

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME III

Monday, the 28th April 1947

The Third Session of the Preliminary Meeting of the Constituent Assembly of India commenced in the Constitution Hall, New Delhi, at Eleven of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following Members presented their credentials and signed their names in the Register:

1. Sir Brojendra Lal Mitter (Baroda).
2. Mr. Gopaldas Ambaidas Desai (Baroda).
3. Mr. P. Govinda Menon (Cochin).
4. Sir T. Vijayaraghavacharya (Udaipur).
5. Sir V. T. Krishnamachari (Jaipur).
6. Pandit Hiralal Shastri (Jaipur).
7. Mr. C. S. Venkatachar (Jodhpur).
8. Mr. Jainarayan Vyas (Jodhpur).
9. Sardar K. M. Panikkar (Bikaner).
10. Raja Lal Shiva Bahadur Singh, Rao of Churhat (Rewa).
11. Mr. Lal Yadhendra Singh (Rewa).
12. Sardar Jaidev Singh, (Patiala).
13. Sardar Gian Singh Rarewala (Patiala).
14. The Hon'ble Dr. Kailash Nath Katju (U.P.: General).
15. Professor K. T. Shah (,Bihar: General).
16. Mr. Mahavir Tyagi (U.P.: General):
17. Mr. Upendra Nath Burman (Bengal: General).

18. Mr. P. M. Velayudapani (Madras: General).

PRESIDENT'S ADDRESS

Mr. President: We are meeting just three months after the last session of the Assembly. In the meantime some important events have happened to which I consider it necessary to make a short reference. Before doing that I have to give to the House the sad news of the death of three of our Members :

1. Raja Maheshwar Dayal Seth from U.P.
2. Sir Azizul Haque from Bengal, and
3. W. K. L. Mazumdar from Baroda.

The death of the last named gentleman has come as a shock because of the tragic circumstances in which it took place. I understand that he was on his way to attend this Session of the Assembly and the railway compartment in which he was traveling caught fire as a result of which he lost his life. I seek the permission of the House to convey to the members of the bereaved families our sympathy with them in their bereavements.

I may on behalf of the House be permitted to extend a cordial welcome to the representatives of the States who are attending this Session and I hope representatives of other States will also be coming soon to assist in the great work which this Assembly has undertaken. I need hardly point out that the tremendous task in which we are engaged requires and expects assistance from all sons and daughters of this country whether they are living in States or in British India and whether they belong to one community or another. The future of the country very largely will depend upon the Constitution which we are able to frame and not only the people of this country but people all over the world are watching our efforts with interest not unmixed with anxiety and it is upto us, to whatever class or community and whatever part of India we belong, to make our contribution towards the accomplishment of this task.

News has come from our neighbour and erstwhile partner Burma that a Constituent Assembly has been elected there with objects similar to our own. May I on behalf of the House convey to that august body our greetings and good wishes and our great interest in the accomplishment of the task and the attainment of the object of a free Burma that the people of that country have before them ?

Since we met last the British Government have declared their intention to transfer power to Indians by June, 1948. This has naturally added urgency to our work and we must proceed in a business-like way to draw up our Constitution in, as short a time as we can. The British Government is pledged to take preparatory measures for transfer of power in advance and while this is being done on one hand, we must be ready with our Constitution well in advance of the date-line to assume responsibility in accordance with the Constitution framed by us. I am, therefore, hoping that the Assembly will proceed with all expedition. There are undoubtedly difficulties which the

Assembly will have to face but if we proceed with determination we shall be able to conquer them.

It will be recalled that the Assembly appointed several Sub-Committees. The Reports of four of these Committees will, I understand, be placed before the House in due course. I suggest that the Assembly should proceed to appoint Committees to formulate the principles on which the Constitution to be framed will be based and when those principles have been approved the work of drafting the Constitution could be undertaken by a suitable agency and finally the Constitution so drafted could be considered in detail by this Assembly. My suggestion to the Assembly will be that the Sub-Committee for framing the principles should be asked to submit its report in time for consideration by the Assembly some time in June or July and after the report has been considered by the Assembly, the drafting could be done and the Assembly itself could meet in September and finalise the Constitution by the end of October. This is roughly the time-table as the Order of the Business Committee and I envisage it. It is necessary that the Constitution should be finalised as early as possible so that there may be time thereafter for the process of transfer to be completed within the time fixed by the British Government. What I have suggested is tentative as developments are taking place and no one can say for certain what steps the Constituent Assembly may have to take to fulfil its functions. We have already defined our objective and the Constitution that has to be framed will naturally have to conform to it.

Whatever the nature of the Constitution that may have to be drafted whether for one undivided India or only for parts of it, we shall see to it that it gives satisfaction to all coming under its jurisdiction. While we have accepted the Cabinet Mission Statement of 16th May which contemplated a Union of the different Provinces and States within the country, it may be that the Union may not comprise all the Provinces. If that unfortunately comes to pass, we shall have to be content with a constitution, for a part of it. In that case we can and should insist that one principle will apply to all parts of the country and no constitution will be forced upon any unwilling part of it. This may mean not only a division of India but a division of some Provinces. For this we must be prepared and the Assembly may have to draw up a constitution based on such division. Let us not be daunted by the immensity of the task or diverted from our purpose by developments which may take place but go ahead with faith in ourselves and the country which has sent us here. I understand some members would like to say a few words. I request Sir B. L. Mitter to begin.

Sir Brojendra Lal Mitter (Baroda) : Sir, I thank you for the cordial terms in which you have welcomed us, the representatives of the States who are here today. I wish more had come in. I have every hope, however, that at the next Session, few of the States' seats will remain unoccupied. Sir, the Baroda Delegation has suffered a serious loss by the tragic death of one of its members who was on his way to the Constituent Assembly.

Sir, this Assembly is framing the Constitution of Free India. We, the States, are an integral part of India and we shall share the freedom with British India. We, therefore, want to share the responsibility of framing the Constitution. (*Hear, hear*).

We are hereby right of being Indians and not by sufferance. We claim that we are in a position to make substantial contribution to the common task. A hundred and fifty years of unitary British rule has resulted in a measure of uniformity in British India, but in the States there is still a great variety. Some States are as advanced as British

India, where the people are associated with the administration. Some are absolute monarchies. Some are feudal and some are primitive. All these have to be fitted into the Indian Constitution, because our 93 millions of population are included in the Indian total of 400 millions. We do not want to disturb the main design, as indicated in the first Resolution of this Assembly; but we want to introduce a variety in the pattern so that we may fit into it according to our capacity.

We want unity in diversity. I appeal to our British Indian colleagues to exercise a little patience with us. We want to march along with them but the pace has to be regulated without impeding the forward move. We are at one with you in that the Indian Union should be strong in the Centre so that India may hold her head high in the comity of nations. We do not believe in isolated independent existence, which can only weaken the Union. We shall join you wholeheartedly in a spirit of co-operation and not in any spirit of securing special privileges at the cost of the Union. We shall endeavour to make the Constitution develop according to the genius and capacity of the different units, so that the development may be natural and healthy.

Sir, I thank you again.

Sardar K. M. Panikkar (Bikaner) : Mr. President, Sir, following what Sir Brojendra Mitter has so very eloquently said, I also, on behalf of the representatives of States who have joined and taken seats today, wish to express our thanks to you, Sir, for the welcome you have extended to us. This was indeed the day to which we have been looking forward. It is a dream which has come true, for at no time in India's history has a representative gathering of people who can speak on behalf of the whole of India met and taken counsel. There have been occasions in the past when sections of India have met. We in the States have also been meeting frequently; but never in the history of India, so far as I can remember, has there been an occasion when representatives from all parts of India have met together in order to decide their future. Therefore, I consider that the taking of seats of certain representatives of Indian States today has a symbolic value which far outweighs the actual number of representatives who have joined, or the insignificance of members who have themselves joined. This is indeed a symbol of the unity to come and from the work that begins today, in co-operation between the representatives of the States and those of the Indian Provinces, we can really hope to look forward to the emergence of a Union of India.

Before I proceed to any other matter, I must say a few words of thanks to the work of the Negotiating Committee which made it possible for us to come and sit here. No doubt a Report of that Committee's work will be made to you in a few minutes and it is not for me to say anything about it, but this much I think I might say that, but for the wisdom, courage and vision with which your representatives approached the question of Indian States, it would not have been possible for those of us who desired from the beginning to actively associate themselves with this work to take our place here. Therefore, on behalf of those of us who are here, I must thank the Negotiating Committee for having made this possible. It is true that we represent only a certain number of States. All of us who represent 93 millions in Indian States have not come here today. But one thing I should like to say, that we are by no means an insignificant minority. We, who have come here, represent no less than 20 million people out of 93 million people of Indian States and those who have formally and publicly announced their intention of joining the Constituent Assembly, form more than another 10 to 15 million people, so that actually when we come to think of it, a

very substantial portion of the people of Indian States are represented in the Constituent Assembly today.

I should like to say one thing here and now, that we are not here by any means as a result of coercion or of any pressure that has been placed upon us. There has been no occasion for any pressure or any force to be used in regard to the States. This is a voluntary association that has been made clear from the very beginning. Any person, however highly placed who declares that our presence here is due to coercion or undue influence, I think, speaks without knowledge of facts. To such precious gentlemen, as would advise us to pause on account of alleged coercion, I have to say clearly and unequivocally that their insinuation is an insult to our intelligence. Are we less patriotic in matters connected with India ? Are we less concerned with the future of India that we have to be coerced to take part in a cause in which it is our right and duty to take part ? Therefore, I want to say firmly here and now, that there has been no coercion and it will not be in the wisdom of things or in the interest of things to talk about coercion of one part by the other.

One other point I desire to say. It is not by way of controversy or anything of the kind. We are not here as a matter of favour. We have a right to be here for the purpose of co-operating in the great task of organising India's freedom. We consider that we have as much right in that matter as any one else. We are indeed asked by some people to wait and see. This is indeed a strange doctrine, because we can only wait and see what happens to others. Are we to wait and see as indifferent observers what happens Ourselves ? That being so, we consider that organising India's freedom as much our duty as it is of others. Looked at from that point of view, where can be no question of our waiting and seeing. We want no favour nor do we want to confer obligations. All that we want is that our problems should be viewed sympathetically by this august body in a sense of friendliness as affecting a large part of India. We, on our part, promise in all humility, to work for the betterment of India and for the Union which we all desire to see established. Sir, I thank you.

Mr. P. Govinda Menon (Cochin) : Mr. President, I am happy in that I have been invited to take part in the deliberations of this historic Assembly. During the last few months, discussions, controversies and negotiations were going on as to whether Indian States should send their representatives to this Assembly; if so, when and how ought they to be selected ? Much of this could have been avoided and the question would have been a most simple one if the question was tackled from the correct perspective, namely, from the perspective of the people of the Indian States.

They had never any doubts in the matter. The hundred millions of people of the Indian States never felt nor do they feel now, that they form an entity or group different from their 300 million brothers and sisters living in what is known as British India. For the last 27 years under the leadership of Mahatma Gandhi and other great leaders, India had been fighting for her independence. In that fight the people of the Indian States have always taken their due share, The people of the States did not feel nor did they take up the attitude that their lot lies elsewhere.

Now, after 25 years of war, when the nation sits down to frame the future Constitution we feel that it is our duty and our right to participate in the deliberations therefore. The people of the States, Sir, are one in their desire to participate in the Constituent Assembly.

Objections, doubts, questions come not from the people. They come when they do from Dewans, Ministers, Rulers, who by no means, except under the theory of Divine Right, can represent the people. Let me hope, Sir, that before the next Session of the Assembly, all the States would have taken the firm decision to collaborate with all of us and would send their representatives to this House.

In the matter of joining this Assembly as in many other matters, the attitude of my State, Cochin, has been unequivocal from the very beginning. The people of Cochin, like the people of all other States, wanted from the very beginning to join this Constituent Assembly and desired that their representative or representatives shall be elected. Cochin has been fortunate in that her Ruler has been of the same view. Long before questions of States' representation in this Assembly began to be actively considered, on the 29th July, 1946, the Maharaja of Cochin in a message to the Legislative Council said as follows :

"The only other point remaining to be considered is about the Constituent Assembly and the representation of Cochin in it. It has not been settled yet how many representatives Cochin could send to this Assembly. However, to set at rest all doubts about the method of representation, I am glad to announce that, after mature consideration, I have decided to allow the people to elect their representative or representatives. This election will be by the Council."

The above statement was made at a time when the question of States representation had not begun to be actively considered. No State had then said that it would stand independent and would have nothing to do with the Indian Constituent Assembly. Recently some such statements have been made. Cochin's position remains unchanged even after such attractive doctrines have been dangled before her. Her reaction cannot better be expressed than in the words of the Maharaja himself who, while opening the Aikya Kerala Convention at Trichur the day before yesterday, said as follows :-

"Now let me come to the question of Cochin's relation to the rest of India. This Convention has met here for considering ways and means of establishing United Kerala. The Travancore Government has said that it does not favour this idea and has declared its intention of assuming independence after June, 1948. Its relations with the Central Government are going to be governed by Treaties. You would like to know in these circumstances what Cochin's attitude is in this respect. I have no hesitation to declare that Cochin would continue to remain part of the mother country. It is joining the Constituent Assembly at one. No word or act of mine shall usher in a day when a Cochinite finds, he has lost the right to call himself an Indian."

Because we are Indians, Sir, and because we want to share in the destinies of this great country, we have with pleasure and gratefulness accepted your kind invitation to take part in the deliberations of this historic Assembly. Sir, I thank you.

Sir T. Vijayaraghavachariar (Udaipur): Sir, I am glad to find myself in Delhi today. The old saying was that Delhi is at a great distance. I never felt the truth of it until this occasion. Previously I found Delhi so very near but on this occasion I find it has been very far and I am glad I am able to find myself here today, and I am glad that I am here today on a historic occasion. Cold as the winds that blow in December in Simla, and hard as flint like the rocks over which aeroplanes fly over the Baluchistan hills towards the west, must be the heart of the Indian who is not thrilled today at this sight of this Assembly, the Assembly which I feel certain will go down in history down the corridors of time. My feeling is that though we may come from different provinces and different States we are not here on behalf of any particular part of India; we are members of all India and that is quite clear. It is in that spirit that I feel certain that we shall all do our work here, not on behalf of any parochial interests, not on behalf of

any narrow sectarian interests but on behalf of the broad interests of the one nation of India. I do not propose to refer to any local problems here; our local problems ought to be solved locally. This place is for all-India problems, and I do hope that all of us will so put our heads together and so do our work that our children and our grandchildren and generations yet unborn, will say, "Our fathers and our grand-fathers sat in the year 1947 at Delhi and framed a constitution which has stood the test of time", and on which history will say, "Blessed are these men; they did their work and they laid the foundations rightly, and on those foundations will the future history of India evolve". It is not for us here to take any narrow views; we will take large views, and let us so conduct ourselves that in the future history of India they will say that we did our work properly and that we acquitted ourselves like men, like true sons of India and not true sons of any particular part of India.

I thank you, Mr. President, for the very kind words of welcome you have uttered.

Mr. Jainarayan Vyas (Jodhpur) * [Mr. President, on behalf of the people of the States and in their own language, I thank you for the welcome you have accorded to the representatives of the States.

We, the subjects of the States, had some status up to 1933, for in that year the Government of India Bill did refer to us in the expression 'The Princes and their subjects. Unfortunately, after that our existence was ignored. No mention of the States subject was made in the Government of India Act of 1935. When Sir Stafford Cripps came to India we were again forgotten. Nor were we referred to in the Cabinet Mission Proposals. We were placed under such circumstances as would have prevented us from sitting and working in this Assembly with you unless the Princes and their Governments decided to associate us with themselves. It is a pleasure that we are today making history. We are sitting together with (the representatives of) the British Provinces and the representatives of the Rulers (of the Indian States). Had not our Rulers come forward to include us among the States Representatives or had not the Negotiating Committees insisted on our being represented (in the Assembly) it was very likely under the conditions in which we were placed at the time that we would not have been here (in the Constituent Assembly). But it is a pleasure to find that we are here in sufficient numbers with you; and we assure you that we will co-operate with you in all Possible ways in making the future Constitution not merely in our self-interest but in that of the whole of India. We consider ourselves as parts of India, although some outsiders had raised walls between us. But these unnatural walls are crumbling today, and we hope that within a short time India would be absolutely one single unit. Once again, I thank you.]*

Raja Lal Shiva Bahadur (Rewa) : Sir, I join my friends in thanking you for the very cordial welcome you have extended to us. I represent one of the very big States in Central India, and if the Rewa State had not taken the lead, Central India would have gone unrepresented. I hope, Sir, in a very short period my friends in other States and our neighbouring States will definitely decide to join this historic House. The Rewa State will not lag behind in rendering all possible service to the mother country.

I thank you Sir.

MESSAGE OF GOOD WISHES FROM COORG

Mr. President: The Coorg Legislative Council have passed a Resolution which has been communicated to me by the Chief Commissioner, Coorg, for being communicated to this House. I will read it:

"That this Council resolves to offer its prayerful wishes to the President and Members of the Constituent Assembly of India for the speedy and successful termination of their efforts to prepare an agreed constitution for India and recommends to the Chief Commissioner that these wishes be conveyed to the President of the Constituent Assembly, New Delhi."

REPORT OF THE STATES COMMITTEE

Mr. President: The next item is the Resolution which will be moved by Pandit Jawaharlal Nehru.

The Hon'ble Pandit Jawaharlal Nehru (United Provinces: General): Sir, I beg to move

"The Constituent Assembly, having taken the report of its States Committee into consideration, resolves that it be recorded.

The Assembly welcomes the States representatives who have already been chosen and expresses the hope that other States who have not chosen their representatives will take immediate steps to do so in accordance with the agreed procedure."

I understand that copies of the Report have been circulated to all the Members; I shall not therefore take up the time of the House in reading that Report. That Report is a brief summary of the activities of the Negotiating Committee appointed by this House. We have tried to make it as precise a summary as possible and it shows what took place and what we did, so that the House may be acquainted with the procedure we adopted and all that was said on those occasions. I might add, however, that if it is the wish of the House and if Members desire to see a fuller report of our proceedings, there is a verbatim Report in existence and this Report can be consulted in the Library of the House. I say this because sometimes all manner of rumours get about and people are misled and sometimes people imagine that we are not trying to put all the facts before the public. We have nothing to hide in this matter; indeed we could not possibly do so from this House; and therefore the verbatim Report of everything that was said on the occasions that we met with the Negotiating Committee, of the Princes is available for reference to any Member of the House in the Library. It is too long a report for us to have it printed and circulated, nor is it normally desirable to have such reports published in the public press. But there can be no secret as between the Committee of this House and the Members of this House, and therefore, while that document is not meant for publication, I should like to remind the Members, that it is there to be consulted by any Members of this House in the Library.

The House will remember that this Committee was appointed for a specific purpose--for fixing the distribution of seats of the Assembly not exceeding 93, and for fixing the method by which the representatives of the States should be returned to the Assembly. These were the definite directions given to us and we proceeded accordingly, but when we met the negotiating Committee appointed by the Chamber

of Princes, other questions were raised. We were confronted by various Resolutions passed by organizations of the Princes. We informed them that we had no authority to deal with any other matter. Our authority was limited to dealing with these two specific matters. Indeed we went a little further. We said we rather doubted the authority even of the Constituent Assembly to deal with all manner of other matters, that is to say, the Constituent Assembly as it is constituted at present. But in any event we were so anxious to get going, so anxious to remove any misapprehensions that might exist, that some of us had further conversations with them and some doubts that they raised were removed in the course of those conversations; some questions that were asked were answered informally, personally if you likes on our behalf because it was not open to us to go beyond the terms of the mandate that you gave us. You will see a reference to that in the Report that is presented to you, in particular because--I am bound to make this point perfectly clear--a few important points were raised by them in the course of those discussions. As it happened, what I said in reply to those questions had more or less been said by me in this House before or by other Members of this House, and therefore, I had no difficulty in saying it to them because otherwise I would have had this great difficulty of saying anything which the House might not approve, or might disapprove as wrong. All of us have certain views in this matter and on one of the occasions when I addressed this House in connection with the Objectives Resolution, I referred also to the States and to the Princes and made it clear that while I, in my individual capacity, held certain views, those views did not come in the way of my stating what the Constituent Assembly stood for, and what its range of activities was going to be. I said then that, while we were deciding in favour of a Republic for the whole of India, that did not bar any State from continuing the monarchical form of Government so far as that State was concerned, provided, of course, that they fitted in the larger picture of freedom and provided, as I hope that there was the same measure of freedom and responsible government in the State. So when these questions were raised. I had no particular difficulty in answering them because in effect they had been mentioned in this House previously.

What were those questions ? First, of course, was--it was an unnecessary question--as to the scope of our work, that is to say, how far we accepted the Cabinet Mission's Statement of May 16, 1946. We have accepted it, and we are functioning in accordance with that Statement. There the matter ends. I do not know what future changes may take place and how these changes might affect our work. Anyhow, we have accepted that Statement in its fullness and we are functioning accordingly.

That leads inevitably to another conclusion, *viz.*, that such subjects, as did not come within the scope of the Union, were subjects to be dealt with by the Units--by the States and the Provinces --and that has been clearly laid down in the Cabinet Mission's Statement. So we said there and we made that clear. What the Union subjects might or might not be is a matter for careful consideration by this House now. But any subjects which did not come within the scope of the Union subjects necessarily are subjects left over to the Units.

Further it was stated that the business of joining the Constituent Assembly or accepting the. Scheme or not accepting it was entirely their own. As Mr. Panikkar has pointed out, there was no coercion, there can be no coercion either to a State, a Province or to any other part of India, which is participating in this Assembly. There can be no coercion, except, of course, the coercion or compulsion of events and that is certainly a compelling factor and a very big factor which none of us can ignore. So there is no question of compulsion; but at the same time it is true that if certain units

or parts of India decide to come in, accepting their responsibilities, they get certain privileges in return, and those who do not come in do not get those privileges as they do not shoulder those responsibilities. That is inevitable. And once that decision has been taken by a Unit, State or other, other consequences inevitably follow, possibly widening the gulf between the two : that is the compulsion of events. Otherwise it is open to any State to do as it chooses in regard to this matter of coming in or not coming in. So that matter has been made clear.

The only other important matter that was raised in this connection was the monarchical form of Government in the States. As I stated in this House previously, in the world today this system of rule by monarchy, whatever good it may have done in the past, is not a system that might be considered to be popular. It is a passing institution : how long it will last I do not know. But in this matter my opinion is of little account. What counts in what this Assembly desires in this matter : what it is going to do : and we have made it clear on a previous occasion that we do not wish to interfere in the internal arrangement of the States. It is for the people of the States to decide what they want and what they do not want. The question, in fact, does not arise in this Assembly. Here we are dealing with Union matters, subjects of fundamental rights and the like. Therefore this question of the monarchical form of Government in the States did not arise here and I told them that so far as we were concerned we were not going to raise that particular subject here.

Lastly, there was the question or rather the misapprehension due to certain words in the Objectives Resolution of this Assembly, where some reference has been made to territorial boundaries being changed. The House will remember that that had no connection with the States as such. That was a provision for future adjustments as they are bound to be involved. Further it was a provision for suitable units to come into existence, which can be units of this Indian Union. Obviously one cannot have very small units or small fractions of India to form part of the Union. Some arrangement has to be made for the formation of sizable units. Questions arise today and will arise tomorrow even about the division of Provinces. There is very, strong feeling about it. We are discussing today, though for other reasons, about the division of certain Provinces like the Punjab and Bengal. All these have to be considered but this has nothing to do with the provision in the Objectives Resolution. The point has been settled in the Negotiating Committee that any changes in territorial boundaries should be by consent.

Those were the statements I made on behalf of our Negotiating Committee to the other Committee and those statements removed a number of misapprehensions and we proceeded ahead with the consideration of other matters.

Among the other matters was, firstly, the question of the distribution of seats. We decided to refer this matter to the two Secretariats--the Secretariat of the Constituent Assembly and that of the Chamber of Princes. We referred this matter, I think, at 1-30 P.M. one day. Those two Secretariats met, I think, at 3 P.M. the same day and 5 P.M. they arrived at an agreed procedure. That was rather a remarkable thing which is worth remembering. It is true that the rules governing the distribution were to some extent laid down in the Cabinet Mission's Scheme--one seat per million, that is, 93 seats in all. Unfortunately these matters of distribution are difficult and often arouse great controversies and arguments. Nevertheless these two Committees met together and I am very glad that the Secretariat of the Constituent Assembly was helped by the representatives of the States to come to an agreed solution within two hours. That

showed that if we approach any of these apparently difficult problems with good will, we find solutions and we find rapid solutions too. I do not mean to say that that solution in regard to the distribution of these seats was a perfect one. Since the agreement was reached certain objections have been raised and criticisms have been made in regard to the grouping of the States here and there. Ultimately we left it to a sub-Committee--a joint Committee of our Negotiating Committee and the States Negotiating Committee--to consider this matter and to make such minor alterations as they thought fit and proper. Now because of these grouping difficulties, a number of States, which might be represented here, are not here. That is to say, the States concerned want to come in and they are quite prepared to do so but the group has not begun to function. Therefore individually they are prevented from coming in. Only yesterday I was informed that one important State, the State of Cutch, was eager and anxious to come in but they formed part of a group of Kathiawar and other States, rightly or wrongly, and till the whole group gets into motion, they do not know how to come in separately. This is a matter to be considered by the sub-Committee. But the point I want to put before the House is this that in this matter as soon as we came to grips with the subject and gave up talking in vague generalities and principles or rights of this group and that group, we came to a decision soon enough and that is a good augury for our work in future, whether it relates to the people of the States or to the rest of India or to any group in India.

We, who meet here, meet under a heavy sense of responsibility--responsibility not only because the task which we have undertaken is a difficult one or because we presume to represent vast numbers of people, but because we are building for the future and we want to make sure that that building has strong foundations, and because, above all, we are meeting at a time when a number of disruptive forces are working in India pulling us this way and that way, and because, inevitably and unfortunately, when such forces are at work, there is a great deal of passion and prejudice in the air and our whole minds may be affected by it. We should not be deflected from that vision of the future which we ought to have, in thinking of the present difficulties. That is a dangerous thing which we have to avoid, because we are not building for; today or tomorrow, we are making or trying to make a much more enduring structure. It is a warning which the House will forgive me, if I repeat--that we must not allow the passion and prejudice of the moment to make us forget what the real and ultimate problems are which we have to solve. We cannot forget the difficulties of the present because that come in our way all the time. We have to deal with the problems of the present, and in dealing with them, it may be, unfortunately that the troubles we have passed through all these years may affect us, but, nevertheless, we have to get on. We have to take quick decisions and final decisions in the sense that we have to act on them. We have to be realists and it is in this spirit of realism, as also in a spirit of idealism, that I say that our Negotiating Committee approached this task.

The House knows that some of the members of the Committee have been intimately associated with the struggle of the peoples of the States for their freedom. The more I have been associated with that struggle, the more I have seen that it cannot be separated from the all-India problem; it cannot be isolated. It is an essential and integral part of the all-India problem, all-India structure, just as the States are an integral part of India. You cannot separate them. And with all my anxiety to further the progress of the peoples of the States with such strength as is in me in my individual or other capacities, when I met the Negotiating Committee I had to subordinate my individual opinions because I had to remember all the time that I was representing this Constituent Assembly. I also had to remember that, above all,

we had gone there not to bargain with each other, not to have heated argument with each other, but to achieve results, and to bring those people, even though they might have doubts, into this Assembly, so that they might come here and they might also be influenced by the atmosphere that prevails here. For me it was the solemnity of the task which we had undertaken, and not to talk in terms of results, or individuals or groupings, or assurances. What assurance do we seek from each other ? What assurance is even this House going to give to anybody in India, except the assurance of freedom ? Even that assurance will ultimately depend on the strength and wisdom of the Indian people afterwards. If the people are not strong enough and wise enough to hold together and proceed along the right path, the structure that you have built may be shattered. We can give no assurance to anybody.

With what assurance have we sought freedom for India all these years ? We have looked forward to the time when some of the dreams that we were indulging in might become true. Perhaps, they are coming true, perhaps not exactly in the shape that we want, but, nevertheless, they will come true. It is in that conviction that we have proceeded all these years. We had no guarantees. We had no assurances about ourselves or about our future. Indeed, in the normal course of events the only partial guarantee that most of us had was the guarantee of tears and troubles, and we had plenty of that. It may be that we shall have plenty of that in the future too; we shall face them. This House will face it and the people of India will face it. So, who are we to give guarantees to anybody ? But we do want to remove misapprehensions as far as possible. We do want every Indian to feel that we are going to treat him as an equal and brother. But we also wish him to know that in the future what will count is not so much the crown of gold or of silver or something else, but the crown of freedom, as a citizen of a free country. It may be that a time may come soon when it will be the highest honour and privilege for anybody, whether he is a Ruler or anybody else, to be a free citizen of a free India and to be called by no other appellation or title. We do not guarantee because we guarantee nothing to anybody, but that is the thing which we certainly hope to achieve and we are certain to achieve. We invite them to participate in that. We welcome those Who have come, and we shall welcome those others when they come. And those who will not come--we shall say nothing about them. But, as I said before, inevitably, as things are, the gulf will widen between those who come and those who do not come. They will march along different paths and that will be unfortunate I am convinced that, even so, those paths will meet again, and meet sooner rather than later. But, in any event, there is going to be no compulsion. Those who want to come, will come, and those who do not want to come, do not come. But there is this much to be said. When we talk about people coming in and people who do not come in, let it be remembered, as Mr. Govinda Menon said, that the people of the States--I say with some assurance and with some authority in the matter--want to come into this Assembly, and if others prevent them from coming, it is not the fault of the people, but breaks and barriers are put in their way. However, I hope that these questions will not arise in the future and that in the coming month or two nearly all the States will be represented here, and, jointly we shall participate in the final stages of drawing up the Constitution.

I am placing this Resolution before the House to record the Report. There has been some argument about this matter too and people attach a great deal of importance to words and phrases and assurances and things like that. Is it not good enough that I have put it to the House ? If it is not good enough, I may repeat what has been stated. Even if that is not good enough, what we have stated is there in the verbatim Report of the meetings; we have nothing to add to it, we shall stand by that. We do not go back. But the procedure to be adopted must be a correct procedure. When this

Committee was appointed you asked us to report and we have reported. We had got to do something, and we tried to do that and did it. Now, if this matter was to come up for ratification before this House before it could be acted upon, obviously, representatives of the States who are here now would not have been here. They would have been sitting at the doorstep or somewhere outside waiting for ratification, waiting for something to happen till they came in. That was not the way in which we understood our directions. We understood that we had to come to some honourable agreement and act up to it so that representatives of the States might come in as early as possible. We were eager in fact that they should join the Committees of this Assembly the Advisory Committee, the Fundamental Rights Committee, the Union Powers Committee and the other Committees which we have formed. It is not our fault that there was delay. At the very first joint meeting of the Negotiating Committees we requested the States Committee to join quickly, indeed to send their representatives to these Committees of the Constituent Assembly as soon as possible. We were asked for assurance at every stage and there were delays. But the way we have understood your mandate was that we had to go ahead and not wait for ratification of every step that we had taken. We acted accordingly, and I am happy that some of the States' representatives are here today and I hope more will come. So the question of ratification does not arise so far as this Committee's work is concerned. The Report is before you. If you disapprove of any single step that we have taken, express your disapproval of whatever might have happened, or otherwise give your directions.

The resolution I have moved is for your adoption. I shall not go into the details in regard to the distribution of the seats and the manner of selection of the delegates from the States. It was a sort of compromise. Naturally it was my desire, as it was the desire of my colleagues that the representative of the States should be elected by the people of the States, partly because it was the right way, and partly because it was the way in which they could be fitted with the other elected elements of this House. On the other hand, I considered it right and desirable that the States governments should also be represented here to bring reality to the picture. The correct way and the right way ultimately will be for the State government itself to be representative of the people and then come in to represent them here. But we have to take things as they are. The States governments, generally speaking, do not represent the people in the democratic sense. In some places they partially represent them. Anyhow, we did consider it desirable that the State governments as such, should also be represented though we would have liked the largest number of representatives to come from the people. Ultimately after a great deal of discussion it was decided that not less than 50 per cent of the representatives should be elected by the elected members of the assemblies where they exist, or by some other method of election which may be devised. We came to a compromise on this proportion, thought we would have liked the proportion to be higher. Some of the States have actually acted as if the proportion were higher. I submit that this compromise that we came to was an honourable compromise for all parties concerned and I think it will lead to satisfactory results so far as this House is concerned, and I commend the resolution to the House.

Mr. President: The motion is:

"The Constituent Assembly having taken the report of its States Committee into consideration resolves that it be recorded.

The Assembly welcomes the States representatives who have already been chosen and expresses the hope that other States who have not chosen their representatives will take immediate steps to do so in accordance with the

agreed procedure."

Members who wish to say anything about this motion may now speak.

(At this stage Dr. Kailas Nath Katju approached the rostrum.)

Mr. Somnath Lahiri (Bengal: General) : On a point of information Sir, of the representatives of the States who have come to participate in this House, how many have been elected and how many nominated by the States?

Mr. President: The Secretary will give you this information. In the meantime, Dr. Kailas Nath Katju will please proceed with his speech.

The Hon'ble Dr. Kailas Nath Katju : (U.P. : General): Mr. President, I ventured to come here for a few minutes and address you on this Resolution because I am connected with one of the States in Central India and also with some in Rajputana; and I have made my home in the United Provinces by adoption. I am, therefore, intensely interested in the endeavour which you are making and I venture to congratulate the Negotiating Committee on the great results that have been achieved.

There are a great variety of States, and there are hundreds of them. Some of the States go back and are rooted in the history of our race. Others are of very, recent origin, going back only a century or so and with little of tradition and little of moral authority behind them. I do not wish to pursue this topic at any great length; but I have no doubt in my mind that it is for the good of the States and it is for the good of the people of the States that they should join this great Indian Union of which Pandit Jawaharlal has spoken so eloquently. I have no doubt in my mind that the course of Indian history teaches us that a union of this great country is an inevitability. When I hear of some Provinces or some States or territorial units claiming to be sovereign States or claiming authority for themselves, I wonder whether they have ever considered the drift of Indian history. There is no shadow of doubt in my mind that within the course of the next fifty years, whatever we may do today, or whatever we may say today, the course of events will compel the people to bring about one united Government, one united Centre in India. It is good therefore for the people of the States, it is good for the people of all States, it is good for the Rulers of these States that they should come in and join in this great endeavour. Instead of the Rulers relying upon their so called strength, I think their safety, their integrity and their very existence lies in relying upon the affection, and upon the trust of their own people. If they rely upon that, they may continue, otherwise most of these States will disappear without much regret on the part of their people or on the part of the rest of India. With these words, I commend this Resolution to the care of the House and I should join in the appeal which has been made to every section of the House that in a short time, we will see almost all the States come in and join this Assembly.

Mr. President: Mr. Lahiri desires to know when notice of amendments should be given. He complains that notice of this Resolution was received by him last night. I am afraid it is now too late now for him to give notice of amendment.

I shall now put the Resolution to the House:

The question is:

"The Constituent Assembly having taken the report of its States Committee Into consideration resolve that it be recorded.

The Assembly welcomes the States representatives who have already been chosen and expresses the hope that other States who have not chosen their representatives will take immediate steps to do so in accordance with the agreed procedure."

The motion was adopted.

Mr. President: I desire to give the information wanted by Mr. Lahiri. Out of sixteen members representing the States who are attending today, five are nominated and eleven are elected.

ELECTION OF ADDITIONAL MEMBERS TO STEERING COMMITTEE

Shrimati G. Durgabai (Madras: General): Sir, I consider it my proud privilege to be able to stand here today and move the motion which stands in my name. Before I do so, I may be permitted to express my great joy at the presence of the representatives of some of the Indian States who are here today in our midst on this occasion. My heart-felt and sincere thanks are due to those States which have extended their co-operation and joined us in our work.

With your leave, Sir, I move:

"Resolved that this Assembly do proceed to elect, under sub-rule (2) of Rule 40 of the Constituent Assembly Rules, two additional members to the Steering Committee from among the representatives of the Indian States, in accordance with the principle of proportional representation by means of the single transferable vote."

Sir, sub-rule (2) of Rule 40 of the Constituent Assembly Rules lays down the procedure for election of members to the Steering Committee. It says :

"The Assembly may from time to time elect, in such manner as it may deem appropriate, 8 additional members of whom four shall be reserved for election from among the representatives of the Indian States."

Sub-rule (1) of Rule 40 lays down:

"A steering committee shall be set up for the duration of the Assembly and shall consist of eleven Members (other than the President) to be elected by the Assembly in accordance with the principle of proportional representation by means of the single transferable vote."

Sir, I may be permitted to state in this connection that in accordance with these Rules, eleven members were initially elected to this Committee on 20th January and the Committee has been functioning with these members. According to sub-rule (2), eight additional members are to be elected from time to time out of whom four are reserved for election from among the representatives of Indian States. It is considered desirable at present that only two out of four will be elected now and that the election of the two other members shall be postponed to a future date. We would have been happy had all the four members been elected on this occasion. But we thought it desirable to elect only two members at present and postpone the election of two other

members to a subsequent date, when we will be fortunate enough to have a much larger representation of Indian States on this Assembly and an present here. We fondly hoped that some of the leading States like Hyderabad, Travancore, Mysore and some other States would have made up their minds to join us here in our work and co-operate with us. But I am sadly disappointed to find that they are not able to come and see eye to eye with us and that they are still pursuing a policy of "wait and see". I hope that it will not be before long, that they will follow the noble example set up by States like Baroda, Bikaner, Rewa, Gwalior, Cochin, Udaipur, Jodhpur and some other States, whose representatives we have here in our midst and send their representatives also to help us in this great task of forging a constitution for this great country. I extend a hearty welcome to those representatives who will be elected to this Committee, to function on this Committee to help us with their advice and guidance in our work. With these words, I commend this motion for the acceptance of this House.

Mr. President: Motion moved:

"Resolved that this Assembly do proceed to elect, under sub-rule (2) of Rule 40 of the Constituent Assembly Rules, two additional members to the Steering Committee from among the representatives of the Indian States, in accordance with the principle of proportional representation by means of the single transferable vote."

Mr, H. V. Kamath (C. P. & Berar: General) : Sir, under sub-rule (2) of Rule 40, four seats have been reserved for election from among the representatives of the Indian States. You have just now been good enough to tell us that today only sixteen representatives are present and seventy-seven are absent. In fairness to the members who are absent, I would suggest that only one seat may be filled today and the other three seats may be filled up later on.

Mr. President: The amendment of Mr. Kamath is that in place of two seats, one seat should be filled by election today.

The Hon'ble Pandit Jawaharlal Nehru: Sir, the Steering Committee has to work from day to day, and if you keep seats vacant for those people who are not here, it is neither good for them nor for the House nor for the Steering Committee. The work of the Steering Committee does not really involve matters of high principle, but it is very important work and it does affect the business of the House. I think it is not fair that the places of those who do not come here should be kept vacant and we should go on waiting. Of course I do not want anything to be done which might be injurious to their interests, and therefore any important matter can be raised again. Now that we have a chance to take them in, we should do so. It is open to the House to reconsider any matter of vital importance later. At the present moment it is desirable to give full opportunities to those who will come to take part in the business.

Mr. H. V. Kamath: Sir, in view of the assurance given by the Hon'ble Pandit Nehru that the number of seats will be increased at a later date I beg to withdraw the amendment.

Mr. President: I now put the resolution to vote.

The motion was adopted.

Mr. President: Nominations will be received up to 2 P.M. tomorrow and elections, if

any, will be held from 4 to 5 P.M. in Room No. 24.

REPORT OF THE COMMITTEE ON UNION SUBJECTS

Mr. President: Presentation of the Report of the Committee appointed by the Resolution of the Constituent Assembly of the 25th January, 1947, to examine the scope of Union subjects.

Mr. B. V. Kamath: Sir, is it only the presentation of the Report or is a motion being moved ? There is no notice of a motion.

Mr. President: If the Hon'ble Member will wait and hear, he will know what it is.

The Hon'ble Sir N. Gopalswami Ayyangar (Madras: General): Sir, I come forward to perform a merely routine and prosaic duty of presenting the Report of the Committee on Union subjects. It is not intended that any motion on this Report should be placed before this House today. This Committee was appointed on the 25th January for the purpose of examining the scope and content of the subjects assigned to the Centre in the Statement of the Cabinet Mission of May 16th and to draw up lists of matters included in and interconnected With the subjects so assigned. The Committee started with a strength of twelve and power was reserved to you, Sir, to nominate ten more, the intention being that some seats should be filled by nomination of representatives of the Muslim League if they came in, and others should be assigned to representatives of the Indian States. As it is, the Muslim League has not so far come in, and as Pandit Jawaharlal explained to you a little while ago, strenuous attempts were made to get the full quota of nominations for representatives of the Indian States being filled in, if possible. But it was not possible to do so. In the later stages of our deliberations, however, we have had the assistance of two distinguished representatives from Indian States.

Now, Sir, I said I was only performing this prosaic duty; I was not going to perform the function which my Hon'ble friend, Mr. Kamath, would have liked me to perform today. Copies of this Report, I believe, have been circulated to Members. It is not, therefore, necessary that I should read the Report; and in connection with mere presentation of reports in a deliberative assembly of this kind it is not usual to make a speech on the contents of such a report except on an occasion such as the one mentioned by Mr. Kamath, for instance, on a motion for taking the Report into consideration. That motion is not to be made today, nor is it intended by those to whom has been entrusted the task of steering the business of this Assembly. It is not their intention that such a motion should be placed before the House during the current Session. There are several reasons why this decision has been taken. In the first place, Sir, the subject is a very important one; it is a vital matter connected with the framing of the Constitution, and it is only desirable that this Report on so important a subject should be read through and studied carefully by Members of this House before it is taken into consideration. And then we have got to remember that the Committee had to work on the Cabinet Mission's Plan. That Plan contains some very unusual features, the unusualness really resulting from the desire to satisfy the wishes of the Muslim League if it ever decided to come in. The coming in of the Muslim League is not yet officially ruled But; there is still a possibility of their coming in, though the probability is perhaps very small. Should this possibility materialise it would be only just and reasonable that the debate on so important a subject, as the subjects and powers to be assigned to the Union centre, should be held in a House

which contains a full representation of the Muslim League. Whether they will come in or not will be definitely known before the June-July Session of this Assembly. And that is one main reason why we are not taking up the discussion of this matter in this current Session.

Then, Sir, there are the Indian States--a number of representatives of Indian States have joined us today but there is a very large number still to come in. Those have not come in because they require time for going through the procedure prescribed for the purpose of choosing them and sending them to this Assembly. The Indian States have got a very vital interest in the matter which is covered by the Report of this Committee, and it is desirable that as full a representation of the Indian States as possible should be in the Assembly before we begin to discuss so important a matter. Thirdly, Sir, there is the question of the present political conversations. The decisions on those conversations are not available yet: they will be available in all probability before we meet again in the June-July Session. The decisions will be of the most important character, and I think the House will agree with me in thinking that those decisions will have very important repercussions on the plan of work which this Constituent Assembly will have to adopt in framing the Constitution for the country if that decision should, as it is feared, take the shape of anything like the division of India into two or more independent States it may become necessary for this Assembly to deviate from rigid conformity to the Cabinet Mission's Plan. It is unnecessary for me to say now in what directions this deviation might become necessary. The nature of those deviations must necessarily depend upon the political decisions that are taken but apart from such deviations the number of subjects that have to be assigned to the Centre, their scope and content, the definition of a field of concurrent jurisdiction between the Union and the Units, and the relations between the Union and the Units as regards the exercise of legislative and administrative powers, will all be matters which would require a fresh and thorough examination. This examination will so far as I can visualize have to be done in close collaboration between the Committee on Union Subjects and the two Committees which are proposed to be set up in the course of the current Session--one for the purpose of determining the principles of the Union Constitution, and the other for determining the principles of a model provincial constitution. These three Committees will have to work in close collaboration, and it is necessary that before they enter into such collaboration, they must have before them the political decisions that will have been reached before them.

Now, Sir, taking all these facts into consideration, it is, I think, very necessary that the debate on the Report of the Committee on Union Subjects should be postponed beyond this Session, to the next Session, and therefore it is that I am not placing before you any motion for taking this Report into consideration today.

There is one matter about which I think I must ask the permission of the House to approve of what this Committee has done. In the original Resolution appointing this Committee, it was asked to submit its Report before the 15th of April. As a matter of fact, the Committee signed its Report on the 17th of April. I do hope, Sir, that the House will excuse this delay of two days.

There is another matter which I might mention. This Report should not be taken as the final Report of the Committee on Union Subjects. I have already placed before you considerations which will necessitate the matter being reviewed and overhauled by the same Committee in collaboration with other Committees. There are matters, for instance, connected with Indian States, which require perhaps more consideration

than it was possible to give them during the time that this Committee met between its appointment and today. The representatives of the States who wish to give us the benefit of their views feel that there are some matters which require further investigation before they could finally commit themselves, and there are also other matters and certain questions connected with the subjects which have been listed in this Report about which greater consideration, it is considered by certain members of the Committee, would be necessary. And apart from that there is looming before us the political decision which will necessitate our overhauling the entire Report if it comes to that, Therefore, Sir, I request the permission of the House to let this Committee submit a further Report if it becomes necessary. With these words, I merely present the Report of the Committee to the House.

Mr. President: The Report has been presented. I think the House will condone two days delay in signing it, and will also give permission to the Committee to submit another Report if it finds it necessary to do so.

This was unanimously agreed to.

Mr. R. K. Sidhwa (C.P. & Berar: General) : When the subsequent Report is presented, may I know whether this Report will also be open to discussion. We have not read even a single sentence of this Report which has been presented to the House.

Mr. President: We are not entering into any discussion on this Report. Me Hon'ble Member will read this Report, and we can then discuss it during the next Session.

We will meet at 8-30 tomorrow morning and we will go on until 12-30 when we will adjourn. Any Member who has any amendments to suggest to the Report of the Fundamental Rights Committee should do, so before 5 o'clock this evening. The Report will be taken into consideration tomorrow. The House now stands adjourned until 8-30 A.M. tomorrow.

The Assembly then adjourned till half past Eight of the Clock, on Tuesday, the 29th April, 1947.

[English translation of Hindustani speech]

APPENDIX A

CONSTITUENT ASSEMBLY OF INDIA

Report of the Committee appointed to negotiate with the States Negotiating Committee

By a resolution of the Constituent Assembly passed on the 21st December 1946, the following members, viz.

- (1) The Hon'ble Pt. Jawaharlal Nehru
- (2) The Hon'ble Maulana Abul Kalam Azad
- (3) The Hon'ble Sardar Vallabhbhai J. Patel
- (4) Dr. B. Pattabhi Sitaramayya
- (5) Mr. Shankarrao Deo
- (6) The Hon'ble Sir N. Gopaldaswami Ayyangar

were appointed as a Committee to confer with the Negotiating Committee set up by the Chamber of Princes, and with other representatives of Indian States, for the purpose of

(a) fixing the distribution of the seats, in the Assembly not exceeding 93 in number, which in the Cabinet Mission's Statement of May 16, 1946, are reserved for Indian States,

(b) fixing the method by which the representatives of the States should be returned to the Assembly,

and thereafter to report the result of such negotiations. By a further resolution passed on the 21st January, 1947, we were empowered to confer with such persons as we thought fit, for examining the special problems of Bhutan and Sikkim, and to report to the Assembly the result of such examination. This report deals only with the negotiations conducted by us in pursuance of the resolution of the 21st December.

2. The first series of our joint meetings with the States Negotiating Committee were held on the 8th and 9th February, 1947. The discussion largely centered on the scope of subjects to be negotiated between the two committees. It was urged by the States Negotiating Committee that there had been no decision yet on the part of the States to enter the Constituent Assembly, and that it would not be possible for them to decide this issue till they received satisfactory assurances on a number of points mentioned in the resolution adopted on the 29th January, 1947, by the General Conference, of Rulers (Appendix A). On the other hand, we pointed out that most of those points could only be discussed by a fully constituted Constituent Assembly including the representatives of the States; they were in any case clearly beyond our competence as a Committee, our own functions being limited to the matters laid down in the resolution of the Constituent Assembly passed on the 21st December, 1946. But while we were not prepared as a committee to discuss matters going beyond our mandate, we raised no objection to discussing, in a friendly and informal manner as individuals, certain difficulties, and to removing certain misapprehensions which seemed to be causing concern to the Princes. The more important of the points cleared up in the course of these discussions were summarised by Pandit Nehru as follows:-

"The first thing to be clear about is to proceed with the full acceptance of the Cabinet Mission's Statement. Apart from the legality of that Statement one thing also seems to me obvious, namely, that the scheme is essentially a voluntary one, where

no compulsion, except, as I said, compulsion of events, is indicated. No doubt, so far as we are concerned, we accept it as a voluntary scheme where people may join as individuals, as groups, or Rulers or otherwise. We are not trying to force any to join if they do not want to. It is a matter for negotiation throughout.....

"Now, to go back, apart from the acceptance of the scheme which is basic, some points were raised yesterday. One was about the monarchical form of Government. That question has not arisen at all in the Constituent Assembly nor, so far as we can see, does it arise at all from the Statement. But it has been repeatedly stated on our behalf in the Constituent Assembly as outside that we have no objection to it we accept that, and we do not want to come in the way of the monarchical form of Government at all. This has been made perfectly clear.

"Another point that we raised in our discussion yesterday was about some apprehension about territorial readjustments. I tried to point out that the Resolution passed by the Constituent Assembly had no reference in the minds of those who framed the Resolution or who proposed it there, to any change regarding the States. It has no relation to the States. It was an indication that there will be provision- made in the constitution or in the process of re-grouping units, etc., where some changes may have to be made. It had no reference to changing boundaries. I can concede territorial boundaries being changed for economic reasons, for facilitating governmental purposes, etc., but any such territorial readjustments, we are quite clear, should be made with the consent of the parties concerned, and not be forced down. I say, for the moment we are not thinking in terms of any such thing, but if this question arises, it should be essential that the parties concerned should consent to it.

"The scheme, as has already been stated, is a voluntary one, and whether in regard to the entry into the Constituent Assembly or subsequently when the Constituent Assembly decides and comes to conclusions, there will be no compulsion, and the States will have the right to have their say at any stage just as anybody else will have the right to have their say at any stage. So the coercive factor must be eliminated from that.

