articles; and one is suddenly told that they are not to be taken up or that it is not their place and so on. However much one may carry one's own argument in one's head, one feels a little upset to be asked all of a sudden to make up one's mind whether this thing is to be moved or not to be moved.

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Secondly, having moved, the argument or suggestion that this is not the proper place etc. and that a given amendment be taken after another article has been dealt with is, again I submit, a little difficult for members, because it might, so to say, pre-judge the main issue. If you hold it over and get to the later article.....

Mr. Vice-President: Are you not moving my amendment, Prof. Shah?

Prof. K. T. Shah: I am placing my difficulty, because the same argument may be used here again that this is out of place. That is why I am replying to it. I am very much afraid having heard this line of reasoning—I do not say that the reasoning is false—I am only saying that it makes it difficult for us to put forward, in the only way in which we can put forward, the amendments, namely, according to the order prescribed or given in the book.

Having said this, I would like to point out quite frankly that naturally all my amendments hang together, and that they arise out of a certain view of the Constitution, out of a certain view of the distribution of powers, of finances etc. which may not be accepted; but which nevertheless is a possible, a known alternative way of doing it.

I have, therefore, brought forward this amendment. I trust it will be examined or dealt with on its merits, and not merely on the ground that it is out of place or it cannot now be discussed. I venture to submit that even if the basic principle is other than I thought would be acceptable to the House, even then, on a point like this, viz., the powers and place of the President may be considered quite irrespective of the governing or basic principle; and if adopted, can be fitted in even in the scheme of the Constitution which you have accepted.

I would, therefore, suggest that the powers and functions of the President should have the place as if they are the powers and functions of the sovereign people being exercised by the Chief Executive of the State. He will be the Chief Executive, I take it, for the time that he is in office; just as the King of England is the Chief Executive, even though the powers are not so thoroughly separated in the British Constitution as they are in the American Constitution.

I, therefore, put forward this point No. 1 that it would be no answer to, to my amendment to say that it is not in harmony with the basic principle of this Constitution namely, that of the Parliamentary Government, and not of the Presidential kind and as such it need not be discussed. I submit that it can be very well fitted in even in the terminology I have used with the basic idea of the constitution that you have accepted, even though I am free to admit my own conception was slightly different.

To proceed, Sir, I would like the President's powers to be very clearly defined, and be exercisable in accordance with the Constitution. I take it there is no question on that. No one will say that the President is supra-Constitution. The President is a creature of the Constitution, and must work under the Constitution. No further words are, therefore, necessary to explain that emphasis which should be—in fact, it is there—in the main clause 2.

The next point is that it must be in accordance with the laws made thereunder. Now, in a variety of articles you have given power to Parliament to make laws. If the laws are made under the Constitution, which allow or explain or expand the powers given to the several organs of Government, then it is quite in order to suggest that they should be in accordance with the laws made thereunder.

Last comes advice,—the advice of the Ministers, officers and servants of the Union. I think that also is important to include in the position of the President as it is. Later on I have tried to elaborate this point in a subsequent amendment which I shall deal with when I come to it.

In this case, however, because I want that my suggestion should not be merely thrown overboard because it is inconsistent with the basic principle adopted in drafting this Constitution, I have tried to harmonise the Ministerial responsibility—I mean the doctrine of Ministerial responsibility—with also the position of the President as the head of the State and Chief Executive. I once more take the analogy of the King of England, who has to act on the advice of the Ministers. At least that is the constitutional position. Every Act begins: "let it be enacted by the King's Most Excellent Majesty, with the advice of the Lords Spiritual and Temporal and the Commons". Every action is the action of His Majesty in each particular matter as advised by the particular Minister. The whole doctrine that "the King can do no wrong" loses its import if the doctrine of ministerial advice and ministerial responsibility is not there. I have, therefore, laid it down, by this amendment, that the President must act in accordance with the Constitution and in accordance with the laws made therein and according to the advice of his ministers.

The addition of the "officers and servants of State" I have felt also necessary to be quite clearly expressed in the Constitution. The President should be entitled not merely to listen to all that the Minister alone says to him; he must have power to consult any other expert, or any other officer, or servant of the State in India who may give him his views. It was, of course, the custom of the regime preceding the present that the Secretaries, for example, of Departments had direct access to the head of the Government, along with or independent of the Member-in-charge of a Government Department. And though I am not keen on restoring that principle, or that system of the Secretaries being entitled to give independent and often conflicting or opposite advice to the head of the Government, as against their Minister-in-charge, I certainly think that it would do no harm to the working of the constitutional machinery if the President is entitled, as a matter of right, to send for any expert officer, and ask his advice, say, for example, the Attorney-General, the Advocate-General, should the President have a legal doubt with regard to his own position, *vis a vis* his own Ministers.

He should be entitled, I submit, as head of the State and finally responsible person, to know what the expert in the department thinks. Under the parliamentary party system it will not be his veto, he would have no right to discard the advice of his Minister. The Minister's advice will eventually prevail. But it will prevail only after the President has drawn attention, according to my conception, to the other aspects of the matter which the Minister has overlooked, or ignored.

It has been said by a great constitutional writer, analysing the Constitution of England a century ago, that the functions of the King,—the permanent Executive in Britain,—is to warn, to advise and eventually to surrender. The President, in the way that I am conceiving the matter here, would have also the right to advise—not the advice from personal prejudice, but the advice from an informed expert opinion having been previously obtained, as a matter of right, to elucidate any point coming before him; and then telling his Minister concerned or the Ministry as a whole that this is the proper view. If you do not think it is proper, very well then, you are the finally responsible party and you can do as you think proper. But in the Constitution a right must be provided for the President to be able to obtain advice from the servants of the Crown.

I am not suggesting that he should be free to go outside the country for such advice. I am not suggesting that he should invite foreign experts to advise

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him. He should be entitled to seek advice from his Ministers in the first place: then from the officers and from the servants of the State. This I think is in perfect harmony even if you conceive and take this Constitution to be on the principle of Ministerial responsibility, and so perfectly proper to accept it. I, therefore, commend this motion to the House.

(Amendment No. 1041 was not moved.)

Mr. Mohd. Tahir (Bihar: Muslim): Sir, I move:

"That in clause (1) of article 42, after the words 'and may' the words 'on behalf of the people of India' be inserted:"

Now, Sir, if my amendment is accepted, the article will read as follows:

"The Executive power of the Union shall be vested in the President and may on behalf of the people of India be exercised by him in accordance with the Constitution and the law."

Artical 41 which we have adopted just now gives us to understand that the President will be the head of the State. Now, Sir, a man can use his powers legally in two ways only: either in his personal capacity or on behalf of somebody else. Therefore, we have to see how the President has to exercise these powers—whether on his own behalf or on behalf of somebody else. In this connection I will draw the attention of the House to page 3 of the Government of India Act, 1935, wherein we find that the Governor-General used to exercise the executive power on behalf of the then King Emperor of India. But now the ownership of this country has been transferred to none but the people of India alone. Therefore, it is necessary that all the powers that have to be exercised in this country have to be exercised on behalf of the people of India.

In this connection I will also point to article 49 of this Constitution wherein the oath has been prescribed for the President and it says that—

"I,.....do solemnly affirm that I will faithfully execute the office of President of India and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well being of the people of India."

Now, Sir, if my amendment is not accepted, article 42 (1) coupled with the form of oath, will surely mean that the personality of the President is somewhat above the people of India which it is absolutely not. I submit that because the ownership of the country vests only with the people of India, all the powers that have to be exercised by the President must be exercised on behalf of the people of India alone and on behalf of none else. Therefore I hope this amendment of mine will be accepted by the House.

(Amendment No. 1044 was not moved.)

Prof. K. T. Shah: Mr. Vice-President, I move:

"That for clause (2) of article 42, the following be substituted:

'(2) Without prejudice to the generality of the foregoing provision and in accordance with this Constitution and the laws made thereunder for the time being in force, the President shall—

(a) convene or dissolve the Legislature of the Union, and place before it any proposal for legislation or for sums of money needed for the good government and efficient administration of the country, or for its defence, or to provide for any sudden calamity in any part of the Union or any other emergency;

(b) have the power to assent to the laws duly passed by the Union Legislature;

(c) conduct and supervise any Referendum that may be decided upon to make to the Sovereign People in accordance with this Constitution;

(d) have the power to declare war, and make peace;

(e) be the supreme commander of all the armed forces of the Union;

(f) appoint all other executive and judicial officers, including the ministers, representatives of the Union in foreign countries as ambassadors, ministers, consuls, trade commissioners and the like; as well as the commanding officers in the armed forces of the Union;

(g) do all acts, exercise all powers and discharge all authority necessary or incidental to the power and authority vested in him by and under this Constitution;

(h) have power to refuse assent to any legislative proposal passed by both Houses of Parliament; or to recommend to Parliament that any legislative proposal passed by Parliament be reconsidered for reasons stated by the President, provided that any legislative proposal duly passed by Parliament, if refused assent by the President only once; and that the same proposal if passed in an identical form by Parliament in the next following sessions of that body, shall be deemed to have been duly passed and become an Act of the Legislature, notwithstanding that the President has refused or continues to refuse to assent thereto;

(i) in every case in which the President refuses to assent to any legislative proposal duly passed by Parliament, the President shall record his reasons for refusing to assent and shall forward the reasons thus recorded to Parliament;

(j) in any case where the President, having duly submitted to Parliament, or to the People's House thereof, a legislative proposal he deems necessary for the safety of the State, its integrity or defence or to safeguard the nation's interests in a national emergency, finds that Parliament is unwilling to consider or pass that proposal, may refer such a proposal to the people of the country; and if the proposal is approved, on such reference, by a majority of not less than two-thirds of the citizens voting, it shall forthwith become a law of the land. If on such reference the proposal is not approved by the requisite majority, it shall be deemed to have been negatived, and shall be treated as void and have no effect."

Sir, this is, I admit, a somewhat lengthy amendment intended to clear and make definite the powers of the President.

Before I come to the innovations or new ideas inserted in these powers as put forward by me, may I point out one item, which perhaps the draftsmen might consider favourably, namely that in the first clause of the article it has been stated that the executive power of the Union shall be vested in the President and "may be exercised" by him in accordance with the Constitution and the law? I am not a practising lawyer, and, therefore, not be able to understand clearly the meaning of this 'may' in this connection. But, speaking only as a commonsense man, I feel that this 'may' is productive or likely to produce considerable mischief. If 'may' is an option to the President, and there is no obligation by law of the Constitution upon him to exercise the powers in accordance with the Constitution and the law thereunder, or in accordance with the advice of his Ministers, then I am afraid many powers —that is my reason for bringing in this amendment—may be exercised by him, which may not be against the written letter of the Constitution, but which in his judgment are necessary and, therefore, taking shelter under this expression 'may', he may do so.

For my part, however, I wish to leave no room for doubt; and, therefore, in a previous amendment I said 'shall' instead of 'may'. And, now, lest there be any further doubt or any margin or no-man's land, or any dubious position in which both may claim equal authority or equal powers, instead of the rather mild description which is given in article 42 (1), I have tried to explain and make clear all the 8 or 10 items, I have specifically enumerated them.

A good many of them are, of course, beyond question, such as the right to convene or dissolve Parliament. These will, of course, be done on the advice of the Ministers. So also the right to declare war or peace. This is merely a titular power, and it is also to be exercised on the advice of the Ministers. Next we have the right to assent to legislation passed by Parliament. I need not, I think, take the time of the House in explaining those conventionally adopted articles. The necessity for stating them, since you are stating them very briefly, or if I may say so, compendiously and clearly, is there, and it would be better to define and put them in full.

[Prof. K. T. Shah]

I come next to the question of the right to refuse assent. It may seem as if it was an innovation of my own. I do not think it is an innovation, because, technically at any rate, in the model on which this Constitution is based or appears to be made, viz. that of the United Kingdom, the King's veto is not abolished, as the veto of the House of Lords for instance is modified. There, there are a number of conventions which have for centuries past guided the ministers and the people in dealing with any exercise of royal authority whether by prerogative or otherwise which does not infringe the spirit, if not the letter of the Constitution as well.

Here, however, we are making a new Constitution, and we are starting upon a new democratic career on a very large national scale. After all, you must remember that the United Kingdom compared to India is perhaps not one-tenth or one-twelfth in size; and, in point of population, it is perhaps one-sixth or one-fifth in strength of numbers. Therefore, what may have suited that country and its ways may not suit us. At any rate, they have a long history of precedents and conventions behind them. We have to make those precedents and conventions. I therefore submit it would be as well for us not to leave any room for doubt, and make precise and explicit the powers that we are vesting in the President.

The right to give assent carries with it the right to refuse assent, unless you positively state that the President will not be able to refuse assent. In my amendment I have, however, laid down the conditions under which the right to refuse assent may be safeguarded. The right to refuse assent is given only once. In spite of the refusal, if Parliament proceeds with the legislation in identical form, whether or not the President agrees, it will become law. The privilege of the President, according to my amendment, only lies in his stating the reasons for refusing his assent. Being popularly elected, as I conceive it, he is bound, in his sense of true responsibility to the people, to lay before their representatives the reasons which have actuated him in refusing assent. I do not think there is anything revolutionary in making such a suggestion.

The second innovation is in regard to reference to the people, or Referendum. Now, this Constitution does not provide for reference to the people, notwithstanding the fact that we talk again and again of the people's sovereignty, of the people being the ultimate sovereign of this country. Our regard for reference to the people, or consultation with the people, is expressed if at all only in a quinquennial election, a general election to Parliament. In a general election, however, so many issues are mixed up; so many cross-currents take place; so many moves and counter-moves happen that the consultation with the people, or the verdict of the people on such variety of issues is only nominal, if I may say so without any disrespect.

If you seriously, if you sincerely, if you really desire that the people shall be sovereign, if you want that the people be consulted in any emergency when your two organs of power, viz., the Legislature and the Executive, are unable to agree, then the test will lie in your readiness to consult the people. It may be that the emergency may be so momentous that you cannot dissolve Parliament. It may be that the state of emergency may be such that the President cannot retire, and will not tender his resignation. Or it may be only a matter involving such strong difference of opinion that neither is prepared to yield. At that moment it is but right that the view of the people should be ascertained on the specific single issue worded so as to admit of a categorical answer, 'Yes' or 'No'.

Surely the test of this Constitution enshrining the sovereignty of the people is not merely the lip-loyalty that seems to be very common in this

Draft. The argument could be urged, and was urged by those who were against people's sovereignty in fact and in name, that the people are not ready; or that they are not educated enough to give any decisive opinion on such complicated issues of foreign or local policy. I trust that in this House, we shall not hear such an argument. Backward as we may be—only ten or twelve per cent of us may be literate—whatever may be our deficiency or handicaps, I take it that we are all sincere, true in our belief that ultimately the people are sovereign. Where there is collective wisdom, there is after all real salvation. *Vox populi vox Dei*—The voice of the people is the voice of God.

That, I take it, is not merely a figure of speech, is not merely a maxim used to hypnotise children, but is intended for serious legislators to take into account and act up to it. I invite you, therefore, with all the earnestness I command to consider this matter seriously. If you think that you will take counsel together, on this amendment before giving a positive decision, here at least I am agreeable to hold over this amendment. But I beg of you with all the earnestness at my command that, if you are sincere in your desire to make the people truly sovereign, if you want them to be trained in the art of working democracy, if you desire that they shall be the final arbiters on all issues, then for goodness' sake, do not treat this with your Party label of opposition, right or wrong.

I have not conceived my role in this House as a cussed opposition, to oppose things on every ground and on any ground. I take myself to be a friendly critic, always ready to offer constructive views with such brains or such ability as I have. It may be that they do not appeal to you for one reason or another. But here is a case in which I venture to submit that, if you really believe in the sovereignty of the people, if you honestly believe that the people are the true masters of our destiny, you cannot shirk this amendment. Do not decline it on merely technical grounds of its being not in proper time or place or out of place and such other camouflage. Let me also point out that I have not omitted to put in certain conditions and safeguards, so that if and when you consult the sovereign people you will not merely have a chance decision, but the considered opinion of a real majority of our voters. In that case, even if the decision is wrong, we shall all be in the same boat. It is far better to sink with our fellows than swim with our masters.

(Amendments Nos. 1046 and 1047 were not moved.)

Mr. Vice-President: Amendment No. 1048 standing in the name of Mr. Naziruddin Ahmad.

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

"That for sub-clause (a) of clause (3) of article 42, the following be substituted:

'(a) be deemed to authorise or empower the President to exercise any power or perform any function which by any existing law is exercisable or performable by the Government of any State or by any other authority; or' "

Sir, I beg to submit that this amendment will have an effect quite contrary to some of the amendments which have been moved by Prof. K. T. Shah. It purports to limit the power of the President in this way that, if any power is specifically exercisable by any State or any local authority, the President will not be empowered to exercise those powers. In fact, I want to make the President a perfectly constitutional President. It has been pointed out that parliamentary legislation in the United Kingdom is in the form that "Be it enacted by the King's Most Excellent Majesty on the advice of the Lords Spiritual and Temporal and the Commons in this Parliament assembled" etc. Sir, I beg to submit that this does not give the King any power. The British are an extremely conservative people. They carry on with old forms. Although the King's power is practically entirely extinct, the old form is kept up. To introduce this form here would be to give the President plenary powers to

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override the Executive and to a large extent flout the decisions of the Legislature. Therefore, I think that the powers of the President should be limited to those of a strictly Constitutional President. The amendment seeks to debar the President from exercising any powers exercisable by the Provinces or the local or other authorities. The present amendment should be considered from this point of view. I do not wish to dilate on the merits and demerits of the proposition any further. This is a view point, which, I submit, should be considered by the House.

(Amendment No. 1050 was not moved.)

Mr. Vice-President: The article is open for general discussion.

Shri R. K. Sidhwa (C. P. & Berar: General): Mr. Vice-President, Sir, I closely followed the amendment moved by my honourable Friend, Prof. K. T. Shah, and also listened to his speech with rapt attention. I give credit for his tenacity for bringing in his view-point by various ways in this House, and to see that they are implemented by changing the very fundamentals of this Constitution from time to time. In this amendment that he has proposed, Sir, it will be seen that many of the clauses refer to the fundamental changes, and some of them, of course, could be provided in the rules and regulations to be made after the Constitution comes into force. But that apart, Sir, I will presently show to this House how some of the suggestions that he has made in this amendment may be commendable for acceptance if a different type of Constitution were to be framed, but the fact is that we have taken a decision on a democratic parliamentary system of Government and if his proposal is accepted, it cannot fit in or suit the provisions we have provided in the Constitution.

For instance, in his amendment, Prof. Shah says: The President shall place before the Legislature of the Union 'any proposal for legislation or for sums of money needed for the good government and efficient administration of the country'. He wants that the President should be empowered with those powers. I want to know, Sir, how it would fit in with an Executive responsible to the Legislature, if the power of spending of money is vested in the President. It is the very negation of the very fundamental principle that we have accepted after a long discussion of five days in the opening session of this Constituent Assembly.

Then he says: "or for its defence, or to provide for any sudden calamity in any part of the Union or any other emergency;". Our Constitution has provided power to the President for emergency purposes, but may I know, Sir, in a responsible Legislature does Prof. Shah want the powers to declare war or peace to be entrusted absolutely to the President? Even in a responsible parliamentary Government that will be certainly most objectionable. If a war has to be declared, the President will certainly have the power; he is the supreme head of Defence under our Constitution, but the House has to be taken into confidence. The Government has to consider this point. Suppose this clause is passed, and some autocrat President comes into existence and says: "I want to declare a war in view of some exigencies arising here or around our country". Would this be called a responsible Government? Absolutely not, Sir.

Then in clause (h) of his amendment he says that when both Houses of Parliament pass the bills, they go to the President. That is understandable. Again they come before the House and then with a certain majority he wants those bills to be passed. There may not be a very serious objection to that, but I find Sir, if his clause (i) is accepted, there would be a deadlock always between the President's action and the Parliament and if all these clauses are

finalised, it will come to nothing else, but a chaos between the Government and the President and who would like, Sir, the President being entrusted with the powers of the Executive? Certainly we do not want them.

As regards the type of Government, Sir, some of the provisions of the American type of Government may be good, but let me tell you, Sir, I have pondered over this matter as to what type of Government should be suitable to our country and I have come to the conclusion that the British Parliamentary procedure, which is really democratic, barring Soviet system of Government, is really suited to our country. Secondly, what is wrong, I ask, in the constitutional democracy? Similarly as we are running elections on a party system, it is run on a party system in England. Prof. Shibban Lal stated "Mr. Churchill was thrown out by the electorate although he was considered to be the best man during war-time". Perfectly right. Mr. Churchill stood in the election through a party and he was considered as the best man during war and he was not accepted by the majority for peace time. Similarly it may happen in our country. We have the party system, elections, etc. I therefore contend, Sir, that the amendments which my honourable Friend Prof. Shah has given notice of may be good; he deserves credit for his trying to convert the Members of this House to his point of view. I do not dispute his sincere belief, but I must say that the House has considered that a particular type of Government is really desirable and I think, Sir, these amendments cannot fit in and would not fit in the Constitution. I do feel that some of them may be good, but the House has taken a decision on the type of Government and I therefore oppose the amendment proposed by Prof. K. T. Shah.

Shri Jagat Narain Lal (Bihar: General): Mr. Vice-President, Sir, I would have liked very much to vote for the amendment moved by Prof. K. T. Shah, but I feel that it runs counter to the view which we have held, so far as introduction of democracy in our country is concerned. It seems clear that Prof. Shah sticks to the view that the President of the Indian Union should wield the same powers and authority as the President of the American Republic. If that is his intention, as I take it to be, I think we would all agree that we do not share that view. So far as our Constitution goes, the powers which we propose to vest in the President are the powers more or less on the lines of the Irish Republic. There are several models with regard to this. One is the latest, the power wielded by the President of the Irish Republic. So far as Great Britain is concerned, we all know that the King is a constitutional head and there is no such thing as President and he has certain powers, privileges and other conventions. The powers wielded by the French President are more or less nominal. He is more of a titular head. Under the Weimar Constitution, the Chairman-President used to wield great powers, but we see that even the Chairman-President, the President of the Reich, even he, in declaring war had to take the approval of the ministers and the Reich itself. Even in making treaties and alliances, he had to take their approval. But Prof. Shah makes a more drastic proposal. He says that even wars and treaties he can make. He does not say that in so many words, but he wants to leave it to the Constitution rather than to convention. If he makes wars or treaties, he may consult; he will, as a matter of course, consult. But he does not want to provide for that in the Constitution. Therefore, Sir, I feel it is not possible to agree with Prof. K. T. Shah. There is a fundamental difference in the view that he takes of the powers which are to be given to the President of the Indian Union. I feel he wants it to be on the American model, whereas we feel that the powers which we want to vest in the President are not to be on that model, but, I take it, more or less on the model of the powers vested in the President of the Irish Republic.

Sir, I do not want to prolong the debate; I have finished.

Shri K. M. Munshi (Bombay: General): Mr. Vice-President, Sir, the previous speakers have already drawn attention to the fact that the amendments moved by my honourable Friend Prof. Shah not only to this article, but to the subsequent articles, create a fundamental change in the whole structure of the Constitution that this House has envisaged for the last year and a quarter. At the earlier stage of the Union Constitution Committee, it was decided, I think possibly with one or two dissident voices, that our Central Government should be based on the English model and that the American model or rather the model of the United States of America was to be rejected for two valid reasons. The two issues that have been before the House and the several Committees were these: what would make for the strongest executive consistently with a democratic constitutional structure, and the second issue is, which is the form of executive which is suited to the conditions of this country. I fail to see how from any of these points of view, the amendments of my honourable Friend can find favour with this House.

Already reference has been made to an amendment moved by my honourable Friend and lost in this House about the separation of powers. It must not be forgotten that the American Constitution was made long ago, in the 18th Century. The makers were then guided by Montaigne's interpretation of the British Constitution that there was separation of powers in England. They thought that they were translating Montaigne's analysis into a constitutional structure. The powers that were given to the President in the Constitution of America were based on what is now held on all accounts to be a misreading of the British Constitution in the 18th Century.

As already pointed out by my honourable Friend Dr. Ambedkar, even in America, they have found it impossible to maintain the principle of separation of powers. We know that the Constitution in America is not working as well as the British Constitution, for the simple reason that the Chief Executive in the country is separated from the legislature. The strongest Government and the most elastic Executive have been found to be in England and that is because the executive powers vest in the Cabinet supported by a majority in the Lower House which has financial powers under the Constitution. As a result, it is the rule of the majority in the legislature; for it supports its leaders in the Cabinet, which advises the Head of the State, namely, the King or the President The King or the President is thus placed above party. He is made really the symbol of the impartial dignity of the Constitution. The Government in England in consequence is found strong and elastic under all circumstances. The power of the Cabinet in England today is no whit less than the powers enjoyed by the President of the United States of America. By reason of the fact that the Prime Minister and the whole Cabinet are members of the legislature, the conflict between the authority wielding the executive power and the legislature is reduced to minimum; really there is none at all; because, at every moment of time, the Cabinet subsists only provided it carries with it the support of the majority in the Parliament. It is that character of the British Constitution that has enabled the British Government to tide over the many difficulties which it has had to face during the last 150 years. Therefore, between the two Executives, one on the American model and the other on the British model, there can be no question of preference. The British model has been approved by every one including leading American constitutional experts as really better fitted for modern conditions.

Apart from that, the second issue which the House has to consider is, what is the best form suited to Indian conditions. We must not forget a very important fact that during the last 100 years, the Indian public life has largely drawn upon the traditions of the British Constitutional law. Most of us, and during the last several generations before us, public men in India, have looked up to the British model as the best. For the last thirty or forty years, some

kind of responsibility has been introduced in the governance of this country. Our Constitutional traditions have become parliamentary and we have now all our provinces functioning more or less on the British model. As a matter of fact, today, the Dominion Government of India is functioning as a full fledged Parliamentary Government. After this experience why should we go back upon the tradition that has been built for over 100 years, and try a novel experiment which was, as I said, framed 150 years ago and which has been found wanting even in America? I, therefore, submit that from this point of view that the whole scheme put forward by the various amendments of Prof. Shah has not been accepted by the House so far, has not yielded the best possible result elsewhere and is against the tradition which has been built up in India. Therefore, I submit, Sir, that the amendment should be rejected.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. Vice-President, Sir, Prof. Shah's amendment, if it meets with the acceptance of the House, would mean that the House, for the reasons which Prof. Shah has assigned, is going back upon the decision reached by various Committees of this House as well as by the Constituent Assembly after considerable deliberation on previous occasions.

Apart from this question that it will involve going back upon the decision solemnly reached, there are weighty reasons why what may be called the Cabinet type of Government should be preferred in this country to what is generally known as the Presidential type of Government. In the first place the idea is to take the various units and provinces and the States into the Federation. There is at present no idea of effacing the Rulers from the various States. What are we going to do in the case of the States if you are going to have what is called the Presidential system at the Centre? Does it mean that in the States the Rulers will again be invested with real executive power and the legislatures be confined purely to their legislative functions? It will be against the marked tendency of the times. It will create insuperable difficulties in the Indian States. That is one point which may be considered.

The second thing is that so far as the provinces in India are concerned, we have been accustomed to something like the Cabinet form of Government for some years. We have got into that frame-work. Before that, Dyarchy was in force for some time. And we have been working responsible Government for some time in the different units in India. In dealing with the American Presidential system it must be remembered that the Presidential system is in vogue not merely in the Centre but in the different States in America. There is complete separation between the Legislature and the Executive, not merely in the Centre but also in the different States. It is also necessary to take into account the historic conditions under which the Presidential system was started and worked in America. The distrust of George III, the conditions under which the rebellion was started, the perpetual feud between the Parliament and the Executive and the earlier history of the Petition and the Bill of Rights, they all account to a very large extent for the Presidential system in America, apart from the theories inculcated by Montesco and other leaders of political thought as to the necessity of separation of functions between the Legislature and the Executive. Then there are obvious difficulties in the way of working the Presidential system. Unless there is some kind of close union between the Legislature and the Executive, it is sure to result in a spoil system. Who is to sanction the budget? Who is to sanction particular policies? The Parliament may take one line of action and the Executive may take another line of action. An infant democracy cannot afford, under modern conditions, to take the risk of a perpetual cleavage, feud or conflict or threatened conflict between the Legislature and the Executive. The object of the present constitutional structure is to prevent a conflict between the Legislature and the Executive and to promote harmony between the different

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parts of the Governmental system. That is the main object of a Constitution. These then, are the reasons which influenced this Assembly as well as the various Committees in adopting the Cabinet system of Government in preference to the Presidential type. It is unnecessary to grow eloquent over the Cabinet system. In the terms in which Bagehot has put it, it is a hyphen between the Legislature and the Executive. In our country under modern conditions it is necessary that there should be a close union between the Legislature and the Executive in the early stages of the democratic working of the machinery. It is for these reasons that the Union Constitution Committee and this Assembly have all adopted what may be called, the Cabinet System of Government. The Presidential system has worked splendidly in America due to historic reasons. The President no doubt certainly commands very great respect but it is not merely due to the Presidential system but also to the way in which America has built up her riches. These are the reasons for which I would support the Constitution as it is and oppose the amendment of Prof. Shah.

The Honourable Dr. B. R. Ambedkar: I am sorry I cannot accept any of the amendments that have been moved. So far as the general discussion of the clause is concerned, I do not think I can usefully add anything to what my friends Mr. Munshi and Shri Alladi Krishnaswamy Ayyar have said.

Mr. Vice-President: I am putting the amendments one by one to vote. First part of No. 1040. The question is:

"That for clause (1) of article 42, the following be substituted :

'(1) The sovereign executive power and authority of the Union shall be vested in the President, and shall be exercised by him in accordance with the Constitution and in accordance with the laws made thereunder and in force for the time being.' "

The motion was negatived.

Mr. Vice-President: I put the second part of No. 1040.

The question is:

"That for clause (1) of article 42, the following be substituted :

'(1) The executive authority, power and functions of Government shall be vested in the President, and shall be exercised by him in accordance with the Constitution and the law with the advice and help of such ministers, officers or servants of the State as may be deemed necessary for him.' "

The motion was negatived.

Mr. Vice-President: I put Amendment No. 1042 to vote.

The question is:

"That in clause (1) of article 42, after the words 'and may' the words 'on behalf of the people of India' be inserted."

The motion was negatived.

Mr. Vice-President: I put amendment No. 1045.

The question is:

"That for clause (2) of article 42, the following be substituted :

'(2) Without prejudice to the generality of the foregoing provision and in accordance with this Constitution and the laws made thereunder for the time being in force, the President shall—

(a) convene or dissolve the Legislature of the Union, and place before it any proposal for legislation or for sums of money needed for the good government and

efficient administration of the country, or for its defence, or to provide for any sudden calamity in any part of the Union or any other emergency;

(b) have the power to assent to the laws duly passed by the Union Legislature;

(c) conduct and supervise any Referendum that may be decided upon to make to the Sovereign People in accordance with this Constitution;

(d) have the power to declare war, and make peace;

(e) be the supreme commander of all the armed forces of the Union;

(f) appoint all other executive and judicial officers, including the ministers, representatives of the Union in foreign countries as ambassadors, ministers; consuls, trade commissioners and the like; as well as the commanding officers in the armed forces of the Union;

(g) do all acts, exercise all powers and discharge all authority necessary or incidental to the power and authority vested in him by and under this Constitution;

(h) have power to refuse assent to any legislative proposal passed by both Houses of Parliament; or to recommend to Parliament that any legislative proposal passed by Parliament be reconsidered for reasons stated by the President, provided that any legislative proposal duly passed by Parliament, if refused assent by the President only once; and that the same proposal if passed in an identical form by Parliament in the next following sessions of that body, shall be deemed to have been duly passed and become an Act of the Legislature, notwithstanding that the President has refused or continues to refuse to assent thereto;

(i) in every case in which the President refuses to assent to any legislative proposal duly passed by Parliament, the President shall record his reasons for refusing to assent and shall forward the reasons thus recorded to Parliament;

(j) in any case where the President, having duly submitted to Parliament, or to the People's House thereof, a legislative proposal he deems necessary for the safety of the State, its integrity or defence or to safeguard the nation's interests in a national emergency, finds that Parliament is unwilling to consider or pass that proposal, may refer such a proposal to the people of the country; and if the proposal is approved, on such reference, by a majority of not less than two-thirds of the citizens voting, it shall forthwith become a law of the land. If on such reference the proposal is not approved by the requisite majority, it shall be deemed to have been negatived, and shall be treated as void and have no effect."

The motion was negatived.

Mr. Vice-President: I now put No. 1048 to vote.

The question is:

"That for sub-clause (a) of clause (3) of article 42, the following be substituted:

'(a) be deemed to authorise or empower the President to exercise any power or perform any function which by any existing law is exercisable or performable by the Government of any State or by any other authority; or'."

The motion was negatived.

Mr. Vice-President: Now the question is:

"That article 42 stand part of the Constitution."

The motion was adopted.

Article 42 was added to the Constitution.

Article 43

Mr. Vice-President: We have some 12 minutes more and I propose to go on to the next article.

The motion is:

"That article 43 form part of the Constitution."

Amendment No. 1051—Mr. Damodar Swarup.

Shri Damodar Swarup Seth (United Provinces: General): Sir, I beg to move:

"That for articles 43 and 44 the following be substituted:

'The President shall be elected by means of the single transferable vote by an electoral college composed of the members of Parliament and an equal number of persons elected by the Legislatures of the States on population basis under the system of single transferable vote.'"

Sir, article 43 provides, for the election of the President of the Union of India, an electoral college composed of the members of both Houses of Parliament and elected members of the Legislatures of the States, while article 44 lays down the details of the procedure to be adopted in the elections of the representatives of the States. Now, so far as the system of proportional representation by means of the single transferable vote is concerned, I hope every honourable Member of the House will welcome it. But so far as the inclusion of members of the Council of States and the members of the Legislative Councils of the States is concerned, I am opposed to their inclusion in the election of the President. Not only that, Sir, I am opposed to the very existence of these Houses under the new Constitution. Now, Sir, bi-cameral legislation is no more regarded as an essential feature of the Federal polity or of a sound democratic Constitution. At best it is a conservative device to delay progress. Sir, Prof. Laski has very rightly remarked that the safeguards required for the protection of the unit of a federation do not need the armour of a second chamber. All the requisite protection to the units of a federation is secured by the terms of the original distribution of powers embodied in the Constitution, and the right to judicial review by the courts. In all federal States, Sir, the party system operates alike in both the chambers of the legislatures, and the members of the second chamber are also elected on party system. Not only that, they work and vote also under the guidance of the party in much the same way as members of their respective parties in the Lower House. The relative strength of the national parties in the two Houses, is no doubt different, but this difference in the number of members of the two Houses only promotes confusion and deadlock. Neither is it wise to entrust the protection of regional and national interests to two different chambers of federal legislature; nor have second chambers justified their existence by protecting the regional and national interests. The members of both the chambers have reacted to national and regional interests in much the same way. The principle of representation of constituent units as political entities through nomination by the local executive, or election by the legislature of the units is also not accepted by modern thinkers as valid. While most of the members of the Council of State are to be elected by indirect election, some are also to be nominated. The system of nomination, Sir, is undemocratic, while that of indirect election, in the words of Prof. Laski, "is the worst system which maximises corruption. Now, Sir, as for the details of the procedure of election given in article 44, and in the foot-note to that article, I submit that it is not only complex, but very complicated, and do not ensure uniformity in the scale of representation of the State. My amendment, on the other hand, Sir, suggests a system which is very simple and can be operated without much difficulty, and does, at the same time, ensure uniformity, as desired, in the scale of representation of the State. I therefore, hope that the House would have no hesitation in accepting this amendment of mine.

(Amendment No. 1052 was not moved:)

Mr. Vice-President: There are two or three amendments of the same type and I want to know which of them is going to be pressed. They are amendments Nos. 1053, 1055, 1057, 1059 and 1062.

(Amendments Nos. 1055, 1059 and 1062 were not moved.)

Mr. Vice-President: So we have two amendments of the same type, Nos. 1053 and 1057. I can allow No. 1053 standing in the name of Prof. K. T. Shah to be moved.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That for article 43 the following be substituted :

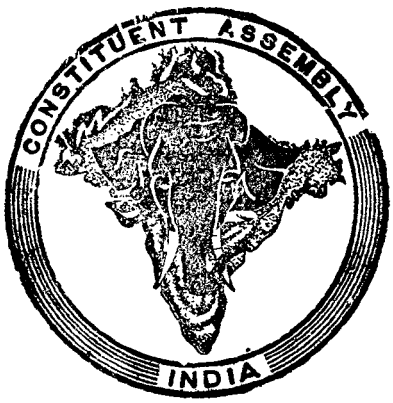
'43. The President shall be elected by the adult citizens of India, voting by secret ballot, in each constituent part of the Union.' "

Mr. Vice-President: You can continue your speech on Monday.

The House stands adjourned to 10 A.M. on Monday.

The Constituent Assembly then adjourned till Ten of the Clock on Monday, the 13th December 1948.

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Monday
13th December
1948

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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Price 5 annas

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 43—contd.

Prof. K. T. Shah: (Bihar: General): Sir, I have moved.....

Shri T. T. Krishnamachari (Madras: General): Sir, on a point of order, may I know whether Prof. Shah can bring in again the scheme that he had outlined in one or two earlier amendments of his and which had all been negatived in this House? He is really persisting in one particular scheme in all his amendments and is the honourable Member in order in moving this amendment?

Prof. K. T. Shah: My reply to that point of order is clear. I had foreseen this objection and that is why I have worded my amendment in such a manner that this particular objection will not apply. The principle of complete separation of powers between the various organs of Government is rejected. But that does not preclude the President, even if these powers are not separated, from being elected by popular vote, whatever his powers. Unless it is intended that I shall not be allowed to move any amendment, I do not see how the objection can arise. I leave it to the Chair. I am entirely in your hands, Sir. I do not think that the honourable Member's arguments can apply at all. It was because of this that I have worded each of my amendments in such a way that risking the possibility..... ....

Mr. Vice-President (Dr. H. C. Mookherjee): Prof. Shah is in order.

Prof. K. T. Shah: Sir, I have moved already:

"That for article 43, the following be substituted :—

'43. The President shall be elected by the adult citizens of India, voting by secret ballot, in each constituent part of the Union.' "

The original article provides for the election of the President by an electoral college consisting of the members of the Central Legislature as well as those of the Provincial or States legislatures. That I think is not sufficiently representative of the people's will; and as such I at least am persistent enough to insist upon the people's will being always held supreme.

I have felt it necessary, even apart from any other scheme, that at every point, wherever I can help it, the sovereign people shall come in, whether you like it or not, and that the people's will be asserted, whether you like it or not. It is therefore I suggest that every adult citizen shall have his share in electing the head of the State; and accordingly, instead of indirect election through the representatives of the legislatures which may be elected after two, three or four years interval, I would suggest that every time a presidential election takes place, that election shall be by the votes of the people themselves.

I will give you both positive or negative arguments for this amendment. I have been accustomed to this kind of suggestion that, either my amendment is not in proper time, or this is not the proper place for it, or the third dimensional argument,— "I oppose it." These are the three—dimensional answers to my arguments. In reply I hold that this is the only time and the only place where I can bring forward this particular amendment; and as for opposition without reason I am of course sufficiently reasonable not to take notice of it.

[Prof. K. T. Shah]

The point I wanted to make is this. On a previous occasion it was suggested that the principle having been settled, it is brought up in another shape today, and so this amendment should not be taken up. I put it to you, Sir, and through you to the House, that even if one had put up this idea at the time that the general principles of the Constitution were considered, I would invite the House dispassionately to consider the point I am making now, namely that 14 or 15 months ago, when we decided upon what are called the leading principles, and nothing more than the leading principles, we were under a stress and strain, and were passing through difficult circumstances and were under influences, which, I venture to submit, deflected, our judgment, unbalanced our outlook, and, therefore, we voted for and accepted ideas, which, in my opinion, were not then, and are not now consistent with the idea of a true, real, working democracy, in every sphere of life. If you wish to go back on it I have nothing more to say. After 15 months we are now in a position to take a more sober, balanced, and impartial view of the situation. As such if we are true to our ideals, if we are true to the principles which we have proclaimed from the house-top, if we are true to the slogans on which we asked the old Imperialist regime to quit and yield place to the children of the soil, I put it to you, Sir, that there is nothing improper, there is nothing out of the way for me to put before the House this amendment. It is after all for the House to judge. I only want to submit to the House the considerations on which it can accept my point of view.

If the Draft before us is treated on the ground that it is something like the report of a Select Committee on a Bill coming before the House, I still say that at that stage any member would be entitled to have his say even on that ground. As I have read the rules, even at the stage of a Select Committee Report before the House, a Member can say that the entire report be sent back for reasons arising out of it, without questioning the principle of the Bill, and, in this case, of the Draft.

Thirdly, after all, the principles that you have accepted, as I have understood them, are the principles contained in the Objectives Resolution; and nothing that I am saying here involves going back upon that Resolution. The Objective principle assures us that ours is a democratic, secular, sovereign republic. That is in no way questioned by my amendment. For the rest they are matters of detail.

Having given you these three reasons against the objection that this is not the time nor the place, I would now pass on to say that, positively considered, the President, whether you make his term three, four or five years, will be, during that period, unless he is guilty of any offence for which he can be impeached and removed, the head, not only of the Government even under your scheme, but will also embody the sovereignty of the people, as Mr. Tyagi pointed out in this House the other day.

And as representing the sovereignty of the people, in their collective capacity, at home and abroad, he must be in a position to command the confidence of the people, be they majority or minority. And I at least hold the view that the President, once elected, ceases to be a party man even as the President of this House is. So I have only suggested that the President will be the President of the whole Indian Union, who will be equally respected, equally reverenced and obeyed by every citizen, no matter whether he voted for him or not at the time of the election.

Thinking in these terms I hold that we should arm the President with the authority to say that he represents the people. It is no use telling him that there may be conflict between the Prime Minister, or the majority party in

the House, and the President elected by the people. Such a conflict need not arise. The President will function only in an emergency; he will function, not ornamentally only, but in a representative capacity with the representatives of other countries. Accordingly this sort of argument would seem to be puerile namely, that you want the President to be a sort of mere gramaphone of the Prime Minister. I do not want the President to be anything but the head of the State and representative of the people in their collective capacity and in their sovereignty. For this reason I hold that the President, not being a creature of party majorities in the Centre or the local legislatures but a real representative of the people, and one elected to function as the head of the State and as its representative, this fact is a conclusive argument.

In this view I may say that the possibilities of conflict between the Ministery and the head of the State, or other difficulties are, in my opinion, matters of detail, which, given good sense, given loyalty to the central theme of this constitution, given sincerity amongst you the makers of the Constitution, may be easily solved. I take the view that you will do very well to have the President elected by the adult vote, instead of by an indirect roundabout method. After all your Parliament is liable to be dissolved at any time. Though a maximum term of four or five years for the People's House, is provided, there is also provision for its dissolution at any time. The local Legislatures in the States may also be dissolved. The President on the other hand will be elected for a definite period. As such he will be outside the turmoil of party passion, will be outside the momentary ups and downs—the vicissitudes of parliamentary fortunes; and will be much more likely to maintain balance, and to give a degree of stability to our Government which it may not have under party passions. Accordingly I commend this amendment and I trust it would be considered on its merits, and not on mere pettifogging points of order.

(Amendments Nos. 1054, 1061, 1067 were not moved.)

Mr. Vice-President: Amendments Nos. 1056, 1058, 1060 and 1068 are all of similar import, and can be taken together.

(Amendments Nos. 1058, 1056, and 1060 were not moved.)

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

"That in clause (b) of article 43, the word 'elected' be deleted."

In this article we are going to form the electoral college for the election of the President. It has been said that the President shall be elected by members of an electoral college consisting of (a) the members of both Houses of Parliament and (b) the elected members of the Legislatures of the States. I want that the word 'elected' in (b) should be deleted. My reasons for doing so are these. In the election of the President are we going to be more democratic or are we going to be guided by some sort of imperialistic ideas? If we delete the word 'elected' I assure the House that we will be more democratic in this respect, because members of either House—they are elected or nominated—but the members as such must have equal rights and privileges so far as the business of the Legislature is concerned. Therefore it appears to be very improper that there should be a distinction between members and members. Whether a member is elected or is nominated he must have equal rights and privileges so far as the voting for the President is concerned. In this way I think we will be more democratic in our action. Therefore I submit that the amendment which I have moved may be duly considered by the House as well as by the honourable Mover and accepted. With these words I move.

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

"That in clause (a) of article 43, for the words 'the members' the words 'the elected members' be substituted."

I shall read article 43. It says: "The President shall be elected by the members of an electoral college consisting of (a) the members of both Houses of Parliament, and (b) the elected members of the Legislatures of the States". Clause (a) says that the President shall be elected by the members of both the Houses of Parliament. The Upper House has got nominated members while the lower House, the House of the People, has got only elected members. So the President, it appears from this article, will be elected both by elected members and by nominated members of Parliament. And clause (b) says that the President will be elected by the *elected* members of the Provincial Legislatures. I cannot understand why only the elected members of the Provincial Legislature are to elect him while both elected and nominated members of the Central Legislature are to elect him. This seems to me to be anomalous. Article 44 tells us how the members are to vote. There is no provision either in this article or anywhere in the Constitution as to how nominated members are to vote. There are provisions only for elected members. Therefore I think that there is some drafting mistake. That is the reason why I have moved this amendment that the word 'elected' be added in clause (a) of article 43, so that both the elected members of the Central Legislature and the elected members of the Provincial Legislatures will elect the President. There will be no nominated members voting, and there is no provision as to how a nominated member is to vote. My amendment is very simple. I have not much to say. I have no doubt the House will accept it and also that the Honourable Dr. Ambedkar will accept the amendment.

Mr. Vice-President: I am not putting amendment No. 1063 standing in the name of Dr. Ambedkar and others to vote, because it is identical with 1064 which has just been moved.

Do you accept it, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar (Bombay: General): Yes, Sir.

Mr. Vice-President: Then I will not put it to vote.

An amendment to amendment No. 1064 standing in the name of Shri Gokulbhai Daulatram Bhatt was not moved as the honourable Member is not in the House.

I disallow, as merely verbal, amendments Nos. 1065 and 1066.

Shri S. Nagappa (Madras: General): I do not move amendment No. 1069, Sir.

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

"That to article 43, the following explanation be added :—

'Explanation.—In this and the next succeeding article, the expression "the Legislature of a State" means, where the Legislature is bi-cameral, the lower House of the Legislature.' "

It is desirable that this amendment should be made, because there may be two legislatures in a State and consequently if this amendment is not made it will be open also to the Members of the Upper Chamber to participate in the election of the President. That is not our intention. We desire that only Members who are elected by popular vote shall be entitled to take part in the election of the President. Hence this amendment.

Mr. Vice-President: Mr. Mohd Tahir may now move his amendment No. 23 to this amendment.

Mr. Mohd Tahir: I beg to move:

"That in amendment No. 1070 of the List of Amendments, in the proposed Explanation, for the words 'the Lower House of the Legislature', the words 'the Legislative Assembly of the State' be substituted".

Now, Sir, with due respect to my friend Dr. Ambedkar I am moving this amendment. In my opinion, the term 'Lower House of the Legislature' has got no existence of its own. Because, we have defined 'the Legislatures' of the States not only in this draft Constitution, but also it will be found in the Government of India Act. There the Legislatures of the State have been defined either as the Legislative Council or the Legislative Assembly. We have given a particular definition for the Houses in the States, namely one, called Legislative Council and the other the Legislative Assembly, in article 148 of the draft Constitution. Therefore my humble submission is that wherever we have to use a term regarding either of these Houses, we must use only the term which has been defined in our Constitution and no other.

Sir, we will now consider how the term 'lower House' originated. I believe it originated from the fact that till now the Members of the Legislative Assembly are being elected by the common people, the general masses of the country paying 6 annas or 12 annas as chowkidari tax and so on, whereas the Members of the Legislative Council are being elected by people having higher qualifications. From this difference the feeling naturally arose in the minds of the people that the Legislative Assembly is the Lower House and the Legislative Council the Upper House. This distinction I submit should not continue in our minds after achieving the independence of India. Therefore to my mind it does not appear to be fair to call the Legislative Assembly the Lower House. In no respect can the Assembly be said to be the Lower House. In respect of the number of members, the Assembly is greater than the Council. Also, the Legislative Assembly has got more powers than the Legislative Council of the States. In conclusion I submit that I base my arguments on the first point, namely that when we have given a particular definition as regards the Chambers of the States, it is in all fairness desirable that we should use only that expression namely, the Legislative Council and the Legislative Assembly and no other.

Mr. Vice-President: The article is now open for general discussion.

Shri K. Hanumanthaiya: (Mysore): Mr. Vice-President, we listened with great respect to the arguments of Prof. Shah. He wants the President to be elected by adult citizens. To begin with, there is a technical difficulty. If the President is to be elected by adult citizens, every citizen gets the right to vote. Under the electoral system, the voters' list is prepared according to some rules and certain people who are lunatics, who are convicted people and who have lost their sannads are not entitled to vote. But in this term 'adult citizen' is included even citizens who are not entitled to vote at the general elections. That means that for the Presidential election those disqualified at the general election can vote, if the wording found in the amendment of Prof. Shah is adopted.

Secondly, Sir, the Constitution which is before the House has adopted the parliamentary system of government. A parliamentary system presupposes responsible government. The government is carried on not directly by the people but by the duly elected representatives of the people and in consonance with that principle, the framers of this Constitution have wisely made the presidential election an indirect election, not a direct election as Prof. K. T. Shah envisages.

Thirdly, Prof. Shah wants that the President should be a non-party man. If the procedure that Professor Shah envisages is adopted, he will

[Shri K. Hanumanthaiya].

certainly become a party candidate. The presidential candidate who has to carry on an election campaign from one corner of the country to another will certainly be put up by some party or another and that election campaign will naturally generate party feelings and the man who is elected to the presidential office through this means will never be able to forget his party affiliations and he will not serve the purpose that Prof. Shah has in view. On the other hand, Sir, if he is elected by the members of the legislatures and the Parliament, he is more likely to be a non-party man, just as the Speaker of the Assembly or the Parliament is likely to be. Therefore, the purpose that Professor has in view that the President should be a non-party man will be better served by his being elected by the legislature and not directly by the people.

Then, Sir, Prof. Shah wants the President to be a real sovereign. That is not the intention of the framers of this Constitution. In this Constitution, the President is given the position of reigning and not ruling. The President here is more or less analogous to the King of England in the United Kingdom. If we give the President real power and make him the real executive head, the whole structure as envisaged by the Drafting Committee changes its character. This amendment does not fit into the picture of this Draft Constitution and should therefore be rejected.

Shri Biswanath Das (Orissa: General): Sir, my honourable Friend Prof. K. T. Shah, has raised a very important issue, viz., to introduce the system now in vogue in the United States of America. Sir, today in democratic countries, two different systems are working, one is the system now in vogue in the U.S.A. and the other is the Cabinet system of responsible government. We appointed a Committee, the Union Committee. This Committee, after due deliberation, weighing the pros and cons, all the advantages and difficulties of the working of the constitutions in various countries, have devised a system of responsibility which is known as the system of Cabinet responsibility. Sir, the report of that Committee was adopted by the honourable Members of this House. It was up to Prof. Shah to have moved and taken a decision on this issue at that time. The Drafting Committee have only given shape to the decisions of the honourable Members of this House. It is, I am afraid, too late in the day to change the structure of our Constitution. A change in the system naturally means a change in a great many articles of this Constitution. Practically it disturbs the very basis of this Constitution. I would therefore appeal to my honourable Friend not to press his amendment. Sir, in justification of his plea, he has appealed to us to think of a President who would be a non-party man. I would plead with him that he has undertaken an impossible task. Sir, party system is the very basis of democracy. How on earth could you find a President who is a non-party man? Even the President of the United States is not a non-party man. Those who have seriously followed the working of the American Constitution and especially the last Presidential election must have come to the conclusion that it is the party system that is functioning in America. If Professor Shah thinks of a non-party President, he will have to think of something other than democracy. Sir, Turkey had a sort of non-party government but it has given it up in preference to a party system of government and elections have been introduced. You have to think of a totalitarian state if you think of a non-party President. It is impossible in the very nature of things. Therefore his plea that the President is and ought to be a non-party man does not at all appeal to me.

Sir, the whole question turns upon one issue, viz., who is going to be responsible to the people of the country with regard to the administration. A

President coming through the direct vote of the people as such has an independent existence outside the sphere of the parliament. It so happens that sometimes, as honourable Members may have seen conflicts do arise between the parliament and the president, and it makes a smooth working of the machinery difficult. Sometimes important programmes may be upset because of these differences. Even the parliamentary system has its own difficulties. The parliamentary system is in vogue in very many countries. In France, difficulty was experienced with the cabinet system of government with the result that in their new constitution some modification has been made with the result that they hope that hereafter the parliamentary executive in France will be more stable than before. Therefore it is for my honourable Friend Prof. Shah to devise ways by which this parliamentary system of government, the Cabinet system of government will function well and properly with stability. I would appeal to him that a change in the important structure of our Constitution is not possible at this stage. We have sat long and the country is waiting for a Constitution. I would appeal to him and also to the other honourable Members of this House to see that we speed up the discussion of the Constitution and pass it as early as possible. The Union Committee have given due attention to this question, and I would appeal therefore that the article may be accepted and the amendment may be rejected.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, of the amendments that have been moved, I can only accept 1064 and I very much regret that I cannot accept the other amendments.

Now, Sir, turning to the general debate on this article, the most important amendment is the amendment of Prof. K. T. Shah, which proposes that the President should be elected directly by adult suffrage. This matter, in my judgment, requires to be considered from three points of view. First of all, it must be considered from the point of view of the size of the electorate. Let me give the House some figures of the total electorate that would be involved in the election of the President, if we accepted Prof. K. T. Shah's suggestion.

So far as the figures are available, the total population of the Governors' provinces and the Commissioners' provinces is about 228, 163, 637. The total population of the States comes to 88, 808, 434, making altogether a total of nearly 317 millions for the territory of India. Assuming that on adult franchise, the population that would be entitled to take part in the election of the President would be about 50 per cent. of the total population, the electorate will consist of 158·5 millions. Let me give the figures of the electorate that is involved in the election of the American President. The total electorate in America, as I understand—I speak subject to correction,—is about 75 millions. I think if honourable Members will bear in mind the figure which I have given; namely, 158·5 millions, they would realize the impossibility of an election in which 158·5 millions of people would have to take part. The size of the electorate, therefore, in my judgment forbids our adopting adult suffrage in the matter of the election of the President.

The second question which has to be borne in mind in dealing with this question of adult suffrage is the administrative machinery. Is it possible for this country to provide the staff that would be necessary to be placed at the different polling stations to enable the 158·5 millions to come to the polls and to record the voting? I am sure about it that not many candidates would be standing for election and they would not like non-official agencies to be employed, for the simple reason, that the non-official agency would not be under the control of the State and may be open to corruption, to bribery, to manipulations and to other undesirable influences. The machinery, therefore, will have to be entirely supplied from the Governmental administrative machinery. Is it possible either for the Government of India or for the State

[The Honourable Dr. B. R. Ambedkar]

Governments to spare officials sufficient enough to manage the election in which 158·5 millions would be taking part? That again seems to me to be a complete impossibility. But apart from these two considerations, one important consideration which weighed with the Drafting Committee, and also with the Union Committee, in deciding to rule out adult suffrage, was the position of the President in the Constitution. If the President was in the same position as the President of the United States, who is vested with all the executive authority of the United States, I could have understood the argument in favour of direct election, because of the principle that wherever a person is endowed with the same enormousness of powers as the President of the United States, it is only natural that the choice of such a person should be made directly by the people. But what is the position of the President of the Indian Union? He is, if Prof. K. T. Shah were to examine the other provisions of the Constitution, only a figurehead. He is not in the same position as the President of the United States. If any functionary under our Indian Constitution is to be compared with the United States President, he is the Prime Minister, and not the President of the Union. So far as the Prime Minister is concerned, it is undoubtedly provided in the Constitution that he shall be elected on adult suffrage by the people. Now, having regard to the fact, to which I have referred, that the President has really no powers to execute, the last argument which one could advance in favour of the proposition that the President should be elected by adult suffrage seems to me to fall to the ground. I, therefore submit that, having regard to the size of the electorate, the paucity of administrative machinery necessary to manage elections on such a vast scale and that the President does not possess any of the executive or administrative powers which the President of the United States possesses, I submit that it is unnecessary to go into the question of adult suffrage and to provide for the election of the President on that basis.

Our proposals in the Draft Constitution, in my judgment, are sufficient for the necessities of the case. We have provided that he shall be elected by the elected members of the Legislature of the States, who themselves are elected on adult suffrage. He is also to be elected by both Houses of Parliament. The lower House of the Parliament is also elected directly by the people on adult suffrage. The Upper Chamber is elected by the Lower Houses of the States Legislatures, which are also elected on adult suffrage. Therefore, having regard to these provisions, I think Prof. K. T. Shah's amendment is quite out of place. I, therefore, oppose that amendment.

Mr. Vice-President: I shall now put the amendments to vote, one by one Amendment No. 1051 standing in the name of Damodar Swarup Seth.

The question is:

"That for articles 43 and 44 the following be substituted:—

"The President shall be elected by means of the single transferable vote by an electoral college composed of the members of Parliament and an equal number of persons elected by the legislatures of the States on population basis under the system of single transferable vote."

The amendment was negatived.

Mr. Vice-President: Amendment No. 1053 standing in the name of Prof. K. T. Shah.

The question is:

"That for article 43, the following be substituted :—

'43. The President shall be elected by the adult citizens of India, voting by secret ballot, in each constituent part of the Union."

The amendment was negatived.

Mr. Vice-President: Amendment No. 1057 standing in the name of Mr. Karimuddin.

The question is:

"That for article 43, the following be substituted :—

"43. The President shall be elected on the basis of adult suffrage."

The amendment was negatived.

Mr. Vice-President: Amendment No. 1068 standing in the name of Mr. Mohammed Tahir.

The question is:

"That in clause (b) of article 43, the word "elected" be deleted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 1064 standing in the name of Mr. Tajamul Husain.

The question is:

"That in clause (a) of article 43, for the words "the members" the words "the elected members" be substituted."

The amendment was adopted.

Mr. Vice-President: Amendment No. 1070 standing in the name of Dr. Ambedkar.

The question is:

"That to article 43 the following explanation be added:—

"Explanation.—In this and the next succeeding article, the expression "the Legislature of a State" means, where the Legislature is bi-cameral, the Lower House of the Legislature."

The amendment was adopted.

Mr. Vice-President: Amendment No. 23 of List I (Fourth Week standing in the name of Mr. Mohammed Tahir.

The question is:

"That in amendment No. 1070 of the list of amendments in the proposed explanation, for the words "the Lower House of the Legislature" the words "the Legislative Assembly of the State" be substituted."

The amendment was negatived.

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

The question is:

"That article 43, as amended, stand part of the Constitution."

The motion was adopted.

Article 43, as amended, was added to the Constitution.

Article 15

Mr. Vice-President: With the permission of the House, I should like to revert to an article left over: that is article 15. I have before me the proceedings of the House from which it appears—this was considered on the 6th December last—that general discussion had concluded and I had called upon Dr. Ambedkar to reply. At that time it was suggested that efforts should be made to arrive at some kind of understanding so that those who had submitted certain amendments might feel satisfied. I do not know the position now; but we cannot wait any longer. Dr. Ambedkar, will you please make the position clear? If no understanding has been arrived at, I would ask you to reply.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, I must confess that I am somewhat in a difficult position with regard to article 15 and the amendment moved by my Friend Pandit Bhargava for the deletion of the words "procedure according to law" and the substitution of the words "due process".

It is quite clear to any one who has listened to the debate that has taken place last time that there are two sharp points of view. One point of view

[The Honourable Dr. B. R. Ambedkar]

says that "due process of law" must be there in this article; otherwise the article is a nugatory one. The other point of view is that the existing phraseology is quite sufficient for the purpose. Let me explain what exactly "due process" involves.

The question of "due process" raises, in my judgment, the question of the relationship between the legislature and the judiciary. In a federal constitution, it is always open to the judiciary, to decide whether any particular law passed by the legislature is *ultra-vires* or *intra vires* in reference to the powers of legislation which are granted by the Constitution to the particular legislature. If the law made by a particular legislature exceeds the authority of the power given to it by the Constitution, such law would be *ultra vires* and invalid. That is the normal thing that happens in all federal constitutions. Every law in a federal constitution, whether made by the Parliament at the Centre or made by the legislature of a State, is always subject to examination by the judiciary from the point of view of the authority of the legislature making the law. The 'due process' clause, in my judgment, would give the judiciary the power to question the law made by the legislature on another ground. That ground would be whether that law is in keeping with certain fundamental principles relating to the rights of the individual. In other words, the judiciary would be endowed with the authority to question the law not merely on the ground whether it was in excess of the authority of the legislature, but also on the ground whether the law was good law, apart from the question of the powers of the legislature making the law. The law may be perfectly good and valid so far as the authority of the legislature is concerned. But, it may not be a good law, that is to say, it violates certain fundamental prinicples; and the judiciary would have that additional power of declaring the law invalid. The question which arises in considering this matter is this: We have no doubt given the judiciary the power to examine the law made by different legislative bodies on the ground whether that law is in accordance with the powers given to it. The question now raised by the introduction of the phrase 'due process' is whether the judiciary should be given the additional power to question the laws made by the State on the ground that they violate certain fundamental principles.

There are two views on this point. One view is this: that the legislature may be trusted not to make any law which would abrogate the fundamental rights of man, so to say, the fundamental rights which apply to every individual, and consequently, there is no danger arising from the introduction of the phrase 'due process'. Another view is this: that it is not possible to trust the legislature; the legislature is likely to err, is likely to be led away by passion, by party prejudice, by party considerations, and the legislature may make a law which may abrogate what may be regarded as the fundamental principles which safeguard the individual rights of a citizen. We are therefore placed in two difficult positions. One is to give the judiciary the authority to sit in judgment over the will of the legislature and to question the law made by the legislature on the ground that it is not good law, in consonance with fundamental principles. Is that a desirable principle? The second position is that the legislature ought to be trusted not to make bad laws. It is very difficult to come to any definite conclusion. There are dangers on both sides. For myself I cannot altogether omit the possibility of a Legislature packed by party men making laws which may abrogate or violate what we regard as certain fundamental principles affecting the life and liberty of an individual. At the same time, I do not see how five or six gentlemen sitting in the Federal or Supreme Court examining laws made by the Legislature and by dint of their own individual conscience or their bias or their prejudices be

trusted to determine which law is good and which law is bad. It is rather a case where a man has to sail between Charybdis and Scylla and I therefore would not say any thing. I would leave it to the House to decide in any way it likes.

Mr. Vice-President: I shall now put the amendments one by one to vote. No. 523.

The question is:—

"That in article 15, for the words "No person shall be deprived of his life or personal liberty except according to procedure established by law" the words "No person shall be deprived of his life or liberty without due process of law" be substituted."

The amendment was negatived.

Mr. Vice-President: The question is—

"That in article 15, for the words "except according to procedure established by law" the words "due process of law" be substituted."

The amendment was negatived.

Mr. Vice-President: No. 528.

Shri S. V. Krishnamurthy Rao (Mysore): I do not press it.

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

Mr. Vice-President: No. 530.

The question is:—

"That in article 15, for the words "procedure established by law" the words "due process of law" be substituted."

The amendment was negatived.

Mr. Vice-President: No. 526

The question is:—

"That in article 15 for the words "except according to procedure established by law" the words "save in accordance with law" be substituted."

The amendment was negatived.

Mr. Vice-President: No. 527.

The question is:—

"That in article 15 for the words "except according to procedure established by law" the words "except in accordance with law" be substituted."

The amendment was negatived.

Mr. Vice-President: I shall put the article to vote.

The question is:—

That article 15 stand part of the Constitution.

The motion was adopted.

Article 15 was added to the Constitution.

Article 44

Mr. Vice-President: We shall now take up article 44.

The motion is:—

That article 44 form part of the Constitution.

I am going to call over the amendments one by one.

No. 1071 is of a negative character and is therefore disallowed.

(Amendments Nos. 1072 and 1073 were not moved.)

Amendment No. 1074 is disallowed as being formal.

Amendment No. 1075—Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar:

Sir, I move—

[The Honourable Dr. B. R. Ambedkar]

"That in sub-clause (c) of clause (2) of article 44, for the words "such member" the words "the elected members of both Houses of Parliament" be substituted."

Before proceeding to give the reasons for the amendment I would like with your permission to go back for a minute to clause (2) of this article and explain the scheme as set out in sub-clauses—(a) and (b) of that clause. Honourable Members will see that the President is to be elected by elected Members of the Lower House of each State Legislature and by elected Members of both Houses of Parliament—the two to form a single electoral college. Sub-clause (1) of article 44 says that as far as practicable there shall be uniformity in the scale of representation of the different States in the election of the President. It would have been possible to achieve this uniformity by the simple method of assigning each member of the electoral college one vote. But this is not possible because of the disparity between the members of the Legislature and their ratio to population that exists between the different classes of States. In the case of States in Part I of the First Schedule, article 149(3) fixes the scale of representation—one representative for every one lakh of population. In the case of States in Part III, no such scale is laid down. The scale may vary from State to State. In one State, it may be one representative for every 10,000 population. In another, it may be one for every 20,000. That being the position, the value of the votes cast in the election of the President by the members of the State Legislatures cannot be measured by the simple rule of assigning one vote one value. The problem, therefore, is how to bring about uniformity in the value of the votes cast by members who do not represent the same electoral unit. The formula adopted to obtain the value of a vote cast by an elected member of the Legislature of a State is to divide the population of that state by the total number of elected members of the Legislature of that State; and to divide the quotient so obtained by 1,000, and if the remainder is not less than 500 then add one to the dividend. This is what is stated in sub-clauses (b) and (c) of clause (2).

I now come to the amendment to sub-clause (c) which I have moved. With regard to the votes cast by members of Parliament, we are confronted by the same problem, namely, the disparity in the electoral units and consequent disparity in the value of the votes cast by them. This disparity also arises from the same causes. In the first place, the Council of States being elected by the State Legislature reflects the same disparity which exists between States in Part I and States in Part III. In the second place, there is the same disparity in the ratio of seats to population as between States in Part I and Part III in the election of members of Parliament.

There are two ways of achieving uniformity in the voting by members of Parliament. One is to divide the total number of votes capable of being cast by members of all the State Legislatures by the total number of members of all the State Legislatures and the quotient will be the number of votes which each member will be entitled to cast. The other method is to divide the total number of votes capable of being cast by members of the Legislatures of all the States by the total number of elected members of both Houses of Parliament. The first method is set out in sub-clause (c) as it stands. The second method is embodied in the amendment to sub-clause (c) which I have moved. The difference between the two methods lies in this. In the first method all members of the electoral college taking part in the election of the President are treated on the same footing in the matter of valuation of their votes. According to the second method the members of Parliament are given equal strength in the matter of voting as the members of the State Legislatures will have. It is felt that members of Parliament should have

a better voice than what sub-clause (c) as it stands does. Hence the amendment.

Mr. Vice-President: No. 1076 is disallowed as being formal.

Amendment No. 1077—Mr. Mahavir Tyagi.

Shri Mahavir Tyagi (United Provinces: General): Sir, I may be permitted to move 1078 instead of 1077.

Mr. Vice-President: No. 1077 will not be put to vote. I allow 1078 to be moved.

Shri Mahavir Tyagi: Sir, I beg to move—

"That for clause (3) of article 44, the following be substituted:—

"(3) The election of the President shall be held by secret ballot and in accordance with the system of majority preferential voting by the single alternative vote."

Sir, the system of majority preferential voting by the single alternative vote is the name of the method which has been envisaged in this article. Proportional representation by the single transferable vote is always as a rule used in such elections where the constituencies are plural and minorities are given the privilege of sending their representatives according to the proportion of the number amongst the electors. It is said that in Ireland the election of the President is held by single transferable vote. I submit that everything that is done elsewhere should not be taken to be a gospel truth. From the very amendment the House will understand that while it elects only one man for one office, and there is only one office vacant which is going to be filled, the minorities cannot have any representation. It is proportional representation. How will they have a proportion in one man—that man belongs to one party. The minorities will have no proportion in that one President elected by proportional representation. Unless the constituency is plural the proportion does not come in. So it is neither proportional representation because he is a "representative"; generally speaking—in ordinary parlance—I do not know—one might be very critical and look into the dictionary—but generally speaking one representative is known as "representative". If there are more than one man then they may be known as "representation". One is not known as "representation".

Pandit Lakshmi Kanta Maitra (West Bengal: General): What is majority preferential system?

Shri Mahavir Tyagi: I am coming to that. A single constituency for election is neither proportional because the minority does not get any proportion in one seat. Nor is it representation because representation always signifies a number of persons together, and not one person. One representative is known as representative. Therefore it is neither proportional nor representation. Nor is it a transferable vote. Transferable vote means a vote which is transferred from one person to another in the manner in which it is described in the single transferable voting system. The balance of a candidate's vote, after his election, is transferred to another candidate. It is not a question of transferring the balance of votes here. There is only one candidate. The whole voting will be alternative so that if one candidate gets defeated and his name is eliminated, then the vote is altered as it is from the name of the defeated candidate; instead of the voter's first choice, the vote goes to his second choice. So this system, although it is called proportional, is not, in fact, proportional. Neither is it representation, as I have just now explained. Nor is it a "single vote". As it is, every voter in the legislatures of the States will have about 99·8 or 99·7 votes. Here it is not a case of one man, one vote as is envisaged in the single transferable vote system. The total population of a state will first be divided by thousand, and the result will be further

[Shri Mahavir Tyagi]

divided by the number of voters in the electoral college in the province, which means that the number of votes one member of the Assembly will cast may be about 100, never more than 100, it may be 99 point or so. I must also point out that in sub-clause (b) it is stated—

"if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause (a) of this clause shall be further increased by one;"

Here, by some clerical error probably, they have forgotten to mention what is to happen to the balance if it is less than half. Unless you mention that less than half will not be taken care of, or less than half shall be disregarded, the authorities may not disregard it. Just as in sub-clause (c) you have stated that fractions exceeding one-half will be counted as one and other fractions disregarded, so also you should have said something in sub-clause (b). Otherwise, the exact wording of this sub-clause (b) will be adhered to and each member of the legislative assembly in the Provinces and States may have not only 99 point something or 98 point something votes, but the calculation can go on to 98.0032 and so on. So a further serious defect will arise in the working of the complicated system of single transferable vote. On an average there will be 3,300 representatives of the States legislatures; and each one of them will have not only one vote, he will have so many votes. How can we call it a single transferable vote? They will not be a uniform number; one member will have 98 point something votes and in some other states it may be 80 votes only. So the number of votes each member will possess and cast will vary from State to State.

It is also not mentioned here that these so many votes with a voter will be given only to one candidate. Sir, I would very much like to draw the attention of the honourable Dr. Ambedkar to the effect of the clause as it stands at present. Each member of a legislative assembly will get a number of votes which will vary from legislature to legislature. I am sorry the honourable Dr. Ambedkar is not attentive.

Mr. Vice-President: Dr. Ambedkar, Mr. Tyagi wants to invite your attention to some points.

Shri Mahavir Tyagi: I want to invite attention to one point. The number of members in the legislatures in the provinces and States will be approximately 3,300 and.....

Shri S. Nagappa: Sir, can the honourable Member address another honourable Member? He has to address the Chair.

Shri Mahavir Tyagi: I am addressing the Chair. I want the honourable Member to pay attention to.....

Mr. Vice-President: Mr. Nagappa will kindly take his seat.

Shri Mahavir Tyagi: According to the calculations envisaged here, there will be approximately 3,300 members in the legislatures of the provinces and States. The votes they will have will not be one each. Each one of them will have as many votes as can be obtained by dividing the population of the State by one thousand, and dividing the result again by the number of legislators in the State. This means that each member will have not one vote, but as many as 98 votes or 97 votes or 80 votes and so on. How can you call such a system as single transferable vote?