"In regard to some confusion which has possibly arisen in regard to subjects and powers, we go on what the Cabinet Mission's, Statement specifically says. The Cabinet Mission's Statement said. "The States will retain all subjects and powers other than those ceded to the Union." That is perfectly clear, we accept that statement, we accept that entirely. Generally speaking, those are the matters that came up yesterday in the course of discussion, and perhaps we might proceed on that basis and consider matters now."

We further explained that the Constituent Assembly could not possibly take up the position that they were not prepared to discuss matters with States not represented on the Chamber of Princes Negotiating Committee; or with representatives of States peoples, as that would involve an element of compulsion which was contrary to their conception of the scheme.

3. A general understanding having been, arrived at. as a result of the above exchange of views, the States Negotiating Committee proceeded to consider the two matters on which we had been asked to, negotiate by the Constituent Assembly. After a preliminary discussion, it was decided that the question of the distribution of the 93 seats should be referred to the Secretariats of the Constituent Assembly and the

Chamber of Princes, and their recommendations placed before the next meeting of the two committees on the 1st March, 1947.

4. In the meanwhile, the Dewan of Baroda, had asked for direct negotiation with us on the representation of Baroda in the Constituent Assembly. We accordingly met Sir B. L. Mitter on the 9th February. In the course of our discussion, he made it clear that it was the decision of the Baroda State, both the Ruler and the people, to give the fullest cooperation to the Constituent Assembly in its work and that they were prepared to take steps forthwith for the selection of representatives so that these could take part in the work of the Assembly at the earliest possible date. It was agreed between us and the Dewan that Baroda should, having regard to its population, send three representatives and that these should be elected by the Dhara Sabha (the State legislature) on the principle of proportional representation, by means of the single transferable vote, and that only its elected and nominated non-official members should take part in the election.

5. The next joint meeting of the two committees was held on the 1st March, 1947. At this meeting we urged that H.M.G.'s declaration of the 20th February had introduced an additional element of urgency in our task and that it would be greatly to the advantage of the States no less than to the British Indian representatives in the Constituent Assembly if States' representatives could join the Assembly during April session. We pointed out that there was nothing in the State Paper of the 16th May which operated as a bar against States doing so. We also suggested that it would be to our mutual advantage if States' representatives could function forthwith on some of the committees set up by the Constituent Assembly, particularly the Union Powers Committee and the Advisory Committee on fundamental rights, etc. The States Negotiating Committee, however, expressed their inability to take these steps in the absence of a mandate from the General Conference of Rulers whom they promised to consult at an early date.

6. The discussion then turned on the method of distribution of the 93 seats allotted to the States. The Committees approved of the distribution as proposed by the two Secretariats, (Appendix B) and authorised the making of such minor modifications as are considered necessary by the parties concerned.

7. After this, we discussed the method of selecting representatives. Various proposals were made and discussed in a joint sub-committee set up for the purpose. Eventually, after a consideration of the sub-committee's report, the following formula was accepted by both Committees, *viz.*, that not less than 50 per cent. of the total representatives of States shall be elected by the elected members of legislatures or, where such legislatures do not exist, of other electoral colleges. The States would endeavour to increase the quota of elected representatives to as much above 50 per cent. of the total number as possible.

This formula has since been ratified by the General Conference of Rulers held on the 2nd April. A copy of the resolution, passed by the Conference is attached (Appendix C).

We pointed out that in regard to two States, *viz.*, Hyderabad and Kashmir elections to their legislatures had been boycotted by important organisations representing the people of the States concerned, and the legislatures therefore could not be considered to represent the people as they were intended to do. In the cases of these two States,

we suggested that a suitable method of electing representatives for the Constituent Assembly should be devised. The Chancellor said that he would communicate the suggestion to the States concerned.

8. A Committee consisting of the following members: (1) Dr. Pattabhi Sitaramayya; (2) Sir N. Golpalaswami Ayyangar; (3) Sir V. T. Krishnamachari; (4) Sir Sultan Ahmed; (5) Sir B. N. Rau; (6) Mir Maqbool Mahmood; (7) Mr. H. V. R. Iengar was set up to consider the modifications referred to in para. 6 above and other matters of detail that might arise from time to time and to report, if necessary, to the two Negotiating Committees.

We have been informed that the States of Baroda, Jaipur, Jodhpur, Rewa, Cochin and Bikaner have already selected their representatives in accordance with the agreement arrived at. These representatives have been invited to take their seats at the forthcoming session of the Assembly. The States of Patiala, Udaipur, Gwalior and Bhavnagar have also announced that they will take part in the work of the Constituent Assembly

JAWAHARLAL NEHRU.

A. K. AZAD.

VALLABHBHAI PATEL.

N. GOPALASWAMI.

SHANKARRAO DEO.

B. PATTABHI SITARAMAYYA.

NEW DELHI

24th April, 1947.

[Enclosure 1 to Appendix A]

TEXT OF RESOLUTION PASSED AT PRINCES MEETING HELD ON 29-1- 47.

1. This meeting reiterates the willingness of the States to render the fullest possible co-operation in framing an agreed Constitution for, and in the setting up of, the proposed Union of India in accordance with the accepted plan; and declares:-

(a) that the following fundamental proposition inter alia form the basis for the States' acceptance of the Cabinet Mission's plan--

(i) The entry of the States into the Union of India in accordance with the accepted plan shall be on no other basis than that of negotiation, and the final decision shall rest with each State. The proposed Union shall comprise, so far as the States are

concerned, the territories of only such States or groups of States as may decide to join the Union, it being understood that their participation in the constitutional discussions in the meantime will imply no commitments in regard to their ultimate decision which can only be taken after consideration of the complete picture of the constitution.

(ii) The States will retain all subjects and powers other than those ceded by them to the Union. Paramountcy will terminate at the close of the interim period and will not be transferred to or inherited by the new Government of India. All the rights surrendered by the States to the Paramount Power will return to the States. The proposed Union of India will, therefore, exercise only such functions in relation to the States in regard to Union subjects as are assigned or delegated by them to the Union. Every State shall continue to retain its sovereignty and all rights and powers except to the extent that those rights and powers have been expressly delegated by it. There can be no question of any powers being vested or inherent or implied in the Union in respect of the States unless specifically agreed to by them.

(iii) The Constitution of each State, its territorial integrity, and the succession of its reigning dynasty in accordance with the custom, law and usage of the State, shall not be interfered with by the Union or any Unit thereof, nor shall the existing boundaries of a State be altered except by its free consent and approval.

(iv) So far as the States are concerned, the Constituent Assembly is authorised only to settle the Union Constitution in accordance with the Cabinet Mission's plan, and is not authorised to deal with questions bearing on the internal administrations or constitutions of individual States or groups of States.

(v) His Majesty's Government have made it clear in Parliament that it is for the States to decide freely to come in or not as they choose. Moreover according to the Cabinet Mission's Memorandum of 12th May, 1946, on States Treaties and Paramountcy "Political arrangements between the States on the one side and the British Crown and British India on the other will be brought to an end" after the interim period. "The void will have to be filled either by the States entering into a federal relationship with the successor Government..... in British India, or failing this, entering into particular political arrangements with it."

(b) that the States Negotiating Committee, selected by the Standing Committee of the Chamber of Princes and set up at the request of His Excellency the Viceroy in accordance with paragraph 21 of the Cabinet Mission's Statement of the 16th May, 1946, is the only authoritative body competent under the Cabinet Mission's- plan to conduct preliminary negotiations on behalf of the States, on such questions relating to their position in the new Indian Constitutional structure as the States might entrust to It.

(c) that while the distribution *inter se* of the States' quota of seats on the Constituent Assembly is a matter for the States to consider and decide among themselves, the method of selection of the States representatives is a matter for consultation between the States Negotiating Committee and the corresponding Committee of the British India portion of the Constituent Assembly before final decision is taken by the States concerned.

2. This meeting--

(a) endorses the Press Statement issued on 10th June, 1946, by the Standing Committee of the Chamber of Princes in consultation with the Committee of Ministers and the Constitutional Advisory Committee, in regard to the attitude of the States towards the Cabinet Mission's plan; and

(b) supports the official statement of the views communicated by the States Delegation to the Cabinet Mission on 2nd April, 1946, which *inter alia* associated the States with the general desire in the country for India's complete self-government or independence in accordance with the accepted plan.

3. This meeting resolves that, in accordance with this Resolution and the instructions and Resolutions of the States' Constitutional Advisory Committee as endorsed by the Standing Committee of Princes and the Committee, of Ministers, the States Negotiating Committee be authorised to confer with the corresponding Committee of the British India portion of the Constituent Assembly, as contemplated and declared by His Majesty's Government in Parliament in order to negotiate (a) the terms of the States' participation in the Constituent Assembly when It reassembles under paragraph 19(6) of the Cabinet Mission's Statement and (b) in regard to their ultimate position in the All-India Union, provided that the results of these negotiations will be subject to the approval of the aforesaid States' Committees and ratification by the States.

[Enclosure 2 to Appendix A]

NOTE ON THE PROPOSED ALLOCATION OF SEATS AMONG STATES

1. The allocation of seats proposed in the annexure has been prepared by the Secretariats of the Constituent Assembly and the Chamber of Princes and is intended as a basis of discussion for the Committees concerned.

2. As in British India, seats to individual States have been allotted generally on the basis of one seat for one million of the population, fractions of three-fourth or more counting as one and lesser fractions being ignored. In the case of groups, fractions of more than half have been counted as one, lower fractions being ignored.

3. States so desiring may pool or share their proportion of the allotted representation, whether individual or grouped, with that of any other State or group of States by mutual agreement, provided:--

(a) that the total representation of the States and/or the groups affected is not disturbed, and

(b) that geographic proximity, economic considerations and ethnic, cultural and linguistic affinity are duly kept in view.

ANNEXURE

A

SINGLE STATES

Division as shown in the Table of seats appended to Part II of the First Schedule to the Govt. of India Act, 1935	Names of State	Population in millions	Number of seats in the Constituent Assembly
1	2	3	4
I	Hyderabad	16.33	16
II	Mysore	7.32	7
II	Kashmir	4.02	4
IV	Gwalior	4.00	4
V	Baroda	2.85	3
IX	Travancore	6.07	6
IX	Cochin	1.42	1
X	Udaipur	1.92	2
X	Jaipur	3.04	3
X	Jodhpur	2.55	2
X	Bikaner	1.29	1
X	Alwar	0.82	1
X	Kotah	0.77	1
XI	Indore	1.51	1
XI	Bhopal	0.78	1
XI	Rewa	1.82	2
XIII	Kolhapur	1.09	1
XIV	Patiala	1.93	2
XIV	Bahawalpur	1.34	1
XIV	Mayurbhanj	0.99	1
	20	611.86	60

B

FRONTIER GROUPS

Division	Names of States in the Group	Population in millions	Number of Seats in the Constituent Assembly
XIV	Kalat	0.25	1
	Las Bela	0.07	
	Kharan	0.03	
XIV	Khairpur	0.31	
VII	Sikkim	0.12	0.7
XV	Cooch Behar	0.64	1
XV	Tripura	0.51	1.23
XV	Manipur	0.51	
XVII	Khasi States	0.21	
XVII	Amb	0.25	0.67
XVII	Chitral	0.10	
XVII	Dir.	0.35	
XVII	Swat	0.26	1
XVII	Phulra	0.01	
3.32	4		

C

INTERIOR GROUPS

Division	Names of States in the Group	Population in millions	Number of seats in the constituent Assembly
VIII	Rampur	0.93	1
	Benares		
IX	Pudukottai	0.49	Included in residuary Group XVII below.
	Bangnapalle		
	Sandur		
X(13 States)	Bharatpur		3

	Tonk Dholpur Karauli Bundi Sirohi Dungarpur Banswara Partapgarh Jhalawar Jaisalmer Kishengarh	2.86	
XI	Shahpura		
XI (26 States)	Datia Orchha Dhar Dewas (Senior) Dewas (Junior) Jaora Ratlam Panna Samthar Ajaigarh Bijawar Charkhari Chhatarpur Baoni Nagod Maihar Baraundha Barwani		

	<table border="1"> <tr><td>Ali Rajpur</td></tr> <tr><td>Jhabua</td></tr> <tr><td>Sailana</td></tr> <tr><td>Sitamau</td></tr> <tr><td>Rajgarh</td></tr> <tr><td>Narsingarh</td></tr> <tr><td>Khilchipur</td></tr> </table>	Ali Rajpur	Jhabua	Sailana	Sitamau	Rajgarh	Narsingarh	Khilchipur	3.11	3							
Ali Rajpur																	
Jhabua																	
Sailana																	
Sitamau																	
Rajgarh																	
Narsingarh																	
Khilchipur																	
XVII	Kurwai																
XII(16 States)	<table border="1"> <tr><td>Cutch</td></tr> <tr><td>Idar</td></tr> <tr><td>Nawanagar</td></tr> <tr><td>Junagadh</td></tr> <tr><td>Dharangadhra</td></tr> <tr><td>Gondal</td></tr> <tr><td>Porbandar</td></tr> <tr><td>Morvi</td></tr> <tr><td>Radhanpur</td></tr> <tr><td>Wankaner</td></tr> <tr><td>Palitana</td></tr> <tr><td>Dhrol</td></tr> <tr><td>Limbdi</td></tr> <tr><td>Wadhwan</td></tr> </table>	Cutch	Idar	Nawanagar	Junagadh	Dharangadhra	Gondal	Porbandar	Morvi	Radhanpur	Wankaner	Palitana	Dhrol	Limbdi	Wadhwan	3.65	4
Cutch																	
Idar																	
Nawanagar																	
Junagadh																	
Dharangadhra																	
Gondal																	
Porbandar																	
Morvi																	
Radhanpur																	
Wankaner																	
Palitana																	
Dhrol																	
Limbdi																	
Wadhwan																	

	Rajkot		
XII-A(15 States)	Jafrabad	1.69	2
	Rajpipla		
	Palanpar		
	Cambay		
	Dharampur		
	Balasinor		
	Baria		
	Chhota Udepur		
	Sant		
	Lunawada		
	Bansda		
	Sachin		
	Jawhar		
	Danta		
	XIII		
XIII(14 States) Pudukottai - Banganapalle and Sandur	Sangli	1.56	2
	Savantvadi		
	Mudhol		
	Bhor		
	Jamkhandi		
	Miraj (Senior)		
	Miraj (Junior)		
	Kurundwad (Senior)		
	Kurundwad (Junior)		
	Akalkot		
	Phaltan		
	Jath		
	Aundh		
	Ramdurg		
XIV(14 States)	Kapurthala	2.70	3
	Jind		
	Nabha		
	Mandi		
	Bilaspur		

	Suket		
	Tehri Garhwal		
	Sirmur		
	Chamba		
	Faridkot		
	Malerkotla		
	Loharu		
XVII	Kalsia		
	Bashahr		
XVI(25 States)	Sonepur	4.25	4
	Patna		
	Kalahandi		
	Keonjhar		
	Dhenkanal		
	Nayagarh		
	Talcher		
	Nilgiri		
	Gangpur		
	Bamra		
	Seraikela		
	Baud		
	Bonai		
XVII	Athgarh		
	Pal Lahara		
	Athmalik		
	Hindol		
	Narsingpur		
	Baramba		
	Tigiria		
	Khandpara		
	Ranpur		
	Daspla		
	Rairakhol		
	Kharsawan		
	XVI-A(14 States)	Bastar	2.81

	Surguja		
	Raigarh		
	Nandgaon		
	Khairagaon		
	Jashpur		
	Kanker		
	Korea		
	Sarangarh		
XVII	Changbhakar		
	Chhuikhadan		
	Kawardha		
	Sakti		
	Udaipur		
XVII	A-1 other states including three states mentioned in Division IX, viz	4.26	4
		27.82	29

[Enclosure 3 to appendix A]

TEXT OF THE RESOLUTION PASSED AT PRINCES MEETING HELD IN BOMBAY ON 2-4-47

1.This conference reiterates the support of the States to the freedom of the country, and their willingness to render the fullest possible co-operation in framing an agreed constitution and to all genuine efforts towards facilitating the transfer of power on an agreed basis. The conference reaffirms the resolution adopted by the General Conference of Rulers and representatives of States on January 29, 1947

2.It ratifies the general understanding reached between the States Negotiating Committee and the corresponding Committee set up by the Constituent Assembly in regard to the allocation of the States' quota of seats in, and the method of selection of the State representatives to, the Constituent Assembly, and on the fundamental points discussed at their meetings held on February 8 and 9 and on March 1 and 2, subject to the acceptance of the aforesaid understanding by the Constituent Assembly.

3. It reiterates the previous decisions of the States to adhere strictly to the Cabinet Mission's plan, under which the representatives of such States as may so desire, may join the Constituent Assembly at the appropriate stage when that Assembly meets, in accordance with the Cabinet Mission's plan to settle the Union constitution, provided

that such participation in preceded by acceptance by the Constituent Assembly, of the general understanding reached between the two Negotiating Committees in regard to the fundamental points, and other matters referred to in the second resolution.

4. The conference is glad to note that Mr. Attlee's statement of February 20, 1947, further confirms the declaration made by the Cabinet Mission that paramountcy will cease at the close of the interim period. This means that all the rights surrendered by the States to the paramount power will revert to them, and they will be in a position, as independent units, to negotiate freely in regard to their future relationship with others concerned.

5. This conference reaffirms its previous recommendations in regard to internal reforms, and emphasizes the urgency and importance of suitable action being taken without delay, where needed, with due regard to local conditions.

6. In view of the element of urgency introduced by Mr. Attlee's statement of February 20, 1947, this conference authorizes the Chancellor and the Standing Committee of the Chamber of Princes to conduct negotiations through the States' Negotiating Committee or such other sub-committees as the Standing Committee may appoint, in regard to questions affecting the States in general: (a) with the Crown Representative in regard to matters relating to the lapse of paramountcy, and those arising out of the proposed transfer of power, so far as they affect the States; (b) with Interim Government and the competent British Indian authorities in regard to matters referred to in Paragraph 4 of the Cabinet Mission's memorandum of May 12, 1946, on the States' treaties and paramountcy, provided that (1) these negotiations will be conducted in accordance with the resolution adopted by the General Conference of Rulers on January 29, 1947, and the instructions and resolutions of the States Constitutional Advisory Committee as endorsed by the Standing Committee of Princes and the Committee of Ministers; (2) the results of these negotiations will be subject to the approval of aforesaid States' Committee and ratification by the States.

7. This Conference requests His Highness the Chancellor to address His Excellency the Crown Representative with a view to ensuring early and satisfactory settlement by His Majesty's Government of questions relating to individual States prior to the transfer of power.

APPENDIX B

CONSTITUENT ASSEMBLY OF INDIA

REPORT OF THE UNION POWERS COMMITTEE TO THE CONSTITUENT ASSEMBLY

We, the undersigned, members of the Committee appointed by the resolution of the Constituent Assembly of the 25th January to examine the scope of Union Powers, have the honour to submit this our report. Sir V. T. Krishnamachari and Sir B. L. Mitter were nominated to the Committee on 10th April, 1947, and the rest of us have had an

opportunity of going over the entire ground again with them.

2. We consider that the scope of the subjects, Defence, Foreign Affairs and Communications in the Cabinet Delegation's Statement of the 16th May covers the following:--

A-- "Defence" connotes the defence of the Union and of every part thereof and includes generally all preparation for defence, as well as all such acts in times of war as may be conducive to its successful prosecution and Communications in the Cabinet Delegation's Statement of the 16th "Defence" includes--

(1) The raising, training, maintenance and control of Naval, Military and Air Forces and employment thereof for the defence of the Union and the execution of the laws of the Union and its Units; the strength, Organisation and control of the existing armed forces raised and employed in Indian States;

(2) Defence industries;

(3) Naval, Military and Air Force works;

(4) Local self-government in cantonment areas, the constitution and powers within such areas of cantonment authorities, the regulation of house accommodation in such areas and the delimitation of such areas;

(5) Arms, fire arms, ammunition and explosives;

(6) Atomic energy, and mineral resources essential to its production.

We recommend further that in order to enable the Union Government effectively to discharge its responsibility for defence, it should be vested with the powers similar to those contained in Sections 102 and 126-A of the Government of India Act, 1935.

B--"Foreign Affairs" connotes all matters which bring the Union into relation with any foreign country and in particular includes the following subjects :--

(1) Diplomatic, consular and trade representation;

(2) United Nations Organisation;

(3) Participation in international conferences, associations and other bodies and implementing of decisions made thereat;

(4) War and Peace;

(5) The entering into and implementing of treaties and agreements with other countries;

(6) Trade and Commerce with foreign countries;

(7) Foreign loans;

- (8) Naturalisation and aliens;
- (9) Extradition;
- (10) Passports and visas;
- (11) Foreign jurisdiction;
- (12) Admiralty Jurisdiction;
- (13) Piracies, felonies committed on the high seas and offences Committed in the air against the law of nations;
- (14) Admission into, and emigration and expulsion from, the Union;
- (15) Port quarantine;
- (16) Import and export across customs frontiers as defined by the Union Government;
- (17) Fishing and fisheries beyond territorial waters.

C-The term "Communications" although it is wide enough to cover any connection between place should for the present purposes of the Union, in our opinion, include the following:--

- (1) Airways;
- (2) Highways and waterways declared by the Union to be Union highways and waterways;
- (3) Shipping and navigation on inland waterways, declared by the Union to be Union waterways, as regards mechanically propelled vessels, and the rule of the road on such waterways; carriage of passengers, and goods on such waterways;
- (4) (a) Posts and Telegraphs:

Provided that the rights existing in favour of any individual State unit at the date of the establishment of the Union shall be preserved to the unit till the same are modified or extinguished by agreement between the Union and Unit concerned, subject however to the power of the Union to make laws for the regulation and control of the same.

(b) Union telephones, wireless, broadcasting and other like forms of communications; the regulation and control of all other telephones, wireless, broadcasting and other like forms of communication;

(5) Union railways; the regulation of all railways (other than minor railways) in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway

administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administration of such railways as carriers of goods and passengers;

(6) Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction;

(7) Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein;

(8) Aircraft and air navigation; the provision of aerodromes, regulation and Organisation of air traffic and of aerodromes;

(9) Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft;

(10) Carriage of passengers and goods by sea or by air;

(11) Union Meteorological Services;

(12) Inter-Union quarantine.

D-The expression "the powers necessary to raise the finances required" for the Union subjects in the Cabinet Delegation's Statement necessarily includes the power, to raise finances by taxation and loans. In existing circumstances, we recommend the following sources of revenue for the Union :--

(1) Duties of customs, including export duties;

(2) Excise duties;

(3) Corporation tax;

(4) Taxes on income other than agricultural. income;

(5) Taxes on the capital value of the assets, exclusive of agricultural land of individuals and companies; taxes on the capital of companies;

(6) Duties in respect of succession to property other than agricultural land;

(7) Estate duty in respect of property other than agricultural land;

(8) Fees in respect of any of the matters in the list of Union Powers, but not including fees taken in any Court, other than the Union Court.

We realise that, in the matter, of industrial development, the States are in varying degrees of advancement and conditions in British India and the States are in many respects dissimilar. Some of the above taxes are now regulated by agreements between the Government of India and the States. We, therefore, think that it may not be possible to impose a uniform standard of taxation throughout the Union all at once

We recommend that uniformity of taxation throughout the Units may, for an agreed period of years after the establishment of the Union not exceeding 15, be kept in abeyance and the incidences, levy, realisation and apportionment of the above taxes in the State Units shall be subject to agreements between them and the Union Government. Provision should accordingly be made in the Constitution for implementing the above recommendation.

This is in addition to the recommendations of the Sub-Committee on Fundamental Rights regarding internal customs duties.

3. It is impossible to enumerate the powers implied or inherent in or resultant from the express powers of the Union. We think that in any case the following powers come within the category :--

- (1) Union judiciary;
- (2) Acquisition of property for the purposes of the Union;
- (3) Union agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies;
- (4) Census;
- (5) Offences against laws with respect to any of the matters in the list of Union powers;
- (6) Enquiries, surveys and statistics for the purposes of the Union;
- (7) Union Services;
- (8) Industrial disputes concerning Union employees;
- (9) Reserve Bank of India;
- (10) Property of the Union and the revenue therefrom;
- (11) Public debt of the Union;
- (12) Currency, coinage and legal tender;
- (13) All subjects in respect of Union areas;
- (14) Powers to deal with grave economic emergencies in any part of the Union affecting the Union.

4. We are of the opinion that provision should be made in the new constitution for the recognition throughout the, Union of the laws and public acts Laid records of the judicial proceedings of the Units and for judgments and orders delivered in one Unit being enforced in other Units. We note that a provision to this effect has already been made in the list of Fundamental Rights.

5. In addition to the above subjects which, in our view, come within the scope of Union powers in accordance with the Cabinet Delegation's Statement, we hope that the following subjects will also be included in the Union List by agreement:--

- (1) Insurance;
- (2) Company Laws;
- (3) Banking;
- (4) Negotiable Instruments;
- (5) Patents; trade marks, trade designs; copyright ;
- (6) Planning;
- (7) Ancient and Historical Monuments;
- (8) Standard Weights and Measures.

Such an arrangement will ensure uniformity, throughout the territories of the union, in matters bearing on trade and commerce as has in fact been recognised in many federal constitutions. We have included Planning in the above list for the reason that, although authority may rest in respect of different subjects with the Units it is obviously in their interest to have a coordinating machinery to assist them.

6. We recommend the insertion in the constitution of a provision on the lines of Article (xxxvii) of Section 51 of the Australian Constitution Act.

7. We also recommend that by agreement there may be a list of concurrent subjects as between the Union and the Units.

(Sd.) JAWAHARLAL NEHRU

PANT

„ GOVIND BALLABH

„ B. L. MITTER

DAULATRAM

„ JAIRAMDAS

AYYANGAR

„ N. GOLASWAMI

„ K. M. MUNSHI

„ V.T. KRISHNAMACHARI

„ B. PATTABHAI

SITARAMAYYA

„ BISWANATH DAS

AYYAR

„ A. KRISHNASWAMI

New Delhi;

17th April, 1947.

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME III

Tuesday, the 29th April, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at half past Eight of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair.

EXTENSION OF TIME LIMIT FOR THE REPORT OF THE ADVISORY COMMITTEE

The Hon'ble Sardar Vallabhbhai Patel (Bombay: General) : Sir, I move:

"That the Constituent Assembly do extend the time fixed for the presentation of the report of the Advisory Committee appointed by the resolution of the Assembly of the 24th January, 1947 until such date or dates as the President may choose in his discretion."

The House is aware that when this Resolution was passed we were required to submit an interim report on Fundamental Rights within six weeks, an interim report on Minorities Rights within ten weeks and our final report within three months from the date of our appointment. We have tried our best to adhere to this time table, but regret that it has not been possible for us to carry it out. At our first meeting held on the 27th February, 1947, we decided unanimously to request you to extend the time limit for the submission of the reports in anticipation of the sanction of the Assembly.

We are full conscious of the necessity of completing our work with the utmost dispatch, but we fear it is not possible to work to a rigid time table. We request therefore that the Assembly may be moved to extend the time limit to such date or dates as you may choose in your discretion.

Mr. President: The question is:

"That the Constituent Assembly do extend the time fixed for the presentation of the report of the Advisory Committee appointed by the resolution of the Assembly of the 24th January, 1947 until such date or dates as the President may choose in his discretion."

The motion was adopted.

INTERIM REPORT ON FUNDAMENTAL RIGHTS*

The Hon'ble Sardar Vallabhbhai Patel: Sir, I move:

"That the Constituent Assembly do proceed to take into consideration the interim report on the subject of Fundamental Rights submitted by the Advisory Committee appointed by the resolution of the Assembly of the 24th

January, 1947."

Sir, this is a preliminary report or an interim report, because the Committee when it sat down to consider the question of fixing the fundamental rights and its incorporation in the Constitution, came to the conclusion, firstly, that the fundamental rights should be divided into parts--the first part justiciable and the other part non-justiciable. Even while considering the first part it came to the conclusion that we could not come to a final decision as to what fundamental rights are to be incorporated in the Constitution. Considering all the circumstances that exist today and that may arise within the course of the consideration of the various Committees' reports and the drafting of the Constitution, points may arise for suggesting additional fundamental rights and also for making minor alterations or suggestions that may be considered advisable. This report is a draft report. I may also suggest for the consideration of the House that in considering the various clauses that have been recommended by the Advisory Committee, the House may not strictly consider the wording of each clause of the rights suggested. Certain changes may be required while actually legally drafting the clauses, and it would be better to leave the drafting to the Drafting Committee which will make such changes as may be necessary to put them in proper phraseology. What I would submit to the House to do today is generally to accept the principles of each of the clauses that have been suggested for consideration, so that we may not have to devote more time in considering the technical legal details of the phraseology to be adopted.

We have now suggested for the consideration of the House those rights that are justiciable. The second chapter we have ourselves not been able to consider. The Fundamental Rights Sub-Committee met and considered this matter for a fortnight and devoted considerable labour and time. After that, the Report was passed on to the Minorities Rights Sub-Committee. That Committee also sat over this Report and anxiously considered various clauses and made certain changes and those changes were adopted. They sat for three days, and then this report was again placed before the Advisory Committee for its consideration. The Advisory Committee sat for two days and at their two sittings they considered the whole thing over again--so, the House will see that this is not a haphazard Report, it has been considered in all its various aspects. It is quite possible to make suggestions, alterations and additions and move amendments, but the House may not have that time which the Committees had, I would humbly submit to the House carefully to consider the various clauses that have been suggested, and when amendments are put forward before the House, they will also be carefully scrutinised. There are about 150 amendments, I hear and scrutiny of the amendments will take some time. The Office has been able to scrutinise about 25 or 30 amendments and that will perhaps take the whole of today's meeting. I move that the Report be taken into consideration, and if that motion is adopted, then we can go and consider the rights clause by clause.

Mr. President: Motion moved:

"Resolved that the Constituent Assembly do proceed to take into consideration the interim report on the subject of Fundamental Rights submitted by the Advisory Committee appointed by the resolution of the Assembly of the 24th January, 1947."

The Hon'ble Pandit Hirday Nath Kunzru (United Provinces: General) Mr. President, the Report before us purports to deal with only those fundamental rights that are enforceable by the courts, but a close study of it shows that it refers to matters which cannot be included under the head "Fundamental Rights", and that it

deals with those fundamental rights which are not justiciable. To give an instance, Sir, If a matter which does not fall under the category of fundamental rights, I shall refer to clause 10 which makes "trade, commerce and intercourse among the units by and between the citizens" absolutely free.

Sri L. Krishnaswami Bharathi (Madras: General): On a point of order, Sir. I should like to know whether Pandit Hirday Nath Kunzru is opposing the motion or supporting it. He objects to a particular clause, but this is not the time for it. I should like to know whether he is supporting the motion, for consideration or opposing it.

Mr. President: If you just allow the Hon'ble Member to complete his speech, you will be able to know whether he is supporting the motion or opposing it.

The Hon'ble Pandit Hirday Nath Kunzru: This is the stage at which according to the rules followed by the Legislatures, general observations can be made, and I hope I am strictly in order in dealing with the Report generally. It is not necessary for me to say whether I agree to the main provisions of the Report, or whether I want it to be rejected as a whole. All that I can be fairly called upon to do at this stage is to state my point of view and to ask the House to be careful in dealing with some important matters which are included in this Report.

Sir, to illustrate my first point, I refer to clause 10 of the Report which deals with what may roughly be called freedom of inter-State commerce. It may be a very desirable thing in itself, probably every one here will want that trade between the different Units of the Indian Union should be absolutely free, but I doubt whether a clause like this can be included among fundamental rights. Clause 10 deals with a matter which impinges directly on the rights of the Provinces. You may deal with it when you come to settle the powers of the Union and the Provinces; but I submit that you cannot take so important a matter outside the purview of the Committee that will consider the Union and the Provincial Constitutions by calling the freedom of inter-State commerce a fundamental right.

Again, Sir, it is stated in one of the provisos to this clause that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties and taxes to which the goods produced in the Unit are subjected by them. Now, I should like this to be clearly explained. If there is to be absolute freedom of commerce and trade between the different units, how can any unit be allowed to tax the goods of.....

Mr. F. R. Anthony (Bengal: General): On a point of order, Sir. Can all of us make our respective comments on the provisions of the Fundamental Rights at this stage?

The Hon'ble Pandit Hirday Nath Kunzru Sir, Mr. Anthony is a Member of the Central Assembly and he knows very well that in making general observations, say, on a Bill, one can refer to a few clauses to illustrate one's point of view. I am astonished that he should get up and object to my observations, which are of a general character, though he may think that they refer to matters of detail. I am sure that on many occasions he has exercised in the Central Assembly the right which I am exercising here now.

Sir, there are other examples of this kind that I could give; but I do not think that I need do so in order to illustrate what I have in mind. Now, I will give an illustration or

two to show where matters which can hardly be called justiciable have been included in the Report. Clause 8 deals with certain familiar fundamental rights; the freedom of speech, the right to assemble peaceably and without arms and the right to form associations. But they have all been made subject to certain safeguards, which, generally speaking, have been considered necessary in every country. But it is well known, Sir, that these safeguards practically make the rights that I have just mentioned non-justiciable. You may confer general rights on the citizens of India, but if they are to be surrounded with the restrictions mentioned here, and I submit that they will have to be surrounded with some such restrictions--then the right will in practice cease to be justiciable. They will be no more than directive principles of a policy, and there seems to me to be no advantage in considering such matters at this stage when, according to Mr. Patel, we should be considering only those rights that are, strictly speaking, enforceable by the courts.

I shall give another instance, Sir, in order to make my point of view still clear. I refer, Sir, to clause 8, sub-clause (e), which deals with the right of every citizen to reside and settle in any part of the Union, to acquire property and to follow any occupation, trade, business or profession. This is subject to the condition that "provision may be made by law to impose such reasonable restrictions as may be necessary in the public interest including the protection of minority groups and tribes." Now, Sir, it is very desirable, in general, that there should be freedom of movement; but I do not think that we can accept without qualification the right of the people of one province to settle in another province. The Government of the province concerned must be given the power.... (*Cries of "We cannot hear, the microphone is not working"*), Sir, I can make myself heard without the aid of the microphone. I was dealing with clause 8, sub-clause (e). This clause states that every citizen has the right to reside and settle in any part of the Union. My submission is that while freedom of movement in the Union is desirable and essential, the right to reside and settle in any part of the Union cannot be called non-controversial.

Mr. President: The microphone is now working.

The Hon'ble Pandit Hirday Nath Kunzru: Thank you, Sir, but I think I can make myself heard without it. The province, I was saying, must have the right to decide, in view of its resources what the size of its population at any time should be. No Provincial Government can fairly be asked to allow an unlimited influx of immigrants from another province in pursuance of the principle enunciated here. Let us take the case of Assam, to understand this fully. Will anybody force the Government of Assam at the present time to allow an unlimited number of people from any of the neighbouring provinces to enter Assam and settle down there? That Government is faced with an extraordinary difficult problem and clause 8(e) shows a strange disregard of the existing state of things there. I think, Sir, that this right can be conferred only under certain conditions which will have to be clearly defined.

Dr. B. R. Ambedkar (Bengal: General) : I do not wish to interrupt the speaker; but in dealing with clause 8(e), he is rather giving a wrong impression of the whole clause.

Dr. B. Pattabhi Sitaramayya (Madras: General): Instead of giving illustrations to make his points clear, he is going into a discussion of the merits.

The Hon'ble Pandit Hirday Nath Kunzru: As a parliamentarian, Sir, you

understand what I am doing. As regards Dr. Ambedkar's objection, I may say--and I am sure you will bear me out,--I read out the entire clause including the proviso.

Mr. President: I would request the Member to confine himself to the point which he wants to illustrate and not go into the merits of the proposal.

The Hon'ble Pandit Hirday Nath Kunzru: I have given only two illustrations so far and this is only the third illustration that I am giving in order to explain clearly to the House what I have in mind. I am not discussing each and every clause. Sir, I have already read out the proviso to clause 8(e) but in order to satisfy Dr. Ambedkar, shall read it out again:

"Provision may be made by law to impose such reasonable restrictions as may be necessary in the public interest including the protection of minority groups and tribes."

Probably Dr. Ambedkar's contention is that this phraseology is such as to enable a province to decide whether it would allow people coming from outside to reside and settle down within its jurisdiction. If so, a special interpretation will have to be placed on these words. Again, if the proviso is so wide as Dr. Ambedkar contends it is, then the right conferred by clause 8(e) virtually ceases to be a justiciable right.

Sir, I think I have said enough in order to indicate my point of view. I need not therefore labour the point further, but, before I sit down, I may say again that there seems to be no particular advantage in considering many provisions of this Report at the present time. They can be considered along with the other fundamental rights which have yet to be dealt with by the Fundamental Rights Sub-committee. But if the House wants to proceed with the consideration of this Report, it will have to take special care to see that only those matters are included in it which are really justiciable.

Mr. Promatha Ranjan Thakur (Bengal: General): Sir, this is a list of fundamental rights which are only justiciable. I do not understand why economic fundamental rights should not be included in these justiciable rights. Economic rights are essential while framing a country's constitution and they must also be made justiciable. I do not understand why mines, key industries and basic industries should not be nationalised. Moreover, this list of fundamental rights should have been considered in the light of reports of the Minorities Sub-committee. The Minorities Sub-committee sat only for two days and they could not go into details as regards safeguards required for minority communities. You know that Minority Sub-committee's Report is very much connected with the list of fundamental rights.

Another point to which I wish to refer is in relation to clause 6--regarding 'untouchability' where it is said that--

"Untouchability in any form is abolished and the imposition of any disability on that account shall be an offence."

I do not understand how you can abolish untouchability without abolishing the very caste system. Untouchability is nothing but the symptom of the disease, namely, the caste system. It exists as a matter of caste system. I do not understand how this, in its present form, can be allowed to stand in the list of fundamental rights. I think the House should consider this point seriously. Unless we can do away with the caste

system altogether there is no use tinkering with the problem of untouchability superficially. I have nothing more to say. I hope the House will consider my suggestion seriously.

Mr. President: I take it that the Hon'ble Member does not wish to move his amendment.

Mr. Promatha Ranjan Thakur: I do not move my amendment.

Mr. Somnath Lahiri (Bengal: General): I agree with what Pandit Kunzru suggested because it is rather difficult to make a fine distinction between what are justiciable rights and what are not. For instance, when we make a provision that people should have the right to work, that is, unemployment should not be allowed to exist in our country, it would be a social right. If you make it an inalienable provision of our fundamental rights, naturally it will have to be justiciable. Similarly, take the question of nationalisation of land. If we want to say that land belongs to the people and to no body else, that would be a social and fundamental right no doubt. But, nevertheless, it will also be a justiciable right, if that is to be given effect to. Therefore, it is rather arbitrary to make any fine distinction between what are justiciable rights and what are social and economic rights. Therefore, we would be in a better position to consider the whole thing if the full Report was forthcoming so that we might know what is in it. Otherwise, there is the danger that when we might put certain things as essential, we would be told that social and economic rights will come up not now but later on. Therefore, I support Pandit Kunzru's suggestion for taking all these things together. I do not see any great hurry for getting these few fundamental rights passed just now. I was surprised to read this Report submitted by the Committee. Before this Report was submitted by the Committee, I got a circular from the Congress Party section of the Constituent Assembly enumerating certain rights. Many good points were contained in them. Afterwards, when we received this Report, we find that many of the good points which were mentioned in that circular have been omitted. Let me put it a little more strongly. I feel that many of these fundamental rights have been framed from the point of view of a police constable and many such provisions have been incorporated. Why? Because you will find that very minimum rights have been conceded and those too very grudgingly and these so-called rights are almost invariably followed by a proviso. Almost every article is followed by a proviso which takes away the right almost completely, because everywhere it is stated that in case of grave emergency these rights will be taken away. Now, Sir, what constitutes a 'grave emergency' God alone knows. It will depend on the executive obtaining at a particular period of government. So, naturally anything that the party in power or the executive may not like would be considered a grave emergency and the very meagre fundamental rights which are conceded in this resolution will be whittled down. Therefore, it is necessary for us to see the whole thing together and see what people are going to get. I should like to mention one or two things as examples. What should be our conception of fundamental rights? Apart from the knowledge that we can gather from the experience of other countries, there is also the knowledge born out of our own experience, that is, there are certain rights which we have been denied in the past by an alien and autocratic government. We have come up against those difficulties. We want to incorporate every one of those rights which our people want to get. One vital thing which our people have been suffering from in the past has been the curtailment of the liberty of the press by means of securities and by other methods. The press has been crushed completely. This is a thing against which every patriotic Indian is up in arms, including every congressman, and, therefore, in his

heart of hearts every Indian feels that in a free India in order that people may feel freedom and act up to it, there should not be such drastic curtailment of liberties of the press. But what do we find? There is not even a mention of the liberty of the press in this whole list of fundamental rights submitted by the Committee, except a solitary mention made at one place that there will be liberty of expression. Sir, this is something which goes against our experience and must be protected.

Similarly, there is another thing that we have found all along that a Government which does not depend on the people and which rules the country by autocracy and by means of force, detains people without trial, without having to go through a judicial process. This is a thing against which Indians have been entertaining the bitterest feelings and they have been agitating against this from the Congress and every other platform. But in the fundamental rights that have been cooked up by this Committee we do not find this right. That is why I am constrained to say that these are fundamental rights from a police constable's point of view and not from the point of view of a free and fighting nation. Here whatever right is given is taken away by a proviso. Does Sardar Patel want even more powers than the British Government an alien Government, an autocratic Government which is against the people--needs to protect itself? Certainly not. Sardar Patel has the support of the overwhelming masses of the people and, therefore, he can do with much less powers to rule the country than an autocratic government would require. But here we find that none of the existing provisions of the powers of the executive has been done away with; rather in some respects those powers are sought to be increased. And if some of the amendments are passed--specially that of Sri Rajagopalachariar-- it will in certain cases be even worse than the conditions obtaining at present. I will give one example. Here according to Patel a seditious speech is a punishable crime. If I say at any time in the future, or the Socialist Party says, that the Government in power is despicable, Sardar Patel, if he is in power at that time, will be able to put the Socialist Party people and myself in jail, though, as far as I know, even in England a speech, however seditious it may be, is never considered a crime unless an overt act is done. These are the fundamental bases of the, fundamental rights of a free country, but here a seditious speech also is going to be an offence; and Sri Rajagopalachariar wants to go further. Sardar Patel would punish us if we make a speech, but Rajaji would punish us even before we have made the speech. He wants to prevent the making of the speech itself if in his great wisdom he thinks that the fellow is going to make a seditious speech.

Dr. B. Pattabhi Sitaramayya: Sir, we cannot anticipate amendments.

Mr. Somnath Lahiri: I will not discuss any more of the amendments.

We thus find that the feeling among Congressmen in general, as evidenced by this circular of the Constituent Assembly section of the Congress Party, is for extended fundamental and civic rights which will enable the country to function in a free manner and for political oppositions to grow. What is the necessity of fundamental rights in a bourgeois national democracy which you are trying to have? There one of the fundamental objects is that a political opposition must have full freedom to express its views, to draw its own conclusions and to say anything it likes. If I am in the opposition or if some one else is in the opposition it is certainly his business to say that the existing Government is despicable; otherwise he would not be in the opposition. Why should my right to say that be curtailed and at the same time we should assume that political opposition will grow and democracy will develop? It cannot; it will have to depend on the sweet will and the tender mercies of the party in

power or the executive in power. That is not the basis of democracy.

Sir, I would request the Committee to consider the amendments very liberally and try their best to accommodate the amendments so that we can have really good and democratic fundamental rights which will give our people a real feeling of freedom and from which our country will go on gathering strength. Otherwise, if we lay down fundamental rights and then insert provisions in every clause for taking away those rights, we will simply make ourselves a laughing stock before the whole democratic world.

Mr. R. K. Sidhwa (C.P. and Berar: General): Sir, I will deal with Mr. Lahiri's statement first. He has misinformed the House by stating that the Committee has absolutely ignored the economic rights and the fundamental rights in various aspects. Sardar Patel in moving his motion made it clear that this is only a preliminary report or rather an interim report; the motion regarding economic and political rights is not here and will be taken up hereafter. Mr. Lahiri must know that we are not unmindful about this matter. We are much more keen on these economic and political rights of the citizens than he imagines; and therefore to say that those rights should have been presented to us now in this document and that failing that we would be making a laughing-stock of ourselves to the world is not fair to this House.

Now, coming to Dr. Kunzru, I was really very sorry to find him stating that some of the clauses in this statement do not come within the purview of fundamental rights or justiciable rights. If any one has studied the various constitutions of other countries he will find that there are chapters and chapters and clauses and clauses dealing with economic, commercial and trading rights of the people. And for Dr. Kunzru to state that this is not a fundamental right or a justiciable right is not fair to this House. I will quote a few paragraphs from some constitutions to show that commerce and trade and economics are considered justiciable fundamental rights. In Germany, Part 2 of Art. 138 says :

"Property and other rights of unions in respect of a property devoted for public purposes, social and commercial, are guaranteed."

Then in Art. 151 it says :

"Freedom of trade and industry is guaranteed in accordance with the provisions of the laws of the Reich."

A number of these may be quoted but I. will content myself with just a few. Art. 156 says :

"The Reich may by legislation in case of present necessity and in the economic interest of the community oblige economic undertakings and associations to combine in a self-governing basis for the purpose of ensuring the co-operation of all productive factors of the nation, associating employers and employees in the management and regulating the production, manufacture, distribution, consumption, prices and the import and export of commodities upon principles determined by the economic interests of the community."

Then further take South Africa. Section 136 says:

"There shall be free trade throughout the Union, but until Parliament otherwise. provides the duties of customs and of excise leviable under the laws existing in any of the colonies at the establishment of the Union shall remain in, force."

Clause 10 and clause 8, to which Dr. Kunzru has made reference, refer to trade within the Units and the Union, and I see no reason why such a clause should not stand for the protection of the various trades that would move about from Unit to Unit and from Unit to Union. As regards clause 8(e) it says :

"The right of every citizen to reside and settle in any part of the Union, to acquire property and to follow any occupation, trade, business or profession."

It is considered a justiciable and fundamental right. If a right to reside and settle is not a justiciable or fundamental right, I do not know what else it could be. Under the circumstances I do feel that the objections of Dr. Kunzru are untenable and I agree with Mr. Lahiri that in some respects this Report is certainly not complete, and we have to give elaborate personal and political rights. It is not that we have ignored that part. There are various amendments on the order paper; I have moved some of them and other Hon'ble Members have also done so. They will be considered by this House. I might also state that the Committee had suggested that the secrecy of correspondence should be guaranteed and that there should be no kind of interception of correspondence, telegrams and telephones, but the main Committee has deleted it. Therefore, it is unfair to say that the Fundamental Rights Committee did not consider this question. We have now moved amendments to that effect, and it is for the House to consider those amendments. Mr. Lahiri should not have made all those general remarks; he should have confined himself to the amendments which have been moved. Therefore, I contend, Sir, that these fundamental rights are justiciable, and I do feel that the objection of Dr. Kunzru is not justifiable and that Mr. Lahiri, in his anxiety to move more amendments to protect the rights of every citizen, made an uncalled for remark that we will be making this country a laughing-stock of the world. This is too much indeed.

Prof. N. G. Ranga (Madras: General): I wish to congratulate this Committee on having produced this very valuable document and presented it to this House.

I think it is not worthy of any member of this House to describe this as a sort of cooked-up document from a responsible Committee like this. But I am not surprised that this remark, unworthy as it is, has fallen from the lips of one of our members, considering the political history of the member as well as the antecedents of his party.

Mr. President: Please do not make any personal remarks.

Prof. N. G. Ranga: I have said enough about it.

We are told that this document is prepared from the view point of a policeman. I do not know where the policeman comes in except by way of our attempt to keep him out of the exercise of our fundamental rights. That is exactly the main object with which this charter of Fundamental Rights has been prepared. We have had such a bitter experience of policemen in this country that the authors of this document have had to formulate these clauses in such a way as to have the least possible interference of policemen. If there are any provisions, they are intended to see that those people who believe in liberalism at one end and communism at the other will not be enabled to take advantage of these rights to pave the way for totalitarianism. It happened like that in several States of Europe between the two wars. They took advantage of the fundamental rights there to the extent that they came to power and paved the way for Nazism on the one hand and for communism on the other. We want to safeguard

ourselves against such a menace. We have had this experience before us and it is the duty of any responsible body like this to make provision for such provisos as will enable a democratic parliament in this country to prevent any mischief-monger--organized or unorganized--from demoralizing our own democratic State to such an extent as to pave the way and effectively achieve a totalitarian State in this country.

A reference has been made to the absence of any reference in this particular document to freedom of the press. But if a little care had been exercised, it would have been found that this has been provided for in the very first clause--sub-clause 8(a):

"The right of every citizen to freedom of speech and expression." Expression' includes freedom of the press.

Now come to the other point--where is the provision for the functioning of the opposition party in these fundamental rights, we are asked ? To draw your attention to a very small thing I need only say that the Congress Party itself is such a democratic body as to make it possible for people like Rajaji to give notice of one set of amendments and people like so many us to give notice of other amendments which may be diametrically opposite to them, and yet we are able to digest these, consider them all and come to an agreeable decision, a decision which will be democratic and which may come to be acceptable to all parties in the House. We have to make it possible for various political parties to function in our country; we all agree on that. It does not come to us as a sort of a new thought from abroad or from other country, but what I wish to remind this House as well as the member concerned is this : in that country which is upheld as a sort of an ideal to us all, where is there any scope for the opposition party? Is there any scope for the opposition party at all ? Indeed in Soviet Russia, people are not allowed to organize themselves into free trade unions. Here in in this country we are already enjoying these rights and we are epitomizing them in this great document. Look at it from every point of view and You will find that this document proposes to give to our masses in this country more democratic, more liberal, more comprehensive, and more fundamental rights than are being enjoyed in any other country, not even excluding Soviet Russia.

There is another point raised by my Hon'ble friend, Dr. Kunzru, namely that several of these things are not justiciable. I am not a lawyer, and, therefore, I do not wish to go into the technical side of it. All that I say is to express my extreme satisfaction with regard to clause 22(1) and 22(2) wherein the right is given to the ordinary citizen to move the Supreme Court by appropriate proceedings for the enforcement of any of the rights guaranteed by this part. This is a very important privilege that is being conferred on our citizens. The only additional privilege that I wanted to be conferred upon them is that--as I said on an earlier occasion--those citizens who are so poor as not to be able to move the Supreme Court, should be enabled under proper safeguards, of course at the cost of the State, to move the Supreme Court in regard to the exercise of any of these fundamental rights. With all these provisos Dr. Kunzru told us that the very essence of these fundamental rights is being lost and Mr. Lahiri has agreed with him. It is rather amusing how Liberalism and Communism can come together and coincide with each other. We have our experience of the way in which the Public Safety Ordinances were enforced in this country. We know that those Ordinances were very arbitrary; they conferred terrible powers, unquestionable powers upon the executive. Are we to be told now that in the same way we should not have any of these provisos at all but that simply power should be conferred upon the Government and that any order made under this particular clause

or that particular clause cannot be questioned in a court of law? That is how it is. We were detained and the orders that were passed to detain us could not be questioned at all in any court of law. But in spite of that there were noble judges. Hon'ble judges of the Calcutta High Court and also of the Central Provinces, who had the courage of their conviction, who were able to look in between the words of those very same ordinances as well as the Public Safety Act and were able to save many people from the gallows by setting aside the judgments of the so-called Special Courts. Similarly, it must be possible and it would be possible, when this document becomes a part of our own Constitutional Law. This document has been so carefully drafted as not to give arbitrary powers but to give just as much power as can possibly be digested in the organisational or institutional exercise of his rights by the ordinary citizen in this country, either organisedly or individually--as much power as possible to those people to see that these individuals, these organisations or institutions are given every possible safeguard or protection. Therefore, these provisos are not going to make these rights nugatory at all. These provisos are intended to prevent our democracy being demoralised or degraded into a dictatorship. These rights are intended to protect our citizens, our law-abiding citizens who believe in democracy from those who believe in dictatorship but only pretend to work for the cause of democracy in order to establish their own dictatorship.

Dr. B. Pattabhi Sitaramayya: Sir, I now move for closure being applied to the discussion

Mr. President : I think we have had sufficient discussion on the motion.

The question is:

"That the question be now put."

The motion was adopted.

The Hon'ble Sardar Vallabhbhai Patel: Sir, when I moved my motion for the consideration of this Report I did not anticipate any long debate on this question. I thought that there would be plenty of opportunities for scrutinising the clauses, omitting some clauses, if necessary, that may be considered objectionable or improving any if need be. Now that the debate has taken place I want to place before the House certain aspects of the proceedings of the Committee which will give the House an idea that this is neither a haphazard Report nor a report cooked or uncooked. It is carefully considered Report. There were two schools of thought in the Committee and there was a large number of very eminent lawyers who could scrutinise every word of every sentence, even commas and semi-colons, from a very critical point of view. These two schools viewed the matter from two different angles. One school considered it advisable to include as many rights as possible in this Report--rights which could straightaway be enforceable in a court of law, rights in regard to which a citizen may without difficulty go straightaway to a court of law and get his rights enforced. The other school of thought considered it advisable to restrict fundamental rights to a few very essential things that may be considered fundamental. Between the two schools there was considerable amount of discussion and finally a mean was drawn which was considered to be a very good mean. It must not be understood, because this Report is called an Interim Report, that the second Report will be much bigger, or that many more important things will come under the subsequent report. It cannot, in the nature of things, be that the principal report which

comes before the House would be containing less important things. Very essential things have been included in this Report. But there is another report which has to be considered and that is the report on fundamental rights which are non-justiciable. There may be other points that may strike this House or may be suggested from outside which may have to be considered and the Committee may take them into account. But I may inform the House that this Report has gone through three Committees. Of course the third school of thought was absent in the Committee. That school would require that under the fundamental rights which were provided for a free India there should be no police, there should be no jail, there should be no restrictions on the press, the baton, the lathi or the bullet. Every body should be free in a free India to do what he likes. That school was absent in the Committee. But the two schools of thought that considered this Report studied not the fundamental rights of one country alone but of almost every country in the World. They studied all the Constitutions of the world and they came to the conclusion that in this Report we should include as far as possible rights which may be considered to be reasonable. On that there may be difference of opinion in this House and this House is entitled to consider every clause from a critical point of view and to suggest alterations, modifications or omissions but what I have moved in this House, now is, that this Report may be taken into consideration. Therefore, I thought that any elaborate speech was not necessary and hence I suggested that whatever has to be considered, or whatever suggestions have to be made, may be made at the time when clauses are considered. As I told the House there are about 150 amendments, though the time given was about ten hours or so. The House contains members who are very studious, very critical and very well-informed and therefore it is to the credit of the House that we have got as much as 150. amendments in such a short space of time. I think if we proceed at this rate we will debate perhaps for a much longer period than we expect. So, I suggest that the Report be taken into consideration, and if that is accepted, we may take clause by clause.

Mr. President: The question is:

"That the Constituent Assembly do proceed to take into consideration the interim report on the subject of Fundamental Rights submitted by the Advisory Committee appointed by the resolution of the Assembly of the 24th January, 1947."

The motion was adopted.

CLAUSE 1--DEFINITIONS

Mr. President: We now proceed to consider the Report clause by clause. Clause 1.

The Hon'ble Sardar Vallabhbhai Patel: Clause I is a clause which gives the definition:

"Unless the context otherwise requires--

(i) 'The State' includes the legislatures and the governments of the Union and Units and all local or other authorities within the territories of the Union.

(ii) 'The Union' means the Union of India.

(iii) 'The law of the Union' includes any law made by the Union legislature and any existing Indian law as in force within the Union or any part thereof."

I do not think that this clause requires any speech in support of it. Therefore I formally move this clause for the consideration of the House.

Mr. President: I have got notice of several amendments to clause 1. Mr. Kamath.

Mr. K. M. Munshi (Bombay: General): I have given notice of certain verbal amendments to this clause. I could do this only this morning, and if you will be pleased to give me leave...

Some Hon'ble Members: Louder, please.

Mr. K. M. Munshi: I have submitted to the Office certain verbal amendments to clause 1, which I have already presented to you, and I beg leave under our rules to move these amendments. They are not amendments of substance; they merely make some verbal changes. If you will be pleased to give me leave I may also move them.

Mr. President: I am afraid I have not seen those amendments. But if they are only verbal amendments, I suppose the House will have no objection to their being moved. But I should like to say that I would not allow substantial amendments to be taken up without due notice. (To Mr. Munshi), I shall take up your amendments a little later, unless they can be covered by Mr. Kamath's or any other amendment.

The Hon'ble Sardar Vallabhbhai Patel: Are there any amendments to this clause?

Mr. President: I have got notice from two Hon'ble Members.

Mr. K. M. Munshi: Before Mr. Kamath moves his amendment, may I say that mine is a verbal amendment to clause 1(i). If that is permitted to be moved, it will remove any doubt that there may be.

Mr. President: You can move yours. (To Mr. Munshi).

Mr. K. M. Munshi: I beg to move that in clause 1 sub-clause (i), insert the words "for the purpose of this Annexure" between the words "State" and "includes". The reason of this amendment is very clear. In order to have one convenient phrase only for the purpose of this annexure we have to use the word "State ". The word "State" has been used here only for the purpose of verbal convenience and only for the purpose of this Chapter. If it be left as it is, it might lead perhaps to an impression that this is the definition of "State" in the Constitution Act. Therefore, I submit that the words "for the purpose of this Annexure", that is, for the purpose of the preliminary report in this Annexure, be inserted as I have moved above.

An Hon'ble Member: Then how will the clause read?

Mr. President: Clause 1, sub-clause (i) will read thus:

"The State' for the purpose of this Annexure includes the legislatures and the governments of the Union, etc., etc."

(To Mr. Munshi). In other places the word "Part" is used, and the word can be used in place of "annexure".

Mr. K. M. Munshi: I will accept that.

Mr. President: Sub-clause (i) will read as follows:

"The State' in this Part includes the legislatures and the governments of the Union, etc., etc."

The Hon'ble Sardar Vallabhbhai Patel: I accept this amendment.

Sri L. Krishnaswami Bharti: I submit that amendment of Mr. Munshi may appropriately be prefixed to the first sentence itself to cover all the three definitions of that clause. We can say--

"Unless the context otherwise requires, and for the purpose of this Part--"

and than give the definitions as in the clause.

Mr. President: Instead of putting in-the words "for the purpose of this Part" after the word "State". let those words come in the beginning. Then it will read as follows:

"In this Part, unless the context otherwise requires--"

(i) 'The State' includes the legislatures and the governments of the Union and the Units and all local or other authorities within the territories of the Union....."

and so on.

Mr. K. M. Munshi: I have no objection, Sir. "Union" must mean the Union of India wherever it is.

Sri K. Santhanam (Madras: General): The amendment is to the definition of "The State" and not to any other definition.

Mr. President: Mr. Munshi's amendment as recast by me has been accepted by the Mover. Does the House accept the amendment?

The amendment was adopted.

Mr. K. M. Munshi: I have an amendment to clause 1, sub-clause (iii), that is purely verbal. Sub-clause (iii) says:

"The law of the Union' includes any law made by the Union legislature and any existing Indian law as in force within the Union any part thereof."

I want to delete the word "as" in the phrase "as in force".

The Hon'ble Sardar Vallabhbhai Patel: I accept this amendment.

Mr. K. M. Munshi: It was felt by many that if the word 'as' is put in, it would mean something as may be in force. Otherwise the word 'as' should be deleted.

Mr. Promatha Ranjan Thakur: Sir, the words "The law of the Union" include any law made by the Union. Sometimes the Union executive may pass orders which have got the force of law. I think the orders made by the Union executive must also be included in this clause.

Mr. President: Did you move an amendment?

Mr. Promatha Ranjan Thakur: No, it is not an amendment.

Mr. President: Mr. Munshi's amendment wants the word 'as' to be omitted and the mover has accepted this amendment. Can I take it that the House accepts this amendment?

The amendment was adopted.

Mr. President: Mr. Kamath will please move his amendment.

Mr. H. V. Kamath (C. P. and Berar: General): Mr. President, since I sent in my amendment I have learnt that the terms whose definitions have been incorporated in this clause have been arranged in alphabetical order and I am further told that in the matter of definitions the alphabetical order should and does take precedence over any other order. In these circumstances, I do not desire to move my amendment and beg leave of the House to withdraw the same.

Mr. President: Dr. Syama Prasad Mookherjee may move his amendment.

Dr. Syama Prasad Mookherjee (Bengal: General): Sir, in view of Mr. Munshi's amendment, it is not necessary for me to move my amendment.

Mr. President: Mr. Chaudhury may move his amendment.

Srijut Rohini Kumar Chaudhury (Assam: General): Sir, I beg to move that in clause 1, the following new definitions be inserted:--

"(iv) 'School' means any educational institution."

"In these clauses dealing with the fundamental rights, we find the word 'school' and also the words 'educational institutions' being used at different places, leading one to think that some distinction is intended. I would like it to be clearly stated that by school we mean any educational institution. I am referring to clause 18 sub-clause (2) where it is stated--

"No minority whether based on religion, community or language shall be discriminated against in regard to the

admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them."

Here the words used are "State educational institutions". In sub-clause (3) (a) it is laid down--

"All minorities whether based on religion, community or language shall be free in any Unit to establish and administer educational institutions of their choice."

Here we have the words "educational institutions". And in sub-clause (3) (b) the word 'schools' is used--

"The State shall not, while providing State aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language."

This is likely to lead to confusion and my amendment is intended to avoid this confusion.

We have to safeguard our rights in the schools also. Some like you, Sir, are extremely good at their studies and knock off all the prizes. But others there are who have other kind of memories of their school days. They remember standing on the bench, standing on the floor, kneeling down on the floor, kneeling under the bench, and all that. We do not want any such things to happen again, because the clauses here are not clear. They should apply equally to schools and to all educational institutions. Therefore, I suggest it may be put down that schools mean any educational institutions.

Mr. K. M. Munshi: In clause 18 (3) (b) the word "schools" has not been used to narrow down the scope of the clause but to discriminate them from other educational institutions. This question, I think can best be dealt with when we come to clause 18. Actually sub-clause (3) (b) was intended to apply only in regard to the system of primary education.

Mr. President : Shall I put the amendment to vote now ? The amendment is--one part of it--

That in clause 1, the following new definitions be inserted:--

'School' means any educational institution.

The amendment was negatived.

Srijut Rohini Kumar Chaudhury: The second part of my amendment is, for defining untouchability, it may be clearly stated that.

" 'Untouchability' means any act committed in exercise of discrimination on, grounds of religion, caste or lawful vocation of life mentioned in clause 4."

Sir, in the fundamental rights, it has been laid down that untouchability in any form should be an offence punishable by law. That being so it is necessary that the offence should be properly defined. As it stands, the word 'untouchability' is very vague. It should be defined in the manner in which I have put it, or in some other

better form. which may be decided upon by the House.

Dr. S. C. Banerjee (Bengal: General): Mr. President, the word 'untouchability' actually requires clarification. We have been accustomed to this word for the last 25 years, still there is a lot of confusion as to what it connotes. Sometimes it means merely taking a glass of water and sometimes it has been used in the sense of admission of 'Harijans' into temples, sometimes it meant inter-caste dinner, sometimes inter-caste marriage. Mahatma Gandhi who is the main exponent of 'untouchability', has used it in various ways and on different occasions with different meanings. So when we are going to use the word 'untouchability', we should be very clear in our mind as to what we really mean by it. What is the real implication of this word? I think we should make no distinction between untouchability and caste distinction, because as Mr. Thakur has said, untouchability is merely a symptom, the root cause is caste distinction and unless and until the root cause, that is caste distinction is removed, untouchability in some form or other is bound to exist and when we are going to have an independent India, we should expect everyone to be enjoying equal social conditions. It is incumbent on us that we should be very clear as to make it explicit that in the future independent India, there should be no distinction between man and man in the social field. In other words, caste distinction must be abolished. Of course there is difficulty as to whether we can make it justiciable or not. I have thought over it for a long time. I do really believe that in place of untouchability, some other word, such as, 'caste distinction' should be used or the word 'untouchability' should be clearly defined so as to leave no doubt in the mind of any one as to what we really mean by it.

Mr. K. Munshi: Sir, I oppose this amendment. The definition is so, worded that if it is accepted. it will make any discrimination even on the ground of place of birth or 'caste or even sex Untouchability. What does the definition say ?

"Untouchability' means any act committed in exercise of discrimination on grounds of religion, caste or lawful vocation of life mentioned in clause 4."

Now, Sir, clause 4 does not deal with untouchability at all. It deals with discrimination regarding services and various other things. It may mean discrimination even between touchables and untouchables, between people of one province and another. The word 'untouchability' is mentioned in clause 6. The word 'untouchability' is put purposely within inverted commas in order to indicate that the Union legislature when it defines 'untouchability' will be able to deal with it in the sense in which it is normally understood.

The present amendment will be extending the scope of the definition of untouchability. Sir, I oppose the amendment.

Mr. Dharendra Nath Datta (Bengal: General): Sir, it seems to me that whether the definition suggested by Mr. Rohini Kumar Chaudhury is accepted or not, it is necessary that there should be some definition put in. Here it is said that 'untouchability' in any form is an offence. A magistrate or a judge dealing with offences shall have to look to the definition. One magistrate will consider a particular thing to be untouchability, while another magistrate may hold a different thing to be untouchability, with the result there will be no uniformity on the part of the magistracy in dealing with offences. It will be very difficult for the judge to decide cases. Moreover, untouchability means different things in different areas. In Bengal,

untouchability means one thing, while in other provinces, it means an entirely different thing. So, unless a definition is put in, it would be impossible for the judiciary to deal with offences coming under untouchability. Whether you accept the amendment of Mr. Rohini Kumar Chaudhury or not, some definition must be there. This question may be left to the Drafting Committee to find out some suitable definition of the word 'untouchability'. I strongly feel that unless there is a definition it cannot be dealt with as an offence. We all feel that untouchability should be made an offence and it should be done away with. I also feel with my friend Mr. Thakur that the root cause of untouchability, namely, the caste system, in Hindu society should be abolished altogether. Unless the caste system is abolished, untouchability will persist in some form or other. It has been said times without number by our leaders that unless Hindu society is drastically reformed by abolishing the caste system, it is bound to perish. Caste system should be abolished. So, if we are to deal with 'untouchability' as an offence, there should be some definition and I hope it would be left to the Drafting Committee to frame suitable definition so that it will be placed before the House for discussion. With these words, I support the amendment.

Mr. President: I should like to draw the attention of the House to clause 24 which says :

"The Union Legislature shall make laws to give effect to those provisions of this part which require such legislation and to prescribe punishment for those acts which are declared to be offences in this part and are not already punishable."

I take it that the Union legislature will define the word 'untouchability' so that the courts might prescribe proper punishment.

Srijut Rohini Kumar Chaudhury: I beg leave to withdraw the amendment.

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

Mr. President: I do not propose to put to vote of the House clause by clause. We will discuss each clause and the House will come to certain decisions. These decisions will be reviewed when the whole Constitution is ready. Suitable alterations will be made in the light of what precedes and what follows, so that there might be no discrepancy between one part and another. Therefore, the House need not be very meticulous about words now.

The Hon'ble Sardar Vallabhbhai Patel: There shall be no duplication of debates and it shall not be open to reopen the whole thing. There shall be only reconciliation between various clauses, in the matter of phraseology.

Mr. President: I do not suggest any duplication or any second discussion clause by clause. When the whole draft comes back we shall see how each clause fits and that there is no discrepancy. Subject to that I think the House can take clause by clause into consideration.

Srijut Rohini Kumar Chaudhury: Sir, on a point of information, I should like to know whether a separate Bill like the Bill of Rights will embody all these provisions and then will be presented to this House. In that case it will be unnecessary to discuss these amendments.

Mr. President: We are now discussing that very thing. As I, said, we shall see at the end that all conflicts and discrepancies are removed; not that we shall discuss the whole thing over again.

Sri M. Ananthasayanam Ayyangar (Madras: General): Sir, you should put the question that clause 1, as amended, be passed.

Mr. President: I am not taking formal votes because it will not then be open to review later on. Therefore, I am taking up the consideration of the clauses one after another.

The Hon'ble Sardar Vallabhbhai Patel: Sir, unless it is accepted by the House there is no point in going through, the whole Report. When the whole Report is gone through, it is understood that the necessary adjustments will be made. But if you leave the whole thing open without taking votes there is no point in going through the Report.

Mr. N. V. Gadgil (Bombay: General): Does a vote mean that it is finally accepted and there is no further scope of any further suggestions even in the matter of principle?

Sri K Santhanam: Sir, some of the rules may be changed afterwards and you can ask the House to change anything. But let us accept the clauses.

Mr. President: It is always open to the House to review its own decisions and in that way every decision that we take today will be open to review. But I was suggesting that even without reopening the whole thing we might remove all conflicts and discrepancies which may appear later on by making the necessary adjustments. In any case I will put clause 1 to vote.

The question is that clause 1, as amended, be passed.

The motion was adopted.

CLAUSE 2-APPLICATION OF LAWS

The Hon'ble Sardar Vallabhbhai Patel: Sir, I move that clause 2 be accepted. The clause runs thus :

"All existing laws, notifications, regulations, customs or usages in force within the territories of the Union inconsistent with the rights guaranteed under this part of the Constitution shall stand abrogated to the extent of such inconsistency, nor shall the Union or any unit make any law taking away or abridging any such right."

If we make a fundamental right justiciable this is not a necessary corollary of it but in this connection I should like to draw the attention of the House to paragraph 7 of the Report which says:

"Clause 2 lays down that all existing laws, regulations, notifications, customs, or usage in force within the territories of the Union inconsistent with the fundamental rights shall stand abrogated to the extent of such inconsistency. while the course of our discussions and proceedings we have kept in view the provisions of existing

Statute law, we have not had sufficient time to examine in detail the effect -of this clause on the mass of existing legislation. We recommend that such an examination be undertaken before this clause is finally inserted in the Constitution."

Therefore, this clause is subject to examination of its effect on the existing laws and this should be done before the Constitution is finally drafted and the clause finally adopted.

Sir, I move.

Sri K. Santhanam: Sir, I gave notice of an amendment but I will move it in a somewhat modified form in terms of a suggestion made by Sardar Patel. I move that in clause 2 for the words "nor shall the Union or any unit make any law taking away or abridging any such right", the following be substituted:

"Nor shall any such right be taken away or abridged except by an amendment of the constitution."

The only reason is that if the clause stands as it is then even by an amendment of the Constitution we shall not be able to change any of these rights if found unsatisfactory or inconvenient. In some constitutions they have provided that some parts of the Constitution may be changed by future constitutional amendments and other parts may not be changed. In order to avoid any such doubts I have moved this amendment and I hope it will be accepted.

The Hon'ble Sardar Vallabhbhai Patel: Sir, I accept the amendment.

Mr. Promatha Ranjan Thakur: Sir, the words are "nor shall the Union or unit etc." "Union" has been defined in the first clause but not "unit". That also should be defined.

Mr. President: The word "unit" does not occur in Mr. Santhanam's amendment and so the question does not arise.

The Hon'ble Rev. J. J. M. Nichols-Roy (Assam: General): Sir, we understand that there will be provincial constitutions and each province will frame its own constitution. If so, the amendment of any law relating to a province should be left to the provinces instead of to the Union. The power to amend the Provincial law must lie in an autonomous province. If it is true, as we understand now, that the Union will deal with certain subjects only like Defence, External Affairs and Communications, we do not want that any provincial power should be limited by any fundamental right or any of its powers to be taken by the Union of India. Therefore, it seems to me that this amendment will be dangerous. I suggest that we should deal with all the fundamental rights first and take up this clause 2 last. I want to see whether any provision in the fundamental rights, does not encroach on the powers of an autonomous province or State.

Mr. B. Das (Orissa: General): I am inclined to agree with the Hon'ble Rev. Nichols-Roy, and I cannot accept Mr. Santhanam's amendment. We cannot delegate that power to the Union Legislature or the Provincial Legislature. That means that the future Constituent Assembly be called upon to make such fundamental changes that are implied by the amendment of Mr. Santhanam. I would suggest to the House to see to whom we are delegating this power before we accept this amendment and leave the

Provincial Legislature to do any thing it likes.

The Hon'ble Sardar Vallabhbhai Patel: The amendment suggested would make all the fundamental rights obligatory because it is absolutely essential that this clause should be passed if these rights are considered justiciable and fundamental. If these are not justiciable then they are not consistent. But if it is considered that those clauses which confer rights on citizens which could be enforced in law, then it is necessary that any act, custom, regulation or notification which takes away or abridges this right, must be abrogated. Otherwise, it is meaningless. Therefore, Sir, I oppose the postponement of the motion. I have of course accepted Mr. Santhanam's amendment.

Mr. President: The mover of the Resolution has accepted Mr. Santhanam's amendment. The question now is:

"That in clause 2 for the words 'nor shall the Union or any unit make any law taking away or abridging any such right, the following be substituted:

'nor shall any such right be taken away or abridged except by an amendment of the constitution'."

The motion was adopted.

Mr. President: The question is--(I will now read the amended clause)--

"All existing laws, notifications, regulations, customs or usages in force within the territories of the Union inconsistent with the rights guaranteed under this part of the constitution shall stand abrogated to the extent of such inconsistency, nor shall any such right be taken away or abridged except by an amendment of the constitution."

The Constitution will provide rules for its own amendment, and the Constitution will be amended in accordance with the rules which will be provided in the Constitution. This clause also, if necessary, may be amended in the same way as any other clause in the Constitution.

The motion was adopted.

CLAUSE 3--CITIZENSHIP

The Hon'ble Sardar Vallabhbhai Patel: Now I will take up clause 3:

"Every person born in the Union or naturalised in the Union according to its laws and subject to the jurisdiction thereof shall be a citizen of the Union."

To this should be added:

"Further provision governing Union citizenship may be made by the laws of the Union."

That was originally passed by the Committee but in printing it was Omitted. by mistake. It will be moved by Mr. Munshi.

Mr. K. M. Munshi: These words were originally in the Report which was placed before the Advisory Committee, but it seems due to some oversight they did not find a place in the final Report. The idea is that the Union will not only have to make laws with regard to naturalisation but with regard to citizenship further provisions may also have to be made. So those words have to find a place in this particular clause; otherwise the whole idea will remain incomplete. I therefore move that the following words may be added at the end of this clause:

"Further provision governing Union citizenship may be made by the laws of the Union."

Mr. Promatha Ranjan Thakur: The clause as it stands is rather vague. It reads--

"Every person born in the Union or naturalised in the Union according to its laws... "

I do not understand how a person can be born according to law. There should be a comma after 'Union'; you must not leave it vague.

Mr. B. Das: This clause is the only outstanding fundamental right a citizen can claim--political equality. 'Every person born in the Union..' will include any non-Indian--a German, or a Japanese who will enjoy the rights of Indian citizenship from the 14th to 21st year unless he declares that he is not an Indian. I would like a provision should be made that--

"a person born in the Union can declare for the nationality open to him by virtue of descent."

It seems that the Fundamental Rights Committee has not bothered about this aspect of the question.

European born sons and daughters will seek occupation in State and private services and later they can turn as aliens. Lord Roberts was born in India and yet. he was one of the greatest satraps to keep down Indians. Of course only one European, Pierre Loti, was born in India and he remained a friend of India throughout. I do agree with my leaders as far as they are thinking on the right lines, *viz.*, that they will bring further provisions by legislation to define fundamental rights. It appears to me that the present draft of citizenship is very wrong as it concedes economic exploitation to aliens on some pretext. Nowhere have you defined nationality, as has been suggested by Mr. Sidhwa. We do see that the Fundamental Rights Committee had to race against time and that they had no time to take into consideration certain factors which they have ignored so far. I do hope that this House will look into that aspect of the matter and will not agree to exploitation of Indian citizens in any shape or manner, by aliens or alien-born I feel very unhappy over this lacuna of exploitation.

Mr. K. M. Munshi: Sir, on a point of personal explanation I was in error in stating that this clause was omitted by mistake. I looked into the Minutes and I find that it was dropped in the Advisory Committee. I was under a wrong impression.

Mr. President: The point that has been raised by Mr. Das deserves consideration and I want the mover to consider it. The wording of the clause as it stands is--

"every person born in the Union shall be a citizen of the Union."

Mr. Das says that the wording is too wide and may include the child of any foreigner born in this country, as he would acquire the right of citizenship by the mere fact of his birth.

Mr. K. M. Munshi: May I point out that the wording is "subject to jurisdiction"-- That is the doctrine of allegiance. Persons born of foreigners, consuls and diplomats, will not be included.

Mr. President : "Subject to jurisdiction" will not include allegiance. I am not quite sure about it but the lawyers in this House have to help us on that.

Mr. K. M. Munshi: "Subject to jurisdiction" has been defined by several authorities and it means persons born of persons who owe allegiance to the Union. If necessary, I will satisfy the Hon'ble Member who has put forward this point of view. The wording "subject to jurisdiction" has been taken from the American Constitution and has been expressly construed to mean this.

Mr. President: Our Constitution should be self-contained as far as possible. We should not depend on the interpretation of clauses in other constitutions, as it may lead us to any amount of confusion.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar (Madras: General): Sir, this clause has been borrowed from the American Constitution. There are two ideas of citizenship. In the Continental countries citizenship is based upon race: it has nothing to do with the birth of a person in any particular place. In the Anglo-American system if a person is born in a particular place, he gets his citizenship. If you want to adopt a different system you may. Under the American system if a Hindu goes to America even today, he becomes an American citizen, though if it is a question of naturalisation there are difficulties in the way of such naturalisation. So the question of birth stands on a different footing from the question of naturalisation. If I may say so, with respect to my friend, Mr. Munshi, that phrase "subject to jurisdiction" is put in for a purpose different from what he stated. Supposing a consul is here and a child is born to him, the child will not get citizenship, because the consul or his child will not be subject to the jurisdiction of the Union. That, is why "subject to jurisdiction" is used here, because a person born to a consul here is supposed to be born in his own country. So far as any ambassador or consul or any other person holding a similar status is concerned, the child will not get the citizenship. That is why the expression "subject to the jurisdiction" occurs in that clause. Therefore the main principle underlying this clause is that if a person is born here he must get the citizenship, even if he is a foreigner. That is the principle obtaining in England -in America and in every other country in which Anglo American jurisprudence prevails.

So far as continental countries are concerned citizenship is based upon blood: it is based upon race: and therefore wherever that person may be if he is the son of a person of a race he has to get citizenship. That is the principle. No doubt difficulties have been expressed in regard to this principle of birth, when people leave their country and children are born to them. That is why provision is made in the British Nationalities Act in regard to birth of children to British citizens abroad and an appropriate provision may be made in the Union laws to cover such cases. The first part of the clause commits the Constitution to the fundamental principle that every person who is born in this Union is a citizen of the Union. The second part of it refers to naturalisation and then both of them are subject to the jurisdiction thereof. Other

cases where children are born to nationals who go abroad from this country will have to be provided for by the Union law. That is the exact position. This is merely the principle obtaining in the Anglo-American law, *viz.*, that if a person is born within the jurisdiction he shall get the citizenship. If you want to depart from it, it may land you in difficulties. You may borrow the whole of the continental system--either the German, French or the Italian system of nationality. But we thought that it would be much better to follow the Anglo-American system, a system with which we are acquainted.

Mr. President: I want to ask one question. Suppose a Jap by birth is travelling through this country and while travelling a child is born to him. What happens?

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: In spite of the language of the clause the American Supreme Court has held on this very clause that a casual visitor like that will not come within the language of the Constitution.

Sri M. Ananthasayanam Ayyangar: Why not ?

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: My answer is that the Supreme Court of America construing this particular clause has held that. I think it is a reasonable exception which can be made. I have looked into this particular point yesterday thinking that this point would come up for consideration, because even a lady passenger in a railway train may live birth to a child, and an exception should be made to cover that class of person who is transiently present in this country to whom a child is born, that that person shall not have citizenship. But then what exactly is the meaning of 'transient presence'? That will have to be provided for and it will be very difficult. Under those circumstances there is no great hardship felt in America by adopting the rule that birth determines citizenship. Otherwise you must have a detailed provision as in the British Nationalities Act, where there are four special clauses to cover such cases. You must borrow all the clauses of the British Nationalities Act, which provides a more comprehensive definition than this. But we thought that on the whole it would be better to adopt the shorter form as in the American Constitution which can find a place in a chapter on Fundamental Rights.

Mr. President: It seems to be a very important question and we should thrash it out. What would happen to a man who is not simply passing through the country but stays in this country, say, for some years for trade purposes or some other purpose ?

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: His son will become a citizen, but political rights are distinct from civic rights. There is no general rule of law that a citizen is entitled to political rights, because we know as a fact that according to the American law of citizenship the citizen is only entitled to civic rights. It does not stand in the way of the Constitution being so framed as not to concede political and other rights to the citizen. Citizenship by itself does not carry anything like minimum rights. Citizenship may confer certain rights in particular cases. If you think that those clauses should not be extended to all the citizens, it is for you to make a distinction. Citizen right by itself normally under the American law from which it borrowed--does not connote any minimal rights, Though the Eighteenth Amendment is applicable to every State in U.S.A., the citizen does not possess political and other similar rights in various States in the Union. Certain rights we have extended to all people. So far the area of fundamental rights of citizens has been considerably reduced and no considerable difficulty can possibly arise in regard to citizenship in matters relating to

religion, protection of property, protection of person, protection of organisation and some safeguards as to public order and all that. But the difficulty is likely to arise by importing the idea of political rights into citizenship. Otherwise, we must consider the question whether we have to borrow this principle at all or depart from it altogether. We have got that very thing in the British Nationality Act itself. Or we shall, have to have some concept of citizenship distinct from the British Nationality Act, distinct from the American law, borrowing from the German or Italian conception or we must have our own idea of what citizenship is. That is how the matter stands.

Mr. President : Personally, I do not like that we should follow the precedent of any other country. We should have our own citizenship and formulate what that citizenship connotes.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: While I greatly appreciate that, I cannot altogether forget the fact that citizenship will carry with it protection in the international field. In dealing with citizenship we have to remember we are fighting against discrimination and all that against South Africa and other States. It is for you to consider whether our conception of citizenship should be universal, or should be racial or should be secretarian. That is a question of politics on which I am not so competent as some other people here. But so far as this is concerned, I merely state the law as it is and the principles on which the Fundamental Rights Committee has proceeded.

Sri M. Ananthasayanam Ayyangar: Take the case of a Japanese who comes into this country and stays here for some time and a son is born to him. Does he lose the citizenship which he inherits from his mother in Japan or he does not do so and he continues to be a citizen of both countries.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: The problem of double nationality is one of the most difficult questions which international jurists have to face. All that we can provide for is a kind of citizenship. We cannot try to remove all the complications that will arise out of the problem either of statelessness or double nationality. Owing to conflict between the continental and Anglo, Saxon systems differences might arise. You might provide for a particular person choosing his citizenship in cases where such conflict arises, but you cannot possibly provide in a chapter on fundamental rights all the complications that may arise on account of the problem of double citizenship, statelessness and all those considerations.

Sri M. Ananthasayanam Ayyangar: In clause 4 it is said:

"The State shall make no discrimination against any citizen on grounds of religion, race, caste or sex."

Therefore, that is an unqualified citizenship and this a fundamental right. This can only be modified by a modification of the Constitution, not even by the law of a unit or of the Union Legislature. Therefore, you are not making a discrimination between citizenship rights and political rights. Is it not desirable that we should not leave this definition in an indefinite form as it now stands in this paper?

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: The clause relating to discrimination in the context can only refer to civic right. It will be for the Provincial and the Union Constitution to give franchise in any form. You can make it subject, if necessary, to qualifications as to franchise both in the Provincial and the Union

Constitutions. I may also say that in fact some members of the Committee were anxious to say that every right must be a human right. I hope I am not disclosing any secret when I say that Mr. Masani went to the length of saying that most of the rights should be extended to human beings who are in this country; that was the stand he took up. As a matter of fact, there is nothing novel in that. The first Ten Amendments of the American Constitution are not confined to citizens. Whatever may be the interpretation put upon them by the Supreme Court, the first Ten Amendments of the American Constitution are not confined to citizens. It extends to every human being generally. Of course, the word "discrimination" has been understood not to extend to Political right, and it is Only confined to civic right ordinarily exercised by the citizen. We are not doing anything novel.

Shri R. V. Dhulekar (United Provinces: General): I submit there is no provision made for any child which has been born outside the Union of parents who are citizens of the Union. I should like to know whether that child will also obtain the right of citizenship or not?

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: That is why provision has been made that the law of the Union may provide for it.

One other suggestion I would like to make. When we draft the Union Constitution you may consider, it. If you accept the view, that normally speaking we have to adopt the general principle in Anglo-Saxon or American jurisprudence subject to necessary modifications or modifications that may be, introduced by the Law of the Constitution for the time being, especially in view of what has already fallen from you, we will consider the whole thing in juxtaposition with other provisions of the Constitution, and if it is likely to come into conflict, that may be considered. But one thing. Are we going to bring in race idea, namely, only those who are born of parents--you call them Indians or other people--are entitled to citizenship or are you going to subscribe to the principle that birth settles citizenship, though necessary exception will have to be engrafted for the purpose of providing for children of Indian nationals who are born abroad? I am not at all suggesting that you must rigorously follow the principle of what you call *lex soli*, that is, place of birth? The two principles are *lex soli* and *lex sanguinis*. *Lex soli* means the law of the place of birth and *lex sanguinis* means according to blood. These are the two different principles in the field of international law.

Mr. R. K. Sidhwa: When this question was considered in the main Advisory Committee, the clause read thus:

"Every person born in the Union or naturalised in the Union shall be a citizen of the Union."

I moved an amendment there that the citizenship clause being very vague should be made more clear as you have rightly pointed out. I put a definite period. I said, whoever is not naturalised for at least ten years in this country shall not be considered a citizen.

On this the following words were added:--

"According to the laws and subject to the jurisdiction thereof."

I was told that this would cover my point; although I was not satisfied as commonsense man I felt --that this did not cover the view point I raised. I was, however, helpless before the views of the legal luminaries. It is, therefore, very necessary that we should have a clear definition of the word 'citizen', and it should be put down in the Constitution and not left to be dealt with when we are making laws hereafter. I suggest that it should be explicitly defined here, and that this clause be postponed and dealt with tomorrow.

Mr. Jagat Narain Lal (Bihar: General): Sir, I feel that the definition of citizenship given in the Constitution of the Irish Free State may be useful in this connection. The definition there is--

"Every person, without distinction of sex, domiciled in the area of the jurisdiction of the Irish Free State at the time of the coming into operation of this Constitution, who was born in Ireland or either of whose parents was born in Ireland or who has been ordinarily resident in the area of the jurisdiction of the Irish Free State for not less than seven years, is a citizen of the Irish Free State."

I think, Sir, if some such time limit, as seven years for domicile is laid down, that will solve our difficulty.

Sri M. Ananthasayanam Ayyangar: Sir, I find that the words in this definition are taken, almost word for word, from the American Constitution. In the American Constitution it reads thus--

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are the citizens of the United States and of the State wherein they reside."

But this definition of 1868, we are told, has been given various interpretations during the subsequent years. I would therefore request this matter to be left over for being dealt with tomorrow. It is one of the most important clauses. On the question of citizenship there have been lots of quarrels all over the world, in Jerusalem, for instance. This is a matter on which there is scope of difference of opinion. For example, if a Japanese child is born in this country, should it be allowed to become a citizen of this country or become a national of this country merely because of the fact that it was born here? Or can we lay it down that if a man lives in this land for a period of 10 or 15 years, he should get the right of being a citizen of this country? I do not think we should make any distinction between foreigners in the matter of citizenship in this country. I feel it is not contemplated in the fundamental rights, it is an innovation. These are matters which require deep thought. I would, therefore, suggest leaving this question over till tomorrow when we will sit together and find out how to modify the present definition.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: Sir, I would only invite the attention of the House to the definition of a British citizen and even this has given rise to difficulties and they have had to make special provision for married women. It is not an easy thing to produce a Nationality Act by tomorrow morning.

The definition says:--

(1) The following persons shall be deemed to be natural born British subjects, namely:-

(a) Any person born within His Majesty's dominion and allegiance; and

(b) Any person born out of His Majesty's dominions whose father was, at the time of that person's birth, a British subject, and who fulfills any of the following conditions, that is to say, if either,

(i) his father was born within His Majesty's allegiance; or

(ii) his father was a person to whom a certificate of naturalisation had been granted; or

(iii) his father had become a British subject by reason of any annexation of territory; or

(iv) his father was at the time of that person's birth in the service of the crown; or

(v) his birth was registered at a British consulate within one year or in special circumstances, etc.

(c) Any person born on board a British ship whether in foreign territorial waters or not.

Even this Act had caused difficulty in the case of married women. Therefore, if at least one thing is decided upon and if we generally accept the general principle, that will be better. My friend, Mr. Ananthasayanam Ayyangar is more hopeful than myself. I do not think it will be possible to come with a ready-made solution of this difficulty by tomorrow coming. For the time being, let us accept the general principle. The exact qualifications and modifications necessary may be considered later. We need not overnight manufacture a law of nationality before 11 o'clock tomorrow morning.

Mr. President: May I make one suggestion for the consideration of the mover? As it is a very important matter--and it is one to which I myself attach great importance--if an amendment like this could be accepted, it might remove most of our difficulties. You begin the sentence like this:

"Save as otherwise provided by the law of the Union, every person born in the Union or naturalised in the Union according to its laws and subject to the jurisdiction thereof shall be a citizen of the Union."

Now, as the clause reads, apart from what the American precedent is,, about which I do not know, it seems to me that it is so wide that every one born in this country will be a citizen of the Union, and the rights of a citizen are specifically given, in clause 9.

The Hon'ble Sardar Vallabhbhai Patel: There are two ideas about nationality in the modern world, one is broad-based nationally and the other is narrow nationality. Now, in South Africa we claim for Indians born there South African nationality. It is not right for us to take a narrow view.

Mr. President: We claim for Indians in South Africa the nationality of that country not merely by birth but by reason of settling there.

The Hon'ble Sardar Vallabhbhai Patel: Yes. This Constitution is for a period of ten years after which it will be subject to revision. We have added a proviso which covers all our difficulties. I suggest for your consideration how many foreign men and women come to India for giving birth to children to acquire Indian nationality. It is a curious idea that, for that purpose you introduce racial phraseology in our Constitution. It is important to remember that the provision about citizenship will be scrutinised all over the world. They are watching what we are doing. We will be undergoing great risk if you postpone this matter and raise legal controversies. By

commenting on every word in this, you will never come to an end. This is a simple problem. We must always have a few foreigners coming here. This will be accidental nationality--If by the accident of birth, some one comes and stays here, subject to the proviso which we have enacted, we can control double citizenship by our legislation. We can always control that.

The Hon'ble Sri C. Rajagopalachariar (Madras: General): We must remember that this clause is intended for the positive purpose of creating a unitary citizenship of India. We should not be obsessed by foreign accidental possibilities.

The Hon'ble Dr. Kailas Nath Katju (United Provinces: General): Mr. President, it is hardly necessary for me to add to the illuminating exposition of Sir Alladi Krishnaswami Ayyar. I suggest that in the definition as it stands we might add something on these lines. Under the present law every person who is born in British India today has Indian citizenship. If a person is born anywhere outside India, then he becomes an Indian subject because he is the son of an Indian subject. That ought to be made quite beyond controversy. That should not be left to the proviso. Wherever the subject of the Indian Union goes to any part of the globe and if a child is born to him there, then that child becomes the subject of the Indian Union. I understand that to be the law. If that is not the law, then it ought to be the law of the Union. We are now sending a number of Ambassadors abroad in order to establish contacts with all foreign countries. It would be lamentable if Indian people who go there and if a child is born to them, then that child should not be treated as an Indian subject. This ought to be added to the definition. I do not wish to say anything about double nationality. The law is quite clear. It was very much stressed during the trials of the Indian National army personnel. It was then found that it sometimes happens that if a child of a non-British subject is born in India, then that child may have double nationality of the country where he is born and of the country of his parents. When he becomes a major, it is open to him to accept one nationality and renounce the other. Speaking for myself, whoever is born on Indian soil should be welcomed as a subject of the Indian Union. That is a plain and intelligible proposition. I think we should accept it.

Mr. K. M. Munshi: As has been suggested by Dr. Katju, every child born of Indian parents should have the citizenship of the Union. Now as a matter of fact, the clause as originally sought to be inserted, has this provision that children would be citizens of India, if when they are born the parents are Indian citizens. But it was felt that if you once start introducing various elements and considerations in this clause, then we will be engaged in enacting a nationality law here and now. Therefore the amendment, which I moved, was inserted, *viz.*, that further provisions required for these different cases will be made by a law of the Union. After all we are not making a law of nationality. We are only enacting two indispensable conditions, namely, persons born in India and naturalised according to the law of the Union shall be citizens. The world is divided between the ideas of racial citizenship and democratic citizenship, and therefore, the words 'born in India' become necessary to indicate that we align ourselves with the democratic principle.

The Hon'ble Sardar Vallabhbhai Patel: As I have already explained all these different points of view can be easily provided for under the clause,--

"Further provision governing Union citizenship may be made by the law of the Union."

All the difficulties suggested from various points of view can, be covered in this. It

is open to the Union to make any law governing citizenship, if it is necessary. After all how many people are going outside? A few people. Supposing some children are born outside and if there is any such necessity, this proviso amply covers such difficulties. The difficulties on the opposite side also are covered. Therefore, our general preface or the general right of citizenship under these fundamental rights should be so broad-based that any one who reads our laws cannot take any other view than that we have taken an enlightened modern civilised view. The citizenship clause has been taken from the American model which is more or less consistent with the English. And therefore we should not disturb this and we need not be frightened about it because it is not going to create any difficulties in the intervening period of ten years. If we find any difficulties after our experience of the working of the Constitution for ten years one can easily change it. But I have no doubt that there is going to be no intricacy or difficulty. It is a simple clause which will be fit and proper for the first Constitution of free India, and we need not have any suspicions.

The Hon'ble Sri C. Rajagopalachariar: Sir, I think it should be "further provisions". It must be plural and not singular.

Mr. President : Even after listening to the learned discourses that have been given to us by eminent lawyers, I confess that I am not yet convinced that the clause as it is, has been rightly put. But it is of course open to the House to accept it in this form.

Srijut Rohini Kumar Chaudhuri: Sir, I suggest that the consideration of this clause may be further postponed.

Mr. President: I am afraid that is not possible. The words--

"Further provisions governing Indian citizenship may be made by the law of the Union."

would not improve matters, because "further" means in addition to and not in modification of. Therefore, that would not in any way take away from the amplitude of the clause as it is in the first part of it. But, as I have said, I do not like to influence the House beyond expressing my own opinion, and I leave it to you to give your vote.

Several Hon'ble Members: The clause may be held over.

The Hon'ble Sri C. Rajagopalachariar: Sir, will you permit me to say a word ? There is some misunderstanding.

Mr. President: I do not think it would be right at this stage to allow any member to speak on this clause. There is a suggestion which seems to come from many members that the consideration of this clause may be postponed.

The question is:

"That the consideration of this clause be postponed."

(Votes were taken by show of hands).

The motion was adopted.

Mr. President: I will particularly request lawyers and jurists who are members of this House to give their attention to this clause and to give us something which will be acceptable to all. If they too feel that the clause as it stands should be accepted, I have no doubt that the House will accept their opinion with the respect which is due to them.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: Sir, we have a big Committee and it is an unworkable proposition for twenty people to discuss the question of citizenship. The whole point has been discussed and I suggest that a small Committee may be appointed to consider this clause.

Mr. K. M. Munshi: That will be better; they can meet and have a discussion because this is a purely technical discussion.

Mr. President: This is a purely legal matter and, therefore, I should like to leave it to the lawyers to give us a draft.

Mr. K. M. Munshi: Three Committees have discussed this question thread-bare and you can now nominate any persons you like and they can discuss it with you.

Mr. President: It is not as if I alone am not convinced about it but a great part of the House is doubtful about this. So there is no use discussing with me alone; even if I am convinced and if the House is not convinced that would not take matters very far.

Shri R. V. Dhulekar: Sir, I propose that a small Committee consisting of Sir B. L. Mitter, Dr. Katju and Mr. K. M. Munshi be appointed to go into this.

The Hon'ble Pandit Jawaharlal Nehru: I think it should be left to the President and the Chairman of the Committee.

Mr. President: If it is left to me I will ask the lawyers to go into it.

Dr. B. Pattabhi Sitaramayya: I suggest that in addition to three lawyers one man of common sense may also be added.

Mr. President: I do not exclude lawyers from the category of people with common sense.

CLAUSE 4--RIGHTS OF EQUALITY

The Hon'ble Sardar Vallabhbhai Patel: Sir, I beg to move clause 4 which runs as follows:

"4. (1) The State shall make no discrimination against any citizen on grounds of religion, race, caste or sex.

(2) There shall be no discrimination against any citizen on any ground of religion, race, caste or sex in regard

to-

(a) access to trading establishments including public restaurants and hotels;

(b) the use of wells, tanks, roads and places of public resorts maintained wholly or partly out of public funds or dedicated to the use of the general public:

Provided that nothing contained in this clause shall prevent separate provision being made for women and children."

This is a non-discriminatory clause which is provided in almost all constitutions and adjustments have been made here to suit the special conditions of our country. There may be various points of view and in the Committee also there was a full discussion on this question and I am sure there will be discussion in this House also. A proviso has been made which was found to be necessary because even in a non-discriminatory clause it would be necessary in the present condition of our country to make special provision for women and children.

Some amendments have been given notice of to remove doubts. In clause (2) (a) the words "and places of public entertainment" were suggested in the course of discussion to be added; and in clause 2(b), the words "State funds" are sought to be substituted for "public funds", Public funds may be by subscriptions or private arrangements; the clause is meant to apply to State funds. In clause (1) it is suggested that for "make no discrimination" the words "not discriminate" should be substituted. I shall accept these amendments when they are formally moved.

The Hon'ble Shri Purushottamdas Tandon (United Provinces: General): Is Sardar Patel himself putting forward these amendments?

The Hon'ble Sardar Vallabhbhai Patel: I said that when these are formally moved I shall be prepared to accept them.

Shri Mahavir Tyagi (United Provinces: General): May I know one thing from the Hon'ble the mover? Allay I know why he thought it necessary to repeat in sub-clause (2) what he has already said in subclause (1)-I mean the words--

"There shall be no discrimination against any citizen on any ground of religion, race, caste or sex...."

The Hon'ble Sardar Vallabhbhai Patel: It is very simple. The first clause is about the State obligation; the second clause deals with many matters which have nothing to do with the State, such as public restaurants--they are not run by States; and hotel--they are not run by State. It is an entirely different idea, and therefore, it is absolutely essential.

Shri Mahavir Tyagi: It does not satisfy me. The second clause pertains to hotels and restaurants. To say that restaurants and hotels shall do this or that and there shall be no discrimination against any citizen on any ground of religion, race, caste or sex in regard to access to trading establishments including public restaurants and hotels, is including such establishments which are not included in the State. It is their outlook. But if we are also to enact for those which are not included in the State, then we should make it clear. Could we not put it in one clause that no discrimination shall be allowed against any citizen in regard to restaurants, hotels, well, tanks, roads, and

so on? The clause as it stands does not mean this. Either the language should be slightly different, or perhaps I have not exactly followed the meaning of this clause.

Mr. R. K Sidhwa: The words 'Hotels and public restaurants' have been mentioned for special reasons and specific purposes. They are used by the public and even at present licence from the local bodies is necessary before they are allowed to function. It is very necessary that these public places of entertainment--hotels, and restaurants--should be specifically mentioned, so that the owners may not say that A shall be allowed and B shall not be allowed. These words have a definite and special meaning, and they are absolutely necessary. I, therefore strongly suggest that the words be retained as the Hon'ble Sardar Patel has moved.

Mr. K. M. Munshi: Mr. President, Sir. I move:

1. "That in clause 4 (1) the words 'not discriminate' may be substituted in place of 'make no discrimination'."

It is merely a matter of phraseology.

2. "That in clause 4, sub-clause (2) (a) the following words may be added: 'and places of public entertainment'."

A doubt was raised whether places of public entertainment could be treated as trading establishments. In order to make it clear that places of public entertainment are trading establishments, this amendment has been moved:

3. "That in clause 4, sub-clause (2) (b) substitute the words 'State funds' for public funds'."

"Public funds" might be construed differently; it may be even money raised by public subscription for specific purpose. This amendment will clear this doubt.

Mr. President: We have received notice of a number of other amendments to this clause.

Mr. P. S. Deshmukh (C. P. and Berar: General): May I say a word as a matter of general observation on this clause'? In drafting such a long clause we are throwing a shadow of untouchability over the whole Constitution of India. In this particular clause, I submit to the House, if we merely say that--

"the State shall not permit any discrimination against any citizen on grounds only of religion, race, caste or sex."