I want to guard against one more defect, of which no notice seems to have been taken. You have not said that all these votes will be cast to one candidate. Suppose I am a legislator in U.P. and I have 98:5 votes and there are four candidates for one seat. You have never said that all the votes

should be given by me to one candidate only. I may give 90 votes of mine to one candidate, 4 to another and 5 to a third and so on. I can thus distribute my votes to the candidates according to my choice. You have said that each elector will have about 98 votes, but you have not said that all of them will have to be cast to one candidate. That being so, how will your single transferable system stand? I would request you to look into this and please correct this clerical error. You have not said that all the votes will be given to one candidate cumulatively and that they cannot be distributed among so many candidates.

Secondly, the single transferable vote does not exist here, because nobody has a single vote, everybody has plural votes. The number of voters will be 3,900 in state legislatures and the total number of votes will be about 3,30,000. And then the same number of votes will be cast here in Parliament by 735 voters. Therefore, here every voter will have something like 460 votes. In Ireland the system of single transferable voting might suit because there each voter has one vote, but it will not suit us here because here each one does not have one vote, but so many, and the number of votes a legislator gets varies from province to province or State to State.

Now, I come to the proposal I have made. My proposal is—

"The election of the President shall be held by secret ballot and in accordance with the system of majority preferential voting by the single alternative vote."

According to this system, votes can be transferred from one candidate to another and the candidate who gets the minimum number of votes will be eliminated from the contest, and his votes will be altered and counted in favour of the next higher candidate of his choice. And this process of elimination will proceed on till there remains only one candidate in the contest. He will be declared elected. I therefore submit that my phraseology is more suitable although the method will remain practically the same. Only there is a technical difficulty which I have pointed out.

Begum Aizaz Rasul (United Provinces: Muslim): Sir, I beg to move:

That in clause (3) of article 44, the words "in accordance with the system of proportional representation" be omitted.

My arguments have more or less been covered by the speech of the previous speaker. The object with which I move this amendment is that the first condition of proportional representation is the existence of a multiple member constituency. If only one man is to be returned then the question of proportional representation does not arise and this point has been clearly made out by Mr. Tyagi. Therefore I do not want to take up the time of the House in repeating his arguments. It might have been understood that the single transferable vote would have been beneficial in this election, because it would have meant the elimination of candidates who got the least number of votes. I will give an example of proportional representation in a constituency which is a multi-member constituency. For instance, if there are 100 voters and 5 people have to be returned and party A gets 50 votes, B gets 25 and C gets 25, in ordinary election all the candidates returned will come from Party A. Whereas in proportional representation Party A will get 3, B will get 1 and C will get 1. The idea is that the proportion of the electorate is reflected in the number of persons elected. For this it is essential that there is more than one seat but when there is only one seat how can the proportion of the electorate be represented in that seat, because one seat cannot be portioned into 3 or 2? Therefore I believe that this system of proportional representation will certainly not be correct for the election of the President and the minority as such where it is able to send in its candidate in a multiple member constituency cannot do so in a constituency which can only return one member. Hence it is that I have moved this amendment.

(Amendments Nos. 1080, 1081 and 1082 were not moved.)

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I propose to move amendment No. 25 on List I (Fourth Week) in place of Amendment No. 1083, because this amendment is acceptable to the honourable Member Dr. Ambedkar.

I beg to move:

"That for amendment No. 1083 in the List of amendments the following be substituted:

"That for the explanation to article 44, the following Explanation be substituted:—

"Explanation.—In this article, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.'"

This amendment really combines the purpose of amendments Nos. 1081 and 1083. Amendment No. 1081 tabled by Dr. Ambedkar wanted to get rid of the first part of the Explanation. Amendment No. 1083 which stood originally in my name really wanted to effect certain important verbal changes in the latter part of the Explanation and the amendment which I have moved combines the purposes of both these amendments.

With regard to the elimination of the first part of the Explanation, which corresponds to Dr. Ambedkar's amendment, I need not say anything. I shall confine myself to that part of the amendment with which I am concerned. In fact the House will be pleased to note that article 44 deals with the election of the President. By article 43 the members of the Houses of Parliament at the Centre and the elected members of the Legislatures of the States are sought to be empowered to vote at the presidential election. By sub-clause (a) to clause (2) of article 44 it is provided that every member of the State legislature shall have a certain number of votes and that would be dependent upon the population of the State. But it is provided in the Explanation as it stands in the text that this population should be taken from the 'last preceding census'. I submit that the original Explanation may lead to an impassee, as for instance, when the election is going to be held the figures of the 'last preceding census' may not be available. For example if there is a census on the 1st January 1951, as it is normally expected to be, and if there is an election of the President in February or March 1951—within two or three months of the Census—the figures of 'the last preceding census' will not be available. It takes about a year to prepare and publish the census figures. Thus if we keep the phraseology of the Explanation as it is we shall be bound to assign votes to the members of the State legislature in proportion to the population as ascertained in the last preceding census, whereas the figures of the last preceding census would not be available for the purpose. The result will be that the election of the President cannot be held. In these circumstances I have suggested the amendment that we should take the population from the last preceding census 'for which the relevant figures have been published'. By these words the impasse would be avoided. If election is held within a short time of the census and the figures of that census are not available, then this amended Explanation will allow the figures of the previous 1941 census to be relied upon. That would remove the impasse which otherwise could not be avoided as we will have definite figures to go upon. In these circumstances I submit that the amendment should be accepted.

Mr. Vice-President: The article is now open for general discussion.

Prof. K. T. Shah: Mr. Vice-President, Sir, I had tabled an amendment on this clause suggesting its entire deletion which obviously was out of order, and has, therefore, been ruled out. My object in submitting that amend-

ment however, was to point out that the whole article sets up a machinery, not only very complicated and likely to give rise to serious disputes as regards the actual number of votes which a State may be entitled to, but which will fail, I submit, in the original purpose for which proportional representation by single transferable vote was devised. Proportional representation by single transferable vote is intended, I submit, to reflect in the legislative body *all* the shades of political philosophy, all the different interests, all the different opinions that may be found in a country, provided they can muster a given figure, say, 50,000 or 100,000, or whatever may be supposed to be the figure, which is entitled to have its voice heard in the legislative or similar large bodies. Proportional representation, therefore, is not suited, I submit, where the election is of the executive head, and where, after all a single individual is to be elected. I agree that you can work it on a proportional basis by having several candidates, and the votes of the different candidates are transferred from one to another according to the order of preference. That, however, will bring you something to this effect, that your finally elected President was the chosen representative, in the first degree, of let us say one-third: that he was the chosen representative in the second degree about one-tenth, that he was the chosen representative in the third degree—supposing there are three candidates—of one twentieth. This is a minority representative not of a majority.

I have had some experience of Proportional Representation in the University of Bombay, and I have known that preferences as low as nine, ten, twelve and fifteen have actually been counted. Do you wish your President to be elected by transfers so that the fifteenth choice of a group may eventually succeed and he would eventually be elected? He would not be the representative even of a majority in the first degree—he would be the representative of a majority by a number of transfers, so that in the first degree he may actually be the representative of a minority. This is undesirable in the interests of national solidarity.

A properly organised minority may secure a sufficient number of votes for the individual or the candidate to stay on, until by transfer, retransfer and re-retransfer he finally secures an absolute majority. That majority will be a misleading and a highly ambiguous majority, in which the major portion of the country will not be reflected.

I further feel that the machinery necessary for transfer and retransfer of anybody who gets last on the roll, so to say, of the list of candidates above will be itself causing difficulties, compared to which the difficulties urged on a previous occasion by the mere force of numbers does not appear to me to be so great. The latter difficulty seems to me to be needlessly exaggerated—that 200 million voters voting will make the election impossible. The 200 million voters will not all be voting at one place and at one time. That is physically impossible. But 200 million voters scattered, let us say, in 20,000 centres and each centre voting its proportion of voters, is not at all a difficult thing which would rise to the level of an impossibility. We can, therefore, rule out completely the question of actual popular representation in the choice of the head of the State as impossible. Nor is the administrative machinery in my mind so difficult to provide. If only you look back to the history of representative institutions in this country, at the Centre, or in the Provinces, from only about thirty or forty years ago you will find that the electorate has, at each change, jumped eight or ten or twenty times; and that those who had held that the mere size of the electorate would make it impossible to work it have proved false prophets.

Take the last rise in the electorate from a few hundred thousands rising to about 35 millions, a rise of some 100 times. And if a suggestion like the one I had the honour to put before the House was accepted, you would raise it only by seven or eight times. That would not be a insurmountable difficulty.

[Prof. K. T. Shah]

In any case the difficulty created by the system of Proportional Representation, and the reflection that the President actually may not be the choice in the first degree of a majority, would undermine the very basis of respect and reverence that the Head of the State should command.

I suggest, therefore, that the system of Proportional Representation, apart from the other difficulties that have been put before the House by those who have moved amendments, should itself convince the House that it is a very dangerous—not to say vicious—principle, and as such ought to be disregarded.

By all means have it, if you like, in the composition of your Legislature. By all means have it, if you like, in the composition of other similar bodies. But when you select the head of the State, or of any unit within the Union, you should avoid the principle of Proportional Representation, as it is a double-edged sword that may cut both ways. It may represent all shades of opinion; at the same time it may bring to the head of affairs a man who is a representative in the first degree, only of a minority.

On these grounds I support the amendment that the principle of proportionate representation be deleted and that the article be amended accordingly.

Shri A. V. Thakkar (United States of Kathiawar: Saurashtra): Mr. Vice-President, Sir, I do not propose to speak on the question of proportional representation but on another point regarding the 'last preceding census'. As is well known, since the census of 1941 was taken there have been very great changes in the population of the country, particularly in certain Provinces. I would refer to the Provinces of East Punjab and West Bengal. I would also refer to the small changes in the United Provinces and Bombay. There large numbers of Hindus and Sikhs and other population have come in and added largely to the general population in those four Provinces. At the same time a large number of Muslims have left these four Provinces and gone to Pakistan. Therefore the census of 1941 has been made thoroughly unrepresentative of the numbers of people residing in these four Provinces. I would suggest that the last preceding census, namely the one of 1941, has very little value, looking at it from a commonsense point of view. Government may therefore arrange to have either a new census taken for the whole country specially for the purpose of this Constitution or necessary arrangements may be made early for taking the new census of these 4 Provinces. It may be suggested that the census of 1951 may be advanced by one year, say, it may be taken in the year 1950 instead of in 1951. Or a special census may be taken only for these four Provinces which I have mentioned and the number of seats representing the population of those Provinces be determined therefrom. Unless this is done it will be very unfair to certain communities. I will name only one instance.

I will give the instance of the Scheduled Castes of the Punjab. Large numbers of these people residing in West Punjab have come over to East Punjab and their number has in consequence very much increased. The number of seats that the Scheduled Castes will get—specially reserved for them—will be much fewer, being nearly one-half of what they are entitled to get under the existing population of these castes. The same thing applies to the Scheduled Castes of West Bengal also, though to a smaller extent. In East Punjab the difficulty is a very serious one. Therefore this minority would not get half its due representation if the figures of the preceding census were adopted.

Shri Rohini Kumar Chaudhari (Assam: General): *[Mr. Vice-President, on this last day of the fourth session, but not at the very closing period, of this Constituent Assembly I desire to speak in Hindi in this House. I have come to entertain this desire as a result of the visit I made a few days ago to the Hindi Sahitya Sammelan which was meeting under the Presidentship of Seth Govind

* [ ] Translation of Hindustani speech.

Das: My friend Shri Prakasam made a speech in Hindi in the Sammelan, and it was such as to make him known for his courage in every part of the country. Indeed his speech was so very sweet and fine as to cause the spread of his fame as a man of courage in all parts of the world. It made me reflect that if Shri Prakasam, a resident of the Deccan, could make such a fine speech in Hindi there was no reason why I could not do so.....]

Mr. Vice-President: Are you speaking on article 44 or any other matter?

Shri Rohini Kumar Chaudhari:* [And I concluded that I could not fail in my attempt to speak in Hindi simply because I am an Assamese.] Sir, I have exhausted my Hindi.

Mr. Vice-President: You will kindly make better use of your time.

Shri Rohini Kumar Chaudhari: My honourable Friend Mr. Thakkar Bapa, in the course of his speech, referred to the United Provinces and the Punjab. Very naturally he has forgotten Assam—In Assam, in 1941 the war was almost at the door and the census was taken in a very haphazard manner. Therefore it is all the more necessary for the province of Assam to have this amendment, which will allow us to take into consideration the relevant figures which may be arrived at just before the election, adopted. If we can have a census which will show the figures of different provinces as they now stand for the purpose of preparing the electoral rolls it will be of very great advantage. Take the case of Assam. Even the actual numbers of people who have come in as refugees to Assam from East Bengal have not yet been taken. We surmise that some 3 or 4 lakhs of people have thus come to Assam already. Therefore it is necessary that these figures should be taken into consideration at the time of fixing the total number of members for the provinces. At present, the population of Assam minus the district of Sylhet has been taken; but many from Eastern Bengal and from Sylhet have come to Assam and their figures must be taken into consideration in fixing the total number of seats for the province. This should be done also for fixing the number of seats in the electorates. Therefore I commend to this House the acceptance of the suggestion that the latest census figures may be taken into consideration at the time of delimiting the constituencies.

Pandit Lakshmi Kanta Maitra: Mr. Vice-President, Sir, article 44 with which we are dealing now provides that as far as practicable there shall be uniformity in the scale of representation based on population of the different States at the time of the election of the President. It will thus be seen that this article, innocuous as it seems, constitutes the very backbone of the working of this Constitution. This article incidentally provides for the mechanism of representation in the different legislatures constituting the units of the Indian Union. The framers of this draft Constitution have come to the conclusion that they should try to bring about a workable uniformity in the representation that is going to be given to the different States. Now, in the Explanation of this article, it has been provided that 'population' in this article means, the population as ascertained at the last preceding census. To this, Sir, an amendment has been moved by my friend Mr. Nazirúddin Ahmad which runs as follows: "The latest census of which the relevant figures have been published." These words are to be put in place of the words 'the last preceding census'. I understand that this amendment is going to be accepted by the honourable Chairman of the Drafting Committee which for all practical purposes means that it will be accepted by the House. Personally speaking I do not see how this amendment at all improves the position. In my opinion it makes the position worse. Sir, anybody with commonsense can understand what 'the preceding census' means, but few can appreciate what is meant by 'the latest census of which the relevant figures have been published'.

* [ ] Translation of Hindustani speech.

[Pandit Lakshmi Kanta Maitra]

Sir, nobody knows, after a census has taken place, when the figures thereof are going to be published. It might be one year, two years or three or four years. When an election takes place, it is quite possible, I should rather say probable—that at that particular point of time the preceding census will not give you the relevant figures because it takes a lot of time to publish them. I therefore do not see how this amendment is going to improve the position. Unless the executive government—for a census is after all the function of the executive government and is conducted under orders of the executive government—takes proper steps to see that the publication of figures follows immediately the enumeration, I believe that the safeguard that is sought to be provided by way of giving uniformity of representation is going to be in a very large measure defeated. I want this aspect to be carefully considered. It is not as simple as we think.

Let us see how it will operate to the prejudice of certain provinces, apart from the question that enumeration and publication will not follow simultaneously and there is bound to elapse an interval of a pretty long time. Sir, we had the last census in 1941. I wish that my honourable Friend, Mr. Rohini Kumar Chaudhary from Assam, who started speaking in Hindi but broke down and started again in English, could make his point clear by making a straight speech in English. He had a point to make which unfortunately he could not. There is a very important point involved in this. In provinces like Assam, undivided Bengal, undivided Punjab, Sind and the North-West Frontier Province, where there was a preponderant body of Muslim population, there was at the time of the last census of 1941, a competitive race for increasing the numbers, and in these provinces that I have mentioned, except in Assam—I am not quite sure of Assam even though in Assam also a Muslim League Government was in power—it is a fact that communities developed a pathological interest in enhancing their numbers so as to get the maximum benefit in the next succeeding Constitutional Reforms. I cannot talk of other provinces because the Muslim community there was in a minority and no Muslim League Government was in power. So far as the provinces, I have mentioned, are concerned, I can say from my personal knowledge and experience—and I think Members from these provinces will testify to the same fact—that this was the state of affairs. The Census Commissioner also made an observation to that effect. Therefore, if today the census figures of 1941 are going to be any guide for fixing the number of seats in the particular provinces I have mentioned, we will get a very misleading picture of the population of these provinces indeed. Mind you, in undivided Bengal for more than ten years before partition, the Hindu community had absolutely no voice, had nothing to do with the Government or any of its departments. In any case, they were not in any important position and the dice were heavily loaded against them. Hence we clamoured then and I do maintain even now that the figures of 1941 are in no way any index to the real population of these provinces. Now, after the 15th August 1947, some of these provinces were divided. Bengal was divided; West Bengal came within the Indian Union. East Punjab came into the Indian Union. Assam was divided and a portion was retained by Assam and a portion went to Pakistan. Sind and the Frontier in toto went over to Pakistan. Thereafter followed the terrible upheavals which everybody knows, as a result of which East Punjab came to be denuded of all Muslims and the West Punjab of all Hindus. The course of events compelled us to change the scale of representation for East Punjab and West Bengal in the present Constituent Assembly. Today the position is that you do not know if there is any Muslim soul in East Punjab or whether there is any Hindu soul in West Punjab. From Sind, I think more than seventyfive per cent. of the Hindus have already come over to the Indian Union. So far as Bengal is concerned,

lakhs of people have already come over to West Bengal from East Bengal. You might differ about the figures. Some may put it at twenty lakhs, others at thirty lakhs or at something more, but the most conservative estimate would be twenty lakhs from Eastern Pakistan due to this partition business, and the number is increasing day by day because the exodus still continues. By the time the general election under the new constitution is held, there will be a further influx and the number may swell to forty lakhs. The influx of people from East Pakistan began in 1941. When the Japanese entered the war against Great Britain, people left Eastern Bengal and came in very large numbers to West Bengal, in quest of jobs, war service, contracts and all the rest of it. Then came the disastrous Bengal famine of 1943 and again very large numbers of people moved from Eastern Pakistan to Calcutta where there was a greater chance of getting a morsel of food than in Eastern Bengal. Thus in 1943 the influx intensified—which brought in a much larger number of people than the ravages of the Japanese war. I therefore ask the Chairman of the Drafting Committee to take this fact carefully into consideration that the population of West Bengal today is not to be judged by the published and ascertained figures in the census of 1941, that it is considerably in excess of them and the excess is due to the facts I have mentioned. First, the influx commenced with the Japanese aggression. Secondly it was intensified by the famine of 1943. Thirdly it has gone beyond all proportions due to the friendly activities of our friends in Eastern Pakistan. This is continuing and will continue, I am sure, notwithstanding all that we do in the Inter-Dominion Conferences. Therefore, Sir, the net result would be that if West Bengal is to be allocated seats on the principle of uniformity based on population figures of 1941 census as envisaged in this article, it will occasion grave injustice to the province which will be hopelessly under-represented in the legislatures, both Central and provincial.

If you want to avoid this, if you want a just and fair deal to be given to the provinces of West Bengal, East Punjab, Bombay and to the City of Delhi, where vast numbers of refugees from Pakistan have come and settled and have swelled their normal population, as indicated in the census figures of 1941, the first thing that the Government should do is that, before they put into effect the Constitution in so far as it relates to the composition of legislatures, they should order an *ad hoc* census in these provinces. I understand that the usual census would be due in 1951 and I further understand that the Government of the day is not prepared to wait till then for general Election under the new Constitution. They want to expedite the election in accordance with the Constitution which will be adopted. If this decision of the Government to enforce the Constitution and to hold the general election thereunder, before the year 1951 stands, it is of utmost importance that there should be a fresh census before that, and that census should be ordered here and now for the provinces of West Bengal, East Punjab, Delhi and Bombay. These are the provinces which are greatly affected, and I hope this aspect of the question would engage the serious attention, in the first instance, of the Chairman of the Drafting Committee, who, I am sure, will realize the injustice that would otherwise be occasioned. And I trust that he would advise the Government, of which he forms an important limb, that this should be given effect to before the Constitution is put into operation.

Sir, I have on several occasions, here and elsewhere, brought this matter to the notice of the authorities. I have pleaded with them for mercy and for justice in this respect. I want the House to bear in mind the consequences that would otherwise follow. On the one hand, the Hindu community would be hopelessly under-represented in the legislatures and on the other, there is every likelihood of the Muslim community getting heavy excess of representation, if the census figures of 1941 are acted upon. This would be a grave political injustice and I caution the Government to take note of this.

[Pandit Lakshmi Kanta Maitra]

Sir, I do not know whether I can really support this amendment with all my heart. As it is, I do not believe that this amendment improves the situation in any way. Anyway the whole matter is left to the House, and if the House thinks that the amendment of Mr. Naziruddin Ahmad will improve matters, I have nothing to say. Personally, I am of opinion that it does not improve matters.

Mr. Vice-President: I have here slips from four eminent members of our House. So far as I have been able to judge, the question centres round a particular amendment and I also believe that sufficient light has been thrown upon it. If honourable Members insist on their right to speak, I am willing to ask them one by one. On the other hand, if they are good enough to accept my suggestion, then the business of the House can be expedited. I am in their hands.

Many Honourable Members: A short discussion may be allowed.

Maulana Hasrat Mohani (United Provinces: Muslim): I want only two minutes, Sir.

Mr. Vice-President: Please come to the mike.

Maulana Hasrat Mohani: Mr. Vice-President, I have come here today simply to point out a very serious defect in this article and in all other sections relating to the election system that we have adopted in India, and that is this. The general procedure adopted in India and elsewhere also is that if there be only one candidate and there is only one seat, that candidate is automatically elected. I think this is a very serious defect in our system of election. In Soviet Russia even if there is only one candidate, still the election is held, as there is always a chance that a person may manoeuvre to remove the names of other rival candidates and in this way the electorate may be in a position to oppose him by a majority vote. Then it will not be on the basis that there is one candidate or one seat. I may say that I have not proposed any amendment in this Constitution because from the very beginning, I hold that this whole thing is absurd. I do not accept its authority. I regard this Constituent Assembly as not competent and therefore, I have not moved any amendment. I simply make a suggestion that something should be added by the Honourable Dr. B. R. Ambedkar and his Committe to remove this defect and adopt the same course that has been adopted in Soviet Russia. There, even when there is only one candidate, the election is still held to find out if it is not possible that the majority may be opposed to him. Even supposing there is not a sufficient number to oppose the man, I think, we are not justified in electing him automatically and taking him as elected.

Mr. Naziruddin Ahmad: With your permission, Sir, can I speak a few words?

Mr. Vice-President: I cannot break a convention which has been established after very great difficulty. Prof. Shibban Lal Saksena.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. Vice-President, Sir, I want to draw the attention of the House to one fact, to which my honourable Friend Mr. Tyagi referred. Herein, we have provided for proportional representation for the election of the President. I think that there is some mistake in this clause. Proportional representation is possible by means of the single transferable vote, but here every member will have more votes than one and they will be calculated according to elaborate and complicated calculations and I do not think that proportional representation is possible in such a case. I feel that Mr. Tyagi has rightly pointed out that the only way to elect the President in the first case can be by elimination. There should be voting and the man who gets the minimum votes should be discarded.

Then among the remaining candidates, there should again be voting and the candidate with the minimum number of votes should be discarded. In this way among the remaining two candidates, the man who gets more should be elected. That is the only way in which one man can be elected with the majority of votes. Proportional representation is not a direct method especially when every single voter in the Central Parliament will have a larger number of votes attached to him than members of the Provincial Legislature. What will happen is that the voters of the Central Legislature will give their first preferences to somebody, and similarly voters of the Provincial Legislatures will give preference to some other person and the preferences, when they are carried over to other members, are very difficult to calculate, because their ways are different. I, therefore, think that the Drafting Committee should reconsider this matter and substitute the system which I have suggested, and in that way, we can be sure that the man who is elected will have a real majority of votes and not votes which are less than 50 per cent. That I think should be one change in the article.

About the census, Sir, I also feel that there has been a great change in the population figures during the last ten years, especially in the big cities. I know in Cawnpore, the population in 1941 was four lakhs; now it is about ten lakhs. I do not know what will be the number of seats allotted to it and similar big cities. As has been pointed out by my honourable Friend, in the provinces of Punjab and Bengal, there has been a large exodus. I also know that the refugees who have come from outside, about a crore, have been distributed to all the provinces. I therefore agree with the revered Thakkar Bapa that there should be a census before the election. I must also suggest one thing. We are prepared to follow the principle of adult suffrage in the elections. We can allot seats for the first term on the basis of the number of electors in the various communities. Out of a population of 33 crores, you will have fifteen crores of voters and the seats may be distributed according to the proportion of the voters in the various communities. I think that is a better method. Either we do away with proportional representation altogether: that is one method of getting over the difficulty; still there will be difficulty in giving seats to the various provinces. I think this is a general difficulty and something should be done to remove it.

The amendment given notice of by Mr. Naziruddin Ahmad will only improve matters, if there is a census before the election takes place. If that is the purpose, I think that is a proper amendment to be accepted.

I think this system of election of the President by the different States is a proper system, when we have rejected the system of direct election. Personally, I would have preferred direct election in which every voter would have voted for the election of the President by a direct vote. Although the President has no powers, still he would have great prestige. In fact, our President will be the substitute for the King in England. If the King in England has got prestige far above the Prime Minister, I think our President should have that prestige. I think this is the only method by which u can have an election in which the voters in every province will take part. think at least this section should be reviewed by the learned Doctor to see at the system of proportional representation is replaced by the other system that I have recommended.

Shri R. K. Sidhwa (C. P. & Berar: General): Mr. Vice-President, Sir, this article relates to two important points: one relating to the election of the President in accordance with the system of proportional representation by means of the single transferable vote, and the other about the census on the poulation figures on which the representation of the different States has to be fixed.

[Shri R. K. Sidhwa]

Now, I consider, Sir, that the single transferable vote system is one of the best systems that has been produced. It gives the voter first choice, second choice and third choice for the election of a candidate. But, there is one factor: the single transferable vote system would work satisfactorily when there are more than one seat. Here is a question of electing one President. Therefore, I feel that while the system is very good, it would create many difficulties and complications if we adopt the method of the single transferable vote of which we have got sufficient experience. I would have preferred the elimination system in the election of the President. That would also give the right of voting to every voter and the candidate who gets the largest number of votes will be elected. For example, if there are five candidates, the man who gets the lowest number of votes is eliminated from the list. Then, all the voters again vote among the four remaining candidates, and whosoever gets the lowest number is again eliminated. Again, the same voters vote between the remaining three. At the end, all the voters exercise their vote between the remaining two. That means, each voter exercises the right for every candidate. In the election of the President, I would personally prefer the elimination system which would be really beneficial and efficient in working. I feel that the single transferable vote system would work satisfactorily where there are more than one seat and where a small minority has also the right of being returned.

Coming to the census, Sir, this is a very important matter and I should think that the point advanced by my honourable Friend Thakkar Bapa should not be lost sight of. Many honourable members have spoken on this subject and we all know that, after the partition, the 1941 census figures in certain provinces will certainly not work satisfactorily. I will give you an illustration. In Sind, there were thirteen lakhs of people. Except two lakhs who are now there, who could not be evacuated for want of transport, there are eleven lakhs of Sindhis who are scattered over the various parts of the country. There are four lakhs of them in Bombay; about two and a half lakhs in the United Provinces. I may tell you that there are many of them in Ajmere and in the various other States. I may also tell you that forty five per cent. of the population of Ajmere consists of Sindhis. In Rajputana States, Jaipur, Jodhpur, there are nearly two lakhs of them. How could we rely on the 1941 census figures? Again, the 1941 census figures were defective. On account of the war, actually, the behest was issued by the then Government that the census should be taken on a very moderate scale. If you refer to the 1931 and the previous census, you will find that particulars are recorded in respect of all columns so that it gives you an idea of what our population consisted of. In the 1941 census, half the number of columns have been done away with. That had a reaction on the number of the population in the various provinces. I therefore consider it a very suicidal policy if the 1941 census is to be taken into consideration, particularly for the four or five provinces where the refugees have migrated. I do not know the real meaning of Mr. Naziruddin's Amendment. The amendment says, "the latest census of which the relevant figures have been published". Assuming that the election is to take place in 1950, the latest figures would be those of the 1941 census. When it is said that Mr. Naziruddin's amendment is going to be accepted, I would like clarification on the point what is conveyed by the phrase, "latest census of which the relevant figures have been published." The latest figures are already there of the 1941 census. I feel that before the election takes place, there should be a census, particularly for the provinces to which the refugees have migrated. Otherwise, I think a great injustice would have been done to them if for no fault of theirs they should be denied the right of voting by taking into consideration the 1941 census figures. I consider, Sir, this is a very important matter.

Mr. Naziruddin Ahmad's amendment creates complications and that requires clarification.

Shri H. V. Kamath: (C.P. & Berar: General): Mr. Vice-President, I rise to reinforce the plea that has been made by our venerable colleague, Thakkar Bapa and ably supported by our friend Pandit Lakshmi Kanta Maitra. It is common knowledge that the census of 1941 was taken under extraordinary circumstances. A World War of tremendous magnitude was on and hundreds of thousands of people were displaced from their homes and scattered not merely all over the country but all over the world. This was one fact which contributed to the incorrect enumeration of the last census of 1941. Since then we have had catastrophes and calamities in rapid succession; for four years thereafter that War raged, and in the middle of the war we had a famine and then soon after the war, we had vivisection of the country. These calamities have led to the uprooting of vast masses of the population, the destruction of large numbers of people and certainly to movements of large numbers of people from one part of the country to another. If we want to be fair at the next election and provide proper and just representation to the people, it is very necessary that there should be a correct enumeration before the elections are held.

Mr. Naziruddin Ahmad: You may have a special census. How can you proceed without figures? My attention was directed to the figures—not the 1941 census.

Shri H. V. Kamath: I do not insist upon a regular census being held before the elections but we must have the figures, not merely for the purpose of this article, but as we all know the Constitution provides for and I think we adhere to the principle of reservation for certain communities like the Scheduled Castes and the Muslims. Unless we know and we have the figures of these communities for whom reservation will be made in the legislature, how can we allot the number of seats for these communities? It is hoped in some quarters that perhaps at no distant date people who have migrated from Pakistan to India and *vice versa* may be enabled to go back, to their countries. I think it is a vain hope and I do not think the *status quo ante* will be restored in the near future. I remember, Sir, in this connection last year when the Provincial constitution was discussed here in this House, my friend Mr. Khandekar raised this point about the Scheduled Castes. He said that in 1941 the enumeration of Harijans was defective and that it was an underestimate and therefore he wanted that before the next elections there should be a re-enumeration in the whole of India. In my opinion this applies not only to Harijans but to all the communities which have got to be properly represented in the Legislature under the New Constitution. Replying to Mr. Khandekar, Sardar Patel, if I remember aright, though he did not make any promise, but he assured Mr. Khandekar and others of his way of thinking that this point will be duly borne in mind and considered and that before the elections we would try our best to arrive at correct figures for the population of the various communities in this country. My friend Mr. Algu Rai Shastry the other day referred to the non-representation of Sindhi Hindus in this Assembly. It is a great anomaly that though, after the partition the East Punjab non-Muslims or Hindus and the West Bengal Hindus have been re-represented—their representations have been increased after the movement of these people from West Punjab to East Punjab and from East Bengal to West Bengal,—Sind has gone by default. Sind is now represented neither in this House nor in the Pakistan Constituent Assembly. They have lost the one seat which was allotted to them, because the Hindus that have migrated from Sind to India are scattered. Some are in Bombay, some are in C.P. and I do not know where

[Shri H .V. Kamath]

the others are scattered, and therefore it is difficult for any Provincial Assembly to elect any Sindhi as from that province because under our representation system, there must be at least 10 lakhs of people for one representative in this Assembly. But whatever that may be, we ought to have the enumeration of all these masses of people who have migrated either from Sind or West Punjab or East Bengal or the Frontier to India, prior to the next elections. Unless we have a correct record of all these movements of very large numbers of peoples, almost unparallelled in our recent history, it will be unfair and unjust to the people of our country to hold elections before the correct enumeration is made, if not by the regular census, at least by an *ad hoc* census as my friend suggested.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, I accept the amendment No. 25 of List 1 to amendment No. 1083 moved by my friend Mr. Naziruddin Ahmad. The other amendments I am sorry, I cannot accept. Now, Sir, in the course of the general debate, two questions have been raised. One is on the amendment of Mr. Naziruddin Ahmad. It has been pointed out by various speakers that it would be very wrong to base any election on the last census viz., of 1941. I am sure there is a great deal of force in what has been said by the various speakers on this point. It is true that the 1941 census was in some areas, at any rate, a cooked census; a census was cooked by the local Government that was in existence, in favour of certain communities and operated against certain other communities. But apart from that, it is equally true that on account of the partition of India there has been a great change in the population and its communal composition in certain provinces of India, for instance, in the East Punjab, Bombay, West Bengal and to some extent in U.P. also. In view of the fact that the Constitution provides for representation to various communities in accordance with their ratio of population to the general population, it is necessary that not only the total population of every particular province should be ascertained but that the proportion of the various communities to which we have guaranteed representation in accordance with their population should also be ascertained before the foundations of the Constitution are laid down in terms of election.

I have no doubt about it that the Government will pay attention to the various arguments that have been made in favour of having a true census of the people before the elections are undertaken. If I may say so, one of the reasons which persuaded me to accept the amendment of my friend Mr. Naziruddin Ahmad is that he used the word 'latest' in preference to the word 'last'. I thought that the word 'last' had a sort of a local colour in the sense that the last census may mean the periodical census which is taken every ten years; and the last census means the census taken before any operation of election is started.

Mr. Naziruddin Ahmad: I did not use those words. I said the last preceding census.

The Honourable Dr. B. R. Ambedkar: Anyhow, I did not pay much attention to what he said. But that certainly is my idea, that this clause shall not prevent the Government from having a new census before proceeding to have elections for the new legislature. I think that should satisfy most Members who have an apprehension on this point.

Shri Mahavir Tyagi: May I take it that you give an assurance that such a census will be taken?

The Honourable Dr. B. R. Ambedkar: I cannot possibly give an assurance. But no government will overlook the vast changes that have taken place in the composition and the total population of the different provinces. We have guaranteed representation to a great population consisting of various minorities. There

has been a great deal of debate, as honourable Members know, over the question of weightage, and we know that weightage has been disallowed. If we now have the elections and allow them to take place and the seats to be assigned on the existing basis of population, when as a matter of fact, that basis has been lost by migrations, it might result in weightage to various communities, and no representation to certain communities. Obviously in order to avoid such a kind of thing and to see that no community has any weightage, undoubtedly, government will have to see that the census is a proper census.

Pandit Lakshmi Kanta Maitra: I want to know whether the honourable Member means that no election under the new Constitution should be held unless this census was taken.

The Honourable Dr. B. R. Ambedkar: Well, it seems to me only a natural conclusion, because the seats for the elections cannot be assigned unless the populations of the various communities are ascertained. Therefore, that seems to me the logical conclusion, and a new census will be inevitable.

The other question that was greatly agitated by Mr. Tyagi and by Begum Aizaz Rasul and certain other members related to the election of the President. Now, there are two ways of electing the President. One way is to elect him by what is called a bare majority of the House. If a man got 51 per cent., he would be elected. That is one way of electing the President and that is the simple and straightforward one. Now, with regard to that, it may just happen that the majority party would be in a position to elect the President without the minority party having any voice in the election of the President without the minority party having any voice in the election of the President. Obviously no Member of the House would like the President to be elected by a bare majority or by a system of election in which the minorities had no part to play. That being so, the election of the President by a bare majority has to be eliminated, and we have to provide a system whereby the minorities will have some voice in the election of the President. The only method of giving the minorities a voice in the election of the President is, so to say, to have separate electorates and to provide that the President must not only have a majority but he must have a substantial number of votes from each minority. But that again, seems to me, to be a proposition which we cannot accept having regard to what we have laid down in the constitution, namely, that there shall be no separate electorates. The only other method, therefore, that remained was to have a system of election in which the minorities will have some hand and some play, and that is undoubtedly the system of proportional representation, which has been laid down in the Constitution.

Mr. Naziruddin Ahmad: There is to be transferability. How can there be proportional representation when there is only one man to be elected?

The Honourable Dr. B. R. Ambedkar: I really cannot go into this question in detail. To do so I will have to open a class and lecture on the subject; but I cannot undertake that task at this stage. However, it is well-known and everybody knows how the system works.

Mr. Vice-President: These interruptions show that some Members are not aware of the true nature of proportional representation. You need not pay attention to these interruptions.

Maulana Hasrat Mohani: What are you going to do if there is only one candidate?

The Honourable Dr. B. R. Ambedkar: If there is only one candidate, he will be elected unanimously (Laughter), and no question of majority or minority arises at all.

The other question asked by Mr. Tyagi was whether there was any procedure for eliminating candidates.

Shri Mahavir Tyagi: On a point of information, Sir.

The Honourable Dr. B. R. Ambedkar: No I cannot yield. I am answering your point. Your point was whether there was a process of elimination in the system of election which has been provided. My answer is, yes, proportional representation involves elimination. Otherwise it has no meaning. The only thing that we have done is that instead of having several proportional representations, we have provided one single proportional representation, in which every candidate at the bottom will be eliminated, until we reach one man who gets what is called a "quota".

Shri Mahavir Tyagi: But in the Parliament the system of alternative votes is adopted.

The Honourable Dr. B. R. Ambedkar: Alternative is only another name for proportional.

Sir, I have nothing further to say on this point.

Shri Mahavir Tyagi: Sir, I want to know.....

Mr. Vice-President: Mr. Tyagi, my difficulty is I cannot compel the Chairman of the Drafting Committee to answer your questions. Neither can I compel him to clarify your doubts.

I am going to put these amendments, one by one to vote.

I put amendment No. 1075 to vote.

The question is:

That in sub-clause (c) of clause (2) of article 44, for the words "such member" the words "the elected members of both Houses of Parliament" be substituted.

The amendment was adopted.

Mr. Vice-President: No. 1078. The question is:

That for clause (3) of article 44, the following be substituted:

"(3). The election of the President shall be held by secret ballot and in accordance with the system of majority preferential voting by the single alternative vote."

That amendment was negatived.

Mr. Vice-President: No. 1079. The question is:

That in clause (3) of article 44, the words "in accordance with the system of proportional representation" be omitted.

That amendment was negatived.

Mr. Vice-President: The question is:

That for the Explanation to article 44, the following Explanation be substituted :

"Explanation.—In this article, the expression 'population' means the population as ascertained at the last preceding census of which the relevant figures have been published."

The amendment was adopted.

Mr. Vice-President:—The question is:

"That article 44, as amended, stand part of the Constitution."

The motion was adopted.

Article 44, as amended, was added to the Constitution.

ARTICLE 45

Mr. Vice-President: The honourable Member concerned may move amendment No. 1084. I would like honourable Members to be as brief as possible, in which case we would be able to get through the article before the House concludes its deliberations today. But that does not mean that I am asking anybody not to speak or to omit important points which they might like to make.

Shri T. T. Krishnamachari: Sir, the honourable Member's amendment is substantially the same as the article, and deals only with the substantive part of the clause and not with the proviso. Is there any object in the honourable Member moving his amendment?

Mr. Mohd. Tahir: There is a difference in the meaning of the amendment and the article, and I shall explain how.

The Honourable Dr. B. R. Ambedkar: It is not an amendment at all: it is merely a transposition of the words. There is no difference at all.

Mr. Mohd. Tahir: There is some difference.....

Mr. Vice-President: I do not want to stand in the way of any honourable Member but there does not seem to be much in this amendment. However, the honourable Member may move it.

Mr. Mohd. Tahir: Sir, I beg to move:

That for the substantive part of article 45, the following be substituted:—

"The term of office of the President shall be five years from the date the President enters upon the Office."

The point was raised now that between the article as it stands and the amendment there is no difference. First I will deal with the article as it stands. It says "The President shall hold office for a term of five years from the date on which he enters upon his office". Supposing the election of the President takes place in 1950 after the general election and the constitution of the Parliament, if there is a casual vacancy in the office of the President in 1951 or 1952, in that case the President will be holding office for five years, that is he will have the office from 1951 to 1955, whereas the Parliament which was constituted in 1950 ends in 1954. My amendment means that the term of office of the President will be for five years, which means that if there is any casual vacancy or the election of the President takes place in 1950 and then there is a casual vacancy in 1951, the office of the President who will be elected in the casual vacancy will end in 1954, that is the term of five years when the Parliament ends. This is the difference which I have made out in my amendment of the article as it stands.

The question now arises as to why I have moved this amendment. The only point before me is that I want that the election of the President or the General election should not be influenced by any authority in power. The election must always be free and democratic. For instance, if a man is elected as President in the casual vacancy and he continues in office after the term of the Parliament ends at the Centre, it follows that the man who will remain in office as President will easily influence the General election as well as the election of the President. I want, Sir, that there should be no influence on the general election or on the election of the President in any case and therefore if the article as it stands means that the President who is elected in a casual vacancy will also hold office only for the remaining term of five years, that is to say his office will run according to the term of the Parliament, then of course I am not going to press my amendment. But in case it means that the term of Parliament will end and the office of the President will continue, then surely my amendment will stand and I will press it. With these words I move and I hope the position will be made clear.

(Amendment No. 1085 was not moved.)

Mr. Vice-President: Amendment No. 1086 is disallowed as it is a verbal amendment.

Amendments Nos. 1087 and 1088 are identical. Dr. Ambedkar may move No. 1087.

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

That in clause (a) of the proviso to article 45, for the word "resignation" the word "writing" be substituted.

Mr. Mohd. Tahir: Mr. Vice-President, Sir, I beg to move:

That in clause (a) of the proviso to article 45, for the words "Chairman of the Council of States and the Speaker of the House of the People" the words "members of the Parliament" be substituted.

I will not be very long. I only wish to submit that if the President, who has been elected by the members of the Parliament, wants to vacate his office by resigning his post, in all fairness it is desirable that he should address his resignation to the members of the Parliament and not to anyone else. The resignation letter may be handed over to the office, namely to the Speaker or to the Chairman of the Council of States, but he must address his resignation to the members of Parliament who elected him as President and to none else.

Mr. Vice-President: The next amendment is No. 1090 standing in the name of Mr. B. M. Gupte with an amendment to it by himself (No. 26 in List I-Fourth Week).

Shri B. M. Gupte (Bombay: General): I desire to move the amendment in a slightly modified form. The modification is only formal. It is with regard to the re-arrangement of the clause. I seek your permission and that of the honourable House to move it in the revised form.

Mr. Vice-President: Does the House give permission to Mr. Gupte to move his amendment in a slightly different form? Of course it is not possible at this hour to supply copies of this to all the Members. So Mr. Gupte may read the original and the altered forms of the amendment.

Honourable Members: Yes.

Shri B. M. Gupte: Sir, I beg to move:

That for amendment No. 1090 the following be substituted:—

(1) Article 45 be re-numbered as clause (1) of that article.

(2) In clause (a) of the proviso to the said clause as so re-numbered for the words "Chairman of the Council of States and the Speaker of the House of the People" the word "Vice-President" be substituted.

(3) In the said article as re-numbered add the following clause:—

"(2) Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) of this article shall forthwith be communicated by him to the Speaker of the House of the People."

Sir, the clause as it stands in the Draft Constitution provides that the resignation shall be addressed to two persons, namely, the Chairman of the Council of States and the Speaker of the House of the people. This is obviously inconvenient. It is therefore better that provision should be made that one person should receive the resignation and be responsible to set the machinery in motion to fill the vacancy. And that person is most properly the Vice-President. I have therefore provided that the Vice-President should receive the resignation. But at the same time it is desirable that the Speaker of the House of the people should also know it, and therefore by a subsequent clause I have provided that the Vice-President shall forthwith communicate this fact of resignation to the Speaker of the House of the people. I therefore hope the amendment will be acceptable to Dr. Ambedkar and to the House.

Mr. Vice-President: Does Mr. Kamath wish to move his amendment to this (No. 27 of List I-Fourth week)?

Shri H. V. Kamath: No. That has been covered by the amended amendment just now moved by Mr. Gupte.

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

That for the words "House of the People" in paragraph (a) of the proviso to article 45 and in all the other places where these words occur, the words "National Congress" be substituted.

Sir, in the future Constitution there will be two Houses at the Centre; the popular House would be called the House of the People and the Upper House will be called the Council of States. My proposal is that the popular House should be named after the National Congress which has been largely instrumental in obtaining freedom for this country.

Shri T. T. Krishnamachari: But actually the Congress still exists.

Mr. Naziruddin Ahmad: I want to perpetuate the name of the National Congress and want it to be assimilated in the Constitution itself.

Mr. Vice-President: I think you need not take up the time of the House.

Mr. Naziruddin Ahmad: I shall be very very brief. The struggle for independence has been going on for the last sixty years or more and it is to culminate in the session of the Congress in Jaipur under the presidency of Dr. Pattabhi Sitaramayya. I submit that the struggles and the services of the National Congress be recognized officially and the popular House be named after it.

I have the American precedent where the Legislature is called the Congress. I have chosen, however, here to give that name to the popular House which really represents the will of the people. I believe it is an amendment based on sentimental grounds.

Maulana Hasrat Mohani: Are you a member of the Congress?

Shri S. Nagappa: He wants to be now.

Mr. Naziruddin Ahmad: It does not require one to be a member of the Congress to recognize or admit facts.

Mr. Vice-President: I beg of you to remember that we have only twenty minutes left.

Mr. Naziruddin Ahmad: Sir, I submit that on sentimental grounds alone the amendment should be accepted. In fact the culmination of today's independence represents the blood, toil, tears and the sweat of the Indian National Congress.

Mr. Vice-President: Does Mr. Kamath wish to move amendment No. 1092?

Shri H. V. Kamath: Here also I have been forestalled by Mr. Gupte and so it does not arise.

(Amendments Nos. 1093 and 1094 were not moved.)

Giani Gurmukh Musafir: (East Punjab: Sikh): *[Sir, My amendment is.

That in clause (b) of the proviso to article 45 after the words "violation of the constitution" the words "or of law" be inserted.

In relation to the President clause (b) says—"The President may for violation of the Constitution be removed from office by impeachment in the manner provided in article 50 of this Constitution".

After the words 'violation of the constitution' it is very necessary to add the words 'or of law'. The President should be impeached not only for the violation of the constitution but he should be treated in the same manner for the violation of law too.]

Mr. Naziruddin Ahmad: I beg to move:

That in proviso (c) of article 45, after the word 'term' the words 'or resignation as the case may be' be inserted.

By this proviso, the President shall continue in office, notwithstanding the expiration of his normal term of his office, till his successor enters upon his office. I want to make the proviso to apply when he resigns before his normal term expires. This amendment is practically a drafting amendment worthy of consideration.

* [ ] Translation of Hindustani speech.

Mr. Vice-President: As no Member has desired to speak on the general discussion of this article, I propose to ask Dr. Ambedkar to reply to the debate. I have received a slip requesting for an opportunity to speak just now. It has come too late.

The Honourable Dr. B. R. Ambedkar: Sir, the only amendment that I accept is No. 1090 as amended by Mr. Gupte's amendment. The others I am sorry I cannot accept. There has been no point raised by any Member which requires any explanation.

Mr Vice-President: I am going to put the amendments to vote.

The question is:

"That for the substantive part of article 45, the following be substituted :—

'The term of office of the President shall be five years from the date the President enter upon the Office.' "

The amendment was negatived.

Mr. Vice-President: Now, the question is—

That in clause (a) of the proviso to article 45 for the word 'resignation' the word 'writing' be substituted.

The amendment was adopted.

Mr. Vice-President: The question is—

That in clause (a) of the proviso to article 45, for the words 'Chairman of the Council of States and the Speaker of the House of the People' the words 'members of the Parliament' be substituted.

The amendment was negatived.

Mr. Vice-President: Now I shall put amendment No. 1090 as modified by amendment No. 26 (A) standing in the name of Shri B. M. Gupte to the vote of the House.

The question is:

That—

(1) Article 45 be re-numbered as clause (1) of that article.

(2) In clause (a) of the proviso to the said clause as so re-numbered for the words 'Chairman of the Council of States and the Speaker of the House of the People' the word 'Vice-President' be substituted.

(3) In the said article as re-numbered add the following clause :—

"(2) Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) of this article shall forthwith be communicated by him to the Speaker of the House of the People."

The amendment was adopted.

Mr. Vice-President: The question is:

That for the words 'House of the People' in paragraph (a) of the proviso to article 45 and in all the other places where these words occur, the words 'National Congress' be substituted.

The amendment was negatived.

Mr. Vice-President: The question is—

That in clause (b) of the proviso to article 45, after the words 'violation of the Constitution', the words 'or of law' be inserted.

The amendment was negatived.

Mr. Vice-President: The question is—

That in proviso (c) of article 45, after the word 'term' the words 'or resignation as the case may be' be inserted.

The amendment was negatived.

Mr. Vice-President: The question is—

That Article 45, as amended, stand part of the Constitution.

The motion was adopted.

Article 45, as amended, was added to the Constitution.

Mr. Vice-President: It is now a quatrer past one.

Shri T. T. Krishnamachari: The next article has only one small amendment.

Article 46

Mr. Vice-President: We shall now take up the next article. Article 46 is now before the House for its consideration.

As amendment No. 1097 is for the deletion of the article I disallow it. The amendment of Professor Shibban Lal Saksena to this amendment falls as the main amendment has been ruled out.

Shri Krishna Chandra Sharma (United Province General): Sir, I move:

That in article 46 the words 'once, but only once' be deleted.

My amendment is a very simple one. It is to the effect that if a capable and efficient man is available, why should he not be allowed to serve a second term by seeking re-election and giving the benefit of his service to the nation as long as he is efficient and capable of service.

(Amendment No. 1099 was not moved).

Shri H. V. Kamath: Mr. Vice-President, I move:

"That in article 46, after the words 'only once' a comma and the words 'but he shall not be so eligible if he has been removed from office by impeachment in the manner provided in article 50' be added."

Even considering as the article as it stands, I think this amendment is to a certain extent necessary, purely for the purpose of clarifying the content of the article. But now, in view of the amendment moved by Shri Krishna Chandra Sharma, it is necessary for us to make this absolutely clear. It is likely that, in case Mr. Sharma's amendment is accepted, a person may contest the election again for the presidentship some years after his first or second term. It may be said against this amendment that the party nominating a candidate will certainly not nominate a person who has been removed from office by impeachment. But, considering that public memory is so short and even party memory is short, and there have been instances in various countries of the world where men who have been accused and impeached for corruption and other nefarious practices have been able to fill some office or other at a later date when people had forgotten the past such a provision becomes necessary. Such things have happened in many countries and it is not unlikely that such a thing may happen here also—God forbid—when party memory being short one cannot completely exclude the possibility of some person who has been guilty of corruption or other misdemeanour being put up to contest the election many years later. Therefore it is only to clarify the whole content of this article that a person who has been impeached cannot stand for election at any time say 5, 10 or 20 years later that I have moved this amendment. It is necessary to lay down that even though people may forget or overlook the fact that a person had been impeached and removed from office, he should not have the right to contest the election for the Presidentship of the Indian Union.

Shri Mahavir Tyagi: Sir, the amendment that I am moving is a very simple one. I move—

"That the following proviso be added to article 46:—

'Provided that it will not apply in the case of a Vice-President who holds or who has held such office only temporarily in an acting capacity'."

The article deals with the admissibility of the President holding office a second time. My point is that a Vice-President who holds or who has held such office only temporarily in an acting capacity should not be debarred from standing for election to Presidentship twice. Of course, if "officiating" by the Vice-President is not considered as holding office or some such meaning is given, then my amendment will not be necessary. Either Dr. Ambedkar may accept my amendment or he may please clarify this point in his speech.

Mr. Vice-President: Even though this article is a very small and simple one, many honourable Members want to speak. I do not want to prevent

[Mr. Vice-President]

them from speaking but I would request them to withdraw their slips. If they insist on making their speeches before an already tired House, I am quite certain that what they may urge will not be taken into consideration. This is my view but I may be wrong.

Honourable Members: We will draw our request to speak.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, I am prepared to accept the amendment of Mr. Sharma, i.e., No. 1098, for the deletion of the words "once, but only once".

With regard to Mr. Kamath's amendment, I think the proper time when this matter could be discussed will be when the issue as to the qualifications of the person standing for Presidentship is raised.

To Mr. Tyagi, I may say that in view of the deletion of the words "once, but only once", his fears about the Vice-President are groundless.

Mr. Vice-President: I shall now put the amendments one by one to the vote. Amendment No. 1098. The question is:

"That in article 46 the words 'one, but only once' be deleted."

The amendment was adopted.

Mr. Vice-President: Then amendment No. 1100.

Shri H. V. Kamath: In view of Dr. Ambedkar's statement, I do not want to press it.

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

Mr. Vice-President: Then Mr. Tyagi's amendment. It does not arise after Dr. Ambedkar's speech, but some pandit of technicalities might say that I did not put it to the vote. So I want to know if Mr. Tyagi withdraws it or not.

Shri Mahavir Tyagi: Sir, I withdraw it.

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

Mr. Vice-President: The question is:

That article 46, as amended, form part of the Constitution.

The motion was adopted.

Article 46, as amended, was added to the Constitution.

Mr. Vice-President: There has been a suggestion that the House should be adjourned for a few days for reasons which must be known to you all. Under the rules as they stand at present, the presiding officer does not have the power to adjourn the House for more than three days. Now I ask the House to permit me to adjourn the House for fourteen days, i.e., till 10 A.M. on Monday the 27th December.

Shri T. T. Krishnamachari: Sir, a proper motion may be moved that the House may be adjourned for fourteen days.

Mr. Vice-President: I do not care how you bring it about. If what you suggest is the procedure, I am quite willing and a resolution may be brought forward in that form.

Shri Satyanarayan Sinha (Bihar: General): You can ask the House whether it is agreeable.

Mr. Vice-President: Is the House in favour of adjourning for fourteen days?

Honourable Members: Yes.

Mr. Vice-President: The House stands adjourned till 10 A.M. on Monday the 27th December.

The Assembly then adjourned till Ten of the Clock on Monday the 27th December 1948.

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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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[Article 47, new article 47-A, article 48, new article 48-A and article 49 considered.]

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CONSTITUENT ASSEMBLY OF INDIA

Monday, the 27th December 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.

Mr. Vice-President (Dr. H. C. Mookherjee): I have just received a letter from our President informing me that he has improved greatly, but there has been a slight relapse, which has compelled him to take a few days' rest. He, however, hopes to be here by the beginning of next year and to conduct the proceedings of the House on and from the 3rd of January next. I am sure the House will allow me to convey to him the greetings of the Season and along with that to assure him that we shall do our best to make as much progress as possible, so as to lighten his work. Is that the wish of the House?

Honourable Members: Yes, yes.

DRAFT CONSTITUTION—(*Contd.*)

Article 47

Mr. Vice-President: We shall now resume our discussion and start with article 47.

(Amendments Nos. 1102 and 1103 were not moved.)

Amendments Nos. 1104, 1105 and 1106 are of similar import; Amendment No. 1104 may be moved.

(Amendments Nos. 1104, 1105, 1106 and 1107 were not moved.)

Amendment No. 1108 is by Prof. K. T. Shah. I shall draw his attention to the last sentence of the new sub-clause, *i.e.*, sub-clause (d) proposed to be added by this amendment. He may please compare it with clause (1) of article 47. It is for him to decide.

Prof. K. T. Shah (Bihar: General): Clause (1) of article 47 gives some positive qualifications. What I propose to move is somewhat of a negative character, and therefore I thought that the two can go together.

Mr. Vice-President: All right.

Prof. K. T. Shah: Sir, May I move?

Shri T. T. Krishnamachari (Madras: General): May I point out that the latter part of this amendment is already barred. We have already accepted article 46 in an amended form, by which the President can be elected *ad infinitum*, any number of times. So the latter part of his amendment is barred and cannot be moved.

Mr. Vice-President: Have you heard what the honourable Member has said?

Prof. K. T. Shah: I have heard that, Sir. If I may again make a submission, that reaffirms the same thing. I do not see how it is finally passed.

Mr. Vice-President: I do not want to put any kind of stop to what you want to say, but it does seem to me that it is not needed. But I do not want to impose my will on you.

Prof. K. T. Shah: Sir, I quite realize that this new change in article 46 affects the latter portion and therefore, I will not move that portion. The other portion still remains and if you will permit me, I will move the other part.

Mr. Vice-President: Yes.

Prof. K. T. Shah: Sir, I move:

"That after sub-clause (c) of clause (1) of article 47, the following new sub-clause be added:

'(d) and is not disqualified by reason of any conviction for treason, or any offence against the State, or any violation of the Constitution';"

The amended clause would then read:

"No person shall be eligible for election as President unless he—

(a) is a citizen of India;
(b) has completed the age of thirty-five years; and
(c) is qualified for election as a member of the House of the People;
(d) and is not disqualified by reason of any conviction of treason, or any offence against the State, or any violation of the Constitution."

As I just now mentioned, these amendments that I would like to introduce put emphasis on the negative side, or disqualifications, as against the positive side of qualification referred to in clauses (a), (b) and (c). I submit, of course, to the judgment of the House in having deleted the restriction included in the original draft of article 46, namely that no one should hold office as President once again. I regret, of course, that that should have commended itself to the good sense of the House, for I fear that the possibility of holding in unlimited succession the office of the President is apt to lead to undesirable consequences, on which one need not now dilate. Sir, you remember that the foundation or rather the destruction of the Republic of Rome was inaugurated by the life consulship of Cæsar, which afterwards ended in a hereditary empire. But, as I started by saying, now that the House has in its wisdom, found that it is undesirable to introduce this restriction, I will submit to the good sense of the House, and not insist on the latter part of my amendment.

Even so, the qualifications that I have introduced in my amendment need, I think, to be positively or specifically stated. It is no use saying that all this is understood; and that no one with commonsense would like to have any one as President who has been guilty of treason, or who has violated the Constitution. Many things, Sir, are matters of commonsense which, under unknown conditions of the future or party passions, and in the heat of the election fever, may be found to be so completely ignored or extenuated that all those disqualifications may be forgotten.

The inclusion, therefore, of this categoric disqualification is a safeguard for the free and honest working of the Constitution, which, I think, should be acceptable to this House.

The disqualification in regard to treason is particularly important, because now that precedents have taken place in such matters, even as trial of defeated enemies for the so-called war crimes, you might begin to feel that whatever you may have done in perfect good conscience may nevertheless be found to be a penalty of your defeat under the influence of party passions, and as such may be liable to charges or accusations against which, in the prevailing atmosphere, there may be no defence, or no possibility of effective safeguard.

Fearing this I desire to leave no room for any doubt at all on the subject. Let the Constitution itself from the start make this particular point clear, that any one convicted of treason must be disqualified for being elected President. To me it seems that there could be no objection to this amendment being accepted; and though perhaps this is in a milder form, I personally hold the sin of violating the Constitution equally serious, and certainly consider that also ought to be made a disqualification for any future candidature in regard to Presidentship.

The later clauses will show that you have provided very effective safeguards for convicting any one as regards violation of the Constitution. If under those safeguards, with due process of law and fair administration of justice, a party has been properly convicted of violating the Constitution in any serious particular, then I think that in itself ought to be a bar against the candidature of

any such party. On those grounds I think the drafter of the Constitution should accept this amendment, and that it ought to be included in the Draft in order that anybody who is guilty of treason, or who has been guilty of violating the Constitution, should be excluded.

I commend this to the acceptance of the House.

Mr. Vice-President: Amendment No. 1109. Verbal; disallowed. Amendments numbers 1110 to 1112 are of similar import. The first of these may be moved. It stands in the name of Dr. Ambedkar.

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

"That in clause (2) of article 47, and in Explanation to clause 2, for the words 'any office or position of emolument', wherever they occur, the words 'any office of profit' be substituted."

Sir, this amendment is merely intended to improve the language of the draft.

Mr. Vice-President: Amendment No. 1111. Should that be put to the vote?

Shri H. V. Kamath (C.P. & Berar: General): Dr. Ambedkar has stolen a march over me; this does not arise.

Mr. Vice-President: Amendment No. 1112.

Shri Mihir Lal Chattopadhyay (West Bengal: General): That is already covered, Sir.

(Amendment No. 1113 was not moved.)

Mr. Vice-President: Amendments numbers 1114, 1115 and 1116 are verbal and are disallowed.

Amendment No. 1117, Dr. Ambedkar.

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

"That for sub-clause (a) of the Explanation to clause (2) of article 47, the following be substituted :—

'(a) he is the Governor of any State for the time being specified in Part I of the First Schedule or is a minister either for India or for any such State; or'"

The object of this amendment is to remove a disqualification that might arise on account of the fact that a Governor of a State or a Minister is holding an office of profit under the Crown. It is desirable that the Governor of a State as well as a Minister both at the Centre and in the States should be permitted to stand for election and the rule of office of profit under the Crown should not stand in their way.

(Amendment No. 1118 was not moved.)

Mr. Vice-President: Amendments numbers 1119 to 1122 are verbal and are disallowed.

(Amendment No. 1123 was not moved.)

Amendment No. 1124.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That after clause (b) of the Explanation to clause (2) of article 47, the following be added :—

'provided that any such Minister shall, before offering himself as candidate for such election, resign his office'."

Sir, I am sure it could not have been intended by the draftsmen that a person in the position of a Minister should continue to be a Minister, and yet offer himself as a candidate. This is one of the items which to me appear to be a matter of commonsense and as such should be accepted; but, of course,

[Prof. K. T. Shah]

where an extraordinary sense prevails, commonsense may not get a chance. I would therefore, like to point out that there is a great danger in a Minister holding the Ministership, and yet offering himself as a candidate, and resorting to, or his workers and canvassers resorting to, practices, which cannot but be condemned under any same system of constitutional Government. Accordingly, that ought to be prohibited by the fundamental constitution.

It is in order to guard against this danger that I would provide, in the Constitution itself, that any Minister, if he chooses to be a candidate for any such office, should first resign his post and offer himself like any other ordinary citizen, for this honour. Whatever he has gained by way of influence, whatever he has previously acquired by way of prestige, connection, etc., will still remain to him; they would not be lost to him. They may be an asset to him. But, let him not be at all liable to the suspicion that continuing in office, he is able to, even if he does not actually do so, utilise his office and position of influence in order to get elected or get more votes. That, I repeat, is a matter of serious import to the constitutional freedom and good government of the country, and as such, this amendment should be accepted without any opposition. I commend it to the House.

Mr. Vice-President: There is an amendment to this amendment. It is number 27 in List I, fifth week, standing in the name of Pandit Thakurdas Bhargava.

(The amendment was not moved.

Amendment No. 1125.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That the following new clause (c) to the Explanation of clause (2) of article 47 be added :

'(c) Any person elected President shall, before he enters upon the functions and responsibilities of his office declare and divest himself of all his right, title, share, property and interest in any enterprise, business or trade which is in any way aided or supported by the Union Government; and all such right, title, share or interest of the President shall be bought up by the Government of India'."

I regard this, Sir, as amongst the most cardinal amendments that I have had the honour to put before this House. This theme will recur from different angles as amendments to different articles hereafter. I would like to make it clear, however, that I have deliberately worded in the different cases the same idea in a different manner, not only because the verbal objection may apply that it has been already disposed of; but also because the angle of approach in the different articles is slightly different. Accordingly, whereas one might be rejected, it does not necessarily become impossible for another to be accepted.

That, Sir, however, is a matter for you at the time when the other amendments come up for decision. But, I would like to say that the principle contained in this amendment is of the highest importance for an honourable and idealistic Government of the State.

Ideals, Sir, seem to be very much at a discount, except, of course, for declamation from public platforms. From the public platform we declare day in and day out the high ideals which we all profess to follow, and which we call upon our friends and admirers to follow, always thinking that they apply to the other fellows and not to ourselves, assuming that our conduct is beyond reproach. I feel, however, that even in a regime of saints entirely, it is by no means superfluous to offer a suggestion of this kind that, at any rate, the Head of the State should be, even more than Cæsar's wife, above any suspicion whatsoever.

If he has any holding, if he has any interest, if he has any property to which he could seek or obtain advantage by any act of his policy or his Government's policy, which in the least he is in a position to influence, then, I submit to the

House, he would be liable as head of the State, and the entire Government would be liable, to suspicion and discredit, and it ought not to be permitted.

Sir, it must be within the knowledge of many Members of this House, who are at all interested in contemporary history of the world, that one of the matters that affected the otherwise heroically worshipped President of the German Reich, in the days before the Nazis came to power, was that President Hindenberg allowed himself to be persuaded to help in the so-called assistance to Eastern Prussian landlords which paved the way for his discredit, and which led, in my opinion at any rate, to the establishment of the Nazi power.

That I hope all will agree was an undesirable thing for Germany, and its consequences have already been realised. This, therefore, is a counsel of perfection; or at any rate, a caution which we will do well to adopt, and to implement in our Constitution.

That the President should be free from any entanglements, that the President should be free from any interest other than that of the State as a whole, that he should be open to no temptation except the desire to serve his country to the best of his ability, even in the ornamental post that he may be given in the Constitution, is of such supreme importance that I think we cannot be too strong, and too definite about removing from his path every possible, every imaginable, every conceivable temptation. Accordingly, here is a constructive, a positive requirement that, before the President enters upon the functions of his office, before he can be inducted in his office, he must make a clear declaration of all his title, right or interest in any property, industry or business in any of these things he may have held as a private citizen before he became President. Further, he must divest himself of it, and Government should take over that right or buy it from him.

This means that notwithstanding this provision, the holder of the Presidential office is not punished, he is not penalised, he is not impoverished, by the mere acceptance of or election to the Presidency. In his position, there would be, financially speaking, no change, no reduction. Morally speaking, however, his stature would grow far more; if you at all consider moral values, if you at all have any ideal that the Head of your State shall be free from any temptation, that the Head of the State shall be free even from any suspicion, then I put it to you that you cannot possibly, in decency, reject this amendment of mine.

By this, I am calling upon you to be true to those ideals which you are proclaiming everyday *ad nauseam* and which nevertheless, many of you at least, are openly breaking everyday in their lives. That being so, I have no hesitation in asking the House that this proposition, for the reason that I have stated, should be accepted, on pain of our being regarded as only preaching ideals for the purposes of humbugging others, enunciating maxims which you do not believe yourselves. I make no apology in putting forward this amendment, and I trust without dissent this amendment will be accepted.

Mr. Vice-President: We shall proceed to put the amendments to vote.

Shri H. V. Kamath: We want discussion, Sir.

Mr. Vice-President: If you insist on it, I am prepared to allow it.

Shri H. V. Kamath: Mr. Vice-President, by your leave I rise to lend my support to the amendment of Professor K. T. Shah, No. 1108, moved by him just a short while ago—the first part. The first part of No. 1108 lays down certain disqualifications for the office of the President of the Indian Republic. On the last day of the last Session before we adjourned for recess, when I moved amendment No. 1100 providing for laying down certain disqualifications for the office of President, *viz.*, that if he has been impeached for violation of the Constitution, that will act as a bar to his contesting an election for the Presidentship again, when I moved that amendment, Dr. Ambedkar told the House that

[Shri H. V. Kamath]

that amendment was not in its proper place but should come up at a later stage, *i.e.*, in article 47 which lays down certain qualifications or disqualifications for the office of Presidentship. I am glad to find that my Friend and scholar Prof. Shah has brought in this particular provision for violation of the Constitution and consequent impeachment as a part of this amendment just moved by him. I realise that article 83 of the Constitution provides—article 83 reads—

"A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament . . . . . .

(e) or if he is so disqualified by or under any law made by Parliament."

It is conceivable that the future Parliament of Free India will make certain provisions to this effect as to who will be qualified and who will be disqualified. But to my mind this is far too important a matter to be left to the decision of Parliament. This goes to the root of the matter, the disqualifications on the score of treason or on the score of offence against the State or on account of impeachment because of violation of the Constitution—it is possible that when we come to article 83 we might incorporate certain of these disqualifications or all of them as disqualifications for being a member of the House of Parliament but we must be clear on this point, as to whether we shall leave them to a future Parliament to decide or whether we will incorporate these things in the body of the Constitution. I therefore would request Dr. Ambedkar when he rises to reply to this debate, to tell us clearly whether he will leave it to the Parliament of future India or whether he will embody these disqualifications clearly and plainly—plain as a pikestaff—without any equivocation in this article 83. That much Sir, for the amendment No. 1108 of Prof. Shah.

Coming to amendment 1125 just moved by him, I am inclined to think that the principle embodied in this amendment is a very sound one. I would certainly welcome the proposition that a person on being elected President of the Indian Union must at least declare to Parliament, or to the people and the nation, what interests, and what shares he holds in any enterprise, business or trade in the country. In the last Budget Session of the Legislative Assembly, if I remember aright, this Assembly adopted the Factory Act, and one of the clauses or sections in that Act was to the effect that even the medical officer of a factory, when he is appointed to his post, must declare to the board of directors or the management or the government, what interests, shares or other similar interests he holds in the factory or in any of the allied concerns of that particular undertaking. If we are going to enforce such a thing in the case of a mere petty officer in a factory, it stands to reason that the President of the Indian Union must declare to the nation and to Parliament what interests he holds in any business or trade or enterprise in the country. I recognise and I do admit that the President is not invested with considerable power. But nobody would deny the fact that the President has been invested with considerable influence, and that influence can be abused by a President if he is not of the proper or right type. We have just come from the Jaipur Session of the Congress—at least some of us—where only a few days ago, the Congress passed a resolution on the standards of public conduct. Are we, Sir, here, serious about implementing that resolution or not? In spite of the subsequent deletion at the instance of Pandit Nehru at the Jaipur Session, it applies to all Congressmen, from top to bottom. And if it applies to all Congressmen, certainly, the code of public conduct that we are going to lay down for Free India, should apply to all, congressmen or non-Congressmen whenever they hold a post, high or low in the country. Certainly, Sir, the President's post, the President's position, is very important and if we are earnest about this resolution about public conduct, I would certainly plead before this House that the President of the Indian Union must publicly before entering his office, tell us, tell Parlia-

ment, what interests and what shares he has in any business or other enterprise in the country, lest on any occasion, on any tempting occasion, he might abuse his position for the furtherance of any particular undertaking in which he is more interested.

Sir, I will not go so far as Prof. K. T. Shah and say that such rights or interests must be bought up by the Government of India. I would suggest that once he has declared what his interests and shares are, in any particular business or undertaking, then the matter must be left to the Parliament to decide in what way those rights or interests are to be dealt with, or administered or disposed of. If this much is admitted or conceded, that the President shall be obliged to declare and disclose his interests, then we can leave it to the Parliament of India to deal with this matter and decide how to dispose of or deal with the particular matter brought before it.

Mr. Vice-President: Dr. Ambedkar.

Shri Syamanandan Sahaya (Bihar: General): Sir. I have. . . . .

Mr. Vice-President: I have called Dr. Ambedkar, I am sorry. But have you any amendment?

Shri Syamanandan Sahaya: No, I have no amendment, but. . .

Mr. Vice-President: If you had come to the front, you could have caught my eyes, because in that direction there is a bad glare.

Shri R. K. Sidhva (C. P. & Berar: General): But, Sir, we have not had adequate discussion of this article. Only one member has spoken.

The Honourable Dr. B. R. Ambedkar: If they want further discussion, I have no objection.

Mr. Vice-President: Dr. Ambedkar has been good enough to say he does not mind if other Members also speak. Will Shri Syamanandan Sahaya please come to the mike?

Shri R. K. Sidhwa: Sir . . . .

Mr. Vice-President: Mr. Sidhwa will always have the last word. I shall give him the last word.

Shri Syamanandan Sahaya: Mr. Vice-President, Sir, I am here to support the amendment which has been moved by Prof. K. T. Shah.

The Honourable Dr. B. R. Ambedkar: Which amendment of Prof. Shah?