It should be quite sufficient, and it will leave ample opportunity to the Union Government to make specific provisions with regard to hotels, restaurants, parks, theatres, etc. I think, therefore, that the whole of the second part should be omitted. We should not forget that we have to confine ourselves to the rights which are and must be fundamental. This is not the place to enumerate all the various rights a citizen should have. We are here concerned with only justiciable fundamental rights and it would be improper to burden the clauses with a detailed list of places which should be accessible to all. I, therefore, suggest, Sir, that it will serve our purpose if we merely substitute in the place of the whole clause the following--

"That the State shall not make nor permit any discrimination against any citizen, on mere grounds of religion,

race, caste or sex."

Mr. Somnath Lahiri: Sir, I support the original motion but there should not be any discrimination on the ground of political creed. The whole idea of these clauses is that discrimination should not be exercised by the State or by other public bodies in respect of religion, caste etc. In the unnatural circumstances of today in India, religious, communal, caste and similar distinctions loom large. But when things have settled down political differences are sure to come to the forefront and there may be a tendency on the part of the State or public bodies to discriminate against members of political parties on the basis of difference in political creeds. In every country in the world you will find that measures are taken generally to obviate this kind of discrimination on the ground of political creed or party. Therefore I want to move:

"That in sub-clause (1) of clause 4, after the words 'grounds of', the words 'political creed' be inserted."

Similarly, I beg to move:

"That in sub-clause 2 of clause 4, after the word 'caste' the word 'creed be inserted."

I support also Mr. Kamath's amendment to the same sub-clauses of clause 4.

Mr. President: Have you moved both the amendments ?

Mr. Somnath Lahiri: I have moved both the amendments, Sir.

Mr. H. V. Kamath: Sir, in moving this amendment I seek to draw a distinction between religion and creed. I think the word religion is not comprehensive enough to include in its scope creed as well. For instance, a person may not accept any religion in the conventional or formal sense of the term, yet he may have a creed. A man may say that he has no religion, yet he may say that he is a rationalist or a free-thinker and that I suppose is a creed which anybody can profess and still he may say that he does not belong to the Hindu, Muslim or Sikh religion, or for the matter of that to any other religion. Therefore, I think that the word creed should be inserted in this clause.

I do not subscribe to my friend Mr. Lahiri's suggestion regarding political creed. I do recognise that times may arise when we may have to discriminate against persons who hold a creed which seeks to subvert the State by violence or similar objectionable methods. We may have to impose discrimination against such persons. But I submit that the word 'creed' has a different connotation from the words 'political creed'.

As regards 'colour' perhaps it is included in the word 'race'. Yet I have my own doubts on that point as well. Personally, I do not think that the word 'race' should find a place here, as that would mean that we recognise a multiplicity of races in India--a doctrine to which I do not subscribe. Yet if ethnologists who are present here think that there are many races in India and the word 'race' must be there, I will yield to them on that point. But I think in that case the word colour should find a place in this clause.

An Hon'ble Member: What do you mean by colour?

Mr. H. V. Kamath: 'Colour' means colour of your complexion. Two persons may belong to the same race but may have different colours physically. Therefore to make

it comprehensive I move:

"That in sub-clause (1) and (2) of clause 4, after the word 'caste' the words 'colour, creed' be inserted."

Srijut Rohini Kumar Chaudhuri: Sir, I beg to move:

"That in sub-clause (2) of clause 4, after the word 'sex', the following words be inserted:

'or of dress worn by any nationality'."

It seems almost a laughing matter. But even today when we are on the threshold of independence there are hotels which do not welcome people dressed in Indian style. I know of an instance which recently occurred when four Indian gentlemen of my province were not allowed to live in a hotel because they wore Indian dress. I am not afraid that in future the same restriction will be observed by any hotel owners. Today of course unfortunately there are some European-owned or European-managed hotels which do not take in Indians in Indian dress or make it a condition that they must not come to their dining rooms in that dress. I am not afraid of the future, because I believe that when India is independent such restriction would disappear. But what I am afraid of is a reprisal or a revenge taken against such European minded people and people in European dress may not be allowed to come into hotels. For that reason particularly I want that this amendment should be accepted by this House.

Mr. Dharendra Nath Datta: Sir, I do not want to move the amendment which stands in my name. (Amendment No. 12 on Supplementary List, dated 28th April 1947).

Sri D. Govinda Doss (Madras: General): (Spoke in Telugu). Sir, I move:

"That in sub-clause 2 (b) of clause 4, after the word 'roads' the words 'Schools, temples or places of worship' be inserted."

Sri V. C. Kesava Rao (Madras: General): I move:

"That in sub-clause 2 (b) of clause 4, after the word 'roads' the words 'Schools, hostels, temples or places of worship' be inserted."

I want to say that though some schools are thrown open to the Harijans in the villages, they are not allowed to sit along with the caste Hindu students. They are asked to sit on the floor or at a distance. I would like to say in this connection that education is the birth-right of every citizen. So a Harijan or an untouchable should be given the same right as every other citizen. As regards temples, I may submit that untouchables are made to worship God only from a distance and not before God. Even though the untouchables are saying that they are Hindus for the last so many centuries, they are being denied this right and they are made to worship God only from a distance and not within the temple itself. I think that untouchability is the sole cause for the non-admission of untouchables into temples. I request that these things may be taken into consideration.

Mr. President: There is another amendment in the name of Shri P. Kakkan. But that is covered by the amendments that have already been moved by Mr. Govinda Doss and Mr. Kesava Rao, and it is not necessary to move that amendment (that is,

amendment No. 15).

Shri Ajit Prasad Jain (United Provinces: General): I beg to move:

"That in sub-clause (2) (b) of clause 4, after the word 'roads' the words 'educational institution, hospital or dispensary', be inserted; and after the word 'resort' the words 'built or' be inserted."

The speaker who preceded me just now has spoken about educational institutions. It is not necessary for me to repeat those arguments. I have also included hospitals and dispensaries among the places in regard to which no discrimination should be made provided they receive aid from State funds. Educational institutions, dispensaries and hospitals are very necessary for the moral, mental and physical, development and my opinion is that any public institution which receives any assistance from State funds should be open to all persons irrespective of their religion, caste, race or sex. In this connection, I would like to refer to paragraph 18 (3) (b) which says:

"The State shall not, while providing State aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language."

Now, the amendment which I have suggested would negate this provision, for I would make it compulsory that any educational institution, hospital or dispensary, if it receives any aid or assistance should be thrown open to all persons. Secondly, I want the words "built or" to be inserted after the word "resort", for the State assistance may take the form of a lump sum or a periodical amount for the purpose of maintaining the thing. The present clause as it stands will not include institutions which receive any lump sum aid for construction and, therefore, my second suggestion is that the words "built or" be inserted after the word "resort", so that both the institutions which have been built or are maintained by the State funds may come within the mischief of this clause.

Mr. R. R. Diwakar (Bombay: General): I beg to move:

"That in sub-clause (2) (b) of clause 4 for the word 'and' a comma be substituted, and after the word 'resort', the following words be inserted:--

and schools, colleges and other institutions."

I should like to bring to the notice of the House that this is a question of equal opportunity. Equal opportunity to all should be given in schools, colleges and other institutions which are State-aided, so that people may not be shut out from any institution on account of race, creed, religion, etc. There may be some apprehension that if this amendment is accepted certain schools which are denominational or run by certain sections or communities may be flooded, or entry may be demanded by all into such schools. But I may state that there is a sufficient safeguard in the phrase which says, "dedicated to the use of the general public". Unless the institutions are run wholly or partly by State funds and are dedicated to the use of the general public, there is no such danger arising by the acceptance of this amendment. Therefore, I request the House to accept it.

I also move:

"That after the words 'general public' at the end of sub-clause (2) (b) of clause 4, the following be added: --

'and (c) the use of all kinds of public conveyances'."

I do not think it necessary for me to say anything about it.

Srijut Rohini Kumar Chaudhuri: I beg to move:

"That the following explanation be added at the end of clause 4:--

Explanation : A place of public resort includes a yard or house attached to any temple where musical and dramatic performances, cinema shows or other entertainments are held for entertainment of general public'."

There are many temples which have got attached to them houses called Nat Mandirs. During festivals and on other occasions also dramatic performances and cinema shows are held there. The performances are sometimes given by people belonging to what you call the Harijans, but the Harijans themselves are not allowed to go. This is very galling to the people. Therefore, whenever any show or any dramatic performance takes place in any place attached to the temple, all members of the public must have access to it.

Mr. President: Have you a new clause to be added, or is it an amendment to clause 4 ?

Srijut Rohini Kumar Chaudhury: It has been misplaced, or wrongly placed. It should be under clause 6 as an amendment.

Mr. President: You can take it up with clause 6.

Now all the amendments of which notice was given have been moved. Therefore, the motion as well as the amendments are now open for discussion.

Mr. K. M. Munshi: Sir, regarding adding the words "schools, etc." to clause 4, I submit that this matter be left over till we come to clause 18. Otherwise the discussion on clause 4 will drift to other matters which are connected to this subject. If it becomes necessary as a result of discussion, to make some modification in clause 4, that may be made later. The discussion will be more cognate so far as education is concerned, if it is taken up with clause 18.

As regards the amendments relating to temples, they relate to untouchability and I submit that they should be taken up with clause 6. This particular clause--clause 4, relates only to rights of citizens with regard to places of public use.

I, therefore, submit that permission may be given to members to deal with these amendments under clause 18 and clause 6.

Mr. R. R. Diwakar: In view of the suggestion by Shri Munshi, I hold over my amendment regarding schools.

Sri M. Ananthasayanam Ayyangar: I would like to submit that there are sources of water supply other than wells, tanks, etc., such as channels, and I think these also

should be covered by clause No. 4. Therefore, I think it necessary to add the words "and other sources of water supply" after the word "tank". Otherwise, there will be a lacuna.

Then again, there may be discrimination in giving medical relief, on grounds of religion, etc. That will be a dangerous thing. Therefore, Sir, if you do not think want of notice a serious objection against it, I would request you to permit me to add the words "and medical institutions" after the word "public resort". It will then read:-

"the use of wells, tanks, roads and places of public resort and medical institutions maintained wholly or partly out of public funds or dedicated to the use of the general public."

Mr. R. K. Sidhwa: I want to have one point clarified, Sir. Suppose a well is constructed by a philanthropic person at a public place in a small village, but he has not dedicated it for public use, and allows everyone to use it, except a few persons in the village, he has used a public place but not dedicated for public use, what will happen? What will be the position then? As it is, this clause is not happily worded, and the House might like to have it worded in a better way.

Mr. President: I would request the mover to give his reply now.

The Hon'ble Sardar Vallabhbhai Patel: The first amendment is from Mr. Somnath Lahiri. He wants that there should be no discrimination on grounds of political creed. I do not know what discrimination he has in view. The non-discrimination clause is restricted to, or is provided for on grounds of religion, race, caste or sex. He wants 'political creed' also to be included. I think it is an absurd idea to provide for non-discrimination as regards a political creed. Political creed may be of any kind. There may be some political creeds highly objectionable. Some may not be deserving of discrimination, but may actually be deserving of suppression altogether. So, I think it does not fit in here. The other amendment relates to colour. I do not know what is the meaning of it. There are different kinds of colours among Indians themselves. Have we got to provide for all of them. Therefore, I do not think all these amendments are necessary at all. The amendment relating to schools and colleges can be provided for when we come to discuss a separate clause relating thereto.

I am glad that on the whole the House is of opinion that this clause is aptly drafted.

Now there is only amendment left of Srijut Rohini Kumar Chaudhury. I do not think this is really necessary. There is no bar against any particular kind of dress. In my present dress I go to the Viceroy's house as well as to the abode of the humblest peasant. There is now no discrimination on account of dress.

Srijut Rohini Kumar Chaudhury: In some hotels and restaurants there is ban against the entry of Indians dressed in Indian national costume.

The Hon'ble Sardar Vallabhbhai Patel: All the foreigners are going. You need not be obsessed on that account. Such things as dress cannot be put in the fundamental rights. If the world at large should read such provisions in our fundamental rights, then they would naturally conclude that we do not even know how to treat our nationals and how to treat our fellow beings. I may assure my friend that there is no discrimination now on account of dress. I do not think such things should

be provided for in fundamental rights.

Srijut Rohini Kumar Chaudhury: What about the ban of entry of Indians in some hotels and restaurants because of their dress?

The Hon'ble Sardar Vallabhbhai Patel: The whole conception is born out of the idea of slavery. That idea of slavery has been haunting some of our people. Not even a shadow of it is left now.

Mr. President: Mr. Deshmukh has suggested that it would be sufficient if you put one clause as follows:

"The State shall not make or permit any discrimination merely on the ground of religion, etc:....."

The idea is if you put it like that, that would cover all cases and the second sub-clause will not be necessary. It would cover cases of private institutions as well as State institutions. We can have one comprehensive clause.

The Hon'ble Sardar Vallabhbhai Patel: If there is no formal amendment, I should prefer the present clause to stand as it is.

Mr. President: Now, I will put the amendments one by one. The first amendment of Mr. Munshi is:

"For the words, 'the State shall make no discrimination', the words 'the State shall not discriminate' be substituted."

The Hon'ble Sardar Vallabhbhai Patel: I accept the amendment.

Mr. President: The question is that above amendment be adopted.

The motion was adopted.

Mr. President: The second amendment is.

"In sub-clause (2) (a) of clause 4, after the word 'hotels', add the words 'and places of public entertainment'."

The Hon'ble Sardar Vallabhbhai Patel: I accept the amendment. The word 'and' before 'hotels' should be omitted and should be placed after 'hotels'.

Mr. President: The amendment:

"In sub-clause (2) (a) of clause 4, omit the word 'and' before hotels and add the words 'and places of public entertainment' after the word 'hotels'."

The motion was adopted.

Mr. President: The next amendment is in sub-clause (2) (b) of clause 4, for the words 'public funds' substitute the words 'State funds.'

The Hon'ble Sardar Vallabhbhai Patel: I accept the amendment.

Mr. President: The question is:

"In sub-clause (2) (b) of clause 4 for the words 'public funds' substitute the words 'State funds.'

The motion was adopted.

Mr. President: The question is:

"That in sub-clause (1) of clause 4 after the words, 'grounds of' the words 'political creed' be inserted."

The motion was negatived.

Mr. President: The question is:

"That in sub-clause (2) of clause 4 after the word 'caste' the word 'creed' be inserted."

The motion was negatived.

Mr. H. V. Kamath : Regarding my amendment No. 10, I desire to withdraw so far as it relates to the insertion of the word 'colour'. With great respect I am still not convinced that religion and creed are the same and so I press that portion of the amendment relating to the insertion of the word 'creed'.

Mr. President: A similar amendment in the name of Mr. Lahiri has just been put to the House and negatived.

Mr. President: The question is:

"That in sub-clause (2) of clause 4, after the word 'sex' the following words be inserted :

'or of dress worn by any nationality'."

The motion was negatived.

Mr. President: The question is:

"That in sub-clause 2 (b) of clause 4, after the word 'roads' the words ,schools, hostels, temples or places of worship' be inserted"

The motion was negatived.

Mr. President: Amendment No. 14 covers the same ground and is therefore lost.

The question is:

"That in sub-clause (2) (b) of clause 4, after the word 'roads' the words educational institution, hospital or dispensary' be inserted."

The motion was negated.

Mr. President: The question is :

"That in sub-clause (2) (b) of clause 4, after the word 'resort' the words 'built or' be inserted."

The motion was negated.

(Mr. Diwakar's amendment about public conveyances was withdrawn.)

Mr. President: No. 19 is withdrawn. The question is:

That the following explanation be added at the end of clause 4:--

"Explanation: A place of public resort includes a yard or house attached to any temple where musical and dramatic performances, cinema shows or other entertainments are held for entertainment of general public."

The motion was negated.

Mr. President: The question is that clause 4, as amended, be passed.

The motion was adopted

CLAUSE 6

The Hon'ble Sardar Vallabhbhai Patel: Sir, I request that clause 5 may be held over because it requires some further consideration and I may be allowed to move clause 6 which runs thus:

"6. 'Untouchability' in any form is abolished and the imposition of any disability on that account shall be an offence."

There can be no difference of opinion on this question. This is now an accepted proposition all over and should be provided for in the fundamental rights, and any one who suffers a disability on this account should have the right to go to a court of law and have redress. I hope there will be no amendment on this.

Mr. H. V. Kamath: Sir, I move that in clause 6, after the word "Untouchability" the word "unapproachability" be inserted, and after the word "any" the words "and every" be inserted.

By this amendment I want to make the clause more comprehensive because in some parts of India the practice of unapproachability besides untouchability used to obtain some years ago, to my own knowledge, in some places like Malabar specially; I do not know what it is now. So I thought it that if you include the word "unapproachability" it would make the clause more comprehensive. The other small amendment that I propose is purely verbal. It does not change the meaning but only

emphasises the clause.

Sri S. Nagappa (Madras: General): Sir, I move that in clause 6, for the words "imposition of any disability", the words "observance of any disability" be substituted. My reason is that imposition implies that one party that imposes it on another is guilty but I suggest that if the untouchability is observed by any person it must be an offence. Unless this amendment is made I do not think the provision made here is enough to punish a person. So I request the House to see that by accepting my amendment observance of untouchability is made a punishable offence.

Sri P. Kunhiraman (Madras: General): Sir, I move that in clause 6 after the word "offence" the following words be inserted:

"punishable by law."

The original clause makes it an offence and implies that it will be punishable; I want to make it more explicit. It is just a verbal amendment and I commend it for acceptance. Moreover, if we only say that it is an offence it may be interpreted later on in the sense that it is not a legal offence. So it is necessary that it should be made explicit.

Mr. President : The motion and the amendments are now under discussion.

The Hon'ble Sardar Vallabhbhai Patel: The first amendment is by Mr. Kamath. He wants the addition of the word 'unapproachability'. If untouchability is provided for in the fundamental rights as an offence, all necessary adjustments will be made in the law that may be passed by the Legislature. I do not think it is right or wise to provide for such necessary corollaries and, therefore, I do not accept this amendment.

The other amendment is by Mr. Nagappa who has suggested that for the words "imposition of any disability" the words "observance of any disability" may be *substituted*. I cannot understand his point. I can observe one man imposing a disability on another, and I will be guilty I have observed it. I do not think such extreme things should be provided for. The removal of untouchability is the main idea, and if untouchability is made illegal or an offence, it is quite enough.

The next amendment was moved by Mr. Kunhiraman. He has suggested the insertion of 'punishable by law'. We have provided that imposition of untouchability shall be an offence. Perhaps his idea is that an offence could be excusable, or sometimes an offence may be rewarded. Offence is an offence; it is not necessary to provide that offence should be punishable by law. Sir, I do not accept this amendment either.

Then, it was proposed that for the words 'any form', the words 'all forms' be substituted. Untouchability in any form is a legal phraseology, and no more addition is necessary.

Mr. H. V. Kamath: In view of the explanation given by the Hon'ble Sardar Patel I leg leave of the House to withdraw the amendments moved by me.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That in clause 6, for the words 'imposition of any disability', the words observance of any disability' be substituted."

The motion was negatived.

Sri P. Kunhiraman: Sir, in the light of the observations made by the Mover of the Resolution I beg leave of the House to withdraw the amendment moved by me.

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

Mr. President: The question is that clause 6 be accepted.

The motion was adopted.

Mr. President: I have received a request from several Members that they should be permitted to give notice of amendments to the clauses which have not yet been considered, and their ground is that yesterday they received the Report rather late and they could not send in their amendments before 5 o'clock. We have already got a large number of amendments, and I do not know if the House would like to extend the time to receive more.

Shri Mahavir Tyagi: It does not matter because your disposal is so fast.

Mr. President: It is not my disposal, but it is done by the House.

If we get the amendments up to 5 o'clock then there is this difficulty. The amendments have to be tabulated, typed and cyclostyled, and there is very little time in the evening because of the Curfew Order. On previous occasions they had to work up to late at night. Now they find it difficult to work at night. If, the Members waive their right of getting copies of these amendments, I might accept their request.

Rai Bahadur Syamanandan Sahaya (Bihar: General): They may be amendments which were received in office after 5 o'clock yesterday....

Mr. President: Those which have already been received will be accepted and even today if notice of amendments is received up to 2 o'clock they will be taken in. But after that it will be very difficult. In any case, amendments to amendments can be handed in until the Session begins tomorrow morning.

As regards the time, we met at half past 8 o'clock today and we have carried on for 4 hours. But I am told that time is not convenient to, some Members, and it is still more inconvenient to our Office people, some of whom live in distant parts of the city. They have to work from 8 o'clock in the morning to late in the evening. If the House agrees we might meet at 9 o'clock tomorrow morning.

Several Hon'ble Members: Yes, yes.

Mr. President: The House now stands adjourned.

The Assembly then adjourned till Nine of the Clock on Wednesday, the 30th April 1947.

*Appendix at end.

APPENDIX

CONSTITUENT ASSEMBLY OF INDIA

No. CA/24/COM/47

Council House,

1947.

New Delhi, the 23rd April,

FROM

THE HON'BLE SARDAR VALLABHBHAI PATEL,

Chairman. Advisory Committee on Minorities,

Fundamental Rights, etc.

To

THE PRESIDENT,

Constituent Assembly of India.

SIR,

On behalf of the members of the Advisory Committee appointed by the Constituent Assembly of India on the 24th January, 1947, I have the honour to submit this interim report on fundamental rights. In coming to its conclusions, the Committee has taken into consideration not merely the report of the Sub-Committee on fundamental rights but also the comments thereon of the Minorities Sub-Committee.

2. The Fundamental Rights Sub-Committee recommended that the list of fundamental rights should be prepared in two parts, the first part consisting of rights enforceable by appropriate legal process and the second consisting of directive principles of social policy which, though not enforceable in Courts, are nevertheless to be regarded as fundamental in the governance of the country. On these latter, we propose to submit a subsequent report; at present, we have confined ourselves to an examination only of the justiciable fundamental rights.

3. We attach great importance to the constitution making these rights justiciable. The right of the citizen to be protected in certain matters is a special feature of the American constitution and the more recent democratic constitutions. In the portion of the Constitution Act, dealing with the powers and jurisdiction of the Supreme Court, suitable and adequate provision will have to be made to define the scope of the remedies for the enforcement of these fundamental rights. These remedies have been indicated in general terms in clause 22 of the Annexure.

4. Clause 20 of the Statement of May 16, 1946, contemplates the possibility of distributing fundamental rights between the constitutions of the Union, the Groups, if any, and the Units. We are of the opinion that fundamental rights of the citizens of the Union would have no value if they differed from Group to Group or from Unit to Unit or are not uniformly enforceable. We recommend that the rights set out in the Annexure to this report be incorporated in the constitution so as to be binding upon all authorities, whether of the Union or the Units.

5. Clause 10 deals with the freedom, throughout the Union, of trade, commerce and intercourse between the citizens. In dealing with this clause, we have taken into account the fact that several Indian States depend upon internal customs for a considerable part of their revenue and it may not be easy for them to abolish such duties immediately on the coming into force of the Constitution Act. We, therefore, consider that it would be reasonable for the Union to enter into agreements with such States in the light of their existing rights, with a view to giving them time, up to a maximum period to be prescribed by the constitution, by which internal customs could be eliminated and complete free trade established within the Union.

6. We have made a special provision in regard to full faith and credit being given to the public Acts, records and judicial proceedings of the Union in every Unit and for the judgments and orders of one Unit being enforced in another Unit. We regard this provision as very important and appropriately falling within the scope of fundamental rights.

7. Clause 2 lays down that all existing laws, regulations, notifications, custom or usage in force within the territories of the Union inconsistent with the fundamental rights shall stand abrogated to the extent of such inconsistency. While in the course of our discussions and proceedings we have kept in view the provisions of existing Statute law, we have not had sufficient time to examine in detail the effect of this clause on the mass of existing legislation. We recommend that such an examination be undertaken before this clause is finally inserted in the constitution.

8. The Fundamental Rights Sub-Committee was of the opinion that the right of the citizen to have redress against the State in a court of law shall not be fettered by undue restrictions. That Sub-Committee was not able, however, to draft a suitable formula as the matter requires more investigation than was possible in the time at its

disposal. It was also suggested during our deliberations that certain additional fundamental rights should be inserted in the constitution. We have not had the time to consider these matters; we shall do so in due course and incorporate any recommendations we may have to make on them in our next report.

9. The Fundamental Rights Sub-Committee and the Minorities Sub-Committee were agreed that the following should be included in the list of Fundamental Rights :--

"Every citizen not below 21 years of age shall have the right to vote at any election to the legislature of the Union and of any Unit thereof, or, where the legislature is bicameral, to the lower chamber of the legislature, subject to such disqualifications on the ground of mental incapacity, corrupt practice or crime as may be imposed, and subject to such qualifications relating to residence within the appropriate constituency, as may be required, by or under the law.

(2) The law shall provide for free and secret voting and for periodical elections to the legislature.

(3) The superintendence direction and control of all elections to the legislature, whether of the Union or of a Unit, including the appointment of Election Tribunals, shall be vested in an Election Commission for the Union or the Unit, as the case may be, appointed, in all cases, in accordance with the law of the Union."

While agreeing in principle with this clause, we recommend that instead of being included in the list of fundamental rights, it should find a place in some other part of the constitution.

be,

I have the honour to

Sir,

servant,

Your most obedient

PATEL,

(Sd.) **VALLABHBHAI**

Chairman,

Minorities,

Advisory Committee on

Rights, etc.

Fundamental

ANNEXURE

JUSTICIABLE FUNDAMENTAL RIGHTS

Definitions

1. Unless the context otherwise requires--

(i) "The State" includes the legislatures and the governments of the Union and the Units and all local or other authorities Within the territories of the Union.

(ii) "The Union" means the Union of India.

(iii) "The law of the Union" includes any law made by the Union legislature and any existing Indian law as in force within the Union or any part thereof.

Application of Laws

2. All existing laws, notifications, regulations, customs or usages in force within the territories of the Union inconsistent with the rights guaranteed under this part of the Constitution shall stand abrogated to the extent of such inconsistency, nor shall the Union or any unit make any law taking away or abridging any such right.

Citizenship

3. Every person born in the Union or naturalised in the Union according to its laws and subject to the jurisdiction thereof shall be a citizen of the Union.

Rights of Equality

4. (1) The State shall make no discrimination against any citizen on grounds of religion, race, caste or sex.

(2) There shall be no discrimination against any citizen on any ground of religion, race, caste or sex in regard to--

(a) access to trading establishments including public restaurants and hotels,

(b) the use of wells, tanks, roads and places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public:

Provided that nothing contained in this clause shall prevent separate provision being made for women and children.

5. There shall be equality of opportunity for all citizens in matters of public employment and in the exercise of carrying on of any occupation, trade, business or profession.

Nothing herein contained shall prevent the State from making provision for reservations in favour of classes who, in the opinion of the State, are not adequately represented in the public services.

No citizen shall on grounds only of religion, race, caste, sex, descent, place of birth or any of them be ineligible for public office or be prohibited from acquiring, holding or disposing of property or exercising or carrying on any occupation, trade, business, or profession within the Union.

Nothing herein contained shall prevent a law being made prescribing that the incumbent of an office to manage, administer or superintend the affairs of a religious or denominational institution or the member of the Governing Body thereof shall be a member of that particular religion or denomination.

6. "Untouchability" in any form is abolished and the imposition of any disability on that account shall be an offence.

7. No heritable title shall be conferred by the Union.

No citizen of the Union and no person holding any office of profit or trust under the State shall, without the consent of the Union Government, accept any present, emoluments, office, or title of any kind from any foreign State.

Rights of freedom

8. There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency declared to be such by the Government of the Union or the Unit concerned whereby the security of the Union or the Unit, as the case may be, is threatened:--

(a) The right of every citizen to freedom of speech and expression:

Provision may be made by law to make the publication or utterance of seditious, obscene, blasphemous, slanderous, libellous or defamatory matter actionable or punishable.

(b) The right of the citizens to assemble peaceably and without arms :

Provision may be made by law to prevent or control meetings which are likely to cause a breach of the peace or are a danger or nuisance to the general public or to prevent or control meetings in the vicinity of any chamber of a Legislature.

(c) The right of citizens to form associations or unions:

Provision may be made by law to regulate and control in the public interest the exercise of the foregoing right provided that no such provision shall contain any political, religious or class discrimination.

(d) The right of every citizen to move freely throughout the Union.

(e) The right of every citizen to reside and settle in any part of the Union, to acquire property and to follow any occupation, trade business or profession :

Provision may be made by law, to impose such reasonable restrictions as may be

necessary in the public interest including the protection of minority groups and-tribes.

9. No person shall be deprived of his life, or liberty, without due process of law, nor shall any person be denied the equal treatment of the laws within the territories of the Union:

Provided that nothing herein contained shall detract from the powers of the Union Legislature in respect of foreigners.

10. Subject to regulation by the law of the Union trade, commerce, and intercourse among the units by and between the citizens shall be free:

Provided that any Unit may by law impose reasonable restrictions in the interest of public order, morality or health or in an emergency :

Provided that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties and taxes to which the goods produced in the Unit are subject:

Provided further that no preference shall be given by any regulation of commerce or revenue by a Unit to one Unit over another.

11. (a) Traffic in human beings, and

(b) forced labour in any form including beggar and involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted; are hereby prohibited and any contravention of this prohibition shall be an offence.

Explanation.--Nothing in this sub-clause shall prevent the State from imposing compulsory service for public purposes without any discrimination on the ground of race, religion, caste or class.

12. No child below the age of 14 years shall be engaged to work in any factory, mine or any other hazardous employment.

Explanation.--Nothing in this clause shall prejudice any educational programme or activity involving compulsory labour.

Rights relating to religion

13. All persons are equally entitled to freedom of conscience, and the right freely to profess, practise and propagate religion subject to public order, morality or health, and to the other provisions of this Chapter.

Explanation 1.--The wearing and carrying of Kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation 2.--The above rights shall not include any economic, financial, political or other secular activities that may be associated with religious practice.

Explanation 3.--The freedom of religious practice guaranteed in this clause shall not debar the State from enacting laws for the purpose of social welfare and reform.

14. Every religious denomination shall have the right to manage its own affairs in matters of religion and, subject to the general law, to own, acquire and administer property, movable and immovable, and to establish and maintain institutions for religious or charitable purposes.

15. No person may be compelled to pay taxes, the proceeds of which are specifically appropriated to further or maintain any particular religion or denomination.

16. No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in the religious instruction that may be given in the school or to attend religious worship held in the school Or in premises attached thereto.

17. Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law.

Cultural and Educational Rights

18. (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.

(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them.

(3) (a) All minorities whether based on religion, community or language shall be free in any Unit to establish and administer educational institutions of their choice.

(b) The State shall not, while providing State aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language.

Miscellaneous Rights

19. No property, movable or immovable, of any person or corporation including any interest in any commercial or industrial undertaking, shall be taken or acquired for public use unless the law provides for the payment of compensation for the property taken or acquired and specified the principles on which and the manner in which the compensation is to be determined.

20. (1) No person shall be convicted of crime except for violation of a law in force at the time of the commission of that act charged as an offence, nor be subjected to a penalty greater than that applicable at the time of the commission of the offence.

(2) No person shall be tried for the same offence more than once nor be compelled in any criminal case to be a witness against himself.

21. (1) Full faith and credit shall be given throughout the territories of the Union to the public acts, records and judicial proceedings of the Union and every Unit thereof, and the manner in which and the conditions under which such acts, records and proceedings shall be proved and the effect thereof determined shall be prescribed by the law of the Union.

(2) Final civil judgements delivered in any Unit shall be executed throughout the Union subject to such conditions as may be imposed by the law of the Union.

Rights to Constitutional Remedies

22. (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of any of the rights guaranteed by this part is hereby guaranteed.

(2) Without prejudice to the powers that may be vested in this behalf in other courts, the Supreme Court shall have power to issue directions in the nature of the writs of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari* appropriate to the right guaranteed in this part of the Constitution.

(3) The right to enforce these remedies shall not be suspended unless when, in case of rebellion or invasion or other grave emergency, The public safety may require it.

23. The Union Legislature may by law determine to what extent any of the rights guaranteed by this part shall be restricted or abrogated for the members of the armed forces or forces charged with the maintenance of public order so as to ensure fulfillment of their duties and the maintenance of discipline.

24. The Union Legislature shall make laws to give effect to those provisions of this part which require such legislation and to prescribe punishment for those acts which are declared to be offences in this part and are not already punishable.

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME III

Wednesday, the 30th April, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair

Mr. President : We shall now proceed with further consideration of the Interim Report on the subject of Fundamental Rights. We have passed clause 6. We have held over clause 5. Before we go on, I desire to make the following announcement.

ELECTION TO STEERING COMMITTEE

Mr. President: For the two seats to be filled on the Steering Committee from among representatives of Indian States in accordance with the resolution of the House of the 28th April, only two nominations have been received, namely, those of Mr. P. Govinda Menon (Cochin) and Mr. C. S. Venkatachar (Jodhpur). I accordingly declare these two members duly elected to the Steering Committee. (*Cheers*).

INTERIM REPORT ON FUNDAMENTAL RIGHTS-*contd.*

CLAUSE 5.--RIGHTS OF EQUALITY

Mr. President: Hon'ble Sardar Vallabhbhai Patel.

The Hon'ble Sardar Vallabhbhai Patel (Bombay: General): Yesterday we had held over clause 5*, because we wanted some time to consider it. We have given thought to the matter and now I proposed to move clause 5. We have made some changes, but they are only formal changes. Some portions are dropped and formal amendments for the changes will be moved. Clause 5 will now run as follows:

"There shall be equality of opportunity for all citizens in matters of public employment."

The words "and in the exercise of carrying on of any occupation, trade, business or profession" have been taken over to some other clause at a later stage. We are dropping those words now. Mr. Munshi will move an amendment for that. Then we put the third sub-clause of the clause as follows :

"No citizen, shall on grounds, only of religion, race, caste, sex, descent, place of birth or any of them be ineligible for public office."

As regards the subsequent words of this sub-clause we have come to the conclusion that they are unnecessary here and they will be taken over to some other place. Therefore, this portion as I have read, remains and as regards that, formal amendments will be moved. Then comes the proviso which is sub-clause 2 of this

clause. It runs as follows:

"Nothing herein contained shall prevent the State from making provision for reservations in favour of classes who, in the opinion of the State, are not adequately represented in the public services."

Then the last sub-clause remains:

"Nothing herein contained shall prevent a law being made prescribing that the incumbent of an office to manage, administer or superintend the affairs of a religious or denominational institution or the member of the Governing Body thereof shall be a member of that particular religion or denomination."

This is clause 5 as I move it, and if there are any amendments to be moved, we shall discuss them afterwards. I formally move.

Mr. President: I have got notice of a number of amendments to this clause. Some came to us day before yesterday and others reached us yesterday. I think there are ten or twelve amendments and I propose to take them one after another. Mr. Munshi's amendment will come first.

Mr. K. M. Munshi (Bombay: General): I move:

"1. In clause 5 paragraph 1 may be marked '(a)', and paragraph 3 may be marked '(b)'.

2. Paragraph 3 may be placed immediately after paragraph 1.

3. Delete from paragraph 1 the words 'and in the exercise of carrying on of any occupation, trade, business or profession', and from paragraph 3 the words 'or be prohibited from acquiring, holding or disposing of property or exercising or carrying on any occupation, trade, business, or profession within the Union'."

This amendment is intended to classify the two heads of rights under two different clauses. As the House will be pleased to see, clause 5 deals not only with public employment but also with occupation, trade, business or profession, and the right to acquire, hold and dispose of property. The same right occurs once again in clause 8 and proviso has been put in at the end of clause 8 permitting Government by law to restrict this freedom under certain circumstances. It was felt that these two clauses were overlapping, and for the purpose of having a proper logical division, clause 5 is now being only restricted to public employment, while freedom to carry on occupation, trade, business or profession and freedom to acquire, hold and dispose of property have been transferred to clause 8 (e). The result of all this change is that this clause will stand only with regard to public employment, and the right with regard to trade, occupation, etc., and with regard to property will come under clause 8 (e). Sir, I move.

Mr. B. Das (Orissa : General) : In paragraph (e) of clause 5 it is said :

"No citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, or any of them be ineligible for public office or be prohibited from acquiring, holding or disposing of property or exercising or carrying on any occupation, trade, business, or profession within the Union."

I have got the experience of many Afghan Princes in India. These Afghan Princes were punished by the King of Afghanistan and sent to India as State Prisoners. There are still some prisoners in India, but some of these Princes cannot hold any office in India, and they can not carry on any business. In my public career, I have met some

of these Afghan Princes, they have come and told me that they were having trouble and they could not get a job even under the old India Government, because the British in league with the Afghan Government, did not allow them to function as free citizens at all. I want to know whether Indian-born Afghan Princes, most of whom are prohibited from going to Afghanistan and have got to live in India,--whether they will be allowed as Indian citizens to hold public office or will be eligible for the same. I want to know whether the draftsman of this clause has envisaged such a contingency.

Some Hon'ble Members: We have not followed what Mr. Das said, we could not hear him.

Mr. President: Mr. Das, the members have not followed what you said. Will you please come to the mike and explain ?

Mr. B. Das: What I was saying was this. There are some Afghan Princes in India who are banished by the Afghan Government and in league with the British Government of India they are to remain in India under certain conditions. They are the sons and grandsons of Afghan Princes, but they are not allowed to get any job in British India. Will they be allowed to get jobs in India if the present interpretation of clause 3 of citizenship is accepted and they become citizens of India ? Up to now there is a political ban on these people and they cannot hold any office in British India. I have met dozens of them. I would like to know what the intention of the draftsman is in this matter.

Mr. President : I will take up the amendments of which notice was given day before yesterday.

Mr. Rajagopalachariar has come up with an amendment which suggests the rearrangements of the paragraphs.

The Hon'ble Sri C. Rajagopalachariar: (Madras: General): That amendment has been agreed to by Mr. Munshi.

(Amendments Nos. 23 to 28 of the Supplementary List I were not moved.)

Mr. Somnath Lahiri (Bengal: General): My amendment (*i.e.* No. 29 of the Supplementary List I) is on the same grounds as my amendment of yesterday, relating to political creed. So I do not want to labour the point further.

Mr. President: Amendment No.30.

Mr. H.V. Kamath (C.P. & Berar: General): Sir, after what happened to my amendment yesterday, I do not wish to repeat that amendment today.

(Amendments Nos.31 to 33 of the Supplementary List I were not moved.)

Mr. President: Shri Mahavir Tyagi.

Shri Mahavir Tyagi (United Provinces: General): * [Mr. President, Sir, my amendment reads as follows:

"That in clause No.5, after the words, "There shall be equality of opportunity for all citizens in matters of public employment and in the exercise or carrying on of any occupation, trade, business or profession", the following proviso may be added after the first para:

'Provided that a Unit may frame rules where under in the matter of public employment it may give preference over others to such citizens as are *bona fide* or domiciled residents of its own territory."

Sir, I have only to submit that for those who are employed at present in the Government offices of different provinces, it is desirable that they should be residents of that province, so far as possible. I think, to establish self-government in the true sense of the word, it is most essential that in any part of the world, only the residents of that part should be government servants and officials. If there are open chances for the residents of one province to serve in another, it means that the residents of that province shall not be able to enjoy self-government. My real intention is that so far as possible, the administration of a province should be run by officers and employees who are residents of that province. This province and the unit, in which the staff is required, should employ mostly the descendants of the residents of that place. According to the form to which this rule is being framed there is no consideration of the domicile of the candidate, or his place of birth. There shall be freedom to serve anywhere. This may create troubles that in order to secure service the residents of one province will compete with the residents of another. By this the self-sufficiency of an autonomous unit will be destroyed. Now-a-days there are restrictions of domicile and residence in all provinces. In our U.P. in every advertisement of the Public Service Commission, a condition is laid down that only those who are domiciled in U.P., Rampur, Benaras or Tehri States can apply for the posts. If this condition is waived and no preference is given to birth-place, then there may be a danger that people of other parts of the province may compete and capture subordinate and higher posts. This will go against the real spirit of Swaraj. Perhaps the clause as moved by Sardar Vallabhbhai Patel may provide that the provincial Governments can give preference to their residents. If this is so, I will not move my amendment, but I would request Sardar Patel to put it on record in today's proceedings that:--

"That there shall be no restrictions in giving preference to place of birth for recruitment to Government Service."

It would mean that provincial Governments will be able to give preference to their residents over others. If, in the proceedings of this House, it is recorded that the right of allowing privileges to its domiciles will vest in every province and in matters of employment it shall be able to allow privileges to its residents over those of other provinces, then I need not move any amendment. I hope that this will be possible. I shall not have to move my amendment if the mover or any other member of this Committee admits that the freedom of the provinces in running their administration through their residents is maintained so far as possible.]*

Mr. R.K. Sidhwa (C.P. & Berar: General) : Sir, which is the amendment he is dealing with?

Mr. President: He is moving his amendment to clause 5, which is amendment No. 2 in the list circulated this morning (Supplementary List II).

Mr. President: Amendment No. 3 of the Supplementary List II by Mr. Munshi.

Mr. K.M. Munshi: That has been incorporated in the one that has been moved.

Mr. President: Rao Bahadur Chaudhri Suraj Mal.

Rao Bahadur Chaudhri Suraj Mal (Punjab: General): *[Mr. President, with your permission, I wish to move the following amendment:

"That in clause 5, the following be added after the third paragraph:

'Provision may be made by law to impose such reasonable restrictions as may be necessary in the interest of agriculture'."

My object, in moving this amendment is that India is an agricultural country, where we have many "petty proprietors", who are commonly known as Bisvadars or petty Zamindars. Their number is very large, and larger still in the Punjab. There are many petty zamindars or Bisvadars in Ambala and Jullundur Divisions. In our Punjab, restrictions of this sort exist even now. It appears from para. 5, that these restrictions may be excluded from the operation of law in future. Therefore, my object in moving this amendment is to give such powers to the Units, which in the interest of agriculture will enable them to protect the petty zamindars and "Bisvadars" from the big Landlords, Capitalists and wealthy people, who do not cultivate the land themselves. In my opinion, such restrictions are very essential for the benefit of the whole country. I hope that such powers will be given to the Units, which will enable them to protect their cultivators.

Secondly, I want to point out, in particular, that the petty Zamindars or "Bisvadars", who inhabit our area, belong particularly to martial classes and are in the army in large numbers even now. I think, and rightly so, that if they do not possess these lands, they will be reduced to the status of mere peasants. The spirit of self-respect is inherent in them. They can fight with courage and the name which they have earned, they will not be able to earn in future. May I point out to you that you may issue statements, publish messages in papers and deliver speeches; but this is the age of the sword. Only that man will rule, who has power in his hands. Therefore, it is necessary that the children of those who are in the army, should be treated well and should not be allowed to grow weak, because their services shall be required. Their support will be needed to enforce the Constitution, which is being framed for the future. Therefore, I submit that such restrictions should be imposed, which will debar wealthy people from acquiring the lands of the weak. I appeal to Sardar Vallabhbhai Patel, because he is a well-wisher of the Zamindars. I hope that he will keep this in view and add some provision in the Constitution, in order to protect them from the operations of the existing laws. Once the peasantry is destroyed, it can not be recouped. As an English poet has said, once a peasant is destroyed, it is very difficult to rehabilitate him. With these words, I move this amendment.]*

(Amendment No. 6 of the Supplementary List II was not moved.)

Mr. President: *[There is another amendment in your name]*

Rao Bahadur Chaudhri Suraj Mal: *[Sir, the object of the second amendment is also the same. As I have already moved a similar amendment, the second one is unnecessary.]*

Mr. President: *[Then you do not move it.]*

The clause and the amendments have been placed before the House. They are now open for discussion. Those who wish to speak may do so.

Sardar Prithvi Singh Azad (Punjab: General): *[Mr. President, I stand to oppose the amendment moved by Rao Bahadur Suraj Mal. There is a black law in the Punjab, which is known as "Land Alienation Act." The purpose of this amendment is to preserve this law. It is highly detrimental to our depressed and other non-agricultural classes. It has allowed those who go under the name of Zamindars or label themselves as peasants to permanently enslave a large section of people in the Punjab. If this amendment of R. B. Chaudhri Suraj Mal is accepted, it would mean that those communities, which have been forced to live under the tyranny of Zamindars for centuries, and which by the help of the black law of "Land Alienation Act" have been kept in the clutches of the Zamindars will not be able to recover for centuries. Hence in this age when we are formulating such a law that all should be provided with the same facilities and opportunities, and every one should have equal rights, it is not proper that this black law should be maintained. Hence, on behalf of the depressed classes, I oppose Mr. Chaudhri's amendment in strong words and appeal to the House that this amendment should not be accepted in any form, for this amendment will amount to injustice and tyranny for the depressed and other non-agriculturist classes. If you now adopt this amendment, it means that you would be perpetuating that tyranny which we are present here to end. I oppose the amendment with these words.]*

The Hon'ble Sardar Vallabhbhai Patel: Sir, almost all the amendments have been withdrawn and there is not much room for debate. I wish to give a reply to one or two points that have been raised by some of the members.

Mr. B. Das has some doubts about the Afghan Princes who have been deported from Afghanistan, and he wants to know whether they and their children will be eligible for office. I do not know that this is going to create any difficulty for us. If the children of the Afghan Princes propose to stay here, it is quite possible they will get themselves naturalised if they have been deported from their country. After all, the clause makes provision for eligibility, but it does not restrict the right of provinces to impose restrictions by legislation on the question of employment. It only says that no citizen can be declared ineligible for office on only the following grounds, that is, on the ground of race, religion, sex, descent, etc. Therefore, there is no reason to have any apprehension on that account. Now, Mr. Tyagi also raised a similar point though of a different type—that preference should be given to the residents of the province and provinces should have opportunity to give preference by legislation to the residents of the provinces. This does not deprive the province of its rights to legislate. This simply removes ineligibility of a citizen; that should be so, and therefore it is provided in the Fundamental Rights. So on that score also, there is no difficulty.

Mr. Chaudhri Suraj Mal has raised a point in which he is afraid that persons having agricultural holdings may be affected. He has in his mind that the Punjab Land Alienation Act which is working, gives some protection to these persons and he thinks they will be deprived of their protection. Now, in this connection, I can only suggest for his satisfaction that there is an amendment to this clause moved by Mr. Munshi, which I proposed to accept, as I have explained in the beginning. This clause so far as it concerns the acquiring, holding or disposing of property is removed from there and

is going to be taken over to another clause that follows, that is clause 8, but in that clause also the provision clause that follows, that is clause 8, but in that clause also the provision has been made that this can be done only on grounds of, I think, public interest. Therefore, in this clause even if the principle is there, it is to be to be restricted, but in this clause this principle is to be removed. In the other clause the principle is discussed and as the principle is restricted only to cases of public interest, I think there is no difficulty and his difficulty is also removed. I, therefore, think that this clause 5, as amended, should be passed by the House.

Mr. President: Now I take Mr. Munshi's amendment. The clause as amended by Mr. Munshi will read like this:

"(a) There shall be equality of opportunity for all citizens in matter of public employment.

(b) No citizen shall on grounds only of religion, race, caste, sex, descent, place of birth or any of them be ineligible for public office.

(c) Nothing herein contained shall prevent the State from making provision for reservations in favour of classes who, in the opinion of the State, are not adequately represented in the public services.

(d) Nothing herein contained shall prevent a law being made prescribing that the incumbent of an office to manage, administer or superintend the affairs of a religious or denominational institution or the member of the Governing Body thereof shall be a member of that particular religion or denomination."

The question is that the amendment of Mr. Munshi be adopted.

The motion was adopted.

Mr. President: There is only one amendment which has been moved and that amendment is by Rao Bahadur Chaudhri Suraj Mal. His amendment related to holding or disposing of property, etc., and that part of the clause has been deleted. So his amendment does not arise and no vote will be taken on that. Now the clause, as amended, will be put to the vote.

The clause, as amended, was adopted.

CLAUSE 7.-- RIGHTS OF EQUALITY

The Hon'ble Sardar Vallabhbhai Patel: Now Sir, I beg to move clause 7. As it stands, it runs thus:-

"No heritable title shall be conferred by the Union."

We have discussed this at length in the Committee and there was difference of opinion in the various committees in which this question was discussed and adopted. It was a very controversial matter. The matter was settled after a prolonged debate and we came to this formula. But the word 'heritable' became a matter of controversy and it was agreed after considerable discussion that that word should also be dropped, and there would be a formal amendment for that purpose. So what will remain will be-

"No title shall be conferred by the Union."

This is the general public opinion in the country. Outside also, in many free countries, it is disappearing. The title is often being abused for corrupting the public life of the country, and, therefore, it is better that it should be provided in the Fundamental Rights. I do not know if there will be any objection or any prolonged controversy over this matter. I move this clause.

Mr. President : There are several amendments to this clause, of five or six of which notice was given the day before yesterday and of one or two of which notice was given yesterday.

I think Mr. Masani's amendment is the most comprehensive one. I will ask him to move.

Mr. M.R. Masani (Bombay: General): Mr. President, the amendment of which I have given notice is an amendment to the amendment given notice of by Mr. Santhanam. It reads as follows:

"No title other than one denoting an office or profession shall be conferred by the Union.

No citizen of the Union shall accept any title from any foreign State.

No person holding any office of profit or trust under the State shall, without the consent of the Union Government, accept any present, emoluments, or office of any kind from any foreign State."

In sentence, 1, paragraph 1, the words, "other than, one denoting an office or profession" may be deleted, so that the clause would read "No title shall be conferred by the Union." In paragraph 3 "or title" should be added in the last line of the clause so as to read:

"No person holding any office of profit or trust under the State shall, without the consent of the Union Government, accept any present, emoluments, office or title of any kind from any foreign State."

That is, I understand, the consensus of opinion. If the House would permit this modification to be made, it will perhaps become a non-controversial amendment.

Mr. President: Mr. Masani has given notice of an amendment and he just wants the permission of the House to drop a few words in the amendment as he has suggested, so that his amendment would read like this:

"No title shall be conferred by the Union.

No citizen of the Union shall accept any title from any foreign State.

No person holding any office of profit or trust under the State shall, without the consent of the Union government accept any present, emoluments, office or title of any kind from any foreign State."

Mr. M.R. Masani: In commending this amendment to the House, I would point out that changes made in the present clause are in two directions. The first, which is an important one, is that the word "heritable" be dropped. This will mean that the Free Indian State will not confer any titles of any kind, whether heritable or otherwise, that is, for the life of the incumbent. It may be possible for the Union to honour some of its

citizens who distinguish themselves in several walks of life like science and the arts, with other kinds of honours not amounting to titles; but the idea of a man putting something before or after his name as a reward for service rendered will not be possible in a Free India. I think, Sir, the House will support this principle, because it has been found not only in subject countries but even in so-called free countries, that titles become dangerous and a source of corruption both to those who bestow them and to those who accept them. Therefore relying on patriotism, self-respect and the motive of service, we shall do without titles of any kind.

The other modification is to distinguish between citizens of the Union and those holding office under the State. Citizens of the Union, in the clause as amended, will not be free to accept any title from any foreign State while persons holding any office of profit or trust under the State would be able to accept emoluments or presents from foreign Governments only when their own Government permits it. That, Sir, would permit diplomats and others who might be permitted by their own Government to accept tokens of respect or appreciation from foreign Governments. I take it, Sir, that the meaning of the amendments has been made clear and I do hope that in the interest of equality between human beings and of democracy, the change which drops the word "heritable" will be accepted as well as the other change which I have indicated.

Shri Sri Prakasa (United Provinces: General): I think, Sir, that my amendment is included in the amendment which was moved by Mr. Masani. There is now no need for my amendment to be moved at all. I am not moving it.

Mr. H.V. Kamath: In view of the change in the clause as indicated, I think there is no point in pursuing my amendment.

Shri K. Santhanam (Madras: General): My amendment has been included in Mr. Masani's amendment.

Mr. R.K. Sidhwa: In view of the amendment moved by Mr. Masani, I do not think any necessity arises for me to move my amendment. I have stated that with the exception of academic degrees, no titles of any kind shall be conferred by the Union. I am told academic degrees will not be considered as titles; these could be given by the Universities or institutions. In view of this, Sir, I do not desire to move my amendment.

Seth Govind Das (C.P. & Bearer: General): *[Mr. President, the resolution that has been moved is clear regarding future titles. But nothing has been said about those who already possess titles. It is an accepted fact that most of the title-holders have been so honoured by the foreign Government which has been ruling this country for the last two hundred years. If we look into the history of other countries, we find that after the French and Russian revolutions, all the titles were withdrawn. So far this Government has also been doing the same. If any of its title-holder participated in any political activity, it withdrew his title. Although I am not proposing any amendment in the matter, I wish to ask Sardarji if he does not want to redeem the people from medals of slavery.

I want that even the titles held by people at present should be withdrawn. The present title-holders should live in free India just as other people live.]*

Shri Balkrishna Sharma (U.P. General): *[Mr. President, I oppose this sub-section which lays down that no title shall be conferred in free India. I consider this against the tradition of my country and against the psychology of its people.

We have time and again tried to honour the dignitaries of this country in so many ways. We call some one 'Acharya', and Mr. President, we call you 'Deshratna'. We call Mahatma Gandhi by the name of 'Mahatma'. I consider it improper to make a decision against honouring our leaders as this tendency is inherent in our minds, our hearts and our culture. Therefore I oppose it.

Mr. Masani and other friends have expressed a contrary view but there is a reason behind it. The present democratic feeling compelled them to say that there should be no titles in our country. But I think that if in our free India some persons of our country do such work as deserves respect, there is no reason why we should not honour such great men with national titles on behalf of our countrymen. In Russia itself where socialism was first experimented upon, it was felt necessary after some time that the country should honour its generals, its military leaders and its distinguished workers with titles and medals. Therefore, I urge that before passing this resolution this House should seriously consider this matter, and should realize that the resolution is against our psychology and against our tradition. Therefore it should be rejected.]*

Shri Sri Prakasa: Mr. President.....

(At this stage the speaker was asked by the President to come to the loud Speaker).

I think Sir, the acoustics of this hall are perfect, if only members knew not only what to say but how to say it. Sir, my esteemed friend Pandit Balkrishna Sharma has gone off the rails completely. (*Hear, hear*). He says that it is against the tradition of our country to abolish all titles and that we are very fond of such titles. What he forgets is that we are not claiming it as a fundamental right that no one could be given a title or an honour unofficially. What we object to is the State having the power to grant titles. (*Hear, hear*). You cannot prevent a whole people from paying their spontaneous homage to their liberator by calling Gandhiji, Mahatma Gandhi. While the State refuses to recognize that title, while the State puts him to long terms of imprisonment, the people go on calling him Mahatma Gandhi and cursing the State that puts the great man in prison.

There is difference between the two titles. The receiver of a spontaneous title from the people feels embarrassed at it. He asks the people not to call him Mahatma or Deshratna or such things, while the person who receives a title from the State is most anxious that he should be called what the State gives him the privilege to call himself. Sir, I was horrified at the last session when you yourself referred to a member from your Province as "Rai Bahadur Sahib". I felt that the parents of the poor dear had forgotten to give him a name, and he had to wait for long years for the State to step in to give him one and ensure his being called "Rai Bahadur" for ever. While one title embarrasses the receiver, the other title makes him feel vain and proper. I think it is necessary in the name of freedom to ask for freedom from the imposition of such titles from the State and freedom from having to curry favour with the authorities in order to get a distinction from them.

Sir, I should like to make it plain that this clause does not prohibit even the State from bestowing a proper honour. We are distinguishing between titles and honours. A title is something that hangs to one's name. I understand it is a British innovation. Other States also honour their citizens for good work but those citizens do not necessarily hand their titles to their names as people in Britain or British-governed parts of the world do. That is all that this clause seeks to do. If the State wants to honour a citizen, if a citizen has done particularly good work, then there are a thousand ways in which that State can honour the citizen. If the people want to honour a leader, then they can also honour him; but we want to abolish this corroding, corrupting practice which makes individuals go about currying favour with authority to get particular distinctions.

We all know that long lists are printed or used to be printed every six months saying so and so is to be so and so, and many anxious people used to scan these list with great anxiety to find if their names were included or not. We want to stop all that practice. It is well known the Government did honour certain very deserving persons. In fact, when Mahatma Gandhi's name was included in the Honours' List, it was definitely stated by one of the leading papers that the Honours' List it was definitely stated by one of the leading papers that the Honours' List itself was honoured--that lustre was shed on the Honours' List--by the inclusion of the honoured name of Mahatma Gandhi in it. Later on, Mahatma Gandhi found it necessary to throw away that title in disgust, but the title of Mahatma still adheres to his great name and he has not thrown that away. Pandit Balkrishna Sharma, myself and all of us can go on and will go on calling him by that dear name and no one can prevent us from doing so. We must distinguish between the title as imposed on an individual by the State and the honour that the people give spontaneously to one of their great men. I hope, Sir, that it would be clear to all sections of the House that it is most essential that the system of bestowing titles by the State should disappear. I also hope, Sir, that the amendment moved by Mr. Masani will commend itself to the unanimous acceptance of the House. (*Hear, hear*).

Shri R. Dhulekar (U.P.: General): * [Mr. President, it is painful to me that my friend Mr. Balkrishna Sharma should have made such criticisms against the tradition of Indian civilisation, which were never to be expected of him. In ancient days our State authorities considered the sages outside their jurisdiction. If Panditji (Balkrishnaji) has looked through our ancient books, he would know that the religious places of the Hindus were outside the jurisdiction of the State.

I beg to submit that such observations and particularly from such a gentleman are not desirable. At a time when India is going to be liberated, it is improper for us to say that we should continue the old slave mentality; it is utterly unbecoming of us to say that since we are doing this for the welfare of the world, we should be rewarded with honour in our life-time. I beg to tell the House that it has always been the tradition of sages in India that they considered God as their guide and with all sincerity and humility did their work. I believe India is the only country in the world where deeds are not actuated by selfish motives. Even religious devotees in India do not pray to God for any selfish purposes. I want to tell the House that Indians want this ancient way of life to be followed in the world. We want to tell the world that we Indians work for the welfare of the whole world and want nothing in return. What Panditji has said will prove that we want some return for the work we do for the benefit of the public. Therefore, I would say that it is not fair on his part to make such an observation. I

support the amendment moved by Mr. Masani and appeal to the House to accept it.]*

Mr. H.V. Kamath: Mr. President, Sir, I rise to support my hon'ble friend, Seth Govind Das. The issue raised by him is to my mind an important one inasmuch as, while we are thinking about the future, we have given no consideration as to what we shall do about the titles that have already been conferred by the alien imperialist Government who have been all these years suppressing our freedom movement and who have been conferring titles on these people who have aided them in suppressing our freedom movement. This point is, to my mind, a vital one. I am very well aware that in this House we have got a few title holders. I do not seek to cast any aspersions or any reflections upon them individually, but today let us remember that we are standing between two worlds, one dead, the other struggling to be born, and we are trying to usher in a FREE INDIA which will redress the balance of the old decrepit world. Our "Quit India" resolution is fast coming to a successful close, and while we are seeing that the British Government is going lock stock and barrel, we eager, nay, anxious--that all associations, all connections with that foreign Government should also go with it. Therefore, I support my hon'ble friend Seth Govind Das and submit that all titles conferred by the alien Government, by the foreign imperialist Government, shall be void at the time of the inauguration of the free Indian Union.

The Hon'ble Sardar Vallabhbhai Patel: Closure.

Shri Sri Prakasa: If Seth Govind Das's amendment is accepted, will the name of his palace at Jubbulpore also be changed? (*Laughter.*)

Mr. President: We will settle that later. (*Laughter.*)

Mr. R.K. Sidhwa: On a point of order, Sir, may I ask whether we can give retrospective effect to this clause?

Mr. President: That question does not arise as no amendment has been moved.

The Hon'ble Sardar Vallabhbhai Patel: Sir, I do not see any point in discussing this matter of giving retrospective effect by people who have no title to surrender. But in the first place, I will read the motion as it runs after the acceptance of some of the amendments that have been moved. The motion is:

"No title shall be conferred by the Union.

No citizen of the Union shall accept any title from any foreign State.

No person holding any office of profit or trust under the State shall, without the consent of the Union Government, accept any present, emoluments, office or title of any kind from any foreign State."

Now, this in effect becomes the motion, and if, it is passed by the House, instead of our discussing what happened in the past, it would work automatically and therefore we need not go into the discussion of past events or try to give retrospective effect. After all, many titles have been surrendered during the last year or two and titles have lost their value. What we are legislating really is for the future and not for the past. But there are still some people who have got that attitude, that frame of mind; because of what happened in the past they still think of the past. It is unnecessary to dilate on this matter. It may show an attitude which may be resented

by some and which may be interpreted as a sign of spiteful feeling. I do not think we should discuss this matter at all: after all, some of the people who have got titles may even carry them after their death. They have spent so much and have worked so hard for it. You do not know--you have no idea--how titles are got. Therefore we cannot put all of them on the same line. Let us leave them alone. Let us forget all about past titles. What we now want to do is to think about the future. One Hon'ble Member from Benaras says: " I oppose this Resolution." Another Hon'ble Member from the same city says: "I am in favour of it." I do not understand this. What is this? Who is going to prevent people from conferring a title or take away a title conferred by the people? They are not titles really. They are attributes of virtues, which people see in them. If Mahatma Gandhi is called "Mahatma Gandhi", it is not because people want to confer any title on him, but they see in him something divine, some virtues they see in him which they admire and respect and therefore the State has nothing to do with it. We are legislating, or trying to legislate, on that the State will do or what the State should do, not on what the people can or should do. There may be sections of people who want to give titles. For instance, which State will prevent the Muslims from conferring the title of "Qaid-e-Azam" on Mr. Jinnah? It is an absurd idea. We should not think about it. People will do what they think proper to do. But these titles are conferred by the State. There may be party governments; there may be other governments. They should have no authority to give any inducements or to corrupt people in order to build up their party or to obtain or derive strength by unfair means. Therefore there is no need for discussion on this question and I move that the clause as amended--I accept the amendments--be passed.

Mr. President: I will read the amendment first:

"No title shall be conferred by the Union.

No citizen of the Union shall accept any title from any foreign State.

No person holding any office of profit or trust under the State shall, without the consent of the Union Government, accept any present, emoluments, office or title of any kind from any foreign State."

I now put the amendment to vote.

The amendment was adopted.

Mr. President: This becomes now the amended clause. I put the amended clause to vote.

The clause, as amended, was adopted

Clause 8- Rights of Freedom.

Mr. President: Then we go on to Clause 8*

The Hon'ble Sardar Vallabhbhai Patel: I move clause 8 which reads thus:

*8. There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency declared to be such by the Government of the Union or the Unit concerned whereby the security of the Union or the Unit, as the case may be, is threatened:--

(a) the right of every citizen to freedom of speech and expression:"

I do not move the proviso to be found in the Report:

"(b) The right of the citizens to assemble peaceably without arms."

Hence again I do not propose to move the proviso:

"(c) The right of citizens to form associations or unions."

The proviso to this sub-clause also I am not moving:

"(d) The right of every citizen to move freely throughout the Union:"

(e) The right of every citizen to reside and settle in any part of the Union, to acquire property and to follow any occupation, trade, business or profession".

To the proviso to this sub-clause, there is a small formal amendment to be made which I will move presently. It will be moved later. This proviso is on the lines of clause 5. It reads:

"Provision may be made by law to impose such reasonable restrictions as may be necessary in the public interest including the protection of minority groups and tribes."

The word 'reasonable' may have to be omitted after discussion on an amendment that is expected to be moved.

I see that there are some amendments to this motion. When they are moved I shall give my reply.

Mr. President. I now call upon Shri Ajit Prasad Jain to move his amendment.

Shri Ajit Prasad Jain (U.P. : General): Sir, I have given notice of an amendment to this clause, but I do not propose to move it. I would, however, request the Hon'ble Mover to make it clear that the declaration of an emergency should be done under authority derived from law. It is not now clear as to who will be the authority that is empowered to declare an emergency. I wish that the Legislature should have the right to declare an emergency and no other body. If the power to declare an emergency is placed in the hands of the executive, it may on occasion, work harshly. It is with this object that I sent up this amendment.

Mr. President: Do you or do you not move the amendment?

Shri Ajit Prasad Jain: I do not move the amendment, Sir.

Rai Bahadur Syamanandan Sahaya (Bihar: General): Sir, before we proceed with the amendments I should like to make a submission. Actually we are considering

the Report at present and the proposition moved was that the Report be taken into consideration. The Hon'ble Mover, in moving Clause 8, suggested dropping all the three provisos and, in fact, did not move their adoption at all. The proper thing to do, it seems to me, is to move for their omission by way of an amendment and not simply to say that they are not being moved. This forms part of our proceedings. If we simply omit the provisos in the manner suggested by the Hon'ble Mover, one may not know how and why they were omitted. I simply want to draw the attention of the mover to this position.

The Hon'ble Sardar Vallabhbhai Patel: I have no objection to the course suggested. It may be taken that I have formally moved for the omission of the provisos to (a), (b) and (c).

Mr. Somanth Lahiri: Sir, as I have amendments to all the sub-clauses of clause 8, I request you to allow me to move all of them together. Some of them have become redundant now in view of the fact that the Hon'ble Mover has dropped the first three provisos.

Sir, my amendment to the proviso 8 (a) to delete the word 'seditious' has become unnecessary, because the whole proviso is to be deleted.

My next amendment is to substitute for the whole of clause 8 (b), the sentence "The right of the citizen to assemble". Here also, except two or three words, the rest have already been proposed to be deleted.

My last amendment runs thus:

"After clause 8 the following new clauses be added and existing clause 9 be renumbered as clause 14, and consequential changes be made in the subsequent clauses: -

9. No person shall be detained in custody without trial.

10. (a) Liberty of the press shall be guaranteed subject to such restrictions as may be imposed by law in the interests of public order or morality.

(b) The Press shall not be subject to censorship and shall not be subsidised. No security shall be demanded for the keeping of a Press or the publication of any book or other printed matter.

11. The privacy of correspondence shall be inviolable and may be infringed only in cases provided by law.....

Mr. Dharendra Nath Datta (Bengal: General): The Hon'ble Member is suggesting new clauses. We are now dealing with clause 8. He may at best move his amendments to clause 8 and not move new clauses.

Mr. Somanth Lahiri: All these clauses have reference to the subjects' right to freedom and so on. I can move them now or later on. Both mean the same thing.

Mr. R.K. Sidhwa: I rise to a point of order. If Mr. Lahiri is allowed now to move all his amendments, similar opportunities may have to be given to other members also. I submit that the consideration of all these new clauses may be held over till we finish the main business. It will otherwise be doing an injustice to us.

Mr. Somanth Lahiri: Even if you ask me, Sir, not to move this amendment now, as soon as this is over you will have to ask me to move it. So it comes to the same thing.

Mr. K.M. Munshi: May I rise to a point of order ? Clause 8 has been moved. The House is considering a number of amendments to clause No.8. Now, Mr. Lahiri wants to suggest certain additions. Really speaking, they are independent matters, and as such they require independent consideration. They have nothing to do with clause No.8, and as such, they should be treated as independent motions. The House is now considering the Report and after the Report is finished, if there are any additional matters, they may be considered by the House. In the Report itself, it has been mentioned that several fundamental rights have not been brought before the House and that the Advisory Committee is considering them. The appropriate procedure would be for all these new matters to be sent to the Advisory Committee for its consideration. This is what clause 20 of the May 16 Statement contemplates.

Mr. Somnath Lahiri: I have already said that, since I have put up these amendments, I have to be called after clause 8 has been finished. The clauses that I have moved also refer to the same subject "Rights of Freedom". Therefore I am quite in order in asking to be allowed to speak now.

Sri K. Santhanam: Many of us have got similar clauses to be added. For the convenience of the House, I propose that all the new clauses be taken up later on after the Report has been considered.

Mr. Somnath Lahiri: If you give a ruling like that, Sir, I have no objection.

Mr. President: There are two view points placed before the House. Mr. Lahiri has a number of fresh proposals which are not exactly amendments, but which are new proposals which he wants to be added to the fundamental rights. The question is whether they should be taken as independent resolutions at this stage or later on.

Mr. K.M. Munshi: Later on, Sir.

Mr. President: Those who would like these new clauses to be taken up at the end of the discussion with regard to fundamental rights will please say 'Aye'--those against will say 'No'.

The motion was adopted.

Shri Balkrishna Sharma: (United Provinces: General): I submit this is a matter for your ruling, Sir, not a matter for voting, Sir.

Mr. Somnath Lahiri: I do not take part in the voting as a protest, Sir, because I think this is not a votable matter.

Mr. President: Your amendments now.

Mr. Somnath Lahiri: My amendments are Nos. 48,49 and 52 of Supplementary

List I.

No. 48-"That in clause 8 for the words 'security of the Union' the words 'defence of the Union' be substituted."

No. 49- "That in clause 8 (a) the word 'seditious' be deleted."

No. 52-"That for the whole of clause 8 (b) the following be substituted:--

'The right of the citizens to assemble'."

I am glad that the Mover of the Resolution has agreed to the delegation of some of the provisos of this clause. I am especially glad because the Congress party members did not take the advice of Professor Ranga who thought that democracy and liberty are harmful to India, because democracy and liberty are supposed by him to have helped Nazis to power in Germany. Anybody who knows a little bit of history knows that Nazism was not the result of having too much of democracy. Nazism came into power in Germany because the rights and liberties that were given under the Weimar Constitution were challenged by force by the capitalist classes in Germany with the help of Hitler's Nazi gangsters, and the Social Democratic Party failed to rally the working classes of Germany to challenge that force with force. That was the main reason why Nazism came into power there, not because there was an extra amount of freedom.

I am very glad, Sir, that these provisos against which I fought--may be, very bitterly for which I express my regrets also--have been done away with. That is very good. That means that my amendment No. 49 will not be necessary and No. 52 also will not be necessary. Only 48 will be necessary. The clause reads:

"There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency declared to be such by the Government of the Union or the Unit concerned whereby the security of the Union or the Unit....."

I want it to read, "defence of the Union" instead of "security of the Union". The word 'security' is a very vague term and may mean anything. In the past we have seen the Government taking advantage of the vagueness of this term. Defence of the Union is certainly a thing which should be guarded and for this special power may be needed. It is an important amendment. I have got nothing more to say:

Mr. R.K. Sidhwa: My amendment which is in relation to clause (c) on the agenda reads thus. Sub-clause (c) says:

"The right of citizens to form associations or unions,"

My amendment is to the following effect: Add at the end of the sub clause the words:

"for the purpose of safeguarding and ameliorating economic condition and the status of workers and employees shall be guaranteed."

As this is considered a new clause, I reserve my right to move it at the appropriate time.

With regard to provisions to (a), (b) and (c) as the motion for deletion of the same stands in my name, with your permission, I would move that these provisos be deleted. My point is that when we are giving the right to every citizen the freedom of speech, it is certainly desirable that we should not restrict this liberty by these provisos. I do not think that it is necessary, because the clause is otherwise self-explanatory. While we are prepared to give certain rights to every citizens the provisos make those rights nugatory. I therefore, propose that they may be deleted.

As regards Mr. Lahiri's amendment regarding the substitution of "defence" instead of "security", I do not understand how defence could be secured without security in the country. Security is essential in the State and in the Union. Therefore, security is very necessary and I do feel that the original wording, as it stands, should remain.

Shri Mahavir Tyagi: Sir, I am rather in a fix about my amendment. There is already an amendment before the House which seeks to remove all the three provisos that occur after sub-clauses (a), (b) and (c). If this amendment is carried my amendment would be redundant. But if the House thinks otherwise and remains the said provisos, then I should suggest that the words "or to prevent or control meetings in the vicinity of any Chamber of a Legislature" occurring at the end of the proviso to sub-clause (b) be deleted. Sir, I deem it a privilege of the people to hold meetings even immediately in the vicinity of any Chamber of a Legislature and thus make their legislators feel what their voters want them to do. In short, I beg to request you, Sir, to take into consideration my amendment only if the House decides not to delete the said provisos altogether.

The Hon'ble Rev. J. J. Nichols-Roy (Assam: General): Mr. President, Sir, the amendment which stands in my name has two parts, namely, - (1) that in the first line of the proviso to sub-clause parts, namely,-- (1) that in the first line of the proviso to sub-clause (e) of clause 8, the word 'reasonable' be deleted; and (2) that after the word 'tribes' the words 'and tribal areas' be added. I want to move only the first part. I do not want to move the second part. So the proviso as I propose will read thus:

"Provision may be made by law to impose such restrictions as may be necessary in the public interest including the protection of minority groups and tribes."

The word "reasonable" will create a great deal of contention and confusion. If a State or a Unit will impose restrictions some one may go to the Supreme Court as provided in clause 2 and say they are not reasonable. So I consider that protection to be made by law for groups and tribes is not a proper and safe protection. At present there is a great deal of misapprehension in the minds of the people in the tribal areas and in the partially excluded areas of Assam that their coming in with India will partially being them under the exploitation of the people of other parts of India and that the present protection which they have for their lands will be withdrawn. So many of them are afraid to be brought within the new Constitution of India. When we, the Sub-Committee of the Advisory Committee were in the Lushai Hills, some of the Lushai people expressed an idea that it might be better for them to be connected with Burma instead of being connected with the Province of Assam. Though they are now in Assam, yet they are afraid that in the new Constitution all the protection which they have up to the present received from the British Government might be withdrawn. In order to remove this suspicion, it will be very necessary that an authoritative statement be made by the Member of the Interim Government, Pandit Jawahar Lal Nehru, who is in charge of these Tribal Areas, that the protection which the tribes in

Assam now have for their land will not be withdrawn. I shall indeed be very thankful for such a statement if it will be made in this House or somewhere else. I understand that this provision is purposely put in here in order to safeguard the land and other interests of minorities and tribal people. But this provision will be misunderstood and misinterpreted in some quarters especially on account of the privileges given by the main sub clause (e) to every citizen in India- and therefore it will create a great deal of confusion in their minds. For that reason I do request again that such an authoritative statement be made by Pandit Jawahar Lal Nehru. This will greatly help the Sub-Committee who will visit these tribal areas, during their course of enquiry.

Prof. K.T. Shah (Bihar: General): I do not move my amendment (No.18 of Supplementary List II) at this stage.

Mr. Jaspal Singh (Bihar: General): Mr. President, there was hardly an hour between our rising yesterday and the time fixed by you for submission of amendments. I have to apologise to the House for the wording of my amendment No. 19* of Supplementary List II, not being exactly as a draftsman would have put it.

The whole idea behind my amendment is to point out to the House that the Sub-Committees appointed to go round the Excluded and Partially Excluded Areas have not yet submitted their findings and their report has not yet gone to the bigger Advisory Committee. Here we have a clause with a provision which is vital to Adibasi millions and which should depend upon our knowledge of the recommendations of these two subcommittees, particularly the Sub-Committee which has to deal with the Tribal Areas of the North East, shall I say, the Bengal-Assam Group. Until we know what their recommendations are, it seems to me unwise, inexpedient and premature that we should be discussing a clause and its provisions at the present moment. I would like to suggest, Mr. President, if I may, that this clause be held over till the reports, particularly of the two Tribal Sub-Committees, are submitted. Then we would know what their recommendations were.

Mr. President, I have said on another occasion previously on the floor of this House that land is the bulwark of aboriginal life. Here we are dealing with a provision which is going to mean the life or death not only of the 34 Tribal areas which are now known as fully Excluded or Partially Excluded Areas, but of many more millions living outside these tracts. Take, for example, Bengal. There you have very nearly 20 lakhs of Adibasis who are in neither the Excluded nor the Partially Excluded Areas. Their problem also will have to be considered by these two Sub-Committees although technically they are supposed to deal only with those tracts that are called Excluded or Partially Excluded Areas. I have no desire at this interim stage to press my amendment. I only want to point out that we are trying to arrive at a decision, even though we may call it an interim decision,--I am told at the present moment all this will come under review, --we are simply multiplying our work, wasting time by trying to come to a decision on an issue that must depend on the recommendations about to be submitted by these two Sub-Committees. This is my humble submission. I am relieved to hear that the mover has no objection to the deletion of the word "reasonable". If you read the wording of the amendment I have submitted, it falls into two parts. First, I want an unequivocal assurance, either here or somewhere else, which will make it absolutely clear to the nearly 30 million tribal people in India,--this is according to the 1941 Census, and whether it is right or wrong, that is beside the point--a definite assurance that the protection that obtains for Adibasis under the

existing laws shall continue. The clause, as it stands, has already created a very very serious fear in the minds of the tribal people. The two Sub-Committees will have to go again to Assam; they have still to go to areas like Chota Nagpur. I want to stress from the Adibasi point of view, that land is and must be the bulwark of aboriginal life. I think the Premier of Assam will bear me out when I say that it will be impossible for him and the Sub-Committees to go about Excluded and Partially Excluded Areas unless this assurance is given that this clause is in no way going to affect their present protection. The Honourable Member preceding me has, in a way, stressed that point. There is already much misunderstanding. I would rather that this clause stood over till the report of the Sub-Committees were submitted. For example, wherever we have been, it has been urged upon us that for several years to come, the aboriginals land must be inalienable. If I were to fight for that particular, shall we say, protection, most members would laugh. A friend of mine, only this morning when I was talking to him, said, "Do you want for eternity that aboriginal land should remain inalienable?" That is how some of the demands vital to Adibasis are ridiculed. We have been talking about equality. Equality sounds well; but I do demand discrimination when it comes to holdings of aboriginal land. That is why I urge that this particular clause be held over till the reports of the particular Sub-Committees which have to deal with the people whose rights will be affected are received before we come to any decision however temporary or interim it might be. I appeal to the Mover, Sardar Vallabhbai Patel, that this clause and its provisos be held over. I have no desire at this stage to press my amendment.

Shri Khurshed Lal (United Provinces: General): In view of what has been said already I do not move my amendment (No.20 of the Supplementary List II).

Dr. Suresh Chandra Banerjee (Bengal: General): In view of the decision taken just now, I shall move my amendment (No.21 of the Supplementary List II) at the appropriate time.

Shri Khurshed Lal: I desire to reserve my right to move my amendment at a later stage. It was put in as an independent clause after clause 8. I wish to reserve my right of moving if after the Report has been considered.

Mr. K.M. Munshi: Mr. President, Sir, now that the other provisos to Clause 8 are gone, the only proviso that is left is the proviso to sub-clause (e); but before I refer to it, I should like to move my amendment with reference to sub-clause (e):

"(1) That the following words be added in Clause 8 (e):

'Hold or dispose of' between the words 'acquire' and 'property';

'(2) Substitute the words "exercise or carry on" between "to" and "any occupation",

With these changes, the sub-clause will run as follows:--

"The right of every citizen to reside and settle in any part of the Union, to acquire, hold or dispose of property and to exercise or carry on any occupation, trade, business or profession."

This is, all those portions which were omitted in clause 5 by reason of this amendment will be carried into this clause. Then I understand there is another

amendment moved with regard to the deletion of the word "reasonable". My third amendment is to the same effect. With regard to the last sub-clause, there was a reference to an amendment that "tribal areas" should be used there instead of "tribes". The word "tribes" has been used in the proviso for this reason that there may be tribes which may not be in tribal areas and it is necessary that the proviso should cover both, viz., tribes which are in tribal areas as well as those outside it. There is no need of any apprehensions with regard to it. If I may mention, Sir, this proviso fully covers the doubts raised by my friend, Mr. Jaipal Singh. It does not say that all the existing rules would be abrogated. On the contrary, under clause 2 all the existing laws in force in the Union or any part thereof will continue unless they conflict or are inconsistent with the Fundamental Rights.

Dr. P.S. Deshmukh (C.P. & Bearer: General): I rise to support the amendment which seeks to delete the word 'reasonable' from the proviso, I also support the suggestion made by my friend, Mr. Jaipal Singh regarding deferment of the whole of the clause for further consideration. I have, however, no objection to retaining the first portion of the sub-clause, that is to say, "the right of every citizen to reside and settle in any part of the Union". The other part of the sub-clause should however, be held over. In supporting my friend, Mr. Jaipal Singh, in this particular matter, I have some very strong considerations in view. I would like to point out to you, Sir, and to the House that the whole of India and especially the masses of India expect the Indian constitution to have a definite socialistic bias. If this clause is retained in the form in which it is put down here, I am sure we will be strengthening the suspicion of the Indian masses that this Constituent Assembly is so inalienably wedded to the vested interests that they have no hope of any socialistic principles being embodied in the Indian Constitution. Here, Sir, we have a very curious provision indeed. I do wish to avoid the use of strong words, but it is strange that we should set out to protect the minority groups, in the matter of acquisition of property. I think it should be a matter of common knowledge that the vast majority of the population of India which consists of agriculturists and labourers has everywhere been exploited by small minority groups. This is so great an evil that the majority is crying for protection against them. In the Fundamental Rights before us we are trying to protect precisely those very minority groups against whom we want protection against whom the labouring classes and the peasants want protection. My submission to this House is that we must give this matter a little more consideration. Although Sardar Vallabhbhai Patel stated that the Interim-Report presented to the House was not haphazard. It was admitted that the Committee did not have time to consider properly every possible point of view. With that statement of the situation, Sir, and with all the things that have been mentioned in the forwarding letter of Sardar Patel it is clear that the Report contained many things which will lend themselves to further consideration. So far as this clause is concerned, it is the labour who requires protection, it is the agriculturists who require protection against unlimited acquisition of property. It is also worth investigating if this matter could not be left to the Provinces to legislate upon; I would certainly welcome this. In my opinion the Centre should not interfere because the effect of this would be that while you are not going to have socialism at the Centre, you will be preventing it from being introduced in the future Indian Provinces also.

Mr. Somnath Lahiri: Sir, I support the suggestion of Mr. Jaipal Singh regarding special protection to the tribal people. These people are down trodden and backward and need special provisions for their protection. It is not even, as Prof. Shah seems to suggest, a question of socialistic bias, but even in a bourgeois democracy the tribal people should have the existing and future provisions for their protection to bring them up, at least to a minimum level. That is why I support Mr. Jaipal Singh's

suggestion.

Srijut Rohini Sahay Chaudhury (Assam: General) : I oppose the amendment which was moved by my Honourable friend, Mr. Jaipal Singh. I consider that it would be extremely unwise to have that amendment accepted by the House.

Mr. Jadubans Sahay: (Bihar: General): On a point of order, Sir. Is it a fact that Mr. Jaipal Singh has not pressed his amendment and that he has made certain general observations only?

Mr. President: I think he did move an amendment.

Srijut Rohini Kumar Chaudhury: I want to refer to that. I support the main motion as amended by the Hon'ble Mr. Nichols-Roy, but I would like to make some alteration as regards the proposal which was made that special protection of existing laws should be maintained. There is a regulation called Chin-Hill Regulation. I wonder how many Honourable Members of this House know about it. That Chin-Hill Regulation entitles any political officer to evict from its precincts anyone who may be considered undesirable. That regulation has now been withdrawn in some places, but it is still in force in most of the places in the Hills. I only desire to point out that such curtailment of liberties in towns and other places where people can be evicted should be looked into.

They were not intended *bona fide* to protect the tribal people, but were meant to isolate them from their brethren in the plans so that there could be greater exploitation by British people.

The Hon'ble Pandit Jawaharlal Nehru (United Provinces: General): Sir, I confess I am a little confused. I do not know where we stand after all this welter of amendments which have been moved and not moved and withdrawn and not withdrawn. I do not know how other Members stand in this matter, but there is utter confusion in my mind as to what is being discussed. As far as I can make out, the present position is this. The clause stands with the first three provisos omitted and with certain other minor changes. In regard to (e) the proviso remains with this difference that the word "reasonable" is sought to be removed, and certain other changes have also been sought to be made. So much has been said which has no reference to the clause. I do not know if I am correct in understanding the position as that. I am supporting for clause, that is to say, without those three earlier provisos, with the last proviso to clause (e) being retained and with the removal of the word "reasonable" from that proviso.

It seems to me that there is also confusion in regard to another matter. Honourable Members seem to forget that we are dealing with fundamental rights. We are not legislating at the moment in regard to any matter. Various things have been brought to our notice--very desirable things which should be done or should not be done, but they having nothing to do with fundamental rights in a constitution, we can consider them separately; we can lay them down even as a part of the Constitution, if you like--or much better, a law could be framed accordingly. There is this confusion, this overlapping, and hence I think a great deal of difficulty has been brought into the picture. 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. The other matter should be looked upon-- however

important it might be--not from this permanent and fundamental point of view, but from the more temporary point of view.

Now Mr. Jaipal Singh moved an amendment which I gather he did not press. As far as I am concerned, I entirely agree with him, but I do not see what it has to do with fundamental right. I completely agree that the tribal areas and the tribal people should be protected in every possible way (*Hear, hear*), and the existing laws--I do not know what those laws are, but certainly the existing laws should continue and may be, should be, added to when the time comes. But thinking of this in terms of a fundamental right would be, I submit, entirely wrong. Mr. Nichols-Roy called upon me not once but several times to speak here and make clear my position apparently in some other capacity than I possess here. He referred to the Interim Government and to the External Affairs Department. Well, Sir, I need not remind the House that I am not here as a Member of the Interim Government or as a Member in charge of the External Affairs Department. I am here as representing the people of the United Provinces. But forgetting my representative capacity, I should like to say-- and I am quite sure the House will agree with me, and indeed, the House, in accepting the first Objectives Resolution, made this point clear even then,--that every care should be taken in protecting the tribal areas, those unfortunate brethren of ours who are backward through no fault of theirs, through the fault of social customs, and may be, ourselves or our forefathers or others; that it is our intention and it is our fixed desire to help them as much as possible; in as efficient a way as possible to protect them from possibly their rapacious neighbours occasionally and to make them advance. I can assure Mr. Nichols-Roy that in so far as I have any say in this matter in any Government or otherwise, I shall try to do that. I think, however, that it is not a question of my desire or someone else's desire. I think it is bound to be the policy of any Government of India because that is likely to be an accepted principle of Indian politics today and I do not think any Government even if it was not keen on this issue would very well go against it. So I submit, Sir, that people interested in tribal areas should rest assured completely because, if any person ceases to be vigilant in the defence of any right or freedom, that freedom or right is likely to be swept away. So I want them to be vigilant, but nevertheless, I want them to feel sure that they have the sympathy of the whole of India with them. (*Cheers*).

Mr. K.M. Munshi: May I in the interest of a little more accuracy suggest a change of wording? I find that there is a defective word used in the first Preamble:

"There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency."

I move this verbal change that instead of the words "to the existence of grave emergency"--that does not sound much sense--we use the words "except in grave emergency".

The Hon'ble Sardar Vallabhbhai Patel: Now, Sir, I accept Mr. Munshi's verbal amendment in the first paragraph. I also accept that the word "reasonable" be dropped in the last proviso. So the clause is as I moved dropping the proviso to clause (a), proviso to clause (b) and proviso to clause (c) and in clause (e) there is an addition which Mr. Munshi has moved which I accept. Mr. Nichols-Roy said something about the tribal areas. Now, there remains another amendment by Mr. Lahiri about the word "security". Mr. Lahiri has moved an amendment to substitute for the words "security of the Union", the words "defence of the Union". I strongly oppose it. Mr.

Lahiri has an acute mind. He knows that internal security is more necessary than security outside. However, he puts "defence" instead of "security", so that there will be defence outside and internally there may be chaos. The word 'security' was selected deliberately and it should not be replaced.

The Hon'ble Rev. Nichols-Roy, was concerned about the protection of minority groups and tribes and Mr. Jaipal Singh had some apprehensions about the tribal areas. Now, with regard to the word 'tribes', my own feeling is that it is not an appropriate word. The expression 'protection of tribal areas', similarly, is not a happy one. This expression will convey the meaning that we are now concerned with the protection of certain areas. That is, if some external trouble is expected or if some encroachment is going to be made there, 'the protection of tribal areas', will carry a different meaning.

Mr. Jaipal Singh has apprehensions that the present laws which afford protection and security to the tribal people will be removed. I do not see why there should be any such apprehension. We are not here legislating or doing anything by way of repealing the existing Acts. This clause relates to Fundamental Rights. It does not do away with the existing laws. Existing legislation is left untouched except in so far as it abrogates the fundamental rights for the protection of the Constitution. Therefore there is no reason to entertain any fear about it. But I would like to make one thing clear. Is it the intention of people to defend the cause of the tribals to keep the tribes permanently in their present state? I do not think it is in their interest to do so. I think that it should be our endeavour to bring the tribal people to the level of Mr. Jaipal Singh and not keep them as tribes, so that, 10 years hence, when the Fundamental Rights are reconsidered, the word 'tribes' may be removed altogether, when they would have come up to our level. It is not befitting India's civilization to provide for tribes. What is the meaning of tribes. What is it that the word means, and is it so? It means something and it is there because, for two hundred years, attempts have been made by foreign rulers to keep them in groups apart with their customs and other things in order that the foreigners' rule may be smooth. The rulers did not want that there should be any change. Thus it is that we still have the curse of untouchability, the curse of the tribes, the curse of vested interests and many other curses besides. We are endeavouring to give them all fundamental rights. It should be our endeavour to remove these curses. Therefore, ten years hence, when we reconsider the position, we hope to be in a position to replace the word. All the laws that have been given them protection are there. But have they protected them? It is not our desire to keep the tribes in their present condition. It is not the existing laws that are going to protect them. It is our own work, our own action and our own sincerity that will give them protection. Therefore, I would appeal to Mr. Jaipal Singh not to entertain any apprehension. In free India there would be no occasion for fear haunting them as it has done during the last 200 years.

Mr. Jaipal Singh: On a point of order, Mr. President, may I say that I have no apprehensions of the kind regarding the tribal areas attributed to me by the Hon'ble Sardar Patel? He has, I am sorry to say, put his own interpretation on what I said. It may be true that the lot of the tribes might be improved hereafter. They may come to my level. But that does not mean that the policy we are pursuing should not be more protective and sympathetic. I know that we are going to reconsider it after ten years.

Mr. President: I shall now put the amendments first. As most of the amendments have been accepted by the Mover, I take it that the House assents to them. (*Voices:*

'Yes')

The amendment for the deletion of the provisos to 8(a), (b) and 8(c) was adopted.

The Assembly also accepted the amendment to substitute the words "except in" for the words "to the existence of" occurring in line 2 of clause 8.

Mr. President: I shall now put Mr. Lahiri's amendment to the House. The amendment seeks to substitute the words "defence of the Union" for the words "security of the Union" occurring in the first para of clause 8. As amended, it will read:

"There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency declared to be such by the Government of the Union or the Unit concerned whereby the defence of the Union or the Unit, as the case may be, is threatened."

The amendment was negatived.

Mr. President: Then I come to amendment to sub-clause (e). As amended it will read:

"The right of every citizen to reside and settle in any part of the Union, to acquire, hold or dispose of property add to exercise or carry on any occupation, trade, business or profession."

The amendment was adopted.

Mr. President: I shall now put the whole clause. I suppose it is not necessary that it should be read out.

Clause 8, as amended, was adopted.

CLAUSE 9-RIGHTS OF FREEDOM

Mr. President: Then we come to Clause 9*.

Mr. K.M. Munshi: I move that for the words "the equal treatment of the laws" the words "equality before the law" be substituted.

The amendment was adopted.

Mr. President: As regards the proviso there is a formal amendment to drop it. Then there are some amendments of which notice has been given.

(Messrs. Diwakar, Mohanlal Saksena and Mahavir Tyagi did not move their amendments.)

Mr. President: Then I come to the amendment saying that the proviso be

dropped.

Mr. K.M. Munshi: I move that the proviso be dropped.

The amendment was adopted.

Mr. President: I put Clause 9 as amended.

Clause 9, as amended, was adopted.

Mr. President: Now, we shall take up the Report of the Order of Business Committee. We shall take up the discussion of the further clauses of the Fundamental Rights tomorrow. Now, Mr. Munshi will move his Resolution.

REPORT OF THE ORDER OF BUSINESS COMMITTEE

Mr. K.M. Munshi: Mr. President, Sir, I beg to move the following motion:

"Resolved that the Constituent Assembly do proceed to take into consideration the report of the committee appointed by the resolution of the Assembly of the 25th January, 1947, to recommend the order of the further business of the Assembly."

In moving this motion I have a few remarks to make. The report is before the House and I need not trouble the House at this late hour by reading it. The Report, as has been explained, is an interim report. We were expected to make a final report of the order of business, but we found it impossible to make a final report, and are seeking the permission of the House to submit a final report at a subsequent stage. The reason is obvious to all the Members. The political conditions in this country are changing fast and these changes naturally have their repercussions on the programme of this Assembly. Therefore, the Committee found it impossible to submit a final report.

Two factors, as has been already referred to by you, Sir, and also by Panditji have come into the forefront during the last few weeks. The first is the overwhelming insecurity in two of the provinces of India-Bengal and the Punjab--and this brought to the forefront the question about the partition of those unfortunate provinces, already referred to by you in your preliminary remarks. This might entail certain changes in the programme of the Assembly and this was one of the factors which prevented us from submitting our final report. The second factor has been the unfortunate fact that the Muslim League has not seen its way to come into the Constituent Assembly even now, and there does not appear to be any prospect of an immediate change, though every concession has been made and every consideration shown and though even the largest party in the country has given an invitation to it. This requires largest party in the country has given an invitation to it. This requires certain changes of programme on the part of the Constituent Assembly.

The Constituent Assembly as well as the Congress have over and over again said that they do not desire to impose any constitution on unwilling parts of the country, and if any unwilling areas stay out, it is not desirable that the Constituent Assembly should wait for ever for them. Now certain changes in the programme of business have become necessary and therefore it was impossible to set out a programme right to the end. Of course, it does not mean, so far as I understand it, that the Constitution

that this House will form will not take into account the whole of India. We do hope to make the Constitution on the basis that a time might come when even the unwilling areas who are staying out, or who want to stay out, will, within a short distance of time, come into the Union of India. The Constitution that we propose to formulate must be such as to enable the prodigal sons to return and they will be welcomed whenever they choose to come in. In view of these factors the Committee wants time to submit our final report.

The second consideration which was weighed with the Committee in formulating its programme has been the statement that His Majesty's Government made in Parliament on 20th February, 1947. That puts a time-limit. The Committee has, therefore, submitted that the Constituent Assembly must finish its work of framing the Constitution by the 31st October at the latest. This time-limit is essential in order that our work should be expedited and that the work should be done with promptness. If the House approves of this Report, a resolution will be moved that two Committees may be appointed. These Committees will perform work of an exploratory nature, and will work side by side. One of them will deal with the main principles of the Union Constitution, and the other with the principles of a model Provincial Constitution. It is expected that these two Committees as well as the other Committees, except perhaps the one dealing with tribal areas, will be ready with their reports by the third week of June. The programme that is envisaged in the report therefore is that all these reports not only of the Minorities Committee, the Advisory Committee, but also of these two Committees, should be before the House in its June-July sessions in the shape of, if I may use a well-known expression, a White paper. Then decisions will be taken on the broad outlines of the Constitutions of the Union as well as of the Provinces.

According to the Rules of the Constituent Assembly, we have to circulate our preliminary decisions to the provinces in order that their respective legislatures may consider them and give the House the benefit of their opinions. That will take about a couple of months, and possibly the period between the middle of July and the middle of September will be taken up in Provincial legislatures considering those proposals. Then it is proposed that we should meet somewhere about the middle of September or end of September so that we can complete our task before the 31st October. In the interval, after the House has taken decisions with regard to the main outlines of the Constitution it is intended that the drafting of the Acts should begin side by side so that in the October Session we may have a full and complete draft of the Constitution placed before the House. This is the general sketch of the programme and I hope that it will meet with the approval of the House.

Mr. President: I suppose nothing is to be said about the report. There is nothing more to be done I believe.

Mr. K.M. Munshi: The report has to be adopted.

Mr. President: I put the report to the vote of the House.

Sri K. Santhanam: There is nothing to vote about. The report may be recorded.

The Hon'ble Sri C. Rajagopalachariar: It is a report of another body to us. We record it.

Mr. K.M. Munshi: I beg your pardon. What I moved was consideration by the

House because we want the permission of the House to make a subsequent report at a later date. There must be a decision of the House. Therefore, I move formally, if necessary, the adoption of this Report by the House.

Sri K. Santhanam: That means we accept the whole Report. The Honourable Member can move a motion for the appointment of the Committees, but the Report may be recorded. We accept the proposal for the Committees, but about the actual contents of the report, we need not commit ourselves to any particular date or any particular paragraph.

Mr. H.V. Kamath: The motion is for consideration and not adoption. It only says, "proceed to take into consideration the report..."there is no question of adoption.

Mr. R.K. Sidhwa: This report is merely for the information of the House. But if we want a decision of the House, there is one thing to which I would like to make a reference regarding the date. It is apparently stated that the work should be completed by the end of October. We all wish that it should be done by that date, but there are yet many factors to be taken into consideration. Under the Rules, the Constitution in the draft form has to go to the various provinces, and we do not know whether the Provinces will adhere to the dates we fix. I also wish that the work should be finished as scheduled but our experience has shown that the dates fixed have had to be changed frequently. It will not be proper to consider every time an extension of the date. I submit that we should respect the laws we make ourselves and the rules which we have made and stick to the date, but in view of the existing conditions it is better not to fix a date.

Mr. President: I take it that the Report is to be recorded. Is that the view of the House?

The Assembly agreed.

The Report was recorded.

Mr. President: There are one or two points in the Report which the House will have to consider. One is that the Committee wants permission to submit a subsequent report. I hope the House agrees.

The second is that the Committee recommends that two separate Committees be appointed one to report on the main principles of the Union Constitution and the other to report on the principle of a model Provincial Constitution.

Dr. B. Pattabhi Sitaramayya (Madras: General): That will come up as a separate resolution.

Mr. President: Shall we take that up now?

Dr. B. Pattabhi Sitaramayya: It will be a fuller resolution because the strength of the Committees has to be mentioned.

Mr. President: Shall we take that up now?

Mr. R.K. Sidhwa: The motion may be made tomorrow.

An Hon'ble Member: You may take it up now.

Mr. K.M. Munshi: I move:

"This Assembly resolves that in accordance with the recommendations contained in the Report of the Order of Business Committee the following Committees be nominated by the President with instructions to report before the next Session of the Assembly:

1. A Committee consisting of not more than fifteen members to report on the main principles of the Union constitution, and

2. A Committee consisting of not more than twenty-five members to report on the main principles of a model provincial constitution."

"That carries out the recommendation at page 2 of the Report.

Mr. President: The motion before the House is:

"This Assembly resolves that in accordance with the recommendation contained in the Report of the Order of Business Committee the following Committees be nominated by the President with instruction to report before the next session of the Assembly:

1. A. Committee consisting of not more than fifteen members to report on the main principles of the Union constitution, and

2. A Committee consisting of not more than twenty-five members to report on the main principles of a model provincial constitution."

Mr. C. M. Poonacha (Coorg): Mr. President, Sir, I have a suggestion to make in connection with the terms of reference of the proposed two Committees which we are going to constitute, one for determining the principles of the Union Constitution and the other to prepare a model Provincial constitution. Sir, we have now in India four Chief Commissioners' provinces which are centrally administered. When the future principles of our Union Constitution are going to be determined, it obviously means that the question whether the future Union Government should have under its authority such centrally administered areas or not will have to be incidentally examined. The Cabinet Mission Statement of May 16, 1946, has reserved only defence, foreign affairs and communications for the Union Government. On that basis, I think, the Union government in future will have nothing to do with the details of administration of any province including the Chief Commissioners' provinces. That being the position, the Committee that we are going to set up naturally will have to go into the question and give its recommendations thereon. Therefore, while determining the principles of the future Union Constitution, this problem will certainly have to be dealt with.

Coming to the functions of the other Committee, viz., that which would draft a model Provincial Constitution, I am of the opinion that the existence and functions of the present Chief Commissioners' provinces will have to be incidentally covered

because, while determining the minimum area, population and revenue, judiciary, principles of taxation, representation, administration and such other matters, the case of these small administrations will naturally be affected. Thus, it is clear--and I take it to be so to everyone here,--that the scope of both these Committees will certainly include the problem of the Chief Commissioners' provinces. Therefore, Sir, I would like to suggest that a small sub-committee of three--one from the Union Constitution Committee and two from the Model Provincial Constitution Committee--be constituted to examine the case of the existing Chief Commissioners' provinces by visiting each Chief Commissioner's province and help the above committees to formulate their report. Such a procedure will also help us to deal with these subjects quickly in our Sectional meetings. We have the Chief Commissioners' Provinces of Delhi, Ajmer-Merwara and Coorg in Section A and the Chief Commissioner's province of Baluchistan in Section B. A detailed examination and suitable recommendations thereon will not only be useful but will also help us to speed up our work in the Sections.