Shri Syamanandan Sahaya: Amendment No. 1124 which reads like this:

> 'provided that any such Minister shall, before offering himself as candidate for such election, resign his office'.

Sir, it is not always that I have the good fortune to agree with Prof. K. T. Shah but I do feel that in this particular amendment which he has proposed, he has raised a very vital point, and I do think that in a matter like this, even though there may have been different decision elsewhere, this House must remain firm because Prof. K. T. Shah, in his amendment, desires to lay down a principle which has been accepted all over the world (Cries of No, No.) Yes, Yes. Everybody has the right to place his information and his knowledge. Even in the present Congress Committees, a person who desires to stand as President of the Provincial or District Congress Committee has to resign his seat, not merely as a Minister, but even as a member of the Legislative Assembly.

Pandit Balkrishna Sharma (United Provinces: General): No, No. You do not know. Do not go on generalising like that.

Shri Syamanandan Sahaya: I come from a Province where this rule obtains; this is a very good rule. If other provinces are not following it, they are doing it to their own disaster.

Mr. Vice-President: You need not reply to these interruptions.

Shri Syamanandan Sahaya: I shall accept your advice, Sir. It is a very good advice.

Now, the position is, that the place which the President will occupy in our Constitution is a very high and important one, indeed, and it would be very unwise and unsafe if a person who is already a Minister, working as such, stands for election as President. Even though such a person may not himself desire it, the fact remains that a Minister in power is likely to gather more support, directly and indirectly, than another person. It is therefore only fair and reasonable that the election of a President must be carried on in such a manner that no individual person may have any additional advantage over his opponents.

Considering the position that obtains in this country at present, it is hoped that there may not be much difficulty among the persons who happen to occupy this high position. They also have a high standard of morality and I have no doubt that they will themselves resign before they stand for Presidentship. But we are laying down in this Constitution a rule by which, if a Minister desires or chooses to stand as a candidate for election, he can do so and contest the whole of the election, occupying all the time the position of a Minister. That, Sir, in my opinion, would not be the right course to adopt, and considering the difficulties that one can foresee, it would only be proper that it should be laid down that no person who occupies the position of a Minister should stand as a candidate as long as he occupies that position. He should first be asked to resign and then he can stand and contest the presidentship like anybody else.

Before I close I would like the House to visualize a situation that will arise when a minister is a candidate for election as a President. It will be like this. Who is the candidate? A minister. Who are the voters? Members of the different Assemblies. Who are the Polling officers? Servants of the Government, some of them may be under the ministry concerned. How does this look? Even assuming that there will be everything fair, I ask: Does it look fair to frame a constitution which not only sanctions but encourages such a situation?

Shri Algu Rai Shastri (United Provinces: General): *[Mr. Vice-President, Sir, I rise to oppose the amendments moved by Prof. K. T. Shah, more specially his last one, No. 1125 on the list. I may repeat what has been said several times previously and it is that the type of constitution Prof. K. T. Shah has in view can either be accepted in its entirety or cannot be accepted at all. At times such amendments as the present one, are moved by Prof. K. T. Shah which seek to make some changes in the constitution or in the basic concept on which it is founded. If a single amendment of Prof. Shah is accepted in any part of the constitution, the entire structure of the constitution would be changed. His idea in moving this amendment is that our President—the President of our Republic—should be a person who has no private financial interests of his own at all. He wants that the President of our Republic should have no financial interest at all but at the same time in course of his speech he has said that if the President has any shares in any property the same should be purchased by the Government so that he may not become a pauper. The dread of private property seems to have influenced him in making this proposal even though he does not seem to desire the abolition of private property itself. He does not propose to expropriate the person, who is to be elected President, of his entire property. It is thus plain that he does

*[ ] Translation of Hindustani speech.

not stand for the abolition of private property. His only objective is that any person, after being elected President, should sell away all his financial interests or they may be acquired by the Government, and that such a person should make a specific declaration that he has no financial interest anywhere. It appears to me that these two ideas are contradictory to each other. On the one hand the institution of private property would remain when we allow him to own the monied wealth he receives on sale of his property and such an ownership is permitted by Prof. Shah because he apprehends that otherwise such a person will become a pauper. On the other hand he seems in my opinion, to have in view Plato's idealistic and Utopian communism under which rulers shall have no property, no financial interest and no money of their own and there would be a common kitchen and the rulers would be leading an ideal life like saints and hermits having no personal financial interests. We can very well lay down in the Constitution that a person who owns a property or has any shares in any enterprise shall not be eligible for Presidentship. The object behind the amendment moved by Professor K. T. Shah is that after a person is elected President he should hold no share in any property but he can hold the same before being elected. In my opinion Professor Shah should aim at the abolition of individual ownership of property and nationalisation of the same so that no individual may possess any property. But we have already accepted and given a place to individual ownership of property in the articles we have passed earlier. Now at this stage it does not appear necessary to me to pass a provision enjoining upon a person to make a particular declaration and relinquish all his financial interests in order that he may honestly discharge the duties of his office. Of course, I do visualise a society in which the individual ownership of property is gradually abolished and commodity be brought under social ownership. I would prefer such a society. We can not accept the ideal of Plato's or such a communism which reduces our life to a mere hotel life. Such a society cannot be stable. It is possible to establish such a society in small communes. But it is difficult to run even a small municipal board on these lines. I have seen that the financial questions bedevils the working of even small bodies. Even in the 'Maths' of Sadhus disputes arise for succession to the Gadi. We must keep the reality in view and from the point of view of reality the proposed restriction is unnecessary. I, therefore, oppose the amendment moved by Mr. Shah.

The other amendment moved by Mr. Shah, which lays down that if any minister seeks election as President, he should resign from the ministerial office before doing so, cannot be accepted. It is evident that a minister who seeks election as President would not be in a position to secure votes of this vast population either by purchase or by undue influence exercised under the powers he possesses as minister. The people or the prospective voters in the Presidential election cannot be beguiled or coerced to sell their votes. This amendment too seems unnecessary and therefore in my opinion it ought to be rejected and the original article as standing in the Draft Constitution should be accepted.]

(*Interruption*)

Mr. Vice-President: It is not proper for experienced parliamentarians to heckle a speaker in that way.

Mr. Tajamul Husain (Bihar: Muslim): Mr. Vice-President, I am, and in fact the whole House is, very grateful to you and also particularly, I would say, to the Honourable Dr. Ambedkar, for allowing us to speak. We know your powers. You can stop us at any time you like. But I would always request you to allow us even at this stage to speak as we are for the first and the last time drawing up a constitution for the whole of India. You will pardon me for using the word "gagging" officially. But do not gag us. Let us speak. The Constitution is not going to be framed within a year as the

[Mr. Tajamul Husain]

Government of India are expecting. They are mistaken. It does not matter if it finishes in two or three years, but give us time to speak.

Coming to the amendment I wish to point out that, as far as I understand it, the amendment of my honourable Friend, Prof. K. T. Shah implies that a person who wishes to stand for the presidentship of the Indian Republic should resign his seat if he happens to be a Minister, or resign his seat if he happens to be a Member of the Legislature. An honourable Member from my province of Bihar has just spoken and he has stated that the law in his province is that a Member of a Legislature who wishes to become the President of the Provincial Congress Committee has to resign his office. There was vehement opposition to this. I entirely agree with the opposition that that is not the law. We find here that the last President of the Congress, Mr. Kripalani, was also a Member of this House and a Member of the Dominion Parliament. Here we find that the Honourable the Speaker of the U. P. is a member of this House. This is not the kind of thing in Bihar. Since the Congress started its activities under the guidance of Mahatma Gandhi, Dr. Rajendra Prasad, the President of this House, was the President of the Provincial Congress Committee for a number of years. It is unfortunate that he had to leave our Province and come over to Delhi. When he came to Delhi and left Bihar somebody who was not a member of the legislature was elected as President and he died. Then we elected a member of the Provincial Assembly and he had to resign his seat in the Assembly. We wanted him to resign and he resigned. Afterwards another member of the provincial assembly was elected and he also had to resign his seat in the Assembly. So we in Bihar have this convention, though not as a law or rule, that a member of the legislature when he wants to become President, before he seeks election he must resign. It is a very good and healthy convention. After all the first President of the Indian Republic will be the first gentleman of this land and equal to any monarch in the world. We want that before he becomes President he should cease to have any connection with any legislature. Before his election as President a Minister, whether at the Centre or in the Provinces, must cease to be a minister: he must come in as a simple man, a non-member of any legislature, stand for election and get elected. That is what people want. This is a very simple amendment and it should be accepted by the House and by Dr. Ambedkar. That is all I have to submit to the House and I thank you, Sir, for permitting me to speak.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, I regret that I am unable to accept any of the amendments which have been moved by my honourable Friend, Prof. K. T. Shah. There are three amendments which have been moved by Prof. K. T. Shah. One of them relates to the Minister as a candidate for the Presidency and the other two amendments relate to the President. I propose to divide my observations in reply to his speeches on the three amendments into two parts. In the first part I propose to devote myself to his amendment relating to the Minister.

Prof. K. T. Shah's amendment requires that if a person is holding the office of a Minister and wishes to contest an election, the first condition must be that he shall resign his office as a Minister. In other words, ministership by itself would be a disqualification for election. It seems to me that Prof. K. T. Shah has not devoted sufficient attention to his amendment. In the first place, if a Minister resigns then this amendment is unnecessary. The second point which I think Prof. Shah has not considered and which seems to me to be very crucial is this. Supposing we accept his amendment that a Minister shall resign before he stands as a candidate for Presidentship, it is quite clear that between the period of the dissolution of the old Parliament and the time when the new Parliament assembles there can be no Ministers at all in charge

of the administration. And the question that we have to consider is this. What is to happen to the administration during the period which is involved between the dissolution of the old Parliament and the assembly of the new Parliament? Are we to hand over the administration to the bureaucrats or the heads of the administrative departments to carry on until the new Parliament is elected? Or is there to be some kind of expedient whereby we are to go about and find a set of temporary Ministers who would take charge of Government during this short period of two or three months and thus forego the opportunity of contesting elections and becoming Ministers themselves in a new Parliament for the full period of their term? It seems to me that the amendment of Prof. K. T. Shah, if accepted, would create complete administrative chaos in the Government of the country and therefore I submit. . . . .

Shri L. Krishnaswami Bharathi (Madras: General): It does not refer to all Ministers: it only refers to one minister.

Shri Mahavir Tyagi (United Provinces: General). And to deputy Minister also.

The Honourable Dr. B. R. Ambedkar: Supposing every Minister wants to contest the election and therefore every Minister will have to resign.

Prof. K. T. Shah referred to the fact that the Ministers generally monkeyed with the election or may manipulate or exercise their influence over the administration. That of course, to some extent, is probably true. But in order to eliminate the influence which Ministers exercise or might exercise on the elections the Draft Constitution has provided under certain articles (articles 289 to 292) for a special machinery to be in charge of what are called Election Commissions both in the Centre as well as in the Provinces, which would take charge of the elections to Parliament as well as to the State legislatures. They are to have complete superintendence, control and management of elections, so that whatever possibility that there exists of Ministers exercising their influence over elections has been sought to be eliminated and consequently the fear which Prof. K. T. Shah entertains has really no place at all. I am therefore, for these reasons, unable to accept his amendment.

Coming to his amendments which deal with the President, his first amendment No. 1108 sets out certain disqualifications such as conviction for treason, any offence against the State or any violation of the constitution, etc. The reason why, for instance, we have not specifically mentioned in this particular article under discussion these disqualifications, will be obvious if the Members recall that we have made other provisions which would have the same object which Prof. Shah has in his mind. In this connection I would like to draw the attention of the House to sub-clause (c) of article 48 which requires that "the President shall be a person who shall be qualified for election to Parliament". Now the qualifications for election to Parliament are laid down in article 83. Sub-clause (e) of article 83 leaves it to the Parliament to add any disqualifications which Parliament may think it necessary or desirable to add. It is therefore possible that the Parliament when it exercises the powers which are given to it under sub-clause (e) of article 83 may think it desirable to include in the list of disqualifications (it is empowered to add to those already enumerated under article 83) some of the propositions which Prof. K. T. Shah has enunciated in his amendment. I therefore submit that, although this particular clause does not refer to the disqualifications mentioned by Professor Shah, it is quite possible and open to Parliament to add them by any law that it may make in sub-clause (e) of 83.

Shri H. V. Kamath: On a point of clarification, Mr. Vice-President, if matters like 'unsound mind' and 'undischarged insolvent' are found important enough to be embodied in the article itself, what is the point in leaving this more vital and fundamental thing to Parliament and not giving it a place in the Constitution itself?

The Honourable Dr. B. R. Ambedkar: I do not know. It is a mere matter of logic. It is perfectly possible to say that every disqualification should be laid down here. It is perfectly possible to say that some essential things may be laid down here and the others left to the Parliament. I cannot see any inconsistency in that at all.

Now coming to the last amendment of Professor Shah, No. 1125, I think a careful perusal of the language he has used is very essential. What the Professor wants is that every person who has to be a President shall, before assuming office, divest himself of his interest, rights, title, etc. in any business or concern which is being sponsored by Government or carried on by Government either itself or through any agency, and secondly that the Government should buy that interest from the President. In regard to this, the first thing that strikes me is that this is one of the most novel propositions that I have ever seen. I do not remember that there is any Constitution anywhere in the world which lays down any such condition. I should have thought that if any such condition was necessary it is in the Constitution of the United States where the President has got an opportunity of exercising administrative control, and administrative discretion and therefore the greatest opportunity of personal aggrandisement exists there. And yet, the Constitution of the United States is absolutely silent about any such condition at all. Professor Shah no doubt has tabled his amendment because he looks upon it as a merely consequential amendment to the original proposition which he had enunciated in the form of his amendment, namely, that the President should have the same position as that of the President of the United States. But our Constitution has completely departed from the position which has been assigned to the President of the United States. As I have stated over and over again, our President is merely a nominal figurehead. He has no discretion; he has no powers of administration at all. Therefore, so far as our President is concerned, this provision is absolutely unnecessary. If at all it is necessary it should be with regard to the Prime Ministers and the other Ministers of State, because it is they who are in complete control of the administration of the State. If any person under the Government of India has any opportunity of aggrandising himself, it is either the Prime Minister or the Ministers of State and such a provision ought to have been imposed upon them during their tenure and not on the President.

The third question that arises—I think it is a very concrete question—is this. Supposing we laid down any such condition; is it possible in the circumstances in which we are living, to obtain any candidate who would offer himself for the Presidentship and subject himself to the conditions which have been laid down by Professor Shah? I doubt very much whether even Professor Shah would offer himself to be President of the Indian Union if these conditions are laid down.

Prof. K. T. Shah: It is not my custom to interrupt speakers at all. But may I give him this categoric assurance that as far I myself am concerned, he can rest assured that there will be complete fulfilment of these conditions. (*Laughter*).

The Honourable Dr. B. R. Ambedkar: I am glad. But this country could not carry on under the assumption that Professor Shah would be the only candidate who would offer himself for Presidentship. (*Laughter*) Safety lies in multiplicity of candidates. Therefore we have to consider whether, from a practical point of view, we should have a sufficient number of candidates offering themselves for this particular post. And I have not the least doubt about it that, notwithstanding the very virtuous character of this amendment we should practically be suspending this particular provision from the Constitution if we accept this amendment.

For these reasons I do not accept any of the amendments.

Shri H. V. Kamath: Is Dr. Ambedkar opposed even to the disclosure of the candidate's interest or share? Is he opposed even to a declaration like that?

The Honourable Dr. B. R. Ambedkar: But that is not the amendment.

Shri H. V. Kamath: That is part of the amendment.

The Honourable Dr. B. R. Ambedkar: But that is not the amendment.

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

The question is:

"That after sub-clause (c) of clause (1) of article 47, the following new sub-clause be added :

'(d) and is not disqualified by reason of any conviction for treason, or any offence against the State, or any violation of the Constitution'."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (2) of article 47, and in Explanation to clause 2, for the words any office or position of emolument', wherever they occur, the words 'any office of profit be substituted."

The amendment was adopted.

Mr. Vice-President: The question is:

"That for sub-clause (a) of the Explanation to clause (2) of article 47, the following be substituted :

'(a) he is the Governor of any State for the time being specified in Part I of the First Schedule or is a minister either for India or for any such State; or'."

The amendment was adopted.

Mr. Vice-President: The question is:

"That after clause (b) of the Explanation to clause (2) of article 47, the following be added :

provided that any such Minister shall, before offering himself as candidate for such election, resign his office'."

The amendment was negatived.

Mr. Vice-President: The question is:

"That the following new clause (c) to the Explanation of clause (2) of article 47 be added :

'(c) Any person elected President shall, before he enters upon the functions and responsibilities of his office declare and divest himself of all his right, title, share, property and interest in any enterprise, business or trade which is in any way aided or supported by the Union Government; and all such right, title, share or interest of the President shall be brought up by the Government of India'."

The amendment was negatived.

Mr. Vice-President: I shall now put the article as amended to vote. The question is:

"That article 47, as amended, stand part of the Constitution."

The motion was adopted.

Article 47, as amended, was added to the Constitution.

New Article 47-A

Mr. Vice-President: Amendment No. 1126 is almost the same, though not quite the same, as amendment No. 1125. Professor Shah may move it.

Prof. K. T. Shah: I beg to move:

"That after article 47, the following new article be inserted :

'47-A. Any person elected President shall, before he enters upon the functions and responsibilities of his office declare and divest himself of all his right, title, share, property and interest in any enterprise, business or trade, which is in any way aided or supported by the Union Government; and shall make over all

[Prof. K. T. Shah]

such right, title, share, or interest to Government of India, to be held, during his term of office, in trust for him".

As you have been kind enough to point out, this is not quite identical with the previous amendment that I had the honour to submit to this House. Whereas in the previous amendment I had suggested that the interest of the President be *bought over* by the State, here it is to be held in a trust for him. He remains the owner, and only is saved any kind of temptation, any kind of manipulation that may be possible in the business, trade or interest that may be in any way supported or aided by the State. Sir, I have been surprised at the lack of argument which has characterised the opposition to the previous amendment. If in answer to one's serious points, one is to be faced with such assumptions as that all the Ministers, for instance, might like at one and the same time to stand for the Presidency, and if that is permitted, there would be chaos, then I think it is equally open to hold that every Minister might become ill at one and the same moment and unable to discharge the functions of his office, thus leaving it to the bureaucracy to carry on the administration. This is no argument of an earthly or reasonable character. Any such cataclysmic event may happen, but in such a case of course, mere human ingenuity may be powerless to cope with it. But if you wish to object to my amendments on reasonable level grounds, and not take flights of fancy into the unreal, then I submit that in this matter there is no contradiction or impossibility that I am asking you to agree to.

The idea that you will have no candidate for the Presidency, merely because the constitution calls upon him to declare his interests and divest himself of all his right, title, share, property and interest, in any industry, trade, or business, which, is in any way aided or supported by the State of which he is the head is to my mind reducing the matter to an absurdity. After all, with all due respect to the Honourable Dr. Ambedkar, I think there are not in this country a majority of people who have any such right, or title, or property. The overwhelming majority of this country's people are without such interests. The possibility, therefore, of finding a candidate who has no interest in such matters will not certainly be so catastrophically small as Dr. Ambedkar in his opposition mood might fear.

If Dr. Ambedkar is thinking of only that class to be eligible to the Presidency who have such rights, who have such interests and shares, while I would point out that such a course would be unfair, I hope he will realise that it is desirable to safeguard them against any temptation of the kind that this amendment tries to guard against.

The fact, moreover, that no other Constitution contains any such provision is no reason, in my opinion, why, under the guidance of such a genius as Dr. Ambedkar, we should not break new ground. We might as well make our own precedents which Americans may copy as we have copied this from the English or Anglo-Saxon races. Why should Dr. Ambedkar and his colleagues be so afraid of taking a new step, even though the new step may be one in the right direction?

In all his arguments I did not hear anything to show that the proposition that I am advancing is in itself wrong.

Mr. Vice-President: Professor Shah, may I request you not to reply to Dr. Ambedkar.

Prof. K. T. Shah: Dr. Ambedkar went out of his way. It is against my practice.

Mr. Vice-President: May I suggest that as both of us belong to the same profession, we should prove superior to this weakness.

Prof. K. T. Shah: I bow to your order; but I do feel, Sir, that argument seems to be absent, and prejudice seems to predominate in a discussion of this kind. If that is so, then I in my determination would go on moving every one of my amendments, whatever the result may be. I am also equally clear that, before the eyes of the world, before those who have no prejudices of their own, we will not be holding ourselves as model legislators if we insist on rejecting such amendments for future generations. That is all I have to say, Sir.

Coming to the amendment proper, may I point out that in this I have tried deliberately to guard against being over-ruled, merely for repeating myself by changing the wording. It was urged, and urged quite unfairly, that this would cover enterprises "carried on" by the State. Nothing of the kind. Here I am speaking only of any trade, industry or business, which is aided or supported by the State. That is a totally different thing from an industry or business being carried on by the State. I should have thought that those who have drafted this Constitution knew the difference between 'being carried on' by the State, and 'being aided or supported' by the State. If they do not understand this difference, I am sorry the drafting should have been done by people who cannot distinguish between simple propositions of this nature.

They might equally misunderstand or misread the difference between "buying over" and "holding in trust", which again in my opinion are totally different propositions. The English Constitution, Sir, is founded on conventions, not on any written document. That, I trust, even Dr. Ambedkar will admit. That being so, may I give him one illustration of the kind of rectitude that is expected from high officers of State. There was the case, Sir, some forty years ago, when the English Navy was thinking of going over to oil-burning instead of coal-burning. Oil was produced by Joint Stock Companies holding interests abroad while coal was produced at home. Admiral Fisher, who was then the First Sea Lord of the Admiralty, was to preside over the Committee which was appointed to investigate into the matter of changing over from coal to oil. There were three members of the Committee and they were all of the same view. Their recommendations were, therefore a foregone conclusion. Admiral Fisher, who had some oil shares in the Anglo-Persian and Iranian Oil Company, and who knew what the results of his recommendation would be, went over to the then King Edward VII, and asked for his advice. He knew the prospects of those shares once the report was published. The King advised, and the Admiral accepted his advice, that he must divest himself immediately of those shares if he was an honourable man, as he stood to gain considerable advantage from the change over from coal to oil. Admiral Fisher may not have a prototype here; but I for one hope that in this country, led and brought to this stage by Gandhiji, there are people who will be willing, only too willing, if elected to such exalted office as head of the State, to divest themselves of such rights and interests as might expose them to the slightest shade of suspicion. Even in the municipality of Bombay we have a convention that any member, who is interested in any enterprise carried on by the corporation, shall not vote when that matter comes up for consideration before the corporation. If that ideal is not suitable for you to copy, if that is a proposition which is not acceptable to you, I am very sorry that this House should be using the name in vain of people like Gandhiji, when we are not carrying out their ideals in this Constitution.

Mr. Tajamul Husain: May I speak, Sir?

Mr. Vice-President: If you insist.

Mr. Tajamul Husain: Mr. Vice-President, Sir, I am again thankful to you because you are exercising your powers in my favour. I have come to support the amendment of my honourable Friend, Professor K. T. Shah, in its entirety. His amendment is a very fair one. He wants that the person elected as

[Mr. Tajamul Husain]

President of the Republic should declare and divest himself of all his rights, shares, property, etc. in any enterprise, business or trade which is in any way aided or supported by the Union Government and should make over such rights, etc. to the Government, to be held in trust during the period he is occupying his exalted office as President of the Indian Republic. Now, Sir, in my opinion; this is a fair amendment but I am afraid that this amendment will not be accepted by the Honourable Dr. Ambedkar. Professor Shah comes forward with beautiful amendments but they are all lost because the honourable Member in charge of the Draft Constitution is not in favour of them. Therefore, with your permission, I want to move a verbal amendment to this.

Mr. Vice-President: I cannot allow you to do that. In that case other people would also come forward with verbal amendments. You may make a suggestion for the acceptance of Dr. Ambedkar.

Mr. Tajamul Husain: My suggestion is this: Mr. Shah's amendment does not say that when a person is elected President he should declare and divest himself of all his personal property. He only says that he should divest himself of his rights, shares or interests in any concern aided or supported by government and that such rights, etc. should be taken over and held in trust for him by the Government of India. I say that as it would come to the Government of India, I thought that Dr. Ambedkar would accept it. If, Dr. Ambedkar as the Law Minister of the Government of India is not going to accept it, then instead of the 'Government of India', let it go to the President's wife and children. That is a very simple matter. The article as amended would read thus:

"Any person elected President shall, before he enters upon the functions and responsibilities of his office, declare and divest himself of all his right, title, share, property and interest in any enterprise, business or trade, which is in any way aided or supported by the Union Government; and all such right, title, share or interest of the President shall be bought up by the President's wife and children, if he has none then to Dr. Ambedkar himself, the Law Minister."

With these words, I support the amendment and I move my oral amendment.

Mr. Vice-President: There is no amendment to be moved.

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

Mr. Vice-President: The question is:

"That after article 47, the following new article be inserted:

'47-A. Any person elected President shall, before he enters upon the functions and responsibilities of his office, declare and divest himself of all his right, title, share, property and interest in any enterprise, business or trade, which is in any way aided or supported by the Union Government; and shall make over all such right, title, share or interest to Government of India, to be held, during his term of office, in trust for him'."

The motion was negatived.

Article 48

Mr. Vice-President: On going through the amendments one by one, I find that amendments Nos. 1127, 1128 and 1130 are of similar import. Amendment No. 1130 seems to be the most comprehensive and may be moved.

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

"That in clause (1) of article 48:

'(a) for the words 'either of Parliament or' the words 'of either House of Parliament or of a House' be substituted;

(b) for the words 'member of Parliament or' the words 'member of either House of Parliament or of a House' be substituted;

(c) for the words 'in Parliament or such Legislature, as the case may be,' the words 'in that House' be substituted'."

There was some defect in the original language and we have tried to improve it.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. Vice-President, we have already decided by accepting certain rules that amendments which are intended to beautify the language of an article will not be allowed. Improving the language is not now one of the objectives of an amendment. Before the amendment was moved, it looked like an imposing amendment, but Dr. Ambedkar has clearly admitted that it was intended merely to improve the language of the article. In that view, although it has been moved, it need not be put to the vote.

Mr. Vice-President: Certain powers have been given to the Chair and the Chair is going to exercise them in the way which seems best.

I understand that there is an amendment to this amendment—Amendment No. 28 of List 1 (fifth week) standing in the name of Mr. V. S. Sarwate.

Shri V. S. Sarwate [United State of Gwalior-Indore-Malwa (Madhya Bharat)]: Sir, I move:

"That in amendment No. 1130 of the List of Amendments in article 48, before the words 'House of Parliament' the words 'of the ruling family of Indian States and is in receipt of political pension or of an allowance on account of privy purse' be inserted."

The amendment purports to say that if a member of the ruling family of an Indian State is elected President, he would have to divest himself of the allowance or the privy purse which he may be receiving.

My object is that the President of this Republic should be of such convictions and wedded to such an ideology as would be republican and democratic. Obviously a person who was lately a ruler of an Indian State and is in receipt of a privy purse or allowance is not expected to fulfil this requirement. It has been said that the President is more or less a nominal figure-head. All the same I would point out that the President is expected in times of emergency to discharge certain very grave and important functions and duties. Further, from his status and position he is expected to give a certain incentive and a certain directive in the best interests of the democratic republic, which we are trying to establish in India. Now all these requirements cannot be expected to be fulfilled by one who has been brought up and who belongs to a family, which must be holding and must have held traditions which are entirely different from those ideas which we call republican or democratic. Therefore, what is required by this amendment is that a late ruler of an Indian State should not be allowed to become President. That, however, does not debar him from standing for election, but debars him to this extent that if he is elected, he may not continue to receive the allowance. The amendment, if further read carefully, will show that the junior members of the ruling families are not debarred from standing or for holding the position of the President, since such junior members would not be in receipt of any allowance on account of privy purse. I need not point out that the Governors and the Governor-General, and especially the new President is expected, from conviction and from his bringing up and from his whole psychological set up, to be a person who would be so entirely devoted to democracy and republic, that there may not be the least shadow of doubt regarding his opinions, his democratic and republican opinions; but this is not likely to be expected in the case of a late ruler. Therefore, my submission is that this amendment may be accepted by the Mover of the original amendment.

Mr. Vice-President: Amendment No. 1127 stands in the name of Giani Gurmukh Singh Musafir. Does he want me to put it to the vote?

Giani Gurmukh Singh Musafir (East Punjab: Sikh): No, Sir.

Mr. Vice-President: Amendment No. 1128. Do you want me to put it to the vote?

Mr. Naziruddin Ahmad: Yes, Sir.

Mr. Vice-President: Amendment No. 1129. Verbal; disallowed.

Amendment No. 1131. Verbal; disallowed.

Amendment No. 1132. This may be moved.

(The amendment was not moved.)

Mr. Vice-President: Amendments numbers 1133 and 1134 are practically the same. Amendment No. 1133 may be moved.

Mr. Naziruddin Ahmad: On a point of order, Sir, this is merely a verbal amendment.

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

"That in clause (2) of article 48, for the words 'or position of emolument' the words 'of profit' be substituted."

Sir, this amendment is just for the sake of uniformity.

Mr Vice-President: Amendment No. 1134. Do you want me to put this to the vote?

Shri H. V. Kamath: I have been forestalled by Dr. Ambedkar; but I would like to move amendment No. 1135.

Mr. Vice-President: We have now only come up to amendment No. 1134. Amendment No. 1135. You can move it.

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

"That in clause (3) of article 48, the words 'the President shall have an official residence and' be deleted"

That is to say, the clause will read thus, if the amendment is accepted. "There shall be paid to the President such emoluments and allowances, etc. etc....."

In moving this amendment, Sir, I seek a little light from Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Which amendment?

Shri H. V. Kamath: Amendment No. 1135. My purpose in moving this amendment before the House is to request Dr. Ambedkar to throw a little light upon the necessity for incorporating such an insignificant, such a minor detail in our Constitution. I recognise, I admit freely that this Constitution, perhaps we are proud of the fact, is the bulkiest in the whole world. The emblem and crest that we have selected for our Assembly is an elephant. It is perhaps in consonance with that that our Constitution too is the bulkiest that the world has produced. Sir, May I ask in all humility whether there is any sense or any point in cumbering the Constitution with details like the President having a residence? If this be accepted, will it not be equally appropriate to say that the President shall have so many servants, the President shall have so many peons, chaprasis, the President shall have an A.D.C., the President shall have a Private Secretary, and what not? It may be argued, I see, Sir, that the President's residence is a symbol and therefore it must be mentioned in the Constitution. I do not know how many precedents there are for a thing like this to be embodied in the Constitution.

An Honourable Member: The Irish Constitution.

Shri H. V. Kamath: I am coming to that. In the American Constitution I do not know whether the White House is mentioned in the Constitution. White House is universally recognised as the President's official residence. Coming to England, I suppose 10, Downing Street is more universally known than Buckingham Palace among students of politics or present day affairs. 10, Downing Street which is the Prime Minister's residence is more widely known than Buckingham Palace. In our Constitution there is no reference to the Prime Minister's residence; we have mentioned only the President's residence. In our Constitution, the President is, more or less, as Dr. Ambedkar has just

now said, a figure head and the Prime Minister is a far more powerful individual than the President. In the fitness of things, I personally feel that the Prime Minister's official residence should be mentioned rather than the President's residence.

Another little point is this. Suppose, the President has two residences—formerly I suppose the Governor in most of the provinces and even at the Centre the Governor-General had two residences, one for summer and one for the other seasons—suppose there are two residences, will this article debar the State from granting or sanctioning two residences for the President, one of summer and one for non-summer seasons? Will this come in the way? Therefore, the point is, why bother about this little thing like a residence for the President? After all, the President will not live under a tree or on a maidan; he will have a roof over his head; he will have a house; that goes without saying. After all, we are now aspiring to provide a roof over the head of everybody in our country. Does the House mean to say, does Dr. Ambedkar mean to say that the President will have no roof over his head? He may have one, two or three residences. Who knows how many he will have? Why restrict by means of this article the right of the Government or the nation to provide more than one residence to the President? Therefore, I feel, Sir, that this is—I do not know how this has crept into the Constitution—too paltry, too trifling a detail to be incorporated in the Constitution, and tends to burden our Constitution with unnecessary, irrelevant and superfluous detail.

I therefore move that this portion of the article regarding the provision of official residence for the President be deleted.

(Amendments Numbers 1136 and 1137 were not moved.)

Mr. Vice-President: Amendment No. 1138 standing in the name of Professor K. T. Shah.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That in clause (3) of article 48, after the words 'shall have an official residence' the following be added :—

'and such secretarial, clerical, or expert consultative assistance at public expense as he may consider necessary for the due discharge of his duties and responsibilities under the Constitution, or the laws made thereunder for the time being in force'."

Sir, this is one of the few inoffensive amendments which I have dared to put forward. It seems to be so self-evident that, except in extraordinary flights of fancy, imagination and impossibility, no one should question this. Accordingly I will not waste the time of the House by putting forward specific arguments in support of that. I trust the good sense of the House will lead it to accept the amendment.

Mr. Vice-President: Amendment No. 1139. Verbal; disallowed.

Amendment No. 1140, standing in the name of Professor K. T. Shah.

Prof. K. T. Shah: Sir, I beg to move—

"That the following new clause be added to article 48 :—

'(5) Every President on completion of his term of office, and retirement, shall be given such pension or allowance during the rest of his life as Parliament may determine, provided that during the life time of any such President in retirement, the pension or allowance granted to him shall not be varied to his prejudice'."

This, Sir, is another novel idea which is not found in the American Constitution, and as such it is also trying to break new ground. I trust that, however, will not be regarded as an argument in itself against my motion, that since even the wise Americans have not provided for this contingency, we in India need not do so.

[Prof. K. T. Shah]

If that argument should be urged, may I mention that in one of the later amendments to the Parliament Act or Ministers' Salaries Act, the hoary old Mother of Parliament has provided for the Prime Minister's pension on retirement, and, if I am not mistaken, even for the Leader of the Opposition. Lest I should be misunderstood by this word, I wish no one will think me guilty of any personal implication in that latter statement. I am only quoting a provision of the law made by the British Parliament providing for the retiring Prime Minister a reasonable competence, so that one who has held the dignity of the Prime Minister of the United Kingdom should not be reduced to circumstances wherein, as in the case of Mr. Asquith, his friends would have to come to his assistance, and provide a sort of trust to enable him to pass his remaining years in peace.

Sir, it is a matter of no small concern to all of us that one who has held the office of the President of India should not, by force of circumstances, by economic necessity, be compelled to have recourse to any service, trade, business or activity of any sort, or even to political manoeuvring, which might bring him a competence. It must be the greatest of our public ideals, the greatest of our public concerns that whoever has been elected Head of the State shall, on retirement, be adequately provided with what is considered at the time adequate sustenance for him who has been President of India.

This has both a precedent, as I have just pointed out, and a principle in its favour. Take for instance, the provision made for Judges of the High Court who also hold a part of the Sovereign power of the State, and who on retirement are without question provided with a pension everywhere in the world. You have plenty of precedents for it, I mean for some retiring pension for the President. If you can provide and if you should provide some retirement allowance to high judicial officials on their retirement, why should you not provide for the Head of the State embodying the Sovereignty of the people though even for a time, some sort of an allowance or pension—call it what you like—which would save him from being reduced by necessity to resort to means that may not be considered honourable, or that may not be considered befitting the dignity of one who has been Head of the State?

Sir, the Constitutions, from which precedents are usually cited, were drafted at a time and were made for a people where those coming up for such offices were presumed to be so well off, so well provided and in possession of such worldly wealth, that the provision was superfluous or unnecessary.

In fact it has been said as regards the President of America, or of the Prime Minister of England, that very often they have retired poorer by thousands than when they entered upon their office. And yet no compensation was found necessary to spend their retirement on a decent livelihood. What does that signify? In this case, Sir, if ideals such as have been preached in this country are at all to be realized in actual fact, if the poorest is to be able to claim one day to have at least the right to be elected President, if one who has no right, title or interest in any industry, aided, supported or protected by the State, and not merely *carried on* by the State, then in such matters I hope the mere consideration of economic necessity after the post has been filled with honour and dignity will not debar such a person otherwise highly qualified from being chosen as a candidate or being chosen successfully as the occupant of the post.

I think, Sir, that the consideration in favour of making some such provision by Parliamentary enactment is so overwhelming that if not in the words that I have had the honour to put forward, in some other way and in some other form, the principle embodied in this amendment will commend itself to the Draftsmen and those who support him; and as such will become part of the Act.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, I regret I cannot accept the amendments which have been moved. Professor Shah's amendment No. 1138 seems to be somewhat superfluous. It provides that the

President shall be given Secretariat assistance. There is no doubt about it that it will be done whether there is any provision in the Constitution or not.

With regard to his second amendment No. 1140 prescribing that a pension be given to the President on his retirement, I find that while I am agreeable to the sentiment that he has expressed that persons who serve the public by becoming members of Parliament undergo a great deal of personal sacrifice and that it is desirable that they should not be left unprovided for towards the end of their lives, it seems rather difficult to accept this particular amendment also. According to him, every person who becomes President and serves his term of office, which is 5 years, shall, at the end of 5 years, be entitled to a pension. The second difficulty is that according to his amendment his pension shall not be altered during his life-time. Now supposing for instance one person who has been a President and has filled his full term of years and has obtained a pension under the amendment of Professor Shah, suppose that he is again elected to be the President, what is the position? The position is that he continues to get his salary as the President in addition to that he will also be entitled to his pension. We would not be in a position even to reduce the pension in order to bring it down to his salary. Therefore, in the form in which the amendment is moved, I do not think that it is a practical proposition for anyone to accept. But there is no doubt about the general view that he has expressed, that after a certain period of service in Parliament, Members, including the President, ought to be entitled to some sort of pension, and I think it is a laudable idea which has been given effect to in the British Parliament, and I have no doubt about it that our future Parliament will bear this fact in mind.

Then, with regard to the question raised by Professor Kamath about residential.....

Shri H. V. Kamath: Sir, I am not Professor Kamath.

The Honourable Dr. B. R. Ambedkar: But he is quite entitled to be called Professor because he speaks so often. (*Laughter.*)

Shri H. V. Kamath: God forbid I should ever become a professor. (Laughter.)

The Honourable Dr. B. R. Ambedkar: Well, my friend Mr. Kamath asked me to explain why we have included this provision here, with regard to the official residence of the President, and he also twitted me on the fact that I was burdening the Constitution by mentioning it and other small minutiæ. It might be thought that this is a small matter and might not have been included in the Constitution. But the question I would like to ask Mr. Kamath is this. Does he or does he not intend that the President should have an official residence and that Parliament should make provision for it? And is there very much of a wrong if the proposition was stated in the Constitution itself? If the intention is that.....

Shri H. V. Kamath: Sir, may I know whether the Prime Minister will or will not have an official residence?

The Honourable Dr. B. R. Ambedkar: Yes, this is merely a matter of logic. I want to know if he does or does not support the proposition that the President should have an official residence. If he accepts that proposition, then it seems to me a matter of small import whether a provision is made in the Constitution itself or whether the matter is left for the future Parliament to decide. The reason why we have introduced this matter in the Constitution is that in the Government of India Act, in the several Orders in Council which have been issued by the Secretary of State under the authority conferred upon him by the Second Schedule of the Government of India Act, official residences, both for the Governor-General and the Governors have been laid down; and we have merely followed the existing practice in incorporating this particular provision in the Constitution; and I do not think we have done any very

[The Honourable Dr. B. R. Ambedkar]

great violence either to good taste or done something which we do not intend to do.

Shri H. V. Kamath: On a point of clarification, Sir, may I know whether this particular clause of article 48 will stand in the way of the President being provided with more than one official residence? It speaks of the President having "an official residence."

The Honourable Dr. B. R. Ambedkar: Not at all. There may be two official residences.

Then, with regard to the amendment of Mr. Sarwate, No. 28, I would like to say that this matter may have to be considered when we deal with the Constitution of the States which will accede to the Indian Union. Today the situation is so fluid that it is very difficult to make any provision of the sort which has been suggested by Mr. Sarwate.

Mr. Vice-President: The amendments will now be put to vote, one by one.

Amendment No. 1130, standing in the name of Dr. Ambedkar.

"That in clause (1) of article 48:

(a) for the words 'either of Parliament or' the words 'of either House of Parliament or of a House' be substituted,

(b) for the words 'member of Parliament or' the words 'member of either House of Parliament or of a House' be substituted,

(c) for the words 'in Parliament or such Legislature, as the case may be,' the words 'in that House' be substituted."

The amendment was adopted.

Mr. Vice-President: Amendment No. 28, standing in the name of Mr Sarwate.

"That in amendment No. 1130 of the List of Amendments in article 48, before the words 'House of Parliament' the words 'of the ruling family of Indian States and is in receipt of political pension or of an allowance on account of privy purse' be inserted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 1128, standing in the name of Mr. Naziruddin Ahmad.

"That for clause (1) of article 48, the following clause be substituted, namely:—

'(1) If the President is a member of any Legislature of the Union or of any State, he shall be deemed, on his making and subscribing the oath under article 49, to have resigned such membership'."

The amendment was negatived.

Mr. Vice-President: Amendment No. 1133, standing in the name of Dr. Ambedkar.

"That in clause (2) of article 48, for the words 'or position of emolument' the words 'of profit' be substituted."

The amendment was adopted.

Mr. Vice-President: Amendment No. 1135, standing in the name of Mr. Kamath.

"That in clause (3) of article 48, the words 'the President shall have an official residence and' be deleted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 1138, standing in the name of Prof. K. T. Shah.

"That in clause (3) of article 48, after the words 'shall have an official residence' the following be added:—

'and such secretarial, clerical, or expert consultative assistance at public expense as he may consider necessary for the due discharge of his duties and responsibilities under the Constitution, or the laws made thereunder for the time being in force'."

The amendment was negatived.

Mr. Vice-President: Amendment No. 1140, standing in the name of Prof. K. T. Shah:

"That the following new clause be added to article 48 :—

'(5) Every President on completion of his term of office, and retirement, shall be given such pension or allowance during the rest of his life as Parliament may determine, provided that during the life time of any such President in retirement, the pension or allowance granted to him shall not be varied to his prejudice'."

The amendment was negatived.

Mr. Vice-President: The question before the House is that article 48, as amended, form part of the Constitution.

The motion was adopted.

Article 48, as amended, was added to the Constitution.

New Article 48-A

Mr. Vice-President: Now we come to the new article 48-A and amendment No. 1141 standing in the name of Prof. K. T. Shah. It will be seen that this amendment is similar to amendments No. 1125 and No. 1126 which have been negatived. Therefore it is disallowed.

Article 49

Mr. Vice-President: We now come to article 49.

The motion before the House is:

"That article 49 form part of the Constitution."

We will go through the amendments, one by one.

First is amendment No. 1142, standing in the name of the Honourable Shri G. S. Gupta; it is a verbal amendment and is disallowed.

Amendments Nos. 1143, 1144 and 1145 are of similar import. No. 1144 may be moved, standing in the name of Shri T. T. Krishnamachari.

Shri T. T. Krishnamachari: Mr. Vice-President, Sir, I move:

"That in article 49, after the words 'Chief Justice of India' the words 'or, in his absence the senior-most Judge of the Supreme Court available' be inserted."

Sir, this is only making a provision in case the Chief Justice of India is not present, some other Judge should do his function, and it is but proper that the senior-most judge of the Supreme Court should do this function. Sir, I trust the House will accept the amendment because it needs no further explanation.

Mr. Vice-President: Dr. Ambedkar, do you accept that amendment?

The Honourable Dr. B. R. Ambedkar: Yes, I do.

Mr. Vice-President: Then I need not put No. 1143 to vote.

Then comes amendment No. 1145, standing in the name of Shri Jaspat Roy Kapoor.

(Amendment No. 1145 was not moved.)

Mr. Vice-President: Then comes amendment No. 1146, standing in the name of Mr. Kamath.

Shri H. V. Kamath: Mr. Vice-President, Sir, by your leave, I move this amendment No. 1146 in a slightly amended form, as follows:—

"That in the affirmation or oath in article 49, for the words 'I, A. B. do solemnly affirm (or swear)', the following be substituted :—

'In the name of God, I, A. B. do swear'

or alternatively,

'I, A. B. do solemnly affirm'."

Sir, as I read the Constitution carefully I was left with a sadly uncomfortable feeling that there was a void in the Constitution, that there was a vacuum in the Constitution.

Mr. Vice-President: Mr. Kamath, Are you not moving your amendment inserting the words, "in the name of God"?

Shri H. V. Kamath: I have amended my own amendment.

Mr. Vice-President: I see, you are amending your own amendment.

Shri H. V. Kamath: Yes, Sir. When I perused the Constitution, I was left with the feeling that there was a void in it. We had forgotten, I do not know why, to invoke the grace and blessing of God. To me it is odd, it is passing strange that before an Indian Assembly, speaking on the Indian Constitution I have to come and stand before you today to plead for this amendment: to plead that God may find a place in our Constitution. I should have thought, Sir, that the Preamble itself should have opened with an invocation to God. Well, that is coming later on and we will see what will happen to that. Perhaps, it was the will of God that the Constitution should be barren of His name and that later on the name of God should be invoked in the course of a discussion on the Constitution. May I ask, Sir, do my friends think—those of them who do not attach any importance or value to this invocation—that by banishing God, by banishing the word 'God' from their minds and thoughts, or from the Constitution they arrogate to themselves the idea that thereby they are banishing God Himself from the Constitution? God forbid, that they should entertain any such thought. Do they think that it is possible to legislate God out of existence? The more, Sir, we avoid God, the more we try to flee from Him, the more He pursues us. There is a beautiful poem, "The Hound of Heaven" by Francis Thompson, which describes the state of mind of one who tried to flee from God.

"I fled Him down the nights
—And down the days,
I fled Him down the arches of the years, etc."

and so he goes on: then he says:

"But with unhurrying chase, unperturbed pace
The feet of God pursued him,
"And a voice beat more instant than the feet,
All things betray thee
Who betrayest me."

In India, Sir, with our ancient culture, with our spiritual genius, with the heritage to which all of us are heirs—one and all of us—it is needless for me to say how every activity of ours in every field of endeavour has been permeated through and through with the idea of an offering to God, the deepest spiritual idea. According to Hindu customs and traditions, our ceremonies open and begin with the invocation "Hari Om Tat Sat". Our Muslim friends have the Koran Sharif whose every verse starts with the invocation "Bismilla Al Rahaman Al Rahim". Our Sikh friends' Guru Granth Sahib opens with "Ekonkara Satnama Karta etc." Our Christian friends have been commanded by their Saviour to "Give up all thou hast and follow Me". The same idea has found a place in our own philosophy, namely, in the Gita:

Sarva Dharman Parityajya, Mamekam Sharanam Vraja!

Give up everything, even all Dharmas and seek refuge in me alone, that is "God". Therefore it is needless to dilate very much upon this amendment of mine. As I have already said every act of ours from eating and drinking to the highest worship, is an offering, a dedication and a sacrifice to God, namely:

यत्करोषि यदश्नासि यज्जुहोषि ददासि यत् ।
यत्तपस्यसि कौतेय तत्कुरुष्व मदर्पणम् ॥

yat karoshi yadashnasi yajjuhoshi dadasi yat
yattapasyasi kaunteya tatkurushva madarpanam

And here Sir, it is something very solemn that we are doing, and even if eating and drinking is to be an offering to God, then this Constitution which is a sacred task, must be an offering to God also. Our own teachers—all the old sages and seers and Rishis—up to the days of Mahatmaji and Netaji have been dominated by a supreme idea, namely that all our actions must be acts of sacrifice to God. I do not want to tell the House how the minds and souls of Mahatmaji and Netaji Subhas Chandra Bose were permeated with this love and "bhakti" of God and how they bathed their being ever and anon in the life-giving waters of the Eternal. Coming, Sir, to our own leaders of today, such as Sardar Patel, Rajen Babu our President, and our Governor-General Shri Rajagopalachari, you will permit me to quote from some of their recent speeches where they have enjoined upon us not to forget God in our daily activities.

The Governor-General, Sir, on Thanks-giving Day after the Hyderabad operations, in his speech, stated:

"Ministers, Generals, Soldiers, Police and Citizens, all are entitled to our gratitude. But nothing moves in this world but God moves it. We imagine we have done great things."

In our own conceit we imagine we have done great things. Proceeding, the Governor-General said:

"The truth is that God did those things. Let us be humble and deserve the grace which he so abundantly poured on us. Let us not be proud. Let us daily fill our hearts with mutual love and trust."

Our President, Dr. Rajendra Prasad, last year when he broadcast a message on Independence Day, said:

"With the help of God and under the leadership of Gandhiji we have won the battle of freedom and gained our objective."

Sardar Patel recently in Bombay declared:

"We are grateful to God that we have succeeded in establishing stabilized conditions in our country to a certain extent."

I therefore feel that in a Constitution, apart from invoking the grace and blessing of God in the Preamble itself, when a solemn thing like an oath or affirmation is concerned, it will be an empty performance, if when we take a solemn oath we do not do it in the name of God. Netaji Subhas Chandra Bose in Singapore, when he became the Commander-in-Chief and Provincial President of the Arzee Hukumat-e-Azad Hind, took the oath which ran thus:

"Ishwar ke nam par main pratigy karta hun."

Therefore, Sir, in the end, I would appeal to the House that we are heirs to an immortal and a spiritual heritage, a heritage which is not phy ical, nor material nor temporal: a heritage which is of the spirit—a spirit that it, ever was, and ever shall be, a heritage that is eternal. Let us not squander this invaluable heritage. Let us not dissipate this heritage: let us remain true to our ancient heritage, our spiritual genius. Let us not lightly cast away the torch that has been handed down to us from time immemorial. Let us in the words of Swami Vivekananda aspire to conquer the world spiritually. Let us blaze forth a trail that will be the light of the world as long as the sun and moon and stars endure. I shall only end with the words which were ever on Mahatma Gandhi's lips:

"Ishwar Allah tere nam
Sabko sanmati de Bhagvan."

This amendment of mine, as amended, today I have moved before the House so that on this matter which I consider vital and fundamental we may have a unanimous House. Therefore I have amended with your leave, Sir,

[Shri H. V. Kamath]

the original amendment No. 1146 and in the amended form I move it before the House and commend it to the House for its acceptance.

Shri Mahavir Tyagi: Sir, I beg to move: that for amendment No. 1146 the following be substituted:

"That in article 49 for the words 'do solemnly affirm (or swear)' the following be substituted :—

'do— swear in the name of God / solemnly affirm.',"

This will mean that those who believe in God will swear in the name of God and there will be liberty for those agnostics, who do not believe in God, only to solemnly affirm, so that there will be freedom for one's faith. My amendment is practically the same as Mr. Kamath's: except that the change of words is made for those who do not believe in God, so that they can 'solemnly affirm' and others 'swear in the name of God'.

While moving this amendment I want to take the opportunity of expressing my views with regard to the name of God. In fact I am glad and proud of the amendment which my Friend Mr. Kamath has moved. This is the first time that the Constituent Assembly is considering the question whether it would bring in the name of God in the Constitution or not. In fact we should have brought it in the very beginning but since the Preamble did not come under consideration, we shall make another effort to invoke the name of God when we start to consider the Constitution from the beginning.

The Constituent Assembly having passed a resolution saying that the State will be a secular State, a lot of misunderstandings have been created on account of that resolution. It is for us to clear them. The name of God does not, in my opinion, interfere with the secularity of the State, because when a person elected as President goes to take the oath, even though a President, he is not virtually a President before he takes the oath: he is simply a person. He has no official capacity when he approaches the altar to take the oath. He is just an individual in his personal capacity and in that capacity he takes the oath. And even if the name of God were to interfere in any way with the secular character of the State, it would be so only when an official takes the name. Till such time as the President takes the oath he remains only a person. And when a person takes an oath he does it according to his personal faith.

Shri L. Krishnaswami Bharathi: What is the distinction?

Shri Mahavir Tyagi: Those who can see the distinction can find it out. An oath is a personal matter and it must be observed with all solemnity and the occasion when an oath is taken is a very solemn one, especially when the head of the State takes the oath. Personal religion does not allow of any temple, altar or rites. It is confined purely to one's internal cult of the Supreme God and the eternal obligations of morality. This is the personal religion of each individual. It is this personal point of view. My friend wanted to know as to what was the distinction. The distinction is that a personal religion is pure faith in God; it does not permit of any practice, profession, or rite. God is neither a physical precept nor a mental concept. It is the spiritual realisation pure and simple. There is no rite attached to it. No temples are needed nor any altars. I well understand the philosophy or the logic of the State being secular. For, in every land, where there are so many religions and so many communities, one cannot give any particular colour to the State. The State must in such cases be secular, so that the consolidation of the nation may be achieved. We have many religions and communities in India. But the name of God is a common factor among them all. Every section believes in God, every group believes in God and every community believes in God. Therefore if we bring in the

name of God in the constitution of our State, it will help us to unify the state, and will implement the secular character of the State rather than disturb its secularity. This is only by way of argument. The fact is that since we announced in this Assembly that ours was going to be a secular State, the announcement has given rise to all sorts of interpretations and misgivings. People began to think that as far as Government was concerned it had banished God altogether. I hope the Constituent Assembly by bringing in the name of God here will to some extent clarify the misunderstandings. Some vain kind of politicians in their attempt to imitate some fashionable slogans of the West have allowed themselves to believe that in a secular State God is taboo. A secular State means the state of Truth and God and eternity without prejudice to any particular religion. In India all our culture, and all our policy and civilization has been spun and woven round the one nucleus, God, and if God is banished I do not know what Swaraj will mean to India. Personally I along with so many others, seniors and juniors, and millions of people fought for thirty years for Swaraj. The Swaraj of my conception was Ram Raj. It was not the political freedom alone that mattered. If I may be permitted to say so, I care a tuppence for political freedom. India did not only mourn the loss of her political freedom but her real grief has been the loss of her freedom of spirit. Our spiritual freedom was first hit when Somnath was attacked. Since that time, all these hundreds of years, India has not been feeling free. Real Swaraj means "Ram Raj". How this idea of secularity has been misinterpreted, I will not be going out of the subject if I take the house into confidence and inform them that very recently at a conference of A.I.R. officials they came to the unanimous decision that the recitation of the Gita and the Ramayana, the Koran and the Bible should now be stopped. If secular State means that our children will not know about the Ramayana or listen to the Gita or the Koran or the Granth what is political freedom worth? This is stretching the meaning too far. If God is banished from this "Ram Rajya", India will become Ayodhya without Ram. I submit, Sir, by 'Ram' I mean Hindu God and also Christian God. (Laughter) I submit that God is a common factor and therefore we must invoke Him here and also in the Preamble when the occasion arises. Even in the British Parliament, when they assemble, they do so only after prayers. They hold prayers. In the proceedings you will find that the Parliament met at such and such an hour and after 'prayer' began their poceedings. Theirs is not a communal State too. In Ireland, as also in many other places, God is not forgotten. I am indebted to my Friend Mr. Kamath who introduced this word God' here. We worship God and our faith must be recorded. India believes in God and therefore the Indian State must remain a State of God. It must be a godly State and not a godless State. This is our meaning of secularity. With these words I move my amendment.

Shri R. K. Sidhwa: I do not move amendment No. 1147.

Kazi Syed Karimuddin (C. P. & Berar: Muslim): Mr. Vice-President I move:

That in the Form of Oath in article 49, the words "and that I will devote myself to the service and well-being of the people of India" be deleted. My reason for the deletion of these words is that the very purpose of taking an oath or making an affirmation is that certain obligations are created in law. If there is a breach of this oath, then there is the impeachment of the President or the Vice-President. As a citizen of India, of course, a person will be devoted to the service of the people. Therefore it is not necessary that in the oath you must have this pious declaration. You will see that in the form of oath prescribed in the American Constitution, the latter part of this oath is not mentioned. Therefore my submission is that the latter portion should be deleted as it is only a pious declaration.

[Kazi Syed Karimuddin]

In regard to the amendment moved by Mr. Kamath I wish to say a few words. I was very glad that he held a brief on behalf of God and pleaded that God should not be banished from our Constitution. My submission is that if his amendment is accepted we will be excluding those people who have no faith in God at all. There are so many people in this country and elsewhere who have no faith in God. I may cite the example of the Jains. They do not believe in God and there are many who are atheists. If Mr. Kamath's amendment is accepted you will be excluding those people from becoming the President. If his amendment is accepted you will be creating an obligation on people that they should have faith in God.

Shri H. V. Kamath: Mr. Karimuddin has not seen my amendment. If he has seen it, he has not understood it.

Kazi Syed Karimuddin: The monopoly of understanding is with you only. (*Laughter*).

Shri H. V. Kamath: Sometimes.

Mr. Vice-President: Do you want to explain it? Yours is an amendment to the amendment of Mr. Karimuddin.

Kazi Syed Karimuddin: My submission is that in a secular State, when you are framing a Constitution, why should there be a classification of people at the time of taking the oath? Whether they believe in God or not, should not be indicated. It is contrary to the spirit of democracy that any insertion of God should be made in the Oath in the Constitution. My submission is that non-mentioning of God is not banishing Him.

Mr. Naziruddin Ahmad: I may point out, Sir, by way of clarification, that Mr. Kamath's amendment does not insist that the President should have real faith in God. According to it, he has merely to begin with the name of God.

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

"That in article 49, after the words 'well-being of the people of India' the following be added:

"and will throughout the term of my office as such President so conduct myself as to leave no ground for any charge of seeking to promote my own interest or my family's aggrandisement, and that in any act I may have to do or appointment I may have to make, I shall consider only the interest of the public service and of the country collectively."

I am afraid this is rather a delicate matter. But there is an old adage that fools rush in where angels fear to tread. As I have been qualifying myself very highly and frequently for the former title, I am afraid I must keep to the role even in this delicate matter.

The oath of the President, apart from other things, must include in my opinion, an assurance and an affirmation that he will only look to the interest of the country, to the service of the people; and not think of his own interest or of the aggrandisement of his family in any act that he may have to do and in any appointment that he may have to make.

It is indeed a pity, Sir, that in this House there are, so far as I can judge, such few voices being raised in support of that purity of the governmental machinery which has been taught to us as the inevitable consequence of what was just described as Ram Rajya in this country. Sir, I must, at the cost of becoming wearisome by repetition, insist that those ideals which have been professed during our struggle against the Imperialist outsiders must not merely be copy-book maxims; they must be living realities, and be implemented and must become an actual fact of daily life, agreed to by everybody in the country from the highest to the lowest.

The symbol of that, I further submit, can nowhere be more vividly insisted upon than in this part of the oath of the President, that, during his term of office, he shall so conduct himself as to leave no ground for any suspicion of seeking to promote his own private interests, or secure the aggrandisement of

his own family, in any act he may do or in any appointment he will make; but that he will always and entirely consider the interests of the country collectively as a whole and not of any individual.

It is a pity, also Sir, that it has become necessary to emphasise what on the face of it seems to be such an obvious proposition. It would not have been necessary to include it, if only we had not bitter experience of people forgetting their own professions, of people forgetting the great principles that they themselves had uttered. For, once they had acquired power, they suffered from intoxication of power and position and allowed it so freely to mount to their heads that they forget what they had stood for throughout their lives, and violate in deed and in fact everyday what they had professed themselves.

Sir, power is a dangerous drug. It is new in this country and I am told—I have no experience of my own—that new wine is much more heady than old. I do think that whatever may have happened in the past, in the new Constitution we must see to it that the head of the State and the principal officers working under him for the benefit of the country, are free from any suspicion, any charge, any ground even to believe that they, in their several acts, in their several offices or appointments, have thought of anything but the good of the country according to their light.

Sir, I know that in human affairs some ground can always be found for such fears, and where good ground is not found, rumour may be busy imagining or fabricating things which are not at all there, or exaggerating things which may be only seedlings. I am also aware, Sir, that man is liable to err, with the best of intentions. The provision that I am seeking to make by this amendment is not intended to punish such errors made in good faith, in ignorance, or in the absence of proper light. What I am seeking to guard against by this amendment is a deliberate mis-use or abuse of office and power, so that, instead of the interests of the country collectively, being attended to by those in power or authority, only the family interests or the individual's own interests may be promoted.

This has happened in other countries; and notwithstanding our heritage, notwithstanding our insistence upon popularising God even in such matters, we are liable, I take it, to repeat other people's follies as well. The mere presence of the name of God, I am afraid, will not be an insurance against the frailty of man. That being so, I want it to be clearly reaffirmed, I want it to be reinforced that those who hold the trust, the highest office under the people, and have in their power, in two, three or four years, to mould the destinies of the country, shall, at least to their own judgment and according to their lights, be free from any accusations of the kinds I have contemplated in this amendment.

It is invidious, Sir, to mention specific instances. It is unnecessary, Sir, to quote examples of this kind which most of us may know. As the saying goes, in my part of the country at any rate, while everybody knows the name of his wife, none will utter it. That being so, I certainly am not prepared to violate that maxim, and mention names which may or may not be accurate. But I think there ought to be no difference of opinion that the head of the State should be free from any such charges. Hence, even if we may not have an absolutely destitute person as President, or a person without any family entanglements, a person without any connections or dependents, even then we should insist upon such safeguards as will see to it that human frailty is not reinforced by individual temptation, or constitutional laxity, and permit things which should never be done. The human brain is ingenious and lawyers there are who will reinforce that ingenuity. Cases are not wanting in the past when persons deliberately misinterpreted or violated the spirit of their own oath, if not the letter. I remember the case of a former Lord Chancellor of

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England who had in his power vast patronage of appointments to which he appointed only his own relatives. When this scandal grew to such an extent that only his sons, nephews and grandsons had any chance of appointment at all, the House of Lords appointed a Committee of Inquiry to find out whether or not such charges were well-founded. Appearing before the committee the Lord Chancellor—I think it was Lord Elden—had the temerity to say, before this Committee, quite solemnly "I have taken *an oath* that I will appoint only those whom I know to be so and so. And whom do I know better than my sons or nephews?" He forgot to add that it was only those whom he knew to be qualified that he was to appoint, and not only those whom he only knew. That was a difference and a distinction which his learned Lordship did not care to remember at the moment.

The case is also very well known of Queen Victoria, who, at the time of the disestablishment of the Anglican Church in Ireland in 1869, brought out her Coronation Oath to show that she had taken an oath to uphold and maintain the Church of England. She had forgotten that she had taken an oath only to maintain the Church of England *in England*, but not necessarily all over the world, or even whole of the United Kingdom. In this way, the opposition of the Queen was got over.

My point is that even though it may be possible to abuse or deliberately misinterpret or misapply the terms of the oath, the oath in itself is a guarantee of some sort. I know it is not an absolute knave-proof guarantee; but it is a guarantee of some sort that those who hold such offices will always be reminded of their obligations, of their promises that they will so conduct themselves as to be free from any suspicion of the kind that is implied in many acts or utterances of those who have high offices in their power as a gift. As I said before, this matter is so self-evident and so important that there ought to be no opposition to a proposition like this. I hope the House, true to the traditions which it has been upholding, will accept my amendment.

Shri R. K. Sidhwa: Mr. Vice-President, Sir, this is a simple clause relating to the oath to be taken by the President. Sir, I am a firm believer in the existence of God and also in religion but I must say, Sir, that it will not be proper to insert the word 'God' in our Constitution simply because we invoke the blessings of God. God is everywhere if you really believe in Him. God is here in this House. He is omni-present. If you really believe in the existence of God, it is no use merely putting it in the Constitution and taking consolation from it. There is no use the President taking his oath in the name of God and then do something quite contrary to the teaching of God. There is another factor to which I object; I do not share the view of my Friend, Mr. Karimuddin that in a secular State the word 'God' cannot come in. A secular State does not mean that an individual cannot believe in God. That theory is certainly not tenable to any reasonable man, but I do believe, Sir, that day in and day out, we do say that religion shall have nothing to do with our Constitution, and that religion is our private concern. I certainly believe in God and I think religion is my own business. It is nobody's business to tell me in what respect and in what method you believe in God and you approach your religion. In India, we feel that God is a symbol of religion; and in the name of religion, we know, Sir, how disastrous things are happening in this country; each community believes in God in his own way. The belief of the Hindus is quite different, that of the Muslims is quite different and so also that of the Parsis and the Christians. I, therefore, do not want that our Constitution should in any way be marred by the word "religion", but if my friends have a consolation in bringing in God, and that is to their satisfaction, let them have it. I only want to say, Sir, that it would have been better if the word 'God' and the religious point of view were avoided. What I would really have

preferred is that the public should have been remembered by the President when he takes the oath. He should have stated that in the presence of the people. . . . .

Mr. Vice-President: Is that the amendment you are suggesting?

Mr. R. K. Sidhwa: I am only stating that from the Irish Constitution. There the President takes the oath in the name of the people of the whole country. He says: "I swear before the People of the whole country" and at the end of the oath states "if I break my oath, I will submit myself to the severest punishment from the State." I have heard this morning sermons being preached that the President should be a man of integrity, sincerity and honesty, and the resolution of the Jaipur Congress was quoted. But the President does not say "I shall be subject to the severest punishment if I do not carry out the injunctions that have been imposed upon me and I make that solemn affirmation before the people of this country".

Mr. Vice-President: I really find that you are moving amendment No. 1147 quoting the very words.

Mr. R. K. Sidhwa: These are the words of the Irish Constitution, Sir.

Mr. Vice-President: I do not deny that, but you are quoting from the amendment which you did not want to move.

Mr. R. K. Sidhwa: This is not my amendment and if it is so, I wish to state that I have borrowed it from another Constitution just as so many things have been borrowed by so many eminent persons in this House.

Mr. Vice-President: Not at all; I am merely suggesting that you are quoting the amendment which you did not move, i.e., Amendment No. 1147.

Mr. R. K. Sidhwa: I bow to your ruling. I cannot challenge what you say. I merely stated that it is merely a reproduction of the Irish Constitution.

Mr. Vice-President: It is certainly an amendment which stands in your name.

Mr. R. K. Sidhwa: I only wanted to say that the oath should be one appealing more to the people of this country, for whose interest and well-being, we are preparing this Constitution.

Shri M. Thirumala Rao (Madras: General): Mr. Vice-President, Sir, I do not know why the light goes off as soon as I approach the mike. All of us are in need of greater light, especially after my honourable Friend, Mr. Sidhwa's speech, who has protested too much by God and who wants to eliminate God from the Constitution. Sir, it is strange how the honest and god-fearing people who have drafted this Constitution have got so much fear of God that they have altogether banished Him from the Constitution! Sir, I want to bring to the notice of this House that during the last 30 years, the Congress struggle has gone on on definite lines of ideology, led by one of the greatest men of the world. Truth and non-violence have been our weapons and they have been uniquely used by large masses of people and during all these years, the people who fought for that freedom of this country have got a concept of what that freedom should be like. Mahatma Gandhi is worshipped in this country not because he is merely a political leader, but because he is a gentleman, a person who has personified in himself the spirit of the nation that has survived the onslaught of many invasions from far-off countries. Civilizations of the world have gone before us; the civilizations of Egypt and Babylon have perished, but the civilization of India has survived all these centuries, because there is something in the very make-up of this nation, which has got its roots deeply in spiritual emotion. If you eliminate that spiritual emotion, then India has no right to exist and would have ceased to exist long ago. All of us have fought under the able guidance of Mahatma Gandhi and Mahatma Gandhi has enthused and inspired us with definite ideals of the

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governance of our country. Unfortunately as irony would have it, the drafting of this Constitution has fallen into the hands of those people whose lives have not touched Mahatma Gandhi's ideology at any point except with the single exception of my honourable Friend, Mr. Munshi there.

Shri K. M. Munshi (Bombay: General): Thank you, Sir.

Shri M. Thirumala Rao: Therefore it is a disappointment that we have not really understood the genius of our people. We have always said, wherever we have gone, that the very basis of our life is embedded in religion. Go to the western countries. There the King stands for the country and God. The King stands for the religion of the community and you have seen the western universities. Oxford and Edinburgh—and all the older universities that provide the tradition in the oldest abbeys that are built along with the universities —these ancient cities of learning have given the first place to religion or the spiritual conduct of the nation. Therefore, what I suggest is this: that this constitution is going to safeguard the real genius, the real civilization of this country. How are they going to safeguard it? A provision has been made for atheists. The Chairman of the Drafting Committee who has got such a soft corner for atheists, who are a handful in this country, should have shown greater enthusiasm for safeguarding the spiritual heritage of the vast masses of this country! Such of those who have gone to Jaipur would have witnessed the real life of the nation is still alive with them. Thousands and thousands of people with genuine emotion in their hearts and tears welling in their eyes were looking at either Sardar Patel or Pandit Nehru, as the real symbols of the nation. I had occasion to watch a handful of Sikhs; they were telling us—about fifteen or twenty of them:

"Hamko Darshan Pura Hogia."

Where does the word 'Darshan' come from? It is a word of religion. If they were looking at our leaders, it was not because they have got a regimented press and regimented armies behind them. Mahatma Gandhi was great not because of the regimented press, state and the armies to support him like the dictators, Stalin, Hitler and Mussolini of the West. The moment you want to banish God from your daily life, as reflected in the Constitution, that moment you have no right to exist. They in the West have banished God from the regimented state of Russia; they have forgotten God in the regimented State of Germany and Italy and you have seen the fate that has avertaken them. Therefore, what I say is if you want to reflect the real genius of our people, let us stand by God; God as such is such a wide term; God is an all embracing term. It is a common noun to which a proper name is given by each religion.

I have seen the amendments of my honourable Friends, Prof. K. T. Shah and R. K. Sidhwa. You want that a man should take the oath, affirming that he will behave properly, that he will be honest and that he will be everything. All these things are contained in 'God'; much more is contained in that one word 'God' by which you are asked to swear and you say that you will not define the name of God in discharging your public duty. Therefore, Sir, the amendment which has been so ably moved by my honourable Friend Mr. Kamath really reflects the genuine genius of our country. I am sure this country and this Constitution will have to undergo a thorough transformation before it finally settles down to evolve this nation as one of the greatest nations of the East, to uphold the real culture of this country as a leader of the world. Therefore, Sir, this amendment has not come a bit too late and I am glad the party has accepted it.

An Honourable Member: Which party has accepted?

Shri M. Thirumala Rao: I think it is understood what I mean by 'party'. I hope the House will unanimously accept this amendment.

Shri K. M. Munshi: Mr. Vice-President, Sir, I think the honourable Member who spoke against my honourable Friend Mr. Kamath's amendment got that

there was an amendment by my honourable Friend Mr. Mahavir Tyagi which leaves it free to those who do not believe in God to affirm solemnly the words of the oath. The only point before the House is, when a person believes in God, is he to swear by God or swear by somebody else? The amendment of my honourable Friend Mr. Kamath as amended by my honourable Friend Mr. Mahavir Tyagi's amendment fulfils the true criterion that when a man actually believes in God, he must swear by Him and not merely swear without His name or in the name of somebody else. We know in the olden days people used to swear by the cow's tail or by the *peepul* tree. The idea is that swearing must be in the name of God, in the most solemn belief that a man possesses.

My friend who spoke last was pleased to refer to me as one who was closely connected with Mahatma Gandhi out of the members of the Constituent Assembly. I do not know whether it is true. But, I myself have felt—I am free to confess—that we are emphasising the absence of God in this Constitution too much. My opinion was that we should have His name in the Preamble; but the general opinion was different. But when it comes to swearing, I see no reason why any person should fight shy of the name of God. I fail to understand how this offends against the conception of a secular State. A secular State is used in contrast with a theocratic Government or a religious State. It implies that citizenship is irrespective of religious belief, that every citizen, to whatever religion he may belong, is equal before the law, that he has equal civil rights, and equal opportunities to derive benefit from the State and to lead his own life; and nothing more. A secular State is not a Godless State. It is not a State which is pledged to eradicate or ignore religion. It is not a State which refuses to take notice of religious belief in this country. As a matter of fact, every State recognises this. We have done it in passing the fundamental rights with regard to religion. Religion is the richest possession of man and even under this secular State, a person having a religious belief will be fully entitled to it in the way that he likes. Any State that seeks to outlaw God, will very soon come to an end.

We must take cognisance of the fact that India is a religious-minded country. Even while we are talking of a secular State, our mode of thought and life is largely coloured by a religious attitude to life. When Mahatma Gandhi died, the State procession which carried him to the funeral ground ended in religious ceremonies. His ashes were immersed in a hundred rivers of India. I may mention to you my own experience. When the ashes of Mahatma Gandhi were taken to be immersed in the Sangam in Hyderabad, the Hyderabad State, as it then was, officially joined in it. Over 200,000 Muslims joined in it. Religious ceremony was performed at the Sangam according to the Hindu style in a congregation which consisted of Hindus, Muslims, Christians, and members of other communities. That shows that the subconscious mind of India is highly religious. We should not be ashamed of it. And it will be a day of disaster for India if, by some legislative trick, our State is converted into an irreligious, Godless State. We need not fear that a secular State is inconsistent with a religious mind among the people.

As an honourable Member has said before, if India has anything to give to the world, it is the outlook on life deeply imbued by spirituality, by awareness of God in our midst. If Indian culture has any meaning at all, it is that there is God and that a man can rise to the dignity of divinity in this very life if he becomes an instrument of God. The lever with which Mahatma Gandhi created the present nationalism and won for us a free State was the religious-mindedness of India. This mind will continue to be religious, and the State in India cannot be secular in the sense of being anti-religious. It does not mean that a man who believes in God should not swear by Him when pledging himself to the service of his country. This is my submission on this point.

Mr. Tajamul Husain: Mr. Vice-President, Sir, every religion says that nothing can be done without the wish or order of God. Therefore, the logical conclusion is that my honourable Friend Mr. Kamath came to propose the name of God by the wish of God. And I have come here also by the wish and order of God to say that he does not want **His name here at all. I have come here** to oppose the amendment of Mr. Kamath; I will give my reasons later on.

First of all, I want that article 49 should be deleted from this Constitution. What is the use of having an article which says that the highest officer, the President, when he becomes President should take an oath or affirmation? What is the necessity? My honourable Friend Dr. Ambedkar, who is an eminent lawyer, knows that 99 per cent of the witnesses who go into the witness box and take an oath or affirmation mentioning Almighty God, go to tell the untruth. (*Interruption.*)

Mr. Naziruddin Ahmad: Witnesses never take oath in the name of God unless they specially agree to. (*Interruption*).

Mr. Vice-President: It would be better if honourable Members do not interrupt.

Mr. Tajamul Husain: I thought the Honourable Mr. Naziruddin Ahmad who is a lawyer from Burdwan—I am told he is a very good criminal lawyer—knew that when a witness goes to the witness box he says:

"Allah ya Bhagwan ko nazir ko kar boltae ham."

He says, "in the name of God, I express....."

I was saying that article 49 should be deleted. I can move it without sending it in writing, because I oppose the whole thing. I say, Sir, that this Constitution is made by us—human beings. We cannot say this is a perfect Constitution. Nobody can say that. The word of Almighty is perfect and so why have the name of God in an imperfect Constitution? Why make Him cheap and why bring Him here? Sir, this constitution is going to be translated and the translation will come before the House and will be passed. What translation are you going to have? Whose name are you going to have? We all know that God is one but we have created thousands of Gods and your God is different from my God and Mr. Sidhwa's is different from some one else's. Whose God are you going to have? Why should Mr. Sidhwa take the oath in the name of some God which is not the name of his God? Supposing it is translated and the word 'Bhagwan' is there, can you compel the Parsee or Christian or a non-Hindu to say that when he becomes a President? Either you do not want him to become the President or if he does, he cannot swear that. Why have His name? We will worship Him in any way we like in our homes. I do not want to repeat the argument of Mr. Sidhwa. He has spoken very ably on this matter. There are Indians who do not believe in God at all. How are they going to take this oath? With these words I move:

"That article 49 be deleted."

Rev. Jerome D'Souza (Madras: General): Mr. Vice-President, it is not without some emotion that I rise to speak a few words on this amendment of Mr. Kamath. I am sure my honourable Colleagues in this House will have no doubt as to the purport of what I am going to say here. I have made references to this solemn subject more than once before this House, and so it is not without satisfaction that I notice and whole-heartedly approve of the suggestion or the amendment of Mr. Kamath. Nevertheless Sir, accepting and welcoming this amendment, I cannot help feeling that far too great a significance to the "official", to the "Constitutional" aspect of it, has been given to this very moderate suggestion, by some of the speakers that have preceded me. If I may be permitted to say so, our honourable Friend Mr. Munshi struck the right note and put matters in the right proportion. What does this amendment propose to do? Does this amendment commit the Constitution

or the Constitution-making body here to a solemn and unequivocal profession of belief in God and in God apprehended by a concept clearly defined and unanimously held? If it were so, objection might have been raised to it, but no such thing is implied here. What is asked here is this: when the most honoured position in our country is being given by the choice of this country to a man of outstanding personality, ability and character, we want him to come to the threshold of that office and to make a promise of service to the country in the manner that is most binding and most solemn that we can think of; we want him to draw his strength from the deepest fountains and springs of action within him for the service of his country. And knowing that the vast majority of our countrymen, Hindus or Muslims or Christians or Parsees or Sikhs draw their moral strength from trust in the Supreme Being, it gives to this chosen, this exceptional man the option of promising service to the country in that Sacred Name if he so desires. We want to give him the opportunity of making what is in his eyes the most solemn and the most binding promise. We do not impose it upon him. If there is someone who for some reason or other does not want to take that particular form, an alternative form is suggested to him. All that the Constitution-makers and we here imply by this amendment is that we accept the fact that in our country the vast majority of men are believers in God and that almost certainly, anyone who would come to this exalted office would be moved to fulfil the functions of that office most faithfully if he promised to do so in the name of Almighty God. Taking this for a fact, we merely register that fact but make no corporate profession. I do not see therefore why this should be construed as opposed to the spirit of our Secular Constitution. Secondly, even a Secular Constitution, as Mr. Munshi pointed out, is not a Godless Constitution. It is not in opposition to the very notion of God. Only it makes no choice as between this or that particular profession, or religious section, but it does look with sympathy upon the convictions, the feelings, the desires, the hopes and aspirations of the entire people. It would not be true to the spirit of those people if it ignored this profound reality, the belief of all our people in God. To my honourable Friends who asked us, 'Have we got a uniform and clear notion of what God is before we permit the introduction of this word in our Constitution?'' may I say, 'Is there anyone who is not aware in a broad and general way of what we mean by this word?' Is it necessary to enter into the discussions of Philosophers and Metaphysicians and to understand their subtle distinctions between this or that concept before accepting this term in so far as it stands for the Supreme Spiritual Reality that is behind this material and transitory world? We are making here an appeal to the eternal and everlasting foundation of all reality behind this passing, this temporal world. And in appealing to that, we are all one, Christians, Hindus, Muslims, Parsis and Sikhs, all of us knowing that above and behind what we see in time and in space, there is Something that is unchangeable, Something that is eternal,—one that works for justice and peace and goodness and harmony. Our deepest instincts of brotherliness, of order, of justice, of law, of progress, are founded upon and inspired and sustained by that conviction and that Reality. My honoured colleagues will, therefore, accept this broad and general assumption as sufficient for the admission of this amendment, and permit us to include it as one of the forms by which the President will take office. In doing so, we are not cheapening the concept of God. We are not imposing it upon all and sundry, and at all times and in all places. But here, on the threshold of a most sacred and most solemn duty, the chosen leader of our country, presumed to be almost always a believer in God, is asked, if he is a believer, to promise in His sacred Name, and with all the strength of his soul and the force of his convictions to fulfil the duties that are imposed upon him. Can we doubt for a moment, that if we word that affirmation in that way, all that is deepest in him will respond to it, and

[Rev. Jerome D'Souza]

that he is bound to fulfil that duty in a manner which he will not be inspired to do if a less compelling forms were used?

I therefore, request the House to waive all objections that may be based upon other considerations or scruples, and accept this amendment which will leave the fundamental secular character of the State rightly understood untouched, and to give this amendment the grace of general acceptance. By this, people of the country will certainly not be persuaded or obliged to believe that we are all here making a solemn profession of this or that particular religion, but they will at least understand that the law-makers and the constitution-makers realise that this country and its people have a strong religious faith, and that, realising it we here make an appeal to a principle of action and a motive of nobility which are bound to be responded to, and bound to do good to the country. Therefore, Sir, with all my heart, I support this amendment of my friend Mr. Vishnu Kamath and request this House to accept it unanimously. (*Cheers.*)

Mr. Vice-President: Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, I am prepared to accept the amendment moved by Mr. T. T. Krishnamachari, that is No. 1144, and also amendment No. 1146 by Mr. Kamath, as amended by Mr. Tyagi's amendment.

With regard to the first amendment, that moved by Mr. T. T. Krishnamachari, not much argument is necessary. His amendment is certainly better than the amendment that stood in my name.

With regard to the second amendment, No. 1146, in view of the fact that I am prepared to accept it in the form amended by Mr. Tyagi, I do not think I am called upon to enter into the merits of the question. But perhaps, it might be as well that I should say a few words as to why the Drafting Committee itself did not introduce in its original draft, the words "in the name of God." Sir, I do not think that this matter was considered fully by the Drafting Committee and therefore I cannot advance any adequate reason why they did not originally put in those words.

So far as I am concerned, I feel that this was a matter which required some consideration. If the House will permit me, I would express my own views on the matter. The way I felt about it is this. The word "God" so far as my reading goes, has a different significance in different religions. Christians and Muslims believe in God not merely as a concept, but as a force which governs the world and which governs, therefore, the moral and spiritual actions of those who believe in God. So far as Hindu theology was concerned, according to my reading—and I may be wholly wrong, I do not pretend to be a student of the subject—I felt that the word "Eswara" or to use a bigger word, "Parameswara" is merely a summation of an idea, of a concept. As I said, to use the language of integral calculus, you put sums together and find out something which is common, and you call that "S" which is merely a summation. There is nothing concrete behind it. If in Hindu theology, there is anything concrete, it is "Brahma" "Vishnu", "Mahesh", "Siva", "Sakti." These are things which are accepted by Hindus as forces which govern the world. It seems to me, that it would have been very difficult for the Drafting Committee to have proceeded upon this basis and to have introduced phraseology which would have required several underlinings—God, below that Siva, below that Vishnu, below that Brahma, below that Sakti and so on and so on. It is because of this embarrassment that we left the situation blank, as you will find in the Drafting Committee.

Shri A. V. Thakkar [United State of Kathiawar (Saurashtra)]: But there is One above all

The Honourable Dr. B. R. Ambedkar: I am, however, quite happy that this amendment has been introduced. Now, some Members have raised objections to the amendment. They are afraid that the introduction of the word God in the Constitution is going to alter the nature of what has been proclaimed to be a secular State. In my judgment, the introduction of the word God does not raise that question at all. The reason why the word God is introduced is a very simple one. The Constitution lays down certain obligations upon the President. Those obligations are obviously divisible into two categories, obligations for which there is legal sanction and legal punishment provided, and there are obligations for which there are no legal rules provided, nor any punishment is provided. Consequently, in every constitution this question always arises. What is to be the sanction of such duties, such obligations, as have been imposed upon a particular functionary for which it is not possible by law to provide a criminal sanction, a penalty? It is obvious that unless and until we decide or we believe that these moral duties for which there is no criminal or legal sanction are not mere pious platitudes, we must provide some kind of sanction. To some people God is a sanction. They think if they take a vow in the name of God, God being the governing force of the Universe, as well as of their individual lives, that oath in the name of God provides the sanction which is necessary for the fulfilment of obligations which are purely moral and for which there is no sanction provided.

There are people who believe that their conscience is enough of a sanction. They do not need God, an external force, as a sentinel or a watchman to act by their side. They think a solemn affirmation coming out of their conscience is quite enough of a sanction. If honourable Members have read the history of this matter which is embodied in the struggle between Mr. Bradlaugh and the House of Commons, they will realize that as early as 1880 or so, Mr. Bradlaugh insisted that he was a perfectly moral being, that his conscience was quite active, and that if he took the oath his conscience was enough of a sanction for him to keep him within the traces, so to say. After a long long struggle in the House of Commons, in which on one occasion Mr. Bradlaugh was almost beaten to death by the Sergeant-at-Arms for trying to sit in the House of Commons and taking part in its proceedings without taking the oath to which he raised objection, Mr. Gladstone ultimately had to yield and to provide an additional or alternative form which is called solemn affirmation. Therefore the issue that is involved in this amendment has nothing to do with the character of the State. Whether it is a secular or a religious State is a matter quite outside the bounds of the issue raised. The only question raised is whether we ought not to provide some kind of a sanction for the moral obligation we impose on the President. If the President thinks that God is a mentor and that unless he takes an oath in the name of God he will not be true to the duties he assumes, I think we ought to give him the liberty to swear in the name of God. If there is another person with whom God is not his mentor, we ought to give him the liberty to affirm and carry on the duties on the basis of that affirmation.

I therefore submit that the amendment is a good one and I am prepared to accept it.

Mr. Vice-President: You have nothing to say on the amendments moved by Mr. Karimuddin and Prof. Shah?

The Honourable Dr. B. R. Ambedkar: No, Sir.

Mr. Vice-President: The question is:

"That in article 49, after the words 'Chief Justice of India' the words 'or, in his absence the senior-most Judge of the Supreme Court available' be inserted."

The amendment was adopted.

Mr. Vice-President: The next amendment to be put to the vote is No. 1146. But this is identical with Mr. Mahavir Tyagi's amendment and if Mr. Kamath agrees I shall put this one to the vote.

Shri H. V. Kamath: I have no objection to Mr. Tyagi's amendment, as there is a mere verbal difference between his and mine.

Mr. Vice-President: Then I shall put Mr. Tyagi's amendment, which is an amendment to amendment No. 1146, to vote.

Shri H. V. Kamath: No, Sir. My amendment as amended by Mr. Tyagi should be put to the vote.

Mr. Vice-President: Yes, yes: that is understood. I did not know that you were such a stickler for forms; You break so many forms systematically!

The question is:

"That in article 49 for the words 'do solemnly affirm (or swear)', the following be substituted :—

'do $\frac{\text{swear in the name of God}}{\text{solemnly affirm}}$'."

The amendment was adopted.

Mr. Vice-President: The question is:

"That in the Form of Oath in article 49, the words 'and that I will devote myself to the service and well-being of the people of India' be deleted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in article 49, after the words 'well-being of the people of India' the following be added :—

'and will throughout the term of my office as such President so conduct myself as to leave no ground for any charge of seeking to promote my own interest or my family's aggrandisement, and that in any act, I may have to do or appointment I may have to make, I shall consider only the interest of the public service and of the country collectively'."

The amendment was negatived.

Mr. Vice-President: The question is:

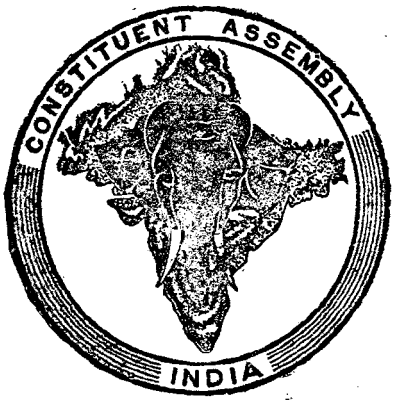
"That article 49, as amended, be adopted."

The motion was adopted.

Article 49, as amended, was added to the Constitution.

The Assembly then adjourned till Ten of the Clock on Tuesday, the 28th December 1948.

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Volume VII
No. 27

Tuesday
28th December
1948

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 28th December 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 50

Mr. Vice-President (Dr. H. C. Mookherjee): We may resume discussion of the Draft Constitution. The motion before the House is:

"That article 50 form part of the Constitution."

Shri Gopikrishna Vijayavargiya [United State of Gwalior-Indore-Malwa (Madhya Bharat)]: May we know up to what date the Assembly will continue, if this can be ascertained, so that we may fix up our own programmes?

Mr. Vice-President: I shall be in a position to let the honourable Member have the information at a later date—by the end of this week or early next week.

(Amendment No. 1150 was not moved.)

Looking to the amendments I find that the first part of amendment No. 1151 and amendment No. 1152 are of similar import. Amendment No. 1152 which stands in the name of Mr. Karimuddin may be moved.

Kazi Syed Karimuddin (C.P. & Berar: Muslim): Mr. Vice-President, I move:

"That in clause (1) of article 50, after the words 'for violation of the Constitution', the words 'treason, bribery or other high crimes and misdemeanours,' be inserted."

This does not require any detailed speech. Under article 50 it is mentioned that there can be an impeachment of the President in regard to the crime of violation of the Constitution. In the American Constitution the grounds I have mentioned in the amendment are also mentioned. In my opinion it is very necessary that for impeachment of the President all these grounds should be embodied under article 50.

Mr. Vice-President: Does Prof. K. T. Shah want the first part of his amendment No. 1151 to be put to vote?

Prof. K. T. Shah (Bihar: General): I want to move it.

Mr. Vice-President: It cannot be moved. But I can put it to vote.

Prof. K. T. Shah: All right.

Mr. Vice-President: Prof. Shah may move the second part of amendment No. 1151.

Prof. K. T. Shah: I beg to move:

"That in clause (1) of article 50, for the words 'either House' the words 'the People's House' be substituted."

Is this the part I am allowed to move, Sir?

Mr. Vice-President: Yes.

Prof. K. T. Shah: In bringing this amendment before the House, I am following the usual practice that if impeachment is to be made, it should be by the People's representatives and not by the other House, the Council of States. The Council of States would be composed of people not directly elected by the people. There may be some appointed elements in that House; and that Body may consist of representatives of units and interests rather than of the people themselves.

Now here are offences and the trial thereof, as against the Head of the State, which can, in my opinion, be only done by the House of the representatives of the people. After all, it is the people who are the sovereign in the scheme of the Constitution that this Draft presents, and that I have accepted. Under that scheme it should be the real sovereign, the people, who should and ought, through their representatives, be empowered and entitled to try for such offences the Head of the State.

I think no further arguments are necessary from me to make it clear even to those who are fond of imitating others that this amendment only conforms to the existing practice in America and the West. This amendment, at any rate, cannot be opposed on that ground.

Mr. Vice-President: There are several amendments to this amendment. The first one is amendment No. 30 in List I of the Fifth Week. As the mover (Pandit Thakur Dass Bhargava) is absent, the amendment is not moved. The next two amendments, viz., 31 and 32 also stand in his name. They are also not moved as the Member is absent.

(Amendment No. 1153 was not moved.)

Amendments Nos. 1154 and 1155 are disallowed as being merely verbal amendments.

Amendments Nos. 1156 and 1160 to 1165 are of similar import. Of these, amendment No. 1156 seems to be the most comprehensive one and may therefore be moved. It stands in the name of Shri Brajeshwar Prasad. The Member is absent and therefore the amendment is not moved.

The next comprehensive amendment is No. 1163 and may be moved. As the Member is absent it is not moved.

Then I allow Shri Shankarrao Deo to move amendment No. 1160.

Shri Shankarrao Deo (Bombay: General): Mr. Vice-President, I move the following amendment which stands in my name:—

"That in sub-clause (a) of clause (2) of article 50 for the words 'thirty members', the words 'one-fourth of the total membership of the House' be substituted."

The necessity for this amendment is so obvious that I need not take the time of the House by adducing arguments in support of it. The impeachment charge is so grave that if it is proved, the President who is the head of public life and the dignity of the State will suffer. So, if anybody thinks of preferring this charge, he must do so realising the seriousness of the charge, and there must be a sufficient number of representatives coming forward to support that charge. In view of the seriousness of the step proposed, the number thirty is very small. So I suggest that at least one-fourth of the total number of members of the House should come forward to prefer such a serious charge against the President who represents the dignity of the State. I hope the House will accept this amendment.

Mr. Vice-President: Does the mover of amendment No. 1161 want it to be put to vote?

An Honourable Member: No, Sir.

Mr. Vice-President: Does Kazi Syed Karimuddin want his amendment (No. 1162) to be put to vote?

Kazi Syed Karimuddin: Yes, Sir.

Mr. Vice-President: Prof. Shibbanlal Saksena may move his amendment No. 1164.

As the Member is not in the House, the amendment is not moved.

Amendments Nos. 1157, 1158 and 1159 are of similar import. Shri Jaspat Roy Kapoor may move amendment No. 1157.

(The amendment was not moved.)

Amendment No. 1158 standing in the name of Shri B. M. Gupte may now be moved.

Shri B. M. Gupte (Bombay: General): Mr. Vice-President, I beg to move:

"That in sub-clause (a) of clause (2) of article 50, for the words, 'after a notice' the words 'at least after 14 days notice' be substituted."

Sir, the provision as it stands today mentions the notice, but specifies no period for it. If we refer to articles 74, 77 and 158 which deal with the removal of the Deputy Chairman, Speaker, the Deputy Speaker of Parliament, and Speaker, Deputy Speaker of the State Legislature, we will find that everywhere 14 days' notice is provided. There is no reason why the same period should not be laid down here. I have therefore suggested in my amendment that 14 days' notice should be given. I hope the House will accept it.

Mr. Vice-President: Does the Member who has given notice of amendment No. 1159 (Mr. Mohd. Tahir) want that it should be put to vote?

Mr. Mohd. Tahir: (Bihar: Muslim): Yes, Sir.

Mr. Vice-President: Amendments Nos. 1166, 1167, 1168 and 1169 are of similar import. Amendment No. 1167 may be moved. It stands in the name of Dr. Ambedkar.

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

"That in sub-clause (b) of clause (2) of article 50, for the words 'supported by' the words 'passed by a majority of' be substituted."

Mr. Vice-President: Amendment No. 1166 standing in the names of Mr. Mohd. Tahir and Saiyid Jafar Imam.

Mr. Mohd. Tahir: I want to discuss it. My amendment is quite different from Dr. Ambedkar's. They are not the same.

Mr. Vice-President: It can be put to the vote. You can take part in the general discussion and make your point then. That will be much better, I think.

Amendment No. 1168 standing in the name of Mr. Naziruddin Ahmad. Do you want it to be put to vote?

Mr. Naziruddin Ahmad (West Bengal : Muslim): Yes, Sir.

Mr. Vice-President: It seems it is identical with Dr. Ambedkar's amendment. Then, amendment No. 1169 standing in the name of Kazi Syed Karimuddin. Do you want it to be put to vote?

Kazi Syed Karimuddin: No, Sir.

Mr. Vice-President: The next in my list is amendment No. 1170 standing in the name of Kazi Syed Karimuddin.

Kazi Syed Karimuddin: Mr. Vice-President, I move:

"That the following new sub-clause be inserted after sub-clause (b) of clause (2) of article 50:

'(c) the meeting shall be presided by the Chief Justice of the Supreme Court whose decision on the admissibility of evidence shall be final.' "

There is no mention in article 50 as to who would preside at the meetings or sittings for the impeachment of the President. Therefore I have made an attempt to add a sub-clause in which it is laid down that the meetings or sittings shall be presided over by the Chief Justice of the Supreme Court. I suppose that if this amendment is not accepted, then either the Speaker or the Vice-President will have to preside at such meetings. Obviously there is an objection to the Vice-President as he is likely to succeed if the President is removed. The Speaker also should not be allowed to preside at these meetings, because generally he is elected from the majority party. When there is an impeachment of the President, political passions will be running so high that there is bound to be an imperceptible change in the Vice-President or the Speaker. There is no doubt that there are instances in India and in England when the Speaker and the Vice-President have maintained the noble traditions of the House, but it is necessary not only that there should be justice but it should appear that you are doing justice. At such a critical time when there is an impeachment of the highest man in the country, it is very necessary that the presiding officer must be the Chief Justice of the Supreme Court.

There is one more ground which is also very important and it is this that while impeaching the President, there would be several questions of law and fact and there will be also several questions about the admissibility of evidence. In a parliamentary system of government, it is not very necessary that every one should be a lawyer or a judge, but surely when there will be so many mixed questions of law and facts and of the admissibility of evidence, it would be very difficult for a layman to decide such important questions. Impeachment can be based by a layman on wild rumours and hearsay evidence. To decide whether a particular piece of evidence is admissible or not, it is very necessary that a man having legal acumen and having experience of law should be the presiding officer at such meetings or sittings. Therefore my submission is that the Chief Justice of the Supreme Court who is generally detached from public life should be requested to preside at such meetings. In the American Constitution there is such a provision. We take only those provisions from other constitutions which suit us and reject others which do not suit us although they are very salutary. I make an appeal to Dr. Ambedkar to embody this amendment, particularly in view of the fact that when political passions are so high, it is very difficult for the Speaker or the Vice-President to keep up their balance.

Mr. Vice-President: Amendments Nos. 1171, 1173 and 1176 all stand in the name of Prof. Shah. I suggest that he may move them one after the other.

Prof. K. T. Shah: Am I to move only one of them?

Mr. Vice-President: You can move all the three.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That in clause (3) of article 50, for the words 'either House' the words 'the People's House' be substituted and the words 'or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation' be deleted."

For clarification I will read the clause as amended by this amendment. The clause would be:

"When a charge has been so preferred by the House of the People, the other House shall investigate the charge."

Coming to the second amendment standing in my name, I move:

"That in clause (3) of article 50, after the word 'investigated' a full stop be inserted."

Then, I move:

"That after clause (3) of article 50, the following new clause be added :

'(3A) The President shall have the right to appear and to be represented at such investigation.'"

Sir, the first amendment is in consonance with an earlier amendment I moved, by which I sought to vest the power to investigate, the power to try, in the House of the People, and the Council of States, respectively; and not be left open to *either* House. The other House may investigate, and the President should have the right to be heard and be represented at such investigation. It is, of course, but the most rudimentary principle of jurisprudence that any man who is accused of any offence should have the right of being heard; and also of being defended by competent advisors or by competent counsel at such hearing or at such investigation. The right, therefore, of the President to be heard is given by this amendment specifically by an additional clause, and not made part of an earlier clause where other matters besides this are also included. The right of the sovereign people to charge the President, in my opinion, should be left untrammelled in this matter; and, similarly, the right of the President to be heard or to be represented by competent advisers should equally be explicitly stated, without linking up or coupling this one with the other, so that there may possibly be some doubt as regards procedure. My object, therefore, in putting forward this amendment is simply to bring in clarity of procedure and the removal of any possible doubt that hyper-ingenious lawyers might bring forward, or party passions might suggest. I therefore commend these amendments to the House, without taking any more time of the House.

Mr. Vice-President: The next three amendments which are grouped together are amendments Nos. 1172, 1174 and 1175.

(The Amendments were not moved.)

Amendments Nos. 1177, 1178 and 1179 are of similar import. Amendment No. 1177 may be moved.

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

"That in clause (4) of article 50, for the words 'passed, supported by' the words 'passed by a majority of' be substituted."

Mr. Vice-President: Amendment No. 1178 stands in the name of Mr. Mohd. Tahir and Saiyid Jafar Imam.

(Mr. Mohd. Tahir rose to speak.)

Do you want to put it to vote? You can say what you have to say in the general discussion. I shall give you an opportunity.

Mr. Mohd. Tahir: My amendment is of quite a different nature and it has to be discussed and moved.

Mr. Vice-President: You make a specific suggestion about 'two-thirds'. All right: you may come to the mike.

Mr. Mohd. Tahir: Mr. Vice-President, Sir, I beg to move:

"That in clause (4) of article 50, for the words 'not less than two-thirds of the total membership of the House', the words 'a majority of the members present and voting' be substituted."

Sir, I have moved this amendment because the provision, as it is, that is to say, requiring the votes as two-thirds, in my opinion seems to be against the spirit of democracy and it can bring in many difficulties and confusion.

[Mr. Mohd. Tahir]

I will submit before the House a very simple example. In case of the Chairman of a District Board, for instance, I think every Member of the House has got this experience. We have seen that a Chairman of a District Board for his misdeeds cannot be removed from the office unless two-thirds of the members vote against him with the result that, however dishonest he may be, it is impossible for the members to remove him from office, simply because a man in office however incompetent or dishonest he may be, at least he has got some power in his hand and by using that power, he manages that two-thirds of the members should not go against him and he keeps at least more than one-third of the members by his side, with the result that although the majority of the members are against his work in the District Board, we find that it is impossible for them to remove such a Chairman. It may be the same case with the President also, because the President will be in power and if there is a resolution to impeach him, then it would be very difficult for the members to remove such a President from the Office. I submit, Sir, that the most important thing that we are doing at present is the framing of this Constitution and we are deciding every article of our Constitution,—the most important thing—simply by majority of votes. Then, in the case of an officer against whom there is a resolution for impeachment—why should not such a resolution be decided by majority votes of the members present in the House? Therefore, Sir, in order to avoid all these difficulties, I have moved this amendment, and I hope this House will consider it deeply and decide that the amendment be accepted. With these words, I move.

(Amendment No. 1179 was not moved.)

Mr. Vice-President: The next three amendments standing in the name of Mr. Naziruddin Ahmad, Nos. 1180, 1181 and 1182 are disallowed.

Amendment No. 1183 may be moved. It stands in the name of Prof. K. T. Shah.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That in clause (4) of article 50, after the words 'such resolution shall' the words 'be placed before the People's House, and if adopted by the latter, shall' be inserted."

The clause as altered would read:—

"If as a result of the investigation a resolution is passed, supported by not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall be placed before the People's House, and if adopted by the latter, shall have the effect of removing the President from his office as from the date on which the resolution is so passed."

Sir, there is one safeguard added by my amendment, namely, that immediately the judgment is passed or the resolution is adopted by the other House, according to the scheme of this Constitution, the Resolution would automatically have the effect of removing the President. I do not think that that would be quite in consonance with our conception of fair justice being done to the accused and especially in the case of such highly exalted officers, or in the case of such offences as are likely to be the subject-matter of this investigation.

After all, the cases would be in all probability cases where politics would play a considerable part. They would not be pure questions of law or fact; but a good deal of opinion, a good deal of view-point, a good deal of the angle of approach would be involved. On that account, the judgment of one House by itself should not, I suggest, be made automatically effective, and the exalted officer be made to cease immediately thereafter to have any place in the scheme of things.

In the several amendments that I have the honour to place before this House, I have, of course, laid emphasis on the fact that the one House investigates and the other House tries; one House makes the accusation, and the other House determines the validity of that accusation. In that scheme of things, I think that it is important, it is but right and proper, that the President should be not only found guilty, and a resolution to that effect be passed by the House which tried him. But what is still more important is that the resolution should be further confirmed by the other House as well.

Mr. Tajamul Husain (Bihar: Muslim): Which has accused him?

Prof. K. T. Shah: Which has accused him. You would, therefore, have the same procedure in a slightly different form, of the two Houses agreeing in a measure, which is to be a measure of Parliament. Thus would this step become a measure of the whole legislature,—and, in the last analysis, a measure as desired by the sovereign people through their representatives.

I do not think that this safeguard will in any way offend against the *requirements of fairness as well as the requirements of expediting such matters.* It is not a dilatory procedure by any means. What is positive in its favour is that it will give, so to say, one more chance to political passions coming down, and the party concerned getting a fair verdict or at least a chance of vindication that may otherwise be denied.

I am particularly anxious that, since the trying procedure is vested, according at least to my scheme of things, in the Upper House, which is relatively a smaller body, and composed of the representatives of interests or the Units, and which therefore is not directly representative of the people's will, a resolution of that House should not be taken to be operative immediately; and that there should be one more chance of the direct representatives of the people having their final say on the matter.

Whether you regard it in the shape of a kind of reprieve; whether you regard it as a kind of supreme pardon, or whatever way you like to look upon it,—I am afraid I cannot give a correct analogy or parallel—it is one more chance, in my opinion, for real justice being done, rather than suffer momentary exigency or political prejudices to prevail. Accordingly, I put it to the House that it would be erring,—if at all it is erring,—on the side of justice and fairplay, and as such it should be accepted.

(Amendment No. 1184 was not moved.)

Mr. Vice-President: Amendment No. 1185. Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: Mr. Vice-President, Sir, I beg to move:

"That in clause (4) of article 50, for the words 'date on which', the words 'time when' be substituted."

Sir, I submit this is a very important amendment. Upon the acceptance of this amendment, a deadlock would be avoided and I hope honourable Members will kindly hear what I have to say. Dr. Ambedkar is not hearing.

Mr. Tajamul Husain: The whole House is hearing.

Mr. Naziruddin Ahmad: The whole House is useless unless Dr. Ambedkar agrees. (*Interruption.*)

Mr. Vice-President: That is a reflection, I think. (*Interruption.*)

Mr. Tajamul Husain: We want to hear you. (*Interruption.*)

Shri H. V. Kamath (C.P. & Berar: General): Is that statement in order, Sir?

Mr. Naziruddin Ahmad: I withdraw it. Sir, I move amendment No. 1185. I consider this amendment to be very important and I desire the House should

[Mr. Naziruddin Ahmad]

listen. This has reference to the impeachment of the President. It is provided that as soon as the appropriate House passes a resolution declaring that the charge against the President has been substantiated—I refer to clause (4) of article 50—it will have the effect of removing the President, "as from the *date* on which the resolution is passed". I submit, Sir, that this will lead to an impasse. By another article, article 54, clause (1), it is provided that as soon as the President is removed by a resolution, the Vice-President steps in from the '*date*' on which the President is removed and, under article 54, clause (1), the Vice-President shall act "until the date on which" the new President enters upon his office. There is an amendment to that article also which is connected with this: that is amendment No. 1207. I submit, Sir, that the President, if he is removed, is removed with effect from the *time* when the resolution is passed and *not* from the *date*. I will ask the House to consider a situation. Supposing the appropriate House under clause (4) of article 50 passes a resolution, say, at one o'clock, then according to clause (4), the President is removed as from the *date* on which the resolution is passed. I ask what will happen to acts done by the President on that date before one o'clock? The President may have declared an emergency under the Constitution in the morning; he may have, in the morning, assented to Bills. He may have appointed a Judge of the Federal Court; he may have dismissed or appointed a Ministry in the morning before his removal. If we allow clause (4) to remain as it is, the President is removed with effect from the *date* on which the resolution is passed, that is, with effect from the period after the previous mid-night. The date begins after the mid-night. I ask what will happen to acts done by the President during the fateful day before his removal? I submit, Sir, his dismissal or removal must have reference to the particular *time* when he is removed. Otherwise, the Vice-President will step in as soon as there is a vacancy. This clause says the vacancy has effect from the date of his removal, that is before his removal. The Vice-President says, "I am the President with effect from the early morning of the 'date' of his removal". What will happen if the Vice-President acts retrospectively? He says, 'I am the President in the place of the President'. The President says, 'I was the President duly functioning before and up to the very moment of my removal'. I submit, Sir, that the words that he is removed with effect from the *date* on which the resolution is passed would be unhappy and would lead to absurd consequences. It will lead to a constitutional impasse and probably the Federal Court will have to decide it without any data. Commonsense says that the President should function till the *time*, that is the moment when he is dismissed, immediately after the resolution is carried. As soon as the resolution is carried, the President ceases to function. Up to that time his acts should be upheld and for that purpose the amendment is necessary. The text says that "He ceases to function with effect from the *date* on which he is removed", but the amendment says "that he would be removed with effect from the *point of time* the resolution is passed". There is a similar amendment to article 54 saying that the Vice-President shall act as President until the *date* on which the new President is appointed. In fact that must also be linked up with the *point of time* at which the new President is elected. If we provide for a whole day instead of a particular point of time, it will lead to absurdities. I submit, this should be carefully considered by the House and accepted. The legality of the President's acts on the date of his removal but prior to the actual moment of his removal will be jeopardy.

Mr. Tajamul Husain: Sir, I rise on a point of order. While Mr. Naziruddin Ahmad was moving his amendment, he deliberately said that he was addressing Dr. Ambedkar who was busy otherwise and he was not addressing the House or you. Now the point is this that when a Member speaks he addresses the Chair or the House. He does not address a particular Member who is in charge

of the bill. Therefore, Sir, my point of order is this that you should hold that Mr. Naziruddin is guilty of contempt of the Chair and of the whole House and if that is your finding, a charge should be framed against him as under article 50 when the President is being impeached, he should be impeached by this House—as there is no other House which can try him and we are the supreme body and sovereign body—and we will make a charge against him and we will try him and you will preside over it. As the honourable Member said deliberately that he was not addressing the Chair or the House, he is guilty of contempt of the Chair and the whole House. I want a ruling, Sir.

Mr. Vice-President: The ruling will be given after proper consideration. I do not want to do anything in a passion.

Mr. Naziruddin Ahmad: I was not addressing any individual Member. I only insisted that the most important Member in the House should listen.

Mr. Vice-President: We shall pass on to the next amendment. No. 1186.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That at the end of clause (4) of article 50, the words 'by both Houses of Parliament' be added."

And the clause would then read—I am omitting the first four lines because I have already read that—

"which resolution shall have the effect of removing the President from his office as from the date on which the resolution is passed by both Houses of Parliament."

and not only by one.

Sir, I regard *you* as the most important Member for the time being, and not the Chairman of the Drafting Committee; and I therefore address the House through you which I trust will listen sympathetically to the argument I am going to place before you, as I regard all other Members of this House to be equal *inter se*.

The point I have made is that the Resolution convicting the President on impeachment must be passed and adopted by not only one but by both Houses. It is in conformity with the general scheme of the amendments which I have suggested that one House should start the proceedings, the other should investigate and pronounce its judgment embodied in a Resolution; and that Resolution be finally confirmed by the other House.

Unless and until that is done, I have been maintaining that the cause of justice would suffer; and in the interest, therefore, of fairness and justice, this is a consequential amendment flowing from those which I have had the honour of placing before the House viz., that the Resolution must be confirmed by both Houses, and that it should have effect only on the day that it is similarly confirmed by the other House which has not tried, the impeached President along with the House which tried and passed a Resolution of that kind.

Mr. Vice-President: Amendment No. 1187.

Kazi Syed Karimuddin: Mr. Vice-President, Sir, I move the amendment standing in my name—

"That the following be added at the end of clause (4) of article 50 :—

"and it shall operate as a disqualification to hold and enjoy any office of honour, trust or profit under the Indian Union.' "

Clause (4) in article 50 lays down that if investigation is successful and a resolution is passed the President shall be removed from his office, but this clause (4) does not lay down any disqualification. Therefore I have moved that after the impeachment is successful and after he is removed from his office, this should operate as a disqualification to hold and enjoy any office of

[Kazi Syed Karimuddin]

honour, trust or profit under the Indian Union. I hope the House will accept this amendment.

(Amendments Nos. 1188 and 1189 were not moved.)

Mr. Vice-President: The article is now open for general discussion.

Shri T. T. Krishnamachari (Madras: General): Sir, before throwing open this article for general discussion; there is one minor amendment necessary for the amendment moved by Shri Shankarrao Deo, i.e., No. 1160, to make it read aright. As it is, the amendment speaks of substituting the words "one-fourth of the total membership of the House." But the correct wording should be "one-fourth of the total number of members". In the event of the House accepting the amendment moved by Shri Shankarrao Deo, this minor amendment which I now suggest, is necessary, and if you think that amendment should be moved before throwing open the article for general discussion, it may be moved now.

Mr. Vice-President: Does the House allow this amendment to be moved in order to make the meaning clearer?

Honourable Members: Yes.

Mr. Vice-President: Then it may be formally moved by you, Mr. Krishnamachari.

Shri T. T. Krishnamachari: Sir, I move:

"That in the amendment No. 1160 moved by Shri Shankarro Deo, the words "one-fourth of the total membership of the House" be replaced by the words "one-fourth of the total number of members."

Mr. Vice-President: Now, Mr. Kamath can speak on the article in general.

Shri L. Krishnaswami Bharathi (Madras: General): In that case, Sir, sub-clause (b) of clause (2) of article 50 also requires a slight change. The sub-clause says—"unless such resolution has been supported by not less than two-thirds of the total membership of the House." Therefore, the same case arises there also, and that sub-clause also should be suitably amended.

Mr. Vice-President: Mr. Kamath.

Shri H. V. Kamath (C.P. and Berar: General): Mr. Vice-President, Sir, this is an important article of tremendous import in that it provides for the arrangement, the impeachment and the removal from office, of the President of the Indian Union. In any ordinary trial, in any criminal trial, the presiding officer of the tribunal is one who is expected to be impartial, and a man of the completest integrity. I hope that we in India shall not have any occasion to invoke the aid of this article, and that all our Presidents will be thoroughly constitutional and of impeccable integrity. But, Sir, we have got to make provisions against human frailty and that is why we have got to incorporate an article of this nature in our Constitution. But it is very necessary, absolutely essential that when you proceed to impeach the President of the Indian Republic for violation of the Constitution, I say it is absolutely necessary that the officer presiding over such an investigation must be a man who is above party politics, and a man of the completest integrity and impartiality. In this context, Sir, the amendment moved by Mr. Karimuddin acquires some importance. The article as it stands says that when a charge has been so preferred—I am referring to clause (3) of the article,—when a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated. It is quite possible and probable that the other House may investigate the charge, or perhaps it may proceed to appoint another tribunal consisting of its own members and some others, to investigate the charge. But in either case, it is necessary that the Presiding officer of the House which is investigating the charge should not

preside over the impeachment proceedings. Suppose, for instance, the Upper House prefers the charge and the Lower House investigates it. Then, what is the position? The Lower House is presided over by the Speaker. Do we intend that the Speaker of the House of the People shall preside over the impeachment proceedings? The Speaker is almost always a party man, and the President is being impeached for some violation consequent upon a conflict that might have arisen between him and the party in power. Naturally, therefore, the Speaker who is a member of the party in power cannot be expected to be impartial and of the completest integrity in this particular affair. Suppose the charge is being investigated by the Upper House after it has been preferred by the Lower House. As the article stands, the Vice-President will preside over the proceedings. But, Sir, man is after all a frail creature. The Vice-President may have at the back of his mind the idea that if the President is impeached and removed from office, he will be able to step into his shoes. The Vice-President, therefore, will be, more or less, an interested man, because, if the impeachment succeeds and the President goes out of office, the Chairman of the Council of State will be able to step into his shoes and become the President. He may be interested in seeing that the impeachment succeeds. So in either case, whether the Lower House presides over the proceedings of impeachment or the Upper House, the presiding officer of that House cannot be expected to be impartial and absolutely above party politics, or above party passions, and of the completest rectitude, in those proceedings. Therefore, it is very necessary that the Chief Justice of India should preside over the investigation of the charge preferred against the President. He must have the last word not merely upon the conduct of the trial, but also on all matters such as admissibility of evidence and cognate matters. Here, I will, with your permission, Sir, quote from "The Constitutional History of the United States" by A. C. Mac Laughlin.

"When President Andrew Johnson was being tried before the Senate—the Chief Justice presiding—a similar question about the admissibility of evidence arose, and the Senate decided that the Presiding Officer might rule on the admissibility of evidence, and the ruling should stand, unless there was a division, in which case, the question should be passed on by the Senate itself."

Here the President was being tried and the Chief Justice was presiding, and in the course of the trial, a question arose and it was ruled that the Chief Justice must have the power to decide about the admissibility of evidence. Here also, I think, the same procedure should be adopted, for the impeachment of the President of the Indian Republic, and the Presiding Officer of the investigation should be the Chief Justice of India, who is neither the Speaker of the House of the People nor the Chairman of the Council of States. I therefore, lend my support to the amendment moved by Mr. Karimuddin, to the effect that the Chief Justice of India should preside over the investigation in connection with the impeachment of the President.

Sir, Mr. K. T. Shah moved an amendment, I refer to amendment No. 1183. Of course, his whole scheme is that the charge should be preferred by the Lower House, that it must originate, that it must be initiated by the Lower House, and that it should be investigated by the Upper House. I do not subscribe to this particular proposition, that it should be initiated only by the Lower House; it may arise either in the Lower House or in the Upper House. But if it arises in either of the two Houses, the other House investigates it. I however support him in so far as amendment No. 1183 says that the House which investigates the charge and finds it to be sustained should not have the last word as regards the removal of the President. The resolution, or the charge, if found sustained by the other House, the House other than the House that preferred the charge, that resolution must go back to the House that preferred the charge, because the

[Shri H. V. Kamath]

President should be impeached, and removed, not by the vote of one House only, but by the vote of both Houses. Therefore, it is important that in the Constitution we should provide definitely, unambiguously and unequivocally that the President, if he is to be removed at all from his high office, must be removed by the vote of both Houses and not of one House only. The arguments advanced by Prof. K. T. Shah are sound. In the course of the trial, many months may elapse and it may be that certain prejudices and party passions which dictated the preferment of the charge might subside and perhaps when it goes back to the other House, it may be—I do not say it will always be so—it may be that the charge which was preferred by that House may be found, on further reflection that it could not be justly and fully sustained. So, both amendments No. 1183 and No. 1186 moved by Prof. K. T. Shah are important in this respect because they have the effect of removing the President of India by a vote of both the Houses and not by the vote of a single House, namely, the House which investigated the charge preferred by the other House and found it sustained on evidence advanced before it. Therefore, I think, Sir, that these amendments must be incorporated in some form or other in our Constitution. Just as in a criminal trial the police hold a preliminary enquiry and then the case comes before a Court of law where the presiding officer is above the prosecution and above the defence, similarly when the charge preferred by the other House is investigated the presiding officer must be the Chief Justice of India because he is neither the Speaker of the House of People nor the Chairman of the Council of States. That is as regards the first amendment moved by my Friend Mr. Karimuddin.

Secondly, as regards the two amendments moved by Prof. K. T. Shah to the effect that the President must be removed by the final vote of both the Houses and not by the vote of a single House only. This is also a very sound principle and must be embodied in the Constitution.

Then there is amendment No. 1187 of my Friend Mr. Karimuddin again, that the President, after he has been impeached and removed from office, must not be eligible for any office of profit or honour or trust in the Indian Union. It follows—I think it is a matter of integrity in public life, of the standards of public conduct which we proclaimed at Jaipur the other day—it follows that the President.....

My Friend Mr. Husain is smiling, chuckling to himself. I do not know what his smile means, whether the Jaipur.....

Mr. Tajamul Husain: It does not follow.

Shri H. V. Kamath: I leave it to Mr. Husain to explain why it does not follow. I will say only this much, that the President has been removed for a gross violation of the Constitution by an impeachment and an adverse vote of both the Houses; do we contemplate, do we visualise that such a man, such a high dignitary, when he has been removed by Parliament from office should be eligible for an office of trust or honour in the Indian Union? No, a thousand times no. We shall keep such a man away from all office and all honour or trust so far as our country is concerned. I therefore lend my support to amendment No. 1187 as well.

Pandit Thakur Dass Bhargava (East Punjab: General): *[Mr. Vice-President, I do not agree with the wording of this article 50. In the first instance there is this defect in article 50 that only the President has been mentioned therein, though there would be many occasions when the Vice-President would act as President. For that there is no provision. In such cases, if there is any violation of the constitution, the responsibility would clearly be that of the Vice-President, wh-

* [ ] Translation of Hindustani speech.

would be held responsible for his actions. For this reason, the Vice-President should also have been mentioned in this article.

Another short-coming which I find in this article is that the words "Violation of the Constitution" have nowhere been defined. There can be "Violation of the Constitution" in various ways, e.g., by not conforming to the instructions contained in Schedule Four; by not fulfilling the undertaking imposed by the Oath under article 49. and in failing to carry out his other functions. Hence, these words "Violation of the Constitution" are vague and require clarification. The President will be the highest official of the Indian Union, and there is a possibility of his being unnecessarily harassed for his act on account of the presence of those vague words. This is a very undesirable position.

The third short-coming, which I find, is that in the face of the vague wording, the condition of thirty members giving notice of such resolution is not a sufficient safeguard. I think a notice by one-fourth of the total membership should be necessary. This amendment is very necessary, and I support it. The additional safeguard that the Resolution should be passed by two-thirds of the total membership is also necessary.

The stage for investigation could be reached after these conditions have been satisfied, and the enquiry will then be conducted by the other House. Under article 50 (3), either the House would investigate the charge itself or appoint somebody else for the work. If the House undertakes the investigation itself, then there is no reason why the President of the House should not continue to act as President. The Speaker of the House of People—is most trustworthy person and he is above all party-politics. He can be fully trusted to act justly without fear or favour. The argument of Mr. Kamath that since the Chairman of the Council of States would also be the Vice-President and so he is not likely to act justly because by the removal of the President he gets a chance to act otherwise, is untenable. Firstly, he would not be the only judge and secondly he would not be so characterless as to cast away all fairness. In this connection, an important question that arises is that if after investigation the charge is substantiated, then the condition of fixing the two-third majority of members would make the right of impeachment quite illusory. To fetter justice by so many restrictions is not proper. There are sufficient and proper safeguards against frivolous accusations in sub-clauses (a) and (b). The result of the enquiry of the House being in support of the charge or the judgment of the Supreme Court or any higher court to that effect, will change the whole position. Under these circumstances there is no necessity of the condition that the Resolution should be confirmed by a two-thirds majority; rather, a bare majority should be enough. If, as a result of investigation the charge is not proved, then the question of passing the resolution does not arise. If a two-thirds majority has the right to pass a resolution only in the event when it supports the charge, then it would be an insult to the House, which has investigated the charge, or to the Court appointed for the purpose. In the other case, there is no occasion or justification for passing a resolution. Of course, if the charge is proved the House should have the right to confirm the resolution by bare majority. The entire article 50 remains quite vague and unsatisfactory by not providing any definite machinery and method of investigation in 50 (3) and by not indicating the result as a definite outcome of the investigation in 50 (4). No doubt, this article would be rarely put to use, but, even then, whenever it would be used difficulties in its proper application will have to be faced. In its present form its correct interpretation would become impossible.

My submission is that if the amendments, to which I have alluded, are not incorporated, then many difficulties would crop up. Another minor point which I want to make is that in cases where the violation of the Constitution by the President is so expressly pronounced that both the Houses want to play the accusers, then the question will arise which House would be the accuser

[Pandit Thakur Dass Bhargava]

and which the investigating authority. Though it is not probable, there is no provision here for such a contingency. There should be some provision that in such and such cases the House of the People should be the accuser and the Council of States should be the investigating authority. With these words I support the article.]

Shri Kuladhar Chaliha (Assam: General): Mr. Vice-President, Sir, while you have given a chance to the important, more important and the most important people, I am glad that you have now given a chance to the most unimportant side of the House.

The trial of the President is a very important matter and requires careful consideration from the Members of this House. Mr. Karimuddin's amendment seems to be very sensible, very fair and impartial. When we try a man of distinguished position and dignity the trial should be presided over by such a person who would be detached from party passions and prejudices. And who could that person possibly be? The Chief Justice of the Federal Court can be the only person who will be the fit person. He will bring into the trial such impartial views as the Speaker will be unable to do. In trying our highest personage it is necessary that we should have a man presiding who will be absolutely free from any bias and who will be free from party prejudices. The Speaker, however high a person he might possibly be, will yet not be away from party leanings and party prejudices, as we find everywhere.

This is a very small amendment and it requires consideration not because it has come from a party, or from a person who does not belong to our party—if that is the consideration I think we will be doing an injustice to ourselves—but we should be fair to all who bring sensible amendments. I wish I could have followed Pandit Bhargava who spoke in high-flown Hindustani which is not understandable by us, but from what I partially followed it was hardly convincing. The Speaker will not be able to bring in proper discussion on the subject. Apart from that he may not be a great lawyer. He may be a very popular person, but he may not be the best person, and may be one backed by the majority. As such his ideas about the admissibility or inadmissibility of evidence will be a matter of great conjecture, and they may possibly be swayed by rumours and other things. And evidence may be let in which may cause prejudice to the great personage. I suggest that we should view this amendment dispassionately and allow the Chief Justice to preside over the trial of the President who will be the most distinguished man we will have in our country. As such I humbly suggest that you may consider the matter and think over the amendment of Mr. Karimuddin.

In the American constitution they have made provision for the Chief Justice to preside over such trial. In fact, in the trial of President Johnson, it was found that unless he had been there the President would have been dismissed. But he allowed such evidence that was proper and therefore the President just escaped from being chucked out and dismissed from office. Similarly in our country also we should try to be fair and just.

I think our party will consider this very wholesome and sensible amendment which has been so ably supported by Mr. Kamath.

Shri B. Das (Orissa: General): Sir, I speak with much diffidence. We are trying to create a democratic President, but we are suspicious and the House is suspicious. The Members, after the recess, after returning from Jaipur, are very much subdued. They do not frankly and openly say what is in their mind. Yet, the few amendments that have been moved by those with whom I do not see eye to eye, and others tabled and not moved show that there is suspicion in the minds of Members.

Mr. Vice-President: Is it necessary for Mr. Das to refer to Jaipur? Members have again and again referred to it. I do not know what Jaipur has to do with the proceedings of this House.

Shri B. Das: I do not know why Members are subdued! Articles 47 to 50 are the most important articles regarding the President. Are we creating a democratic President or are we creating a Frankenstein? Under article 50, we are discussing at present about our suspiciousness of the President and are considering in what way he can be prosecuted for misdemeanours to the Constitution. That shows that we are not creating a democratic President. By means of the various amendments moved and not moved, many Members want to further restrict the hands of the President. Human minds have travelled far backwards and to the memory of Napoleon, a common man who was elected as President and became an autocratic Emperor. We have the recent memories of South American Presidents who suddenly became great autocrats and dictators in those so-called republics which abound in South America. Unfortunately, we have to see whether we are giving any dictatorial powers to our President. Though he may be guided by a democratic Cabinet, is it safe to entrust him with dictatorial powers? With all human weaknesses, will a democratic President remain democratic and not turn autocratic? Sir, the amendments that have not been moved indicate that we are human beings and have our suspicions about the democratic President turning autocratic. Many want that he should not be a baby of 35 years, but should be an elderly statesman. My own amendment No. 1185 I did not move, hoping that the President will prove to be a gentleman always. It is to this effect: No President should seek service under the Union Government or as the Governor of a State after he retires from the Presidentship of the Republic of India. Why should that human weakness manifest in our elderly statesmen? Why should he seek to become an Ambassador or a Governor? Sir, these things are agitating our minds. It is for the democratic President to prove that he is above all these allurements.

Sir, I have had experience of these suspicious conducts in the recent past, in the days of British Government; a Governor of Madras, after retirement, came here as the Governor-General of India and his wife looked at it as a means of getting fabulous presents and other gains. We have to consider whether the democratic President we are going to have under articles 41 to 51 will not later on turn out to be autocratic President and accept presents and other perquisites. Such presents are not small sums. The jewellery and other presents go up to lakhs and crores. We have to see that our future President, his wife, his daughters or his daughter-in-laws are not allowed to accept such presents. I wish that my esteemed Friend Dr. Ambedkar devises a provision which will make all presents received by a President or his family during the time he occupies the Gadi at Delhi accrue to the Nation and become State property. The benefit of such presents should not go to the President or his dependants.

Sir, if I sought permission to speak, I did so only to voice the feelings of many Members. We are all human beings. We are not Thakkar Bapa or Mahatma Gandhi or even you, Mr. Vice-President. My mind is suspicious. All my political career I have been suspicious of every Englishman and I have been suspicious of those who have been trained in the British traditions. Therefore I want to know what we are going to do to allay these suspicions. The speeches made on the floor of the House show that we are suspicious of our President. That being the case, why not we make matters clear? We cannot expect that because we may have a President well trained in the school of Mahatma Gandhi, others may not seek Governorships and the like. While considering the article under reference we have to bear in mind that we are giving autocratic powers to pass Ordinances and other dictatorial controls to the President and the Cabinet. Sir, these are my observations.

Mr. Tajamul Husain: *[Mr. Vice-President, my learned Friend Mr. Tahir has moved amendment No. 1178.....]

Mr. Vice-President: Our South Indian friends have repeatedly told me that they cannot follow highflown language. You are at liberty to speak in any language you like; but if you want to influence their votes you must speak in English. It is for you to decide.

Mr. Tajamul Husain: Because a friend of mine Pandit Bhargava spoke in beautiful Hindustani, I wanted to show to the House that I was also capable of speaking in my mother tongue as well as a person from Delhi, although I come from a long way off, Bihar.

Mr. Vice-President: He comes from East Punjab.

Mr. Tajamul Husain: Punjabi is not Hindustani. However, I shall speak in English, Sir.

Mr. Tahir has moved his amendment to this article. The article says that when the Parliament wants to censure the President of the Indian Republic it should at least pass a resolution to that effect by a majority of not less than two-thirds of the members present and voting. Mr. Tahir says: 'No, that is wrong. In a democracy it should not be done like that. It should be done by a simple majority of votes.' I have come here to oppose his amendment.

Now, if the President of the Indian Republic is to be turned out of office by a simple majority of one or by the casting vote of the person presiding at that time, then what would happen?

The President will be a mere tool in the hands of the majority party of the House. We do not want a President like that. We do not want a President who should flatter the majority party, no matter what party is in power, Congress, Socialist or Communist. We do not want the President to look to the majority party in the House. Once elected, let him become impartial absolutely and not look for favours at the hands of any party. Therefore, I support the draft article as it is. If the President is to be impeached, let him be impeached by a majority of two-thirds of the members present.

Now, Sir, I come to amendment No. 1183 moved by my Friend Prof. K. T. Shah. He wants that in clause (4) of article 50, after the words "such resolution shall", the words "be placed before the People's House and if adopted by the latter, shall" be inserted. Article 50 lays down the procedure for the impeachment of the President. There are two Houses, the Upper House and the Lower House, the Council of States and the House of the People. Now, article 50 says that either of the two Houses may frame a charge against the President and when one House—suppose the Lower House—frames the charge, accuses or makes certain allegations against the President of the Republic, the other House, the Council of States shall enquire into it, which means that the other House will act as judges and the House which is accusing will be only the complainant or the prosecutor. In legal jurispurdence you will find that the person who accuses should not be the judge. That is why we have been fighting that the judiciary should be separated from the executive. As soon as time permits, that is going to be done. It suited the British Government to be the accuser as well as the judge, but now that we are having democracy, now that India has become independent, the accuser should not be the judge. Therefore I have come here to oppose the amendment moved by my Friend Prof. K. T. Shah.

The next amendment is 1185 moved by Mr. Naziruddin Ahmad. His is a simple amendment. He wants that the President shall cease to be President from the time when such a resolution has been passed, instead of the date on which the resolution is passed. This appears to be reasonable and simple. Suppose the meeting is held at 10 o'clock in the morning and the motion of

* [ ] Translation of Hindustani speech.

censure is passed, the President according to the existing clause (4) will remain President till twelve in the night on that date. According to the amendment of Mr. Naziruddin Ahmad, the moment the Resolution is passed, the President automatically ceases to be President. I think this is reasonable and should be accepted.

Then I come to amendment No. 1186 moved by Prof. K. T. Shah that at the end of clause (4) the words "by both Houses of Parliament" be added. He wants that both the Houses of Parliament should try the President of the Republic when one of the Houses has accused him. I do not want to repeat my argument but what he wants is that both the accusers and the judges should sit together and deliver judgment on the case. As the accuser should not be the judge also, I oppose this amendment also.

Next comes amendment No. 1187 moved by my honourable Friend Kazi Syed Karimuddin. In this article, it is nowhere mentioned as to what is going to happen to the President of the Republic after he ceases to be the President on account of the censure motion passed against him. When the President is removed, he will be unfit to hold any office, but it must be mentioned in this Constitution also. I think the amendment of Mr. Karimuddin is very reasonable, and I therefore support it. When a President is removed, it shall operate as a disqualification to hold and enjoy any office of honour, trust or profit under the Indian Union. Of course, that will be done but I want it to be in black and white.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, of the many amendments which have been moved to this article, I can accept only two. One is No. 1158 moved by my Friend, Mr. Gupte providing of fourteen days' notice for the discussion of a motion to impeach the President. The second amendment which I am prepared to accept is amendment No. 1160 moved by my Friend Mr. Deo, as amended by Mr. T. T. Krishnamachari. I think the original provision in the Draft Constitution did not lay down sufficient number of members as a condition precedent for the initiation of the motion. I think the change provided by the amendment is for the better and I am therefore prepared to accept it.

Now, Sir, I come to the other amendments which I am sorry to say I have not been able to accept but which I think call for a reply. The amendments which call for a reply are the amendments moved by Prof. K. T. Shah, Nos. 1151, 1171, 1173, 1176 and 1186. Sir, the amendments which have been moved by Prof. K. T. Shah refer to two questions. The first is the scheme of impeachment which has been laid down in the Draft Constitution and the second relates to the right of the President to appear and defend through a lawyer before the House which is investigating the charge against the President. So far as the second amendment of Prof. K. T. Shah is concerned, I do not see that there is any necessity for any such amendment at all; because Prof. Shah referred to the article—I think it is sub-clause (4) or (3),—it makes ample provision for permitting the President not only to appear before the investigating House, but also to be represented by any other person, namely, a lawyer. All that Prof. K. T. Shah has done is to separate this particular part of that clause and to put it as sub-clause (3) (a) in order to make it an independent proposition by itself. I do not think that there is any such necessity for the device that he has adopted.

Now, I come to the first part, namely, the drawbacks which he has shown in the scheme of impeachment provided in the Draft Constitution. Before I proceed to reply to his points, I think it is desirable that the House should have before it a clear picture of the provisions of the scheme embodied in the Draft Constitution. Any one who analyses this article will find that it embodies four different propositions. Firstly, the motion for impeachment

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may be initiated in either House, either in the Council of States or in the House of the People. Secondly, such motion must have the support of a required number of members. Thirdly, the House which has passed the motion for investigation shall not be entitled to investigate the charge. And fourthly, that the House which has investigated the charge, if it finds the President guilty must do so by a majority of two-thirds.

These are the four propositions which have been embodied in this particular article. Now Prof. Shah's proposition is that the Upper House should have nothing to do with the impeachment of the President and that the jurisdiction to impeach the President, to investigate and to come to its own conclusions must be solely vested in the House of the People. I have not been able to understand the reasons why Prof. K. T. Shah thinks that the Lower House is in a special way entitled to have this jurisdiction vested in it. After all the trial of the President or his impeachment is intended to see that the dignity, honour and the rectitude of the office is maintained by the person who is holding that particular office. Obviously, the honour, the dignity and the rectitude of that office is not merely a matter of concern to the Lower House, it is equally a matter of concern for the Upper House as well. I do not, therefore, understand why the Upper Chamber which, as I said, is equally interested in seeing that the President conducts himself in conformity with the provisions of the Constitution should be ousted from investigating or entertaining a charge of any breach of conduct on the part of the President in his integrity and it is equally concerned as the House of the People. Prof. K. T. Shah felt so sure about the correctness of his proposition that he said in the course of his argument that only those who have been slavishly copying the other constitutions would have the courage to oppose his amendments. I do not mind the dig which he has had at the Drafting Committee. As I said in my opening address, the Drafting Committee in the interests of this country has not been afraid of borrowing from other constitutions wherever they have felt that the other constitutions have contained some better provisions than we cou'd ourselves devise. But I thought Prof. K. T. Shah forgot that if there was any person, so far as I am able to see, who has practised slavish imitation of the Constitution of the United States, I cannot point to any other individual except Prof. Shah. (*Laughter*). I thought his whole scheme which was just a substitute for the scheme of Government embodied in the Draft Constitution was bodily borrowed with commas and semi-colons from the United States Constitution, and when he was defeated on his main proposition, his worship of the United States Constitution has been so profound, so deep, that he has been persisting in moving the other amendments which, as he himself knows, are only consequential and have no substance in themselves. I therefore do not mind the dig that he has had at the Drafting Committee.

The other proposition which Prof. K. T. Shah has sought to introduce in the Constitution is that there should be a concurrence of the other House. He has evidently decided to accept the main scheme embodied in the Draft Constitution. What he wants is that even if the one House which has investigated the offence has come to a conclusion, that conclusion ought not to have effect unless it has been adopted by the other House. I cannot understand why, for instance, the verdict of a jury—and this is no doubt a sort of jury, which will investigate and come to a conclusion—I do not understand why the verdict of one House, which it would have come to after investigation should be submitted to another jury. I have never known of any such principle or precedent at all. Secondly, I do not understand what is to be the effect if the other House does not adopt. Is the other House required to adopt only by a bare majority or two-thirds majority? Supposing the other House does not adopt the conclusion which has been arrived at by one House, what is to be done? Obviously there will be

a tie. Prof. K. T. Shah provided, in my judgment, no remedy for the dissolution of that tie. For these reasons, I am unable to accept any of the amendments moved by Prof. K. T. Shah.

There is another amendment which I might deal with because it is analogous to the amendments moved by Prof. K. T. Shah, and that is amendment No. 1178 moved by my Friend, Mr. Mohd. Tahir. He says that it is unnecessary to provide for a two-thirds majority for a charge of being guilty of violation of the Constitution. He thinks that a bare majority is enough. Now, Sir, I think my Friend, Mr. Mohd. Tahir has not taken sufficient notice of the fact that a motion for impeachment is very different from a motion of no confidence. A motion of no confidence does not involve any shame or moral turpitude. A motion of no confidence merely means that the party does not accept or the House does not accept the policy of the Government. Beyond that no other censure is involved in a no confidence motion. But, an impeachment motion stands on a totally different footing. If a man is convicted on a motion for impeachment, it practically amounts to the ruination of his public career. That being the difference, I think it is desirable that such an important consequence should not be permitted to follow from the decision of a bare majority. It is because of this difference that the Drafting Committee provided that the verdict of guilty should be supported by a two-thirds majority.

Now, Sir, I come to the amendments of my honourable Friend, Kazi Syed Karimuddin. His first amendment which I propose to take for consideration is amendment No. 1152. By this amendment he wants to add treason, bribery and other high crimes and misdemeanours after the words, 'violation of the Constitution'. My own view is this. The phrase 'violation of the Constitution' is quite a large one and may well include treason, bribery and other high crimes or misdemeanours. Because treason, certainly, would be a violation of the Constitution. Bribery also will be a violation of the Constitution because it will be a violation of the oath taken by the President. With regard to crimes, the Members will see that we have made a different provision with regard to the trial of the President for any crimes or misdemeanours that he may have made. Therefore, in my view, the addition of these words, treason and bribery, are unnecessary. They are covered by the phrase "violation of the Constitution".

His other amendment is amendment No. 1170, whereby Mr. Karimuddin seeks to provide that when an investigation is being made into the charge of impeachment, the Chief Justice of India shall preside. I have no quarrel with his proposition that any investigation that may be undertaken by any House which happens to be in charge of the impeachment matter should have the investigation conducted in a judicial manner, having regard to all the provisions which are embodied in the Criminal Procedure Code and the Evidence Act. As I said, I have no quarrel with his objective; in fact, I share it. The only point is this: whether this is a matter which should be left for the two Houses to provide in the Rules of Procedure or whether it is desirable to place this matter right in the Constitution in a definite and express manner. My Friend Mr. Karimuddin will see that in sub-clause (3) it is provided that the House shall investigate, and therefore it is quite clear that both the Houses of Parliament in making the rules of procedure will have to embody in it a section dealing with the procedure relating to impeachment. Because, it may be, at one time the initiation may take place in the Upper Chamber and trial may take place in the Lower Chamber, and *vice versa*. So, both the Houses will have to have a section dealing with this matter in the procedure of each House. That being so, there is nothing to prevent the legislature from setting out in that part of the procedure of the two Houses that wherever that investigation is made, either the Chief Justice shall preside or some other judicial officer may preside, and therefore it seems to me that his object will be achieved if what I submit is carried out by the procedural part of the Rules of the two Houses. This provision is therefore quite unnecessary.

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I come to his third amendment, No. 1187. He wants that the Constitution should lay down the disqualifications which must necessarily arise out of a charge of guilt on impeachment. The language that he has borrowed I see is from the United States Constitution. My view with regard to this matter is this. So far as membership of the legislature is concerned, as I pointed out on an earlier occassion, the matter is covered by the provision contained in article 83 which lays down the disqualifications for membership of the legislature. As I then stated, it would be perfectly possible for Parliament in laying down additional disqualifications to introduce a clause saying that a person who has been impeached under the Constitution shall not be qualified to be a member of the legislature. Therefore, by virtue of article 83, it would be perfectly possible to exclude a President who has been impeached from membership of the legislature.

The only other matter that remains is the question of appointment to office. It seems to me that there are several considerations to be borne in mind. It is quite true that the provisions of the Draft Constitution leave this matter open. But, I think it would be perfectly possible for Parliament, when enacting a Civil Servants Act, as I have no doubt the future Parliament will be required to do, to lay down the qualifications for public service, their emoluments and all other provisions with regard to public service. Obviously, it would be open to Parliament to say that any person who has been impeached under the law of the Constitution shall not be a fit person to be appointed to any particular post, either an ambassadorial post, outside the Government, or inside the Government in any particular department. Therefore, that matter, I see, can also be covered by parliamentary legislation.

Shri H. V. Kamath: Am I to understand that Dr. Ambedkar is personally in favour of this amendment?

The Honourable Dr. B. R. Ambedkar: Yes; I think there is nothing in this amendment except the fact that this was met by other ways.

Now, Sir, the other question is this: is it necessary to have these disqualifications laid down specifically and expressly in the Constitution? It seems to me that there is no necessity, for two reasons. One is that no person who has been shamed in this manner by a public trial and declared to be a public enemy would ever have the courage to offer himself as a candidate for any particular post. Therefore, that possibility, I think, is excluded by this consideration. The second is this: whether the people of this country would be so wanting in sense of public duty and public service to elect any such person, if he, as a matter of fact, stood. I think it would be too shameful an imputation to the people of this country to say that it is necessary to make an express provision of this sort in the Constitution because the people of this country are likely to elect persons who are criminals, who have committed breach of trust and who have failed the public in the performance of their public duties. I think these weaknesses are inherent in all societies and no good purpose will be served by advertising them by putting them in the Constitution. I therefore think that the amendments, however laudable they are, are not necessary to be embodied in the Constitution.

Mr. Vice-President: The amendments which have been moved will now be put to vote.

Amendment No. 1152 standing in the name of Kazi Syed Karimuddin. The question is:

"That in clause (1) of article 50, after the words 'for violation of the Constitution', the words 'treason, bribery or other high crimes and misdemeanours', be inserted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 1151 standing in the name of Prof. K. T. Shah: First part.

The question is:

"That in clause (1) of article 50, after the words 'is to be impeached for' the words 'treason or' be added."

The amendment was negatived.

Mr. Vice-President: Amendment No. 1151 standing in the name of Prof. K. T. Shah: Second Part.

The question is:

"That in clause (1) of article 50, for the words 'either House' the words 'the People's House' be substituted."

The amendment was negatived.

Mr. Vice-President: I now put to vote amendment No. 1160 as modified by the amendment of Mr. T. T. Krishnamachari.

The question is:

"That in sub-clause (a) of clause (2) of article 50, for the words 'thirty members', the words 'one-fourth of the total number of members' be substituted."

The amendment was adopted.

Mr. Vice-President: The question is:

"That in sub-clause (a) of clause (2) of article 50, for the words 'thirty members' the words 'hundred members' be substituted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in sub-clause (a) of clause (2) of article 50, for the words 'after a notice' the words 'after at least 14 days notice' be substituted."

The amendment was adopted.

Mr. Vice-President: The question is:

"That in sub-clause (a) of clause (2) of article 50, for the words 'moved after a' the words 'moved after fourteen days' be substituted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in sub-clause (b) of clause (2) of article 50, for the words 'supported by' the words 'passed by a majority of' be substituted."

The amendment was adopted.

Mr. Vice-President: The question is:

"That for sub-clause (b) of clause (2) of article 50, the following be substituted:—

'(b) such resolution has been supported by a majority of the members present and voting'."

The amendment was negatived.

Mr. Vice-President: I am not putting No. 1168 to vote because it is the same as 1167. It is already covered.