Speaking about my own stand, Sir, I have given an assurance at the time of my election to this Constituent Assembly, stating that before deciding about the future of Coorg one way or the other, the people of Coorg will be consulted. So, the visit of a committee to these areas will also give an occasion to contact public opinion in these provinces while making a study of the various aspects connected therewith.

With these remarks, Sir, I suggest that the question of the Chief Commissioners' provinces be specifically included under the terms of reference of these two Committees and for that purpose a small subcommittee of these two Committees, as explained already be constituted. Sir, I have done.

Dr. B. Pattabhi Sitaramayya: Sir, I welcome the proposal to appoint these two Committees and I wish to bring to your notice that I have given notice of a proposition relating to the linguistic redistribution of provinces. That will be discussed in due course. I do not know whether I shall be in order in referring to the proceedings of the Party, but the Party has been good enough to say that that the subject would be referred to these two Committees. I think it is opportune now for us to say that these two Committees will not only go into these questions which have been associated with them but that it would also be competent for these Committees to go into the question of the redistribution of provinces on a linguistic basis.

Mr. President: Do you want to reply? (To Mr. Munshi.)

Mr. K.M. Munshi: This does not require a reply.

Mr. President: There are two points which have been raised one--by Mr. Poonacha that these, Committees should go into the Constitution of the Chief Commissioners' provinces and that there should be a sort of sub-committee of these two Committees to deal with the question of the Chief Commissioners' provinces. There is another suggestion by Dr. Pattabhi Sitaramayya that this Committee should be authorised to deal with the question of the creation of linguistic provinces. I take it that these two Committees when constituted will take into consideration all these and other matters so far as they arise and will make their recommendations in due course. It will be remembered that what is wanted is only a sort of model constitution for the provinces and a constitution for the Union. The model provincial constitution might apply equally to any number of linguistic provinces that might be created. The model constitution need not necessarily require linguistic provinces for that purpose. It is just

possible this may fall within the purview of the other Committee which will deal with the general principles of the Union Constitution and that Committee may suggest ways and means for the creation of linguistic provinces. I take it that this Committee will take into consideration all these questions and the question of the Chief Commissioners' provinces will also naturally arise before them.

Prof. N. G. Ranga (Madras: General): Does that mean that, supposing these two Committees come to the conclusion that this question need not be discussed at all and that they need make no detailed suggestions, this House will not be able to have any say in the matter?

Mr. President: Nothing of the sort. The Committees will make their recommendations. It is always open to the House to correct any errors and remove any defects in their recommendations.

Now this motion is put to the House.

The motion was adopted.

Mr. President: I think we shall disperse now and meet tomorrow morning at 9 o'clock.

The Assembly then adjourned till Nine of the Clock, on Thursday, the 1st May, 1947

* 5. There shall be equality of opportunity for all citizens in matters of public employment and in the exercise of carrying on of any occupation, trade, business or profession.

Nothing herein contained shall prevent the State from making provision for reservations in favour of classes who, in the opinion of the State, are not adequately represented in the public service.

No citizen shall on grounds only of religion, race, caste, sex, descent, place of birth or any of them be ineligible for public office or be prohibited from acquiring, holding or disposing of property or exercising or carrying on any occupation, trade, business, or profession within the Union.

Nothing herein contained shall prevent a law being made prescribing that the incumbent of an office to manage, administer or superintend the affairs of a religious or denominational institution or the member of the Governing Body thereof shall be a member of that particular religion or denomination."

Rights of freedom

*8. There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency declared to the such by the Government of the Union or the Unit concerned whereby the security of the Union or the Unit, as the case may be, is threatened:-

(a) the right of every citizen to freedom of speech and expression:

Provision may be made by law to make the publication or utterance of seditious, obscene, blasphemous, slanderous, libellous or defamatory matter actionable or punishable.

(b) The right of the citizens to assemble peaceably and without arms:

Provision may be made by law to prevent or control meetings which are likely to cause a breach of the peace or are a danger or nuisance to the general public or to prevent or control meetings in the vicinity of any chamber of

a Legislature.

(c) The right of citizens to form associations or unions:

Provision may be made by law to regulate and control in the public interest the exercise of the foregoing right provided that no such provision shall contain any political, religious or class discrimination.

(d) The right of every citizen to move freely throughout the Union:

(e) The right of every citizen to reside and settle in any part of the Union, to acquire property and to follow any occupation, trade, business or profession:

Provision may be made by law to impose such reasonable restrictions as may be necessary in the public interest including the protection of minority groups and tribes.

* That at the end of Clause 8, the following be inserted:--

"Existing laws for the special protection of Tribes shall continue and further provisions may be made by laws to impose such restrictions as may be necessary in the public interest including the protection of Tribes and minorities."

*9. No person shall be deprived of his life, or liberty, without due process of law, nor shall person be denied the equal treatment of the laws within the territories of the Union.

Provided that nothing herein contained shall detract from the powers of the Union Legislature in respect of foreigners.

*[] Translation of Hindustani speech.

APPENDIX

CONSTITUENT ASSEMBLY OF INDIA

Report of the Order of Business Committee

We, the undersigned, members of the Committee appointed by the Resolution of the Constituent Assembly dated the 25th January, 1947, to recommend the order of the further business of the Assembly, have the honour to submit this our report.

We met on the 5th March, and on the 21st, 23rd and 27th April, 1947. Pandit Jawaharlal Nehru was, by special invitation, present at all the meetings of the Committee except the one held on the 23rd.

The Statement of His Majesty's Government made in Parliament on the 20th February, 1947, has imported an element of urgency into the work and proceedings of the Assembly and, in our opinion, it is essential that the constitution should be prepared well before the end of this year. The task of arranging the order of business and of framing a time-table is, however, by no means easy. The political situation is developing with great rapidity, and the changes that are taking place inevitably affect the work of the Assembly. We are not, therefore, in a position at this stage to make final recommendations except in regard to the immediate future; and we request that

we be permitted to submit a further report at a subsequent stage.

We understand that when the Assembly meets on the 28th April, it will have before it the reports of the following Committees:--

(1) The States Committee appointed by the Constituent Assembly on 21st December, 1946.

(2) The Union Powers Committee appointed by the Constituent Assembly on 25th January, 1947.

(3) The Advisory Committee appointed by the Constituent Assembly on 24th January, 1947, but only on the subject of Fundamental Rights.

After the business connected with these reports has been disposed of by the Assembly, we recommend that two separate committees be appointed one to report on the main principles of the Union Constitution and the other to report on the principles of a model Provincial constitution. We consider that there are many advantages in having two committees, perhaps with an element of common membership, working side by side and considering the interrelated principles of the Union and the Provincial constitutions. The work of the committees will be of an exploratory nature to facilitate and expedite the work of the Union Assembly or the Sections thereof, as the case may be. After the committees have been set up, we recommend that the meeting be adjourned to a date to be fixed by the President at his discretion. We suggest this flexible arrangement partly in order that the Assembly may avoid difficulties likely to arise from the fixation of a date in advance and partly because experience has shown that committees are not always able to work up to a rigid time-table.

The constitution Assembly should complete its work by the end of October this year. A meeting will be necessary at the end of June or the beginning of July to consider the reports of the various committees and thereafter the matter of going into Sections. A meeting of the Assembly to finalise the constitution should be held in September.

K.M. Munshi,

N.

Gopalaswami,

Biswanath Das,

New Delhi, the 27th April, 1947.

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME III

Thursday, the 1st May, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair.

INTERIM REPORT ON FUNDAMENTAL RIGHTS-contd.

Mr. President- We shall proceed with the discussion of the remaining clauses.

CLAUSE 10-RIGHTS OF FREEDOM*

The Hon'ble Sardar Vallabhbhai Patel (Bombay: General): Clause 10 reads as follows :

"Subject to regulation by the law of the-Union trade, commerce, and Intercourse among the Units- by and between the citizens shall be free:--

Provided that any Unit may by. law impose restrictions in the interest of public order, morality or health or in an emergency;"

In paragraph 2 we have dropped the word "reasonable."

"Provided that nothing in this section shall prevent any Unit from sin on goods imported from other Units the same duties and taxes to impression the goods produced in the Unit are subject;"

After this word "subject", We have decided to add the words, "and under regulations and conditions which are non-discriminatory."

"Provided further that no preference shall be given by any regulation of commerce or revenue by a Unit to one Unit over another."

So these are the few changes that are suggested and in order to cut short the discussion and save the time of the House I have mentioned these changes which were reached after certain discussions. I move.

Mr. K. M. Munshi (Bombay: General): Mr. President, Sir, I beg to move the ' following amendment to clause 10.

"In paragraph 2, clause 10, delete the word 'reasonable'."

The word "reasonable" gives a certain amount of vagueness and therefore it is not necessary. The second amendment which I beg to move is :

"That after the word 'subject' in the 3rd paragraph of clause 10, add the words 'and under regulations and

conditions which are non-discriminatory'."

The proviso contemplates that a Unit can impose certain customs duty with a view to bring up the level of the price of goods imported to the level of the price of the goods manufactured in the Unit itself. Otherwise, the goods produced in other Units will flood that particular Unit. With that view only has this proviso been added. Provinces, therefore, can impose certain duties and taxes on goods imported from other units with a view to bring up the value to the level of goods manufactured in the Unit itself. But it was felt, Sir, that this was incomplete. Such regulations and conditions may be made as to favour the goods produced in the Unit and, therefore, the words 'and under regulations and conditions which are non-discriminatory' have to be added, so that conditions must not be such as to force up the price of the goods imported. Therefore, the whole point is that there should not be any regulation or any conditions of such a nature which would favour the goods produced in the Unit as against those produced and imported from outside.

Sri K. Santhanam (Madras: General): Sir, I have given notice of an amendment. It was more or less to meet the point raised in it that Mr. Munshi has moved the present amendment. But, in my opinion, the amendment moved by Mr. Munshi does not fit in with the clause, because the point of my amendment is that when a Unit imposes certain conditions besides duties on goods within its own frontiers, it should be able to insist that the goods coming from other Units should also conform to the same conditions. For example, there may be regulations about packing, labeling, disclosure of the materials used in an article and many other conditions and the goods produced from other Units should not have in these matters any advantage over goods produced in the same Unit. As Mr. Munshi's amendment stands, it will be subject to regulations and conditions which are non-discriminatory, but it does not say that the Unit concerned will have the right to impose these regulations on goods produced from other units. Therefore, either his amendment should be properly integrated with the clause or my amendment which says that in the second proviso to clause 10, for the words 'the same duties and taxes' the words 'the same regulations, duties and taxes' be substituted should be accepted. I am quite willing to accept any amendment which makes it clear that the Unit can impose the same conditions and regulations on goods produced from other Units as on the goods produced in the Unit. Therefore, I move my amendment.

Prof. K T. Shah (Bombay: General) : I do not propose to move the amendments in my name.

Mr. President: So we have, as a matter of fact, two amendments before us, one moved by Mr. Munshi and the other moved by Mr. Santhanam.

The Hon'ble Sardar Vallabhbhai Patel: There is one thing to which I wanted to draw the attention of the House that is paragraph 5 of the Report which I forgot, which provides for the different condition prevailing in the States for which provision has to be made. We have mentioned in the Report, para 5:

"We, therefore, consider that it would be reasonable for the Union to enter into agreement with such States, in the light of their existing rights, with a view to giving them time, up to a maximum period to be prescribed by the constitution, by which internal customs could be eliminated and complete free trade established within the Union."

About the amendment of Mr. Santhanam, I think Mr. Munshi's amendment which I propose to accept, satisfies the requirements because it is non-discriminatory. I do not

think any further discussion on this is necessary.

I therefore move the clause as amended for the acceptance of the House.

There is a clerical error in the third proviso. The words "by a Unit" are unnecessary. The clause will read:

"Provided further that no preference shall be given by any regulation of commerce or revenue to one Unit over another."

Mr. President: Now, I will put this clause to vote.

"Subject to regulation by the law of the Unit trade, commerce, and intercourse among the units by and between the citizens shall be free."

There is no amendment to this clause.

The clause was adopted.

Mr. President: First Proviso:

"Provided that any Unit may by law impose reasonable restrictions in the interest of public order, morality or health or in an emergency"

The amendment proposed is that the word "reasonable" should be dropped.

The amendment was adopted.

Mr. President: Second Proviso:

"Provided that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties and taxes to which the goods produced in the Unit are subject."

There are two amendments to this, one by Mr. Santhanam and the other by Mr. Munshi. I shall put Mr. Santhanam's amendment first. As amended, it reads:

"Provided that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties, taxes and restrictions to which the goods produced in the Unit are subject."

He had at first used the word "regulations". He has changed the word "regulations" into "restrictions". The last portion will read-

"the same duties, taxes and restrictions to which the goods produced in the Unit are subject."

The other amendment of Mr. Munshi is:

"Provided that nothing in this section shall prevent any Unit from imposing on goods imported from either Units the same duties and taxes to which the goods produced in the Unit are subject and under regulations and conditions which are non-discriminatory."

Shri M. Ananthasayanam Ayyangar (Madras: General): I, would like to add the

word "similar". Otherwise, it is meaningless.

Mr. President, I have not got your amendment. (To Mr. Ananthasayanam Ayyangar).

Mr. Santhanam's amendment was negatived.

Mr. Munshi's amendment was adopted.

Mr. President: Third Proviso:

"Provided further that no preference shall be given, by any regulation of commerce or revenue by a Unit to one Unit over another."

Here there is a verbal change suggested. We are asked to omit the words "by a Unit" because they are unnecessary. The proviso will read like this:

"Provided further that no preference shall be given by any regulation of commerce or revenue to one Unit over another."

As amended the proviso is put to the House,

The proviso, as amended, was adopted.

Mr. President: I shall now put the whole clause as amended. Mr. C. Rajagopalachariar suggests that the first proviso should come last and the other should be changed.

The Hon'ble Sri C. Rajagopalachariar (Madras: General): The reason is this. The restrictions to be imposed in the interests of public health will certainly differ from Unit to Unit. If we say in the second proviso that there shall be no discriminatory restrictions, it will mean that when there is infection, you will have to impose on all Units whatever you impose on one Unit. That will be avoided if you add the special proviso as the last proviso instead of that being the first.

Mr. President: I put the whole clause as amended with the change in the order of provisos.

Sri L. Krishnaswami Bharathi (Madras: General): The word "further" must be added so as to read "Provided further."

Mr. President: The amendment is:

"That the word 'further' be added to the first proviso which becomes the third."

The amendment was adopted.

Mr. K. M. Munshi: It is only a matter of arrangement. I do not want to argue. At the time of drafting the Act, it will be placed here.

Mr. President: The clause, as amended, is put to the House.

The clause, as amended, was adopted.

CLAUSE 11.-RIGHTS OF FREEDOM

The Hon'ble Sardar Vallabhbhai Patel: Clause 11 is as regards forced labour and it reads:

"11. (a) Traffic in human beings, and

(b) forced labour in any form including *begar* and involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted, are hereby prohibited and any contravention of this prohibition shall be an offence."

Explanation--

"Nothing in this sub-clause shall prevent the State from imposing compulsory service for public purposes without any discrimination on the ground of race, religion, caste or class."

Now we have to try to discuss this and abridge it and put it in a comprehensive form instead of separate clauses and put it in one clause "traffic in human beings".

Mr. President: The suggested amendments have not been circulated to the Members and they do not know what changes are suggested. I would request that you move the clause and then the amendments may be moved.

The Hon'ble Sardar Vallabhbhai Patel: Then I move this clause.

Mr. President: I have got notice of a number of amendments to this clause. Mr. Munshi's amendment has not been circulated. I have got this only two minutes ago. Still we have to go on with the work. I will take the other amendments first.

Mr. M. R. Masani (Bombay: General): It is very difficult to decide whether to move the other amendments until Mr. Munshi's amendment is moved. I would suggest that the agreed amendment be moved.

Mr. President: I am not aware of any agreed amendment.

Mr. K M. Munshi: Mr. President, Sir, the amendment I move is the following--

"That for clause II the following be substituted:

"Traffic in human beings, and *begar*, and other similar forms of forced labour are prohibited, and any contravention of this prohibition shall be an offence."

The object is to deal in one sentence with both subjects.

The Explanation has to be dropped because in view of the shortening of the whole sentence, the Explanation is not necessary at all. The object of this is that if there is any sort of forced labour like *begar*, it will be prohibited. Traffic in human beings will be prohibited. But the other forms of labour e.g. labour for educational purposes or for

any other purpose of public service, will be regulated by legislation.

Mr. P. R. Thakur (Bengal: General): The word '*begar*' should be in italics.

Mr. President: The clause, as amended, if the amendment is accepted, will read thus-

"Traffic in human being and *begar* and other similar forms of forced labour are prohibited and any contravention of this prohibition shall be an offence,"

The Explanation to the sub-clause (b) is dropped, and so the whole thing will be much shorter and more comprehensive.

There are a number of amendments of which notices have been received. I will call the members to move one after another.

The Hon'ble Mr. Jagjivan Ram (Bihar: General): In view of this amendment, I do not want to press my amendments. (Nos. 27 and 28 of the Supplementary List II).

Mr. H. V. Kamath (C.P. and Berar: General): In the event of acceptance by the House of Mr. Munshi's amendment, there is no necessity for my amendment. (No. 29 of the Supplementary List II). If it is not accepted, I will reserve the right to move my amendment later on.

Mr. M. R. Masani: Mr. President, I had given notice of an amendment (No. 36 of the Supplementary List II) in order to safeguard the rights of Conscientious Objectors in view of the very wide powers given to the State by the Explanation.

I am glad to see that the Explanation has been dropped. I do not, therefore, wish to press my amendment at this stage.

Mr. President: Now the motion and the amendment are open for discussion.

Dr. B. R. Ambedkar (Bengal: General): The point that I want to make is this, that, while I have no objection to the redrafting of sub-clause (a) and (b) in order that they may run in a compact manner, I have a certain amount of doubt as to whether the dropping of the Explanation is in consonance with the desire of the majority of the members of the Advisory Committee that the State should not have power in any way for introducing compulsory service. Mr. Munshi suggests that, if the clause stands as redrafted and if the Explanation is omitted, nonetheless, the State will have the right to introduce compulsory military service. I have not had sufficient time to apply my mind to the consequences of the proposed change, i.e., the dropping of the Explanation but I fear that the dropping of the Explanation and retaining the clause in the form in which it is stated may have opposite and serious consequences. Because '*begar*' is also something which is imposed by the State. So far as I know, in Bombay, '*begar*' is demanded by the State for certain public purposes, and if the State is prohibited from having '*begar*' it is perfectly possible for anybody to argue that even compulsory military service is *begar*. I am, therefore, not quite satisfied that the dropping of the Explanation is something which is advisable at this stage. I am not in a position to suggest any definite course of action in this matter, but I think I shall be sufficiently discharging my duties if I draw the attention of the House to the doubt

which I have in mind about the effect which the dropping of the Explanation may have on the right of the State in regard to compulsory service either for military purposes or for social purposes for the State. MY suggestion would be that at this state we should not drop the Explanation, but leave it as it is and have the whole matter reconsidered the Provincial Constitution and the Federal Constitution are when drafted in their final form.

Shrimati Dakshayani Velayudan (Madras: General) Mr. President, I have great pleasure in commending Clause 11 because it is a clause which mostly relates to a community, a vast regiment of people who are subjected to untold miseries for so many centuries. Sir, even nowadays we find traffic in human beings in some parts of India and this clause will have a great effect on the underdogs of this land who will have a voice when India gets her independence. This clause will bring about an economic revolution in the fascist social structure existing in India. All the disabilities of the underdogs of this land are mainly due to the economic backwardness of the unfortunate brethren of the neglected community. It is unfortunate that a section of the people of this land will have to work without getting any remuneration whatsoever, even for their daily maintenance and the people who work in the fields or in other places-- will have to go back to their homes even without getting a single pie. They have not got the right to demand the wages even though they will work for day and night. If the people are called upon to work and if they do not go for that work they will get punishments. That is what we find in certain Provinces of India like the United Provinces. Even if there is not the system of '*begar*' in other parts of India, almost a similar sort of compulsion exists throughout India and the majority of the people are subjected to exploitation economical and in all sorts of ways. The underdogs of this land are deprived of the facilities that make life happy. This System ought to have been, abolished even before the Provinces got self-government. Even if there are rules and regulations regarding this in certain provinces, the system still prevails and the people who are subjected to the system have no voice whatsoever in deciding their fate. So, this clause when it comes into existence will give great relief to a great number of people who are subjected to economic exploitation. When this sort of economic exploitation is eliminated from this land, the underdogs also will rise up and will be in a position to assert their rights and keep up their self respect and dignity and they too will have a right to enjoy like the people belonging to the upper class and upper caste. I have great pleasure in supporting this clause.

Mr. B. Das (Orissa: General): I have great pleasure in supporting Mr. Munshi's amendment to Clause 11. I accept the new draft of the clause. Sir, I have studied a good deal of forced labour problems since 1929. I was a member of the Forced Labour Convention in Geneva in 1929. India accepted the Forced Labour Convention in 1930, but the Indian States, with certain exceptions, did not accept it. That practice does not exist among the major States whose representatives I find today in this House. Sir, in my part of the country forced labour has been taken advantage of by most of the small Indian States. They receive grants from the Government of India for the construction of roads and utilise the money for their own purposes and by means of forced labour they construct roads and other civil works. Therefore, Sir, I do not apprehend the trouble which my friend Dr. Ambedkar has just now voiced. In case of national emergency the State must come forward and everybody must compulsorily work for the country, be it war or famine or drought. But I do not want any lacuna left over which will allow some of the Indian Princes to use forced labour for their own gains.

Sir, one point I am not satisfied with is whether traffic in human beings includes women traffic. Sir, some of us have studied this problem about women's traffic for the last ten years or more. Unfortunately, every year thousands of women of Orissa and the Province of Bengal, where there are surplus women, are carried away to other parts of India. There is a regular traffic going on by crooks and gangsters who carry away these women to some outside Provinces. I do not know whether they are regular house-wives or whether they lead the life of shame. We do know that in provinces like the Punjab and the Frontier the number of women is less than the population of men.

Sir, we had the painful experience during the Bengal famine when lakhs of women were spirited away. Whether these women were taken to the provinces where there are less women or whether they were used to supply women to the huge British army that was then in the eastern part of India, that is a problem that social workers must work out, But I would have been happy to see "traffic in women" being specifically mentioned in the clause. Those of us who belong to the eastern part of India still apprehend that in spite of this provision in the Fundamental Rights, traffic in women will be carried on by unscrupulous moneymakers. I, therefore, want Sardar Patel to assure me whether he has in contemplation some kind of legislation by which this traffic in women may be stopped for ever.

Sir, I want a further assurance from the representatives of the Indian States here whether they will persuade their colleagues in the less advanced States to abolish forced labour which is a source of profit and gain to many small principalities in India.

Dr. P. K. Sen (Bihar: General): Sir, might I be permitted to point out some of the difficulties that would present themselves if we put the clause in the truncated form suggested? First of all, there can be no question, nobody can doubt for a moment that forced labour in any form must go. But there were certain qualifying explanations in the original form of the clause which have now been omitted. Those are--

"involuntary servitude except as punishment for crime whereof the party shall have been duly convicted."

Now, it is well known that it is not only from children in the reformatory schools or from adolescents in the Borstal institutions, but also from adults--grown up people who may be regarded as under State tutelage, during their incarceration--it is right and legitimate, in fact, necessary, to exact labour according to the rules of the prisons. All that may really become very difficult if we put the clause in the form, that *begar* or forced labour shall be prohibited and any contravention of this rule would be regarded as an offence. I quite agree with my friend, Dr. Ambedkar, that the only way of getting out of this difficulty would be to retain the Explanation and then such cases would come under the expression "for public purposes", because even in jails and prisons or any other organisations where people are under State tutelage, forced labour can legitimately be exacted for the good of the inmates and also for the good of the State. If there is still any doubt, we can add the words "in the case of those under the State tutelage" or some such expression as that. But the amendment as it has been put, i.e., Traffic in human beings, and *begar* and forced labour in any form are hereby prohibited...."

Mr. K. M. Munshi :There are also the words "other similar forms".

Dr. P. K. Sen: 'Similar' is a very vague word. I really cannot imagine what difficulty or objection there can be in the way of retaining the Explanation. The

Explanation is quite innocuous, and it only says that for certain public purposes as in all civilized countries, it is necessary to get compulsory service from the citizens, for their own good and for the good of the State. I, therefore, submit that the Explanation either in the form as it stands or with any requisite modification may be accepted. Otherwise, all sorts of complications might arise.

Dewan Bahadur Sir Alladi Krishnaswami Ayyar (Madras: General): Mr. President, going into the question as to whether there is necessity for the retention of the Explanation or not, I am quite clear in my mind. So far as the first sub-clause is concerned, it will not preclude military conscription. In the Committee, there was a special clause inserted by Mr. Masani to the effect that there shall not be military conscription; but that has been omitted. In spite of the existence of the slavery and anti-slavery clause in the United States Constitution, the Supreme Court of the United States has held that there is nothing to prevent military conscription being introduced. The learned Judges referred to various writers on international law and they pointed out that the very existence of the State depends upon military force, and the slavery and antislavery or servitude clause cannot be construed as precluding the United States of America from introducing conscription. Therefore, the words '*begar* and similar forms of forced labour' cannot possibly be interpreted as excluding conscription. That is my view and I do not think that the future legislatures will be precluded from introducing conscription by reason of a clause like this. The word "similar" occurring in the clause makes it quite clear that it cannot have in view a military conscription law. Therefore, under those circumstances, there need not be any apprehension. That does not, however, mean that I am opposed to the retention of the Explanation. The retention, it was pointed out yesterday in the Committee, might give rise to considerable difficulties in the working of the village economy and village institutions, and no harm would result by the omission of the Explanation, and therefore, yesterday, in the course of the discussions in the Committee, it was omitted. I do not think there is any danger of military conscription being ruled out as a power inherent in the Union by reason of the forced labour clause as it stands.

Sri M. Ananthasayanam Ayyangar: I was also of the same opinion as Sir Alladi Krishnaswami Ayyar, when in the party meeting I consented to the change of the present clause, but I find on reconsideration that the original clause might stand. I shall presently give the reasons. The reasons are these. Two points referred to in the clause are, one, traffic in human beings is prohibited, and, secondly, forced labour ought not to be allowed. Both these are already provided for in the Penal Code. Section 370 of the Indian Penal Code prohibits traffic in human beings, and section 374 makes it an offence to compel any person to labour against his will, but the word "unlawful" is used there. "Unlawful" means, it is lawful for any legislature to pass a law that for particular purposes labour may be enforced, as when a person is convicted of a crime and he is sentenced to penal servitude. Or in the interests of village administration when there are floods, the villagers may be obliged or forced to repair breaches in tanks, etc., it also allows compulsory military service. Now, that these two provisions which are already in the general law under sections 370 and 374 of the Indian Penal Code are raised to the status of fundamental rights, we have to be a little careful. When we are giving the status of fundamental rights, unless we add other explanations allowing the State to make an exception to these two fundamental rights which are now being given, it might appear, and courts may also interpret that by taking these out of the ordinary law and placing them in the Statute Book as fundamental rights--that the States jurisdiction to legislate for such purposes, for forced labour even under an emergency has been taken away. If Mr. Munshi who has moved this amendment has at the back of his mind that the State Ought not to be

prevented from introducing conscription whenever or wherever necessary, let the matter be cleared here and now. I do not see any objection to having an Explanation or even having the original clause as it stands. There is no need to make the amendment. Let us be clear in our minds. Otherwise, it will mean that we have given up, irrespective of any considerations requiring conscription, or irrespective of other considerations requiring any local legislature or any particular unit to compel persons to come and help by way of forced labour-irrespective of all these considerations the fundamental right has been given, and that means that the right of the State has been abrogated once and for all. There is much force in the argument of Dr. Ambedkar, and I am not in favour of this amendment. The original clause as it stands may stand. Let us be clear in our minds whether we want conscription here and now or not. Let us not leave it to the judges to decide. Sir Alladi Krishnaswami Ayyar said that it has been interpreted by the American Court. The American Law was framed so long ago, and therefore, it is necessary to interpret it from time to time to enlarge its scope. We know too well that the Justinian Code running into 150 volumes has been developed by interpretation of the Twelve Tables. People are not in favour of modifying the statute from time to time, but lawyers have introduced various things as interpretations and have been evolving new law out of that. Now, that we are making a statute, why should we rely upon the future interpretation and leave it to the judges to decide? I oppose the amendment and I am in favour of retaining the original clause.

Dr. B. R. Ambedkar: May I make a suggestion? We have heard the arguments of Sir Alladi Krishnaswami Ayyar who has said that according to his reading of the rulings of the Supreme Court of the United States, even if the Explanation was not there, the State would be permitted to have compulsory military service. Fortunately, for me I also happened to look into the very same cases which I am sure Sir Alladi has in mind. I think he will agree with me, if he looks at the reasoning of the judgment given by the Supreme Court, he will find that they proceeded on the hypothesis that in a political Organisation the free citizen has a duty to support the Government and as every citizen has a duty to support the Government therefore compulsory military law was doing nothing more than calling upon the citizen to do the duty which he already owes to the State. I submit that that is a very precarious foundation for so important a subject as the necessity of compulsory military service for the defence of the State.

I submit that we ought not to rest content with that kind of reasoning which the Supreme Court in India may adopt or may not adopt. Therefore, my suggestion is this, that, just as in the case of the other clause dealing with citizenship you were good enough to remit the matter to a small committee to have it further examined. It will be desirable that this question as to whether the Explanation should be retained or not may also be remitted to a small committee which should report to this House. It will then be possible for the House to take a correct decision in the matter.

Mr. President: I think it is not necessary to have any further discussion if the suggestion which has been made by Dr. Ambedkar is acceptable to the House.

Mr. R.K. Sidhwa (C.P. and Berar: General) : The question regarding compulsory military service may be discussed here.

Mr. President: We are not deciding here whether we ought to have conscription or not. The question is whether under fundamental rights conscription is prohibited. I think it is best to refer it to the game committee to which the other clause has been

remitted.

An Hon'ble Member: The whole clause 11.

Mr. President: Yes, the whole clause 11.

The clause was remitted.

CLAUSE 12--RIGHTS OF FREEDOM.

Mr. President: Clause 12.*

The Hon'ble Sardar Vallabhbhai Patel: I move clause 12. Clause 12 says :

"No child below the age of 14 years shall be engaged to work in any factory, mine or any other hazardous employment."

It is proposed to delete the Explanation. But I move the clause as it is, and deletion of the Explanation may be moved as an amendment.

Mr. K. M. Munshi: I move that the Explanation be deleted. The Explanation says:

"Nothing in this shall prejudice any educational programme or activity involving compulsory labour."

That has nothing to do with sub-clause and I submit it should be deleted.

Mr. President: Amendment No. 37-Mr. Kamath.

Mr. H. V. Kamath: I am told that this clause deals only with children below 14, and that, therefore, expectant mothers and old people are out of place. I shall reserve my right to move my amendment at a later stage. I do not move it now.

Mr. B. K Sidhwa: As regards amendment No. 43, they are all new clauses, and as decided by the Honourable House yesterday, I will take them at the end of all these clauses.

Mr. President: These are the amendments. I will put the amendment of Mr. Munshi for deletion of the Explanation, to the House.

The amendment was adopted.

Clause 12, as amended, was adopted.

CLAUSE 13-RIGHTS RELATING TO RELIGION

The Hon'ble Sardar Vallabhbhai Patel: Sir, I move the adoption of clause 13, viz.,

"All persons are equally entitled to freedom of conscience, and the right freely to profess, practise and propagate religion, subject to public order, morality or health, and to the other provisions of this Part.

Explanation 1.--The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation 2.--The above rights shall not include any economic, financial, political or other secular activities that may be associated with religious practice.

Explanation 3.--The freedom of religious practice guaranteed in this clause shall not debar the State from enacting laws for the purpose of social welfare and reform."

I see that there are a number of amendments on the Order Paper. I shall speak on them when they are moved and, if there is any that could be accepted, I shall accept.

Mr. K. M. Munshi: Sir, I move an amendment to the effect that, after the last Explanation, the following words be added:-

"and for throwing open Hindu religious institutions of a public character to any class or section of Hindus."

After the Explanation above was drafted it was thought that the practice of religion referred to should not be of such a character as will interfere with the right of the Legislature to legislate on social questions. The question arose with regard to the throwing open of all temples to all classes of Hindus, whether it would be religious practice. In order to prevent any, such construction of clause, it was decided that the throwing open of Hindu religious institutions shall not be held to contravene the practice of Hindu religion.

Mr. President: I shall now call upon Members who have given notice of amendments to this clause, to move them(after a pause.....) As I find that there is no amendment moved to the clause I shall put it to the vote of the House.

Mr. H. J. Khandekar (C. P. and Berar): Sir, in case Mr. Munshi's amendment to this clause is accepted, it may be necessary to have a definition for "places of public worship". Unless this is done it may be difficult for people to know which is a place of public worship. Even where admission to people of all classes is given, depressed classes are not allowed. Even when there is a written record that a certain temple is open to worship by depressed classes, the pujaris obstruct and say that that temple is a private one and, therefore, not open to depressed classes. So, Sir, if there is definition of "places of public worship" there will be no difficulty. I suggest, therefore, that there should be a definition for "places of public worship".

Mr. President: May I know in which clause that expression occurs?

Mr. H. J. Khandekar: Explanation 3.

Mr. President: I do not find this expression there. There is no mention of any place of public worship there.

Mr. H. J. Khandekar: I want a definition for "religious institutions of a public character".

Mr. President: Mr. Khandekar wants some explanation of the term "religious institutions of a public character" so that it may be clear what religious institutions are referred to.

Shri L. Krishnaswami Bharathi: Sir, the clause reads: "other provisions of this Chapter". It should read "other provisions of this Part".

The Hon'ble Sardar Vallabhbhai Patel: The word "Chapter" has been substituted by the word "Part".

I accept Mr. Munshi's amendment and I congratulate the House on agreeing to pass this very controversial matter which has taken several days in the Committees and gone through several Committees. There might be differences of opinion, but on the whole we have tried our best to accommodate all sections of the people. I move that this clause as amended be passed.

Mr. President: I am putting to the vote first the amendment to Explanation No. 3. The amendment is:

"That the words 'and for throwing open Hindu religious institutions of a public character to any class or section of Hindus be added at the end of- Explanation No. 3'

The amendment was adopted.

Mr. President: Now I put the clause as amended to the House.

Clause 13, as amended, was adopted.

Mr. President: Now we go to clause.

CLAUSE 14.

The Hon'ble Sardar Ballabhbhai Patel: Now I move clause 14.

"Every religious denomination shall have the right to manage its own affairs in matter of religion and, subject to the general law to own, acquire and administer property movable and immovable, and to establish and maintain institutions for religious or charitable purposes."

There is a little addition by way of an amendment which Mr. Munshi will move. I move this clause for the acceptance of the House.

Mr. K. M. Munshi: Sir, I move an amendment that in clause 14 the words "or a section thereof" be added between the word "denomination" and the word "shall". It was felt that the use of the term "religious denomination" may prevent a section of a denomination from being protected.

Sri K. Santhanam: What is meant by "general law".

Mr. K. M. Munshi: There is a general law of the country as apart from any special legislation. When the word 'law' is used, it means the law of either the Unit or the Union according to the power which is being exercised. If it is a Union subject, it is

Union law. If it is a Unit subject, it is Unit law.

Mr. President: Has the word "general" any special significance here, Law is law.

Mr. K. M. Munshi: The intention was that any specific legislation was to be excluded. There are certain legislations specifically intended for certain classes of people. If the desire of the House is that it should be 'law', I have no objection.

Some Hon'ble Members: ".....subject to 'law'."

Mr. President: Mr. Santhanam, there is an amendment to be moved by you, amendment No. 63.

Sri K. Santhanam: No, Sir. I am not moving it.

Mr. President: Mr. Rajagopalachariar, you have an amendment.

The Hon'ble Sri C. Rajagopalachariar: No, Sir. I am not moving it.

Mr. President: The clause and the amendment are now open for discussion.

Sri M. Ananthasayanam Ayyangar: I oppose the omission of the word 'general' which is opposed to special or local laws which are defined in the Indian Penal Code as relating to a particular subject or a particular part of British India. There ought to be no restriction on the acquisition of rights and property by any religious institution under any special law. The same definition relating to special and local laws will be found in the General Clauses Act also. I, therefore, want the retention of the word 'general'. I think the framers of the clause were right in including it.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: The General Clauses Act and the Penal Code will not apply to the interpretation of our Constitution. We must have an interpretation clause in our Constitution when the Constitution is finally framed.

Mr. H. V. Kamath: I could not hear a word of what Sir Alladi said.

Mr. President: Sir Alladi's view was that the General Clauses Act and the Penal Code will not apply to our Constitution and, therefore, We need not attach any importance to them.

Mr. D. N. Datta (Bengal: General): If the words "existing Indian law" are there, the General Clauses Act will apply.

Mr. President: You are at liberty to differ from Sir Alladi.

The Hon'ble Sri C. Rajagopalachariar: Apart from the question of how words should be interpreted, it is very necessary that this special right that we are giving to religious denominations should be subject to all the laws that will be enacted and, therefore, the expression should be only 'law' and not any particular portion of the law.

Sri M. Ananthasayanam Ayyangar: We are trying to get these on the statute book. What is the meaning of taking these technical objections?

Mr. President: As a matter of fact, the point has been discussed, and if there is anything else, then the Drafting Committee will attend to them.

Now I will put the various amendments. The first amendment I will put is that the words "or a section thereof" be added between "denomination" and "shall". That part of the clause will read as follows :

"Every religious denomination or a section thereof shall have the right to manage its own affairs.

and so on.

The amendment was adopted.

Mr. president: The next amendment is that the be omitted.

The amendment was adopted.

Mr. President: The clause as amended will read:

"Every religious denomination or a section thereof shall have the right to manage its own affairs in matters of religion and, subject to law, to own, acquire and administer property movable and immovable, and to establish and maintain institutions for religious or charitable purposes."

I put the clause, as amended, to the House.

Clause 14, as amended, was adopted.

CLAUSE 15

The Hon'ble Sardar Vallabhbhai Patel: Clause 15.

"No person may be compelled to pay taxes, the proceeds of which are specifically appropriated to further or maintain any particular religion or denomination."

I do not think that there is any amendment to this clause and I move this clause for the acceptance of the House.

Mr. President: As there is no amendment to this clause, I put it to the vote of the House.

Clause 15 was adopted.

CLAUSE 16

The Hon'ble Sardar Vallabhbhai Patel: Clause 16. This clause was passed in the Advisory Committee, but I think that it may be referred back to the Advisory Committee, because there are some difficulties and it has been suggested that it may be referred back. The House agrees that this clause may be referred back to the

Advisory Committee.

Mr. President: Then you formally move it.

The Hon'ble Sardar Vallabhbhai Patel: I formally move:

"No person attending any school maintained or receiving aid out of public funds shall be compelled to take parts in the religious instruction that may be given in the school or to attend religious worship held in the school or in premises attached thereto."

Mr. President: On the vote of the House this clause is referred back to the Advisory Committee.

CLAUSE 17

The Hon'ble Sardar Vallabhbhai Patel: Sir, I move Clause 17.

"Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law."

Mr. K. M. Munshi: Sir, I beg to move the following amendment,

"That for clause 17 substitute the following clause:

"Any conversion from one religion to another of any person brought about by fraud, coercion or undue influence or of a minor under the age of 18 shall not be recognised by law."

The additions that are made to the clause as it is originally moved are there. First of all, the word 'fraud' is added to the words, 'coercion' and undue influence'. The second matter is with regard to the conversion words "the general" of a minor. As a matter of fact, it was proposed by one of the other Committees in some form or other, and it is the general feeling that this clause should be restored in this form,--any conversion of a minor under the age of 18 shall not be recognised by law. The only effect of non recognition by law would mean that even though a person is converted by fraud or coercion or undue influence or be converted during his minority he will still in law be deemed to continue to belong to the old religion and his legal rights will remain unaffected by reason of his conversion. The idea behind this proposal is that very often, if there are conversions by fraud or undue influence or during minority, certain changes in the legal status take place, certain rights are lost. This will have only this effect that the rights will remain exactly the same as at the moment a person was converted by fraud or coercion or undue influence and in the case of a minor at the moment of conversion.

If Hon'ble Members desire I will read the whole clause. The whole clause is put in this form.

"Any conversion from one religion to another of any person brought about by fraud, coercion or undue influence or of a minor under the age of 18 shall not be recognised by law."

Srijut Rohini Kumar Chaudhury (Assam: General): May I ask you to explain as to what is meant by the words "undue influence"? Is it used in the sense laid down in

the Contract Act or in the general sense ?

Mr. K. M. Munshi: It is difficult for me to say, but I am sure "fraud" is fraud all the world over and in all systems of jurisprudence. There is no difference between the two words coercion and undue influence as understood in India and in other countries. There may be little shades of difference but the free India will form its definitions and it may not be different from the Oxford dictionary meaning so far as I can see.

Shri Phool Singh (United Provinces: General): In view of the amendment moved by Mr. Munshi, my amendment will not fit in. But I suggest, Sir, that conversion by coercion should be made an offence. I would suggest he might move an amendment to this effect.

The Hon'ble Mr. Jagjivan Ram: I am not moving my amendment (No. 72 of the Supplementary List II).

Mr. President: Amendment No. 73 of the Supplementary List II

Mr. B. K. Sidhwa: This is a new clause. It may be taken up later.

Mr. F. B. Anthony (Bengal: General): Mr. President, my amendment, is with specific reference to Mr. Munshi's amendment, "or of a minor under the age of 18". To this part of the clause I want to add these words: "except when the parents or surviving parents have been converted and the child does not choose to adhere to its original faith". This was more or less the form in which the particular clause was accepted by the Minorities Sub-Committee. We discussed it at length and it was felt that in the form, I have sought to re-introduce, it would best serve the interests that we were considering there.

I agree that conversion under undue influence, conversion by coercion or conversion by fraud should not be recognised by law. I am only interested in this question, Sir, on principle. My community does not propagate. We do not convert, nor are we converted But I do appreciate how deeply, how passionately millions of Christians feel on this right to propagate their religion. I want to congratulate the major party for having, in spite of its contentious character, retained the words "right to practise and propagate their religion". Having done that, I say that after giving with one hand this principal fundamental right a right which is regarded as perhaps the most fundamental of Christian rights, do not take it away by this proviso, "or of a minor under the age of 18". I say that if you have this particular provision, or if you place an absolute embargo on the conversion of a minor, you will place an embargo absolutely on the right of conversion. You will virtually take away the right to convert. Because, what will happen ? Not a single adult who is a parent, however deeply he may feel, however deeply he may be convinced, will ever adopt Christianity, because, by this clause you will be cutting off that parent from his children. By this clause You will say, although the parents may be converted to Christianity, the children shall not be brought up by these parents in the faith of the parents. You will be cutting at the root of family life. I say it is contrary to the ordinary concepts of natural law and justice. You may have your prejudices against conversion; you may have your prejudices against propagation. But once having allowed it, I plead with you not to cut at the root of family life. This is a right which is conceded in every part of the world, the right of parents to bring up their children in the faith that the parents want them to pursue. You have your safeguards. You have provided that conversion by undue

influence, conversion by fraud, conversion by coercion shall not be recognised by law. I have gone further, and unlike the position in other parts of the world, I have even given discretion to the child provided it has attained the age of discretion, to adhere to its original faith. The wording is "and the child does not choose to adhere to its original faith". If both the parents are converted and if they want their children to be brought up as Christians, if these children have reached the age of discretion and say that in spite of the conversion of their parents, they do not want to be brought up as Christians, under the restriction which I have introduced, they will not be brought up in the Christian faith.

I have also added the word "surviving parent". for this reason, I say that if you restrict it to both the parents,--What will happen? If a widow, let us assume, adopts Christianity, do you mean to say that if she wants to bring up her children in the Christian faith, and if those children themselves want to be brought up in the Christian faith, you are placing an embargo on this? If you do not use the word "surviving parents", if the father who happens to be a widower adopts the Christian faith, and the children wish to be brought up as Christians, it may be said that since both the parents are not alive, the father cannot bring up the children in his faith. He will automatically be cut off from his children.

I realise how deeply certain sections of this House feel on this question of conversion. But I do ask you, having once conceded the right to propagate, to concede this in consonance with the principles of family law and in consonance with the principles of natural law and Justice.

Mr. P. R. Thakur: Sir, I am a member of the Depressed Classes. This clause of the Fundamental Rights is very important from the standpoint of my community. You know well, Sir, that the victims of these religious conversions are ordinarily from the Depressed Classes. The preachers of other religions approach these classes of people, take advantage of their ignorance, extend all sorts of temptations and ultimately convert them. I want to know from Mr. Munshi whether "fraud" covers all these things. If it does not cover, I should ask Mr. Munshi to re-draft this clause so that fraud of this nature might not be practised on these depressed classes. I should certainly call these "fraud".

The Hon'ble Rev. J. J. M. Nichols-Roy (Assam: General): Mr. President, Sir, it appears to me that the clause as it came out of the Advisory Committee is sufficient and should not be amended at all. The amendment seeks to prevent a minor, who is of twelve years of age, or thirteen years of age, up to eighteen years of age from exercising his own conscience. The age limit may be quite right in law. But to think that a youth under the age of eighteen does not have a conscience before God and, therefore, he cannot express his belief is wrong. That side of the question must be appropriately considered. There is a spiritual side in conversion which ought to be taken notice of by this House. Conversion does not mean only that a man changes his form of religion from one religion to another or adopts a different name of religion, such as, a Hindu becomes a Christian. But there is the spiritual aspects of conversion, that is, the connection of the soul of man with God, which must not be overlooked by this House. I know there are those who change their religion being influenced by material considerations, but there are others who are converted being under the influence of spiritual power. When a boy feels that he is called by God to adopt a different faith, no law should prevent him from doing that. The consciences of those youths who want to change their religion and adopt another religion from a spiritual

standpoint should not be prevented from allowing these youths to exercise their right to change their legal status and change their religion. We know, Sir, in the history of Christianity, there have been youths, and I know personally, there have been many youths, who, have been converted to Christianity, who are ready to die for their conviction and who are ready to lose everything. I myself was converted when I was about fifteen years old when I heard the voice of God calling me. I was ready to lose anything on earth. I was ready to suffer death even. I did not care for anything save to obey and follow the voice of God in my soul. Why should a youth who has such a call of God be prevented by law from changing his religion and calling himself by another name when he feels before God that he is influenced by the Spirit of God to do that end is ready even to sacrifice his life for that. This part of the amendment about minors is absolutely wrong when we consider it from the spiritual standpoint, From the standpoint of conscience I consider that it is altogether wrong not to allow a youth from the age of twelve to eighteen to exercise his own conscience before God. It will oppress the consciences of the youths who want to exercise their religious faiths before God. Therefore, I am against this amendment as it is. The clause should be left as it was before. The legal and other aspects have been discussed by Mr. Anthony regarding the conversion of the children of the converted parents. Certain minors should be allowed to follow their own conviction if they have any, and should not be forced to do anything against their own conviction. Why should the law not allow them if they themselves do not care for their former legal status? Why should they one Prevented from changing their religion? Why should their consciences be oppressed? That is a very important point, Sir, to be considered by this House. This freedom I consider to be a Fundamental Right of the, Youths. No law should be made which will work against good spiritual forces. India, especially, is a country of religions, a country where there is religious freedom. If this amendment is carried in this House, it will only mean that in making a law to prevent the evil forces our minds lose sight of the real religious freedom which the youths of this land ought to have. Therefore, I am against this very principle of forcing the youths by not allowing them to exercise their religious conviction according to their consciences. I would suggest, Sir, that if in the amendment moved by Mr. Anthony the words 'or save when the minor himself wants to change his religion' are included, then I do not object to this amendment. I am against any conversion by undue influence or by fraud or coercion. When we make a law against all these evils we should be careful to see that that law does not oppress the consciences of the youths who also need freedom.

The Hon'ble Shri Purushottamdas Tandon (United Provinces: General) : * [Mr. President, I am greatly surprised at the speeches delivered here by our Christian brethren. Some of them have said that in this Assembly we have admitted the right of every one to propagate his religion and to convert from one religion to another. We Congressmen deem it very improper to convert from one to another religion or to take part in such activities and we are not in favour of this. In our opinion it is absolutely futile to be keen on converting others to one's faith. But it is only at the request of some persons, whom we want to keep with us in our national endeavour that we accepted this. Now it is said that they have a right to convert young children to their faith. What is this? Really this surprises me very much. You can convert a child below eighteen by convincing and persuading him but he is a child of immature sense and legally and morally speaking this conversion can never be considered valid. If a boy of eighteen executes a transfer deed in favour of a man for his hut worth only Rs. 100, the transaction is considered unlawful. But our brethren come forward and say that the boy has enough sense to change his religion. That the value of religion is even less than that of a hut worth one hundred rupees. It is proper that a boy should be allowed

to formally change his religion only when he attains maturity.

One of my brethren has said that we are taking away with the left hand what we gave the Christians with our right hand. Had we not given them the right to convert the young ones along with the conversion of their parents they would have been justified in their statement. What we gave them with our right hand is that they have a right to convert others by an appeal to reason and after honestly changing their views and outlook. The three words, 'coercion', 'fraud' and 'undue influence' are included as provisos and are meant to cover the cases of adult converts. These words are not applicable to converts of immature age. Their conversion is coercion and undue influence under all circumstances. How can the young ones change their religion? They have not the sense to understand the teachings of your scriptures. If they change their religion it is only under some influence and this influence is not fair. If a Christian keeps a young Hindu boy with him and treats him kindly the boy may like to live with him. We are not preventing this. But the boy can change his religion, legally only on attaining maturity. If parents are converted why should it be necessary that their children should also change their religion? If they are under the influence of their parents they can change their religion on maturity. This is my submission.

With your permission, Mr. President, I would like to address a few words in English that such of my friends who do not know Hindi may follow me.]*

Sir, I am astonished at the manner in which some Christian friends have advanced the claim to convert minors. We have agreed to the right of conversion. Generally, we, Congressmen do not think it at all right--I say so frankly--that people should strenuously go about trying to convert peoples of other faith into their own, but we want to carry our Christian friends with us--friends who feel that they should have the right to make conversions--and we have agreed on their insistence to retain this formula about "propagation". They know that we are opposed to it, yet we have agreed.

Mr. C. E. Gibbon (C.P. & Berar: General): It is quite wrong.