The question is:

"That the following new sub-clause be inserted after sub-clause (b) of clause (2) of article 50:

'(c) the meeting shall be presided by the Chief Justice of the Supreme Court whose decision on the admissibility of evidence shall be final'."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (3) of article 50, for the words 'either House' the words 'the People's House' be substituted and the words 'or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation', be deleted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (3) of article 50, after the word 'investigated' a full stop be inserted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That after clause (3) of Article 50, the following new clause be added:—

'(3A) The President shall have the right to appear and to be represented at such investigation.' "

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (4) of article 50, for the words 'passed supported by' the words 'passed by a majority of' be substituted."

The amendment was adopted.

Mr. Vice-President: The question is:

"That in cluause (4) of article 50, for the words 'not less than two-thirds of the total membership of the House', the words 'a majority of the members present and voting' be substituted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (4) of article 50, after the words 'such resolution shall' the words 'be placed before the People's House, and if adopted by the latter, shall' be inserted."

The amendment was negatived.

Mr. Vice-President: The question is: Amendment No. 1185.

Mr. Naziruddin Ahmad: Sir, no reply has been given to my amendment by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Sir, I said I oppose it.

Mr. Vice-President: The question is:

"That in clause (4) of article 50, for the words 'date on which', the words 'time when' be substituted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That at the end of clause (4) of article 50, the words 'by both Houses of Parliament' be added."

The amendment was negatived.

Mr. Vice-President: The question is:

"That the following be added at the end of clause (4) of article 50:—

'and it shall operate as a disqualification to hold and enjoy any office of honour, trust or profit under the Indian Union.' "

The amendment was negatived.

Mr. Vice-President: The question is:

"That article 50, as amended, stand part of the Constitution."

The motion was adopted.

Article 50, as amended, was added to the Constitution.

Article 51

Mr. Vice-President: We come to article No. 51.

The motion is:

"That article 51 form part of the Constitution."

We shall take the amendments one after another. Amendments Nos. 1190 and 1191 are of similar import and are to be considered together. No. 1190 may be moved.

(Amendments Nos. 1190 and 1191 were not moved.)

No. 1192 is disallowed.

No. 1193, first alternative, and Amendment No. 1194 are similar and are to be considered together and I can allow 1193 to be moved—first alternative. Mr. Tahir.

Mr. Mohd. Tahir: Sir, I beg to move:

"That in clause (2) of article 51, for the words 'six months' and the words 'full term of five years as provided in article 45 of this Constitution' the words 'three months' and the words 'remaining term of five years in which the vacancy so occurs' be substituted respectively."

Sir, regarding the period of six months and three months I would only submit that it is a matter of importance and it is better that the sooner it is decided the better it is and the period of six months is too long and therefore I have suggested that it should be decided in three months only.

Now I come to the second point. In such cases the office will remain only for the remaining term of five years in which the vacancy so occurs. Supposing the President is elected and after one year of his term the vacancy has occurred by his removal or resignation or anything otherwise, then in that case the new President who will be elected will hold the office for the remaining term of 5 years. In doing so, Sir, I want that the term of the Parliament and also the term of the office of the President should run parallel side by side so that after every five years when there is a new Parliament, there must also be a new President—a new air and new breath. If it be not so, then to my mind it appears that there would be some difficulties. Supposing the President is elected after two years when the vacancy occurs, then he will continue in office for another two years after the new Parliament is elected. Then there may occur two difficulties. Suppose the President belongs to a certain party and unfortunately in the next election that party does not come in with a majority. Then what will be the position of the President who is still continuing in office? Certainly, he will have to vacate the office on many grounds. Either he will resign from his office or the party which comes in with a majority will not consider him suitable to their own views, aims and objects.

Secondly, I would submit that if a President who is in office at the time of the elections continues in his office for some more years after the election, then it is but natural that the President, being in power, certainly will influence the elections for the new Parliament, and in my opinion, any influence exercised on the elections is against—it is hopelessly against—the spirit of democracy. Moreover, nobody can check it, because the President in power will naturally want to continue in power, and therefore, the party to which he

[Mr. Mohd. Tahir]

himself belongs, must come into power. Therefore he will exercise all his influence to see that such a party comes into power. Therefore, it is quite undesirable that the President should continue in office beyond a period, when Parliament comes to an end. Therefore, I submit that in all fairness, it would be desirable that the office of the President and the term of life of the Parliament should run side by side, for equal periods of time. With these few words I submit my amendment to the House for its acceptance.

Mr. Vice-President: You can move the alternative amendment also.

Mr. Mohd. Tahir: Sir, the second alternative amendment runs as follows:

"That for article 51 the following be substituted :—

'51. If the office of the President becomes vacant by reason of his death, resignation, removal or otherwise, the Vice-President shall act as President for the remaining term of office in which the vacancy so occurs'."

In moving this amendment, Sir, I submit that when the question of election of President or the Vice-President comes before Parliament or before the country, it is but natural that the Parliament and the country as a whole will think of selecting the best two men of the country to be the President and the Vice-President. The best two men are elected as President and Vice-President, and after that, if the vacancy arises in the office of the President, there is no reason why the third person should be elected for that office, and not the next best man who has already been elected as Vice-President and who has been in office, and who has had experience of the office in which he has been working for a certain period. Therefore, in all fairness, I am of the opinion that in case of vacancy of office of President, the Vice-President in office should automatically be in the President for the time that remains unexpired, and for which that office has fallen vacant.

With these few words, Sir, I submit my amendment to the House for its acceptance. I hope the House will consider these amendments seriously and accept them.

Mr. Vice-President: Amendment No. 1198, standing in the name of Prof. K. T. Shah.

Prof. K T. Shah: Mr. Vice-President, Sir, I beg to move:

"That the following new clause be added after clause (2) of article 51 :—

'(3) During the interval between the date when a vacancy in the office of the President occurs, and the date when new election to that office is completed, and the name of the new President announced, the Vice-President, provided for in the next following article, shall hold the office of and act as President of the Union'."

Sir, this is only a consequential amendment, trying to fill in the gap between the removal, resignation or death of one President and the election of his successor. Some arrangement must be made for the interim period, whether it is three months or six months or whatever period it may be, between the election of the new President and the demise or removal of his predecessor. This is at least one example in which, may I make a present of my non-imitation of the American Constitution. There, after all, the Vice-President automatically takes charge in such emergency and election is avoided. Here we have insisted upon not only election, but election not for the balance of the period remaining, but for the full term of the office. If the Honourable Chairman of the Drafting Committee will consider the spirit as well as the wording of my amendment, he will find that there are much fewer imitations in mine than in his,—the only difference being that he has imitated several more constitutions, while I have reserved my "worship"—as he called it—for only one

This, however, does not affect the simple provision that some interim provision must be made, and so far as I can see, the Draft does not make any satisfactory arrangement for the interim period during which the office may remain vacant. My amendment only seeks to provide for a consequence and hence, I hope the House will accept it.

Mr. Vice-President: Amendments Nos. 1195, 1196 and 1197 are disallowed, being verbal ones. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Sir, I am sorry I cannot accept the amendment moved by Prof. K. T. Shah. His amendment seems to be covered altogether by article 54 (1). I fail to find any difference between the amendment that he has moved and the provision contained in sub-clause (1) of article 54. I think if he considers this article, he will find that his amendment is unnecessary and superfluous.

With regard to the other amendment, the point of difference is that any one who is elected as a result of the resignation and so on, should only occupy the Chair of the Presidentship during the balance of the term, while the provision contained in the Constitution is to the effect that if a person is elected as a result of resignation, death and so on, he should continue to be the President for the full term perscribed by the Constitution. I see no reason why the term of office of a person who has been elected to the office should not be the full term prescribed by the Constitution and why he should be limited only to the balance of the term. I therefore, see no justification for the amendment at all.

Mr. Vice-President: I shall put amendment No. 1193—first alternative—standing in the name of Mr. Mohd. Tahir to vote.

The question is:

"That in clause (2) of article 51, for the words 'six months' and the words 'full term of five years as provided in article 45 of this Constitution' the words 'three months' and the words 'remaining term of five years in which the vacancy so occurs' be substituted respectively."

The amendment was negatived.

Mr. Vice-President: Amendment No. 1194 standing in the name of Prof. K. T. Shah.

The question is:

"That in clause (2) of article 51, for the words 'hold office for the full term of five years' the words 'hold office for the balance of term of five years' be substituted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 1193, second alternative, standing in the name of Mr. Mohd. Tahir.

The question is:

"That for article 51 the following be substituted :—

'51. If the office of the President becomes vacant by reason of his death, resignation, removal or otherwise, the Vice-President shall act as President for the remaining term of office in which the vacancy so occurs'."

The amendment was negatived.

Mr. Vice-President: The question is:

"That article 51 stand part of the Constitution."

The motion was adopted.

Article 51 was added to the Constitution.

New Article 51-A

Mr. Vice-President: Now we come to amendment No. 1199 standing in the name of Prof. K. T. Shah.

Prof. K. T. Shah: Sir, am I allowed to move the second part of the amendment relating to pension?

Mr. Vice-President: The question of pension to the President was dealt with in a former amendment by you?

Prof. K. T. Shah: Yes, Sir, that is why I asked the question.

Mr. Vice-President: Then the second part may be left out.

Prof. K. T. Shah: Then I will not move this amendment.

Article 52

Mr. Vice-President: Then we come to article 52.

I find the amendment deals with a matter which is concerned with article 1 and I disallow it on the understanding that if any similar change is made in article 1 then the Drafting Committee itself will make the change in the course of the Third Reading. Are you willing to accept that, Mr. Kamath?

Shri H. V. Kamath: I will not move the amendment, Sir.

Mr. Vice-President: So, I can put article 52 to vote.

The question is:

"That article 52 stand part of the Constitution."

The motion was adopted.

Article 52 was added to the Constitution.

Article 53

Mr. Vice-President: Then we come to article 53.

Amendment No. 1201 is being disallowed because it has the effect of a negative vote. Amendments Nos. 1202 and 1203 seem to be identical and I therefore allow amendment No. 1202 to be moved.

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

"That in article 53, for the words 'or position of emolument' the words 'of profit' be substituted."

Mr. Vice-President: Then No. 1204 standing in the name of Mr. Mohd. Tahir.

Mr. Mohd. Tahir: I am not moving it, Sir.

Mr. Vice-President: Then amendment No. 1205 standing in the name of Dr. Ambedkar.

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

"That to the proviso to article 53, the following be added :—

'and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 79 of this Constitution'."

The provision is intended to prevent making a double profit.

Mr. Vice-President: There is one amendment sent in by Mr. Naziruddin Ahmad, No. 33. This is formal and is disallowed.

Now I am putting these amendments to vote. Has any Member anything to say on these amendments?

Shri H. V. Kamath: On a point of information, Sir, with reference to amendment No. 1205, will the Vice-President, when he acts as President, draw the salary and allowances of the President or those of the Vice-President only?

The Honourable Dr. B. R. Ambedkar: The salary of the President, salary of the office.

Mr. Vice-President: Then I am putting these amendments to vote. I shall put No. 1202 standing in the name of Dr. Ambedkar.

The question is:

"That in article 53, for the words 'or position of emolument' the words 'of profit' be substituted."

The amendment was adopted.

Mr. Vice-President: Do you want me to put your amendment to vote, Mr. Naziruddin Ahmad, which is identical with the previous one?

Mr. Naziruddin Ahmad: No, Sir.

Mr. Vice-President: Then I shall put to vote amendment No. 1205.

The question is:

"That to the proviso to article 53, the following be added :—

'and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 79 of this Constitution'."

The amendment was adopted.

Mr. Vice-President: The question is:

"That article 53, as amended, stand part of the Constitution."

The motion was adopted.

Article 53, as amended, was added to the constitution.

Article 54

Mr. Vice-President: Then we come to article 54.

The motion before the House is:

"That article 54 form part of the Constitution."

There is amendment No. 1206 standing in the name of Mr. Mohd. Tahir.

Mr. Mohd. Tahir: I am not moving it, Sir.

Mr. Vice-President: Then No. 1207. As amendment No. 1185 has been disallowed. . . . . .

Mr. Naziruddin Ahmad: This is a different situation altogether, Sir. I shall show it in a minute.

Mr. Vice-President: All right.

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

"That in clause (1) of article 54, for the words 'date on which', the words 'time when' be substituted."

Sir, I shall be extremely short. These words occur in clause (1) of article 54. It says that the Vice-President shall act as the President during a vacancy 'until the *date* on which' a newly elected President enters upon his office. I shall ask the House to consider only one example. Suppose the Vice-President acts in a vacancy in the President's office and a new President is elected and enters upon his office at noon on the 1st of January. By this clause it is laid down that the Vice-President shall act as President 'until the date on which' the new President enters upon his office. So he can act only up to the 31st of December, because he can act only, "until the *date* on which" the new President enters upon his office which is the 1st of January. From the midnight of the 31st December till the noon of the 1st January when the new President enters upon his office, there will be no one to preside over the functions of the Government of India. There will be no President; there will be no Vice-President. The amendment seeks to fill up this political vacuum.

Mr. Vice-President: Amendments Nos. 1208 and 1209 are merely verbal and are therefore disallowed.

[Mr. Vice-President]

Amendments Nos. 1211 and 1210 are of similar import but the former is more comprehensive and may be moved.

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

"That to clause (3) of article 54, the following be added :—

'and be entitled to such privileges, emoluments, and allowances as may be determined by Parliament by law and until provision in that behalf is so made, such privileges, emoluments and allowances as are specified in the Second Schedule'."

This merely makes good an omission in the Draft Constitution.

Mr. Vice-President: Amendments Nos. 1212 and 1213 have been blocked as article 49 has been adopted.

Shri H. V. Kamath: Sir, with regard to amendment No. 1211 moved by the Honourable Dr. Ambedkar I would like to say something. He said a short while ago that the Vice-President will have the same emoluments and allowances as the President while acting as such, whereas under this amendment he will "be entitled to such privileges, emoluments, and allowances as may be determined by Parliament by law and until provision in that behalf is so made, such privileges, emoluments and allowances as are specified in the Second Schedule". If the Vice-President acts as President why make a distinction like this that until Parliament enacts in that behalf he will get emoluments and allowances according to the Second Schedule. When he acts as President he must get the emoluments of the President all the time and I should like to know why this difference is made.

Pandit Thakur Dass Bhargava: Sir, article 54 (3) says:

"The Vice-President shall, during, and in respect of, the period while he is so acting as, or discharging the functions of the President, have all the powers and immunities of the President."

The amendment which has been moved by Dr. Ambedkar speaks of privileges, emoluments and allowances but there is no reference to the duties and liabilities of the Vice-President when he is acting as President. If the Vice-President violates the constitution there is no provision that he should be impeached or dealt with in any manner.

When we proceed further to article 56 we find that by a resolution of both Houses he can be made to vacate his office. But in regard to the violation of the Constitution and in regard to the failure of discharge of his duties there is no provision. When he is acting as President he should be liable to the same liabilities and duties as the President. Therefore I would have liked that the words "duties and liabilities" were inserted after the words "powers and immunities" which would have met the exigencies of the circumstances. I have given an amendment to this effect but since it has not been circulated I do not propose to move it formally but I would like Dr. Ambedkar to consider the proposition of the addition of the words "duties and liabilities" after the words "powers and immunities", which will make the section complete and make up the obvious lacuna.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, I find that in the amendments that have been moved there are really three points which have been raised. One point which has been raised by my friend Mr. Naziruddin Ahmad relates to time. We all know by now how very meticulous my friend Mr. Naziruddin Ahmad is and he wants to have the Constitution specifically state the time when a President frees himself from office and another person takes over that office. I do not know whether so much meticulousness is necessary in this Constitution. However, what I find difficult to accept in the amendment which he has moved is that he has not particularised what is the system of timing which he has in mind. Is it the Greenwich time, the Standard time, the Bombay or Calcutta time?

Mr. Naziruddin Ahmad: I mean the actual time of appointment.

Dr. B. R. Ambedkar: What is the time may be very different. Unless he prescribes the system I do not think that the introduction of the word time introduces any greater clarity or definiteness at all.

Secondly, so far as this particular clause is concerned I find that his amendment is quite unnecessary, because if he will read sub-clause (1) of article 54 he will see that it is stated "to fill such vacancy enters upon his office". Surely the entering upon office will be at sometime in the day—it may be midnight or it may be 12 o'clock in the day. Therefore time is specified so to say by implication and this amendment is therefore quite unnecessary. . . . .

Mr. Naziruddin Ahmad: The clause provides that the Vice-President shall act until the 'date' on which the new President enters upon his office and not the time when he does so.

The Honourable Dr. B. R. Ambedkar: Surely it will be sometime on some day on which he will enter the office. He may probably consult an astrologer to find out what is the auspicious moment. However, the amendment is quite unnecessary.

My Friend Mr. Kamath said that in replying to the debate on the previous article I stated or rather in moving my amendment I stated that the Vice-President when acting as the President shall have the same emoluments as the President. He found some difficulty in reconciling that statement with the amendment which I have moved, which gives the Parliament the power to fix the salary of the Vice-President when acting as the President. If my Friend Mr. Kamath were to turn to page 161 of the Draft Constitution he will find that there is a schedule fixing the salary of the President and paragraph 5 of that schedule definitely provides for the salary of the President. Surely when a person is acting as the President, no matter at what early stage in life he has climbed to that post, he will be entitled to get that salary according to this Constitution. But it was felt that it might be necessary to leave the matter to Parliament to fix a different scale of salary for a person who is assuming the office of the President expressly for a very short duration. Parliament may not like to give him the same salary, because the tenure of his office is certainly not of the same duration as that of the President himself. Consequently, if Parliament makes no provision, then he gets the salary of the President. But Parliament may make provision to give him a different salary. It is for that purpose the amendment has been moved.

Shri H. V. Kamath: Sir, may I invite the attention of my honourable Friend Dr. Ambedkar to article 48 clause (4) which lays down that the emoluments and allowances of the President shall not be diminished during his term of office? Am I to understand that you make a distinction between the Vice-President acting as President and the President?

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

Shri H. V. Kamath: Sir, just now when I raised objection to an amendment to the last article, Dr. Ambedkar said that the Vice-President shall draw the salary and allowances of the President while acting as President.

The Honourable Dr. B. R. Ambedkar: Unless Parliament otherwise provides, the Vice-President gets the salary of the President when he acts for him. There is no reason why Parliament should not be given authority to fix the scales of pay of a President who may be there for a short duration.

Pandit Bhargava raised another point and that was to the effect that there was no provision for the impeachment of the Vice-President when acting as President. Obviously, when a Vice-President becomes the President, all the duties and obligations which are imposed upon the President fall upon him without making any express mention of the fact at all. If during his tenure of

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office as President, the Vice-President commits any of the offences or acts which expose the President to the risk of being impeached, he will not have any kind of immunity by reason of the fact that he is either a Vice-President or is acting as President, *pro tempore*. There is therefore no necessity for making any provision for it.

Mr. Naziruddin Ahmad: Mr. Vice-President, may I ask. . . .

The Honourable Dr. B. R. Ambedkar: I do not submit myself to any cross-examination at this stage.

Mr. Vice-President: Mr. Naziruddin Ahmad may go back to his seat.

Mr. Naziruddin Ahmad: I want to draw the attention of the Honourable Dr. Ambedkar to an oversight.

Mr. Vice-President: He refuses to listen to it. What can I do? I cannot compel him to listen.

Mr. Naziruddin Ahmad: No one can compel him. The point is that in clause (3) of article 54. . . . . .

Mr. Vice-President: I am going to put the amendment to vote. Dr. Ambedkar has said that he will not give any reply.

Mr. Naziruddin Ahmad: I hope he will reconsider the matter.

Mr. Vice-President: I have not called upon Mr. Naziruddin Ahmad to speak.

Mr. Naziruddin Ahmad: Sir, I want only to draw the attention of the House to a point which might influence the votes.

Mr. Vice-President: Why not do so at the third reading stage? I am going to put the amendment to vote.

Mr. Naziruddin Ahmad: But, Sir, this is a matter of great importance.

Mr. Vice-President: You think so. May I ask you respectfully to go back to your seat?

Mr. Naziruddin Ahmad: I shall comply with your request.

Mr. Vice-President: I shall now put amendment No. 1205 standing in the name of Mr. Naziruddin Ahmad to vote.

The question is:

"That in clause (1) of article 54, for the words 'date on which', the words 'time when' be substituted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That to clause (3) of article 54, the following be added :—

'and be entitled to such privileges, emoluments, and allowances as may be determined by Parliament by law and until provision in that behalf is so made, such privileges, emoluments and allowances as are specified in the Second Schedule'."

The amendment was adopted.

Mr. Vice-President: The question is:

"That in clause (3) of article 54, after the words 'have all the powers', the words and privileges, emoluments' be added."

The amendment was negatived.

Mr. Vice-President: The question is:

"That article 54, as amended, stand part of the Constitution."

The motion was adopted.

Article 54, as amended, was added to the constitution.

Article 55

Mr. Vice-President: The House will now take up for consideration article 55.

The first amendment to this article stands in the name of Shri Himmat Singh K. Maheshwari. As the Member is not in the House it is not moved.

Amendments Nos. 1215 of Mohd. Tahir and 1218 of Prof. Shah are of similar import. Prof. Shah may move his amendment.

Prof. K. T. Shah: Mr. Vice-President, I beg to move:

"That in clause (1) of article 55 for the words 'by the members of both Houses of Parliament assembled at a joint meeting in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot' the words 'at the same time and in the same manner as the President' be substituted."

May I point out that, though it goes against myself, this was in consonance with the method of election of the President as originally suggested by me in an amendment on adult franchise which this House has been pleased to reject? I wonder whether I would be quite in order to move it.

Mr. Vice-President: I would ask the honourable Member to use his discretion.

Prof. K. T. Shah: I am not fond of hearing my own voice. I only want to point out the discrepancy that is there.

Mr. Vice-President: I think then the honourable Member had better not move it. This need not, therefore, be put to vote.

Mr. Mohd. Tahir: I beg to move:

"That for clause (1) of article 55, the following be substituted:

'(1) The Vice-President shall be elected in the same manner as provided in article 43'."

Article 43 lays down the manner in which the President is to be elected. I think, Sir, that so far as the election of the President and the Vice-President is concerned, there should not be any distinction as to the manner thereof. As for the position of the Vice-President, it is the same as that of the President. Of course there is the division of labour and division of work. They occupy more or less the same position and therefore there should be no distinction between them in the manner of their election.

My second point is that the President is to be elected by both Houses of Parliament as well as by the members of the Legislatures of the States. If we do not elect a Vice-President in the same manner, it means that we are going to deprive the Legislatures of the States of the right of electing him. Therefore it would be quite unfair to the Members of the Legislatures of the States to deprive them of the power to elect the Vice-President. I have therefore suggested in this amendment that the Vice-President should also be elected in the same manner as the President.

(Amendments Nos. 1216 and 1217 were not moved.)

Mr. Naziruddin Ahmad: Mr. Vice-President, Sir, I beg to move:

"That in clause (1) of article 55, the words 'assembled at a joint meeting' be omitted and the clause as so amended, be renumbered as article 55."

Sir, to my mind, the words which I want to delete create an anomaly. Sir, the provision is to this effect: "The Vice-President shall be elected by the members of both Houses of Parliament assembled at a joint meeting." I submit that for the purpose of electing the Vice-President, the members of both Houses of Parliament must *vote* but they need not at all *assemble* at a *meeting*. They need not assemble and there need be no meeting. We are familiar with

[Mr. Naziruddin Ahmad]

the system of election by members to various Committees. The members do not at all meet at a meeting. They are not required even to assemble formally in the House to be presided by the Speaker or the President or the Vice-President or the Deputy Speaker as the case may be. They are not even required or expected to assemble at the same time. There is no joint meeting or any meeting at all. There is no quorum required. They may come between the prescribed hours to the appointed place and the Returning Officer or the Polling Officer records their votes. Even if one member comes and votes, it is enough. No meeting implying the simultaneous presence of a certain number of members is necessary. Sir, the idea of any meeting or a joint meeting is absolutely inapplicable to a matter of votes. It is for this reason that I am asking the House to accept the deletion of the words "assembled at a joint meeting". If these words are deleted, the clause will read thus:

"The Vice-President shall be elected by the members of both Houses of Parliament . . . by means of single transferable vote."

The members need not at all assemble at a meeting. That would involve a number of conditions and a set paraphernalia under the procedure rules which do not apply to a matter of voting. I submit that these words are unnecessary and are misleading and should be deleted. Then the second part of the amendment is to the effect that this may be regarded as an independent article. That is merely formal. The first part of the amendment, I submit, should be carefully considered.

Mr. Vice-President: Amendment No. 1220 standing in the names of Begum Aizaz Rasul and Mr. Naziruddin Ahmad. The Begum Sahiba is not here and so you can move it, Mr. Naziruddin Ahmad.

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

"That in clause (1) of article 55, the words 'in accordance with the system of proportional representation' be deleted."

Sir, the matter has been much mooted in the House as to whether there can be proportional representation when there is only one seat to be filled. There may be many candidates for one seat and so the votes may be transferable. By transferability you elect the most popular man. I will give an illustration. If there are one hundred voters and there are ten seats to be filled up, then ten members representing one group can elect one member and that one member elected by the ten electors represents one-tenth of the electors and that is proportional representation in the body elected. Sir, I want to draw the attention of Dr. Ambedkar to this point. In fact I find that he often misses my points and forgets to reply. I am particularly anxious to draw his attention to this point and it is this. If there are one hundred voters and ten seats, then ten voters forming a group can elect one and that one elected by the said ten voters represents one-tenth of the seats by proportional representation. He represents one-tenth of the voters. Proportional representation applies to a plurality of seats. There can be no proportional representation where only one person is to be elected. He cannot split up his person and represent separately a one-tenth and nine-tenths fractions of electors. As for instance, if you, Sir, are elected by this House, then you do not by any means proportionately represent different groups of the electors. There cannot be any proportional representation in the case of one man seat.

With regard to the transfer of votes, that is a proposition which is really acceptable. If at the first counting of votes the first man gets less than half the votes polled, then at the second counting the votes transferred are again appropriately allocated, the first man at the first calculation may not be the first man in the second or subsequent calculations. By means of the device

of the transferability of votes, the person or persons having the largest support gets or get elected. Even in cases of single seats, it is desirable to have transferable votes but there is no proportional representation, i.e. one man elected can not proportionally represent different groups of electors. Proportional representation according to this system is inevitable in case of a plurality of seats. But in the case of a one seat or one man election, he does not represent any section proportionately at all. Proportional representation is not applicable to a one man vacancy. I think, Sir, there has been a considerable amount of confusion about this proportional representation. I want to draw a distinction between election by proportional representation and transferability of votes. They must not be mixed up together and I think there is a risk of these two independent categories being muddled together as part of each other.

(Amendments Nos. 1221 and 1222 were not moved.)

Mr. Vice-President: Amendment No. 1223 is disallowed as being merely verbal.

Amendment No. 1224 Dr. Ambedkar.

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

"That in clause (2) of article 55, for the words 'either of Parliament or' the words 'of either House of Parliament or of a House' for the words 'member of Parliament or' the words 'member of either House of Parliament or of a House', and for the words 'in Parliament or such Legislature, as the case may be' the words 'in that House' be substituted respectively."

This is only to improve the language. There is no point of substance in it.

(Amendments Nos. 1225, 1226 and 1227 were not moved.)

Mr. Vice-President: Amendments Nos. 1228 and 1229 are of similar import.

(Amendments Nos. 1228, 1229 and 1230 were not moved.)

Amendment No. 1231 standing in the name of Prof. K. T. Shah may be moved.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That in sub-clause (c) of clause (3) of article 55, after the words 'Council of States' the following be added :—

'and is not disqualified by reason of any conviction for treason, or any offence against the safety, security or integrity of the State, or any violation of the Constitution, or has been elected and served more than once as President or Vice-President of the Union'."

Even if the last words are not quite proper after the decision of the House on article No. 46, I trust the preceding disqualifications that I have suggested would be acceptable to the House.

Sir, there is a school of thought which seems to consider *infra dig* for this Constitution to provide specifically the disqualifications that may attach to candidates for certain offices. I am afraid, I cannot share this view, particularly as these are political offices, in which disqualifications like those enumerated above may become merely a matter of opinions and unless they are laid down positively in the Constitution, people may be found, not only having the courage which Dr. Ambedkar was pleased to doubt, but even having the effrontery, to stand as candidates after having been suspected or charged with violation of Constitution duly proved or even of treason. Treason can be even without violation of the Constitution. May I say, treason will not be called treason if it succeeds, for the very good reason that nobody would dare call it treason then. In that way of looking at it, I feel it necessary that a specific provision be made laying down disqualification on the three or four grounds that I have mentioned

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The violation of the Constitution or conviction for treason are items, which, in regard to political offences, or in regard to political offices, cannot be merely taken for granted; we cannot, therefore, assume in safety that even if no one would have the courage, or even if nobody has the effrontery, to disregard its disqualifications clearly attaching to an individual was conceded, the electorate would have the common-sense, the decency not to return them. I for one am not so enamoured of any electorate so narrow as is provided in the Draft Constitution to trust that, by party influences, by party prejudices, it may not be possible to disregard such disqualifications if the Constitution is silent on the subject. Accordingly, Sir, I commend this motion to the House.

Mr. Vice-President: The next two amendments Nos. 1232 and 1233 are disallowed as being verbal.

Amendments Nos. 1234 standing in the name of Dr. Ambedkar, 1235 and 1239 standing in the name of Mr. Naziruddin Ahmad are of similar import and I am, therefore asking Dr. Ambedkar to move his amendment, which seems to me the most comprehensive one.

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

"That in clause (4) of article 55, for the words 'or position of emolument' wherever they occur the words 'of profit' be substituted."

Mr. Vice-President: Amendment No. 1235 stands in the name of Mr. Naziruddin Ahmad. Does he want me to put this to the vote?

Mr. Naziruddin Ahmad: No, Sir, the previous amendment will cover it.

Mr. Vice-President: What about amendment No. 1239?

Mr. Naziruddin Ahmad: The same consideration would apply.

(Amendment No. 1236 was not moved.)

Mr. Vice-President: Amendments Nos. 1237 and 1238 are verbal and are, therefore, disallowed.

Amendment No. 1240 stands in the name of Dr. B. R. Ambedkar. He may move it.

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

"That for sub-clause (a) of the Explanation to clause (4) of article 55, the following be substituted :—

'(a) he is the Governor of any State for the time being specified in Part I of the First Schedule or is a minister either for India or for any such State, of'."

This matter has already been debated last time.

(Amendment No. 1241 was not moved.)

Mr. Vice-President: Amendments Nos. 1242, 1243 and 1244 are disallowed as being merely verbal amendments.

Amendment No. 1245 stands in the name of Prof. K. T. Shah. I think there is no use in moving this amendment.

Prof. K. T. Shah: All right, Sir.

Mr. Vice-President: Amendments Nos. 1246, 1247 and 1248 are disallowed as being verbal.

Mr. Naziruddin Ahmad: They are not 'merely' verbal; they are verbal, no doubt.

Mr. Vice-President: I am afraid, I do not agree with you.

(Amendments Nos. 1249 and 1250 were not moved.)

Mr. Vice-President: Amendment No. 1251 standing in the name of Prof. K. T. Shah, that also is blocked. Amendments Nos. 1252, 1253, 1254 and 1255—I am afraid they are also verbal and I, therefore disallow them.

Mr. Naziruddin Ahmad: Amendment No. 1255 is not verbal.

Mr. Vice-President: If it is not verbal, then it is formal.

Mr. Naziruddin Ahmad: So long as it is rejected, it does not matter how it is rejected.

(Amendments Nos. 1256 and 1257 were not moved.)

Mr. Vice-President: That brings us to the end of the amendments. The article is now open for general discussion.

Mr. Tajamul Husain: We have got ten minutes more and I shall finish before that. Mr. Vice-President, Sir, I take up first amendment No. 1215 moved by my honourable Friend Mohd. Tahir. His amendment seeks to say that the Vice-President shall be elected in the same manner as provided in article 43. Article 43 provides for the election of the President. How is he elected? He is elected by the elected members of both the Houses of Parliament and by the elected members of both Houses of legislature in the States where there are two Houses. According to article 55 with which we are dealing, he is to be elected not in this manner, but by both the Houses of Parliament, at a joint meeting of the Parliament, the Central Legislature. I oppose this amendment because there is a difference between the President and the Vice-President. The Vice-President has to preside at the meetings of the Council of States. The President of the Republic has nothing to do with presiding at meetings of the legislature. The Vice-President has nothing to do, till he becomes the President in case of vacancy on account of death etc., with the provincial or State legislature. Therefore, article 35, as framed in the Constitution is correct, in my opinion.

The next amendment is amendment No. 1219 moved by my honourable Friend Mr. Naziruddin Ahmad. His amendment is that in clause (1) of article 55, the words "assembled at a joint meeting" be omitted. He does not want that the Vice-President should be elected at a joint meeting of the two Houses. He does not say by which House he is to be elected. Therefore, it has no sense and it should be rejected.

Next, I come to amendment No. 1220 again by Mr. Naziruddin Ahmad and Begum Aizaz Rasul, which says that in clause (1) of article 55, the words "in accordance with the system of proportional representation" be deleted. We are dealing entirely with the system of proportional representation in the election of the President. Supposing there are more than one candidate, say, three or four candidates. That is the safest method, and by the process of elimination you know exactly the votes secured by each according to the system of proportional representation by means of single transferable vote, I presume. That is the best system in a country like this. Therefore, I oppose that amendment also.

Next, I come to the amendment moved by the Honourable Member in charge of this Draft Constitution, the Honourable Dr. Ambedkar. That is amendment No. 1224. I have the honour to oppose this also. My submission is this. When the Honourable Dr. Ambedkar was speaking, I was busy; otherwise, I would have risen on a point of order. My point of order is this and it could be raised even now. A member cannot move many things in one motion. There must be one specific resolution or motion. He has brought in three or four things. If you read this, you will have to rule it out of order. It is hopelessly illegal. I do not know how he could have moved four things in one amendment. He says that in clause (2) of article 55 for the words "either of Parliament or" the words "of either House of Parliament or of a House", for the words "member of Parliament or" the words "member of either

[Mr. Tajamul Husain]

House of Parliament or of a House", and for the words "in Parliament or such legislature, as the case may be" the words "in that House" be substituted. These are four separate amendments. I may accept one and reject the other. Therefore, I think you should rule it out of order; that would be a very good thing.

Mr. Vice-President: Unfortunately, it cannot be done now. Your advice comes rather too late.

Mr. Tajamul Husain: On a point of order, I am sure Dr. Ambedkar will agree it is never too late.

The Honourable Dr. B. R. Ambedkar: The Office could have done it.

Mr. Tajamul Husain: I hope he will agree if I say that a point of law could be raised at any time. At any time, you can say it is out of order.

Mr. Vice-President: Probably he took advantage of my ignorance of procedure.

Mr. Tajamul Husain: Because of my mistake, I do not see any reason why a wrong thing should go in. It all depends on your ruling.

Next I come to amendment No. 1231 moved by my honourable Friend Prof. K. T. Shah. He says that in sub-clause (c) of clause (3) of article 55, after the words "Council of States" the following be added: "and is not disqualified by reason of any conviction for treason, or any offence against the safety, security or integrity of the State, or any violation of the Constitution, or has been elected and served more than once as President or Vice-President of the Union." I think this is hopelessly wrong. I cannot understand why this amendment has been allowed. You will find article 83 which deals with the disqualifications of the members. Article 83 says that a person shall be disqualified for being chosen as, and for being a member of either House of Parliament if he holds any office of profit under the Government of India or the Government of any State, if he is of unsound mind and stands so declared by a competent court, if he is an undischarged insolvent, if he is under any acknowledgment of allegiance or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power, and if he is so disqualified by or under any law made by Parliament. Everything comes there; all these things are mentioned in article 83. Therefore, according to article 83, he cannot be a member and is not entitled to be a member of the Council of States. According to article 55, sub-clause (3), he has to be qualified for election as a member of the Council of States. Therefore to add this in clause (3) has no sense, is meaningless. I am sure Dr. Ambedkar will never accept it and the House will not accept it.

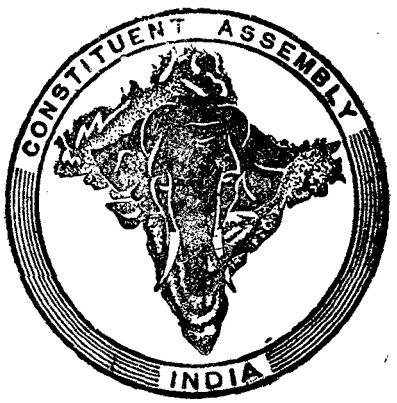
I have divided the amendment into two parts; I have already dealt with the first part. The second part of the amendment says, "or has been elected and served more than once as President or Vice-President of the Union". Supposing he has served as Vice-President or President for one term, why prevent him from becoming Vice-President again if he happens to be a very qualified man and the people want him and the legislature wants him? I had sent in an amendment to the effect that President could be elected more than once, but as I was not in the House I could not move it; but it was accepted by the House that the President could be elected more than once. Therefore, why prevent the Vice-President from being elected more than once?

Sir, it is exactly 1-30 now and I have finished.

Mr. Vice-President: The House stands adjourned to ten of the clock tomorrow.

The Assembly then adjourned till Ten of the Clock on Wednesday, the 29th December 1948.

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Volume VII
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Wednesday
29th December
1948

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 29th December 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.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following members took the pledge and signed the Register:—

1. Shrimati Annie Mascarene (Travancore).

2. Shri Sita Ram Jaju, [United State of Gwalior-Indore-Malwa (Madhya Bharat)].

DRAFT CONSTITUTION—*(Contd.)*

Article 55—*(Contd.)*

Mr. Vice-President (Dr. H. C. Mookherjee): We shall now resume discussion on article 55. Mr. Bharathi.

Shri L. Krishnaswami Bharathi (Madras: General): Mr. Vice-President, Sir, article 55 is under general discussion. The House might remember that yesterday Mr. Naziruddin Ahmad moved an amendment standing in his name under No. 1220. Though we cannot straightaway accept the amendment, I felt there was very great force in his contention. His amendment was to delete the words 'proportional representation' in article 55. As I understood him, he had no objection to the transferability of vote, but he took objection to the phraseology of that system. In fact, he said that there is no question of proportional representation when the candidate to be elected is only one. There is no idea of proportional representation in such a case of single-member constituency. That word means in the resultant election there must be some proportion; in proportion to the strength of the electors, you get seats there. And therefore he took objection to the words 'proportional representation'.

I happened to go through some literature on the subject and I found there is great force in what he said. The same difficulty was felt in England, and there was a Royal Commission to go into the question of all electoral systems. As a result, two bills were introduced in 1908 in the House of Commons by Mr. Robertson and they found that 'proportional representation' was not the proper word. The system is all right, i.e., the transferability of voting, when there is a multiplicity of candidates; when the election to be made is only for one candidate, it is obvious that in order to get an absolute majority, we must have what is known as transferability. That is admitted. But in the case of single-member constituency they have hit upon the word—the proper word is what they call 'alternative vote'. I only take leave, Sir, to read an authority on the subject—Humphreys—in this connection. This is what the author says:—

"In recent years the phrase "*alternative vote*" has been employed in England, and was adopted by the Royal Commission on Electoral Systems *as a means of distinguishing* the use of the transferable vote in single-member constituencies from its use in multi-member constituencies."

[Shri L. Krishnaswami Bharathi]

There is a difference made in multi-member constituencies, and the words 'proportional representation' have meaning and therefore though the transferability is maintained, in order to distinguish from the system of multi-member constituencies the single-member constituencies, they have used the word 'alternative vote'. The memorandum of Mr. Robertson's Bill goes on to say—

"The principle of the alternative vote is extremely simple. Its purpose and mechanism is set forth in the memorandum of Mr. Robertson's Bill, which is as follows:—

"The object is to ensure that in a parliamentary election effect shall be given as far as possible to the wishes of the majority of electors voting. Under the present system when there are more than two candidates for one seat it is possible that the member elected may be chosen by a minority of the voters.

"The Bill proposes to allow electors to indicate on their ballot papers to what candidate they would wish their votes to be transferred if the candidate of their first choice is third or lower on the poll and no candidate has an absolute majority. It thus seeks to accomplish by one operation the effect of a second ballot."

I therefore, think that this word which has been in vogue not only in England but in the Australian States also ever since 1911 must be taken advantage of and incorporated in our constitution so as to distinguish the present case from the case of plural-members constituencies and to avoid the absurdity of having the word 'proportional representation'.

It may not be possible straightaway to accept this suggestion, but I would request Dr. Ambedkar and the Constitutional Adviser, Sir B. N. Rau to give consideration to this idea. There is no particular reason why, when an exact and precise word is there, which has been in use in England, we should not have it. After all, we have to make some rules or lay down some process to indicate what exactly is meant by this system. There are a number of systems even in the single transferable vote system—the Hare system and others. We may have to bring in a bill or some rule to indicate the difference.

Objection may be raised that we are now familiar with the word—proportional representation. But I submit that we are not familiar with it in the case of single member constituencies, and this is the first time that we are having a single member constituency. Therefore, it is but proper that we should think of the word—"alternative vote", as it was accepted by the Royal Commission on Electoral System.

Thank you, Sir.

Mr. Vice-President: Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. Vice-President, Sir, I regret that I cannot accept any of the amendments which have been moved, to this article. So far as the general debate is concerned, I think there are only two amendments which call for any reply. The first is the amendment moved by Mr. Tahir, No. 1215. Mr. Tahir's amendment proposes that the same system of election which has been prescribed for the President should be made applicable to the election of the Vice-President. Now, Sir, the difference which has been made in the Draft Constitution between the system of election to the Presidentship and the system of election for the Vice-Presidentship is based upon the functions which the two dignitaries are supposed to discharge. The President is the Head of the State and his powers extend both to the administration by the Centre as well as of the States. Consequently, it is necessary that in his election, not only Members of Parliament should play their part, but the Members of the State Legislatures should also have a voice. But when we come to the Vice-President, his normal functions are merely to preside over the Council of States. It is only on a rare

occasion, and that too for a temporary period, that he may be called upon to assume the duties of a President. That being so, it does not seem necessary that the Members of the State Legislatures should also be invited to take part in the election of the Vice-President. That is the justification why the Draft Constitution has made a distinction in the modes of election of these two dignitaries.

The second amendment which calls for a reply is the amendment moved by Mr. Naziruddin Ahmad, No. 1219. He has suggested that the word "assembled" should be dropped. Now, the reason why the word "assembled" has been introduced in this article is to avoid election being conducted by posting of ballot papers. We all know that the postal system, when used for the purpose of electioneering is liable to result in failure. Either the ballot papers posted may not reach the destination and may be lost in transit; or it is perfectly possible for a candidate to send round his agents in order to collect the ballot papers so that he may obtain possession of them, sign them himself and send them on without giving any opportunity to the elector himself to exercise his freedom in the matter of election. It is for this reason that it was decided that the election should take place when the two Houses assemble, so as to prevent the misuse of posting. Now, I do not think that the calling together of a meeting of the Members of Parliament for this purpose is going to introduce in practice a difficulty, or is going to introduce any inconvenience. After all, Members of Parliament would be meeting together for the purposes of legislation, and it would be perfectly possible to have the election during one of those sessions. I, therefore, submit that the original language is the more justifiable one, in view of the circumstances I have mentioned.

Now, Sir, with regard to Prof. K. T. Shah's amendment that the disqualifications with regard to the Vice-President should be specified in the Constitution itself, that is a matter which I have already dealt with when replying to a similar amendment moved by him with regard to the President, and I said that this is a matter which could be provided for by law made by Parliament.

With regard to the suggestion which has been made both by Mr. Bharathi and Mr. Naziruddin Ahmad about the use of the words "alternative vote", all I can say is this. If it is merely a matter of change of language, it might be possible for the Drafting Committee at a later stage, to consider this matter. But if—and I am not prepared to commit myself one way or the other—the alternative vote does involve some change of substance, then I am afraid it will not be possible for us to consider this matter at any stage at all.

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

The question is:

"That for clause (1) of article 55 the following be substituted :

'(1) The Vice-President shall be elected in the same manner as provided in article 43.' "

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (1) of article 55, the words "assembled at a joint meeting" be omitted, and the clause as so amended, be re-numbered as article 55."

The amendment was negatived.

Mr. Vice-President: Amendment No. 1220, standing in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, in view of the assurance given that it will be considered by the Drafting Committee, I will not gested this amendment.

Mr. Vice-President: Is there the necessary permission of the House not to put it to the vote?

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

Mr. Vice-President: The question is:

"That in clause (2) of article 55, for the words "either of Parliament or" the words "of either House of Parliament or of a House", for the words "member of Parliament or" the words "member of either House of Parliament or of a House", and for the words "in Parliament or such Legislature, as the case may be" the words "in that House" be substituted respectively."

The amendment was adopted.

Mr. Vice-President: The question is

"That in sub-clause (c) of clause (3) of article 55, after the words 'Council of State', the following be added:—

"and is not disqualified by reason of any conviction for treason, or any offence against the safety, security or integrity of the State, or any violation of the Constitution, or has been elected and served more than once as President or Vice-President of the Union."

The amendment was negatived.

Mr. Vice-President: The question is:

That in clause (4) of article 55, for the words "or position of emolument" wherever they occur the words "of profit" be substituted

The amendment was adopted.

Mr. Vice-President: The question is:

That for sub-clause (a) of the Explanation to clause (4) of article 55, the following be substituted:

"(a) he is the Governor of any State for the time being specified in Part I of the First Schedule or is a minister either for India or for any such State, or".

The amendment was adopted.

Mr. Vice-President: The question is:

That article 55, as amended, stand part of the Constitution.

The motion was adopted.

Article 55, as amended, was added to the Constitution.

Article 56.

Mr. Vice-President: We now proceed to article 56.

The motion is:

That article 55 form part of the Constitution.

The first amendment is 1258. The first alternative is disallowed as being verbal. The second alternative may be moved.

(Second alternative of amendment No. 1258 was not moved.)

Prof. Shah—Amendment No. 1259.

Prof. K. T. Shah (Bihar: General): Mr. Vice-President, Sir, I beg to move:

That article 56 be numbered as clause (1) of the article and the following new clauses be added after that:

(2) The Vice-President shall have an official residence and there shall be paid to the Vice-President such emoluments and allowances, not exceeding those granted to the President, as may be determined by Parliament by law, and until provision in that behalf is made by Act of Parliament, the Vice-President shall be paid a monthly salary of Rs. 4,500.

(3) The emoluments and allowances of the Vice-President shall not be diminished during his term of office.

(4) Every Vice-President, on completion of his term of office and retirement shall be given such pension or allowance during the rest of his life as Parliament may by law determine, provided that, during the life time of any such Vice-President in retirement and pensioned, such pension or allowance shall not be diminished.' "

In presenting this motion to the House, I have to put forward three grounds which I hope will commend themselves to the House. The provision of an official residence for the Vice-President is no less important than that for the President. I hold it, Sir, that high officers of Government should not be obliged to rent their premises, and be in any way obliged to the landlord by hiring accommodation from them. Not only is the great evil of Pugree system that is going on at the present time, under the Rent control system in itself a source of great temptation, and so must be condemned, and kept out of access to such exalted dignitaries. The relationship of landlord and tenant, whereunder quite possibly such important officials may fall into a position of undue influence being exercised upon them, and their conduct in their office be affected thereby, is by itself a source of evil.

It is therefore a simple proposition which I trust no one would take exception to, viz., that high Government officials, who have in their power executive or other influence to wield, should not be at the mercy or under the influence of any private individual who may seek his own advantage through that influence.

I am aware that the Vice-President is, under this Constitution, not given any position of executive power or patronage; and, as such, it is quite arguable that in his case, at any rate, the main ground on which I urge this will not be applicable. But on the other hand, I would submit that after all the Vice-President would be the second personage in the country in point of social status and importance. Even if he has no executive authority or political patronage to give, he is a personage and dignitary who should be safeguarded against all temptation. It is but right that he should be saved from any chance even of a possible misuse of his position to the disadvantage of public service, and to the advantage of some private individual having his ear, so to say.

The second point is in regard to the Vice-President's salary and allowances. This, under my amendment, may be provided for by Act of Parliament. It is not that it is to be provided either by a motion in Parliament where the motion may be carried by simple force of party majority; or that it is an *ad hoc* decision to be varied from time to time. I want this also to be fixed by law; and I want the law to be quite clear that during the tenure of the office of the Vice-President, the salary, allowances and emoluments, shall not be varied to his prejudice or diminished.

The terms I have used are somewhat different from being "varied to his prejudice". I simply suggest that they shall not be diminished in figures. This, again, is a proposition which ought not to be taken exception to. The Vice-President will be the President of the Council of States; and he would have other active duties or possible functions, and a social position of high eminence to maintain. He would be, however, ornamental, a whole-time officer. He should not be, therefore, allowed or permitted to engage in any private trade, business, industry, occupation or profession, whereby he may be obliged to neglect any part of his duties. It is, therefore, necessary that a reasonable salary or emoluments should be provided for him.

I add the limiting clause also that such salary, etc., should not exceed that of the President. It must, however, be sufficient to enable the Vice-President

[Prof. K. T. Shah]

to maintain his place with the dignity and status that we associate with such high offices.

Finally, I have asked that a pension, or retirement allowance, be given to the Vice-President, as I had proposed it should be given to the President as well. I urged on a former occasion that, in this country, these high offices should not be the exclusive monopoly of the rich, who may not need any allowance or any provision for them in retirement. They are in such a position because by other means they are able to make sufficient provision for themselves not to care for the pittance that may be allowed by the State by way of pension.

I hope our Government, under this Constitution, will not be charged with the accusation, which has been hurled against it that it is intended to be a Government of the Rich, for the Rich, by the Rich. Let it be, at least in theory, a Government under a Constitution which has provided equal opportunities for all, and which will, therefore, make it possible,—even if it is theoretically possible only,—for the poorest in the land to aspire to such offices and to do so without any risk of being further impoverished or burdened with debt.

I accordingly desire that a proper provision be made for such officers on their retirement, so that they may be free from temptation, from want, and from penury; so that they may end their days, after a life-time in the country's service, in peace and comfort, if not in luxury.

I do not, of course, desire that any "luxury" should be available to these personages, which is not available to the rest of the country. But I do not want, also, to conceal the view that, even if the holder of such office has held it only once for the full period, he should be given a retirement pension.

An argument was urged on a previous occasion, when a similar proposition was put forward to the House by me, that I had not been particularly careful as regards what would happen if the same person should once again hold a similar office, or any other office, and was as such in receipt of the salary etc., attached thereto, I trust commonsense will enable those who object in this manner to perceive that, such pension would not be paid or payable, if there is concurrently any other office held. It is distinctly and exclusively a pension or allowance payable only on retirement, and while in retirement. I was, therefore, amazed to hear the argument put forward the other day that I had not mentioned whether the President, for example, if he retired and was in possession of a national pension, whether he would be allowed any other salary; or, if he was re-elected, whether any such salary would be continued side by side with pension. I can only characterise such opposition as arising merely out of prejudice, and not out of any reasoned, rational perception of the point I have been urging. I am powerless to fight against such prejudice; and, therefore, trust to the good sense of the House, and commend my motion to the House as such.

Mr. Vice-President: There are two amendments standing in the name of Pandit Thakur Dass Bhargava. Is the honourable Member going to move them?

Pandit Thakur Dass Bhargava (East Punjab: General): I am not moving these two amendments.

Mr. Vice-President: Amendments 1260, 1261 and 1262 are verbal amendments and as such they are disallowed.

Amendment 1263 stands in the name of Prof. K. T. Shah. This may be moved.

Prof. K. T. Shah: Mr. Vice-President, I beg to move.

"That in paragraph (b) of the proviso to article 56, after the words "be removed from his office for" the following be added :

'reason duly proved, or for any violation of the Constitution duly established, or for conviction for any offence constituting a disqualification for election to the office of a President, Vice-President or member of Parliament, or for physical or mental incapacity duly certified, or for bribery and corruption, duly proved.' "

This amendment also embodies very simple propositions, which however need to be stated. I hold the view, Sir, that if you leave the Constitution,—and, at that, a written Constitution, unbacked by any conventions or precedents, without clear statements of such possibilities, then you open the door wide to great abuses of the clauses, or of the practices that may prevail in the actual working of the constitution.

It is a different matter in a country, where, even though the Constitution is not a written document, there are well-established conventions or precedents, which guide the conduct of public men in office. In this country, we are, for ourselves and by ourselves, making a Constitution for the first time. In this country we are taking the responsibility of shaping public morality, and the canons of governance for the first time in our hands. At this time, with a written Constitution, I for one do not think it right that we should leave such important matters merely to the so-called commonsense, the sense of propriety of the public at large or public opinion to regulate. I, for one, think it is necessary that, categorically, the Constitution must expressly state these matters.

The result would be that the holders of big offices may be removed from their offices for given reasons. All the items on which I desire that such office holders may be removed from their office, or may be declared unqualified, are those which occur not in one but in several Constitutions of leading nations, and several more of subordinate bodies like Municipalities even in this country.

That being so, I think no exception should be taken to this proposition namely, that anybody convicted of treason, or of an offence against the Constitution, or for violation of the Constitution or involving moral turpitude like bribery and corruption, should continue in his office, despite such a thing being urged and proved against him.

The question of bribery and corruption involving moral turpitude is a much more serious as well as a much more difficult proposition to establish. It is difficult, not only because those who take bribes take jolly good care that they are not easily caught. The evidence will not be quite easily obtainable, I would not, of course, say that, merely on suspicion of high officers taking bribes, they should be condemned. On the contrary, they must be properly placed before the duly constituted courts of justice. They must be duly tried. They must be fully heard in their defence; and every facility should be given to them to exculpate themselves from any such charge, if they have means of doing so. I am perfectly aware that those who enjoy high position, and who hold high offices, live in glass houses. Their every act, every utterance, every movement, is liable not only to public comment, but also to public misinterpretation.

I would accordingly not throw them to the wolves so summarily or unreservedly to say that on a mere charge or suspicion they should be condemned. But if, after proper trial under proper procedure, before a competent court of law, unsuspected of any partiality for, or any favour to, anybody, they are proved guilty of having taken bribes, or in any way of having been liable to undesirable influences, then it is but right and proper that they should be removed from their high office and prevented from further misgoverning the country.

[Prof. K. T. Shah]

The same argument applies to mental and physical incapacity. Sir, if we are indifferent, if we do not insist upon this, also, it is not that the individual holding such office may benefit; it is that those concerns, those departments, those interests which are placed in his charge may suffer. It is, therefore, purely in the interests of public service, in the interests of public morality and efficiency of the administration that I am suggesting the inclusion in the Constitution in express and unambiguous terms that those proved unfit, those suffering from mental or physical disability should be removed from their offices. This, I trust Sir, will not be taken exception to, and would be accepted, if not by the draftsman, at least by the general good sense of the House.

Mr. Vice-President: Amendment No. 1264 standing in the name of Mr. Kamath, and 1266 standing in the names of Mr. Tahir and Saiyid Jafar Imam, and 1269 standing in the name of Mr. Mahboob Ali Baig, are of similar import. Of these amendment No. 1264 seems the most comprehensible and Mr. Kamath may move it. Is the honourable Member moving it?

Shri H. V. Kamath (C. P. & Berar: General): Yes, Sir. But it has been my misfortune again that four separate amendments which I sent in have been lumped together as one amendment, and so I am labouring under a handicap. I wish to move only the third part of this amendment. There are four amendments lumped together in this one. I do not blame the office for that.....

Mr. Vice-President: Does the honourable Member propose to move the other three also?

Shri H. V. Kamath: Only the third one.

Sir, I move:

"That in clause (b) of the proviso to article 56, for the words 'agreed to by the House of the People', the words 'agreed to by a similar resolution of the House of the People' be substituted."

I wonder why the Drafting Committee preferred to be so delightfully vague as they have been in this part of the proviso. The draft on this article merely says that the resolution should be agreed to by the House of the People. It is admitted on all hands that brevity, clarity and precision should be the hallmarks of a sound Constitution. Nobody will however say that our Constitution is noted for its brevity. We take pride in the fact that our Constitution is the bulkiest in the world. Some are more proud of this fact than others. Yet, in parts of the Constitution, I find that the Drafting Committee have been seized by a strange affection for brevity, but unfortunately at the expense of clarity and precision. Here for instance they have not laid down what majority should be required for the resolution. Whether it should be unanimously agreed to, or whether it should be two-thirds majority or three-fourths majority or a simple majority has not been laid down in the proviso. I hope Dr. Ambedkar will pay some attention to this point and reply to it.

I would like to draw the attention of the House to article 50 regarding the impeachment and removal from office of the President, which we passed yesterday. There we laid down that the majority of the House in either case is required for the removal on impeachment of the President. Here is a similar article regarding the removal of the Vice-President of the Indian Republic. But strangely enough it is not stated therein clearly whether the resolution passed by a majority of all the then members of the Council of States should be agreed to by the entire House of the People or passed by a bare majority. If this article and proviso are left as they are, it will certainly be difficult later on; difficulties will be encountered. Suppose for instance the resolution is

passed by a bare majority in the Council of States. As regards the House of the People, the article is silent on the point as to what majority is required for the passing of the resolution. It is essential in my judgment that the article must specify as to what majority is required for the resolution of the Council of States to be agreed to by the House of the People. Unless this is specified this might land us in trouble later on.

May I point out another defect in this proviso? Yesterday we passed article 50 regarding the removal of the President from office upon impeachment. There we deemed it sufficient that a Resolution of the House investigating the charge preferred by the other House should be adopted for the removal of the President from Office. But here, so far as the removal of the Vice-President is concerned, we lay down that the Resolution passed by the Council of States must be agreed to by the House of the People. Yesterday I pleaded in support of Prof. Shah's amendment to the effect that the President should be removed on a resolution or vote of both Houses of Parliament and not on the vote of a single House of Parliament. As regards the removal of the Vice-President, we lay down that the resolution for removal should be adopted by both Houses of Parliament, but for the President we think it sufficient if only one House adopts a resolution for removing him from office. This is a strange anomaly which signifies that we are attaching greater importance to the removal of the Vice-President than to the removal of the President from office.

By your leave, Sir, I will just say a word about the amendment just now moved by Prof. Shah. I am afraid my friend has not read article 79 which provides for the emoluments, the salary and allowances of the Chairman of the Council of States who is in our Constitution the Vice-President of India. Had he read that article he would not have moved that part of his amendment No. 1259 which relates to this question.

Mr. Vice-President: To the next amendment there is an amendment standing in the name of Pandit Thakur Das Bhargava. He is not moving it I understand. The main amendment is also not moved.

Does Mr. Mohd. Tahir want his amendment No. 1266 to be put to vote?

Mr. Mohd. Tahir (Bihar: Muslim): Sir, as Mr. Kamath has moved only a part of amendment No. 1264, I hope you will permit me to move my amendment.

Mr. Vice-President: That cannot be done. We have established a convention on those lines. I now want to know whether the honourable Member wants me to put it to vote or not?

Shri H. V. Kamath: He is right, Sir. As I did not move my entire amendment which consists of four parts his amendment may be allowed to be moved. I moved only the third part of my amendment. His amendment relates to another matter and therefore it is not blocked.

Mr. Mohd. Tahir: May I move all three amendments Nos. 1266, 1267 and 1268 together?

Mr. Vice-President: You may move No. 1266 only. No. 1267 will fall under another group as will be seen from the copy of the notice regarding grouping of amendments sent to honourable members.

Mr. Mohd. Tahir: I beg to move:

"That in clause (b) of the proviso to article 56, for the words 'all the then members of the Council' the words 'the members of the Council present and voting' be substituted."

Now, Sir, if my amendment is accepted the clause will read thus:

"The Vice-President may be removed from his office for incapacity or want of confidence by a resolution of the Council of States passed by a majority of the Members of the Council present and voting".

Now, Sir, in this connection I want to submit that the existing provision says "by a resolution of the Council of States passed by a majority of all the then members of the Council". I want to make a distinction between all the then members of the Council" and "the members of the Council present and voting". Now, the provision "all the then members of the Council" also includes those members who, although they are members of the Council, may be absent from the Council, but the intention evidently is that the resolution should be moved and passed by those members who are present and voting. Sir, Dr. Ambedkar is not attending to this.

Mr. Vice-President: Dr. Ambedkar, Mr. Tahir wants your attention.

Mr. Mohd. Tahir: I was saying that the provision "by a majority of all the then members of the Council" also includes those members who, although they are members of the Council, may not be present in the Council, while the intention evidently is that the resolution should be passed by a majority of the members who are present and voting. Therefore I submit that the wording "members of the Council present and voting" will be more suitable than the existing words "all the then members of the Council". With these words, I move.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): Mr. Vice-President, Sir, I move:

"that in clause (b) of the proviso of article 56, for the words "all the then members of the Council and agreed to by the House of the People", the following be substituted:

'not less than two-thirds of the total membership of the Council and agreed to by the House of the People by a majority of not less than two-thirds of its total membership.' "

Sir, the Constitution provides for the election of a Vice-President who discharges the functions of the President in the absence of the President for any reason whatever, for instance, if he is absent on account of illness or other causes. He also discharges the functions of the President when the office of the President falls vacant. Therefore the office is a sufficiently important one. That he is also asked to preside over the Council of States is only an incidental thing. He is the *ex officio* Chairman of the Council of States. Therefore, Sir, this office of Vice-President has been made sufficiently important. Now, the method of election to this Office has been made simpler, even though I would have wished that it were also made as elaborate as the election of the President, but we have accepted his election to be made by the members of both Houses. The occupant of such an important Office, who discharges the very important functions of the President and is entitled to all the powers and immunities of the President as is stated in clause (3) of article 54,—should he be dispensed with by a simple majority of the Council of States and to be agreed to by the House of the People in a light manner? That is the question to be considered. I submit that I am in agreement with those members who moved an amendment that his removal also should be done in a similar manner and in the same way by which the President is removed for incapacity, for treason and other things. I support those amendments which say that he should be treated in the same footing as the President in the matter of his removal from office, but if for any reason the Chairman of the Drafting Committee is not prepared to go to that length, it is but fair that the Vice-President should be removed from office for incapacity or for want of confidence by a double majority of

two-thirds. It may be said that if the Council of States has no confidence in the Vice-President, he should be removed by a simple majority because the words that are used are "for his incapacity or for want of confidence", but we are forgetting one thing. He is not only the person who presides over the Council of States but he is also the person who discharges the very important functions of the President. I agree that when the Council of States is not in favour of his continuance as its Chairman, no doubt there is some reason for saying that he should be removed, but we are forgetting, as I said, that he will be functioning as the President also during his absence for whatever reason and during a vacancy. This is a very important function and therefore, Sir, if the Chairman of the Drafting Committee is not agreeable to his removal on the same footing as the President is to be removed, at least he should be removed from office only by a double majority of two-thirds of both the Houses. Sir, I move.

Mr. Vice-President: Amendment No. 1265 is disallowed as being verbal.

Amendment No. 1268 is disallowed for a similar reason.

Then we come to the four amendments which have been grouped together in the papers circulated to honourable members—1267, 1270—1272. Of these, 1270 is the most comprehensive and may be moved. It stands in the names of Shri Nand Kishore Das and Shri Biswanath Das.

(Amendment No. 1270 was not moved.)

Then amendment No. 1267 can be moved. Mr. Mohd. Tahir.

Mr. Mohd. Tahir: Mr. Vice-President, Sir, I beg to move:

"That in clause (b) of the proviso to article 56, for the words 'fourteen days notice' the words 'fourteen days notice in writing signed by not less than thirty members of the Council of States' be substituted."

I will be very short in this matter as we have already adopted in respect of the President that such resolutions should be submitted, signed by one-fourth of the total members of the House. Now, as regards the Vice-President, I do not understand why we should not adopt this provision also that a notice like this must be signed by at least 30 members of the Council of States and then and then only it can be admitted. I hope Dr. Ambedkar will give due consideration to this and will agree to adopt this amendment.

(Amendments Nos. 1271 and 1272 were not moved.)

Mr. Vice-President: Amendment No. 1273 stands in the name of Mr. Naziruddin Ahmad. This is verbal and is therefore disallowed.

Amendment No. 1274 can be moved.

Mr. Naziruddin Ahmad: Mr. Vice-President, Sir, I beg to move:

"That in proviso (c) of article 56, after the word 'term', the words, 'or resignation or removal as the case may be' be inserted."

Proviso (c) provides that the Vice-President must continue in office notwithstanding the 'expiration of his term'. I want to make the passage read as follows: "the expiration of his term or resignation or removal as the case may be". The 'expiration of his term' usually means the usual efflux of time for which he holds the office. 'Resignation or removal' must also be included to make the passage complete. It was only to clarify this that I have suggested this amendment.

Mr. Vice-President: The article is now open for general discussion. Mr. Sidhwa and after him Mr. Tajamul Husain will speak. I give the two names together.

Shri R. K. Sidhva (C. P. & Berar: General): Mr. Vice-President, Sir, with regard to amendment No. 1259 moved by my honourable Friend, Prof. K. T. Shah, he states that an official residence should be provided for the Vice-President and that his emoluments and allowances should be fixed in the Constitution; and while suggesting that, he gave his reasons that if we do not fix the emoluments and if we do not give him a reasonable salary and also provide him with a house, it is likely that he would be tempted to many kinds of vices; he gave certain illustrations. Now, Sir, I shall deal with these matters.

As regards the Vice-President's post, as we all know, we have passed article 53. which states that the Vice-President shall be *ex-officio* Chairman of the Council of States, and as such his salary will certainly be fixed. The Chairman of the Council of States, who will be holding a very responsible post will certainly get a salary as is definitely stated in article 79. Article 79 states, Sir, that all the salaries of the President, Chairman of Council of States, the Speaker, the Deputy Speaker will be fixed. My honourable Friend. Prof. K. T. Shah feels that it should be laid down in the Constitution. I do not think, Sir, that in the Constitution we should lay down a salary for the post of Vice-President. The President's and the Governors' salaries have been fixed for certain reasons that we know very well, that their salaries should not be changed from time to time but it is only fair—the Vice-President is after all a subordinate to the President—his salary should be subject to the vote of the House.

Prof. K. T. Shah goes further and says that his salary should not exceed those granted to the President, as if he feels that the Vice-President is superior to the post of the President, and therefore we must fix a bigger salary than what the President is likely to get. From this point of view, it will be seen that while we all admit that the Chairman of the Council of States and the Vice-President should be given a salary—there is also provision to this effect—I do not agree with him and I hope the House will not agree with him that the salary should be laid down in the statute.

Now, Sir, coming to the residence, my honourable Friend, Prof. Shah, stated that in this rent control business, if we do not allow him a residence, it is likely that he might come in conflict and then he would be tempted to many kinds of vices. I do not accept such a proposition for this reason. Today we have a Speaker of this Constituent Assembly. He is not provided with any house and yet the Government have requisitioned a house for him. Similarly for the State Ministers, who do not get official residences and the Deputy Ministers. Still the Government have requisitioned houses for them for that purpose. I do not know what rent they are charged, but ordinarily, it is the custom that the Government officials are charged 10 per cent. of their salaries. And, therefore, Sir, it is an exaggeration to say that if we do not provide an official residence, an officer will have to go to the Rent Controller [*sic*] and say: "If you give me this house, I will pay you so much." I do not think any Vice-President would ever condescend to do such a thing and it would be a sorry day if we have a Vice-President, who really would go to that length. From this point of view, Sir, I consider Prof. Shan s fears are uncalled for.

Prof. Shah laid great stress upon corruption. He said he wants to pay the Vice-President and all the officials and all our Ministers a reasonably high salary, so that they may not be tempted to any kind of corruption or bribe. If we accepted that argument and pay more salary to make a man honest, well, I think, Sir, that proposition looks to me as most absurd and ridiculous. An honest man is an honest man. An honest man, even if he draws a salary of Rs. 20, is honest. A dishonest man, if he draws a salary of Rs. 20,000, is dishonest, Sir. I know that some of the Executive Councillors in the past drawing a salary of Rs. 5,000 have been found to be corrupt. I know some of the Governors drawing a salary of Rs. 10,000 and I know that some of the

Viceroys drawing a salary of Rs. 20,000 have been known to be corrupt and many of my friends in this House and in this country know that there had been Viceroys drawing salaries of Rs. 20,000 who have been proved to be corrupt and have taken bribes and some of the Governors too. Sir, I would not like to mention their names; but I know the House will share the view with me. Therefore it is wrong to state,—it is a fallacy and I will never accept it—that you must pay a man more to make him honest. I know of men who draw Rs. 15 and Rs. 20 being honest although they could not make both ends meet in the maintenance of their families. If a man gets a smaller salary, he adjusts his household budget accordingly. If you merely want to pay a higher salary to make him honest, I will never accept that proposition. Wherever it has been tried, it has simply failed. Therefore, I am sorry I cannot accept the argument advanced by my honourable Friend Prof. K. T. Shah while moving his amendment, although in theory it looks laudable that you should give more salary to make a man honest. I have seen in my public life what has happened in the case of public servants drawing more salaries, and I know how corrupt they have been. With these words, Sir, I oppose very strongly the amendment moved by my honourable Friend Prof. K. T. Shah.

Mr. Tajamul Husain (Bihar: Muslim): Mr. Vice-President, Sir, I will take up first the amendment moved by my honourable Friend Prof. K. T. Shah, that is, amendment number 1259. His amendment says that there should be an official residence for the Vice-President of the Indian Republic, that there should be fixed by Parliament emoluments and allowances to the Vice-President, and till that is fixed, his pay should be Rs. 4,500 and that his pay should not be diminished during his term of office, and also that he should get a pension after retirement to maintain the dignity of the high office which he had held during the term of his office of five years. I have come to support this amendment. The speaker just before me, my honourable Friend Mr. Sidhwa, said, what is the use of mentioning the salary of the Deputy President when it is mentioned in article 79 of the Constitution? I at once looked up article 79 and found that the salary of the Deputy President is not mentioned at all. The salary of the Chairman, the Deputy Chairman, Speaker and Deputy Speaker of the Upper Chamber and the Lower Chamber, the Council of States and the House of the People has been mentioned. Sir, these are two distinct things. He is the Vice-President as well as the Chairman of the Council of States. He is elected as Vice-President and by virtue of his office, *ex-officio* he becomes the Chairman of the Council of States. Now, Sir, what do we find in England? We have got the Lord Chancellor who is the Chairman of the House of Lords. At the same time, the Lord Chancellor holds office as the supreme head of the judiciary. He is supposed to be higher than the Lord Chief Justice of England. He gets a salary as the Chairman of the House of Lords £4,000 and as the highest Judge in the land, he gets a salary of £6,000, total, £10,000. When he retires from office, he gets a pension of £4,000. Now, Sir, in order to maintain the dignity of such a high office, these things should be allowed to him and what should be the salary of the Vice-President of the Indian Republic should be mentioned in the Constitution. That is the reason why I have come to support this amendment.

I take up next the amendment moved by my honourable Friend Prof. K. T. Shah. I again support this amendment. That amendment says as follows. I will just read from the article 56 with which we are dealing, only a few words: "(b) A Vice-President may be removed from his office for incapacity or want of confidence," and for no other reason. The amendment moved by my honourable Friend Prof. K. T. Shah mentions that apart from these two things, there must be something else and this is how he has worded his amendment. The clause as amended would read this way. "A Vice-President may be removed from his office for reason duly proved or for any violation of the Constitution duly established, or for conviction for any offence constituting a disqualification

[Mr. Tajamul Husain]

for election to the office of a President, Vice-President or member of Parliament, or for physical or mental incapacity duly certified, or for bribery and corruption duly proved.". I think, Sir, no argument is needed for this simple matter. All these things are very important and they should be inserted in this Constitution in article 56(b). Therefore, I support this amendment of Prof. K. T. Shah.

I next take up the amendment moved by my honourable Friend Mr. Kamath. I regret, Sir, I have to oppose it. I want your ruling, Sir, on this point. Here we find that my honourable friend Mr. Kamath has sent in five distinct and separate amendments in one amendment.

Shri H. V. Kamath: I am sorry that my honourable Friend Mr. Tajamul Husain did not follow what I said before I moved the amendment. I said that I had sent them as four separate amendments, but unfortunately they have appeared as one in the book of amendments, for no fault of mine. I moved only one of the four.

Mr. Vice-President: Mr. Kamath moved the third part of his amendment only. He did not move the other parts.

Mr. Tajamul Husain: Unfortunately, when Mr. Kamath was moving his amendment, I was not in the House. So I did not know what he actually moved. I want to know whether he moved only one amendment or all the amendments.

Mr. Vice-President: Only the third part.

Mr. Tajamul Husain: Only one amendment? Then, I have nothing to say against it. If he had moved all the amendments, I would have asked for your ruling. It may be the mistake of the office. I have nothing to do with that. Each amendment must be moved distinctly and separately.

Now, coming to amendment No. 1269 moved by my honourable Friend Mr. Mahboob Ali Baig, I oppose this amendment. He says that in clause (b) of the proviso of article 56 for the words "all the then members of the Council and agreed to by the House of the People", the following be substituted: "not less than two-thirds of the total membership of the Council" etc. He wants that when a censure motion is being brought against the Vice-President, there must be a majority of two-thirds. Yesterday, Sir, as regards the censure motion against the President, I said that the President must not be a mere tool in the hands of the majority party and there must be a two-thirds majority. Today I am saying that a bare majority is quite sufficient. My reason is different from what I said yesterday. My reason here is that he is only acting as the Speaker of the House. He is the Chairman of the Council of States and everywhere in the civilized world you will find and also in India you will find in the Parliament here and in all the Provincial Legislatures, the Speaker can be removed by a simple vote of majority. Therefore he must have the confidence of the majority of the people. Therefore I oppose. Otherwise he will become too autocratic. He must protect the whole House. proved by a majority of a single vote. Therefore I oppose.

The next is No. 1274 by Mr. Nazruddin Ahmad who wants to add the words "or resignation or removal as the case may be" in proviso (c) of article 56. The clause will then read—

"The Vice-President shall, notwithstanding the expiration of his term or resignation or removal as the case may be, continued to hold office until his successor enters upon his office."

I strongly oppose this. This clause (c) simply means that when his term has expired and another election is being held and his successor has not been found, he must continue in office till his successor is duly found and duly

installed in his place but when the Deputy President or the Chairman of the Council of States has been removed, removed for certain reasons like bribery etc., we do not want him to continue even for one minute. I would not like to sit in a House where the Presiding Officer has been found guilty of bribery. He must go at once. As regards resignation, he resigns as he becomes incapable or has been compelled to do so and we do not want him even then. I quite agree that when his term expires after five years, then he must remain till his successor is found but if he has been removed, he must get out at once. I therefore oppose strongly the amendment of Mr. Naziruddin Ahmad.

Pandit Thakur Dass Bhargava: Sir, the Vice-President as such will have two capacities—No. 1, while he is acting as President and No. 2, while acting as the President of the Council of States. Now in regard to his capacity as President, it is clear that if he violates the Constitution he would come under the purview of article 50 and will be impeachable and removable from his office as President. So far as the question of his removal is concerned in regard to article 56 as President of the Council of States, the provisions are exactly the same as are applicable to the Speaker of the House of People. Perusal of article 77 (c) would show that the language is almost the same for the Speaker of the House of People as for the Vice-President who will fill the office of President of the Council of States and I do not think that any change is necessary at all. My apology for taking the time of the House only consists in my anxiety to emphasise one point which struck me and that was that the Vice-President should lose his office as such *ipso facto* if he is successfully impeached under article 50. In regard to this I have been assured that the position is clear and it will be done in some other manner except by providing under article 56. I tabled an amendment which I have not moved because I have been assured that the rules will provide for it. When I speak on this point, it is only to bring it to the notice of the authorities that some provision should be made so that by virtue of successful impeachment under article 50 the Vice-President may be removed without any want of confidence being shown by a Resolution as provided under Clause (b). The mere fact that he has been successfully impeached is in my opinion, quite sufficient for his removal from the position of Vice-President and therefore this should be made clear. I only wanted to bring out this point and, get an assurance that the rules will provide for it.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, I regret my inability to accept any of the amendments that have been moved to article 50. I should, however, like to meet some of the points that have been made by those who have moved the amedments. Sir, the first amendment was by Prof. Shah which laid down that provision should be made for pay and pension for the Vice-President. This is a matter which Prof. Shah has also raised in connection with the office of the President and I had stated my objection to making any such provision in the Constitution itself.

The Honourable Shri K. Santhanam (Madras: General): May I point out that in Second Schedule express provision has been made?

The Honourable Dr. B. R. Ambedkar: Having explained my position with regard to that point, I shall not repeat what I have said then. Coming to sub-clause (b) of article 56, various points have been raised. First of all a point has been raised that the words 'bribery, corruption etc.' should be added. Personally I do not think that any such particular phrase is necessary. Want of confidence is a very large phrase and is big enough to include any ground such as corruption, bribery etc. Therefore that amendment, in my judgment, is not necessary. The second point that has been made is that the removal of the Vice-President should be governed by the same rules as the removal of the President viz., that there should be a majority of two-thirds. Now, Sir, with regard to that point, I would like to draw the attention of the House that although the Constitution

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speaks of Vice-President, he really is a Chairman of the Council of States. In other words, so far as his functions are concerned, he is merely an opposite number of the Speaker of the House of People. Consequently in making a comparison or comment upon the provisions contained in sub-clause (b) of article 56 those provisions should be compared with the articles dealing with the removal of the Speaker and they are contained in article 77(c). If this article 56(b) is compared with the article 77(c), members will find that the position is exactly identical. The same rules which are made applicable to the removal of the Speaker are also made applicable to the removal of the Vice-President who, as I have stated, is really another name for the Chairman of the Council of States. Consequently, the requirement of two-thirds majority is unnecessary.

And then my friend Mr. Kamath has raised what I might call a somewhat ticklish question. He said that sub-clause (b) of this article speaks of a majority, while when the reference is made to the House of the People, no such phraseology is used. Now, the matter is quite simple. Whenever we have said that a certain resolution has to be passed, it is understood that it has to be passed by a majority of the House. It is only when a special majority is mentioned that a reference is made to a majority and not otherwise. Now, I quite agree that his argument is that although we do not mention or specify any particular majority with respect to the Council of States, we have still used the phraseology—passed by a majority. Why is this distinction made? Why is this distinction between the phraseology used in regard to the Council of States and in regard to the House of the People? Now, the difference has been made because of the word "then" occurring there. That word "then" is important. The word "then" means all members whose seats are not vacant. It does not mean members sitting or present and voting. It is because of this provision, that all members who are members of Parliament and whose seats are not vacant, that their votes also have to be counted, that we have said—passed by a majority of the then members.

Shri H. V. Kamath: Does it mean the total number of members of the Council of States?

The Honourable Dr. B. R. Ambedkar: Yes. The word 'then' is necessary.

Shri H. V. Kamath: On a point of clarification, Sir. Yesterday in article 50, we used the phraseology 'passed by a majority' in place of the two-thirds majority. Should we not do the same thing here, to make the meaning clearer?

The Honourable Dr. B. R. Ambedkar: I shall explain it presently. The reason is due to the fact that we have to use the word 'then' which is intended to distinguish the case of members present and voting, and members who are members of the House whose seats are not vacant, and voting.

Shri H. V. Kamath: Am I to understand that unless otherwise specified, when you say a resolution is passed or adopted, it means that it is by a simple majority?

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

Now, coming to the point raised by my friend Mr. Tahir, amendment No. 1266. If I understood him correctly, what he says is that the resolution of no-confidence should require to be passed by two-thirds. This may be good or it may be bad. I cannot say. All I can say is that this provision is also on a par with the provision regarding the want of confidence in the Speaker. There also we do not require that it should be passed by two-thirds majority or two-thirds of the members of the House.

Then, coming to the amendment of my friend Mr. Naziruddin Ahmad, who wants that in clause (c) after the word "term" words such as resignation etc.

shoud be inserted. This amendment is absolutely unnecessary, because this article does not make any provision for filling casual vacancies. There is no necessity for making any provision for casual vacancies because under article 75, sub-clause (1) there is always the Deputy Chairman who is there to step in whenever there is any casual vacancy. Consequently such an amendment is unnecessary.

Sir, I hope that with this explanation, the House will accept the article as it stands.

Mr. Vice-President: I may now put the amendments, one by one to vote. The question is:

"That article 56 be numbered as clause (1) of the article and the following new clauses be added after that:

"(2) The Vice-President shall have an official residence and there shall be paid to the Vice-President such emoluments and allowances, not exceeding those granted to the President, as may be determined by Parliament by law, and until provision in that behalf is made by Act of Parliament, the Vice-President shall be paid a monthly salary of Rs. 4,500.

(3) The emoluments and allowances of the Vice-President shall not be diminished during his term of office.

(4) Every Vice-President, on completion of his term of office and retirement shall be given such pension or allowance during the rest of his life as Parliament may by law determine, provided that, during the life time of any such Vice-President, in retirement and pensioned, such pension or allowance shall not be diminished.' "

The amendment was negatived.

Mr. Vice-President: The question is:

"That in paragraph (b) of proviso to article 56, after the words "be removed from his office for" the following be added:

'reason duly proved, or for any violation of the Constitution duly established, or for conviction for any offence constituting a disqualification for election to the office of a President, Vice-President or member of Parliament, or for physical or mental incapacity duly certified, or for bribery and corruption, duly proved."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (b) of the proviso to article 56, for the words "agreed to by the House of the People" the words "agreed to by a similar resolution of the House of the People" be substituted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (b) of the proviso of article 56, for the words 'all the then members of the Council" the words 'the members of the Council present and voting' be substituted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (b) of the proviso of article 56, for the words 'all the then members of the Council and agreed to by the House of the People', the following be substituted:

'not less than two-thirds of the total membership of the Council and agreed to by the House of the People by a majority of not less than two-thirds of its total membership.' "

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (b) of the proviso to article 56, for the words 'fourteen days' notice' the words 'fourteen days' notice in writing signed by not less than thirty members of the Council of States' be substituted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in proviso (c) of article 56, after the word 'term', the words, 'or resignation or removal as the case may be' be inserted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That article 56 stand part of the Constitution."

The motion was adopted.

Article 56 was added to the Constitution

Article 57

Mr. Vice-President: Now we come to article 57.

The motion before the House is that article 57 form part of the Constitution.

There are only two amendments tabled so far, Nos. 1275 and 1276. No. 1275 standing in the name of Mr. Naziruddin Ahmad is disallowed as it has the effect of a negative vote.

No. 1276 standing in the name of Prof. K. T. Shah may be moved.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move that in article 57, after the words "the functions of the President" the words "or Vice-President" be added.

The article as amended would then read as follows:—

"Parliament may make such provision as it thinks fit for the discharge of the functions of the President or Vice-President in any contingency not provided for in this Chapter."

Sir, I am at a loss to understand why while providing for "*any contingency*", the words Vice-President should have been omitted, in laying down provision for the discharge of the functions entrusted to the President. Such a contingency might quite possibly occur when the President, for one reason or other,—let us say, for having lost confidence of the House, or having been impeached successfully,—is unable to discharge his functions; and the Vice-President has gone insane. That is a contingency which is not utterly out of possibility; and as such I do not really see why this simple contingency has not been foreseen by the draftsmen. The draftsman has been quick enough in many cases, to propose amendments of his own to his own Draft, and to see to it that others support him also, when he finds that certain matters have been omitted in the first Draft, they subsequently occur to him in the amendments proposed by others, and, taking the hint from them, he tables his amendments, which, of course have the unanimous support of the House except one. But here I find a case in which I do not think the draftsman will be well advised to say that this amendment is unnecessary.

I have just now mentioned a particular contingency and said that when both these high officers may not be able to, or may not be permitted, under the Constitution, to perform or discharge their functions, in that contingency it is but necessary that some such provision be made.

As this is an article of the Constitution, I take it that the ordinary legislature would not be allowed to step in, and rectify the omission by making provision, should that contingency occur. You may say that there will be the Parliament, and Parliament will make the necessary provision for such a contingency. But if a provision is made expressly by the Constitution—and the Constitution has presumably deliberately left out the addition of the word "Vice-President"—then I put it to the House that it is an omission which, at this stage, we ought to

correct. I therefore, without further argument, suggest that this amendment at least ought to be accepted. It is utterly unoffensive, it does not reflect anything on the skill, ingenuity or foresight of the Draftsman, and as such I trust the Draftsman will agree to accept it.

Mr. Tajamul Husain: Mr. Vice-President, I wish to oppose the amendment just moved by my friend Prof. K. T. Shah. My reasons are two. No. 1 is this. Article 57 says that "Parliament may make such provision as it thinks fit for the discharge of the functions of the President in any contingency not provided for in this Chapter". Now, my friend Prof. Shah wants the addition of the words or Vice-President". Now, Parliament will have power, if his amendment is accepted, to make provision either for the President or for the Vice-President; it cannot make for both. Supposing it makes provision only for the Vice-President and not the President, then what happens? The word "or" is therefore absolutely wrong. Parliament may very well say, "we make provision for the Vice-President and no provision for the President to discharge his functions at all."

The second objection is, supposing the word "or" is removed and "and" had been there, or Prof. Shah had meant "and", then I beg to submit that the Vice-President has no functions to perform at all as Vice-President; so, what provision for the discharge of his functions can anybody make or the Parliament make? He functions only as the Chairman of the Council of States. We are not dealing with him here as Chairman of the Council of States. So I oppose the amendment, because he has no functions or duty to perform.

The Honourable Dr. B. R. Ambedkar: I am afraid Prof. K. T. Shah has not considered the matter as fully as he ought to have before moving his amendment. The omission of the Vice-President from article 57 is a very deliberate one, because as my friend Mr. Tajamul Husain has just now pointed out, his main functions, which are those of the Chairman of the Council of States, have been amply provided for by article 75(1) where there is a Deputy Chairman who will function in his absence. It is therefore unnecessary to introduce any such amendment in article 57.

My friend Prof. Shah said that I was really borrowing very liberally from the amendments of other friends whenever I found that the Draft was in some way defective. I think Prof. K. T. Shah, if I may say so, has indirectly paid me a compliment because, as Emerson has said, "A genius is the most indebted man" and I am certainly most indebted to my friends.

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

The question is:

"That in article 57, after the words 'the functions of the President' the words 'or Vice-President' be added."

The amendment was negatived.

Mr. Vice-President: There are no other amendments.

The question is:

"That in article 57, stand part of the Constitution."

The motion was adopted.

Article 57 was added to the Constitution.

Article 58

Mr. Vice-President: We now pass on to the next article No. 58.

The motion is:

"That article 58 form part of the Constitution."

Mr. Vice-President]

We have a number of amendments, of which only No. 1281 will be allowed. The other amendments are verbal and are therefore disallowed.

(Amendment No. 1281 was not moved).

Mr. Vice-President: I shall put this article to vote.

The question is:

"That article 58 stand part of the Constitution."

The motion was adopted.

Article 58 was added to the Constitution.

Article 59

Mr. Vice-President: The motion is:

"That article 59 stand part of the Constitution."

We have a number of amendments. No. 1282 is disallowed as it has the effect of a negative vote. 1282-A may be moved.

(1282-A was not moved).

Amendments Nos. 1283 and 1284. There are a number of amendments to them also, but they are disallowed as being verbal. No. 1285 may be moved.

(Amendment No. 1285 was not moved).

Amendment No. 1286.

Mr. Tajamul Husain: Mr. Vice-President, Sir, I beg to move:

"That clause (3) of article 59 be deleted."

Sir, in my opinion, the President only should have power to suspend, remit or commute a sentence of death. He is the supreme Head of the State. It follows therefore that he should have the supreme powers also. I am of opinion that rulers of States or Provincial Governors should not be vested with this supreme power. The President of the Federation should be the supreme authority in respect of offences committed against Federal Subjects. I say that there must not be divided loyalty on this subject. When the States came into the Federation they accepted the operation of the Federal Laws in their States and they accepted to that extent that the Federal Government was supreme and the President of the Federation as representing the Federal Government can alone be the authority who can grant pardons. In the U.S.A. the President grants pardon in all the States. These are matters of the most vital importance to the existence of the Centre and therefore the power of pardon could not be given to anybody except the Head of the Federal Government, that is the President of the Indian Union or the Indian Republic. If the ruler of a State exercised powers of pardon in respect of offences relating to those subjects which they themselves had conceded to the Federation it would amount to taking away with one hand what they had given with the other. In regard to the subjects conceded by the State to the Union the State ceases to be sovereign to that extent. The Federal Law is binding upon every citizen and there is a direct relation between the citizen and the Federal Government. When there is a breach of the federal law the representative of the Federation must have the inherent power of pardon. Therefore I think where the question of pardon is involved the more serious the offence the higher should be the authority to grant the pardon. I have already pointed out about America. In England too the pardon is granted only by the King on the advice of his Home Minister, but pardon is granted only by the representative of the State. In those days when there was no

talk of partition of this country they were thinking of a weak Centre with three or four subjects like Communications, Defence, Foreign Affairs, etc., and the provinces were to enjoy complete autonomy. Now that the country has been partitioned we people who are the citizens of this country have decided once for all that the Centre will not be weak but a strong one, that we would have the strongest possible Centre. If this is our aim the head of the Central Government must have this power. With these words, Sir, I move my amendment and I hope it will have the support of the whole House, including my honourable Friend Dr. Ambedkar and also you, Sir.

Mr. Vice-President: Amendment No. 1287 is disallowed as being formal.

(Amendment No. 1288 was not moved.)

Mr. R. K. Sidhwa: Sir, my honourable Friend Mr. Tajamul Husain has proposed to delete clause (3) of article 59 and his argument was that he wanted to keep the authority of the President supreme. Nobody denies that. If the honourable Member would see article 59 (1) it says:

"The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence . . . ."

Similarly powers are vested in the Governors and they can also suspend, remit or commute a sentence of death. In my opinion it is very healthy they should continue to vest this power which existed under the old regime in the Governors of the provinces, for this reason that the Governor of a province is better informed of a particular case of pardon which is referred to him. As far as the President is concerned when the question goes to him, he has to refer the matter first to the Governor and if the Governor has not exercised his right properly the President goes into the whole matter and exercises his right. In the matter of commuting a sentence of death it is only fair that the powers should also be with the Governor and the supreme power should remain with the President. The Governor is a popular governor and is responsible in a sense to the legislature, as he is the nominee of the Premier or the Prime Minister. If he acts wrongly, as my friend fears, then the legislature is there to keep a vigilant watch over him. Therefore I do feel that the present position which is retained in the Draft Constitution is very desirable and we should retain those powers.

As far as rulers are concerned I am not very clear. But I do feel that in the constitution that will be framed by the various constituent assemblies of the States they will see that the ruler is made responsible to the legislature and he will also be like the head of provinces a mere figurehead of the State. From that point of view I would support even the power being vested in the ruler, although I make a qualification to my statement that at present I do not know what the position of the ruler is. If the ruler is autocratic and not responsible to the legislature certainly I would not like to give him that power. But assuming as I do that the rulers of the States are going to be made responsible to the legislatures I support the article as moved by Dr. Ambedkar. The commuting of a sentence of death is a very important power and we do not want straightaway that the matter should go to the President. Let the Governor, who knows his province very well and can consult his Premier, exercise the function. The President is for the whole of India. Even if the matter goes to him he has to consult first the Governor and the Governor has to consult his Premier. From that point of view I oppose the amendment of Mr. Tajamul Husain.

Mr. Vice-President: Does Dr. Ambedkar wish to say anything on this amendment moved by Mr. Tajamul Husain?

The Honourable Dr. B. R. Ambedkar: Yes, Sir. It might be desirable that I explain in a few words in its general outline the scheme embodied in article 59. It is this: the power of commutation of sentence for offences

[The Honourable Dr. B. R. Amedkar]

enacted by the Federal Law is vested in the President of the Union. The power to commute sentences for offences enacted by the State Legislatures is vested in the Governors of the State. In the case of sentences of death, whether it is inflicted under any law passed by Parliament or by the law of the States, the power is vested in both, the President as well as the State concerned. This is the scheme.

With regard to the amendment of my friend Mr. Tajamul Husain, his object is that the power to commute sentences of death permitted to the Governor should be taken away. Now, sub-clause (3) embodies in it the present practice which is in operation under which the power of commuting the death sentences is vested both in the Governor as well as in the President. The Drafting Committee has not seen any very strong arguments for taking away the power from the Governor. After all, the offence is committed in that particular locality. The Home Minister who would be advising the Governor on a mercy petition from an offender sentenced to death would be in a better position to advise the Governor having regard to his intimate knowledge of the circumstances of the case and the situation prevailing in that area. It was therefore felt desirable that no harm will be done if the power which the Governor now enjoys is left with him. There is, however, a safeguard provided. Supposing in the case of a sentence of death the mercy petition is rejected, it is always open, under the provisions of this article, for the offender to approach the President with another mercy petition and try his luck there. I do not think there is any great violation of any fundamental principle involved or any inconvenience that is likely to arise if the provisions in the draft article are retained as they are.

Mr. Vice-President: Now I will put the amendment of Mr. Tajamul Husain to vote. The question is:

"That clause (3) of article 59 be deleted."

The amendment was negatived.

Mr. Vice-President: I shall now put article 59 to vote. The question is:

"That article 59 stand part of the Constitution."

The motion was adopted.

Article 59 was added to the Constitution.

Article 60

Mr. Vice-President: The House will now take up for consideration article 60 of the Draft Constitution. Mr. Ahmed Ibrahim may move amendment No. 1289.

K. T. M. Ahmad Ibrahim Sahib Bahadur (Madras: Muslim): I have given notice of an amendment to this amendment.

Mr. Vice-President: Yes, I received it just now. The honourable Member may move it.

K. T. M. Ahmad Ibrahim Sahib Bahadur: Sir, I move:

"That the proviso to clause (1) of article 60 be deleted."

The object of my amendment is to preserve the executive powers of the States or Provinces at least in so far as the subjects which are included in the Concurrent List. It has been pointed out during the general discussion that the scheme of the Draft Constitution is to whittle down the powers of the States considerably and, though the plan is said to be a federal one, in actual fact it is a unitary form of Government that is sought to be imposed

on the country by the Draft Constitution. Members from all parties, irrespective of party affiliations, have condemned during the general discussion this aspect of the Draft Constitution. They have repeatedly shown that this Draft Constitution is in spirit a unitary form of Government and not a federal one.

Now, Sir, even in the Lists of Subjects drawn up and attached to the Constitution, a very large number of subjects which are usually in the Provincial List have been transferred to the Concurrent List and the Union List, with the result that we find only a small number of subjects included in the Provincial List. Article 60 (1) (a) seeks to take away from the States the executive power even with regard to those few subjects which are included in the Concurrent List. This, Sir, will be depriving the States of a large portion of even the little executive power that will otherwise be left to them under this Draft Constitution. It may be said that this has to be done for the sake of common interest, for uniformity, for defence and for emergencies. But I would point out that there is no necessity at all to take away even this limited power from the.....

The Honourable Shri K. Santhanam: May I point out to the honourable Member that the deletion of the proviso to clause (1) will vest the entire executive power and Concurrent subjects at the Centre.

K. T. M. Ahmad Ibrahim Sahib Bahadur: I am coming to that.

The Honourable Shri K. Santhanam: The consequence of the deletion of this proviso will be as stated by me.

K. T. M. Ahmad Ibrahim Sahib Bahadur: I am coming to that. I have given notice of another amendment to obviate that difficulty. It is to the effect that the word 'exclusive' be inserted in article 60 (1) (a) between the words 'Parliament has' and the word 'power'. The result of this will be that the executive power of the Union will be confined only to those subjects with respect to which it has exclusive power to make laws. I think this would remove the doubt expressed by my honourable Friend. The executive power under my amendment.....

The Honourable Shri K. Santhanam: Has the honourable Member the permission of the Chair to move this amendment?

K. T. M. Ahmad Ibrahim Sahib Bahadur: The Vice-President has been kind enough to permit me to move this amendment and in pursuance of that permission I have moved the amendment.

Shri L. Krishnaswami Bharathi: How does it read now?

K. T. M. Ahmad Ibrahim Sahib Bahadur: It reads as follows:—

"Clause (1) (a) to the matters with respect to which Parliament has exclusive power to make laws."

Therefore the executive power of the Union shall not extend to matters with respect to which it has no exclusive power to make laws, i.e., matters included in the Concurrent List. Sir, under the present Government of India Act we do not have any such provision. In page 6 of the letter of the Chairman of the Drafting Committee to the Honourable President of the Constituent Assembly, in paragraph 7, he points out—

"Under the present Constitution, executive authority in respect of a Concurrent List subject vests in the province subject in certain matters to the power of the Centre to give directions."

He says then—

"In the Draft Constitution the Committee has departed slightly from this plan."

I must point out, Sir, that it has not departed slightly from this plan but on the other hand the Drafting Committee has opened the floodgates to

[K. T. M. Ahmad Ibrahim Sahib Bahadur]

the Central Government to enable it to make as many inroads as possible into the powers of the provinces and states with respect to the Concurrent subjects, as the proviso reads:

"Provided that the executive power referred to in sub-clause (a) of this clause shall not, save as expressly provided in this Constitution or in any law made by Parliament . . ."

Therefore not only has the Union Government executive power in respect of subjects included in the Concurrent List to the extent it is specifically conferred by this Constitution but Parliament may also from time to time make legislation conferring on the Union Government executive power in regard to subjects included in the Concurrent list, with the result that all the subjects may be removed from the Concurrent List and transferred to the Federal List in course of time. It is not fair, Sir, that provincial autonomy should be whittled down to such an extent. In actual practice it will come to that. I know, Sir, that to obviate this difficulty, my honourable Friend, Pandit Kunzru, has given notice of an amendment for the omission of the words "or in any law made by Parliament". It will in a way remove the difficulty but not the entire difficulty. That is why I am persisting in moving my amendment. Sir, under the present Government of India Act, even though the Central Government can give only directions to the provincial governments in regard to these subjects, in actual practice the provincial governments are not able to carry on their administration without any hindrance or impediment from the Central Government on account of this power to give directions. We have heard very often repeated by our Ministers that even though they do not see eye to eye with certain directions issued by the Central Government, they are helpless and cannot do what they consider best. Even with regard to the food policy they say they are not able to do what they consider to be best in the interests of the province, as they have to obey the directions of the Central Government in this matter. Very often after their return to Madras from Delhi, our ministers point out that though they do not agree with the views of the Central Government, they have to carry out their directions because these directions have been issued under the law, even though they do not believe that the policy adumbrated by the Central Government in regard to the matter will be successful.

I hope, Sir, that the House will recognise the importance of this amendment. As I pointed out, already the powers of the provincial governments have been considerably taken away and if this clause also remains as it is, provincial autonomy will become almost a nullity. Even under the present provisions, provinces will be only glorified district boards and municipalities, and this clause empowering Parliament to legislate for conferring executive power on the Union Government with regard to any subjects included in the Concurrent list will be only another nail in the coffin of provincial autonomy.

Mr. Vice-President: Amendments Nos. 44 and 45 may be moved together.

Pandit Hirday Nath Kunzru (United Provinces: General): Mr. Vice-President, I beg to move:

"That with reference to amendment No. 1289, in the proviso to clause (1) of article 60, the words 'or in any law made by Parliament' be deleted."

and

"that with reference to amendment No. 1289, after clause (1) of article 60 the following clause be inserted:

'(1a) Any power of Parliament to make laws for a State with respect to any matter specified in entries 25 to 37 of the Concurrent List shall include power to make laws as respects a State conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties upon the Government of India or officers and authorities of the Government of India as respects that matter, notwithstanding that it is one with respect to which the Legislature of the State also has power to make laws.'"

Sir, there are federations of all kinds. There are federations for instance of the United States of America, Canada and Australia, but in none of these federal Constitutions does the Central Government enjoy the right to issue executive directions to the provincial or State governments. In Canada, concurrent powers of legislation have been given both to the Dominion Government and the provincial governments in regard to two subjects, agriculture and immigration. In Australia, there are a large number of subjects in respect of which both the Commonwealth and the States can legislate. Yet in neither of these countries is the Central Government in a position to direct the State or provincial government to exercise their authority in any particular way. Our Constitution, however, departs from this principle. Under the Government of India Act, 1935, the Central Government have the right to issue instructions to provincial governments in respect of certain matters. Those matters are connected either with subjects that are exclusively within the jurisdiction of the Central Legislature or are contained in Part II of the Concurrent List. If the language of the proviso to article 60 is accepted, the Central Government will have the right to issue instructions to the Provincial Governments with regard to the manner in which they should exercise their executive authority in respect of all subjects in the Concurrent List. What we have to consider is whether circumstances have arisen that make it necessary or desirable that such a power should be conferred on the Central Government.

The Honourable Shri K. Santhanam: May I point out to the honourable Member that it is only when Parliament makes a law and gives that power that it will extend in any State?

Pandit Hirday Nath Kunzru: I perfectly understand it. That is obvious. If Mr. Santhanam will bear with me for a while, he will find that I shall not omit to refer to this matter.

I do not see, Sir, that there is any reason why so large a power should be conferred on the Central Government. We have to be clear in our minds with regard to the character of the Constitution. While we may profit by the experience of other federal countries and need not slavishly copy their constitutions, it is necessary that the federal principle should be respected in its essential features. We should not go so far in our desire to give comprehensive powers to the Central Government to deal with emergencies as to make the Provincial Governments virtually subordinate to the Central Government. Whatever powers may be conferred on the Central Government if the federal principle is to be given effect to, the Provincial Governments should be co-ordinate with and not subordinate to the Central Government in the provincial sphere. If this principle is accepted by the House, I think that the proviso in the article under discussion would be found to be contrary to the relations that ought properly to subsist between the Central and the Provincial Governments. The proviso, as honourable Members know, runs as follows:

"Provided that the executive power referred to in sub-clause (a) of this clause shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws."

If this is accepted, it will be open to the Central Legislature to pass a law empowering the Central Government to issue directions to the Provincial Governments with regard to the manner in which the law should be executed. Under the Government of India Act, 1935, such a power was conferred on the Central Government, but it was more restricted. Sub-section (2) of section 126 of the Government of India Act, 1935 lays down that the executive authority of the Dominion shall also extend to the giving of directions to a Province as to the carrying into execution therein of any Act of the Dominion Legislature which relates to a matter specified in Part II of the Concurrent Legislative List and authorises the giving of such directions," and no bill or

[Pandit Hirday Nath Kunzru]

amendment dealing with this matter be introduced without the previous sanction of the Governor-General. In the new order, it is quite obvious that the Governor-General, who will be the Constitutional Head of the State, cannot be entrusted with the power given to the Governor-General by this sub-section. But there seems to me to be no reason why the power conferred by sub-section (2) of section 126 of the Government of India Act, 1935 should be widened in the manner proposed in the proviso to article 60 of the Draft Constitution. It is true that the Central Government will not have the right to issue instructions to the Provincial Governments with regard to the execution of any law, unless the law itself provides that such instructions should be issued. But this is certainly no check on the power of the Central Legislature. The Central Legislature itself will be the judge of the propriety of conferring such a power on a Government that is responsible to it. What I am seeking to do by my amendment is to protect the Provincial Governments against any unnecessary encroachment on their powers by the Central legislature and Central Government.

Now, Sir, it may be pointed out to me that if the words "or in any law made by Parliament" are deleted from the proviso, the Central Government will not enjoy even the limited power conferred on it by sub-section (2) of Section 126 of the Government of India Act, 1935. I think, Sir, that this can be provided for under article 234. I have accordingly given notice of an amendment to article 234 that would enable the Central Government to issue instructions to provincial Governments with regard to the execution of laws relating to items 25 to 37 of the Concurrent List if the central legislature by law authorises the Central Government to do so.

There is, however, one other matter to which it is necessary to draw the attention of the House. The second part of my amendment goes beyond anything contained in the Government of India Act, 1935. I may be asked how I am proposing an extension of the power of the central legislature and through it of the Central Government when the purpose of my amendment is to see that the executive authority of the provincial Governments is not unnecessarily restricted by orders issued to them by the Central Government under laws passed by Parliament. Honourable Members will remember that a few weeks ago, the Deputy Prime Minister introduced a Bill in this House the object of which was to amend the Government of India Act, 1935. It was stated in the Statement of Objects and Reasons attached to that Bill that experience had shown that uniform principles in the review of awards made by the Central and provincial industrial tribunals should be adopted under the overall control of the Central Government. It was therefore proposed in the Bill that the Central Government should, in addition to the right of issuing instructions to the provincial Governments in regard to the manner in which their authority should be exercised, also have the power to confer power on their own officers regarding the execution of laws dealing with any of the matters referred to in the Concurrent List. I should not like to go into the merits of that Bill; but we have to take into account the fact that in the present circumstances it is necessary so to widen the powers of the Central Government as to enable them to impose duties on their own officers in respect of certain matters if any law made by Parliament permits them to do so. The matters with which the Bill introduced by the Honourable Sardar Vallabhbhai Patel is concerned are industrial matters and a few other matters. Broadly speaking, these matters are covered by items 25 to 37 of the Concurrent List contained in the Draft Constitution. These matters are, but for two items, the same as those contained in Part II of the Concurrent List in the Government of India Act, 1935. It appears to be reasonable in the present circumstances when labour is becoming conscious of its rights, when questions relating to it have to be settled on an all-India basis, that in all these questions that might

involve the settlement of disputes between labour and the employers, there ought to be a power vested somewhere, in order that matters of importance may be dealt with in an uniform manner. I do not know when the Bill introduced by the Honourable Sardar Patel will be considered by the House. But, I have little doubt that the power asked for by him will be conferred on the Central Government by the House. If that is done, it is obvious that the Draft Constitution will have to be amended so that it may be brought into line with the Government of India Act, 1935. I have anticipated this necessity and have therefore brought forward an amendment authorising the Dominion Parliament to confer powers or impose duties on the Central Government or any of its officers in respect of entries 25 to 37 of the Concurrent List. It seems to me, Sir, that the amendment proposed by me meets the needs of the case There is no reason whatsoever why the Central Government should be given the wide power that the passage of the proviso would confer on the Central Executive under laws passed by the Central Parliament.

I should like, Sir, to refer to one more matter before I resume my seat. Under the Government of India Act, 1935, the power of the Dominion legislature to pass laws authorising the Central Government to confer powers and impose duties on their own officers with respect to matters in regard to which provincial legislatures could make laws could be exercised only when a declaration of emergency had been issued declaring that the security of India was threatened by war. So far as I remember, Sir, in no other contingency was the Central Legislature allowed to authorise the Central Government, or to place the Central Officers in a position to deal with the execution of laws on matters included in the Concurrent List. In proposing therefore my second amendment, it will be seen that I have not copied the provisions of the Government of India Act, 1935. I have departed considerably from the provisions of that Act but I have done so in so far only as circumstances have proved that the departure is necessary. It is incumbent on my honourable Friend Dr. Ambedkar to show that the wide power that he has asked for is essential in the present circumstances if law and order are to be maintained in India or if its security is not to be threatened or if problems arising in the new circumstances are of such a character that the country will be able to deal with them only when the Provincial Governments have been made practically subordinate to the Central Government. As I do not feel that any such circumstances have arisen, I have proposed the amendments that I read out a little while ago. I hope, Sir, that they will receive the careful consideration of the House.

(Amendments Nos. 1290 and 1291 were not moved.)

Mr. Vice-President: Amendment No. 1292 is disallowed as a verbal amendment.

Mr. Naziruddin Ahmad: It is not merely verbal. It will change the sense. In fact, my amendment will set up a different authority altogether.

Mr. Vice-President: I am afraid I do not agree with you.

Amendment No. 1293 is disallowed as verbal.

The article is open for general discussion. Mr. Mohamed Ismail Sahib.

Mr. Mohamed Ismail Sahib (Madras: Muslim): Sir, I support the amendments moved by Mr. K. T. M. Ahmad Ibrahim, of the intention to move which I have also given notice. Sir, in the footnote under article 60 the Drafting Committee says—

"The Committee has inserted this proviso on the view that the executive power in respect of Concurrent List subjects should vest primarily in the State concerned except as otherwise provided in the Constitution or in any law made by Parliament."

[Mohamed Ismail Sahib Bahadur]

The impression which this note creates in the minds of the readers is that some power or more power than is apparent in the article is being sought to be vested in the provinces but any such impression is removed by what the Chairman of the Drafting Committee says in para. 7 of his letter to the President of the Constituent Assembly. He speaks of the saving clause in the proviso and says—

"The effect of this saving clause is that it will be open to the Union Parliament under the new Constitution to confer executive power on Union authorities, or if necessary, to empower Union authorities to give directions as to how executive power shall be exercised by State authorities."

That is being made clearer by the next sentence in which he says—

"In making this provision, the Committee has kept in view the principle that executive authority should for the most part be co-extensive with legislative power."

Wherever the Centre has been endowed with legislative power, it is being sought to endow it with executive power as well. Our amendments seek to correct this position and say that the Centre might have legislative power on the subjects included in the concurrent list but at least the executive power ought to be left in the hands of the units—the provinces. Sir, I have to make a few remarks in connection with the scheme of this Constitution. It is said that the American Constitution has been based on a suspicion of the Central authorities that the people in power in the Centre would seek to encroach, whenever there is an opportunity, on the powers of the States, i.e. the component parts or units, and also of the individuals. It was contended not only at that time when that Constitution was made but also subsequently and even at the present time that such a conception of a Constitution is well based on facts, because it is admitted that when people come to power, more often than not the power corrupts them. Therefore too much of power should not be invested or placed in the hands of the executive and the supreme authority. But so far as our draft Constitution goes, the contrary seems to be the method which has been adopted. It has been based on the suspicion of individuals and the component units. The idea seems to be that the individuals will always be scheming and conspiring to set the authority at nought and the units would always be on the look-out for doing something wrong. Therefore, Sir, though the scheme of things as adumbrated in the Draft Constitution is alleged to be on a federal basis, it is really over-weighting the Centre with too much power. That is not salutary at least under the circumstances obtaining in our country. That is not good to the country as a whole. Ours is a country of vast distances and a huge population. Therefore it is not conducive to efficiency to over-concentrate power in the Centre. Units must be left with adequate powers in their hands. It must not be the basis of this Constitution that patriotism and anxiety for the welfare of the people are the sole monopoly of the Centre. It must be admitted that the Provinces and individuals also are as patriotic as anybody else. Therefore, their rights and powers must not be sought to be encroached upon. The basis of this Constitution seems to be suspicion, in the first place of the individuals and then in the second place of the units. Sir, where the individuals are concerned, it has not even been conceded that individuals have got an irreducible amount of right to personal freedom. The personal freedom that has been conceded under article 15 is beset with serious, and not only a serious, but fatal modifications so much so these modifications have eaten up and swallowed up the right of personal freedom. It does not recognise that an individual has got any irreducible right which cannot be taken away by any law. And so far as the Provinces or Units are concerned, the same spirit seems to prevail. By various provisions, the powers of the Provinces are sought to be taken away; and in the interest of efficient government and good government, I think that spirit ought not to prevail; and the powers of the units must not be encroached upon.

These amendments of ours, while providing for the maintenance of the legislative powers of the Centre where the appropriate subjects are concerned, want to restrict the executive field of the Centre. Therefore, I think, they are very reasonable amendments which the House should support. I also know that if only Members are given the right to vote as they please, and if they are given the freedom of vote on this particular question at least, I know Sir, many Members will vote for these amendments. I know personally, Sir, there are many Members who feel with me in the matter of these amendments.

Mr. Vice-President: May I suggest that these remarks are not called for here?

Mohamed Ismail Saheb Bahadur: Sir, I am speaking, with your permission, of what I know to be the feeling of many of my colleagues here on this very important matter. In these amendments is involved the efficiency of the government and therefore the welfare of the whole country and of the people. These amendments seek to eliminate any friction or any conflict that may arise in the future between the Centre and the Provinces. If time and again the Centre seeks to encroach upon the rights and powers of the units, then, there is sure to be conflict and friction and these amendments only seek to remove any such conflict. And I wanted to make it clear that I am not alone in this feeling of mine, that I am not alone in this opinion, but that there are many others irrespective of party affiliations. Therefore, I would very much like that the colleagues of mine in this House be given freedom of vote to vote as they please. In that case, the Chairman of the Drafting Committee will know whether there is real support among the Members of this House for the idea contained in these amendments. If the Chairman of the Drafting Committee does not find it in his mind to accept these amendments, may I appeal to him, at least to accept the amendment to our amendment moved by Pandit Kunzru which seeks to remove the words "or in any law made by Parliament". That at least would mean something. That would go to some extent to alleviate the conditions which I have got in mind and which I have been trying to express here. It will to a certain extent restrict the encroachment upon the powers of the Provinces. Therefore, I would appeal to the House and to the Chairman of the Drafting Committee to consider at least the much milder amendment which seeks to eliminate the words "or in any law made by Parliament".

Mr. Vice-President: I have just received information about the sudden death of Sir Akbar Hydari, Governor of Assam. He was not a member of this House, but we all know the excellent work he has done for our country and we also know that we are indebted not only to him but also to his father. The offices of the Government of India are already closed. It is true that His Excellency was not a member of this House, but still I think we ought to adjourn as a tribute to him and as a mark of respect to his memory.

The House stands adjourned till 10 A.M. to-morrow.

The Constituent Assembly then adjourned till Ten of the clock on Thursday, the 30th December 1948.

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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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[Articles 60, 61 and 62 considered.]

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CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 30th December 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 60—(*Contd.*)

Mr. Vice-President (Dr. H. C. Mookherjee): I have just received notice of an adjournment motion signed by Shri Mahavir Tyagi. It is ruled out of order under Rule 26 of the Rules of Procedure and Standing Orders of the Constituent Assembly of India. Does the House want to know the contents of this adjournment motion?

Honourable Members: Yes, yes.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, on a point of order. Is an adjournment motion in this House permissible?

Mr. Vice-President: I shall read out the adjournment motion:

"I beg to move that the House do adjourn to discuss the attitude of the Government of India in respect of the recent attacks on Indonesia."

It is ruled out of order under Rule 26 of the Rules of Procedure and Standing Orders of the Constituent Assembly of India.

We can now resume discussion on article 60. Is Pocker Sahib Bahadur in the House?

B. Pocker Sahib Bahadur (Madras: Muslim): Mr. Vice-President, this clause as it stands is sure to convert the Federation into an entirely unitary form of Government. This is a matter of very grave importance. Sir, we have been going on under the idea, and it is professed, that the character of the Constitution which we are framing is a federal one. I submit, Sir, if this article, which gives even executive powers with reference to the subjects in the Concurrent List to the Central Government, is to be passed as it is, then there will be no justification at all in calling this Constitution a federal one. It will be a misnomer to call it so. It will be simply a camouflage to call this Constitution a federal one with provisions like this. It is said that it is necessary to give legislative powers to the Centre with regard to certain subjects mentioned in the Concurrent List, but it is quite another thing, Sir, to give even the executive powers with reference to them to the Centre. These provisions will have the effect of practically leaving the provinces with absolutely nothing. Even in the Concurrent List there is a large number of subjects which ought not to have found place in it. We shall have to deal with them when the time comes. But this clause gives even executive powers to the Centre with reference to the subjects which are detailed in the Concurrent List. In this connection, since the question has been expounded with great lucidity and ability by the Honourable Pandit Kunzru, I do not want to take up the time of the House in dealing with those aspects.

Now I would just like to point out one aspect of the matter and it is this. In such a big sub-continent as India, it will be very difficult for the authorities in the Centre to appreciate correctly the requirements of the people

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in the remotest parts of this country, and this disability is there even with regard to legislation. But even if executive power, with reference to those laws dealing with subjects in the Concurrent List, is given to the Centre, the result will be that if any person is aggrieved by the way in which the law is executed in a very remote part of the country, he has to resort to the Centre which may be thousands of miles away, and it is not all people that can fly from one part of the country to the other in a few hours. I submit, Sir, that if we just look into the Concurrent List as it is, we shall find that there are very many subjects which ought not to have found a place in it. Anyhow, if those subjects are to be dealt with by an executive which is under the Centre, it will be a very great hardship, and I do submit that the machinery itself will be very inefficient and will be a blot on the administration.

If with reference to such subjects as are mentioned in the Concurrent List, the people suffer by the bad way in which the executive carries on the administration, then the result will be that the persons who have got a grievance will have to go a very great distance to have matters redressed, and even then it will be very difficult for the authorities in the Centre to realize the difficulties. It has been pointed out that as matters stand now as regards the subjects in the Concurrent List, the executive authority is in the provinces, and to do away with that practice and to centralise even the executive powers in the Centre with regard to all these subjects in the Concurrent List is a very backward step. Even from 1919 onwards when the Britishers were ruling, Provincial Autonomy was considered to be one of the objects of the Reforms. Now after we have won freedom, to do away with Provincial Autonomy and to concentrate all the powers in the Centre really is tantamount to totalitarianism, which certainly ought to be condemned. It has become the order of the day to call a dog by a bad name and hang it. Well, if some group of persons agitate for protecting their rights as a group, it is called communalism and it is condemned. If Provinces want Provincial Autonomy to be secured to allow matters peculiar to them to be dealt with by themselves, well, that is called provincialism, and that is also condemned. If people press for separation of linguistic Provinces it is called separatism and it is condemned. But I only wish that these gentlemen who condemn these 'isms' just take into consideration what the trend of events is. It is leading to totalitarianism; they ought to condemn that in stronger language. But I am afraid that the result of the condemnation of these various 'isms', namely communalism, provincialism and separatism, is that it leads to totalitarianism or even fascism. If there are separate organisations for particular groups of people who think in a particular way, well, that is condemned as communalism or as some other 'ism'. If all kinds of opposition are to be got rid of in this sort of way, well, the result is that there is totalitarianism of the worst type, and that is what we are coming to having regard to the provisions in this Draft Constitution as they stand.

Therefore, it is high time that we take note of this tendency and see that we avoid it and that we do not come to grief. I submit that at least as regards this provision, the amendment only seeks to make a very moderate demand, namely that with reference to matters in the Concurrent List, even though the Centre may have legislative power, the executive power with reference to those subjects should be left to the Provinces. This is a very moderate demand, and as has already been pointed out, honourable Members from various Provinces do feel that these executive powers should be left to the Provinces. But as we all know, they are not able to give effect to their views for obvious reasons, and I do not want to raise questions which may create a controversy. But I would submit that those honourable Members who do really feel that this amendment is one which is for the good of the people and

that according to their conscience it ought to be carried, ought not to hesitate from giving effect to their views according to their conscience. I would remind honourable Members that the duty we have to perform here is a very sacred one and that we are answerable to God for every act we are doing here, and if the defence is that we did not act according to our conscience on account of the whip that is issued, I submit, Sir, the honourable Members will realise that it is no defence at all.

Shri L. Krishnaswami Bharathi (Madras: General): Sir, is it necessary to make all these references?

B. Pocker Sahib Bahadur: I am making all these references on account of facts which cannot be denied.

Mr. Vice-President: I am afraid Mr. Pocker Sahib is raising a controversy.

B. Pocker Sahib Bahadur: Mr. Vice-President, Sir, I have already stated that I do not want to enter into this controversy, but I have got every right to appeal to each and every honourable Member.

Mr. Vice-President: Nobody is preventing the honourable Member from doing it.

B. Pocker Sahib Bahadur: I have got a right of appeal to every individual Member to exercise his right of vote according to his conscience. That is why I am making these submissions. I have to make this appeal on account of obvious reasons on which I do not want to dwell. The honourable Members know, I know, and the Honourable the Vice-President knows it. Therefore, I do not want to dwell on those aspects of the case.

Mr. Vice-President: The Honourable the Vice-President, has absolutely no knowledge of this.

B. Pocker Sahib Bahadur: Well, Sir, I hope the Honourable the Vice-President, will not compel me to dilate more on this topic. Anyhow, I take it that the Honourable the Vice-President knows that Party Whips are issued and Members are being guided by these Whips, to put it in a nutshell. That is a fact well-known and cannot be denied, and therefore, it is, that I make this special appeal to the honourable Members that if they are satisfied in their conscience that this is a matter in which they should support the amendment, they ought not to hesitate from doing so, and if they so require they ought to seek the permission of the Party to which they are affiliated.

Shri T. T. Krishnamachari (Madras: General): Mr. Vice-President, Sir, I feel it my duty to oppose the two amendments that are before the House, to article 60. Sir, the two amendments fall into two distinct categories. The amendment that was proposed by my honourable Friend Mr. K. T. M. Ahmed Ibrahim merely sought to cut out the proviso to sub-clause (1) of article 60. That was the original state of the amendment. If the amendments were carried in that particular form, it would mean that the Federal executive power will be co-extensive with the legislative power that the Union has, namely, not only will it extend to List I but it will also extend to List III.

Subsequently apparently my honourable Friend found out his mistake and has sought to amend the body of sub-clause (1) of article 60, which limits the power of the Federation in regard to executive matters and completely prevents it from exercising it in the field of Concurrent legislation. Well, that, Sir, the House is aware, will mean going back on the present provisions of the Government of India Act. The position was remedied by my honourable Friend Pandit Hirday Nath Kunzru. With his characteristic precision he framed an amendment which will exactly fit in with the position that was envisaged in the Government of India Act of 1935. It does not concede any more executive power to the Centre than what it has under the Government of

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India Act, 1935. Sir, there is also a considerable amount of difference in the approach of the Movers of the two amendments. The three speakers who supported the amendment of Mr. Ibrahim, including the mover, objected to the proviso to article 60(1) on political grounds. My honourable Friend Pandit Hirday Nath Kunzru objected to it on theoretical grounds. Let me first deal with my honourable Friend Pandit Kunzru's objections. He said that Federation or Federalism in the Draft Constitution before the House will become a farce if the position that is taken up by the Government of India Act in regard to the sphere of executive action that could be exercised by the Central Government in the concurrent field is changed, if the i's are dotted or the t's are crossed. Pandit Kunzru is a person who is well known for his wide reading. His experience is profound and I shall not seek to controvert his right to lay down the law. But, nevertheless, he made a fundamental mistake in saying that there is a particular type of federalism or constitution which alone can be called federal and that the word 'Federal' or 'Federalism' had a complete connotation of its own, excluding every possible inroad into it. I must also point out that Pandit Kunzru made a big blunder in characterising our Draft Constitution as being something which would not be federal if the proviso of the article is retained.

Sir, in regard to what is a Federal Constitution, there are various interpretations. It varies widely. For instance, the Canadian Constitution which is one of the four prominent Federal Constitutions in the world is characterised by some as not being wholly federal. On the other hand it does happen that in the actual working of the Constitution, it is more federal than the Australian Constitution which, from the strictly constitutional point of view, is undoubtedly fully federal. It is said often times that a Constitution becomes Federal because of the fact that the component units are first formed and then the Centre is created. That is the opinion expressed by Lord Haldane in 1913 as an obiter in a matter that was referred to him arising out of an Australian litigation wherein he mentioned that the Canadian Constitution was not Federal in so far as, while the British North American Act was passed by Parliament, the Centre and the Provinces were created at the same time.

Similarly there are other views in regard to what makes a Federation. Another view is that the residuary power must lie with the units and not with the Centre. Where and how this fact exactly detracts from the concept of Federalism nobody knows. This particular aspect is emphasised by reference to the United States Federation. If that is so, undoubtedly the Draft Constitution before the House is not federal, for one reason that the residuary power is not vested in the units; for another reason that it (the Draft Constitution) creates both the Centre and the Provinces at the same time.

Sir, if we are to accept this view, we would be merely theorising in regard to Federation. I hold the view that we have no reason to take a theoretical view of the Draft Constitution at this stage. The concept of this Constitution is undoubtedly Federal. But, how far Federalism is going to prove to be of benefit to this country in practice will only be determined by the passage of time and it would depend on how far the various forces inter-act conceding thereby to the provinces greater or lesser autonomy than what we now envisage. But I will repeat once more the fact that in actual practice it has happened that in Canada the provinces have greater amount of liberty of action under a Constitution which is not avowedly fully Federal, than in Australia where the interference by the Centre into the affairs of the units has been considerable.

Pandit Hirday Nath Kunzru (United Provinces: General): May I interrupt my honourable Friend to ask whether he is aware that in Canada the power of the provinces is greater than it is supposed to be because of the decisions of the Privy Council?

Shri T. T. Krishnamachari: It only supports my statement of fact that the Indian Constitution, when it is passed, will either become fully federal or partially federal in actual practice over a period of time. It may be that if we are going to leave the field of authority for the Centre and the units completely undefined, the courts may interpret it one way or the other. It is conceivable that if we say nothing about the exercise of the executive powers in the Concurrent List, the courts may interpret it one way or the other and the Constitution may become more federal or less federal as circumstances arise and the views of the judges in this regard and the decisions they arrive at. So, I think the interruption of my honourable Friend is without any force and I see no reason why I should answer it at greater length.

Sir, in regard to this question of executive action in regard to concurrent powers on which actually the objection is being taken, the position is that the Government of India Act has been framed with a certain amount of attention for precision. Professor K. C. Wheare, in a short but exhaustive work on Federal Government, has pointed out this particular fact—though he does not concede that the Government of India Act establishes a full federation—that that Act is one of the most notable examples of Federation where the powers of the Centre and the units are clearly defined and the three Lists are more or less exhaustive.

Sir, in regard to the provisions of this Concurrent List, the Draft Constitution or the 1935 Act are by no means unique. The fact is that the Australian Constitution practically leaves the entire field of legislative action in the Concurrent List save for a few that are enumerated in Section 52 of the Australian Constitution. Section 61 which is the corresponding section in the Australian Constitution to article 60 of our Draft Constitution says that the executive power extends to the execution and maintenance of the Constitution and of the laws of the Commonwealth. And an attempt by a State to interfere with the free exercise of the executive power by the Commonwealth was declared invalid in 1909 in a case D'Emden vs. Pedden. The position in regard to the distribution of powers in the Australian Constitution is however nebulous and assuredly the framers of the Government of India Act were conscious of that fact and that is why they have framed the three lists which are far more precise.

Sir, if you look back to what happened in Canada where passage of time has more or less delimited the precise scope of Federal and Provincial executive power, we find that there has been room for friction in various important matters. And in the Rowell-Sirois Report on Dominion-Provincial Relations, certain changes have been recommended. They have recommended that in the field of labour legislation particularly, and in the field of social services like Unemployment Insurance, etc., the power should be given to the Federation not only for the purpose of legislation which it possesses to some extent, but also in the field of executive action. With this background let me, Sir, now examine the position in the Government of India Act in regard to the allocation of powers under the Concurrent List in view of our experience of the last twelve years.

Sir, the Joint Select Committee in dealing with this particular aspect of the

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separation of powers and also in investing the Central and Provincial Governments with executive powers in respect thereof have been rather careful. Sir, they say—

"We think the solution is to be found in drawing a distinction between subjects in the Concurrent List which on the one hand relate, broadly speaking, to matters of social and economic legislation, and those which on the other hand relate mainly to matters of law and order, and personal rights and status. The latter form the larger class, and the enforcement of legislation on these subjects would, for the most part, be in the hands of the Courts of the Provincial authorities responsible for public prosecutions. There can clearly be no question of Federal directions being issued to the Courts, nor could such directions properly be issued to prosecuting authorities in the provinces. In these matters, therefore, we think that the Federal Government should have in law, as they could have in practice, no powers of administrative control. The other class of concurrent subjects consists mainly of the regulation of mines, factories, employer's liability and workmen's compensation, trade unions, welfare of labour, industrial disputes, infectious diseases, electricity . . . . . In respect of this class, we think that the Federal Government should, where necessary, have the power to issue directions for the enforcement of the law, but only to the extent provided by the Federal Act in question"

Sir, that was the plan envisaged in the Government of India Act. That was the reason why a sub-clause was added to Section 126, i.e., sub-clause (2), which gives power to the Centre to give executive directions in so far as the subjects covered by Part II of the Concurrent List is concerned. Sir, I want to tell my honourable Friends in this House that in actual practice we found that so far as Part II is concerned executive directions were not adequate to achieve the objects of the legislation undertaken by the Centre. Sir, it raised a very important problem. Who is to be ultimately responsible for carrying out the objects of such legislation in a responsible government? The provincial governments are responsible to the provincial legislatures and it has happened so far that the provincial executive has often said, "Oh, the Centre has given its directions, we have no funds, we have no administrative machinery, we do not know what to do and it is unfair that it should be our business to do the actual work in these matters when somebody else lays down the law." The present scheme in the Government of India Act is defective by reason of the fact that the field of executive responsibility blurs. We do not know where it begins and where it ends, and one of the reasons why this proviso has been put in which has been carefully worded, is that, where the Government of India want to lay the executive responsibility squarely on the shoulders of the provinces or the units, it can do so by not mentioning in their legislation that they are possessed of any executive power in regard to any particular legislation. This is a variation of the provision contemplated in Section 126(2) and it is a wise variation in so far as the lines of demarcation are clearly laid down. The Government of India where it is possible or necessary, perhaps in the field of social legislation, in social insurance, unemployment and perhaps labour, will take over the executive responsibility by laying down in the related Acts that the executive authority shall be that of the Government of India, Where there is no specific provision, the executive responsibility will be that of the provinces and the provincial ministries cannot shirk their responsibility for carrying out the objects of the legislation. Sir, I wish that my honourable Friend, Mr. Jagjivan Ram, who has been in charge of some pieces of welfare legislation, would speak on this subject, because times without number we have found that we have had to sail very close to colourable legislation in such matters. That, Sir, I think is a very valid reason, a reason which is dictated by experience, for us to put a provision of the nature of the proviso in clause (1) of this article which I can asuure you, does not detract an iota from the federal character of this Draft Constitution. After all, what is a federal constitution? It is one that lays down precisely the field where the units are supreme and another field where the Centre is supreme. Where it is not possible to demarcate this clearly it has got to be done in some other manner where the responsibility will

be precisely indicated, and this proviso to article 60 makes the constitution more federal than it would otherwise be. Therefore I think the objection of my honourable Friend, Pandit Hirday Nath Kunzru, is without any point; it is without any reference to the experience of the 1935 Act which has been gained during these twelve years; it is without reference to the theory and practice of federalism; it is without reference to the experience of Australia and Canada, and therefore has got to be rejected.

Sir, I shall turn my attention to the other amendment, the originally imperfect amendment, which seeks to give greater powers to the provinces in regard to concurrent subjects, and practically limits the powers of the Centre in the executive field to nothing, which was moved by my honourable Friend, Mr. K. T. M. Ahmad Ibrahim and ably supported by Mr. Muhammad Ismail and Mr. Pocker. Sir, the House will be aware that these honourable Members are fairly important people, particularly Mr. Muhammad Ismail who happens to be the President of the Muslim League in India and the virtual successor to Mr. Jinnah. When he makes a political statement, it cannot be dismissed as being something which is of no value. One of the reasons why the Government of India Act is so elaborate, one of the reasons why such great emphasis on provincial autonomy was laid in the past, one of the reasons why we in this country agreed to the Cabinet Statement of May 16, 1946, was the fact that the Muslim League wanted complete freedom of action in the provinces which it controlled. Sir, that circumstance no longer exists owing to the dissection of the country into two. That circumstance has now faded into obscurity, and therefore it seems to me that my honourable Friend is simply starting the trouble from the beginning viz., the agitation that provinces should have greater powers when actually there is no attempt to fetter the powers of the provinces. If there is any opposition to this Draft Constitution, it is a political opposition, rather than an opposition to any particular feature of this Draft Constitution. My honourable Friends have warned us that we have a conscience, that we have to act according to that conscience. I may tell the honourable Members of this House that their conscience will not be affected in any way if they approve of article 60, as it stands, that they may rest assured that there will be no inroads into the freedom of action of the provinces and that really no real limitation of the executive power of the provinces is contemplated. Provincial opinion will be adequately represented in the Parliament to be: the *pros* and *cons* of each particular piece of legislation contemplated in this article will be adequately canvassed before the Centre is granted executive power in regard to any subject which falls in the Concurrent List. I might again draw the attention of the House to what was mentioned in the Joint Select Committee's report in respect of the 1935 Act that they did not contemplate that even in the matter of giving executive directions under Section 126 (2), it would be done right over the wishes of the provinces, because after all the Centre was not something apart from the provinces. Even in the future the Central Legislature will only consist of representatives of the units. In one House it will be representative of the unit legislatures. In the other House it will be representative of the people of the units. The Centre can have no existence in the future apart from the provinces or units and why therefore suspect the *bona fides* of that legislature and say that that legislature will grant powers to the Centre in such a manner as would fetter the freedom of action of the units?

Sir, on the other hand, as I said once before, this proviso precisely delimits the functions of the Centre and the units. There will be no more ambiguity, no more blurring of responsibility. I feel that intrinsically the article is sound and the House will not, I have no doubt, be guided by the threats uttered by these appeals to conscience, the threat of the totalitarian state of things to come which my honourable Friends from Madras of the Muslim League think

is going to come to pass. Sir, this article.....

B. Pocker Sahib Bahadur: Is it not a fact that whips are being issued over such questions?

Shri T. T. Krishnamachari: I have no desire to answer my honourable Friend. Whips may be issued. We know what is being done. It is a matter of convenience. If some of us do not congregate together and get through the work that is to come before the House by mutual agreement, I am afraid this House will have to sit for three or four years. By acting together some of us, not exactly the members of one Party but a number of people who act together are only expediting the framing of this Constitution for our country. Well, I can conceive that my honourable Friend does not want a constitution for this country. If that is his idea, well, he might object to the method by which we are carrying on the work. Sir, I think these allegations are without any point. The basis of the opposition is political. It has its origin in the fact that the Muslim League never wanted India to be a strong country, with a strong government. Therefore, Sir, I hope the House will dismiss all these vague threats and all these allegations and support the article before it.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. Vice-President, Sir, I am sorry that I cannot accept either of the two amendments which have been moved to this proviso, but I shall state to the House very briefly the reasons why I am not in a position to accept these amendments. Before I do so, I think it is desirable that the House should know what exactly is the difference between the position as stated in the proviso and the two amendments which are moved to that proviso. Taking the proviso as it stands, it lays down two propositions. The first proposition is that generally the authority to execute laws which relate to what is called the Concurrent field, whether the law is passed by the Central Legislature or whether it is passed by the Provincial or State Legislature, shall ordinarily apply to the Province or the State. That is the first proposition which this proviso lays down. The second proposition which the proviso lays down is that if in any particular case Parliament thinks that in passing a law which relates to the Concurrent field, the execution ought to be retained by the Central Government, Parliament shall have the power to do so. Therefore, the position is this; that in all cases, ordinarily, the executive authority so far as the Concurrent List is concerned will rest with the units, the Provinces as well as the States. It is only in exceptional cases that the Centre may prescribe that the execution of a Concurrent law shall be with the Centre. The amendments which have been moved are different in their connotation. The first amendment is that the Centre should have nothing to do with regard to the administration of a law which relates to matters placed in the Concurrent field. The second amendment which has been moved by my honourable Friend, Pandit Kunzru, although it does not permit the Centre to take upon itself the execution of a law passed in the Concurrent field, is prepared to permit the Centre to issue directions, with regard to matters falling within Items 25 and 37, to the Provincial Governments. That is the difference between the two amendments.

The first amendment really goes much beyond the present position as set out in the Government of India Act, 1935. As honourable Members know, even under the present Government of India Act, 1935, it is permissible for the Central Government at least to issue directions to the Provinces, setting out the method and manner in which a particular law may be carried out. The first amendment I say even takes away that power which the present Government of India Act, 1935, gives to the Centre. The amendment of my honourable Friend, Pandit Kunzru wishes to restore the position back to what is now found in the Government of India Act, 1935.

Pandit Hirday Nath Kunzru: I go a little beyond that. The second part of my amendment goes beyond any power which the Government of India now enjoy under the Government of India Act, 1935.

The Honourable Dr. B. R. Ambedkar: Well, that may be so. That I said is the position as I understand it. Now, Sir, I will deal with the major amendment which wants to go back to a position where the Centre will not even have the power to issue directions, and for that purpose, it is necessary for me to go into the history of this particular matter. It must have been noticed —and I say it merely, as a matter of fact and without any kind of insinuation in it at all,—that a large number of members who have spoken in favour of the first amendment are mostly Muslims. One of them, my Friend Mr. Pocker, thought that it was a sacred duty of every Member of this House to oppose the proviso. I have no idea.....

B. Pocker Sahib Bahadur: I have not said that, Sir. I only said that it is the duty of every Member to act according to his conscience.

The Honourable Dr. B. R. Ambedkar: By which I mean, I suppose that every Member who has a conscience must oppose the proviso. It cannot mean anything else. (*Laughter.*)

B. Pocker Sahib Bahadur: Certainly not.

The Honourable Dr. B. R. Ambedkar: Now, Sir, this peculiar phenomenon of Muslim members being concerned in this particular proviso, as I said, has a history behind it, and I am sorry to say that my honourable Friend, Pandit Kunzru forgot altogether that history; I have no doubt about it that he is familiar with that history as I am myself.

This matter goes back to the Round Table Conference which was held in 1930. Everyone who is familiar with what happened in the Round Table Conference, which was held in 1930 will remember that the two major parties who were represented in that Conference, namely the Muslim League and the Indian National Congress, found themselves at loggerheads on many points of constitutional importance.

One of the points on which they found themselves at loggerheads was the question of provincial autonomy. Of course, it was realised that there could not be complete provincial autonomy in a Constitution which intended to preserve the unity of India, both in the matter of legislation and administration. But the Muslim League took up such an adamant attitude on this point that the Secretary of State had to make certain concessions in order to reconcile the Muslim League to the acceptance of some sort of responsible Government at the Centre. One of the things which the then Secretary of State did was to introduce this clause which is contained in Section 126 of the Government of India Act which stated that the authority of the Central Government so far as legislation in the concurrent field was concerned was to be strictly limited to the issue of directions and it should not extend to the actual administration of the matter itself. The argument was that there would have been no objection on the part of the Muslim League to have the Centre administer a particular law in the concurrent field if the Central Government was not likely to be dominated by the Hindus. That was so expressly stated, I remember, during the debates in the Round Table Conference. It is because the Muslim League Governments which came into existence in the provinces where the Muslims formed a majority, such as for instance in the North-West Frontier Province, the Punjab, Bengal and to some extent Assam, did not want it in the field which they thought exclusively belonged to them by reason of their majority, that the Secretary of State had to make this concession. I have no doubt about it that this was a concession. It was not an acceptance of the principle that the Centre should have no authority to administer a law passed in the concurrent field. My submission therefore is that the position stated in Section 126 of the Government of India Act, 1935, is not to be justified on principle; it is justified because it was a concession made to the Muslims.

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Therefore, it is not proper to rely upon Section 126 in drawing any support for the arguments which have been urged in favour of this amendment.

Sir, that the position stated in Section 126 of the Government of India Act was fundamentally wrong was admitted by the Secretary of State in a subsequent legislation which the Parliament enacted just before the war was declared. As honourable Members will remember, Section 126 was supplemented by Section 126-A by a law made by Parliament just before the war was declared. Why was it that the Parliament found it necessary to enact Section 126-A? As you will remember Section 126-A is one of the most drastic clauses in the Government of India Act so far as concurrent legislation is concerned. It permits the Central Government to legislate not only on provincial subjects, but it permits the Central Government to take over the administration both of provincial as well as concurrent subjects. That was done because the Secretary of State felt that at least in the war period, Section 126 might prove itself absolutely fatal to the administration of the country. My submission therefore is that Section 126-A which was enacted for emergency purposes is applicable not only for an emergency, but for ordinary purposes and ordinary times as well. My first submission to the House therefore is this: that no argument that can be based on the principle of Section 126 can be valid in these days for the circumstances which I have mentioned.

Coming to the proviso, . . .

B. Pocker Sahib Bahadur: With your permission, Sir, may I just correct my learned Friend? This Constitution is being framed for the present Indian Union in which there is not a single province in which the Muslims are in a majority and therefore there is absolutely no point in saying that it is the Muslim members that are moving this amendment in the interests of the Muslim League. It is a very misleading argument based on a misconception of fact and the Honourable Minister for Law forgets the fact that we in the present Indian Union, Muslims as such, are not in the least to be particularly benefited by this amendment.

The Honourable Dr. B. R. Ambedkar: I was just going to say that although that is a statement of fact which I absolutely accept, my complaint is that the Muslim members have not yet given up the philosophy of the Muslim League which they ought to. They are repeating arguments which were valid when the Muslim League was there and the Muslim Provinces were there. They have no validity now. I cannot understand why the Muslims are repeating them. (*Interruption.*)

Mr. Vice-President: Order, order.

The Honourable Dr. B. R. Ambedkar: I was saying that there is no substance in the argument that we are departing from the provision contained in Section 126 of the Government of India Act. As I said, that section was not based upon any principle at all.

In support of the proviso, I would like to say two things. First, there is ample precedent for the proposition enshrined so to say in this proviso. My honourable Friend M. T. T. Krishnamachari has dealt at some length with the position as it is found in various countries which have a federal Constitution. I shall not therefore labour that point again. But I would just like to make one reference to the Australian Constitution. In the Australian Constitution we have also what is called a concurrent field of legislation. Under the Australian Constitution it is open to the Commonwealth Parliament in making any law in the concurrent field to take upon itself the authority to administer I shall just quote one short paragraph from a well known book

called "Legislative and Executive Powers in Australia" by a great lawyer Mr. Wynes. This is what he says:

"Lastly, there are Commonwealth Statutes. Lefroy states that executive power is derived from legislative power unless there be some restraining enactment. This proposition is true, it seems, in Canada, where the double enumeration commits to each Government exclusive legislative powers, but is not applicable in Australia. Where the legislative power of the Commonwealth is exclusive—e.g., in the case of defence—the executive power in relation to the subject of the grant inheres in the Commonwealth, but in respect of concurrent powers, the executive function remains with the States until the Commonwealth legislative power is exercised."

Which means that in the concurrent field, the executive authority remains with the States so long as the Commonwealth has not exercised the power of making laws which it had. The moment it does, the execution of that law is automatically transferred to the Commonwealth. Therefore, comparing the position as set out in the proviso with the position as it is found in Australia, I submit that we are not making any violent departure from any federal principle that one may like to quote. Now, Sir, my second submission is that there is ample justification for a proviso of this sort, which permits the Centre in any particular case to take upon itself the administration of certain laws in the Concurrent List. Let me give one or two illustrations. The Constituent Assembly has passed article 11, which abolishes untouchability. It also permits Parliament to pass appropriate legislation to make the abolition of untouchability a reality. Supposing the Centre makes a law prescribing a certain penalty, certain prosecution for obstruction caused to the untouchables in the exercising of their civic rights. Supposing a law like that was made, and supposing that in any particular province the sentiment in favour of the abolition of untouchability is not as genuine and as intense nor is the Government interested in seeing that the untouchables have all the civic rights which the Constitution guarantees, is it logical, is it fair that the Centre on which so much responsibility has been cast by the Constitution in the matter of untouchability, should merely pass a law and sit with folded hands, waiting and watching as to what the Provincial Governments are doing in the matter of executing all those particular laws? As everyone will remember, the execution of such a law might require the establishing of additional police, special machinery for taking down if the offence was made cognizable, for prosecution and for all costs of administrative matters without which the law could not be made good. Should not the Centre which enacts a law of this character have the authority to execute it? I would like to know if there is anybody who can say that on a matter of such vital importance, the Centre should do nothing more than enact a law.