The Hon'ble Shri Purushottamdas Tandon: I am speaking, Sir, as a Congressman. I say that the majority of Congressmen do not like this process of making converts (interruption), but in order to carry our Christian friends with us....

Mr. C. E. Gibbon: On a point of order, Sir.

The Hon'ble Shri Purushottamdas Tandon: There can be no point of Order. There may be a point of opinion.

Mr. C. E. Gibbon: I do not think, Sir, that the Speaker is competent to speak for all Congressmen.

Some Hon'ble Members: Why not?

Mr. President: That is no point of order.

Shri Balkrishna Sharma (United Provinces: General): The Speaker has every right to speak on behalf of most of the Congressmen. He is most certainly entitled to

do so.

The Hon'ble Shri Purushottamdas Tandon: I know Congressmen more than my friend over there. I know their feelings more intimately than probably he has ever had an opportunity of doing, and I know that most Congressmen are opposed to this idea of "propagation". But We agreed to keep the word "propagate" out of regard for our Christian friends. But now to ask us to agree to minors also being converted is, I think, Sir, going too far. It is possible that parents having a number of children are converted into some other faith but why should it be necessary that all these children who do not understand religion should be treated as converts? I submit it is not at all necessary. The law of guardianship will see about it. Guardians can be appointed to look after these children, and when they grow up, if they feel that Christianity is a form of religion which appeals to their minds they will be at liberty to embrace it. That much to my Christian friends.

I understand, Sir, that it is possible that difficulties may be raised by some lawyers. What is the legal difficulty about this matter? The ordinary law of guardianship will see about this. When we say that minors cannot be converted, that implies that when parents go to another faith and they have a number of children to look after, the law of the country will take care of those children. You can always enact a law of guardianship and you can, if necessary, add to the laws which at present exist on the subject so that in such cases the minors should be taken care of. I do not, Sir, therefore, see that there is any legal difficulty in the way of the amendment which Mr. Munshi has proposed being accepted. I heartily support Mr. Munshi's amendment.

(Mr. Dharendra Nath Datta rose to speak).

Sri Ramnath Goenka (Madras: General): Mr. President, I rise on a point of order.

Mr. President: But Mr. Datta has risen before you on a point of Order.

Mr. P. N. Datta: Mr. President, I would not have risen but for the speech of the previous speaker.....

Mr. President: I thought you were raising a point of order.

Mr. D. N. Datta: No, Sir. I do not raise a point of order.

Mr. President: Then, please wait. Yes, Mr. Goenka.

Sri Ramnath Goenka: My point of order is, Sir, that under clause 13 which we have passed, all persons are equally entitled to freedom of conscience. "All persons" must necessarily include at least those persons who have attained the age of discretion. It is not necessary that they must attain the age of 18 before developing conscience, it may be at the age of twelve, fifteen, sixteen or seventeen. If we pass clause 17 and prescribe the age of 18, then it will be inconsistent with clause 13. We have said in clause 13 "all persons". They must, I think, attain freedom of conscience any time before 18. So if we pass this clause 17 and prescribe the age of 18, it will be inconsistent with clause 13 which we have just now passed.

Mr. President: But what is the point of order ? (*Laughter*)

Sri Ramnath Goenka: It is that it will be inconsistent with clause 13 which we have passed.

Mr. President: That is on the merits of the thing. You do not say that the House cannot take it up because it is inconsistent.

Sri Ramnath Goenka: I say the amendment is out of order.

Mr. President: Which amendment?

Sri Ramnath Goenka: The amendment moved by Mr. Munshi. It is out of order if you agree with me that the age of discretion will be any time before eighteen years. Sir, my point of order is that the amendment of Mr. Munshi will be out of order.

Shri Mahavir Tyagi (United Provinces: General): But Mr. Munshi is above that age.

Sri Ramnath Goenka: It is not a question of Mr. Munshi being over eighteen. (*Laughter*).

Mr. President: I take it that the point of order raised by Mr. Goenka is that we have already taken a decision with regard to clause 13 and, therefore, the House is not entitled to take-up this amendment moved by Mr. Munshi. But I believe the House is always free to revise its own decision

Sri Ramnath Goenka: Certain, Sir. But as long as clause 13 stands as it is, this amendment will be out of order.

Mr. K. M. Munshi: May I reply to this, Sir?

Mr. President: Yes.

Mr. K. M. Munshi: Sir, my friend, Mr. Goenka, I think should not have ventured in the region of construction. If you look at clause 13, you will see that it says--

"All persons are equally entitled to freedom of conscience, and the right freely to profess-practise and propagate religion subject to public order, morality or health and to the other provisions of this Part."

This provision is generally subject to the other provisions of this Part and if the House passes this clause, that freedom will be subject to this particular clause. The matter is as plain as a pikestaff.

Sri Ananthasayanam Ayyangar: Sir, I want to pose this point of order raised by Mr. Goenka in a different way. The mover of this point of order said he has no objection to persons who are of the age of discretion being converted. But the age of discretion has not been defined anywhere. It is open to this Assembly to say that the age of discretion is eighteen. Therefore, there is really no point of order, or there is no point in this point of order.

Mr. President: I think this amendment is in order. Now we can discuss the motion as well as the amendment.

Mr. D. N. Datta: Mr. President, Sir, I feel that the whole of this clause 17 should go into the Fundamental Rights Committee and I would be glad if the whole clause could be deleted. I know the reasons for enumerating this under Fundamental Rights, because we are now working under the present setting. But as it is going to be enumerated in the fundamental rights, it has to be seen, Sir, whether the amendment of Mr. Munshi is to be accepted or the amendment of Mr. Anthony should be accented. Mr. Anthony wants that the option of the minors to join the religion they like on attaining majority, should be retained, just as the choice is given to Mohammadan children given in marriage during minority to repudiate the marriage on attaining majority,--What we call the option of puberty. A similar right he intends to be given to the children of the parents who have been converted. On attaining majority the child shall have the right of declaring whether he adheres to his original faith or whether he will join the faith of his parents who were converted. I for myself, do not see any reason, why that right should not be given to the child on attaining majority. On attaining, he may declare, if he was a Hindu, that he will adhere to Hinduism or if his parents have taken to Christianity, whether he will become a Christian. I think this right should not be taken away. It should be given and how it is to be given, it is for the Drafting Committee to determine. For that, Sir, I suggest that the whole clause should go to the drafting Committee, or, better still, that it should go to the Fundamental Rights Committee to determine whether this clause should remain or how it should remain.

And before I go, I must say that the remark of Mr. Tandon that the majority of the Congress members are not in favour of introducing the word 'propagate' in clause 13 is not correct. This matter was discussed yesterday and the majority were in favour of keeping the word 'propagate'. Therefore, the contention of Mr. Tandon is not correct.

Sri Lakshminarayan Sahu. (Orissa: General): Mr. President; Sir, I welcome this clause in the Fundamental Rights, but I have a little doubt to start with, as to what should be called a minority. I think that doubt may be cleared afterwards. As the conditions are today, I would like to point out to the House how in the Midnapore District, half of which is Oriya speaking, the language has been killed there from 1891 to 1931. I will give the census figures for that. In 1891, the number of Oriyas in the District of Midnapore was 6 lakhs. Ten years after, in 1901 it was less than 3 lakhs. From 6 lakhs it went down to about 3 lakhs. And in 1911.....

Mr. President: Mr. Sahu we are not on the question of language now, we are dealing with clause 17, about religion, and not clause 18.

Sri Lakshminarayan Sahu: I am sorry.

Rev. Jerome D'Souza (Madras: General): Mr. President; I regret, Sir, that this discussion should have taken a turn which makes it look as if it is almost exclusively a minority problem, and as a result of that, a degree of heat has been imported into it which most of us regret very much indeed. Sir, when this matter was discussed at the committee stage, quite independently from the question of minorities, legal difficulties with which this question bristles were brought home to us by men of the highest authority like Sir Alladi. As far as the minority rights, are concerned, I can only say this, that the way in which clause 13 has been handled by this House is so reassuring

and so encouraging to the minorities that we have no reason at all to quarrel or to ask for stronger assurances. That attitude must provoke on the part of the minorities an equally trustful attitude which I hope will inspire future relations and future discussions. I appreciate Mr. Anthony's stand that this is a question of a wider nature of principle and family authority. I assure you I am speaking from that point of view. This question of conversion of minors may affect not only majorities in relation to minorities but the minorities among themselves,--one Christian group in relation to another Christian group, as Catholics and Protestants, and so on. But among all sections, in regard to the authority of a man over his family, I think certain rights should be assured and must be part of fundamental rights. We have nothing in these fundamental rights that safeguards or encourages or strengthens the family in an explicit way, and indeed I do not think this is necessary at this stage, because that is not a justiciable right. There are certain constitutions where the wish of the State to protect and encourage the family is explicitly declared. I hope in the second part, among these fundamental rights which are not justiciable, some such declaration or approbation of the institution and rights and privileges associated with family will be introduced. It may perhaps be thought that in our country such a declaration is not necessary because among us the strongest family feeling is universal; we have not merely individual or unitary families but we have also joint families. I believe the discussion on this point has been partly influenced by that background of the joint family system. I am sure that Tandonji, if I may be permitted to refer to him by name, when he was speaking of the minor child of converted parents, was thinking really in terms of the joint family where there are people ready to take over and bring up such children. But we are legislating for all sections of our people, for those also who are not in joint families but in unitary families. We are legislating for them, and, therefore, some provisions must be made which, in the last analysis, will safeguard the authority of the parent, both parents or the surviving parent, in particular, as Mr. Anthony has said in regard to babies in the arms of their mothers. To take them away from the mother or father who are one with them, practically identified physically and juridically with them, is to introduce into our legislation an element which certainly weakens the concept of the authority and sanctity of the family. On this ground, as well as on the legal implications to which attention has been drawn. I mean difficulties in connection with the death, the marriage, the succession rights, of these minors, I oppose Mr. Munshi's amendment as it stands. Take the question of marriage. Marriage is permitted before 18 years. Now Mr. Munshi has carefully explained that his amendment does not prevent the minor children from going with the parents. But if they are to be married, under what law, by the ceremonies of which religion will they be married? If they follow their conscience and the religion they have adopted, whether they be Hindus, Muslims, or Christians, the question of the validity of that marriage will come in. All this is bristling with legal and juridical difficulties, quite apart from those other considerations into which, as I said, I regret we have entered with undue warmth. While I want to support Mr. Anthony's motion, I am more inclined to support the suggestion of the speaker who immediately preceded me, and ask the House to refer the entire clause back to the Advisory Committee so that the wording of it may be most carefully weighed. It can be brought back to this House just as we have decided, to bring back three or four other controversial matters. That is my suggestion and I would request.....

The Hon'ble Mr. B. G. Kher (Bombay: General): You may refer it to the other Committee which the President has appointed.

Rev Jerome D'Souza: I accept it. I want it to be discussed in a very much calmer manner. I suggest that it may go back to the Committee which the President has

already appointed.

Mr. R. K. Sidhwa: I do not want it to be sent back to the Committee.

Mr. President: I have got a list of a number of names of members who wish to speak on this amendment. I take it that my eye catches members in the order in which I have received the requests. So, I call upon Shri Algu Rai Shastri.

Shri Algu Rai Shastri (U.P.: General):*[Mr. President I stand here to support the amendment moved by Mr. Munshi. I believe that by accepting the amendment we shall be doing justice to those minors who have perforce to enter the fold of the religion which their parents embrace out of their greed. This practice is like the one prevailing in the transactions of transfer of land and which is that 'trees go with the land'. It is on some such basis that the minor children who do not understand what change of religion or coercion or religious practices mean, have to leave their old faith along with their parents. This evil practice has a very bad effect, on the strength of our population. It is proper for US that we, who are framing the charts of Fundamental Rights, should safeguard their interests and save them from such automatic conversion. The dynamic conditions of our society make it more important than ever that we should incorporate such a provision in our. Constitution as will prevent such practices. Such minors on attaining majority often regret that they were made to change their religion, improperly. Where ever the Europeans or the white races of Europe, who rule practically over the whole world, have gone, they have, as Missionaries. A study of the 'Prosperous India' by Digby shows that 'cross was followed by the sword'. The missionary was followed by the batons, the swords and the guns, It was in this way that they employed coercion for spreading their religions and for extending their Empire. At the same time, they put economic and political pressure on the indigenous tribes and consolidated the foundations of their dominion. We want such an amendment in this clause of Fundamental Rights that a person who wants to change his religion should be able to do so only after he is convinced through cool deliberation that the new religion is more satisfactory to him than the old one. For example it is only when I am convinced that Sikhism is preferable to Hinduism, that I should be able to change my religion. This right I believe we have. But no one should change religion out of greed and temptation. When the followers of one religion employ, sword and guns to attack a family consisting of a few members, the latter have no option but to accept the religion of the aggressors in order to save their lives. Such a conversion should be considered void and ineffective because it has been brought about through coercion and undue influence. In view of such conditions which exist today, conversion brought about through temptation and allurements is, in fact, not a conversion in the real sense of the term. I have a personal experience extending over a period of 24 years as to how the elders of the family are induced through prospects of financial gain to change their religion and also with them the children are taken over to the fold of the new religion. It appears as if some are taking the land physically in his possession and the helpless trees go with it to the new master.

One particular part of the country has been declared as an "Excluded Area" so that a particular sect alone may carry on its propaganda therein. Another area has been reserved for the "Criminal tribes". Similarly, other areas have also been reserved wherein missionaries alone can carry on their activities. In Chhattisgarh and other similar forest areas there are tribes which follow primitive faiths. There the Hindu missionaries cannot carry on their activities. These are called "Excluded and partially Excluded Areas", and no religious propaganda can be carried on in these areas except

by the missionaries. This was the baneful policy of the Government. We should now be delivered from this policy of religious discrimination. In his book "Census of India-1930" Dewton writes that the Christian population of Assam has increased 300 times and attributes this increase to certain evils in Hindu Society. It is these evils which gave other missionaries opportunities to make conversions. In his book "Census of India-1911" Mr. S. Kamath has said that the missionaries of one particular religion are reducing the numbers of another by exploiting the evils of that group. They convert some influential persons by inducement and persuasion. The bitterness of the present is due to such activities. I am conversant with what Christian missions have done for the backward classes and I have also seen their work among such classes of people. I bow to them with respect for the way in which they (missionaries), have done their work. How gracious it would have been had they done it only for social service I found that the dispute, if and when it occurs, between members of such castes as the sweepers or the *chamars* on the one side and the land-lords or some other influential persons on the other have been exploited to create bitterness between them. No effort has been made to effect a compromise. This crooked policy has been adopted to bring about the conversion of the former. Similarly, people of other faiths have intensified and exploited our differences in order to increase their own numbers. The consequence is that the grown-up people in such castes as *Bhangies* and *chamars* are converted, and with them their children also go into the fold of the new religion. They should be affectionately asked to live as brothers. This is what has been taught by prophets, angels and leaders. But this is not being practised, today. We are in search of opportunities to indulge in underhand dealings. We go to people and tell them "you are in darkness; this is not the way for your salvation". Thus every body can realise how all possible unfair means have been adopted to trample the majority community under feet. It is in this way that the Foreign bureaucracy has been working here, and has been creating vested interests in order to maintain its political strangle-hold over the people. If we cannot remove this foundation whom are we going to give the Fundamental Rights ? To these minors who are in the lap of their parents ? If we permit minors to be transferred like trees on land with the newly embraced religion of their parents, we would be doing an injustice. Many fallacious arguments are offered to permit this. We must not be misled by these. We know that our failure to stop conversion under coercion would result in grave injustice. I have a right to change my religion. I believe in God. If I realise tomorrow that God is a farce and an aberration of human mind then I can become an atheist. If I think that the Hindu faith is false, I, with my gray hair, my fallen teeth and ripe age, and my mature discretion can change my religion. But if my minor child repeats what I say, are you going to allow him also a right to change his religion (at that age)? Revered Purushottam Das Tandon has said in a very appealing manner that if a child transfers his immovable property worth Rs. 100 the transaction is void. How unjust it is that if a minor changes his religion when his parents do so, his act is not void? It has an adverse effect on innocent children. This attempt to increase population has increased religious bitterness. The communal proportion has been changed so that the British bureaucracy may retain its hold by a variation in the numbers of the different communities. I am saying all these things deliberately but I am not attacking any one community in particular. The sole interest of the government in the illusory web of the census lies in seeing a balance in the population of the communities so that these may continue to quarrel among themselves and thereby strengthen its own rule. This amendment of Mr. Munshi is directed against such motives. Nothing can be better than that, and, therefore, I support it.

In my opinion this majority community should not oppress the minority. We respect and honour all and we give an opportunity to every body to propagate his

religion. Those who agree with you may be converted. But convert only those who can be legitimately converted. Improper conversions would not be right. You tempt the innocent little ones whom you take in your lap, by a suit of clothes, a piece of bread and a little toy and thus you ruin their lives. Later, they repent that they did not get an opportunity to have a religion of their choice. I, myself, am prepared to change my religion. But some one should argue with me and change my views and then convert me. Surely, I should have no right to change the religion of my children with me-- specially children below a certain age. Those children are considered to be minors who are under teens, i.e., below eighteen.]*

Mr. H. V. Kamath: *[Under teens includes nineteen.]*

Shri Algu Rai Shastri: *[However if it is nineteen, it is all the better. Even if it is not possible they should extend minority by a year of grace. The age limit fixed for minors and majors should be adopted in religious matter as well. They say that there would be no incentive for conversion if people have to forego their children. I hear that in Japan the father has one religion and the child another. What does religion mean? Does the mother feed her baby so that the child's religion might change? If the mother's love is true she will surely feed her baby. Does the mother's milk change the religion? We do not wish to snatch away the child from the mother's lap, but we wish to give to the baby a right to record his (natal) religion in the report of the Census and any other government records, till he attains majority and declares his (new) religion. We give him things right in this amendment. Parents need the company of their children. If they have changed their religion discreetly, let them educate their children. But the change in the religion of the children may be considered (only) on their declaration at reaching majority. This is the purpose of this amendment and I support it, and I strongly oppose the view that this right should not be given to children.]*

Mr. Jagat Narain Lal (Bihar: General): *[Mr. President, I was expecting that after the acceptance of clause 13, no representative of any minority in this House will have any ground for any objection. Clause 13 lays down that--

"All persons are equally entitled to freedom of conscious, and the right freely to profess, practice and propagate religion subject to public order, morality or health or to the other provisions of this Chapter."

This goes to the "farthest limit". If you look to any of the best of "modern" world Constitutions, you will find that nowhere has this right to propagate been conceded. If you look at Article 50 of the Swiss Confederation, it lays down that "the free exercise of religion is guaranteed within limits compatible with public order and morality." It ends there. If you, look at Article 44 sub-clause (2) 1 of the Irish Free State, you will find there--

"Freedom of conscience and the free profession and practice of religion are subject to public order and morality, guaranteed to every citizen."

If you refer to Article 124 of the Constitution of the Union of the Soviet Socialist Republics you will find--

"In order to ensure to citizens freedom of conscience, the Church in the U.S.S.R. is separated from the State and the school from the Church. Freedom of religious worship and freedom of anti-religious propaganda is recognised for all citizens."

If I place before you all the clauses pertaining to "Freedom of professing religion," it will tax your patience. I do not want to waste more of your time in this connection. My submission is that this House has gone to the farthest limit possible with regard to the minorities, knowing well the fact that there are a few minorities in this country whose right to carry, on propaganda extends to the point of creating various difficulties. I do not want to go into its details. The previous speaker had referred to certain things in this connection. I submit that that should be sufficient. Hon'ble Tandonji by his observation that on reading the mind of most of the Congress members of this House he did not want to keep "right to do propaganda" (on the statute), has rightly interpreted the mind of most of us. The fact is that we desire to make the minorities feel that the rights which they had been enjoying till now shall be allowed to continue within reasonable limits by the majority. We have no desire to curtail them in any way. But we do not concede the right to do propaganda. I want to appeal to those who profess to speak for the minorities not to press for too much. They must be satisfied with this much. It will be too much to press for more. That would be taking undue advantage of the generosity of the majority. That will be very regrettable. It is difficult, rather impossible, for us to go to that limit. I think that the amendment tabled by Mr. Munshi becomes essential if the right to propagate is conceded. The House should, therefore, accept it. Various arguments have been advanced in the House, and so I do not want to comment upon them again. With these words I support Mr. Munshi.]*

Dr. B. R. Ambedkar: Mr. President, Sir, I am sorry to say that I do not find myself in agreement with the amendment which had been moved by Mr. Munshi relating to the question of the conversion of minor children. The clause, as it stands, probably gives the impression to the House that this question relating to the conversion of minors was not considered by the Fundamental Rights Committee or by the Minorities Sub-Committee or by the Advisory Committee. I should like to assure the House that a good deal of consideration was bestowed on this question and every aspect was examined. It was, after examining the whole question in all its aspects, and seeing the difficulties, which came up, that the Advisory Committee came to the conclusion that they should adhere to the clause as it now stands.

Sir, the difficulty is so clear to my mind that I find no other course but to request Mr. Munshi to drop his amendment.

With regard to children, there are three possible cases which can be visualised. First of all, there is the case of children with parents and guardians. There is the case of children who are orphans, who have no parents and no guardians in the legal sense of the word. Supposing you have this clause prohibiting the conversion of children below 18, what is going to be the position of children who are orphans? Are they not going to have any kind of religion? Are they not to have any religious instruction given to them by some one who happens to take a kindly interest in them? It seems to me that, if the clause as worded by Mr. Munshi was adopted, *viz.*, that no child below the age of 18 shall be converted it would follow that children who are orphans, who have no legal guardians, cannot have any kind of religious instruction. I am sure that this is not the result which this House would be happy to contemplate. Therefore, such a class of subjects shall have to be excepted from the operation of the amendment proposed by Mr. Munshi.

Then, I come to the other class, *viz.*, children with parents and guardians. They may fall into two categories. For the sake of clarity it might be desirable to consider

their cases separately; the first is this: where children are converted with the knowledge and consent of their guardians and parents. The second case is that of children of parents who have become converts.

It does seem to me that there ought to be a prohibition upon the conversion of minor children with legal guardians, where the conversion takes place without the consent and knowledge of the legal guardians. That, I think, is a very legitimate proposition. No missionary who wants to convert a child which is under the lawful Guardianship of some person, who according to the law of guardianship is entitled to regulate and control the religious faith of that particular child, ought to deprive that person or guardian of the right of having notice and having knowledge that the child is being converted to another faith. That, I think, is a simple proposition to which there can be no objection.

But when we come to the other case, *viz.*, where parents are converted and we have to consider the case of their children, then I think we come across what I might say a very hard rock. If you are going to say that, although parents may be converted because they are majors and above the age of 18, minors below the age of 18, although they are their children, are not to be converted with the parent, the question that we have to consider is, what arrangement are we going to make with regard to the children? Suppose, a parent is converted to Christianity. Suppose a child of such a parent dies. The parent, having been brought up in the Christian faith, gives the Christian burial to the dead child. Is that act on the part of the parent in giving a Christian burial to the child, to be regarded as an offence in law? Take another case. Suppose a parent who has become converted has a daughter. He marries that daughter according to Christian rites. What is to be the consequence of that marriage? What is to be the effect of that marriage? Is that marriage legal or not legal?

If you do not want that the children should be converted, you have to make some other kind of law with regard to guardianship in order to prevent the parents from exercising their rights to influence and shape the religious life of their children. Sir, I would like to ask whether it would be possible for this House to accept that a child of five, for instance, ought to be separated from his parents merely because the parents have adopted Christianity, or some religion which was not originally theirs. I refer to these difficulties in order to show that it is those difficulties which faced the Fundamental Rights Committee, the Minorities Committee and the Advisory Committee and which led them to reject this proposition. It was, because we realised, that the acceptance of the proposition, namely, that a person shall not be converted below the age of 18, would lead to many disruptions, to so many evil consequences, that we thought it would be better to drop the whole thing altogether. (*Hear, hear*). The mere fact that we have made no such reference in clause 17 of the Fundamental Rights does not in my judgment prevent the legislature when it becomes operative from making any law in order to regulate this matter. My submission, therefore, is that the reference back of this clause to a committee for further consideration is not going to produce any better result. I have no objection to the matter being further examined by persons who feel differently about it, but I do like to say that all the three Committees have given their best attention to the subject. I have therefore, come to the conclusion that having regard to all the circumstances of the case, the best way would be to drop the clause altogether. I have no objection to a provision being made that children who have, legal and lawful guardians should not be converted without the knowledge and notice of the parents. That, I think, ought to suffice in the case.

The Hon'ble Sardar Vallabhbhai Pate: Sir, this is not a matter free from difficulties. There is no point in introducing any element of heat in this controversy. It is well known in this country that there are mass conversions, conversions by force, conversions by coercion and undue influence, and we cannot disguise the fact that children also have been converted, that children with parents have been converted and that orphans have been converted. Now, we need not go into all the reasons or the forces that led to these conversions, but if the facts are recognised, we who have to live in this country and find a solution to build up a nation,--we need not introduce any heat into this controversy to find a solution. What is the best thing to do under the circumstances ? There may be different points of view. There are bound to be differences in the view points of the different communities, but, as Dr. Ambedkar has said, this question has been considered in three Committees and yet we have not been able to find a solution acceptable to all. Let us make one more effort and not carry on this discussion, which will not satisfy everybody. Let this be therefore referred to the Advisory Committee. We shall give one more chance.

Mr. President: Do I take it that it is the wish of the House that this clause be referred back to the Advisory Committee for further consideration ?

The clause was referred back to the Advisory Committee.

CLAUSE 18--CULTURAL AND EDUCATIONAL RIGHTS

The Hon'ble Sardar Vallabhbhai Patel: I move clause 18 now.

"(1) Minorities in every Unit shall be protected in respect of their languages, script and culture, and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect.

(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction. be compulsory imposed on them.

(3) (a) All minorities whether based on religion, community or language shall be free in any Unit to establish and administer educational institutions of their choice.

(b) The State shall not, while providing State aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language."

I move this clause for the acceptance of the House.

Shri Mohanlal Saksena (United Provinces: General): Sir, with your, permission, I would like to move that this clause be referred back to the Advisory Committee for reconsideration. There are certain aspects which require reconsideration, and, on the whole, I think it would be much better that this whole clause be referred to the Advisory Committee for their reconsideration.

Mr. President: Mr. Mohanlal Saksena has moved that this clause also be referred back to the Advisory Committee for further consideration.

Mr. D. N. Datta: Mr. President, with regard to sub-clause (1) of clause 18, it has been stated that--

"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."

I want to illustrate my point. If in a particular Unit....

Mr. President: You are going into the merits of the clause.

Mr. D. N. Datta: I am not going into the merits. I want clarification.

Mr. K. M. Munshi: I have got an amendment to move.

Mr. President: There is a motion by Mr. Mohanlal Saksena. He wants that the clause be referred back to the Committee. If that is accepted, no amendment need be moved.

Mr. D. N. Datta: I do not know if my request for clarification will be fulfilled even if the clause be referred back to the Committee. If you would allow me to speak....

Mr. President: If the House wants to refer back the Clause to the Committee the discussion will not be of much help.

Mr. D. N. Datta: If the House intends that this clause shall be referred back, I need not speak. I am not moving any amendment.

Mr. K. M. Munshi: Is it worth while moving any amendment if Mr. Mohanlal Saksena's suggestion is carried ? If that is accepted no amendment need be moved.

Archarya J. B. Kripalani (United Provinces: General): If after discussing we find there are any serious difficulties, then we may send the clause back to the Advisory Committee. If there are no serious difficulties and the House is practically united, then we may proceed with this.

Many Hon'ble Members: That is right.

Mr. President: I take it that the House wishes to discuss this clause. The amendments will be moved. We may take up the suggestion of Mr. Mohanlal Saksena at a later stage.

Mr. K. M. Munshi: I move that sub-clause (2) of clause 18 be referred back to the Advisory Committee. It was the general sense of many of the members that this clause should be reconsidered in the light of discussion that took place.

Mr. President: There are other amendments of which I have got notice. I shall ask the Hon'ble members to move the amendments.

Sri V. C. Kesava Rao (Madras: General): I do not move my amendment. (No. 76 of the Supplementary List No. II).

Dr. Suresh Chandra Banerjee (Bengal: General): In view of the amendment that sub-clause (2) be referred back to the Advisory Committee, I do not see any object in

moving my amendment, and I do not propose to move it.

Sri R. Santhanam: I am not moving my amendment. (No. 78 of the Supplementary List No. II).

Shri Phool Singh: I am not moving amendment. (No. 80 of the Supplementary List No. II).

Shri Algu Rai Shastri: *[I do not want to move my amendment.]*

Dr. Suresh Chandra Banerjee: In view of the assurance given by Mr. Munshi, I am not moving amendment No. 72 in the List.

The Hon'ble Shri Jagjivan Ram: I am not moving my amendment (No. 83 of the Supplementary List No. II).

Mr. R. K. Sidhwa: My amendment, i.e., No. 84, is a new clause. It may be taken afterwards.

Mr. D. N. Datta: Amendment No. 85 seeks to introduce new clauses. It may be taken up later.

Mr. President: All the amendments of which I have got notice have been disposed of; they are not moved.

Mr. Munshi's amendment and the clause are now both open for discussion. There is a suggestion that the whole clause be referred back and the amendment is that only sub-clause (2) be referred back.

Shri Mahavir Tyagi: Sir, I rise to support the motion of Mr. Mohanlal Saksena. He has only proposed that this clause be referred back to the Advisory Committee. I think, Sir, we are taking this document lightly. It may be that in matters like these, i.e., cultural and educational rights, they could be defined only as far as they appertain to individuals and the question of minorities had better be left for the future Governments. I think we are binding the hands of our future Governments too much. We should leave them free to do according to the times and the situations they face.

Now, Sir, the question of guaranteeing the rights of minorities with regard to culture and education privileges, I would suggest that in future occasions may arise when the Governments belonging to the Union may have to negotiate with other units and may have to know from them as to what is happening to the minorities that reside in the areas which have not chosen to join the Union. Now, supposing the Governments of the Units which belong to the Union are committed by means of this clause 18 to a certain policy towards the minorities, the people here may feel the necessity of knowing as to what is happening to the minorities who reside in those units which have refused to join the Union and belong to Pakistan or any other parts of India which may organise themselves separately. My suggestion is that on the question of minorities we may not be committed here and this question be left over for the time when we may definitely know as to whether the whole of India is going to be one Unit or is going to be partitioned into two. If there is to be a partition, we must know what is happening to the minorities on the other side, in the other units.

Therefore, the question is not so easy to solve just now. I submit that the whole House will support me when I say that this question had better be hanging fire till we definitely know as to what is going to be the final shape of India and how the Units are going to treat the minorities. I therefore support the motion of Mr. Mohanlal Saksena that the consideration of this clause be put off.

Seth Govind Das (C.P. & Berar: General): *[Sir, I think the motion before us contains no such clause which can be considered controversial. Mr. Mahavir Tyagi has said that we do not know till now whether India is to remain one or is to be Partitioned. For reasons which lead him to think that this should be sent to the Advisory Committee, I feel that it should be passed by us today. Whether there is one Hindustan or Pakistan, undivided or divided India--the phantom of this thought sticks to us and we look at all problems when they come up, obsessed with that view.

While supporting the resolution of Pandit Jawaharlal Nehru I said that we should not care whether our Muslim League brothers enter the to say that we Assembly or not. On the same grounds I again wish should not care whether India is to remain undivided or is to be divided. We want one India. We want that India should remain one. We are not to stop any of our efforts. I am even against Mr. Munshi's amendment, for I cannot see anything in this whole clause against any caste or community, As I have said that without looking--to what is going to happen to India in future, we should pass this resolution keeping in view as to what our duties are and what should be done in this Assembly.]*

Mr. D. N. Datta: Mr. President, Sir, clause 18, sub-clause (1) says--

"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."

I shall illustrate my point. Suppose in a certain unit there are different communities residing, using different scripts, and that unit intends to make a law that there should be one script instead of different scripts now prevailing. I feel that there may be necessity for the unit to promulgate a law that there should be one script for that particular unit for the benefit of the unit itself, and if that is not allowed by the Fundamental Rights, I think the interests of the Unit will suffer. I cannot suggest what should be the language of the clause under which such laws can be promulgated so that there should be one script for the benefit of the whole Unit. I suggest that this matter may also be referred to the Drafting Committee of the Fundamental Rights Sub-Committee because it is a very fundamental matter. The minority must have a right, but at the same time the Unit itself should also have a right to promulgate such a law--that there should be one script for the whole Unit or province. So, I consider that this matter should be considered by the. Fundamental Rights Sub Committee or by Sardarji.

Srijut Rohini Kumar Chaudhury: Mr. President, Sir, I wish to draw attention to sub-clause (2) of clause 18:--

"No minority whether based on religion community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them."

It refers to the compulsory imparting of religious instruction Clause 16 which also refers to compulsory participation in religious instruction in school has already been

referred by this Hon'ble House to the Advisory Committee. So it is only reasonable that we should agree to refer this clause to the same Advisory Committee which will consider clause I6.

I submit, Sir, that other sub-clause of this clause are not inoffensive or free from difficulty as they may seem on surface.

Take for instance, sub-clause (1) which speaks of scripts. Most of the tribal people in our Province have lost their original script. Some have taken to Assamese language and script, but Roman scripts have been recently imposed on them and now most of them are willing to take Hindi scripts which they would not be able to adopt if the sub-clause stands as it is.

Then turning to sub-clause (3) (b), if the clause stands as it is, it will seriously interfere with proper distribution of grants. So, on the whole, I think, instead of remitting sub-clauses piece-meal. It will be wise to refer the whole clause 18 to the Advisory Committee.

Shri Rajkrushna Bose (Orissa: General): I suggest, Sir, that clause 18 as moved by Sardar Patel and the amendment of Mr. Munshi, should be taken up for consideration now and the House should come to a decision in the matter. It seems that there is a move to refer clauses like this back to the Advisory Committee and it has become a little too catching and therefore we are not in a position to do anything here but refer back to the Advisory Committee. Let us not forget that before these clauses passed through the Committee, they had passed through two other Committees, *viz.*, the Minorities Rights Sub-Committee and the Fundamental Rights Sub-Committee. Clause 18 which we are now considering is so very simple and innocuous that it really needs no referring back to the Advisory Committee again. Three sub-clauses are attached to it, one is that the language, script and culture should be preserved and no laws or regulation may be enacted that may operate oppressively or prejudicially in this respect. If we are going to have one script in India as was suggested by Mr. Datta, it may create difficulties and any unit which wants to have a common script for the whole unit will have difficulties if this sub-clause is kept.

Well, my contention is that the sub-clause should be retained as it is, just because, if today we raise the question of wiping out languages or scripts when we are framing our first independent constitution, there may be any number of complications and difficulties and misunderstandings and at a time when we are having a lot of other difficulties we should not invite any more now. Therefore, we ought, to keep the first sub-clause as it has been kept in the original. Then sub-clause (3) (a) reads :

"All minorities whether based on religion community or language, shall be free in any Unit to establish and administer educational institutions of their choice."

This is a right, Sir, which I think no country can take away and ought to take away and all constitutions should concede this right to the minorities. It is such a simple thing that it needs no reference back to the Advisory Committee again. Now, sub-clause (3) (b) reads:

"The State shall not, while providing State aid to schools discriminate against schools under the management of minorities whether based on religion, community or language."

This again is such a simple question. If any minority wants to start a school of its own in any unit or in any part of the Union, certainly you are not going to forbid them from doing so, or pass laws whereby they cannot have this ordinary right. If you are going to do that, all your claim to give protection to the minorities will be reduced to a farce. Therefore, I do not see why this simple clause, namely clause 18, with all its sub-clauses should be referred back to the Advisory Committee. Of course, a point has been raised by one of the members that the consideration of matters relating to minorities should be put off till we know the mind of the Pakistanists in the matter and the rights they are going to concede to the minorities in their areas. Well, Sir, if, knowing fully well that those who oppose India's independence today like the Muslim League are adopting dilatory tactics to delay our freedom we put off our business till Doomsday or wait till they have made some decisions, we shall have to wait indefinitely. If, say for instance, they go beyond June 1948 to reach a decision with regard to these matters, are we to postpone our decisions on matters so simple and ordinary. I think, Sir, that it will be foolish on our part to delay decisions on matters like these, and therefore clause 18 as moved by Sardar Patel and amended by Mr. Munshi should be adopted by the House.

Dr. B. R. Ambedkar: Mr. President, Sir, I confess that I am considerably surprised at these amendments—both by Mr. Munshi as well as Mr. Tyagi, They have, I submit, given no reason why this clause 18 should be referred back to the Committee. The only reason in support of this proposal—one can sense—is that the rights of minorities should be relative, that is to say, we must wait and see what rights the minorities are given by the Pakistan Assembly before we determine the rights we want to give to the minorities in the Hindustan area. Now, Sir, with all deference. I must deprecate any such idea. Rights of minorities should be absolute rights. They should not be subject to any consideration as to what another party may like to do to minorities within its jurisdiction. If we find that certain minorities in which we are interested and which are within the jurisdiction of another State have not got the same rights which we have given to minorities in our territory, it would be open, for the State to take up the matter in a diplomatic manner and see that the wrongs are rectified. But no matter what others do, I think we ought to do what is right in our own judgment and personally I think that the rights which are indicated in clause 18 are rights which every minority, irrespective of any other consideration is entitled to claim. The first right that we have given is the right to use their language, their script and their culture. We have stated that "there shall be no discrimination on the ground of religion, language, etc." in the matter of admission into State educational institutions. We have said that "no minority shall be precluded from establishing any educational institution which such minority may wish to establish". It is also stated there that whenever a State decides to provide aid to schools or other educational institutions maintained by the minority, they shall not discriminate in the matter of giving grant on the basis of religion, community or language. Sir, I cannot understand how there can be any objection to these rights which have been indicated in clause 18. At any rate, nobody who has supported the motion that this may be referred back to the Committee has advanced any argument that either these rights are in excess of what a minority ought to have or are such that a minority ought not to have them. Therefore, it seems to me a great pity that the labours of three Committees which have evolved these provisions should be so brusquely set aside simply because for some reasons people want that this matter should be referred back to the Committee. I do not know what objection my friend Mr. Munshi has to sub-clause (2) as it stands, but if it is necessary that this sub-clause may be referred back to the Committee I certainly would raise no objection. That sub-clause may be referred back because I understand that we have limited this matter to State educational institutions and we

have said nothing about those which are only State-aided. If that point needs to be further clarified the matter may be referred back, but, because there may be something to be said in favour of the reference back of sub-clause (2) I do not see that the same logic could be extended to the whole of the clause. I submit therefore that the clause as it stands, should be passed, barring sub-clause (2) which may, if necessary, be referred back to the Committee for consideration.

Shri Lakshminarayan Sahu: Mr. President, Sir, while I was speaking some time before, I was just telling that I welcomed this clause 18 in the Fundamental Rights, because this is the first time that minorities will feel happy that they have got some definite rights. I was referring to the question of who should be called a minority about which I have my doubts. But I hope they will be cleared by further discussions. But as it is, I welcome this clause. I want to show that in Midnapore district the population of Oriyas has been mutilated to a very great extent so much so that today we do not find in the census figures any Oriya as such. In 1891 the census number of Oriyas was 6 lakhs. In 1901 it was reduced to 3 lakhs and in 1911 it was reduced to less than 2 lakhs. In 1921 it was 1,40,000 and in 1931 the figure is only 45,000.

Now, the same thing has happened in the southern portion of Orissa. The Utkal Union Conference for over 40 years agitated to get a separate province for Orissa only in order to get their minority rights, because as minorities they were not safe in any of the provinces, and when they got a separate province they were very happy. Now the question has come about the language. Referring to only one district there, out of the six districts of Orissa,--to Ganjam,--there is great language difficulty there. The Vizagapatnam, District Gazetteer of 1906 writes:

"The language of the district forms a veritable bable. In Gunjam 940 out of a 1,000 speak Telugu in their houses, 14 talk Oriya, 9 Khond. 7 Gadaba, 5 Hindusthani. But among the same number in the Agency, 451 speak Oriya, 204 Khond, 180 Telugu, 56 Savara, 30 Poroja. 23 Gadaba, 11 Koya 3 Hindustani, 3 Gondi and 5 other vernaculars such as Labadi, Bastari, Hindi, Chhatiskari, etc."

This difficulty about language has been felt in our province because a section of the people are Andhras and they are claiming that their children should be educated right up to the college stage through the medium of their own mother-tongue. And this should be decided clearly. I hope that by a clause like this these difficulties will be removed and our culture will be intact in those places where the Oriyas will be left outside their province; and so also the culture of other people who will be left in the province of Orissa will be properly safeguarded. But I would like to know what should be the language of the province and also the language of the different aboriginal people who are in the province of Orissa. As I have already said, there are any number of aboriginals speaking any number of different languages. Some of the aboriginal workers who are coming up claim that their language must be respected. In Orissa, if we respect every language it will be very difficult for the provincial Government to run the administration.

Quite apart from all the above difficulties which may be solved by the Units, I welcome this clause 18 which safeguards our cultural and educational rights.

Mr. President: We have two amendments. One is from Mr. Mohanlal Saksena.

Shri Mohanlal Saksena: Sir, I beg leave to withdraw my amendment.

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

Mr. President: Then the other is from Mr. Munshi to refer back subclause (2) to the Committee.

The Hon'ble Sardar Vallabhbhai Patel: I accept it.

The amendment of Mr. Munshi was adopted.

Mr. President: Then I put the amended clause to the House now leaving out sub-clause (2) and retaining sub-clause (1) and sub-clause (3) (a) and (b)

Clause 18, as amended, was, accepted.

Mr. President: I think we have just come nearly to 12-30. So we shall stop to-day and take up the work again at 9 o'clock tomorrow.

The Assembly then adjourned till Nine of the Clock on Friday, the 2nd May, 1947.

*10. Subject to regulation by the law of the Union trade, commerce, and intercourse among the Units by and between the citizens shall be free:

Provided that any Unit may by law impose reasonable restrictions in the interest of public order, morality or health in or in an emergency:

Provided that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties and taxes to which the goods produced in the Unit are subject:

Provided further that no preference shall be given by any regulation of commerce revenue by a Unit to one Unit over another.

*12. No Child below the age of 14 years shall be engaged to. work in any factory, mine or any other hazardous employment.

Explanation: Nothing in this shall prejudice any educational programme or activity involving compulsory, labour.

[English translation of Hindustani speech]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME III

Friday, the 2nd May, 1947

The Constituent Assembly' of India met in the Constitution Hall, Now Delhi, at Nine of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair.

INTERIM REPORT ON FUNDAMENTAL RIGHTS-contd.

Mr. President- We shall resume further discussion on the remaining clauses of the Fundamental Rights. Clause 19.

Clause 19.-Miscellaneous Rights.

The Hon'ble Sardar Vallabhbhai Patel (Bombay: General): I beg to move clause 19. The clause runs thus:

"No property, movable or immovable, of any person or corporation including any interest in any commercial or industrial undertaking, shall be taken or acquired for public use unless the law provides for the payment of compensation for the property taken or acquired and specified the principles on which and the manner in which the compensation is to be determined."

I do not expect any amendments to this motion, but if there are any, we shall consider them in time.

(Amendments Nos. 86 and 87 were not moved.)

Raja Jagannath Bakhsh Singh (United Provinces: General): I do not move amendment No. 88. Sir, I shall, with your permission, move amendment No. 89. I move:

"That in clause 19, after the words 'the payment of' the word 'Just' be inserted."

I congratulate the Advisory Committee on the labour they have devoted to the difficult and complicated question of framing the fundamental rights. Clause 19 provides:

"No property, movable or immovable, of any person or corporation, including any interest in any commercial or industrial Undertaking, shall be taken or acquired for public use unless the law provides for the payment of compensation.

I have no doubt that the Advisory Committee had in their mind that, whenever an occasion arises to take property, movable or immovable, it should be after payment of

compensation which is just compensation. But I think that without the insertion of the word "just" which I am moving, the meaning of the clause may be left a little vague.

Then, Sir, there are a number of precedents in support of my contention. I believe the Advisory Committee had in their view the American constitution in , framing the fundamental rights. In paragraph 3 of the Report of the Advisory Committee it is stated:

"We attach great importance to the constitution making these rights justiciable The right of the citizen to the protection in certain matters is a special feature of the American Constitution and the more recent democratic constitutions."

If you look at Article V of the American Constitution, 1791, the last two lines read thus:

" nor shall private property be taken for public use without just compensation."

This makes it clear that the American Constitution lays particular emphasis on this word "just" in qualifying the word "compensation". Next, Sir, if we look at the Constitution of Danzig-I am referring to the Third Series of Constitutional Precedents, page 69, you will find:

"The right, may only be effected in accordance with the provisions of the law and for the benefit of the whole, community, and in return for due compensation, in case of dispute with regard to the amount of compensation recourse may be had to the law-courts."

Further, if I have your permission to quote one more constitution, namely, that of Australia, it will be found that in section 51 of the Constitution of the Commonwealth of Australia the following provision is incorporated:

"The acquisition of property on just terms from any State or person in respect of which the Parliament has, power to make laws."

I do not wish to take the time of the House in reading the Constitutions of other countries, but I may add that the House will find in the Constitutions of Belgium, Bulgaria, Denmark, Finland, Albania, and Yugoslavia--in a number of these countries the word "just" qualifies "compensation", in others a similar expression has been used. I, therefore, submit that so far as precedents are concerned, I am well supported in my motion. I think it is unnecessary for me to put before the House all the arguments in support of this amendment, as I know the House is pressed for time. Therefore, Sir, with these words I commend my amendment for the acceptance of the House.

Prof. K. T. Shah (Bihar: General): Mr. President, I have given notice of an amendment to add the following proviso to clause 19:

"Provided that-no rights of individual private property shall be recognised in forms of natural wealth, like rivers or flowing waters, coastal waters, mines and minerals, or forests."

But as this raises many complicated issues, I do not move it but suggest that this should go back to the Advisory Committee.

Mr. President: Do you move the amendment ?

Prof. K. T. Shah: No, Sir.

Mr. President: There is only one amendment to this clause. The clause and the amendment are both for discussion.

Shri S. Nagappa (Madras: General): Mr. President, I rise to offer my support to this clause proposed by the Hon'ble Mover of this Report. This is a clause that gives some hope to the poor tiller of the soil. This clause gives a promise to the people of the country that the Union Government or the Unit Governments are going to acquire property, landed or other sort of property, from either individual or corporations or from industrialists or commercial, concern, in the public interest and that, when they do so, they are going, to compensate them. Now Sir, what sort of compensation is to be paid ? There are difficulties in the way of settling this matter. I want that in paying compensation we must be reasonable. Now the question arises as to what is reasonable compensation. It seems, to me, Sir, that when we are acquiring landed property from a zamindar, we need not pay as much as he wants. We need pay only what is reasonably required to enable him to maintain himself and his family for one or two generations. That is the only thing necessary to do to fulfil the kind of assurance which the Congress has given to these zamindars and jagirdars in their election manifesto. My humble request that the Government should accept my interpretation of what reasonable compensation is. For instance, if a poor man's property is acquired for a particular purpose, then, in giving him compensation, care must be taken to see that it is reasonable in the particular case. In such a case the Government must pay him the cost of the land and something more even. But when the Government acquire lands from a zamindar, they need not pay the actual market rate or the local rate to make the compensation paid reasonable. You have to fix the compensation keeping in view the manner in which the zamindar acquired that property. That is my contention, Sir.

Then, Sir, I submit that when once you acquire land, you must see that the tiller of the soil is made the owner of the soil. Then alone we will be able to give a kind of encouragement to the toilers and make them increase the produce and the national wealth for the maintenance of the country. I hope this clause will not stand in the way of, the provinces pushing forward land legislation which they have in some cases already undertaken. For instance, my respected leader of Andhradesa, Sri T. Prakasam, has already done a lot for the abolition of the zamindari system in Madras and the Madras Government are pushing forward legislation for the abolition of zamindaris. Once the zamindaris are abolished and the Government acquire their properties, it must be their endeavour to make the best use of such properties. The Government must see to it that collective farms are formed and that, through them, the maximum is produced and the tiller is given sufficient for what he does. These are the hopes which the particular clause gives to the poor tillers of the soil.

Now, Sir, so far as the industries are concerned, I have been day in and day out asking in the Madras Legislative Assembly, for their nationalisation. That does not mean that we need not encourage private bodies to take to industrialisation. We have to go forward in this respect. Our country is very backward industrially. If we are to move quickly forward, we must go to the extent of granting subsidies to our industries and nationalise them as soon as possible. When private enterprise has fully developed and when the country thinks that particular industries should be taken over by the

Government for public benefit, reasonable compensation must be paid. In these cases it would be reasonable compensation if we offer the persons who started those industries ample funds to fall back upon. That is my interpretation of the word 'reasonable' in this respect.

Sir, these are two main points that should be borne in mind when legislation is undertaken for the abolition of zamindaris and nationalisation of industries.

Once again, I offer my thanks to the Hon'ble Mover for bearing in mind this particular class of tillers of the soil who would be getting their due share of the results of their labours. I also thank you, Mr. President, for giving me this opportunity to speak on this motion.

Dr. Suresh Chandra Banerjee (Bengal: General): Mr. President, Sir, I had naturally hoped that we would make some progress towards socialisation at least when we gained our independence within a few months, but in these fundamental rights nothing has been put in regard to socialisation. I would have been really happy, had the amendment of Prof. K. T. Shah been accepted, because there is an element of socialisation there. I feel that in a country like India where poverty is so acute, where general condition of the workers and peasants is so miserable, nothing but socialisation can give some hope of improvement in the future. So, I would have been happy if the House had accepted the amendment of Prof. Shah. But I know, Sir, the difficulties with which we are faced at present. We know, Sir, how many interests are represented here. Here, we have to consider the case of the Indian Princes, we have to consider the case of the Anglo-Indians, of the Christians and so many other people. As a matter of fact, it is a matter of great consolation to us that we have been able to find out a solution for reconciling so many interests. So, in the present context, we cannot press for any amendment like this, but still I do hope that in the near future when India gets her independence, it will be possible to have some kind of socialisation. With these words, Sir, I support the clause as it stands.