Let me give you another illustration. We have got in this country the practice of child marriage against which there has been so much sentiment and so much outcry. Laws have been passed by the Centre. They are left to be executed by the provinces. We all know what the effect has been as a result of this dichotomy between legislative authority resting in one Government and executive authority resting in the other. I understand (and I think my friend Pandit Bhargava who has been such a staunch supporter of this matter has been stating always in this House) that notwithstanding the legislation, child marriages are as rampant as they were. Is it not desirable that the Centre which is so much interested in putting down these evils should have some authority for executing laws of this character? Should it merely allow the provinces the liberty to do what they liked with the legislation made by Parliament with such intensity of feeling and such keen desire of putting it into effect? Take, for instance, another case—Factory Legislation. I can remember very well when I was the Labour Member of the Government of India cases after cases in which it was reported that no Provincial Government or at

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least a good many of them were not prepared to establish Factory Inspectors and to appoint them in order to see that the Factory Laws were properly executed. Is it desirable that the labour legislations of the Central Government should be mere paper legislations with no effect given to them? How can effect be given to them unless the Centre has got some authority to make good the administration of laws which it makes? I therefore submit that having regard to the cases which I have cited—and I have no doubt honourable Members will remember many more cases after their own experience—that a large part of legislation which the Centre makes in the concurrent field remains merely a paper legislation, for the simple reason that the Centre cannot execute its own laws. I think it is a crying situation which ought to be rectified which the proviso seeks to do.

There is one other point which I would like to mention and it is this. Really speaking, the Provincial Governments ought to welcome this proviso because there is a certain sort of financial anomaly in the existing position. For the Centre to make laws and leave to provinces the administration means imposing certain financial burdens on the provinces which is involved in the employment of the machinery for the carrying out of those laws. When the Centre takes upon itself the responsibility of the executing of those laws, to that extent the provinces are relieved of any financial burden and I should have thought from that point of view this proviso should be a welcome additional relief which the provinces seek so badly. I therefore submit, Sir, that for the reasons I have given, the proviso contains a principle which this House would do well to endorse. (*Cheers*).

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

The question is:

"That with reference to amendment No. 1289 of the List of Amendments, in sub-clause (a) of clause (1) of article 60, between the words 'Parliament has' and the word 'power', the word 'exclusive' be inserted."

The amendment was negatived

Mr. Vice-President: The question is:

"That with reference to amendment No. 1289 in proviso to clause (1) of article 60, the words 'or in any law made by Parliament' be deleted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That with reference to amendment No. 1289 after clause (1) of article 60 the following clause be inserted :

'(1a) Any power of Parliament to make laws for a State with respect to any matter specified in entries 25 to 37 of the Concurrent List shall include power to make laws as respects a State conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties upon the Government of India or officers and authorities of the Government of India as respects that matter, notwithstanding that it is one with respect to which the Legislature of the State also has power to make laws.' "

The amendment was negatived.

Mr. Vice-President: The question is:

"That the proviso to clause (1) of article 60 be deleted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That article 60 stand part of the Constitution."

The motion was adopted.

Article 60 was added to the Constitution.

Article 61

Mr. Vice President: The motion before the House is:

"That article 61 form part of the Constitution."

The first amendment, No. 1294, by Mr. Baig may be moved.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): Mr. Vice-President, I beg to move:

"That for the existing Clause (1) of article 61, the following be substituted:

'1(a) There shall be a Council of Ministers to aid and advise the President in the exercise of his functions,

(b) The Council shall consist of fifteen ministers elected by the elected members of both the Houses of Parliament from among themselves in accordance with the system of proportional representation by means of a single transferable vote, and one of the ministers shall be elected as Prime Minister, in like manner."

Sir, the purpose of moving this amendment is-firstly, to secure in the executive i.e., the Cabinet, proper representatives and secondly, to secure representatives from all sections of the people. The method by which ministers are appointed to the cabinet as envisaged in the Draft Constitution and as has been the practice in the past under the Government of India Act, 1935, and previous thereto also, is that the leader of the party which has been returned in majority is called upon by the Governor or the Governor-General, as the case may be, and he is asked to form a government; and he chooses his colleagues in the Cabinet. That is the practice in the past and that is what is envisaged in this Draft, and that is in accordance with the form of government in what is called parliamentary democracy. My conception of democracy is not the conception of democracy as can be considered, or as can be gauged from the system of government called parliamentary democracy. According to me, parliamentary democracy is not democracy at all. Democracy, according to me, is not a rule by mere majority; but it is rule by deliberation, by methods of deliberation on any particular matter, by taking into consideration all sections, who make up the people in general. Now, let us see what actually happens, at the time of the formation of a cabinet. Take for instance, the case of a parliament consisting of 200 members. If 105 members were returned by a particular party, one of the members who is elected as the leader out of the 105—and he may have been elected by a majority of only 60, he is called by the President and is asked to form the Government. That is, out of two hundred members, the man who gets 60 votes is called by the President to form the government and he becomes the Prime Minister and this Prime Minister chooses his own men without reference to the will and to the opinion of his own party, or of the members of the Parliament. He may choose his own men. He is really in great difficulty sometimes. If he chooses a certain member as his Minister, there are others who are up against him; but he has been given the choice. So the net result is.....

Shri H. V. Kamath (C.P. and Berar: General): Sir, on a point of order. The second part of the amendment moved by Mr. Baig relates to the appointment of Ministers which forms the subject matter of article 62. So it cannot be moved as an amendment to article 61.

Mr. Vice-President: There is an amendment, I understand, which will cover your objection.

Mahboob Ali Baig Sahib Bahadur: Therefore, Sir, according to the Draft Constitution, the person who is supported by 60 persons out of a membership of 200 persons belonging to the House.....

Mr. Vice-President: Mr. Kamath will please turn to amendment No. 1302 standing in the name of Mr. Baig, and he will get the requisite information to answer his objection.

Mahboob Ali Baig Sahib Bahadur: He is called upon to form the Cabinet. He might choose any person as his Minister, who, in the opinion of his own party, may not be suitable for a ministership, not even taking into consideration the opinion of the entire House. Therefore, my submission is that this kind of appointment of the Executive to rule over the country is anything but democratic. In the first place, as I said, they are not chosen by the entire House consisting of 200 persons, and even the Leader who is called the Prime Minister and who forms the Cabinet is not elected by a majority of the House, and in the case of other members of the Cabinet, they are not chosen at all by the people.

It may, however, be said that the party has been returned in a majority and therefore the Leader has got the right to choose his men. But I submit, Sir, that it is by a legal fiction that these members of the Cabinet are chosen. It may so happen that if election takes place in the case of individual ministers, they may not be elected at all. Shall we then call these Ministers—the Ministers of the people? Can we say that they have been elected in a democratic way, and appointed in a democratic way? Surely not. It is only by a legal fiction that they are there. Therefore, my submission is that it is not the democratic way.

Still, it is said that parliamentary democracy has been a success in England and other places and so on and so forth. My submission is that I do not agree with the statement that that is parliamentary democracy at all. Sir, I am rather amused, though I am very much concerned also when people say that parliamentary democracy based upon party politics is the best method. I must say that this kind of democracy obtaining in what is called parliamentary democracy is far from being democratic, and all the ills and all the evils of the internal revolutions and internal changes in governments in Europe, specially, are due to these political parties, one political party coming into power and the other political party trying to pull it down. That is what is happening there. Can we not have democracy without parties and without any political parties? My conception of the future politics is non-party politics.....

An Honourable Member: Communal parties.

Mahboob Ali Baig Sahib Bahadur: Certainly not, Sir. You are wrong. Do not be obsessed with that idea; the sooner you get rid of it the better.

Mr. Vice-President: Mr. Baig, please address the Chair.

Mahboob Ali Baig Sahib Bahadur: I am addressing you, Sir. It is the tendency amongst some of our Friends that whenever a man, belonging to a different religion than them, speaks he has to be heckled. That is unfortunate. But I am propounding the idea whether we cannot have non-party politics.

Shri Algu Rai Shastri (United Provinces: General): It is a narrow-minded party politics view that you are propounding.

Mahboob Ali Baig Sahib Bahadur: If my friend wants an instance, I can quote him the instance of Switzerland. In that country you have not got what are called political parties being returned there. There, after members

are elected to the Parliament, they elect their own Ministers to the Cabinet. That is what has been happening there and for the last several centuries you have not had any revolutions in that country. There has been no such thing like one party coming into power and suppressing or oppressing another party and all that sort of thing.

What was the concept on of democracy in the past? In those days it was not political parties that formed governments. Non-party politics prevailed and the best men were chosen from all sections of the people. They were sent to Parliament and these Members of Parliament themselves chose their rulers and executives.

Now, Sir, the reason why persons belonging to one political party are nervous about the party in power is that each political party is trying to retain power and when it is in power it exercises that power to oppress and suppress all other parties. Such things should not be. The only political party we should have is the party that works for the welfare of the country. If our representatives that are sent to the legislatures and to Parliament sit together and deliberate about which is the best method of democracy and promulgate laws which are beneficial to the people, be it for nationalization or for any other purpose, where is the necessity, I ask, then for political parties?

Pandit Thakur Dass Bhargava (East Punjab: General): How will you ensure collective responsibility?

Shri Algu Rai Shastri: How will you ensure collective responsibility? That is the question.

Mahboob Ali Baig Sahib Bahadur: When there are no political parties, the Cabinet that will be chosen will be non-political and the only aim before their mind will be the welfare of the country and they will co-operate with one another for that purpose. That is my conception. Therefore, as I submitted, the present method by which the Prime Minister and the members of the Cabinet are chosen is something which cannot be called democratic, because all the members do not have a hand in choosing the Premier. Their own party men have the right to choose and even in the party, if the leader gets one vote more than his opponent, he becomes the leader and it is he who chooses the other members of the Cabinet. Therefore, the appointment of these Ministers to the Cabinet is something which is undemocratic and cannot be called democratic at all. That is the first point I would like to urge.

In the second place, I am visualising to myself how to get rid of all the nervousness and troubles that countries have in this world on account of such political parties, such as, the Communist Party, the Socialist Party and the Democratic Socialist Party, all of which come into existence, each with its own programme, and when in power, in order to retain that power, suppress and oppress others. There is no necessity for all this. Every party or group will proclaim that its programme is the best for the country. But when the aim is the good and welfare of the country, is there any necessity for any division amongst the persons calling themselves as members of the Socialist Party, the Democratic Socialist Party, the Communist Party, and so on? So, from that point of view, I am visualising a state of things in which the members who are sent by the people should choose their own men and elect them to the legislatures. That is the democratic method.

Therefore I move that due consideration may be paid to my point of view and I hope that Members will not be so uncharitable as to stigmatise this because I am a Mussalman and think I have something else in my mind. There is nothing ulterior in my mind at all. We are entitled to talk on general topics without being accused of ill motives.

Shri R. V. Dhulekar (United Provinces: General): May I know from you whether Switzerland is a country or a cosmopolitan hotel?

Mr. Vice-President: You need not answer that question. The next amendment is in the name of Prof. K. T. Shah—amendment No. 1295.

The Honourable Shri K. Santhanam (Madras: General): There is a similar amendment in his name, amendment No. 1300, and that may be moved also.

Mr. Vice-President: I wish to inform the honourable Member that there are certain amendments to this amendment.

So will the honourable Member move the amendments as I call them out: Prof. Shah—amendment No. 1295.

Prof. K. T. Shah (Bihar: General): Sir, I move:

"That in clause (1) of article 61, the words 'with the Prime Minister at the head' be deleted."

The article as amended would read:

"There shall be a Council of Ministers to aid and advise the President in the exercise of his functions."

In suggesting that the designation of the Prime Minister should be kept out of the Constitution, I am not specifically opposed to the institution of the Prime Minister. The Prime Minister as an institution has been well-known to the Constitution of England ever since Sir Robert Walpole was in charge of that office. And yet to the British Constitution even today he is not known. All the social status, official prestige, and other precedence he has got is by way of Orders in Council, than by a specific provision in the Constitution.

Mr. Tajamul Husain (Bihar: Muslim): May I know from Prof. Shah that, though he says that the Constitution of England does not know whether the Prime Minister exists, is it not a fact that the whole world knows that there is a Prime Minister of England?

Prof. K. T. Shah: I have not said that the Prime Minister as an institution should be abolished. But I am only suggesting that he should be kept out of the Constitution. That does not mean that he should not be known as Prime Minister, or he should not exist in fact. Nothing of the kind. It only means that, as far as the Constitution goes, the Ministers should be described as Ministers by themselves; and any separate importance or status or description should be kept out of the Constitution to permit a degree of flexibility, which may otherwise be lacking.

A Minister of Finance we do not describe here as a Minister of Finance likewise in the case of a Minister of Defence, though there may be Minister of Defence, we do not provide for one specifically in the Constitution. Similarly, there will be the Prime Minister, without the Constitution providing for that office in so many words or describing him as such, and making him an integral part of the Constitution. In fact, of course, we should always have a Prime Minister.

As I started by saying, Sir, the institution of the Prime Minister is a very useful one, and may serve as a machinery for holding together a party: a means to expedite business, regulate and distribute work and, in many other ways, be a useful help in working the Constitution.

But on the theoretical side of the Constitution, I submit it is not absolutely necessary—and I rather think it is not even desirable—that we should insist upon the retention of the Prime Minister *qua* Prime Minister, as the head of the Council of Ministers.

The second reason I have for suggesting this amendment is that I regard the Ministers to be not only equal amongst themselves, but because, if for any reason, the Prime Minister may be unwelcome or any of his colleagues becomes unwelcome, we should not be obliged to have a complete change of the entire Ministry. The power which this Constitution as a Constitution

seeks to confer upon the Prime Minister makes it inevitable that a degree of power will concentrate in his hands, which may very likely militate against the working of a real, responsible and democratic Government.

It may be,—it has often happened,—that only a particular Minister is unwelcome on a particular occasion; or that a particular policy of Government is unwelcome. Now, if only a particular Minister is unwelcome, I personally think it is undesirable to sacrifice the whole Cabinet under the doctrine of collective responsibility, which comes on later in this article. We should rather provide for the possibility of dropping one or another Minister, without the necessity of changing the entire Cabinet. It may be that with the authority that the Prime Minister will possess, he will still be able to drop out one Minister, and yet carry on the Government as a collective Cabinet, substituting the entire Ministry by another.

I consider, however, that the danger becomes greater when the Prime Minister himself may be the object of such want of confidence or unpopularity. At such a moment the Prime Minister should have the right, against perhaps the majority of his own colleagues, to dissolve Parliament, or rather the House of the People; and at least have a chance of one more delay to vindicate himself if he so desires.

I hold the view, Sir, that this would not only be in the interests of real, responsible and democratic Government functioning; but also in the interests of the Ministry concerned, or its policy. Accordingly, I have put forward this amendment, which, however, I repeat, does not by convention make it impossible for the Prime-Ministership continuing, nor exclude the powers and functions which we now associate with the Prime Minister being vested in one such Minister. I commend the amendment to the House.

Mr. Vice-President: Amendment No. 1296 standing in the name of Shri Ram Narayan Singh. The Member is absent.

(The amendment was not moved.)

Then, amendments Nos. 1297 and 1298 standing in the names of Mr. Mohd. Tahir and Saiyid Jafar Imam. They may be moved together.

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

"That at the end of clause (1) of article 61 the following be inserted :

'Except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.' "

If this amendment is accepted, then the article will read thus:

"There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion."

Now, my second amendment is as follows:—

"That the following new clause be inserted after clause (1) of article 61 and the existing clause (2) be renumbered as clause (3) :

'(2) If any question arises whether any matter is or is not a matter as respects which the President is by or under this Constitution required to act in his discretion, the decision of the President in his discretion, shall be final and the validity of any thing done by the President shall not be called in question on the ground that he ought or ought not to have acted in his discretion.' "

In moving these amendments, I want that the President of India, although he is a 'nominal President' in the words of my honourable Friend Mr. Kamath, still I want that the President should not be tied down all round. At least this House should be generous enough to give him the freedom of using his discretionary powers. In introducing this exception, I would submit that it is not a novel exception; if you will be pleased to look at article 143 of the

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Draft Constitution you will find that the same exception has been allowed in respect of the Governors and the Ministers of the State. When the Governors of the States have been given power to exercise certain powers in their discretion, I do not see any reason why this innocent power should not be granted to the President of India.

I need not make any long speech in this connection. I close my speech with the hope that my honourable Friend Dr. Ambedkar will consider this question seriously and decide in favour of my amendments. With these few words, Sir, I move.

Mr. Vice-President: Then there are amendments Nos. 1299 and 1300 by Prof. K. T. Shah.

Prof. K. T. Shah: May I move both of them together? There is a further amendment to one of them.

Mr. Vice-President: Yes.

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

"That at the end of clause (2) of article 61, the words 'except by the High Court of Parliament when trying a President under section 50' be inserted."

As advised by you, I will also move my amendment No. 1300 now.

I beg to move:

"That after clause (2) of article 61, the following new clauses be inserted :—

(2A) On every change in the Council of Ministers, and particularly on every change of the holder of Prime-Ministership, the Prime Minister (alternatively, the President) shall present the new minister as the case may be to the People's House of Parliament, and shall ask for a vote of confidence from that body in the particular minister newly appointed. In the event of an adverse vote in the case of a particular minister, the minister concerned shall forthwith cease to hold office and a new minister appointed. If a vote of confidence in the Council of Ministers collectively is refused, the Council as a whole shall resign and a new Ministry formed in its place.

(2B) Every minister shall, at the time of his appointment, be either an elected member of one or the other House of Parliament, or shall seek election and be elected member of one or the other House within not more than six months from the date of his appointment, provided that no one elected at the time of a General Election, and appointed minister within less than six months of the date of the General Election, shall be liable to seek election.

(2C) No one who is not an elected member of either House of Parliament shall be appointed minister unless he gets elected to one or the other House of Parliament within six months of the date of his appointment.

(2D) Not less than two-thirds of the members of the Council of Ministers shall at any time be members of the People's House of Parliament; and not more than one-third of the members of the Council of Ministers shall at any time be members of the Council of States. Members of the Council of Ministers may have such assistance in the shape of Deputy Ministers or Parliamentary Secretaries as Parliament may by law from time to time determine, provided that no one shall be appointed Deputy Minister or Parliamentary Secretary who at the time of his appointment was not an elected member of either House of Parliament, or who is not elected within six months of the date of his appointment to a seat in one or the other House of Parliament.

(2E) No one shall be appointed Minister or Deputy Minister or Parliamentary Secretary, who has been convicted of treason, or of any offence against the sovereignty, security, or integrity of the State, or of any offence involving moral turpitude and of bribery and corruption and liable to a maximum punishment of two years' rigorous punishment."

Mr. Vice-President: The honourable Member may move amendment No. 47 in List IV of the Fifth Week.

Prof. K. T. Shah: I beg to move:

"That in amendment No. 1300, just moved by me, at the end of clause (2E), the following be added :—

'Every Minister shall, before entering upon the functions of his office, declare all his right, interest or title in or to any property, business, industry, trade or profession, and shall divest himself of the same either by selling all or any such right, interest, or title in or to any property, business, industry, trade or profession in open market or to Government at the market price; and further, shall take an oath ever to consider exclusively the interests of the country and not seek to promote his own interest or aggrandisement of his family in any act he may do or appointment he may have to make.' "

Sir, with regard to amendment No. 1299, I would like it to be realised that, ordinarily, the advice that any Minister may have tendered to the President should be regarded as strictly confidential, and, therefore, not open to enquiry in any ordinary manner. But if and when it should happen that either the President or any Minister is on trial, particularly the President, and Parliament has ordered an enquiry either by itself in the process of impeachment, or caused any such enquiry to be made, it is necessary in the interests of justice, where particularly the very advice tendered is in question, whether or not the Constitution has been followed or violated, then it is but right and proper that the High Court or Parliament should be entitled to enquire into the question as to what advice was tendered.

The question would turn, in such an event, upon a question both of fact and of opinion; and the fact in that case would be the advice given to the President, who can, under the scheme of this Constitution, always plead that he acted in accordance with the advice of his Minister. If the advice is not to be enquired into by anybody, then I think it would go hard with the President, when and if he should be impeached, that he is not able to produce his best defence in the shape of the advice which his Minister gave him. On that ground, I think the amendment I have suggested would meet such a contingency, and as such ought to be accepted.

As regards the next amendment, I would like to point out that it deals with three or four important matters, which I do not find equally clearly provided in this Constitution and in this place. The Ministers being collectively responsible to the legislature, it is obvious that they must be members of that body. Later on in this Constitution, there are clauses dealing with the legislatures in which some provisions of that kind occur. To those clauses I have the honour of giving notice of some amendments. But here, I think, is the proper place where we should insert a definite provision, that the Ministers who are responsible to Parliament should have a seat at the time of the formation of the Ministry in the Parliament, in either House of Parliament; or that, if they have no such seat, then within six months of their appointment as Ministers, they should find seats. This is a very simple proposition, conformable to the practice prevailing in widely popular Constitutions, like that of England; and as such ought to find no opposition.

Sir, the other matter that I have suggested is not an absolute one. I have only suggested that not less than two-thirds of the members of the Council of Ministers should at any time be members of the House of the People. The House of the People should obviously have a greater importance, since a vote of confidence in that body alone would sustain the Ministry. That being so, the presence of a considerable majority of Ministers in that House is I think of the utmost importance. The other House, being an equal partner or concurrent in most of the functions of Parliament, it follows that that body should also have a certain number of Ministers present therein, who would be able to explain the Government point of view or the Ministry's point of view to that body. Therefore I have suggested that not less than two-thirds should be present in the Lower House, and not more than one-third in the Upper House or the Council of States. This also corresponds roughly with the membership, under this Constitution, of the House of the People and of the Council of

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States respectively. I, therefore, think that that particular amendment also should not in any way be objected to.

The point further that Ministers, whatever they call themselves, should be entitled to assistance by way of Parliamentary Secretaries and Deputy Ministers is a matter of convenience in parliamentary procedure. It is necessary that, by the mere absence or inability to attend for any Minister owing to overcrowded time with public business for the Chief or any other Ministers, it may not happen that the House has in it no one to explain the Ministry's point of view in regard to any matter that is coming before the House. The Constitution should accordingly provide for or facilitate the appointment of such parliamentary assistance as is contemplated in this clause of my amendment in the shape of Deputy Ministers or Parliamentary Secretaries as they may be called.

Obviously these Ministers would not be Ministers of the same rank as the Chief or Cabinet Ministers. They should be expressly and clearly declared by the Constitution to be only aides, or assistants, to the Cabinet Ministers in charge of the various departments of State. But their appointment must be specifically provided for in the Constitution, and not be left to the exigency of the moment for a particular Ministry.

The number and the exact functions of these assistant Ministers may be determined by Parliament from time to time, so that these appointments would not be a mere matter of executive decree which Parliament need not confirm, or may not be required to confirm.

The doctrine of collective responsibility that this article is based upon would require, in my opinion, that the vote of confidence of the House should be available for each new appointment, and also for the collective Ministry as well when first appointed; and if the vote is not forthcoming, the Minister or the Ministry should resign and a new one appointed in his or its place.

Lastly, Sir, is the question of rectitude of the Ministers concerned in their official duties. On an earlier occasion; while dealing with the President, I had the honour of making the suggestion that the President should declare all his right, title and interest in any business, property, trade or industry, that he may have held or carried on before election; and that such right, title, etc., should be either sold or be disposed of; or should be made over to be held in trust by the Government during the period that he holds the office of President. I was told, Sir, at that time that the President being more or less a figurehead or ornamental chief executive of the State, as he would have no powers which may at all injure the interests of the State, it would be unnecessary to compel him to disclose his right, title and interest, to require the same to be disposed or to be made over to the Government to be held in trust for him during his term of office. At that time I was further told that if such a suggestion were made in regard to the executive authority proper, viz., the Ministry, then perhaps it may be considered.

I am not so foolish as to believe that this very guarded statement,—I cannot call it an assurance,—would be strictly acted upon, particularly as I have the misfortune to put forward that idea. Taking, however, the Draftsman to be also the spokesman in this matter, may I venture to remind him of his very guarded and carefully worded assurance—I would hardly call it an assurance—or the observation that he had made, and ask him to consider this question favourably at least at this stage; and to see whether, if not in my words, at least in some other words, some such assurance may be given so that the Ministers, the real executive heads of the country, may be free from temptation, and may devote themselves exclusively to the interests of the country, without thinking of themselves or of their families. I hope this amendment will be accepted.

Mr. Vice-President: There is an amendment to this amendment: No. 46 in the name of Mr. Kamath.

Shri H. V. Kamath: Mr. Vice-President, Sir, I move:

"That in amendment No. 1309 of the List of amendments, in the proposed new clause (2E), all the words occurring after the words 'moral turpitude' be deleted."

My Friend, Prof. Shah, has just moved amendment No. 1300 comprising five sub-clauses. I dare say neither Dr. Ambedkar nor any of my other honourable Friends in this House will question the principle which is sought to be embodied in Clause (2E) of amendment No. 1300 moved by Prof. Shah. I have suggested my amendment No. 46 seeking to delete all the words occurring after the words "moral turpitude" because I think that bribery and corruption are offences which involve moral turpitude. I think that moral turpitude covers bribery, corruption and many other cognate offences as well. Sir, my friends here will, I am sure, agree with me that it will hardly redound to the credit of any government if that government includes in its fold any minister who has had a shady past or about whose character or integrity there is any widespread suspicion. I hope that no such event or occurrence will take place in our country, but some of the recent events have created a little doubt in my mind. I refer, Sir, to a little comment, a little article, which appeared in the Free Press Journal of Bombay dated the 8th September 1948 relating to the **** Ministry. The relevant portion of the article runs thus:

"The Cabinet (the * * * * Cabinet) includes one person who is a convicted blackmarketeer, and although it is said that his disabilities, resulting from his conviction in a Court of Law, which constituted a formidable hurdle in the way of his inclusion in the interim Government, were graciously removed by the Maharaja."

Mr. Vice-President: I did not hear you. Otherwise I would not have allowed you to quote any names.

Shri H. V. Kamath: I am only reading from a written article in a paper.

Mr. Vice-President: I am helpless now. I would not have allowed you to give the name of the State but I would have allowed you to read the extract.

SHRI H. V. KAMATH: "Although the disabilities were graciously removed by the Maharaja, how can the public forgive and forget his sin against society? How can a Government, having in their fold such elements, be called a popular Government? Inclusion of such elements, apart from being a mockery of democracy would blot out the prestige of Government, and would consequently fail at its very inception to create enthusiasm and confidence in the public mind. Will this anomaly be rectified before it is too late?'

I do not know if this was absolutely justified, but then to give even a handle to newspapers writing in this fashion about any Ministry or any Government is certainly not creditable to the Government nor is it in the public interest. I do not know whether this anomaly was rectified later on. I hope that it will be a disqualification imposed on any prospective Minister of any State or in the Central Government of our country.

It may be argued that this particular amendment has no place here and we might as well prescribe this disqualification in article 83 which relates to the disqualifications of a member of the House of the People, because a Minister will be chosen from among the Members of the House of the People, but there is one difficulty in this matter, which I would request Dr. Ambedkar to clear in the course of his reply to this debate. Article 83 as it stands, includes no disqualification of this nature. There is an omnibus sub-clause in it which reads:

"(e) if he is so disqualified by or under any law made by Parliament."

[Shri H. V. Kamath]

Certainly I visualise the possibility, nay, the certainty of Parliament prescribing various disqualifications, but certainly that Parliament will assemble after the elections under the New Constitution, after perhaps Ministries have been formed in the States and in the Centre, and therefore, if article 83 does not specifically lay down the disqualifications for the Members of the House of the People or the Ministers, we cannot be certain that certain persons who have been guilty or who have been suspected of certain offences will be excluded from the membership of a Cabinet in a State or at the Centre, because Parliament if it takes cognizance of this particular aspect of the matter; after Governments have been formed in the State and at the Centre, will certainly meet and pass a law, but that will be subsequent to the formation of the Government in the States and in the Centre. Therefore, at the very inception or initiation of this Constitution, we must have provision in this regard imposing disqualifications with regard to the Members of State or the Central Cabinets.

I, therefore, Sir, move this amendment to the effect supporting Prof. K. T. Shah's amendment, [the last part of it, (2E) of 1300] and I move that the words occurring after the words "moral turpitude" be deleted, because their import is comprised in the words "moral turpitude".

Mr. Vice-President: Before I call upon the next Member who has an amendment in his name, I would like to have the permission of the House to this effect that in our official proceedings when the extract from that paper occurs, the name of the State should be represented by stars. Is the necessary permission given? It would look more dignified. We have got to keep up the prestige of this House and that is one way of doing it.

Shri H. V. Kamath: I have no objection.

Mr. Tajamul Husain: No one has any objection.

Mr. Vice-President: Thank you.

(Amendment No. 1301 was not moved.)

Mr. Vice-President: The article is now open for general discussion.

(To Shri Mahavir Tyagi) There are a large number of Members who want to speak, and I therefore ask you to be as brief as possible.

Shri Mahavir Tyagi (United Provinces: General): Mr. Vice-President, Sir, I do not want to take more time of this House, but I would like to point out one thing. My honourable Friend, Mr. Mahboob Ali Baig has suggested that the Cabinet should be elected by the House on the basis of the single transferable vote system. It seems to be quite a good thing to use such high sounding words everywhere, but my friend forgets that it was to avoid the evil of two or three or, as my friend suggests, fifteen minds working separately in a Cabinet that we had to undertake such a tremendous sacrifice. The country had only recently the experience of a cabinet in which there were two parties working together. If the Cabinet were not so evilly composed by the British, we should not have partitioned India into two. We have given away the best and the most precious part of our land, and have separated willingly. We have obtained this unanimity in the Cabinet at a very great price indeed, and at a very great cost. Thousands of our friends and citizens of this country were killed and massacred on the other side, and thousands of equally good people, who were quite innocent, were killed on this side too. After all that has happened and after this bitter and bloody experience of ours, does my friend still insist on composing a cabinet in which there will be so many parties represented? An election by the single transferable vote means that any man who has 30 votes at his command will come into the Cabinet which deals with the highest priority secrets of the State; it decides upon budgets; it has so many treaties

and other important functions to perform. Do you mean to suggest that as many parties as there are in the House should all come into the Cabinet, so that they may never decide an issue or keep a secret? Are we going to throw ourselves into such a chaotic condition as to have a Cabinet which will not be of one mind? Sir, I do not want to dilate on it. The House understands that no Cabinet can live even for a day if all the members of the Cabinet are not of one mind.

Then again, my honourable Friend, Prof. K. T. Shah proposes that whenever a Minister is appointed by the Premier, he should seek the vote of confidence of the House. Although obviously this is true, like the Premier all other Ministers must also have the confidence of the House, but then again, there is one point slightly finer and that is if every member of the Cabinet is required to seek votes for himself or is put to trial on the first day he is appointed. It will mean that only such persons will be Ministers as will have their own followings and personal parties in the House. Such a minister will have a tendency to keep his personal party always alive and active and aloof. In fact when a Minister comes and joins a Cabinet, he merges his whole self, and all his influence into the Cabinet. He has no voice of his own; he speaks the voice of the Premier and acts according to the decisions of the Cabinet. In the Cabinet he has no personal entity left because he becomes absolutely one with the whole Cabinet. If there are 15 ministers, every one of them becomes an indivisible part of the whole Cabinet. The Premier speaks for himself and his Cabinet, and the Ministers for the Cabinet and the Premier. So under these conditions if the amendment of Prof. K. T. Shah is accepted it will virtually mean that the Premier will be on trial whenever another Minister is appointed. It is always a vote of confidence in the Premier. The House can appoint only one Premier. And once a Premier is appointed, he then takes into his Cabinet colleagues of his own choice with whom he can share all the secrets and responsibilities of the State.

How can he allow every Minister to keep a separate circle of his own personal influence in the House? If the Ministers will have such sort of relationships with the Members, the Cabinet will be open to all sorts of corruption because no one can keep a number of members always ready to back him as his pocket Borough, unless he tries to appease them. It is always unhealthy and undemocratic that Ministers should be allowed to retain their own small influences in the House. In a democracy, it is the majority party which is given the power to rule, to administer. The majority party decides upon a Premier, because the wish of the whole country is that such and such a party will rule. The Cabinet therefore has to be loyal to the majority party which has the mandate of the people to run the Government on their behalf. The administration shall be run on the lines of the manifesto which has been approved by the general electorate. Therefore, I submit that the Cabinet must be of one mind, and it could be of one mind only when all the members come through the Premier and look upto him and not to the House for their sanction. They must be popular in the House; but they must be popular to bring strength to the Premier, to bring strength to the party and not popular individually. Every Minister pools his personal strength, influence and following together with his colleagues completely, and thus enjoys the loyalty of and draws his strength from a much bigger group of members in the House. I therefore submit that both these amendments will stultify the whole fabric of democratic Constitution. This type of group-cabinet has nowhere been tried so far. I therefore press that both the amendments must be opposed on principle and I oppose the amendments.

Mr. Vice-President: Mr. Raj Bahadur from Matsya Union. I would request you to be brief because there are a number of Members who want to speak.

Mr. Tajamul Husain: Five minutes to each, Sir.

Shri Raj Bahadur (United States of Matsya): Mr. Vice-President, Sir, I join my honourable Friend Shri Mahavir Tyagi, in opposing the amendment that has been moved by Mr. Mahboob Ali Baig. Mr. Mahboob Ali Baig has put forward an amendment which unfortunately shows a tendency on the part of some of the Members in this House to get back somehow the spirit of separatism and division by one method or another. It is unfortunate that despite the generous attitude that the Congress party as the majority party has shown towards all the minority parties in general and the Muslim minority in particular, such like things should come in. I see within and behind the lines of this amendment a devise to introduce the evil of communalism and separatism by the back-door method. (*Hear, hear*).

I submit that Mr. Mahboob Ali Baig has advanced three main arguments in favour of his amendment. Firstly, he says that Parliamentary democracy is an evil and it is no democracy at all." I am surprised to hear such a categorical statement, made on the floor of this House. We know that Parliamentary democracy has been on the anvil of experience during the course of three hundred years in one country at least, and we also know that leaving certain notable exceptions almost all the countries of the world are today trying to achieve and progress towards the attainment of Parliamentary democracy. It is too late in the day therefore to curse Parliamentary democracy as an evil. He says that it would be unfortunate, if a majority of sixty per cent should be allowed to rule one hundred per cent of the population. I would submit that all acts in human society have got to be judged and decided on the principle of "*summum bonum*", greatest good of the greatest number, and that judgment of decision could be made by the electorate as such on the basis of majority of votes only. To say that the type of democracy that obtains in Switzerland would suit our requirements is not to state the whole truth at all. Nor would it be a sound proposition. We know that in Switzerland three distinct nationalities, German, French and Italian combined together in a confederacy. It was done in order to suit the exigencies of their own situation. I would submit that the type of democracy in Switzerland would not suit our requirements at all. We have had some taste of it in the days when the Muslim League Party, through the "good offices" of Lord Wavell entered into a sort of coalition with the Congress Party. What ensued thereupon is recent history. We know how from top to bottom the virus of separatism and communalism permeated the rank and file of the services and the entire body politic. We know how difficult it became to make any progress. We know how we could not execute or implement any schemes of policies. The result of all this was that the country had to be partitioned. We are not going to repeat the same experiment again. I would submit in the end that it is only meet and proper that we should cast away our prejudices and bias, if any, against the unity or the unification of the country. With these words, I oppose the amendment that has been put forth by my honourable Friend Mr. Mahboob Ali Baig.

Mr. Tajamul Husain: Sir, I shall be very brief in my statement. I take up first amendment number 1294 moved by my honourable Friend Mr. Mahboob Ali Baig. Now, article 61 says: "There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions." Mr. Mahboob Ali Baig's amendment is that there shall be fifteen Ministers and secondly, that they should be elected in accordance with the system of proportional representation by means of the single transferable vote. He does not mention that the Prime Minister will be the head of this Cabinet. These are his three main objections to this article. I do not agree with the amendment of my honourable Friend Mr. Mahboob Ali Baig. (*Hear, hear*). The first point is that he wants the number of Ministers to be fixed

in the Constitution. How can we fix the number? He wants fifteen Ministers. Suppose we require only ten, what are we to do with the other five? Suppose we require twenty, we cannot appoint them. Therefore, I say, Sir, that it is absurd to fix the number of Ministers in the Constitution. There is no Constitution in the whole world which fixes the number of Ministers. It is for the Parliament, it is for the Cabinet itself to find out how many Ministers are required for the work.

As regards proportional representation, Sir, what would be the result? Article 61 contemplates that after the general election, the party which is in a majority will elect its leader and that leader will be called upon by the President or the Governor-General, whoever he may be, to form the Ministry. He will be called the Chief Minister or the Prime Minister and he will submit the names to the President. If you have, Sir, election by means of the single transferable vote and proportional representation, a man may be elected who does not see eye to eye with the majority party. What will happen then? Every country wants a smooth working of the Constitution, (*Interruption*) in day to day working. I submit that it would be absurd. Then, you must have Coalition Government every time whether a particular party is in the majority or not.

In England you had a Coalition Ministry. Because at one time when the Labour Party came to power they had not an absolute majority on account of the existence of other parties—the Liberals and Conservatives—and they formed Coalition Ministry for the purposes of the First Great War and the Second Great World War. But to have Coalition Ministry everyday is absurd. Therefore I oppose this. The next amendment is of Prof. Shah who does not want that the Prime Minister should be the Head. Everywhere Prime Ministers are the Head. So I oppose this. The Article says—

"There shall be a Council of ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions."

My friend says the Prime Minister shall not be at the Head. I don't agree, Sir. In England the Prime Minister is the Head. This is the English system and it has been working satisfactorily for a number of years. My friend says that there is no mention of it in their Constitution but I submit that they never had a Constituent Assembly. The Constitution evolved itself. They did not have a Prime Minister in those days. It gradually grew and they found that the office of the Prime Minister at the head of the Cabinet was absolutely essential and they have got him now and it is working quite satisfactorily and it is right to have it under our Constitution also. Therefore I oppose that amendment also.

Now I come to No. 1297 by Mr. Tahir. Sir, the article says that the Council of Ministers will advise the President. The amendment says:

"Except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion."

Sir, I do not accept this.

Kazi Syed Karimuddin (C. P. and Berar: Muslim): Is he replying on behalf of Dr. Ambedkar?

Mr. Tajamul Husain: Sir, I am not replying on behalf of Dr. Ambedkar or anybody else. I am speaking what actually I feel should be done. I have supported many amendments moved by Dr. Ambedkar and I have opposed many amendments moved by him. My friend Mr. Karimuddin never opposed any amendment of Dr. Ambedkar, but I did. So it does not mean that I am supporting Dr. Ambedkar. I do not know which amendment Dr. Ambedkar is

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going to accept. If my friend Mr. Karimuddin knows beforehand what is going to be accepted by Dr. Ambedkar, then he must be in the confidence of Dr. Ambedkar.

Mr. Vice-President: Order, order. Mr. Tajamul Husain, if I were there, I would not mind this kind of interruption. You go on with your speech and do not mind the observations of your friends.

Mr. Tajamul Husain: I will go on with my speech; but sometimes one has to reply to baseless allegations. I am sorry I am taking more time of the House that I ought to have. Now I come to No. 1297 by Mr. Tahir. He wants that when the President wants to exercise his individual discretion, then the Cabinet shall not give him advice. Sir, I oppose this one also. We do not want the President or the Governor to use his individual discretion at all. In those days when the British were here they wanted to safeguard their own interest under the Government of India Act, 1935. That was absolutely necessary under that Act to check the Congress Ministries in their opinion, but now every thing has changed. His Majesty the King of England does not exercise his individual discretion at all. He merely follows the advice tendered by the Cabinet. If he does not accept the advice, he must go and not the Cabinet. Ultimately he will have to go. Therefore we have been mostly following the British Constitution which has worked so well—and I am also an admirer of the British Constitution—I think that there should be no question of individual discretion at all. If advice is tendered by the Cabinet, the President must accept that. Now, amendment No. 1298.

Mr. Vice-President: That will be blocked if 1297 is rejected and so you need not touch upon it.

Mr. Tajamul Husain: I now come to Prof. Shah's amendment. His first amendment is that every time the Minister or the Prime Minister is appointed or elected as the case may be, he should seek a vote of confidence from the House. This is a novel procedure. I have not heard anywhere that such procedure is being adopted. A new man has come; you must give him a trial. If you find after a time that he is not working to your liking, remove him. But why, everytime the Prime Minister is appointed, should he be brought before the House and ask for a vote of confidence? This should not be accepted. His amendment No. 2 is that every minister must be an elected member of either House and if he is not, he should seek election within six months. I accept this amendment. (*Interruption*).

Yesterday I used the words "I support my own amendment". There was a fling at me. Now I used the word 'I accept this amendment'. Because we all are one.

Even now in the Provincial Legislatures a nominated member of the Upper House may be appointed as Minister. We do not want that. We want him to be elected. This is reasonable.

The third amendment is that not less than two-thirds of the members of the Council of Ministers shall at any time be members of the House of the People and not more than one-third of the Council of Ministers shall at any time be members of the Council of States. I am not prepared to agree to this. I do not accept it and I do not support it; I oppose it. Supposing the majority party in the House of the People—we shall call it the Conservative Party, the Congress must go and the Congress will go and there will be Labour, Conservtive and some other parties on economic basis—supposing there is a Conservative party in Lower House which is in majority and is asked to form the Ministry and the Leader of the Party is asked to form a Ministry by the President. This amendment says he must get one-third at least from the

Council of States. Supposing in the Upper Chamber you have not got one-third of that party, what will happen. That will mean having people who are not of the same view. That is also objectionable.

There should be no limit to the number. Let there be Ministers from the Lower House or from the Upper House, it does not matter. But they must all be of one party.

The next point is that Parliament may appoint Deputy Ministers and Parliamentary secretaries. That, I suppose, will be done and there is no objection to that, and I support that amendment.

Lastly, there is the statement that no one should be appointed if he is found guilty by a competent court of moral turpitude or any other offences, etc., etc., and I think that this provision is good and so I support him there.

Sir, with these words, I resume my seat.

The Honourable Shri K. Santhanam: Mr. Vice-President, Sir, the House should be a little careful in interpreting articles 61, 62, 63 and 64. They should not be interpreted literally, because they embody conventions of the cabinet system of government evolved in Great Britain as a result of a long struggle between the King and Parliament. At every stage of this struggle the King yielded some power, but was anxious to preserve his prestige. Therefore, at the end of the struggle, the King gave up all his power, but preserved all his forms. Therefore, it is said here that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. That does not mean that normally, the function of the Prime Minister is to aid or advise the President in the exercise of his functions. In fact, the position is altogether opposite, or the reverse. It is the Prime Minister's business with the support of the Council of Ministers, to rule the country and the President may be permitted now and then, to aid and advise the Council of Ministers. Therefore, we should look at the substance and not at the mere phraseology, which is the result of conventions. Of course, it may be asked why we should adopt these conventions, and why we should not put them into precise legal language. It might have been desirable to do so, but I do admit that it would not be easy, because the Prime Minister and the Council of Ministers are entities depending upon the confidence of the House which may vary from day to day, and at any moment it may cease to have confidence in them. Therefore, to embody the position of the Prime Minister and the Council of Ministers in the Constitution may bring about a degree of rigidity which may be inconsistent with the elasticity of the cabinet system of government. The greatest advantage of the British type is its elasticity. So long as the Prime Minister and the Council of Ministers have got the confidence of the House, they are absolutely sovereign and they can do anything, but the day they lose that confidence, they become weaker and weaker and no one can say what their position will be at any particular moment. It is to embody this fluid position that we have had to adopt the words of the British convention. Therefore, there is no use interpreting them literally and then finding fault with them. Take for instance, clause (2) "The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court."

Now, my friend Prof. K. T. Shah has an amendment to this effect that there should be an exception, and that these matters can be enquired into, when there is an impeachment, by the High Court of Parliament. First of all, to speak of the High Court of Parliament is to obscure the language of the Constitution, because Parliament is something different, it is not a court at all. Normally no advice is tendered by the ministers to the President at all. They simply pass orders. They come to decisions and they execute the decisions. Therefore,

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there can be no question of impeachment of a President for any advice given by the Prime Minister or the Council of Ministers. Therefore there is no question of taking that advice into consideration in matters of impeachment.

Now, Sir, I wish to say one or two words regarding the amendments which have been moved. I do not think it is right to suggest that Mr. Baig's amendment is based on any communal or other calculations. It is one of the recognised systems of government. The Swiss system, for instance, believes in an elected executive. It is something between the American executive and the Parliamentary executive. Therefore, though there is no presidential system, there is a sort of stable executive. In certain circumstances, that system may be advantageous. But for a country like India which is very big and which has very wide and diverse interests and the Parliament of which may consist of violently opposed elements, it cannot be a suitable system. It is on that ground and not on any *mala-fide* motives that it should be rejected.

Sir, Prof. K. T. Shah has been fighting such a lonely battle that I hardly like to criticise him. But he has taken upon himself too much of a task and that too quite unnecessarily. If he had concentrated on specific points, he might have carried greater weight. As it is, he has allowed himself to table such long amendments which I believe he has not been able to scrutinise himself. Take for instance amendment No. 1300 (2C). He says:

"No one who is not an elected member of either House of Parliament shall be appointed minister unless he gets elected to one or the other House of Parliament wihtin six months of the date of his appointment."

Now, when is the minister to be appointed? When does the period of six months begin? Before he is appointed, he must be elected, and before he is elected, six months may pass. So it is an obvious absurdity. Apparently, he has not had time to look into it. When he tables many amendments on matters which should be the result of careful consideration of committees, naturally he lets himself down. Whenever we are considering a complicated constitution of this type, individual members will have to content themselves with pointing out particular points and stressing particular amendments, instead of trying to re-draft the entire constitution. It is merely taking up the time of the House without adding to its knowledge and I humbly make the suggestion to Prof. K. T. Shah to concentrate on points where it will be practicable to improve the Constitution without trying to put forward an alternative constitution.

Thank you, Sir.

Mr. Vice-President: Dr. Ambedkar.

Shri Lakshminarayan Sahu (Orissa: General): Sir, this is a very important article on which I would like to.....

Mr. Vice-President: I know there are many Members who would like to speak on this article, but the time at the disposal of the House is extremely limited and I also feel that it has been sufficiently debated on.

Shri Lakshminarayan Sahu: But, Sir,.....

Mr. Vice-President: Kindly do not try to over-rule the Chair. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, I am sorry I cannot accept any of the amendments which have been tabled, either by Mr. Baig or Mr. Tahir or Prof. K. T. Shah. In reply to the points that they have made in support of the amendments they have moved, I would like to state my position as briefly as I can.

Mr. Mahboob Ali Baig's amendment falls into two parts. The first part of his amendment seeks to fix the number of the Cabinet Ministers. According

to him they should be fifteen. The second part of his proposition is that the Members of the Cabinet must not be appointed by the Prime Minister or the President on the advice of the Prime Minister but should be chosen by the House by proportional representation.

Now, Sir, the first part of his amendment is obviously impracticable. It is not possible at the very outset to set out a fixed number for the Cabinet. It may be that the Prime Minister may find it possible to carry on the administration of the country with a much less number than fifteen. There is no reason why the Constitution should burden him with fifteen Ministers when he does not want as many as are fixed by the Constitution. It may be that the business of the Government may grow so enormously big that fifteen may be too small a number. There may be the necessity of appointing more members than fifteen. There again it will be wrong on the part of the Constitution to limit the number of Ministers and to prevent him from appointing such number as the requirements of the case may call upon to do so.

With regard to the second amendment, namely, that the Ministers should not be appointed by the President on the advice of the Prime Minister, but should be chosen by proportional representation, I have not been able to understand exactly what is the underlying purpose he has in mind. So far I was able to follow his arguments, he said the method prescribed in the Draft Constitution was undemocratic. Well, I do not understand why it is undemocratic to permit a Prime Minister, who is chosen by the people, to appoint Ministers from a House which is also chosen on adult suffrage, or by people who are chosen on the basis of adult suffrage. I fail to understand why that system is undemocratic. But I suspect that the purpose underlying his amendment is to enable minorities to secure representation in the Cabinet. Now if that is so, I sympathise with the object he has in view, because I realise that a great deal of good administration, so to say, depends upon the fact as to in whose hands the administration vests. If it is controlled by a certain group, there is no doubt about it that the administration will function in the interests of the group represented by that particular body of people in control of administration. Therefore, there is nothing wrong in proposing that the method of choosing the Cabinet should be such that it should permit members of the minority communities to be included in the Cabinet. I do not think that that aim is either unworthy or there is something in it to be ashamed of. But I would like to draw the attention of my friend, Mr. Mahboob Ali Baig, that his purpose would be achieved by an addition which the Drafting Committee proposes to make of a schedule which is called Schedule 3-A. It will be seen that we have in the Draft Constitution introduced one schedule called Schedule 4 which contains the Instrument of Instructions to the Governor as to how he has to exercise his discretionary powers in the matter of administration. We have, analogous to that, decided to move an amendment in order to introduce another schedule which also contains a similar Instrument of Instructions to the President. One of the clauses in the proposed Instrument of Instructions will be this:

"In making appointment to his Council of Ministers, the President shall use his best endeavours to select his Ministers in the following manner, that is to say, to appoint a person who has been found by him to be most likely to command a stable majority in Parliament as the Prime Minister, and then to appoint on the advice of the Prime Minister those persons, including so far as practicable, members of minority communities, who will best be in a position collectively to command the confidence of Parliament."

I think this Instrument of Instructions will serve the purpose, if that is the purpose which Mr. Mahboob Ali Baig has in his mind in moving his amendment. I do not think it is possible to make any statutory provision for the inclusion of members of particular communities in the Cabinet. That, I think, would not be possible, in view of the fact that our Constitution, as proposed, contains the principle of collective responsibility, and there is no

[The Honourable Dr. B. R. Ambedkar]

use foisting upon the Prime Minister a colleague simply because he happens to be the member of a particular minority community, but who does not agree with the fundamentals of the policy which the Prime Minister and his party have committed themselves to.

Coming to the amendment of my friend, Mr. Tahir, he wants to lay down that the President shall not be bound to accept the advice of the Ministers where he has discretionary functions to perform. It seems to me that Mr. Tahir has merely bodily copied Section 50 of the Government of India Act before it was adapted. Now, the provision contained in Section 50 of the Government of India Act as it originally stood was perfectly legitimate, because under that Act the Governor-General was by law and statute invested with certain discretionary functions, which are laid down in Sections 11, 12, 19 and several other parts of the Constitution. Here, so far as the Governor-General is concerned, he has no discretionary functions at all. Therefore, there is no case which can arise where the President would be called upon to discharge his functions without the advice of the Prime Minister or his cabinet. From that point of view the amendment is quite unnecessary. Mr. Tahir has failed to realise that all that the President will have under the new Constitution will be certain prerogatives but not functions and there is a vast deal of difference between prerogatives and functions as such.

Under a parliamentary system of Government, there are only two prerogatives which the King or the Head of the State may exercise. One is the appointment of the Prime Minister and the other is the dissolution of Parliament. With regard to the Prime Minister it is not possible to avoid vesting the discretion in the President. The only other way by which we could provide for the appointment of the Prime Minister without vesting the authority or the discretion in the President, is to require that it is the House which shall in the first instance choose its leader, and then on the choice being made by a motion or a resolution, the President should proceed to appoint the Prime Minister.

Mr. Mohd. Tahir: On a point of order, how will it explain the position of the Governors and the Ministers of the State where discretionary powers have been allowed to be used by the Governors?

The Honourable Dr. B. R. Ambedkar: The position of the Governor is exactly the same as the position of the President, and I think I need not over-elaborate that at the present moment because we will consider the whole position when we deal with the State Legislatures and the Governors. Therefore, in regard to the Prime Minister, the other thing is to allow the House to select the leader, but it seems that that is quite unnecessary. Supposing the Prime Minister made the choice of a wrong person either because he had not what is required, namely, a stable majority in the House, or because he was a *persona non-grata* with the House: the remedy lies with the House itself, because the moment the Prime Minister is appointed by the President, it would be possible for the House or any Member of the House, or a party which is opposed to the appointment of that particular individual, to table a motion of no-confidence in him and get rid of him altogether if that is the wish of the House. Therefore, one way is as good as the other and it is therefore felt desirable to leave this matter in the discretion of the President.

With regard to the dissolution of the House there again there is not any definite opinion so far as the British constitutional lawyers are concerned. There is a view held that the President, or the King, must accept the advice of the Prime Minister for a dissolution if he finds that the House has become recalcitrant or that the House does not represent the wishes of the people. There is also the other view that notwithstanding the advice of the Prime

Minister and his Cabinet, the President, if he thinks that the House has ceased to represent the wishes of the people, can *suo moto* and of his own accord dissolve the House.

I think these are purely prerogatives and they do not come within the administration of the country and as such no such provision as Mr. Tahir has suggested in his amendment is necessary to govern the exercise of the prerogatives.

Now, Sir, I come to the amendments of Prof. K. T. Shah. It is rather difficult for me to go through his long amendments and to extract what is really the *summum bonum* of each of these longish paragraphs. I have gone through them and I find that Prof. K. T. Shah wants to propose four things. One is that he does not want the Prime Minister, at any rate by statute. Secondly, he wants that every Minister on his appointment as Minister should come forward and seek a vote of confidence of the Legislature. His third proposition is that a person who is appointed as a Minister, if he does not happen to be an elected Member of the House at the time of his appointment, must seek election and be a Member within six months. His fourth proposition is that no person who has been convicted of bribery and corruption and so on and so forth shall be appointed as a Minister.

Now, Sir, I shall take each of these propositions separately. First, with regard to the Prime Minister, I have not been able to understand why, for instance, Prof. K. T. Shah thinks that the Prime Minister ought to be eliminated. If I understood him correctly, he thought that he had no objection if by convention a Prime Minister was retained as part of the executive. Well, if that is so, if Prof. K. T. Shah has no objection for convention to create a Prime Minister, I should have thought there was hardly any objection to giving statutory recognition to the position of the Prime Minister.

In England, too, as most students of constitutional law will remember, the Prime Minister was an office which was recognised only by convention. It is only in the latter stages when the Act to regulate the salaries of the Ministers of Cabinet was enacted. I believe in 1939 or so, that a statutory recognition was given to the position of the Prime Minister. Nonetheless, the Prime Minister existed.

I want to tell my friend Prof. K. T. Shah that his amendment would be absolutely fatal to the other principle which we want to enact, namely collective responsibility. All Members of the House are very keen that the Cabinet should work on the basis of collective responsibility and all agree that that is a very sound principle. But I do not know how many Members of the House realise what exactly is the machinery by which collective responsibility is enforced. Obviously, there cannot be a statutory remedy. Supposing a Minister differed from other Members of the Cabinet and gave expression to his views which were opposed to the views of the Cabinet, it would be hardly possible for the law to come in and to prosecute him for having committed a breach of what might be called collective responsibility. Obviously, there cannot be a legal sanction for collective responsibility. The only sanction through which collective responsibility can be enforced is through the Prime Minister. In my judgment collective responsibility is enforced by the enforcement of two principles. One principle is that no person shall be nominated to the Cabinet except on the advice of the Prime Minister. Secondly, no person shall be retained as a Member of the Cabinet if the Prime Minister says that he shall be dismissed. It is only when Members of the Cabinet both in the matter of their appointment as well as in the matter of their dismissal are placed under the Prime Minister, that it would be possible to realise our ideal of collective responsibility. I do not see any other means or any other way of giving effect to that principle.

[The Honourable Dr. B. R. Ambedkar]

Supposing you have no Prime Minister; what would really happen? What would happen is this, that every Minister will be subject to the control or influence of the President. It would be perfectly possible for the President who is not *ad idem* with a particular Cabinet, to deal with each Minister separately, singly, influence them and thereby cause disruption in the Cabinet. Such a thing is not impossible to imagine. Before collective responsibility was introduced in the British Parliament you remember how the English King used to disrupt the British Cabinet. He had what was called a Party of King's Friends both in the Cabinet as well as in Parliament. That sort of thing was put a stop to by collective responsibility. As I said, collective responsibility can be achieved only through the instrumentality of the Prime Minister. Therefore, the Prime Minister is really the keystone of the arch of the Cabinet and unless and until we create that office and endow that office with statutory authority to nominate and dismiss Ministers there can be no collective responsibility.

Now, Sir, with regard to the second proposition of my friend Prof. K. T. Shah that a Minister on appointment should seek a vote of confidence. I am sure that Prof. K. T. Shah will realise that there is no necessity for any such provision at all. It is true that in the early history of the British Cabinet every person who, notwithstanding the fact that he was a Member of Parliament, if he was appointed a Minister, was required to resign his seat in Parliament and to seek re-election because it was felt that a person if he is appointed a Minister will likely to be under the influence of the Crown and do things in a manner not justified by public interest. The British themselves have now given up that system; by a statute they abrogated that rule and no person or Member of Parliament who is appointed a Minister is now required to seek re-election. That provision, therefore, is quite unnecessary. As I explained a little while ago, if the Prime Minister does happen to appoint a Minister who is not worthy of the post, it would be perfectly possible for the Legislature to table a motion of no-confidence either in that particular Minister or in the whole Ministry and thereby get rid of the Prime Minister or of the Minister if the Prime Minister is not prepared to dismiss him on the call of the Legislature. Therefore, my submission is that the second proposition of Prof. K. T. Shah is also unnecessary.

With regard to his third proposition, viz., that if a person who is appointed a member of the Cabinet is not a member of the Legislature, he must become a member of the Legislature within six months, I may point out that this has been provided for in article 62 (5). This amendment is therefore unnecessary.

His last proposition is that no person who is convicted may be appointed a Minister of the State. Well, so far as his intention is concerned, it is no doubt very laudable and I do not think any Member of this House would like to differ from him on that proposition. But the whole question is this: whether we should introduce all these qualifications and disqualifications in the Constitution itself. Is it not desirable, is it not sufficient that we should trust the Prime Minister, the Legislature and the public at large watching the actions of the Ministers and the actions of the Legislature to see that no such infamous thing is done by either of them? I think this is a case which may eminently be left to the good-sense of the Prime Minister and to the good sense of the Legislature with the general public holding a watching brief upon them. I therefore say that these amendments are unnecessary.

Shri H. V. Kamath: I am afraid Dr. Ambedkar has lost sight of amendment No. 47 in List IV of the Fifth Week.

Mr. Vice-President: He is not bound to reply to everything. The reply to that amendment has been given by Mr. Tajamul Husain.

The Honourable Dr. B. R. Ambedkar: That does not require any reply. All that has to be left to the Prime Minister.

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

The question is:

"That for the existing clause (1) of article 61, the following be substituted :

'1(a) There shall be a Council of Ministers to aid and advise the President in the exercise of his functions,

(b) The Council shall consist of fifteen ministers selected by the elected members of both the Houses of Parliament from among themselves in accordance with the system of proportional representation by means of the single transferable vote, and one of the ministers, shall be elected as Prime Minister in like manner.' "

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (1) of article 61, the words 'with the Prime Minister at the head' be deleted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That at the end of clause (1) of article 61 the following be inserted :

'Except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion.' "

The amendment was negatived.

Mr. Vice-President: Amendment No. 1298 of Mr. Mohd. Tahir is blocked by the rejection of amendment No. 1297, I am not therefore putting it to vote.

I shall now put to the vote of the House amendment No. 1299 of Prof. K. T. Shah. The question is:

"That at the end of clause (2) of article 61, the words 'except by the High Court of Parliament when trying a President under section 50' be inserted."

The amendment was negatived.

Mr. Vice-President: I will now put amendment No. 1300 of Prof. Shah as amended by amendment No. 47 of List IV of the Fifth Week to vote.

The question is:

"That after clause (2) of article 61, the following new clauses be inserted :

'(2A) On every change in the Council of Ministers, and particularly on every change of the holder of Prime-Ministership, the Prime Minister (alternatively, the President) shall present the new minister as the case may be to the People's House of Parliament, and shall ask for a vote of confidence from that body in the particular minister newly appointed. In the event of an adverse vote in the case of a particular minister, the minister concerned shall forthwith cease to hold office and a new minister appointed. If a vote of confidence in the Council of Ministers collectively is refused, the Council as a whole shall resign and a new Ministry formed in its place.

(2B) Every minister shall, at the time of his appointment, be either an elected member of one or the other House of Parliament, or shall seek election and be elected member of one or the other House within not more than six months from the date of his appointment, provided that no one elected at the time of a General Election, and appointed minister within less than six months of the date of the General Election, shall be liable to seek election.

(2C) No one who is not an elected member of either House of Parliament shall be appointed minister unless he gets elected to one or the other House of Parliament within six months of the date of his appointment.

(2D) Not less than two-thirds of the members of the Council of Ministers shall at any time be members of the People's House of Parliament; and not more than one-third of the members of the Council of Ministers shall at any time be members of the Council of States. Members of the Council of Ministers may have such

[Mr. Vice-President]

assistance in the shape of Deputy Ministers or Parliamentary Secretaries as Parliament may by law from time to time determine, provided that no one shall be appointed Deputy Minister or Parliamentary Secretary who at the time of his appointment was not an elected member of either House of Parliament, or who is not elected within six months of the date of his appointment to a seat in one or the other House of Parliament.

(2E) No one shall be appointed Minister or Deputy Minister or Parliamentary Secretary, who has been convicted treason, or of any offence against the sovereignty, security, or integrity of the State, or of any offence involving moral turpitude and of bribery and corruption and liable to a maximum punishment of two years' rigorous punishment.

'Every minister shall, before entering upon the functions of his office, declare all his right, interest or title in or to any property, business, industry, trade of profession, and shall divest himself of the same either by selling all or any such right, interest, or title in or to any property, business, industry, trade or profession in open market or to Government at the market price; and further, shall take an oath ever to consider exclusively the interests of the country and not seek to promote his own interest or aggrandisement of his family in any act he may do or appointment he may have to make.' "

The amendment was negatived.

Mr. Vice-President: Amendment No. 46 of List IV is blocked. Mr. Kamath will understand why I am not putting it to vote. It is blocked by the rejection of amendment No. 1300 as amended.

Now I will put article 61 to the vote of the House.

The question is:

"That article 61 stand part of the Constitution."

The motion was adopted.

Article 61 was added to the Constitution.

Article 62

Mr. Vice-President: The House will take up for consideration article 62.

The motion is:

"That article 62 form part of the Constitution."

Mr. Mahboob Ali Baig may move amendment No. 1302. No, I see that it is blocked by the decision in regard to the previous article.

Mahboob Ali Baig Sahib Bahadur: Yes, Sir. That is so.

Mr. Vice-President: Amendment No. 1303 standing in the name of Kazi Syed Karimuddin may now be moved.

I should tell the Mover that parts (1) and (2) are blocked. He may move part (3) only.

Shri T. T. Krishnamachari: May I point out that if parts (1) and (2) of this amendment are blocked as result of the rejection of a previous amendment, the rest of the amendment cannot be moved?

Mr. Vice-President: Part (3) of the amendment may be moved. It deals with the removal of a Member of the Cabinet.

Kazi Syed Karimuddin: Sir, in view of the ruling given by you that sub-clauses (1) and (2) of my amendment are barred, it has really become difficult for me to make a speech on parts (3) and (3A).

The Honourable Shri K. Santhanam: Is it not barred by the rejection of an earlier amendment? Unless the Ministers are elected, this will not follow at all. The thing is meaningless as it is.

Kazi Syed Karimuddin: It is not meaningless.

Mr. Vice-President: Kindly let Mr. Santhanam speak.

The Honourable Shri K. Santhanam: Part (3) is consequential upon part (2). Only if (2) is accepted, part (3) can be considered. It will have no meaning otherwise. It is only if Ministers are to be elected this will arise. Here the Ministers are merely appointed by the President. Then the amendment will make them irremovable. His point is that if they are elected they should not be removed.

Kazi Syed Karimuddin: My amendment is regarding the removal of Ministers.

Shri T. T. Krishnamachari: May I point out, Sir, that if sub-clause (2) of article 62 remains and is not being omitted, part (3) of amendment No. 1303 cannot be moved. Sub-clause (2) of article 62 says: "Ministers shall hold office....., etc." If that remains, part (3) of the honourable Member's amendment, cannot have any place in it.

Mr. Vice-President: Mr. Karimuddin wants a special provision for the removal of Members of the Cabinet. Is that not so?

Kazi Syed Karimuddin: Yes.

Mr. Vice-President: Mr. Krishnamachari's contention is that this is barred. Why?

Shri T. T. Krishnamachari: If the Honourable Member wants to achieve his object, sub-clause (2) has to be omitted first. If parts (1) and (2) of his amendment are not moved, the third part would not fit in at all.

Kazi Syed Karimuddin: Parts (1) and (2) have nothing to do with part (3) of my amendment.

Mr. Vice-President: This may be interpreted as a substitute for (2) and (3). At any rate I allow him to make his point.

Kazi Syed Karimuddin: Mr. Vice-President, Sir, I move amendment for the inclusion of sub-clause of (3) and (3A):

"(3) A member of the Cabinet shall not be liable to be removed except on impeachment by the House on the ground of corruption or treason or contravention of laws of the country or deliberate adoption of policy detrimental to the interests of the State.

(3A) The procedure for such impeachment will be the same as provided in article 50."

Sir, my submission is that at present the executive machinery of the government in the country is deteriorating very fast because the legislators and all those who belong to the majority parties in the assemblies exercise very great influence on the Ministers. If the Ministers do not listen to the legislators and their supporters, the result is that they are likely to be removed. Under these circumstances it is clear that even the Congress High Command have felt that a procedure should be evolved by which the Ministers should not be compelled to accede to the requests of the legislators and their supporters. In C.P. the Honourable Pandit Misra has issued clear instructions that government servants should not allow any interference by Congressmen and their supporters. This means that in this country the executive is being influenced by those who are supporters of the party. Until the Ministers feel secure in their seats, it is possible that there will be interference in the day to day administration of the country. Therefore my submission is that, in order to have a stable and a formidable government, which would not be influenced by the people in the street or by their supporters, it is very necessary that it should not be removable by the House. I have laid down in (3) "except on impeachment on the ground of corruption or treason or contravention of the laws

[Kazi Syed Karimuddin]

of the country or deliberate adoption of policy detrimental to the interests of the State," they shall not be removed.

Shri Mahavir Tyagi: What about a no-confidence motion? Can it be moved or not?

Kazi Syed Karimuddin: No.

(Amendments Nos. 1304, 1305, 1306, 1307 and 1308 were not moved.)

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That in clause (1) of article 62, before the words 'and the other ministers' the words 'from the members of the party commanding a majority of votes in the People's House of Parliament' be inserted."

The amended clause would read:

"The Prime Minister shall be appointed by the President from among the Party commanding a majority of votes in the Peoples' House of Parliament, and the other Ministers, etc."

Sir, this is just to clarify the idea that the Ministry is not only collectively responsible to the legislature, but also that it is homogenously selected and that therefore it is guaranteed the confidence of the House. That is, I think, necessary to clarify in the Constitution itself in order to secure that the Ministry is not only stable, but is commanding the confidence of the House. Those who accept the principle of collective responsibility of the Ministry to the chosen representatives of the people, should not find any fault with this suggestion as it is only clarifying what is no doubt the intention of the whole clause, and in fact of the whole Constitution.

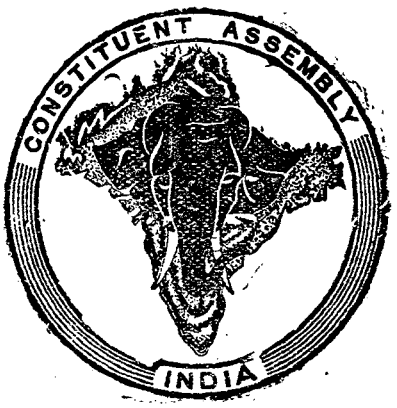
I realise that I making myself somewhat unpopular with those who do not like the number or nature of the amendments that I have put forward, or are unable to follow in the multiplicity of the clauses that I have suggested the essence of those clauses. I very much regret that I cannot help doing so, because I do not judge that my function is merely to get anything accepted by those who will not accept. None so blind as will not see, nor none so deaf as will not hear. My function, Sir, is not to get those amendments successfully through. My function is, I hold, to place my view on each point before the House; and it is for the House as a whole to accept or reject after hearing my arguments. Prophets are never honoured in their own time. I do not look upon the task that I have assigned to myself as merely to get my views successfully adopted. I am deeply grateful to my friend Mr. Santhanam, who was pleased to commisserate with me on that heavy burden I have placed on myself which he considers unnecessary. But, I repeat, Sir, I do not view my work here merely in the light of the successful acceptance of the proposals that I have been putting forward in the House. I have, under the procedure of this House to propose, not an alternative Constitution, but only amendments to each particular clause as it comes up. Accordingly, without going out of the rules, it would be impossible for me to convey to the House the ideas that I have before me. It may be very well for those who once stood for the separation of powers between the executive, the legislature and the judiciary, to change places, to think differently about it now that they may have changed their chair. I have no objection to that. But, for my part, I have never believed in the doctrine that consistency is not a virtue in politics. Consistency may not be a virtue among politicians. Unfortunately, not being able to accept that doctrine, I continue to present my ideas to the House regardless altogether of the fate with which the House might accept them. Every time I have attempted to put forward particular principles, the House is unwilling to see

eye to eye with me; but I assure you that unless I am barred altogether by a specific motion of the House that all amendments tabled by me shall be rejected even before they are moved, I will present every one of my amendments, speak on them, and abide by whatever fate they may have in the House.

Mr. Vice-President: The House stands adjourned till 10 A.M. tomorrow.

The Constituent Assembly then adjourned till Ten of the Clock on Friday, the 31st December 1948.

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CONSTITUENT ASSEMBLY OF INDIA

Friday, the 31st December 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.*)

Artical 62—(*contd.*)

Mr. Vice-President (Dr. H. C. Mookherjee): We shall now resume discussion of article 62.

(Amendments Nos. 1310 and 1311 were not moved.)

Nos. 1312 and 1329 are of similar import. No. 1329 may be moved. Dr. Ambedkar.

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

"That after clause (5) of article 62, the following new clause be inserted :-

'(5) (a) In the choice of his Ministers and the exercise of his other functions under this Constitution, the President shall be generally guided by the instructions set out in Schedule III-A, but the validity of anything done by the President shall not be called in question on the ground that it was done otherwise than in accordance with such instructions.' "

Mr. Vice-President: There is an amendment to this amendment, viz., No. 50 of List IV in the name of Mr. Naziruddin Ahmad.

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

"That in amendment No. 1329 of the List of Amendments, in the proposed new clause 5(a) all the words commencing with 'but the validity' to the end be deleted."

Sir, the amendment which has just been moved by the honourable Member Dr. Ambedkar introduces a new clause (5) (a) to article 62. It provides that the President in choosing his Ministers as well as "in the exercise of other functions" under the Constitution, would be generally guided by the Instrument of Instructions. With regard to this part of the clause I have no quarrel. But the last few lines which I have sought to omit seem to be open to serious objection. At least they require clarification. The words which I want to delete are the following—"but the validity of anything done by the President shall not be called in question on the ground that it was done otherwise than in accordance with such instructions."

I submit, Sir, that these words imply a serious encroachment on the Constitution. The earlier part of the clause affects also "other functions" under the Constitution. These words are all-embracing. In fact, the "other functions" under the Constitution mean all sorts of functions. The choice of Ministers should be a matter which should not be open to question at all. But the validity of any other functions, I submit, should not be immune from question. In fact, under the Constitution, the President would be a constitutional President. He would be acting on the advice of Ministers. So in the exercise of his other functions under the Constitution, he would be acting on the advice

[Mr. Naziruddin Ahmad]

of his Ministers. The effect of the words which I seek to delete would be that it would give the President absolute and autocratic power in the exercise of his "other functions" under the Constitution. That is too much to concede. The real effect of the President being a constitutional President would be that the Ministry or a Minister may advise the President to do anything which is not constitutional, and the effect of the words which I seek to delete would be that a clearly unconstitutional act, or which may amount even to a deliberate, open violation of the Constitution would not be open to question. The new clause says that such an act of the President "shall not be called in question". The prohibition is absolute. It cannot be called into question in any place, in any manner. It would not be open to question in a Court of law, in the legislature or anywhere else. I do not know whether any criticism in a newspaper questioning the legality or even the propriety of an act of the President would be prohibited under this clause. But the plain meaning of these words would be at any rate to shut out any discussion of it in the Legislature or in a Court of law where an unconstitutional act should be effectively challenged. I submit, Sir, that these words are too wide to be accepted. I do not suggest or believe that they were introduced to cover and protect a deliberately perpetrated unconstitutional act. I do not believe it. But the effect of these words would nevertheless be this. They would cover or protect from question in any way any act done by a Minister or by a Ministry through the President and a Minister will thereby secure a kind of protection which he should not enjoy. A Minister will be enabled to use the President as an effective shield to support an unconstitutional act. The sanctity of the Constitution would thus be seriously impaired, its authority seriously undermined, if a perfectly unconstitutional act is shut out from any kind of discussion or question, under the latter part of this clause. I submit, Sir, this is a very serious encroachment on the rights of the citizens so eloquently guaranteed with so much flourish in the Constitution. These rights would be absolutely nullified if a President can be coaxed, persuaded, on the advice of a Minister to act in an unconstitutional manner. I submit that this is an effect which is undesirable and, perhaps, not intended. I, therefore, seek the elimination of even any possibility of any question as to the unconstitutionality of an act of the President being in any way shut out. At any rate I seek clarification. I think that the rights of the citizens should be protected from this sort of encroachment under the last few lines.

Mr. Vice-President: Amendment No. 1312. Mr. Mohd. Tahir and Saiyid Jafar Imam, do you want this amendment to be put to vote?

Saiyid Jafar Imam (Bihar: Muslim): Yes.

(Amendment No. 1313 was not moved.)

Mr. Vice-President: Amendments Nos. 1314, 1315, 1316, 1317, 1319 and 1320 are all of similar import. No. 1315 seems to be the most comprehensive and may be moved. It stands in the name of Shri Damodar Swarup Seth.

(Amendment No. 1315 was not moved.)

Amendment No. 1314, standing in the name of Shri Kesava Rao may be moved.

(Amendment No. 1315 was not moved.)

Amendment No. 1316, standing in the names of Mr. Mohamed Ismail and Mr. Pocker Sahib, may be moved.

B. Pocker Sahib Bahadur (Madras: Muslim): Sir, I beg to move:

"That for clause (2) of article 62, the following be substituted :—

'(2) The ministers shall hold office so long as they enjoy the confidence of the House of the People.' "

Sir, I may at the outset say that this amendment has no communal character, and there is no political motive behind it. I have to make this statement in view of my past experience. What this amendment asks for is only to put in writing in the Constitution what is admitted to be the convention. No doubt, the convention prevails, that the Ministers shall hold office only so long as they enjoy the confidence of the House of the People. So long as the Ministers enjoy the confidence of the House of the People, certainly they will not be dismissed by the President. But as a matter of practice, it is not a fact to say that the Ministers hold office during the pleasure of the President. It is really a fiction to say that the Ministers hold office during the pleasure of the President. It is not so, as a matter of fact. No doubt, the convention prevails in Great Britain and some other countries. But when we are providing for the country a written Constitution, I do not see any reason why we should hang on to the convention to put down everything clearly in the Constitution, should we be left to quote the precedents of the United Kingdom or, the United States? There is absolutely no harm in putting on paper, in the Constitution, the actual state of affairs, namely, that the ministers shall hold office so long as they enjoy the confidence of the people. I am saying this in anticipation of the only possible objection to this amendment, viz., that it is a convention that obtains in the rest of the world and therefore it is not necessary to put it down in writing in the Constitution. As a matter of fact, I feel myself at a disadvantage on account of the procedure that is being followed; under this procedure one is not in a position to know what the objection to an amendment is until the Honourable Dr. Ambedkar gets up and states his objection. He has the last word on the subject. There is no opportunity for the Mover or any of the other members of the House to deal with the objections or tell the House whether the objections are valid or not. I am not in the least questioning the procedure. I simply state what the procedure followed is. Therefore I am driven to the necessity of anticipating what possible objection there can be to an innocent amendment like this.

From what was mentioned by the Honourable Shri K. Santhanam in connection with the discussion of article 61, I gather that this will be the possible objection, namely, that this is a convention that obtains elsewhere and therefore it will be difficult to put it down on paper and it is also unnecessary. To this anticipated objection I submit that we should not continue to be slavish hereafter too, when we have obtained our freedom. No doubt until now we have been slavishly following the convention or procedure adopted in Great Britain and in other parts of the British Commonwealth. But, having obtained freedom to do what we feel to be for the best for our country, why should we not put down our ideas in the Constitution itself? I see no reason why we should again be hanging on even hereafter to precedents and conventions obtaining elsewhere and not put down what we desire to be the law in our Constitution? The conventions referred to in other countries are there because of the fact that they have unwritten Constitutions. At least so far as these aspects are concerned, why should we leave them in an unspecified manner to be fought out in the Supreme Court? There is no necessity for that when we have an opportunity to put these down in the Constitution now. Why cannot we state this clearly? Where is the harm or danger in doing so, I cannot understand.

Sir, as I said, I have anticipated the possible objection to my amendment and I say that that is no objection at all. On the other hand, we must put down in writing clearly what the convention is.

Now, Sir, I also heartily support the amendment moved by my honourable Friend Mr. Naziruddin Ahmad for the deletion of the latter part of the amendment moved by the Honourable Dr. Ambedkar. Mr. Naziruddin's

[B. Pocker Sahib Bahadur]

amendment is to omit the words "but the validity of anything done by the President shall not be called in question on the ground that it was done otherwise than in accordance with such instructions". Mr. Naziruddin Ahmad's amendment only seeks to delete what is attempted to be taken away from that which is given by the first part of the amendment of the Honourable Dr. Ambedkar. If the latter part of the amendment of Dr. Ambedkar is not there, it will mean something. Otherwise his amendment would only be a paper amendment and a pious wish without any substance in it and helpful to nobody. Therefore I heartily support the amendment of Mr. Naziruddin Ahmad.

Now, Sir, so far as my amendment is concerned, before resuming my seat, I would only mention this: that as I have already said, I am driven to the necessity of anticipating the possible objections to it and reply thereto. Another possible objection that I can think of to my amendment is, according to the experience I have gained in the discussion on other clauses, that the amendment is communal. To that I say that this amendment is entirely non-communal and non-political and there is no other motive behind it. It affects only the constitutional aspect of the problem. Only it happens to be moved by a member who is a Muslim. I say this, Sir, because yesterday I was surprised to find that Dr. Ambedkar, in his reply to an amendment moved by Mr. K. T. M. Ahmed Shah pointed out to the House that it must be remembered that the amendments are moved and supported only by Muslims. I ask, Sir, whether an amendment or the reason behind it loses any force by the fact that the Mover is a Muslim or a Christian or a member of the Scheduled Castes or of other minority communities? I am very sorry to find that, while Dr. Ambedkar is doing very great service to the country in having undertaken this most difficult task at so much sacrifice of pushing through the Constitution, I never expected that he of all people would resort to such reasoning.

Mr. Vice-President: Please confine yourself to your amendment. You are going out of your way.

B. Pocker Sahib Bahadur: Sir, I do not want . . .

Mr. Vice-President: Kindly carry out my suggestion.

B. Pocker Sahib Bahadur: I am carrying out your suggestion. I want to say I am only appealing to the House that, in considering the validity or the propriety of this amendment, the fact that the Mover is a Muslim should not be taken into consideration. Sir, I am entitled to say that in view of what has happened with reference to the other amendments moved by some Muslim members.....

Mr. Vice-President: You need not dilate upon it.

B. Pocker Sahib Bahadur: That is right, Sir. I entirely agree. I only wanted to make that point clear; that is all. I only wished to mention that the discussion in this House should be kept at a higher level than what it would be if such kind of reasoning is adopted for opposing amendments of members of minority communities.

Mr. Mohamed Ismail Sahib (Madras: Muslim): On a point of information, Sir, may I know whether, in view of the fact that the movers of amendments have not got the right to reply and particularly in view of the fact that certain serious statements have been made by some members and also personal reflections have been cast on members, they cannot reply to them when there is an opportunity of doing so; more particularly when they have a legitimate opportunity to reply to the reflections and unjustified and unwarranted statements that were made in the House. In all legislative proceedings, the mover of a serious amendment, a substantive amendment, has got the right to reply.

at the end, but you have ruled, Sir, to the contrary, to which we submit. However, have we not got the right to reply to the statements made, when there is an opportunity and that too an opportunity which does not take the Member out of his way?

Mr. Vice-President: I certainly shall not hinder any member from replying to unjustifiable reflections. On that I am perfectly clear in my mind. At the same time I must use my powers in order to persuade members when they make such reply to use language which may not provoke irritation. It is this that was responsible for the request I made to Pocker Sahib. I think you will agree that this is the best way of proceeding with our work without unnecessary friction.

Mr. Mohamed Ismail Sahib: I quite appreciate and agree to the advice you have given, Sir, that members should not use any provocative language. That advice of yours, I hope, is addressed to all sections of the House.

Mr. Vice-President: Has the Chair ever been guilty of saying anything which is meant for one section of the House only? I do not think that has ever been the case.

Mr. Mohamed Ismail Sahib: That is what I wanted you to emphasise, Sir. This interruption of mine has been occasioned by certain provocative statements that have been made. They were quite unwarranted. Therefore I am grateful to you for saying that this advice of yours is meant not to one section but to all sections of the House. I beg your pardon for interrupting.

Mr. Vice-President: Pocker Sahib, please continue.

B. Pocker Sahib Bahadur: Sir, I would respectfully follow your advice. I do not want to make either any provocative statements or to dilate more upon the topic. I have already mentioned what I wanted to mention, viz., the fact that a particular member belongs to a particular community ought not to be a ground for stating that a particular argument has no value or should not hold water, as it proceeds from a member of a particular community. I say this particularly for the reason that it is the duty of each and every member of this House to keep the debate on a high level and we should never go down to a low level to which we will be driven if such statements are resorted to. I do not want to pursue this matter further. Sir, I move this amendment and leave it to the House to consider the same without any reference to the question that it is a Muslim who has moved it.

(Amendment No. 1317 was not moved.)

Mr. Vice-President: Amendment No. 1319. Prof. Shah, do you want it to be put to vote?

Prof. K. T. Shah (Bihar: General): Yes, Sir.

Mr. Vice-President: There is an amendment to this amendment. I allow that to be moved. No. 48 of List IV.

Mr. Naziruddin Ahmad: I desire that this also should be put to the vote.

Mr. Vice-President: Amendment No. 1320 standing in the names of Mr. Tahir and Mr. Jafar Imam. Do you want it to be put to vote?

Mr. Mohd. Tahir (Bihar: Muslim): Yes, Sir.

Mr. Vice-President: There is an amendment to this. No. 49 of List IV.

Mr. Naziruddin Ahmad: I desire that this also should be put to the vote.

(Amendments Nos. 1318 and 1321 were not moved.)

Mr. Vice-President: Amendment No. 1322 standing in the name of Mr. Mihir Lal Chattopadhyay.

Mr. Naziruddin Ahmad: On a point of order, Sir. This is a good amendment, but it is purely verbal.

Mr. Vice-President: It is a good amendment, though it is verbal. Therefore it is allowed.

Shri Mihir Lal Chattopadhyay (West Bengal: General): Mr. Vice-President, Sir, I move:

"That in clause (3) of article 62, after the word 'Council', the words 'of Ministers' be inserted."

Obviously, this is a simple amendment but I consider it to be very necessary. The word "Council' has been used in the body of the Draft Constitution in different places to express different meanings. It is desirable that in this clause nothing should be left vague and uncertain. It should be precise and definite. I hope Dr. Ambedkar and the House will have no difficulty in accepting this.

(Amendments Nos. 1323 and 1324 were not moved.)

Mr. Mohd. Tahir: Sir, I beg to move:

"That for clause (5) of article 62 the following be substituted:

'(5) A minister shall at the time of his appointment as such, be a member of the Parliament.'."

Before I submit a few words regarding my amendment I would draw the attention of the House to the existing clause of the article. Clause (5) says:

"A minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a minister."

This shows that even if a person is not a member of the Parliament he can be appointed as a minister. In this connection I would submit that it is wholly against the spirit of democracy that a person who has not been chosen by the people of the country should be appointed as a minister. When the Parliament is constituted it is evident that it will be a House consisting of more than 300 members and they will all be members elected by the people of the country and there is no reason why an outsider who is not a member of the Parliament should be appointed as a minister. It cannot be imagined that out of a total of 300 or 400 members of the Parliament the President or the Leader of the party will not be able to find out a suitable person to be taken into the ministry and hence he will be forced to choose a minister who is not a member of the Parliament. I think that it goes against the spirit of democracy; rather it cuts at the very root of democracy not to choose a minister from out of the members of the Parliament chosen by the people of the country. Therefore I submit that this clause should be replaced by my amendment.

After this I want to say a few words regarding the amendment which has been proposed by my honourable Friend Dr. Ambedkar, viz., No. 1329. On this matter I have also given notice of an amendment, No. 1312, which reads:

"In choosing his Ministers the President shall be generally guided by the instruction set out in Schedule 4(A)."

Now my friend has brought up a similar amendment, though not exactly the same thing, and has selected the Schedule to be 3(A). I would point out that Schedule 3(A) is not the proper place nor should this schedule be numbered as Schedule 3(A), because in the existing schedules we find that Schedule 4 gives the instructions to the Governors and Schedule 3 is the form of declaration. Therefore I submit that if any proper place is to be given to this schedule it can only be either Schedule 4 or 4(A). It cannot be given a place as Schedule 3(A). Besides this, in the amendment proposed by my honourable Friend the last portion, viz., "but the validity of anything done by the President shall not be called in question on the ground that it was done otherwise than in accordance with such instructions", is in fact the negation of the instruction that has been given to the President. The spirit of this schedule is that in

choosing the ministers the President should have regard to giving proper representation to the minorities in the Ministry. The instruction as has been laid down by my honourable Friend Dr. Ambedkar gives me to understand that the idea that proper representation should be given to the minorities in the Ministry cannot be met if this portion is maintained in the amendment. In fact, my honourable Friend has been very generous here to give discretionary power to the President, whereas in his speech yesterday he was clear to the House that no discretionary power should be given to the President and the House had adopted it. By this amendment, in other words, he has given some discretionary power to the President. My submission would be that the Instrument of Instructions to the President should be very simple and clear as has been laid down in my amendment and I hope my honourable Friend Dr. Ambedkar will consider it and be pleased to amend his amendment accordingly, so that the Instrument of Instructions may stand very simple and clear.

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

"That in clause (5) of article 62, for the words 'for any period of six consecutive months, is' the words 'after his appointment, is for any period of six consecutive months' be substituted."

The amended clause would then read:

"A minister, who after his appointment is for any period of six consecutive months not a member of either House of Parliament shall at the expiration of that period cease to be a minister."

This I take it must have been the intention. If for any consecutive period of six months, whether on account of his going abroad or doing other work which prevents him from being a member of the House, he is to be disqualified or that he should cease to be a minister, I think it could not have been the intention. What the intention of this clause must have been is that if a Minister is, *after* his appointment as Minister, not a member for six consecutive months, whether as originally not elected, or has not been able to find subsequently election to the House, he should cease to be a member. This, Sir, is merely a consequence of the principle of collective responsibility of a Minister, which requires every Minister to be a member of one or the other House of Parliament. As such I do not think it is necessary to present any elaborate case in support of this amendment. I commend it to the House.

Mr. Vice-President: There is an amendment to this amendment, No. 71 of list V standing in the name of Mr. Krishnamachari. Does he move it?

Shri T. T. Krishnamachari (Madras: General): Mr. Vice-President, Sir, I beg to move:

"That in amendment No. 1326 of the List of Amendments for the word 'after' (in the words proposed to be substituted), the words 'from the date of' be substituted."

If this amendment is accepted, it will read: "from the date of his appointment, is for any period of six consecutive months" and so on. This is a very minor amendment. It makes the meaning very precise and indicates from when the six months will operate. I trust the House will accept it.

Shri H. V. Kamath (C. P. and Berar: General): May I suggest to my Friend Mr. Krishnamachari that consistently with the import and meaning of his amendment, the word "any" should be substituted by the word "a". The word "any" makes no sense in this context.

Shri T. T. Krishnamachari: Personally I have no objection, though I do not think it will make any material difference.

(Amendment No. 1327 was not moved.)

Prof. Shibban Lal Saksena (United Provinces: General): Sir, I beg to move:

"That in clause (5) of article 62, for the words 'either House of Parliament' the words 'House of the People' be substituted."

[Prof. Shibban Lal Saksena]

This has been further amended by my amendment to this amendment No. 72 of list V. I beg to move:

"That for amendment No. 1328 of the List of Amendments the following be substituted:

'That in clause (5) of article 62, for the words "is not a member" the words "is not an elected member" be substituted.'"

This is an amendment of a fundamental character. We have provided in the Constitution for nomination of twelve members to the Council of States. There will be twelve members who are nominated in that Council and in the Lower House Anglo-Indians will also be nominated. According to this clause (5) as it stands, members who have not been returned by the electorate shall be able to be permanent Ministers of the Government. This is altogether against all democratic methods. Formerly, I had desired that only members of the Lower House who were elected by the General Electorate should be eligible to be appointed as Ministers but after seeing the opinion of many Members I thought that my amendment should not be so extreme, but I do feel that unless everybody who is a Minister has got the confidence of the electorate, he should not be appointed as one. I therefore want that instead of "is not a member" it should be "is not an elected member". You may remember, formerly, when we were discussing the election of the President, we provided that only elected members should be entitled to vote. Now, if members nominated are not fit to vote at the Presidential election, if we do not credit them with that much responsibility, surely to be a Minister of the Government of India is a far more responsible office. The same will be the case about any Cabinet in any province. Therefore, if nominated members are not fit to vote for the President's election they are also not fit to be appointed Ministers of any Government. Every Minister who is a member of a Cabinet must seek open election and if he is returned, only then he should be appointed a Minister. Otherwise, what will happen is this. In many provinces we shall have Upper Chambers, and there too there will be nominated members and if these nominated members may become Ministers I am sure an occasion might arise when the whole Council of Ministers is composed of nominated members excepting perhaps the Prime Minister. That will be a very extraordinary situation indeed. It would be a complete negation of democracy. Therefore I want this question to be properly understood. Probably, this was the purpose of my honourable Friend Dr. Ambedkar and what he meant was that if a Minister does not become a member of either House within six months, he ceases to be a Minister. By this, he surely meant that he should be elected and I would very much welcome it from him if that is his purpose, and I expect he will accept my amendment. I hope in this way he will see that Government is absolved from the charge that in our Constitution there could be Cabinets where except the Prime Minister all the Ministers are nominated. Especially in the State legislatures, as at present provided about two-thirds of the members in the Upper Chamber shall be nominated and if any Prime Minister thinks of nominating only those members, then the whole Cabinet will become a sort of nominated Cabinet and that surely is utterly against democratic principles. Similarly, in the Central Parliament also, the twelve members whom the President may nominate may be persons the majority of whom may be appointed to the Cabinet. It may be that such a thing may not arise, but it is quite possible and we should see that no Prime Minister is able to allow his power to be so misused. I therefore think that the addition of the word "elected member" would make the whole thing perfectly right. I hope Dr. Ambedkar will accept this amendment. Sir, I move.

(Amendments Nos. 1330 and 1331 were not moved.)

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That after clause (6) of article 62, the following new clause be inserted :

'(7) Every Minister shall, before he enters upon the functions and responsibilities of his office, make a declaration and take steps in regard to any right, title, corresponding to those provided in this Constitution for the President and Vice-President, and shall take an oath—or make a solemn declaration—in the presence of the President and of his colleagues in the following form.' "

Sir, I see that the form is not printed here. I do not know whether it was some separate slip that I had given which is left out or forgotten or has been lost, but the oath actually suggested has not been printed. I hope, Sir, that would not be an objection.

Mr. Vice-President: That will not be an objection. At the same time, I have to make it clear that the form has not been received by the office.

Prof. K. T. Shah: I may have forgotten. I am not blaming the office. The form is one which I have read on the former occasion, Sir. I have not got that paper here, but I can say from memory.

Mr. Vice-President: You may proceed with your speech.

Prof. K. T. Shah: This, Sir, is an amendment which in principle I have been pressing for from a variety of angles, whether as regards the President or the Minister or the Prime Minister. It was to me a very painful and surprising phenomenon that yesterday, when one of the most satisfactory reasoned replies was given to one of my amendments by the Chairman of the Drafting Committee, this particular point was not answered; I do not know, whether it remained unanswered by oversight, or by deliberate omission. I had taken care to remind him that he had assured me, or at any rate, he had made a sort of promise when discussing a similar matter in regard to the President, that when or if the matter occurred in connection with the Ministers, who had the real effective executive power under this Constitution, he might consider it. I say, Sir, it was extremely surprising that such a careful, painstaking champion of the Draft should have, notwithstanding a pointed reminder, chosen to remain altogether silent and the silence was still more intriguing, when one of the honourable Members actually asked whether there was any answer to that particular point. It seems either that the Honourable the Chairman of the Drafting Committee has no answer or does not wish to answer, or has made a promise which is so embarrassing that he does not wish now to be even reminded of it.

Whatever it may be, Sir, I beg to place before this House that even in the Press that particular item seems to have been completely overlooked, whether it was by oversight just as the form is not printed here,—my mistake of course,—or for any reason, one particular most essential item that in my opinion would guarantee a purity, an honesty, an honourableness in the working of our Government seems to be killed by a strange conspiracy of silence. I trust that this is a matter, at least when we are dealing with the Ministers, that the draftsman will take note. It is not a matter of changing a comma or a semi-colon; it is not a matter of substituting ministers for Council of Ministers; it is a matter, Sir, which goes to the very foundation of the actual working of the governmental machinery; and, as such, Sir, I hope that those who have it in their power to mould, form, and shape this Constitution, to put it into a proper wording, and to give it a sound working character, will appreciate the desire with which the principle is placed before them from one angle and another, with a view to make them realise that we do stand in need of some such provision in our Constitution.

I was advised, Sir, yesterday from a high authority, that if I had not taken upon myself this unnecessary task of putting forward amendments to every clause, and if I had concentrated myself on a few principles, I might have proved more useful. Sir, I do not measure the usefulness of my amendments

[Prof. K. T. Shah]

by the number of them which are carried. I measure the usefulness of my amendments merely by the degree of thought and interest or opposition I provoke; and, as such, I feel perfectly satisfied, whether or not they are accepted, if the honourable Members, including Ministers of the Government of India, are given furiously to think in the matter; and have to reply specifically to points of that character. Here, however, Sir, is a case in which I seem to have, whether consciously or unconsciously, accepted and acted upto such an honourable and exalted advice; and appear to have concentrated myself on this principle. On this I have been labouring time and again, from one angle and another. And yet what is the fate? Failure, of course, to persuade the drafting and piloting block to see eye to eye with me. There is no possibility of an effective reply. There is no gainsaying the desirability of the points I am making. And yet not only do I get no reply; the very point I urged is suppressed or blacked out even in the press. And this conspiracy of silence, to say the least, is amazing. I trust on this occasion the silence will be broken; I trust on this occasion I will be given, what has been called "a crushing reply". And I trust this time, at any rate, the reply will be so crushing that I will cease to put forward, at least to this House, this kind of amendment.

Mr. Vice-President: There is an amendment to this amendment. It is No. 51 of List No. IV and stands in the name of Mr. H. V. Kamath.

Shri H. V. Kamath: Sir, I move:—

That for amendment No. 1332 just moved by my honourable Friend, Prof. K. T. Shah, the following be substituted:—

"That after clause (6) of article 62, the following new clause be inserted:

'(7) Every minister including the Prime Minister shall, before he enters upon his office, make a full disclosure to Parliament of any interest, right, share, property or title he may have in any enterprise, business or trade, directly owned or controlled by the State, or which is in any way aided, protected or subsidised by the State; and Parliament may deal with the matter in such manner as it may, in the circumstances, deem necessary or appropriate.'"

My amendment, Sir, does not go as far my honourable Friend, Prof. K. T. Shah's goes. I only seek through this amendment that a minister before he enters upon his office shall disclose to Parliament whatever share, interest or title he may have in any business or enterprise that may be owned, controlled or subsidised by Government and I leave it to Parliament to deal with the matter as best as it can. It may call upon him to sell it to Government; Parliament may call upon him to make it over to be administered in trust for him or the Reserve Bank may hold it in safe trust. I leave it to Parliament as our sovereign legislature to decide the best course that may be adopted in the circumstances for dealing with this particular matter.

I would, by your leave, Sir, like to read from the Factory Act, to which I referred in a previous occasion, the Act which we passed during the last session of the Legislative Assembly. There is a section, Section 8 in this Factory Act, of 1948, which provides for the appointment of Factory Inspectors and one clause of this section is to the effect:—

"No person shall be appointed as Factory Inspector or having been so appointed shall continue to hold office, who is or becomes directly or indirectly interested in the factory or in any process or business carried on therein, or in any patent or machinery connected therewith:"

Sir, there is another section, Section 10, providing for the appointment of Factory Doctors, Certifying Surgeons. That also provides that:

"Certifying Surgeon. No person shall be appointed to be or authorised to exercise the powers of a Certifying Surgeon, or having been so appointed or authorised, continue to exercise such powers, who is or becomes an occupier of a factory or is or becomes directly or indirectly interested therein or in any process or business carried on therein or in any patent or machinery connected therewith or is otherwise in the employ of the factory."

Now, it is obvious, it is plain as a pikestaff, that the relationship of a Minister of State is far more intimate, is fraught with far greater possibilities for good or for evil than the relationship of a Factory Inspector or Certifying Surgeon to his particular factory or any connected business. What is sauce for the goose must be sauce for the gander as well. If this principle is applied on a larger scale, I do not see why this principle laid down for the Factory Inspector and Certifying Surgeon in the Factories Act should not be applied to Ministers of State.

You will permit, me, Sir, to remind the House of what Dr. Ambedkar told us a couple of days ago when replying to the debate on Article 47. I hope I have his leave as well to remind the House and remind him too about the words he used when replying to that debate. Referring to an amendment regarding a similar provision for the President to declare to Parliament and to divest himself of all right, interest, share or title in any business or enterprise owned or controlled, subsidised or aided by the State, Dr. Ambedkar said, "If at all such a provision is necessary, it should be with regard to the Prime Minister and the other Ministers of State, because, it is they who are in complete control of the administration of the State. If any person under the Government of India has any opportunity of aggrandising himself, it is either the Prime Minister or the Ministers of State and such a provision;—mark his words—such a provision ought to have been made—he did not say may be made, he said 'ought to have been' imposed—on their tenure and not on the President." I hope Dr. Ambedkar will reply to this particular amendment after great consideration and in detail and I hope he will not find a way out of the tangle that might have been caused by the words, by the language that he employed on a previous occasion. I hope he will stick to the views which he expressed only a couple of days ago, not a year or two ago, and I hope during these two days, he has not been prevailed upon, or he has not had the occasion or opportunity, or has not been persuaded to change his views in the matter. After reminding the House and Dr. Ambedkar about what he himself said a couple of days ago, I do not think there is anything more for me to say, but that Dr. Ambedkar will not hesitate to uphold his own view, not a very ancient view, but a very recent view and will see his way to accept this amendment.

(Amendment Nos. 1333, and 1334 and 1335 were not moved.)

Mr. Vice-President: The article is now open for general discussion.

It is suggested that the next two amendments Nos. 1336 and 1337 also deal with similar matters and may be taken up here. Prof. Shah, will you please move your amendment No. 1336?

Mr. Naziruddin Ahmad: That is a new article.

Prof. K. T. Shah: It is a new article; it is not an amendment.

Mr. Vice-President: Just as you please.

Prof. K. T. Shah: I am in your hands. If you ask me to move it now, I shall do so.

Mr. Vice-President: I thought the general discussion may take place together. Today, as honourable Members are aware, we have to adjourn the House at 1 p.m. in order to afford facilities to our Muslim brethren to attend the Jumma prayers. If there is no objection, I would like Prof. K. T. Shah to move his amendment now.

Shri Amiyo Kumar Ghosh (Bihar: General): Sir, this is a new article. We may dispose of article 62 first, and then take up this new article.

Mr. Vice-President: Suppose we forget the niceties of law for one occasion.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That after article 62, the following new article be inserted:

'62-A. No one shall be elected or appointed to any public office including that of the President, Governor, Minister of the Union or of any State of the Union, Judge of the Supreme Court or of any High Court in any State in the Union, who—

(a) is not able to read or write and express in the English language; or

(b) within ten years from the day when this Constitution comes into operation, is not able to read or write or express himself in the National language;

(c) or who has been found guilty at any time before such election or appointment of any offence against the safety, security or integrity of the Union; or

(d) of any offence involving moral turpitude and making him liable on conviction to a maximum punishment of two years imprisonment;

(e) or who has not, prior to such election or appointment, served in some public body, or done some form of social work, or otherwise proved his fitness, capacity and suitability for such election or appointment as may be laid down by Parliament by law in that behalf.' "

Sir, these are some of the points which, in my opinion, should be positively fulfilled; or they should negatively act as disqualification for any person to hold such exalted offices as that of the President, Minister, Governor, Judge and so on.

The points that I am making may seem at first sight to be so obvious that it may appear somewhat improper to put them in the Constitution. I am free to admit, however, that, for instance, the first item in my amendment seems to be of that category, namely ability to read or write and express himself in the English language. At the present time, Sir, however, constituted as we are, and with the absence of a national language of our own, it is important that members should be able to exchange, in some sort of a common medium of intercourse, their ideas on crucial matters in the Constitution or in any piece of legislation, or other legislative work that may come before Parliament hereafter. Judging from that point of view, and without wanting to provide that English should for ever continue to be the medium of intercourse of this country, or over this Sub-Continent, I think it but right to require that, unless persons who choose to be or who are elected to be members of either House of Parliament, are able to express themselves in some common language that others of their fellows may understand, it would be improper, it would be against the interest of the country to do so.

Opinion, Sir, I quite realize, may differ on this subject, honestly differ, perhaps very hotly differ. But I submit, Sir, that very often we are all familiar with the phenomenon in this House of speeches delivered in one language which fall absolutely meaningless upon the ears or minds of other Members of this House. It is but fair not only to those Members who cannot follow the language, but it is also in fairness to the speakers themselves, that, I submit, some common medium of expression should be used, so that everybody should be in a position to follow and do justice to the remarks. I at least do not think that any Member of this House is intended merely to raise his hands. I do believe that every member intelligently and carefully follows all that is said; and, as such, it would be a loss to the House if anything said in this House is not for mere lack of following the language or understanding the idiom in which some idea is expressed, it should be lost upon any section of the House. It is for this reason, Sir, that I make this provision in the Constitution, at least for ten years to come.

In the next clause I require a similar provision to be made for the national language. I am equally strong on the subject that once we have got over this initial hurdle once we have been able to fix upon a national language, within the given period of ten years,—and I think that period is sufficiently long for this purpose,—every member should be expected to know, or be able to read and

write and express himself in the national language. Once again, the basic logic is the same in this case as in the former, viz., that people should be able to express themselves in some common medium of speech that is understood by all their fellow members. It must therefore be made a categorical requirement that, not only we must have a National Language which is, so to say, a statutory provision more often broken than observed, but it should be a living force, so that in this House or its successor, or in the Parliament, we should be able to exchange in our own language all the thoughts, in all the fineness and technicality that such legal documents require. I think, therefore, that no further argument is necessary to support the provision of such a positive qualification from those who aspire to hold high offices in the country that I have enumerated or described in my amendment in the first or governing clause.

As regards the clause with reference to moral cleanliness of those who aspire to such offices that, again, is almost self-evident and I trust there can be and will be no opposition to accept such a provision as this. I fear that if we take things for granted, as it might be urged that in a case like this it must be taken for granted, we may land ourselves into difficulties, or embarrassments, to put it mildly, which it might be as well for us to avoid from the beginning.

Here, again, is may I say, Sir, another of those fundamental principles on which I seem to have concentrated myself as I was advised the other day on high authority, but to no avail, at least as regards some people who are otherwise convinced.

Finally, Sir, I insist upon the qualification that those who aspire to be members of such legislature, or to hold such high offices, must themselves have some positive qualifications. I am not just now thinking of purely academical qualifications. I am thinking of those more mature, deeper, fuller indices or measures of qualifications, which might be provided by constructive work, or social service, or some other work that is much more tangible evidence of fitness and suitability of such people for the posts, than mere academical qualifications. Those latter are very often the work merely of a good memory rather than of a good character, or a good general outlook on the part of the person concerned, not a means or index of judging his real, objective fitness for such responsibilities. The criteria—or indices—I am suggesting will provide better, more reliable means of judging the suitability of particular individuals for the posts they aspire to, or which they may be asked to fill.

With these words, Sir, I commend this motion to the House.

Mr. Vice-President: There are two amendments to this amendment. One is No. 52 of List IV in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: Mr. Vice-President, Sir, I beg to move:

"That in amendment No. 1336 of the List of Amendments, in the proposed new article 62-A the words 'Judge of the Supreme Court or of any High Court in any State in the Union' be deleted."

Sir, the proposed new article 62-A is of a very comprehensive character. In fact through this amendment Prof. Shah, with his characteristic thoroughness, has sought to introduce certain conditions as to public servants and specially Ministers, Presidents and even Judges of the High Court and of the Supreme Court. The test he would lay down for them are (a) that they must be able to read and write and express themselves in the English language; then perhaps alternatively, (b) they must know the national language, and (c) and (d) that they must not have been found guilty of any offence and (e) they must be of proved fitness.

Sir, with regard to the idea behind this amendment, I have nothing to say. I also support the idea. But I do consider that the Judges of the High Court

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and of the Supreme Court should be outside these tests—not that I desire that they should be illiterate or be incapable of expressing themselves in English or in the national language, or that they should have been connected of offences involving moral turpitude or that they need not have any provable fitness—far from it. But I do submit that in this very Draft Constitution itself we have provided certain standards by which the Judges of the High Court and of the Supreme Court are to be appointed. In clause (2) of article 193 we have clearly provided that a person can be appointed a Judge of the High Court only if he has been a judicial officer or an Advocate of a certain standing, and under clause (3) of article 103, no person can be appointed a Judge of the Supreme Court unless he has been a Judge of the High Court or an Advocate for a period. I believe that Advocates are at least expected to be, for any length of time that we can now foresee, literate or be capable of expressing themselves in English. At present we have a galaxy of lawyers in the House—Dr. Ambedkar, Mr. K. M. Munshi, Mr. Ananthasayanam Ayyangar and a lot of others, Alladi Krishnaswamy Ayyar (A voice: And yourself) of course my humble self. There are a lot of Advocates in the country and I believe that they will, at least for a long time to come, be literate.

It could perhaps be safely assumed that, with the spread of compulsory primary education, lawyers would be literate, and if one is not literate, he cannot be a lawyer. To be a lawyer and also an Advocate, one has to pass certain tests in literacy and commonsense. So that if one is not literate he could not be an Advocate and so he could not be appointed a Judge of a High Court and he could not also be appointed Judge of the Supreme Court.

Then with regard to their expressing themselves in the national language, I think if and when English is to be discarded, Advocates and Judges must necessarily possess the minimum literacy qualifications which are required of them and they ought to be able to express themselves in the national language. Within a foreseeable period of time, an Advocate, a Judge of the High Court or of the Supreme Court must necessarily be able to express themselves in the English language, so long as it is current, and thereafter, of course, in the national language.

I also believe that no person who is guilty of any offence involving moral turpitude can be appointed Judge of a High Court or of the Supreme Court. He would initially cease to be an Advocate and therefore cannot be appointed a Judge. A provision like this for Judges is therefore absolutely unnecessary, though we are indebted to the indefatigable labours of Mr. Kamath who disclosed here yesterday, that a Minister has been appointed in a certain area who had a previous conviction relating to black-marketing. Although Ministers of this type may be appointed, Judges cannot possibly be so appointed. I devoutly hope that we should rather cease to be a free country than contemplate even the possibility of Judges being appointed who have previous convictions for offences involving any moral turpitude or be illiterate.

Shri H. V. Kamath: Is my honourable Friend of the view that a person convicted of black-marketing may be appointed a Minister? I am astonished.

Mr. Naziruddin Ahmad: I did not express any personal view. I was careful to state that we were indebted to the labours of Mr. Kamath himself for the discovery. In fact, it was he who said yesterday that a Minister had been appointed at a certain place who had been convicted of an offence involving moral turpitude relating to black-marketing. So such an event is conceivable. Such considerations may be applicable to a Minister but not to a Judge. I therefore submit that these words relating to Judges should be deleted. In fact it would be highly insulting to the Judges of the High Court and of the Supreme Court themselves to be told that no one should be appointed a Judge

who had no literacy qualifications or who had previous convictions. These words should therefore be deleted.

Mr. Vice-President: The next amendment to this amendment is No. 73 in List V. But it is disallowed because it has previously been covered.

Then amendment No. 1337, standing in the name of Mr. Bharati.

(Amendment No. 1337 was not moved.)

Now, the article is open for general discussion. Mr. Sidhwa.

Shri R. K. Sidhwa (C. P. & Berar: General): Mr. Vice-President, Sir, this article has created a lot of discussion by way of amendments, particularly as regards clauses (1), (2) and (5). The rest of them are formal. Clause (1) relates to the appointment of the Prime Minister by the President and the former appointing his colleagues as other ministers. Several amendments have been moved which state that the President should call the person who enjoys the confidence of the House and who could form a stable ministry. Sir, this is really a very good suggestion undoubtedly and from our past experience we know that the Governors of some provinces have intentionally called, for their own convenience and for their own purpose, a person who did not enjoy the confidence of the House, and who had hardly a following of a small minority, to form a cabinet. We have got the instances of Bengal, of Assam, of Orissa, of Sind and of the Punjab. And these Governors created hell and created mischief by appointing a person who did not at all enjoy the confidence of the House. And what was the other aspect of it? When a ministry was thus formed under the 1935 Act, no session could be called, until the next budget session came, once in a year. So the man enjoyed the benefits of his Ministry for full one year, and then when the budget came, he had consolidated his position by offering various kinds of bribes and jobs to members, and showed that he enjoyed the confidence of the House. Of course, I do realise under the new constitution, conditions have changed, and in the Instrument of Instructions it is stated that the Prime Minister should be such and such who enjoys the confidence of the House—that is in Schedule III A. I know that the Schedule also forms part of the Constitution. Therefore, I say this is a good suggestion. Keeping in mind all that has happened in the past, I support this motion, for this reason that our Governors and our Presidents will not be irresponsible persons. If a President were to call a person who really did not enjoy the confidence of the House, that President would be subject to impeachment under these clauses and the Prime Minister also to dismissal.

Sir, I know that in the past, requisitions were sent to a Governor to call a session of the legislature for the purpose of a no-confidence in the ministry, but the Governor did not call such a session. But today the position is quite different. If such a mistake is committed, the President shall have to call for a session, otherwise he will be subject to many disqualifications that we have passed in the various articles. Therefore, fearing in my own mind the same apprehensions that are in the minds of honourable Members, still I do not want to take that view which existed in the past, and I support clause (1) as stated in the draft article.

The other important clause is No. (5) which states that a minister who, for any period of six consecutive months, is not a member of either House of Parliament shall at the expiration of that period cease to be a minister. Such a clause existed in the 1935 Act, and it has been borrowed from there. I wish that such a clause should not exist in our Constitution, for the simple reason that in our new legislature there will be about five hundred members, and if we cannot secure a minister with technical or expert knowledge that may be necessary, it would be a slur on the legislature if it does not contain a single person with the requisite expert knowledge. Apart from that, Sir, our whole Constitution is based on the Parliamentary system of Great Britain and in

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Great Britain elections are run on the party system. There they take care to see that persons who are likely to be Ministers, with special knowledge and who are experts, are given party tickets, and they see to it that those candidates are returned. We also shall be running, under this Constitution, similar party elections, and care should be taken to see that persons with special knowledge are given tickets to contest the seats. Sir, I do not understand why, except probably in the case of the Ministry of Law and that of Finance, where knowledge of certain special subjects is required, the other Ministers should have any special expert qualifications, except common-sense, practical knowledge, ability, perseverance, strong will, tenacity of purpose and a pushing nature. These are the qualifications that a Minister should possess, rather than mere theoretical knowledge. These are the qualifications the Ministers should possess. A man with theoretical knowledge fails as we know, in practical politics. In my opinion a man with practical knowledge is far superior to one who possesses only theoretical knowledge. Sir, even assuming that we want a person with theoretical knowledge, I am sure that the party running the elections will take care to see that such a person is given a party ticket. Further I consider it a slur on the Legislature that we should have to go outside the ranks of members for filling the post of a particular Minister. Such things have happened in the past. But hereafter it will be unnecessary to have in the Cabinet, as we have in the Legislatures, a combination of Members some of whom do not necessarily advocate the policy of the party in power. I therefore feel that this matter should be really considered from that point of view. In the British Cabinet I have not seen anyone who is not a Member of Parliament is taken in the cabinet. Whatever may have happened in the past, today this is the case. It may be argued that a non-Member would be in the Cabinet only for six months. I object for even one day an outsider to be a member of the cabinet. Why should we have for six months a non-Member who should hold office when we can find among Members suitable person? I therefore do contend that this clause should be deleted.

Now coming to the last amendment of my friend Prof. Shah, I may say it is a laudable one. There could be no objection to it. But I do feel that he has given great prominence to the English language by saying that the office of Governor, President and Ministers should be given to those persons in the first instance who know English and who, within ten years, learn the national language. My reaction to such a clause is that the President, the Governors and the Ministers should be only those who know both English and the national language at the very outset. The term of office of these dignitaries is five years and we have passed a clause laying down that the Governor shall be elected once and only once more, that is to say for ten years in all. If the Professor's amendment is accepted, it will mean that by the time a President or Governor is expected to learn the national language he would have retired. Of course I do not think it is appropriate to insert it in the Constitution. Even on merits, such a provision would be defective in that it is the national language that should be given importance and not English. We cannot, I agree, summarily reject the English language. Therefore we may provide that if a person does not know the national language along with English he should not be deemed to be qualified to hold the office of President, Governor, etc.

As far as the other clauses are concerned, particularly those relating to honesty, integrity, maximum punishment for moral turpitude and so on are concerned, I know that in the 1935 Act such provisions exist. They may well find a place in the disqualification clause for those who contest elections. It is not enough to lay down these things for the big offices only. No man who has been convicted or punished for moral turpitude would be chosen as a candidate for election. From that point of view, while the other clauses of

the amendments are commendable, I do feel, this has no place here. This may find a place in the general disqualification clause which we shall be providing in the case of the Governors, the President and even the Ministers.

With these words I support the article except clause (5) for which I have stated that the Chairman of the Drafting Committee will again reconsider in view of my suggestions. Unfortunately he was not present when I presented forceful arguments in support of my contention. Otherwise he would have certainly considered, this matter. I hope he will bear in mind my point and agree that such a clause in a Free India Constitution should not exist. With these words I commend the article for acceptance.

Shri Mahavir Tyagi (United Provinces: General): Sir, I rise to oppose this amendment. There is some misunderstanding in the minds of some of my friends here. They feel, as my friends Kazi Karimuddin, Mr. Pocker Sahib and others feel, that the Prime Minister and his Cabinet are the representatives of the House. Politically speaking, and speaking from the point of view of democracy, they are not liable to represent the House. No Prime Minister represents the House. The House is represented by the Chair here. It is only the Chair through whom the House can express itself. The Prime Minister represents the majority party in the House and therefore the Prime Minister cannot be elected by the whole House. Any person who is elected by the whole House has to represent the whole House. So, if the Prime Minister were to be elected by the whole House, then morally he would have to be responsible to the whole House. The Prime Minister is not responsible to the whole House. He is responsible only for the majority outside that has sent him here. Though he keeps in view the views of the opposite party also, he cannot be elected by the whole House. If he is to be elected by the whole House, then his position as party Leader will be gone altogether, because even those who have cast their votes in the ballot against him will claim him as their representative. Just as in the case of a constituency which elects a Member, the member thus elected is expected to represent even the views of those who voted against him, the Prime Minister also, if the whole House were to elect him, would have to represent even the party in opposition. Such an election is against the principles of a party-systemed democracy. He represents the general will of the masses outside, the vast bulk of the population who have voted his party as the party of their choice. Though he, of course, protects the minorities as a matter of duty yet he continues to represent the majority party only. The case of the President is quite different. He is elected by all the parties, which means by all the elected representatives of the people. He therefore acts as the guardian of all alike. As the head of the State, it is only through him that the general will of the people is expressed. The ministers should be made to invoke the general will. The President contains the biggest representation in him. Such a President shall therefore have the right of appointing the Ministers. We have already clarified the issue by providing in the Constitution, further on, as Instrument of Instructions to the President that when he appoints the Ministers he will see to it that they shall enjoy the confidence of the House. But the appointment should be made by the President because he is the only one person in whom the whole nation has invested its sovereignty and therefore the amendment of Mr. Pocker Sahib goes against the whole set up of democracy.

Then another amendment has been moved in which it is said that the Ministers will hold office so long as they enjoy the confidence of the House. In the Draft Constitution the position virtually comes to the same. The Ministers are appointed by the President and when that sole representative of the people appoints the Ministers, it is only he who will dispense with their services if circumstances so demand. The House is always at liberty to pass a vote of confidence or no-confidence. A vote of no-confidence in the Cabinet passed by the House is always a recommendation to the President to see that the

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Ministry should go and another appointed in its place. This point is further on enunciated in the Constitution. I therefore oppose this amendment also.

Then there is, the amendment of Prof. Shah in which he says that Ministers should know the English language for ten years, and Hindi after the next ten years. I happen to be an anarchist by faith so far as literacy is concerned. I do not believe in the present-day education. I am opposed to the notion of literacy also, even though it has its own value. If I were a boy now, I would refuse to read and write. As it was, I practically refused to read and write and hence I am a semi-literate. The majority in India are illiterate persons. Why should they be denied their share in the administration of the country? I wonder, why should literacy be considered as the supreme achievement of men. Why shoud it be made as the sole criterion for entrusting the governance of a country to a person, and why Art, Industry mechanics, Physique or Beauty be not chosen as a better criterion. Ranjit Singh was not literate. Shivaji was not literate. Akbar was not much of a literate. But all of them were administering their states very well. I submit, Sir, that we should not attach too much importance to literacy. I ask Dr. Ambedkar, does he ever write? Probably he has got writers to write for him and readers to read to him. I do not see why Ministers need read and write. Whenever they want to write anything, they can use typists. Neither reading nor writing is necessary. What is necessary is initiative, honesty, personality, integrity, intelligence and sincerity. These are the qualifications that a man should have to become a Minister. It is not literacy which is important.

Shri H. V. Kamath: Does my redoubtable friend want to keep India as illiterate as she is today?

The Honourable Dr. Ambedkar: Have you any conscientious objection against literacy?

Shri Mahavir Tyagi: No, Sir.

Shri B. H. Khandekar (Kolhapur): I wish to raise my small voice in support of the lone and indefatigable fighter, Prof. K. T. Shah. I am here to support particularly his amendment No. 1332. I want complete elimination of the possibility of corruption as far as the Ministers are concerned. I differ from him in the case of the President. I make a very great distinction between the President and the Ministers for the following reasons: The President has no executive power. Sir, the President is the one, only one, the best and the highest citizen of the country. He is the delight of crores of eyes and he is the balm of the people's heart. It is not proper to have any suspicion with regard to this real idol of the people. I am not being superstitious at all. But the Ministers are on a different footing and are very different persons. They have executive authority and they are too many comparatively. In this country, Sir, you know that some men are very great but they are very few. I remember having seen a cartoon the day before in one of the weeklies—I believe it is Shankar's—that now-a-days two persons are always found doing all the work—Pandit Jawaharlal Nehru and Sardar Patel. One or two may be added to this class but the rest are what I may call comparatively very ordinary persons.

Now, I wish honourable Members to revive their memory of their college days and to think of a very great book on political philosophy—the Republic of plato. Plato in trying to give us an ideal state, makes it incumbent on the Governors to have absolutely no personal interest in any property. He goes even further and says that Governors should not have even families. We in this country talk a lot of idealism, of very high ideals, but when it comes to actual practice, it seems to me that we fall deplorably low. If it is impossible

to carry out Plato's utopian ideas, at least we should go as far as possible to approach the ideal. I would not have been so suspicious but for the singular service rendered by my honourable Friend Mr. Kamath in giving a particular example, a deplorable case, a scandalous case from a certain State in this country where a person, although convicted for blackmarketing, became a Minister. That is really most scandalous. It is not only in the States but also in the provinces that there are so many rumours about widespread corruption. These might be rumours but you cannot have smoke without fire: as the Sanskrit saying goes:

"Yatra yatra dhoomah
Tatra tatra wahnih."

When we talk of Gandhiji and bring his name every time, let us try to be in a small measure worthy of that great man and if I were to bring in an amendment to Prof. Shah's amendment at this late hour I would go so far as to say that ministers should not only make a declaration of their interests and their property but they should also make a declaration of their relatives and friends. There is so much of favouritism, nepotism and partiality that we seem to be going down and down though we have achieved great things. I do wish to support to a certain extent the amendment moved by Prof. Shah with regard to the ministers or high officials having a knowledge of English during the transition period. It was very interesting to listen to the animated talk of Mr. Mahavir Tyagi. He was almost for the elimination of literacy and he reminded us of Shivaji and others. I merely wish to remind the House about the skit that a French King had when he heard about Abraham Lincoln's definition of democracy as being "the government of the people, by the people and for the people." The French King immediately blurted "Democracy is government of the cattle by the cattle and for the cattle." If we are going to have democracy by illiterate men, it will be a democracy as described by the French King.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, of the amendments that have been moved I am prepared to accept amendment No. 1322 and 1326 as amended by No. 71 on List V. As to the rest of the amendments I should just like to make a sort of running commentary.

These amendments raise three points. The first point relates to the term of a minister, the second relates to the qualifications of a minister and the third relates to condition for membership of a cabinet. I shall take the first point for consideration, viz., the term of a minister. On this point there are two amendments, one by Mr. Pocker and the other by Mr. Karimuddin. Mr. Pocker's amendment is that the minister shall continue in office so long as he continues to enjoy the confidence of the House, irrespective of other considerations. He may be a corrupt minister, he may be a bad minister, he may be quite incompetent, but if he happened to enjoy the confidence of the House then nobody shall be entitled to remove him from office. According to Mr. Karimuddin, the position that he has taken, if I have understood him correctly, is just the opposite. His position seems to be that the Minister shall be liable to removal only on impeachment for certain specified offences such as bribery, corruption, treason and so on, irrespective of the question whether he enjoys the confidence of the House or not. Even if a minister lost the confidence of the House, so long as there was no impeachment of that minister on the grounds that he has specified, it shall not be open either to the Prime Minister or the President to remove him from office. As the Honourable House will see both these amendments are in a certain sense inconsistent, if not contradictory. My submission is that the provision contained in sub-clause (2) of article 62 is a much better provision and covers both the points. Article 62, (2) states that the ministers shall hold office during the pleasure of the President. That means that a minister will be liable to removal on two

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grounds. One ground on which he would be liable to dismissal under the provisions contained in clause (2) of article 62 would be that he has lost the confidence of the House, and secondly, that his administration is not pure, because the word used here is "pleasure". It would be perfectly open under that particular clause of article 62 for the President to call for the removal of a particular minister on the ground that he is guilty of corruption or bribery or maladministration, although that particular minister probably is a person who enjoyed the confidence of the House. I think honourable Members will realise that the tenure of a minister must be subject not merely to one condition but to two conditions and the two conditions are purity of administration and confidence of the House. The article makes provision for both and therefore the amendments moved by my honourable Friends, Messrs. Pocker and Karimuddin are quite unnecessary.

With regard to the second point, namely the qualifications of ministers, we have three amendments. The first amendment is by Mr. Mohd. Tahir. His suggestion is that no person should be appointed a minister unless at the time of his appointment he is an elected member of the House. He does not admit the possibility of the cases covered in the proviso namely that although a person is not at the time of his appointment a member of the House, he may nonetheless be appointed as a minister in the cabinet subject to the condition that within six months he shall get himself elected to the House. The second qualification is by Prof. K. T. Shah. He said that a minister should belong to a majority party and his third qualification is that he must have a certain educational status. Now, with regard to the first point, namely, that no person shall be entitled to be appointed a Minister unless he is at the time of his appointment an elected member of the House, I think it forgets to take into consideration certain important matters which cannot be overlooked. First is this,—it is perfectly possible to imagine that a person who is otherwise competent to hold the post of a Minister has been defeated in a constituency for some reason which, although it may be perfectly good, might have annoyed the constituency and he might have incurred the displeasure of that particular constituency. It is not a reason why a member so competent as that should be not permitted to be appointed a member of the Cabinet on the assumption that he shall be able to get himself elected either from the same constituency or from another constituency. After all the privilege that is permitted is a privilege that extends only for six months. It does not confer a right to that individual to sit in the House without being elected at all. My second submission is this, that the fact that a nominated Minister is a member of the Cabinet, does not either violate the principle of collective responsibility nor does it violate the principle of confidence, because if he is a member of the Cabinet, if he is prepared to accept the policy of the Cabinet, stands part of the Cabinet and resigns with the Cabinet, when he ceases to have the confidence of the House, his membership of the Cabinet does not in any way cause any inconvenience or breach of the fundamental principles on which parliamentary government is based. Therefore, this qualification, in my judgment, is quite unnecessary.

With regard to the second qualification, namely, that a member must be a member of the majority party, I think Prof. K. T. Shah has in contemplation or believes and hopes that the electorate will always return in the election a party which will always be in majority and another party which will be in a minority but in opposition. Now, it is not permissible to make any such assumption. It would be perfectly possible and natural, that in an election the Parliament may consist of various number of parties, none of which is in a majority. How is this principle to be invoked and put into operation in a situation of this sort where there are three parties none of which has a majority?

Therefore, in a contingency of that sort the qualification laid down by Prof. K. T. Shah makes government quite impossible.

Secondly, assuming there is a majority party in the House, but there is an emergency and it is desired both on the part of the majority party as well as on the part of the minority party that party quarrels should stop during the period of the emergency, that there shall be no party government, so that government may be able to meet an emergency—in that event, again, no such situation can be met except by a coalition government and if a coalition government takes the place, *ex hypothesi* the members of a minority party must be entitled to become members of the Cabinet. Therefore, I submit that on both those grounds this amendment is not a practicable amendment.

With regard to the educational qualification, notwithstanding what they Friend Mr. Mahavir Tyagi has said on the question of literary qualification, when I asked him whether in view of the fact that he expressed himself so vehemently against literary qualification whether he has any conscientious objection to literary education, he was very glad to assure me that he has none. All the same, I wonder whether there would be any Prime Minister or President who would think it desirable to appoint a person who does not know English, assuming that English remains the official language of the business of the Executive or of Parliament. I cannot conceive of such a thing. Supposing the official language was Hindi, Hindustani or Urdu—whatever it is—in that event, I again find it impossible to think that a Prime Minister would be so stupid as to appoint a Minister who did not understand the official language of the country or of the Administration, and while therefore it is no doubt a very desirable thing to bear in mind that persons who would hold a portfolio in the Government should have proper educational qualification, I think it is rather unnecessary to incorporate this principle in the Constitution itself.

Now, I come to the third condition for the membership of a Cabinet and that is that there should be a declaration of the interests, rights and properties belonging to a Minister before he actually assumes office. This amendment moved by Prof. K. T. Shah is to some extent amended by Mr. Kamath. Now, this is not the first time that this matter has been debated in the House. It was debated at the time when similar amendments were moved with regard to the article dealing with the appointment and oath of the President and I have had a great deal to say about it at that particular time and I do not wish to repeat what I said then on this occasion. My Friend Mr. Kamath reminded me of what I said on the occasion when the article dealing with the President was debated in this House and I do remember that I did say that such a provision might be necessary.....

Shri H. V. Kamath: May I remind Dr. Ambedkar of what exactly he said? I am reading from the official type-script of the Assembly Secretariat. These are his very words:

"If any person in the Government of India has any opportunity of aggrandizing himself, it is either the Prime Minister or the Ministers of State and such a provision *ought* to have been imposed upon them for their tenure but not upon the President."

The Honourable Dr. B. R. Ambedkar: That is what I was saying. What I said was that such a provision might be necessary in the case of Ministers, and my friend Mr. Kamath also read some section from the Factory Act requiring similar qualifications for a factory inspector. Now, Sir, the position that we have to consider is this: no doubt, this is a very laudable object, namely, that the Ministers in charge should maintain the purity of administration. I do not think anybody in this House can have any quarrel over that matter. We all of us are interested in seeing that the administration is maintained at a high level, not only of efficiency but also of purity. The question really is this: what ought to be the sanctions for maintaining that purity? It seems to

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me, there are two sanctions. One is this, namely, that we should require by law and by Constitution,— if this provision is to be effective—not only that the Ministers should make a declaration of their assets and their liabilities at the time when they assume office, but we must also have two supplementary provisions. One is that every Minister on quitting office shall also make a declaration of his assets on the day on which he resigns, so that everybody who is interested in assessing whether the administration was corrupt or not during the tenure of his office should be able to see what increase there is in the assets of the Minister and whether that increase can be accounted for by the savings which he can make out of his salary. The other provision would be that if we find that a Minister's increases in his assets on the day on which he resigns are not explainable by the normal increases due to his savings, then there must be a third provision to charge the Minister for explaining how he managed to increase his assets to an abnormal degree during that period. In my judgment, if you want to make this clause effective, then there must be three provisions as I stated. One is a declaration at the outset; second is a declaration at the end of the quitting of this office; thirdly, responsibility for explaining as to how the assets have come to be so abnormal and fourthly, declaring that to be an offence followed up by a penalty or by a fine. The mere declaration at the initial state.....

Mr. Naziruddin Ahmad: How could you trace or check invisible assets or secret assets?

The Honourable Dr. B. R. Ambedkar: The whole thing is simply good for nothing, so to say. It might still be possible, notwithstanding this amendment, for the Minister to arrange the transfer of his assets during the period in such a manner that nobody might be able to know what he has done and therefore, although the object is laudable, the machinery provided is very inadequate and I say the remedy might be worse than the disease.

Shri H. V. Kamath: May I, Sir, presume that Dr. Ambedkar at least accepts the amendment in principle and that he has not resiled from the view which he propounded the other day; that he has not recanted?

The Honourable Dr. B. R. Ambedkar: I do not resile from my view at all. All I am saying is that the remedy provided is very inadequate and not effective, and therefore, I am not in a position to accept it.

Prof. Shibban Lal Saksena: Make it more comprehensive.

The Honourable Dr. B. R. Ambedkar: I cannot do it now. It was the business of those who move the amendment to make the thing fool-proof and knave-proof, but they did not.

Now, Sir, I was saying that nobody has any objection; nobody quarrels with the aim and object which is behind this amendment. The question is, what sort of sanction we should forget. As I said, the legal sanction is inadequate. Have we no other sanction at all? In my judgment, we have a better sanction for the enforcement of the purity of administration, and that is public opinion as mobilised and focussed in the Legislative Assembly. My honourable Friend, Mr. H. V. Kamath cited the illustration of the Factory Act. The reason why those disqualifications had been introduced in the case of the Factory Inspector is because public opinion cannot touch him, but public opinion is every minute glowing, so to say, against the Ministry, and if the House so desires at any time, it can make itself felt on any particular point of maladministration and remove the Ministry; and my submission, therefore, is that there is far greater sanction in the opinion and the authority of the House to enforce purity of administration, so as to nullify the necessity of having an outside legal sanction at all.

Shri Lokanath Misra (Orissa: General): Is that not a more impossible task?

The Honourable Dr. B. R. Ambedkar: Democracy has to perform many more impossible tasks. If you want democracy, you must face them.

Now, Sir, I come to the amendment of my honourable Friend, Mr. Naziruddin Ahmad. He wants the deletion of the latter part of the amendment which I moved. His objection was that if the latter part of my amendment remained, it would nullify the earlier part of my amendment, namely, the obligation of the minister to follow the directions given in the Instrument of Instructions. Yes, theoretically that is so. There again the question that arises is this. How are we going to enforce the injunctions which will be contained in the Instrument of Instructions? There are two ways open. One way is to permit the court to enquire and to adjudicate upon the validity of the thing. The other is to leave the matter to the legislature itself and to see whether by a censure motion or a motion of no confidence, it cannot compel the Ministry to give proper advice to the President and impeachment to see that the President follows that advice given by the Ministry. In my judgment, the latter is the better way of effecting our purpose and it would be unfair, inconvenient, if everything done in the House is made subject to the jurisdiction of the court, so that any recalcitrant Member may run to the Supreme Court and by a writ of injunction against the Speaker prevent him from carrying on the business of the House, unless that particular matter is decided either by the Supreme Court or the High Court as the case may be. It seems to me that that would be an intolerable interference in the work of the Assembly. Even in England the Parliament is not subject to the authority of the Court in matters of procedure and in the conduct of its own business and I think that is a very sound rule which we ought to follow, especially when it is perfectly possible for the House to see that the Instrument of Instructions is carried out in the terms in which it is intended by the President and by the Ministry. Sir, I oppose this amendment.

Prof. Shibban Lal Saksena: What about nominated members being in the Cabinet?

The Honourable Dr. B. R. Ambedkar: I have dealt with that.

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

The question is:

"That for clause (3) of article 62, the following clauses be substituted :

'(3) A member of the Cabinet shall not be liable to be removed except on impeachment by the House on the ground of corruption or treason or contravention of laws of the country or deliberate adoption of policy detrimental to the interests of the State.

(3A) The procedure for such impeachment will be the same as provided in article 50.' "

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (1) of article 62, before the words 'and the other ministers', the words 'from the members of the party commanding a majority of votes in the People's House of Parliament' be inserted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That after clause (5) of article 62, the following new clause be inserted :

'5(a) In the choice of his Ministers and the exercise of his other functions under this Constitution, the President shall be generally guided by the instructions set out in Schedule III-A, but the validity of anything done by the President shall not be called in question on the ground that it was done otherwise than in accordance with such instructions.' "

The amendment was adopted.

Mr. Naziruddin Ahmad: There is an amendment to this amendment which should be put to vote first.

Mr. Vice-President: The question is:

"That in amendment No. 1329 of the List of amendments, in the proposed new clause (5a) all the words commencing with 'but the validity' to the end be deleted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That after clause (1) the following new clause be inserted as clause (2) and the existing clauses be re-numbered :

'(2) In chosing his Ministers the President shall be generally guided by the instruction set out in Schedule 4 (A).' "

The amendment was negatived.

Mr. Vice-President: The question is:

"That for clause (2) of article 62, the following be substituted :

'(2) The ministers shall hold office so long as they enjoy the confidence of the House of the People.' "

The amendment was negatived.

Mr. Vice-President: The question is:

"That in amendment No. 1319 of the List of amendments, for the words 'People's House of Parliament' (in the words proposed to be substituted), the words 'House of the People' be substituted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 1319 standing in the name of Professor K. T. Shah.

The question is:

"That in clause (2) of article 62, for the words 'during the pleasure of the President' the words 'such time as they possess the confidence of a majority in the People's House of Parliament' be substituted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 49 in List IV standing in the name of Mr. Naziruddin Ahmad.

The question is:

"That in amendment No. 1320 of the list of amendments, for the word 'maintains' the word 'enjoys' be substituted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 1320 standing in the name of Mr. Mohamed Tahir.

The question is:

"That the following be inserted at the end of clause (2) of article 62 :

'and till such time as the Council of Ministers maintains the confidence of the Parliament.' "

The amendment was negatived.

Mr. Vice-President: Amendment No. 1322 standing in the name of Shri Mihir Lal Chattopadhyay.

The question is:

"That in clause (3) of article 62, after the word 'Council' the words 'of ministers' be inserted."

The amendment was adopted.

Mr. Vice-President: Amendment No. 1325 standing in the name of Mr. Mohamed Tahir.

The question is:

"That for clause (5) of article 62, the following be substituted:

'(5). A minister shall at the time of his appointment as such, be a member of the Parliament.' "

The amendment was negatived.

Mr. Vice-President: Amendment No. 1326 as amended by amendment No. 71 of list V as further amended by Shri Krishnamachari and Shri Kamath.

The question is:

"That in clause (5) of article 62, for the words 'for any period of six consecutive months, is' the words 'from the date of his appointment, is for a period of six consecutive months', be substituted."

The amendment was adopted.

Mr. Vice-President: Amendment No. 1328 as modified by amendment No. 72 of list V.

The question is:

"That in clause (5) of article 62, for the words 'is not a member' the words 'is not an elected member' be substituted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 1332 standing in the name of Prof. K. T. Shah.

The question is:

"That after clause (6) of article 62, the following new clause be inserted:

'(7) Every Minister shall, before he enters upon the functions and responsibilities of his office, make a declaration and take steps in regard to any right, title, corresponding to those provided in this Constitution for the President and Vice-President, and shall take an oath—or make a solemn declaration—in the presence of the President and of his colleagues in the following form.' "

The amendment was negatived.

Mr. Vice-President: Amendment No. 51 of List IV standing in the name of Mr. Kamath:

The question is:

"That for amendment No. 1332 of the List of amendments the following be substituted:

'That after clause (6) of article 62, the following new clause be inserted:

(7) Every minister including the Prime Minister shall, before he enters upon his office, make a full disclosure to Parliament of any interest, right, share, property or title he may have in any enterprise, business or trade, directly owned or controlled by the State, or which is in any way aided, protected or subsidised by the State; and Parliament may deal with the matter in such manner as it may, in the circumstances, deem necessary or appropriate.' "

The amendment was negatived.

Mr. Vice-President: Amendment No. 52 of list IV, standing in the name of Mr. Naziruddin Ahmad.

The question is:

"That in amendment No. 1336 of the list of amendments, in the proposed new article 62-A, the words 'Judge of the Supreme Court or of any High Court in any State in the Union', be deleted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 1336 standing in the name of Professor K. T. Shah.

The question is:

"That after article 62, the following new article be inserted:

'62-A. No one shall be elected or appointed to any public office including that of the President, Governor, Minister of the Union or of any State of the Union, Judge of the Supreme Court or of any High Court in any State in the Union, who—

(a) is not able to read or write and express in the English language; or

(b) within ten years from the day when this Constitution comes into operation, is not able to read or write or express himself in the National language;

(c) or who has been found guilty at any time before such election or appointment of any offence against the safety, security or integrity of the Union; or

(d) of any offence involving moral turpitude and making him liable on conviction to a maximum punishment of two years imprisonment;

(e) or who has not prior to such election or appointment, served in some public body, or done some form of social work, or otherwise proved his fitness, capacity and suitability for such election or appointment as may be laid down by Parliament by law in that behalf.'"

The amendment was negatived.

Mr. Naziruddin Ahmad: There is an amendment to this amendment. That should be put to vote first.

Mr. Vice-President: That was put to vote before. Probably, the honourable Member did not follow the proceedings closely.

The question is:

"That article 62, as amended, stand part of the Constitution."

The motion was adopted.

Article 62, as amended, was added to the Constitution.

Mr. Vice-President: We shall now pass on.....

Shri T. T. Krishnamachari: Mr. Vice-President, may I suggest that the House do take up article 67 in view of the fact that it is the desire of a number of Members of this House that these articles which relate to elections should be disposed of first, so that the election machinery might be got ready?

B. Pocker Sahib Bahadur: Mr. Vice-President, I very strongly object to the procedure suggested. As a matter of fact Members are entitled to know what is the order in which the business of the House would proceed. If all of a sudden, for the whim of any particular Member, some particular article should be taken at once, I submit, that it will put the honourable Members of this House to a great deal of inconvenience and it will be impossible for them to get on. Article 67 is a very important article and if that is to be dealt with first, it ought to be announced by you and honourable Members should have sufficient notice of such advancement and therefore, I strongly object to the suggestion made by my honourable Friend Mr. T. T. Krishnamachari.

Mr. Vice-President: I should like to remind honourable Members that the suggestion made by Mr. T. T. Krishnamachari cannot be given effect to without securing the permission of the House, which I would take in due course.

Secondly, so far as the technical objection is concerned, I should like to remind the honourable Member that in the agenda that has been sent, we have distinctly stated that a particular Part would be taken up. There is no such specification. Lastly, I should remind him that grouping of the amendments in question has been forwarded to honourable Members. That objection, I overrule.

The real objection is whether the House as a whole wishes to take up article 67. I should like to inform the House that it has been intimated to me that in several provinces the electoral rolls are almost complete and in some provinces the rolls have been completed. It is up to us to facilitate the passing of these articles because if any serious modification is made, then the work of the provincial Governments would be seriously interfered with. We have to keep that in mind. But it is for the House to decide whether it will stand on its dignity and go on increasing the difficulties of the provincial Governments.

Pandit Hirday Nath Kunzru: (United Provinces: General): Sir, may I put a consideration before you in this connection? So far as I remember, the Drafting Committee has suggested an amendment to this clause. This amendment requires that instead of the proportion of elected seats assigned to the States in this article, the number assigned to each State should be substituted. I think therefore, that it would be desirable that this article should be taken up not now, but on Monday next. That would not involve practically any delay at all. We are very near one o'clock and as it is Friday, I suppose in accordance with our ordinary convention, the House will disperse at one o'clock.

Mr. Vice-President: Yes.

Pandit Hirday Nath Kunzru: If we take up the clause on Monday, we shall have time to consider the matter more fully and also to acquaint ourselves with what was done on a previous occasion in connection with the representation of the States here. We shall have time to consult Dr. Ambedkar himself on the point.

Mr. Vice-President: That seems a more reasonable objection. I am quite prepared.....

Mr. Naziruddin Ahmad: Sir, I have got a more important consideration to submit.

Mr. Vice-President: We shall now go on with article 62-A. We shall take up article 67 on Monday. In that connection, I would remind the House that there are other articles also dealing with election provisions. These are articles 149, 150, 289, 290 and 291. Information as to the way in which the various amendments are proposed to be grouped by me will be given to honourable Members in due time so that as soon as article 67 is finished, we can proceed to article 149, and then article 150 and so on.

Mr. Naziruddin Ahmad: Will that lead to acceleration of business at all? If article 67 is passed, it will not be operative because until we pass the whole Constitution after the third reading and it is signed by the President.....

Mr. Vice-President: We shall consider that question when we pass article 67. Probably, the ingenuity of some lawyers will be able to find some way by which we can obviate this difficulty.

Article 62-A

We come to articles 62-A and 62-B. Amendment No. 1338.

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

"That after article 62, the following new article 62-A, be inserted :—

'62A. No one selected to be a Minister shall be a member of Parliament in either House; and if already a member of either House, he shall, before accepting the office of a Minister, resign his seat in the Legislature. The provisions of article 48-A shall apply to every Minister *mutatis mutandis*.

62-B. A Minister shall have the right to sit in either House of Parliament, and to address the House or any of its committees, at any time he deems necessary, but not vote on any issue coming before any such body.' "

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Sir, may I say, before I commend this motion to the House, that this has arisen out of a scheme of amendments which I had in mind when I was proposing that the Executive or the Ministry should be separate from the Legislature and all organs of the State should be separate from one another. That having been rejected by the House, I wonder if it would be in order to move the first part of this motion.

Mr. Vice-President: Take the second part.

Prof. K. T. Shah: In that case I am proposing the second part that the Ministers should be entitled to sit and speak in either House no matter to what House originally they belong, or are elected to.

Pandit Thakur Dass Bhargava: May I point out that this is the subject-matter of article 72?

Prof. K. T. Shah: Then I will move this at that time.

Mr. Vice-President: Shall we proceed to the next article or shall we adjourn now. Article 63 may not be finished today. I would like to have the whole of Monday for article 67.

Prof. Shibban Lal Saxsena: We can finish article 66. It is a small one.

Mr. Vice-President: I do not want to start on a fresh article because that would interfere with our work on Monday, and I suppose from Tuesday we have some other business to engage our attention. I have got to inform the House that it is more than probable that we shall come to the end of our labours on the 8th January; but there will be a sitting on Saturday, the 8th January. A formal announcement will be made later but I am giving the information in advance so that honourable Members may not experience any difficulty in reserving their accommodation.

The House stands adjourned till ten A.M. on Monday next.

The Assembly then adjourned till Ten of the Clock on Monday, the 3rd January, 1949.