Shri Ajit Prasad Jain (United Provinces: General): I rise to make a few observations on this clause. I had given an amendment for the total deletion of this clause, but it became unnecessary to move that amendment for I could express my ideas during the course of general discussion. This clause reproduces a part of Section 299 of the Government of India Act, 1935, with a certain amount of amplitude. It says that no property, whether movable or immovable, shall be acquired for public use unless the law provides for the payment of compensation. We have some experience of the working of Section 299 of the Government of India Act. The House must be aware that in several Congress Provinces measures for the abolition of zamindari system are under consideration. In the United Provinces we passed a resolution for the abolition of zamindari system on payment of equitable compensation. That resolution follows the line laid down in the Congress Election Manifesto. In working out how the compensation should be calculated, we were faced with great difficulties. There was the question of the financial capacity of the State. If we fix compensation at a figure which the State could not pay, it would mean that the zamindari should continue to exist. We had also to see how much profits the landlords have made in the past from the zamindari. The question of the origin of zamindari also became relevant. Some of the zamindaris in our provinces have been acquired for helping the British by acts of treachery during the first war of independence in 1857. We could not ignore the market price of the zamindari either. After a careful consideration of these various factors we are trying to fix compensation for the zamindaris. On the other hand the

landlords have been interpreting the word 'compensation' to mean full compensation, i.e., the market price of the land. Some of them have threatened that they will go to the Federal Court for interpretation of the word 'compensation'. We have no manner of doubt that it is impossible for the State to pay full compensation. Then the choice before us is to leave the zamindari as it is. Sir, land acquisition may take either of two shapes. It may be acquisition of a specified for a specified purpose. In that case the State may pay not only its full value but something more for the compulsory acquisition as is provided in the Land Acquisition Act. There may be other cases in which property may not be acquired as a solitary thing. It may take the shape of a measure of social or economic reform for the welfare of the society. For instance, we may have to acquire factories, mines and industries for nationalisation. In such cases the acquisition of the property will be for social use for the upliftment and betterment of the society. The property is being acquired in the interest of the large masses of the people. And in such cases considerations which may prevail in the cases of isolated acquisition will not apply. The State may not be in a position to pay full, compensation. In fact, there may be only a nominal compensation, or no compensation at all. This clause, if accepted as it stands, will stand in the way of large scale social and economic reforms. It will cover all the cases where property, is being acquired for social or economic improvements. It is none of my intentions that the State should act as a robber or a bandit and arbitrarily seize properties of the people, but measures of social reforms stand on quite a different level. That is the reason why a number of amendments, which were not moved, had been tabled in the direction pointed out by me. Fundamental Rights in my opinion are embodied in the Constitution with a view to protect the weak and the helpless. The present clause will have just the contrary effect. It will protect the microscopic minority of propertied class and deny rights of social justice to the masses. I am, therefore, totally opposed to this clause and I do hope that the Hon'ble Mover will keep this in mind and refer the clause back to the Advisory Committee so that any provision which we pass today may not stand in the way of social and economic reforms which are necessary to bring prosperity and plenty to the country. With these few remarks, I commend my point of view for the consideration of the House.

Mr. R. K. Sidhwa (C.P. and Berar: General): Mr. President, Sir, one would have expected that under the present economic conditions prevailing in the country, there would be a clause for acquiring property in a different manner. It is very deplorable that at the present moment when various legislatures are out to abolish the jagirdari and zamindari systems by payment of a small compensation or no compensation under this clause we are asked to pay compensation for any property that is ping to be acquired. In free India where we should expect the property clause to be more liberal and beneficial to the people, we find that we are helping the upper class people by passing this clause.

Sir, the word 'property' is very vague. "Property" includes public utility concerns like electric corporations, transport organisations, etc. We are well aware that in many provinces these public utility concerns are being nationalised and I am sure that in a very short time to come almost all the public utility concerns will be nationalised. In fact, under the bureaucratic system of Government, all the railways have been nationalised by payment of any 'goodwill' that may have been specified under the agreement. I know, Sir, that the agreements with local bodies under which some electric concerns are working, provide for acquiring such concerns without any compensation being given. If you pass this clause, it would mean that although the agreements do not provide for it, we have to pay compensation, to these public utility concerns when we acquire them. Is it fair, may I ask, that the public utility concerns

which are for the benefit of consumers and the people, and which in all countries eventually may become the property of the people, are to be taken over by paying the actual invested capital plus compensation even if there is no clause as to the payment of compensation ? I do feel, Sir, that this clause requires amendment at least as far as the public utility concerns are concerned. But, Sir, I am helpless as I could not move an amendment I would have been desired that this clause should have been amended or have gone back to the Advisory Committee under the circumstances I mentioned. If it is not going, I hope that this will receive the consideration of the Mover, because it will be really doing great injustice to the consumers,--that though in the agreement there is no clause of compensation we shall be bound to give it and in a small province they would have to take over concerns by paying them the actual amount invested plus compensation.

Mr. President: Do you mean to say that an agreement will be affected by this clause ?

Mr. R. K. Sidhwa: Yes, Sir, No property shall be taken or acquired for public use unless the law provides for the payment of compensation, says the clause. Now, Sir, the law will be made certainly in accordance with this clause and a demand for compensation will be made even if there is nothing in the agreement.

Mr. President: The acquisition itself will be provided for in the agreement.

Mr. R. K. Sidhwa: If the law provides that a compensation is to be paid and if in the agreement there is no clause, then, we will be bound down. I, as a common sense man, feel--of course, the legal luminaries may say, if they enlighten me I shall welcome it, but, as a common sense man, I feel that, if there is an agreement in which there is no clause for compensation and if you are enacting an Act for giving the compensation, they will claim from us the compensation. And owner of the property in that event will go to the Supreme Court and get his demand fulfilled under the clause.

Shri Vishwambhar Dayal Tripathi: * [Mr. President, I stand here to oppose the amendment moved by my friend, Raja Jagannath Bakhsh Singh. His amendment says that the word "just" should be added before the word 'compensation' here. I oppose this most emphatically. So far as this clause is concerned, not only I but most of my friends apprehend, that its wordings are such that their effect, particularly the legal effect, would not be to the good of the country to the same extent as it ought to be. I want that the words in the clause be changed so that it may not go against the interests of the country as apprehended by us. I would appeal to the gentlemen who drafted this clause to reconsider it and put before us a new "formula".

It is proper and I accept it that when we acquire property of any one it is necessary to give compensation for it. This too I accept that in most cases compensation should correspond to the value of the property. But at the same time I also believe that we must also see as to how the property was originally acquired by the person concerned. If it was acquired justly, compensation ought to be given according to its value. If the property was not acquired justly or if the holder has earned sufficient profit from the same it is wrong to give him full compensation or to pay its full price. If we want to change the existing social order, if we want to change the present order of zamindari and capitalism and at the same time say that full compensation should be given for the property taken by the State, it would mean that we would not be able completely to do, away with the present social order. If we have

really to change this order, if we really want to implement the resolution passed by A.I.C.C. on 8th August, 1942, which promised to frame a constitution wherein the real power is vested in the workers in farms and factories, we have to reconsider these clauses. If this clause is left as it is, undoubtedly various obstacles will come up in our way of fulfilling the promises and declarations made by us before the country from time to time. Therefore, I again request the framers of this clause to reconsider it.

We have before us the question of ending zamindari in several provinces. We have also before us the question of payment of compensation to the Zamindars. There are all kinds of difficulties before us. I am a member of the U.P. Zamindari Abolition Committee which has to deal with such questions. I can say with all the authority at my command that if we have to pay the compensation for zamindari according to its market value, I have no doubt that it will be almost impossible for us to end zamindari: and even if it could be made possible, it would result in the peasantry remaining burdened for another 20 or 25 years to the same extent as they are today. After all from what source the compensation will be paid ? It will be taken from the pockets of the poor. Under these circumstances for another 20 or 25 years the peasants will have to remain under the same financial burden which they have to bear today. They will not benefit in any way for this period of 20 or 25 years. Besides the statement of Raja Sahib that "just" compensation should be paid is rather extremely odd. Is Raja Sahib prepared that a general examination of the titles of the Zamindars in respect of their landed property be undertaken to verify as to how many of these titles can be termed just ? If he agrees to this his amendment may be considered. There are many estates in the country and particularly in Oudh, to which province Raja Sahib belongs, which were acquired by the present holders as rewards for their traitorous support to the English during the Mutiny of 1857. The recipients of these estates had no estate previously. The Englishmen gave them these estates for their treachery against India. Raja Jagannath Bakhsh Singh claims that the Zamindar participated in the war of liberation of 1857. I welcome those who had fought for freedom and I do recommend that they should be given the maximum concessions. Raja Sahib knows that there are instances of many who betrayed their countrymen and in return for their treachery received big estates. Such people have no right to demand compensation. Many of them enjoy exemption from payment of revenue, and have been continuously enjoying the profits of these estates for the last 90 years. They have been realising rent from the tenants for the last 90 years without having had to pay even a pie of land revenue. If any body had even paid the price for it, he has already received five times its value. Those who acquired these estates as a reward for their betrayal of the country now demand compensation. The question of 'just' compensation does not arise so long as we have not examined the validity of the titles to these estates. Even if the word 'just' is not added here the clause as it stands, can be widely interpreted to include compensation to those who were never entitled to receive these estates, who have been receiving the profits of the estates for nearly 90 years and many of whom had not even to pay any land revenue to the Government. It would be improper to pay any compensation to these people. There is a 'saving grace' in this clause that the Government would consider the principles and basis on which compensation should be given.

It is my frank opinion that they should be given something as maintenance allowance for some years so that they may be able to live in, and adjust themselves to, the new and changed circumstances. I have no objection to this. I do not like, and nobody would like, that many of these people should be reduced to destitution and starvation. Therefore, if compensation can be supported it can be only on the basis that zamindars and capitalists should be given some amount for maintenance for a few

years so that they may keep themselves alive without difficulties in the new economic set-up. If we want that the existing order of zamindari and capitalism should be done away with, it is desirable that compensation should be given on the basis of maintenance for a few years. But what I fear and suspect is that the clause in question may be legally so interpreted that our economic progress may be retarded, and the Congress and other important public organisations may not freely advance in the direction they intend to. Therefore, I oppose the amendment moved by Raja Sahib and at the same time request my respected friends, who have framed this clause, to reconsider it. If it is accepted as it is, disastrous consequences may follow. Therefore I beg to put these two requests of mine before you and hope that the Hon'ble President and my other friends would accept them.]*

Shri V. C. Kesava Rao (Madras: General): Mr. President, Sir, I stand to support the clause, but I want to make some observations on that.

This clause provides compensation to the citizen whose property will be acquired for the use of the public. When the State acquires any person's property, it is only for the benefit of the public and not of any individual. If such acquiring deprives a citizen of his livelihood, it is necessary to pay compensation equivalent to the property one loses. And I think nobody disputes such a compensation.

We are framing a constitution for free India. We are asking the British to quit India though they came here 200 years ago. We know that the British acquired India by foul, means and not by hard labour. As the owners of this country, we have the right to ask them to leave the country, and in response to our demand, they are quitting India by June, 1948. In free India nobody wishes to be exploited by another. The big landlords and the Zamindars, did not get their land and property by hard labour. In this respect there is no difference between the Zamindar and the British imperialist. The British acquired Empires and the Zamindars acquired large fortunes-both by means of exploitation.

In Free India it is necessary to keep all the citizens on the same footing. This may not be possible for some time to come due to the system prevalent in this country. The common cry of the tenant is that, he whole produce collected by him is taken away by the landlord even though he requires some of it for the maintenance of his family. There is no other way for him except starvation. Is the State prepared to give him any livelihood or a compensation for the loss of his energy and for his labour ? But if a Zamindar who exploits the Door and amasses wealth is deprived of a portion of his property for the benefit of the public, the State thinks of giving compensation for the loss, though it is not a loss to him actually. The present day request of a tenant is the reduction of rent for his land. But this request will lead to the snatching away of the little land he has been cultivating and maintaining his family with. The Zamindar is prepared to keep the land waste and not to reduce the rent. Thus he allows his tenant to starve.

Lastly, I wish to point out that the Indian National Congress has been fighting for the abolition of the system of Zamindari and even in the last election, it gave an undertaking to the masses that the Zamindari system will be abolished as soon as the Congress comes into power. And accordingly, the Congress Provincial Governments have prepared their Bills for the abolition of it. Now, when we are asked to frame the Constitution for Free India, we want to compensate them in the manner in which the law fixes. The law will be always in their favour and they get more than what is

necessary.

In view of the above facts, I request the House to consider and amend the clause in such a way that only a nominal compensation may be payable for acquisition of the property of a citizen or a Corporation.

Rai Bahadur Syamanandan Sahaya (Bihar: General): Sir, I would like to make a few submissions in connection with the amendment which has been moved by my hon'ble friend, Raja Jagannath Bakhsh Singh, His amendment only suggests the addition of the word "just" before the word "compensation". I have been anxiously and carefully listening to the debate and I must say, I have heard nothing so far that there should be no justice exercised in the matter of the payment of compensation. No one has suggested, and I dare say, no one will suggest, that once we accede to the principle that acquisition of private property must be preceded by the payment of compensation, such compensation should be an unjust one. This, I submit, cannot be the contention of anybody in an august assembly like this. After all, the future of this country depends on the justice and fair-play that we exercise in dealing with the different problems confronting us here and in the tact and ability that we display in dealing with the affairs of international policy. I submit, Sir, whatever may be said about those who own lands at present, it cannot be denied that at one time they were the pioneers in building up the economic structure of this country a couple of centuries ago. They have earned and they have made money, but is that a ground for now taking away the property from them and paying them no compensation and even going to the extent of incorporating in the fundamental rights that they should get compensation and then arguing that it should be an unjust compensation. I do not think that any such proposition can be placed before this House, and even if it is placed, I do not think it will find acceptance in this House.

Well, Sir, what is the demand that the amendment puts forward ? It says the word "compensation" should be qualified. The Hon'ble Mover has referred to other constitutions in the world where the word "compensation" has been qualified by the word "just". This is not the only word which has been used. If we refer to the constitutional series on Fundamental Rights which was circulated to us by Sir B. N. Rau, it will be found that even in the German Constitution the words used are "due compensation". It is said there-

"Expropriation may be effected only for the benefit of the general community and upon the basis of law. It shall be accompanied by due compensation."

I therefore submit, Sir, that the use of the word "just" could only indicate, the real purpose behind what is embodied in the Report of the Fundamental Rights Sub-Committee, unless some members are prepared to argue that you might as well put the word "compensation" there but be prepared to face the fact that it might be unjust compensation in certain circumstances. I contend, Sir, that that cannot be a correct and a proper approach to the problem nor a valid argument.

Then, Sir, the whole argument of all those who have opposed the amendment has centred round the question of the acquisition of the Zamindari. These friends unfortunately have either ignored knowingly or failed to appreciate that this compensation clause does not cover Zamindari alone. It covers the whole field of movable and immovable property in the country,--in the Union or in the Units. It may be necessary in the larger interest of the country at a later stage even to acquire

"Kashtakari", i.e., tenants' lands. If you want to introduce cooperative farming or communal farming, it may be necessary to acquire even the tenants' lands. Would you deny them a just compensation? A proposition therefore like this which covers such a wide field—not merely Zamindari but even commercial interests and so many other interests, must, I submit, be placed beyond all doubts and suspicions. If I may submit, Sir, the right to private property and the protection of private property are the acceptance of the principle of right over might. You may choose to do away with it if you like, but we shall then all slowly drift towards jungle laws rather than good laws meant to keep society together. Some friends have also referred to the fact that certain zamindars got all their property for anti-national work during 1857 Revolution. The Hon'ble Mover of the amendment has questioned this remark. I will go a little further and submit that these hon'ble friends have probably incomplete knowledge of the Zamindari system and therefore it is that they have come to the conclusions that many or most of the Zamindars acquired their property as a gift after the 1857 Revolution. They forget that in certain parts of the country the Permanent Settlement Act was enacted as early as 1793 much before the 1857 Revolution. It cannot be said of them that they got their Zamindari because of certain anti-national work. There may have been some people, whose conduct may not have been such as one would like, but you are dealing with a community and not individuals. You are dealing with the whole land problem, and when you are doing that, it is essential that the whole question and the entire picture must be within your consideration. There are also a large number of people who have paid good money and purchased Zamindari—not a hundred years before as some think. Zamindaris have been bought and sold every day. People have bought Zamindari only this year by paying good money, earned money which they have accumulated as their life's savings. Who does not know that until only a few years ago our main investment out of our savings was only in lands? It will certainly be unfair not to give them compensation—and a compensation which is just and fair. My suggestion, Sir, to the Hon'ble the Mover of the main clause and to the Mover of the amendment will be that the word "compensation" itself means "just and fair, compensation". Compensation cannot be, in my opinion, unjust and unfair, and I submit that if the Hon'ble Mover of the main clause feels precisely as I do, that compensation means just and fair compensation, then my advice to the Hon'ble the Mover of the amendment would be that he need not press his amendment.

Raja Jagannath Bakhsh Singh: In view of the discussion that has taken place, Sir, I would not like to press my amendment. I beg leave to withdraw my amendment.

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

Mr. President: Now, the discussion will only be about the whole clause.

Sri Lakshminarayan Sahu (Orissa: General): Mr. President, Sir, while I approve of the clause as it stands now, I want to make certain observations especially with regard to Orissa Zamindaris. In Orissa the state of tenants is very bad and that is due to the people of Orissa receiving English education a little latter than the people of Bengal and elsewhere. What happened was the Zamindaris that were in Orissa were transferred to the hands of absentee landlords in Bengal and the result has been that two-thirds of North Orissa—as it is called now—i.e., the districts of Balasore, Cuttack, Puri and Sambalpur two-thirds of the land in these districts are in the hands of absentee landlords and the result has been extremely disastrous. When they bought these Zamindaris they did not purchase them for a fair price. In fact, the Government records say that there was broad day-light robbery and that is how these Zamindaris

were purchased, I, therefore do not see why we should give any compensation to such Zamindars who bought these lands by a fluke or acquired them by broad day-light robbery.

Secondly, I want to draw the attention of the House to another Zamindar, the Zamindar of Jeypore. Now Jeypore Zamindari constitutes the whole of the Koraput District, which is one of the six districts of Orissa. It is a great pity that the Zamindari gives 16,000 rupees per annum to the Government but enjoys an income of Rs. 16 lakhs per annum. This state of things is extremely bad and it must be cured. It is very difficult to run the administration in the presence of such Zamindars. I, therefore, say that while giving compensation--and I also say while giving just compensation--we should be very just to these absentee landlords of Bengal and also to such landlords as the landlord of Jeypore Zamindari in Orissa. These are the things that I wanted to say, in particular, about Orissa.

Another thing I want to say is that in future when trying to build up a democratic State, we cannot bear that such a state of things as the existence of these Zamindars, which is very galling, should be allowed to continue for some time more to come. The sooner the Zamindars are paid off the better. I have nothing more to say except to add that out of 100 zamindars at least 99 today have a very bad name and the duties that have been imposed on them are not performed by them. Take, for instance, one duty of the Zamindar. It is a part of their duty laid down by Government that they should look after the interests of the cultivators. They never look to the interests of the cultivators. On the other hand, the cultivators are rack-rented too much. There are so many illegal cesses which they take. If I were to narrate them one after another, it would make a very long list. In fact, there has been great agitation 'in one of the Zamindaris in Orissa--i.e., the estate of Kanika where 64 different kinds of illegal cesses, were taken. Now, in spite of agitation the same situation exists even today. The tenants are harassed in many ways. Therefore, when we are promised a democratic republic and that too very soon, I say we cannot bear the oppression of Zamindars. The sooner the Zamindars are paid off the better.

Mr. Satyanarayan Sinha (Bihar: General): I move: Sir, that the question be now put. The matter has been sufficiently discussed.

Mr. President: I have got some more names. Mr. Phool Singh.

Shri Phool Singh (United Provinces: General): * [Mr. President, Sir, several speeches have been made from the floor of the House, which go to show that some compensation is proposed to be given in lieu of the abolition of Zamindari. It is true, as Bishwambhar Dayal Tripathi has said, that many people acquired their zamindari by being traitors to the country. In reply to that a Raja Sahib has said that some of them have also helped in the freedom-struggle of the country. I submit that no reward has been given to men who helped the country. In that war, lands were forfeited. It would be an unusual case if one was granted an estate for fighting against the Government. Anyway, the question just now is one of compensation. One of the reasons that is constantly advanced in favour of granting compensation is the Government of India Act of 1935, and whenever any person raises the point that no compensation should be paid then he is told that it can only be done after the repeal of the Government of India Act of 1935. But today the very same clause is being passed by the Constituent Assembly, and I think, by putting it, not in the country's Constitution but in the list of its Fundamental Rights, the question is being closed once for all. Many people have

spoken on the question of zamindari, but there is a much bigger problem than zamindari. It is industry. Who does not know that during the last five or six years of the war, many Mill-owners have earned profits several times more than their invested capital? Take the Textile Industry in which, on the paid-up capital of nearly fifty crore rupees; some hundred crores of rupees have accrued as profits. It would not be very proper to compare this country with others. During this war capitalists of no other country have reaped as much profits as Indian capitalists. Therefore, what I want to say is that by passing the clause in its present form we would be running the risk of permanently obstructing the possibility of reform in this country for ever. I appeal to my elders and others, who guide the thinking of this House, to ponder again over this clause and to re-shape it in a way so as not to make it impossible for the coming generations to introduce reforms if they choose. Section 16 in its present form, as it has been placed before the House, if passed, will make nationalisation of industry very difficult, if not impossible. I do not want to take any more time of this House, but I request you to refer this clause back for further consideration.]*

Sri Rajkrushna Bose (Orissa: General): Sir, I move that the question be now put.

Mr. President: There is a motion that the question be now put. I think we have had enough discussion and I would like to take the sense of the House. The question is:

"That the question be now put."

The motion was adopted.

Mr. President: Sardar Patel will give his reply.

The Hon'ble Sardar Vallabhbhai Patel: Sir, the discussion on this question has gone on a wrong track. An amendment was moved by somebody, which has been subsequently withdrawn, but those who took part in the debate assumed that this clause was intended for the purpose of acquiring Zamindaris. That is, to say the least, not understanding the real meaning of the clause. Land will be required for many public purposes, not only and but so many other things may have to be acquired And the State will acquire them after paying compensation and not expropriate them. That is the real meaning of the clause. But the Zamindars or some of their representatives thought that their interests must be safeguarded by moving an amendment or by making a speech here. But they are not going to safeguard these interests in this way. They must recognise the times and move with the times. This clause here will not become the law tomorrow or the day after; it will take at least a year more, and before that, most of the Zamindaris will be liquidated. Even under the present Acts or laws in the different provinces legislation is being brought in to liquidate Zamindaris either by paying just compensation or adequate compensation or whatever the legislatures there think fit. Therefore, it is wrong to think that this clause is Intended really for them. It is not so. The process of acquisition is already there and the legislatures are already taking steps to liquidate the Zamindaris. Therefore, we must not or need not go into the question whether the Zamindars have in the past been patriotic or a nuisance or anything of that kind. It is all irrelevant and we need not go into the past.

There is no amendment to this clause and, therefore, I do not have to say anything

by way of answer. I move that the clause as moved by me be passed.

Mr. President: I put clause No. 19 to the House.

Clause 19 was adopted.

Mr. President: We now come to Clause 20.

CLAUSE 20

The Hon'ble Sardar Vallabhbhai Patel: I move clause No. 20.

"(1) No person shall be convicted of crime except for violation of a law in force at the time of the commission of that act charged as an offence, nor be subjected to a penalty greater than that applicable at the time of the commission of the offence.

(2) No person shall be tried for the same offence more than once nor be compelled in any criminal case to be a witness against himself."

I do not suppose there will be any amendment to this clause, and I move that this clause be accepted.

Mr. President: I have got notice of several amendments to this clause also. I will ask the movers if they want to move them. Mr. Kamath.

Mr. H. V. Kamath (C.P. & Berar: General): Sir, as regards amendment No. 95 subsequent scrutiny shows that my point comes under clause 9 and therefore there is no necessity to move my amendment. As regards my amendment No. 96, I would like to reserve my right to move it later.

Mr. President: Shri Rohini Kumar Chaudhury, No. 97.

Srijut Rohini Kumar Chaudhury (Assam: General): I may move my amendment now if you would permit. This relates to the important question of possession of fire-arms and abolition of death sentences. But if this is treated as a new clause, it would be better to move it with other new clauses.

Mr. President: It will be a new clause.

Srijut Rohini Kumar Chaudhury: Then I do not move.

Mr. President: That means there are no amendments to this clause. I put the clause to the House.

Clause 20 was adopted.

Mr. President: Then we come to clause 21.

CLAUSE 21

The Hon'ble Sardar Vallabhbhai Patel: Sir, I move clause 21:

"(1) Full faith and credit shall be given throughout the territories of the Union to the public acts, records and judicial proceedings of the Union and every Unit thereof and the manner in which and the conditions under which such acts, records and proceedings shall be proved and the effect thereof determined shall be prescribed by the law of the Union.

(2) Final civil judgments delivered in any Unit shall be executed throughout the Union subject to such conditions as may be imposed by the law of the Union."

I move this formally for consideration of the House.

Mr. President: I have got no notice of any amendments to this clause. So I shall put the clause.

Clause 21 was adopted.

Mr. President: Clause 22.

CLAUSE 22-RIGHT TO CONSTITUTIONAL REMEDIES

The Hon'ble Sardar Vallabhbhai Patel: Sir, I move clause 22:

"(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights guaranteed by this part is hereby guaranteed.

(2) Without prejudice to the powers that may be vested in this behalf in other courts. The Supreme Court shall have power to issue directions; in the nature of the writs of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari* appropriate to the right guaranteed in this part of the Constitution.

(3) The right to enforce these remedies shall not be suspended unless when. in cases of rebellion or invasion or other grave emergency, the public safety may require it."

There may be some amendments to this clause, Sir.

Mr. President: There are several amendments of which I have got notice. There is one from Sir B. L. Mitter.

Sir B. L. Mitter (Baroda): I am assured that this matter will be considered when the Judiciary Report comes up. In view of this assurance I do not move my amendment.

(Amendments Nos. 99 to 101 were not moved.)

Sri K. Santhanam (Madras: General): I move:

"That in sub-clause (3) of clause 22, after the word 'emergency', the following words be inserted:

"declared to be such by the Government of the Union or of the unit concerned'."

This is an obvious slip and I think it is acceptable to the mover. I do not want to say anything more. I move the amendment.

(Amendments Nos. 103 to 106 were not moved.)

Mr. President: There is only one amendment which has been moved.

Mr. K. M. Munshi (Bombay: General): There is one amendment of which I have given notice this morning. That is a purely verbal amendment, just re-arranging the wording. The amendment that I am moving is only to remove a little inelegance of language in sub-clause (1) of clause 22. The sub-clause says:

"The right to move the Supreme Court by appropriate proceedings for the enforcement of any of the rights guaranteed by this part is hereby guaranteed."

The word "guaranteed" appears twice, and it is felt that it is not an elegant phraseology. I therefore move the following amendment:

"In clause 22(1), for the words 'any of the rights guaranteed by this part is hereby guaranteed substitute the words 'any of the rights provided for in this put is hereby guaranteed.'"

Mr. President: The two amendments and the clause are open now for discussion.

Sri K. Santhanam: I am afraid that the clause, as has been framed, is very defective, and it is one of those clauses which require careful consideration and revision. I understand that this is one of those things which will be considered by the Committee which is dealing with the judiciary. I wish this clause had also been left to them. As it stands, it is liable to serious misinterpretation. For instance, sub-clause (1) says :

"The right to move the Supreme Court by appropriate proceedings for the enforcement of any of the rights guaranteed by this part is hereby guaranteed."

It might possibly imply that the Supreme Court is to be vested with exclusive original jurisdiction on all the matters governed by the fundamental rights, or it may mean that it is invested with concurrent original jurisdiction with another court. I would like to ask Dr. Ambedkar what it means--"the right to move the Supreme Court is guaranteed". I can come at any time to the Supreme Court and move the Court on any of the matters connected with this. It may be by way of original jurisdiction, it may be by way of appellate jurisdiction. The matter is not clear, and therefore it is one of those things which ought to be made clear. Then in paragraph (2) of the clause, we have:

"Without prejudice to the powers that may be vested in this behalf in other courts."

Which is the authority to vest it? Is it the Union legislature or the Unit' legislature ? I think in matters of interpretation of the Constitution or enforcement of fundamental rights the vesting of powers in the courts should be purely a Union matter and it ought not to be given to the units, because the units may particular defeat the exercise of these fundamental rights in two may different ways. For instance, if they all original jurisdiction shall be in the Supreme Court, the ordinary citizen will not be able to go up every time to the Supreme Court. Or if they vest it in the magistracy, then he will have to get redress only by way of appeal, which is always dilatory and inconvenient. Therefore, the vesting of jurisdiction is an important matter for the citizen. I think all original jurisdiction in the matter of enforcement of fundamental rights should be

vested only in the High Court of the Unit. It should not be given either to inferior courts, or to the Supreme Court except in matters concerning the Unit and the Union of inter-Unit matters. Therefore the High Courts in the Units should be the lynch-pin for the enforcement of these rights. I think this matter must have been made clear. I hope it will be made clear. As it stands, it is very defective and I reserve my right to ask for a review of this clause when the matter comes up again.

The Hon'ble Sardar Vallabhbhai Patel: This is a clause which provides a judicial remedy. If we provide for fundamental rights, it is necessary that we must provide also for a remedy. But it does not mean that this excludes or appropriates the jurisdiction of other courts or High Courts. It has nothing to do with that. When the whole judicial set-up will be considered, everything will be considered in proper order and in an appropriate manner, and, therefore, Mr. Santhanam's apprehensions are unnecessary. He reserves his right; everybody has reserved his own right, but reservations are unnecessary because the whole thing will have to be incorporated in the Constitution, and the final clause will have been considered several times before they are inserted in the Constitution. There is no reason to apprehend anything of that kind. I, therefore, move that the clause be accepted with the amendments which have been moved. I accept the two amendments.

Mr. President: The Mover is prepared to accept the two amendments--one moved by Mr. Santhanam and the other by Mr. Munshi.

The two amendments were separately put and adopted.

Clause 22, as amended, was adopted.

Mr. President: Clause 23.

CLAUSE 23

The Hon'ble Sardar Vallabhbhai Patel: I move clause 23:

"The Union Legislature may by law determine to what extent any of the rights guaranteed by this part shall be restricted or abrogated for the members of the armed forces or forces charged with the maintenance of public order so as to ensure fulfilment of their duties and the maintenance of discipline."

This is a clause on which there can be no controversy and I hope there will be no amendment. I move.

Clause 23 was adopted.

Mr. President: Clause 24.

CLAUSE 24

The Hon'ble Sardar Vallabhbhai Patel: Sir, I move clause 24:

"The Union Legislature shall make laws to give effect to those provisions of this part which require such legislation and to prescribe punishment for those acts which are declared to be offences in this part and are not already punishable."

This is a consequential clause and therefore there will be no amendments to it. I commend it for the acceptance of the House.

Clause 24 was adopted.

Mr. President: Now there are two clauses that had been referred to a committee of five. We may now take them up one by one. The new clause 3 may now be moved.

Mr. K. M. Munshi: I move that the following clause be substituted for the original clause:--

"Every person both in the Union and subject to its jurisdiction, every person either of whose parents was at the time of such person's birth, a citizen of the Union, and every person naturalised in the Union shall be a citizen of the Union.

Further provision regarding the acquisition and termination of Union citizenship may be made by the law of the Union."

The reasons have already been given fully in the Report of the Ad Hoc Committee. I have nothing to add to it.

Sri K. Santhanam; Sir, I move that the following be added at the end of the first paragraph of this clause:

"Every person born or naturalised in India before the commencement of the Union and subject to its jurisdiction shall be a citizen of the Union."

The necessity for this amendment is simply this: You are conferring citizenship on people who are to be born hereafter and on those who are born citizens on the date the Union comes into existence. That means that unless any of us are born within the territories of the Union, we shall not be citizens. I have consulted Sir Alladi Krishnaswami Ayyar. This clause only covers the cases of persons who are born citizens on the day the Union comes into existence. Under the Cabinet Mission Plans, Union territories were expected to be co-extensive with the territories within the frontiers of India. In that case my amendment may not be necessary. But there is the possibility that the Union territory will be much smaller than the present territories. Supposing there is a man in the Union born in Sind. According to this definition he will not be a Union citizen. He will become an alien. Do you want that consequence to happen? I want to say that, at the beginning of the Union, anybody who has been born in India and who is subject to the jurisdiction of the Union, shall be a Union citizen. After the Union has come into existence I have no objection to this clause. Therefore it is a fundamental point. I hope it will be fully considered and, either in this form or in some other form, provision will be made to see that those who are citizens of India at the time of the commencement of the Union are treated as citizens and not deprived of citizenship simply because they are born outside territories of the proposed Union.

The Hon'ble Sardar Vallabhbhai Patel: It is not necessary to consider such questions at this stage. We are at present providing for citizenship for people residing in the Union. Nobody can now say what will be the situation when the Constitution is finally drafted. Nobody can now say whether any part of India is going to be separated from the rest. When finality is reached in regard to these matters we can consider what should be the adjustment to be made between the parts if there are to be parts.

It is unnecessary to consider it at this stage. I hope the Mover will withdraw his amendment.

Sri M. Ananthasayanam Ayyangar (Madras: General): What about persons born in the Union ?

The Hon'ble Sardar Vallabhbhai Patel: You will be considered to have been born in the Union when the Constitution is passed.

The Hon'ble Sri C. Rajagopalachariar (Madras: General): The point to be covered is not a ridiculous or simple thing as has been imagined.

The Union will consist of defined areas. It may not consist of the whole of India, but of certain parts of India only. Let us admit that. Now I will cite a concrete case. Suppose I am born in Mysore. I am a man who was born in Mysore. Mysore does not join the Union. Let us take it like that. Then, I shall not have been born in the Union according to the clause by any process of legal construction which is to be provided for legally. Therefore it is that it is suggested that any person who is born in any part of India at the time of the commencement of the Union shall be deemed, when by long previous residence he becomes subject to the jurisdiction of the Union, to be a citizen.

This is a very substantial question. Probably under this category will come a considerable section of the present population who should automatically be taken to be citizens of the Union so soon as it is formed. It does not depend merely on a process of interpretation or explanation. It has to be definitely provided for. This has to be considered and included.

Mr. R. K. Sidhwa: Sir, as stated by Mr. Santhanam, if the position is left as it is, this clause will deprive many persons who are born in the Union, which is going to be defined later on,--I hope it will comprise all parts of India--of their rights of citizenship of the Union. What will be their position ? I am born in Sind. Supposing Sind is not going to be part of the Union, what will be my position ? Am I to lose my citizenship of the Union ? That is a point which has to be considered later on. As I said the other day, citizenship right is a fundamental right. Why should a law hereafter provide for that ? The right of citizenship has a first place in the Fundamental Rights. Foreigners who come to India for their own personal interest and gain can make an application for citizenship and can get it immediately, whereas those who are born in India will be under a disadvantage. For the foreigners a period of ten years must be mentioned. If the State is satisfied that after ten years they have their stake in India they can have the right of citizenship. This matter was discussed for a number of hours in this Chamber yesterday. We did not like to treat this matter lightly. We wanted to give this matter very serious consideration and you, Sir, were good enough to impress upon those who differed from us the need for giving this matter sufficient consideration and warned us against ignoring it in view of the fact that every person should have the right to become a citizen of this country. After all, we want to be in the Union. We cannot forget that we are Indians, that we were born here. If India is to be divided into parts, what kind of rules are we going to make for citizenship ? I consider, Sir, that those who were born here before the Union should be given full guarantee that they are citizens of the Union and that they would not be deprived of their citizenship.

Then, about naturalisation. Any man who comes here from a foreign country for his personal gain, for his personal benefit, has only to say, "I want to be naturalised" to

become a citizen of the Union. I am born in India but I am to be deprived of my citizenship. A foreigner by simply giving a declaration that he wants to become naturalised, gets all the rights of citizenship.

With due deference to the framers of this clause, I do not think this matter has been given due consideration although it has been stated that:

"Further provision regarding the acquisition and termination of Union citizenship may be made by the law of the Union."

I do not want any law to provide for my citizenship. Therefore, this matter should be discussed here, Sir.

Dewan Bahadur Sir Alladi Krishnaswami Ayyar: (Madras: General): I think, Sir, there is some force in Mr. Santhanam's argument. We did not, it must be admitted, consider in the Committee this particular question now before the House, but it may not be wise to put in an amendment on the spur of the moment. If a person was a resident of India, and makes the Union his home after the Union comes into existence, in such a case he might get citizenship. The mere accident that he was born in India or British India but not in the Union cannot give him the right of citizenship. We might have to add a further condition to this clause saying that they must make the Union of India their permanent residence.

So far as the term "born in the Union" is concerned, I do not think there need be any difficulty. Union: there is a geographical concept. It is not a political concept. No man can be born in a political concept. "Born in the Union" only means "born in the territories comprising the Union".

There is certainly some force in the objection raised by Mr. Santhanam. We do not want suddenly to disenfranchise any persons, possibly very distinguished people born in a Native State but today permanent residents of British India. Therefore, so far as that particular class is concerned, we might consider an appropriate formula. We may not be in a position to give the right of citizenship to every person born in any part of India. Suppose some of the States keep out of the Union, we may have to consider whether we should give the rights of citizenship to the people of those States. Therefore, we will carefully consider this aspect and put in an appropriate clause. In the Committee--I am a member of the Committee and Dr. Ambedkar is a member--we did not consider this particular complication that might arise. I think we should not push through an amendment on the spur of the moment.

But so far as the general principle is concerned, there cannot be any exception. "Every person born in the Union and subject to the jurisdiction; every person either of whose parents was, at the time of such person's birth, a citizen of the Union, and every person naturalised in the Union", so far as that part is concerned, there can be no exception. That was considered by the Committee in all its aspects. This particular class of people which Mr. Santhanam mentioned will have to be separately dealt with and provided for. On the understanding that this class of people will be provided for, this clause should be passed, or the whole clause might stand over, I have no objection. But so far as the main principle is concerned, we are all agreed and there is, absolutely no difference of opinion. It was discussed threadbare by the Committee which was appointed by this House and we unanimously came to the conclusion that

this should be adopted.

Shri M. Ananthasayanam Ayyangar: I do not agree with Sir Alladi. He says that Union means Union territory. The clause says, "subject to the jurisdiction thereof". Is it subject to the jurisdiction of the territory or the Government of the territory? Mere territory is not enough. I therefore urge upon the House to remit this clause for the reconsideration of the Expert Committee.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: We may have remittance or re-remittance but I do not think that that Committee can throw any additional light on this. If there is any other class to be provided for, we will provide for them. I am merely answering the suggestion of remittal and all that. I was stating that it was not fair to that Committee to remit. This is a political question and not a legal question. We must come to a conclusion on that point. We were only anxious to get the help of that Committee for the purpose of determining the question whether 'birth' shall be the foundation of a nationality or not, and that Committee has given its opinion. We may have any number of committals and re-committals, so far as the Committee of this House is concerned. The Committee which considered this consisted of Members of this House and also persons who are not members of this House. Under these circumstances, I would suggest that we have had all the help from people who are not members of this House and from the gentleman who was the President of that Committee. I do not think it will be fair to that Committee to remit it as if they had not considered any particular aspect of the question. It is a new question that has cropped up before the Committee and let us deal with it squarely. And before we next meet, there will be no difficulty in providing so far as that particular class of cases is concerned. This general principle may be passed and the other clause may be brought in later on or the whole thing may stand over. I am not wedded to either one theory or another, but let it be clearly understood that so far as the main principle is concerned, we accept the recommendation of the Committee presided over by a very distinguished lawyer.

The Hon'ble Sri C. Rajagopalachariar: I am sorry Sir, the discussion has proceeded on lines which create a certain amount of confusion. I wish that attention should be bestowed on one important and entirely non-controversial matter, namely, that there are numerous persons in India today, who will be within the jurisdiction of the Union, however restricted it may be, however small it may be, who were born in other parts of India and who are now resident within the territories which are going to be in the Union. The formula as it stands today will exclude those large classes of people, not intentionally, but unintentionally. Therefore, the formula has to be corrected. It has to be corrected so as to give automatic citizenship to those large numbers of people who are born in various parts of India, as we today understand it, and who will be old and permanent residents of the areas which will be comprised within the Union. That exclusion would be wholly unintended and wrong. Therefore, the formula has to be revised. I myself believe that it can be revised, if Sir Alladi and Dr. Ambedkar sit at it, in the course of 15 minutes; but if it is considered difficult, the whole thing should be remitted, because if we pass a clause like this solemnly in the Constituent Assembly, it cannot be added to afterwards without much ceremonial. I would suggest that it be deferred. Sir Alladi and Dr. Ambedkar may meet today, discuss and finish it in a few minutes. If they do not think so, let them take their own time, but it cannot be simply ignored on the ground that it is a small matter. It is too large a matter to be put aside.

Mr. K. M. Munshi: Nobody suggests for a moment that this is not an important matter. The Committee did not consider it, but when the original draft was placed this difficulty was present in my mind. But this, as Sir Alladi very rightly said, is not a question of fundamental rights only. It is a question which will have to be decided in future in the setting of the political situation at the time when we finally draft the Constitution. Of course, it is very easy to move an amendment, but we do not know today what is going to be the position of the Union with regard to its territory, whether it is going to be the whole of India, or part of it, or whether some portions are going to be hostile. The second question that has to be considered is whether people born in the Union, who are residing in other parts of, India, will have rights as regards citizenship in those territories. An instance was given of Mysore. I will restrict myself to that case. Suppose Mysore stays out of the Union and makes a law like this, that any Indian born in any other part of India, though residing in Mysore for a whole life-time shall not be a citizen. This House will be in a position to consider those intricate problems not merely as a matter of fundamental right but as a question dependent upon the political situation at the time we pass it finally. This fundamental right, as drawn up, is the minimum right, the basic right. The fluctuating situation today is such that you cannot possibly draft any amendment to this clause. Let us, therefore, see the political situation between now and the day when the situation is going to be finally considered. At that time it will be possible to produce a proper formula which will find a Place either in the Fundamental Rights or in some other convenient place. It has been said that several fundamental rights are going to be considered hereafter. It has also been said that this is a preliminary draft and any situation arising hereafter will be considered. I, therefore, submit that we should take the clause as it is, and with regard to the amendment of Mr. Santhanam, it should be referred to the Advisory Committee together with the other amendments which are going to be referred, so that a proper aspect of the question may be brought before the House again.

Dr. B. R. Ambedkar (Bombay: General): Mr. President, Sir, I think there can be no doubt that the point raised by Mr. Santhanam is a point of great importance and we have to take this matter seriously. The difficulty that has arisen will be seen easily if one reads the very first sentence of the clause as drafted by the Committee. The draft says, 'every person born in the Union'. Obviously that has reference to future, those who will be born in the Union after the Union is formed. The question is this. What is going to be the position of people who are born in India, but who are born before the Union has come into being? In my Judgment, in order to cover that case, we shall have to introduce another clause. I am not suggesting an amendment, I am putting forth an Idea. The new clause shall have to be something like this :

"All persons born in India, as defined in the General Clauses Act and who are residing in the Union and subject to the jurisdiction of the Union shall be citizens of the Union."

I think that a clause somewhat on these lines is necessary and it will cover the case of people who are born in India, who will be the subjects of the Union, when the Union comes into being. Without this clause, large numbers of people will be denationalised. They will have no nationality at all. I, therefore, suggest that it may be as well to send the whole clause back for further consideration.

Mr. President: A suggestion has been made that the whole clause be held over for further consideration.

Mr. R. K. Sidhwa: This is not a matter for lawyers only. This question has a bearing on every ordinary person.

Mr. President: The Advisory Committee will be free to consider it, and if it so feels, it can put forward any suggestions at the next sitting.

Do I take it that the House agrees that this clause be held over for further consideration ?

Many Hon'ble Members: Yes.

Mr. President: It is held over. Now we take up clause 11.

CLAUSE 11

Mr. R. M. Munshi: The clause which has emanated from the Committee to which it was referred runs in thus.

"Traffic in human beings, and *begar* and other similar forms of forced labour are prohibited and any contravention of this prohibition shall be an offence."

The Explanation which was dropped is in the view of the Committee necessary in order that the wording "forced labour" may not have a controversial interpretation. Sir, there was a conflict of opinion in several sections of the House as regards the Explanation and this Report was placed before the House only this morning. I, therefore, submit that it will be fair that this clause also should stand over till we meet again, because, I believe, certain Members would like to move amendments. I, therefore, feel it will not be proper that this clause should be considered today. It should stand over.

Mr. President: Instead of moving it, do you suggest that it should be held over ?

Mr. K. M. Munshi: Yes.

Mr. President: Is it the wish of the House that this clause also should be held over ?

Many Hon'ble Members: Yes.

Mr. President: It stands over.

We had a number of new propositions which were sought to be put forward in the form of amendments by certain Members, and it was decided by the House that they should be taken up after the clauses were disposed of. We have got a large number of such clauses which have not been considered. I do not know in what form the House would like to take up these.

Seth Govind Das (C.P. and Berar: General): I move, Sir, that all these new clauses be referred to the Advisory Committee so that the Advisory Committee may first consider them and then they may be brought before this House.

Mr. President: Seth Govind Das has made a suggestion that these clauses be referred to the Advisory Committee for consideration and that they may be brought up here with the Report of the Advisory Committee. May I take it that it is the sense of the House that all these clauses be referred to the Advisory Committee ?

Hon'ble Members: Yes.

Mr. President: All these clauses are referred to the Advisory Committee.

Mr. B. K. Sidhwa: Sir, paragraph 9 of the Report of the Chairman of the Advisory Committee states:

"The Fundamental Rights Sub-Committee and the Minorities Sub-Committee were agreed that the following should be included in the list of Fundamental Rights :--

"every citizen not below 21 years' of age shall have the right to vote at any election....."

"While agreeing in principle with this clause, we recommend that instead of being included in the list of fundamental rights it should find a place in some other part of the Constitution."

The opinion of the House has to be taken whether it is in favour of putting this clause in the Fundamental Rights or whether it should form part of the Constitution. That question has to be decided and discussed here. Otherwise, what would be the effect of paragraph 9 of the Report of the Chairman of the Advisory Committee which has been submitted to you ? Does it automatically go into the Constitution ? The Chairman of the Advisory Committee by this para. desires to know the view of the House.

Mr. President: What is your suggestion? Do you move any proposition?

Mr. R. K. Sidhwa: I have no objection to this clause forming part of the Constitution.

Mr. President: What is your suggestion, whether this should form or should not form part of the Constitution ?

Mr. R. K. Sidhwa: It should form part of the Constitution.

The Hon'ble Sardar Vallabhbhai Patel: We have stated in the Report while agreeing in principle with this clause, we recommend that instead of being included in the list of fundamental rights, it should find a place In some other part of the Constitution."

Mr. President: This is the Report of the Committee and the House has to express itself on this part of the Report. That is why I asked Mr. Sidhwa whether this should be accepted and it should find a place in some other part of the Constitution.

Mr. R. H. Sidhwa: I said it should form part of the Constitution.

Mr. President: Mr. Sidhwa's proposition is that that paragraph should be adopted.

Does any one wish to speak on this?

(None).

I put it to the House that paragraph 9 of the Report be adopted.

Paragraph 9 of the Report was adopted.

CLAUSE 2

Sri Biswanath Das (Orissa: General): I propose to invite the serious attention of the House to the implications of clause 2. It has been laid down:

"All existing laws, notifications, regulations, customs or usages in force within the territories of the Union inconsistent with the rights guaranteed under this part of the Constitution shall stand abrogated."

In this connection, I wish to refer to paragraph 7 of the Report wherein they have stated that they had not sufficient time to examine in detail the effect of this clause on the mass of existing legislation.

Mr. President: We have already considered clause 2 of the Fundamental Rights.

Sri Biswanath Das: I am not proposing to revise the clause. I am only referring to something which arises out of the acceptance of clause 2. I am going to suggest what further action is necessary as a result of the acceptance of clause 2. A thorough examination of its implications is necessary in the sense that we have got local laws and Indian laws and the extent to which these laws and regulations, etc., are going to be abrogated as a result of the acceptance of these fundamental rights, will have to be examined. This could be examined either by the Government of India and the Provincial Governments or by a committee of this House. It is rather unfortunate that we members; of the Agenda Committee could not go into this question because it was not before us. In these circumstances, I beg to suggest that it is necessary for us to take note of this question and to examine the implications in full before we again assemble in this House. Unless we fully examine the extent of abrogations, it will not be possible for this House to realise the full implications and to make any interim arrangements in the Constitution. I am only referring to certain circumstances flowing from the acceptance of clause 2 and offering certain suggestions.

Mr. President: I take it you are referring to the last sentence of paragraph 7 of the Report which says:

"We recommend that such an examination be undertaken before this clause is finally inserted in the Constitution."

It has been accepted. We are going to have an examination as suggested.

Mr. H. V. Kamath: My suggestion is that it should be undertaken immediately so that we may have a report as to the implications before us.

Mr. President: When the House has accepted it, that means that action will be

taken.

Mr. H. V. Kamath: How will these clauses go to the Committee?

Mr. President. They will go as they are. The Secretariat will refer them to the Advisory Committee.

PRESIDENT'S REMARKS REGARDING THE RESOLUTIONS RELATING TO LINGUISTIC AND CULTURAL PROVINCES AND THE LANGUAGE OF THE CONSTITUTION TO BE FRAMED.

Mr. President: There are one or two matters to which I should like to make a reference. Hon'ble Members will recollect that notice was given of Resolutions regarding the formation of linguistic and cultural provinces by several Members in the last Session of the Assembly and those Resolutions were held over and it was expected that they would be taken up in this Session. But as we have already under Resolution of this House decided to constitute two Committees, one for drawing up the principles of the Union Constitution and another for drawing up a model Constitution for the provinces, I announced the other day that those Committees would take into consideration those Resolutions also. I take it that that would be done and nothing further need be done now regarding those Resolutions.

Then there is one other matter about which I have been feeling bit worried and I wish to share that worry with the House--not that expect any answer to it just now but I would like the Members to take that into consideration. All our proceedings are being conducted in English because there are many Members who are not acquainted with the national language and so the drafts also are being prepared in the English language. In the drafts there are many expressions used which may be called terms of art, that is to say, technical language, taken from some constitution or other. Some of these constitutions have been subjected to legal interpretations, and by using that language we are in a way attracting the operation of those interpretations also to our constitution. In future--I do not say immediately, but in the future--a time may come when we shall probably cease to depend upon English as our language, and if the Constitution is passed today in the English language, then that remains the original constitution and any question of interpretation will have to be with reference to the language used in that constitution as it is passed today. The question arises whether we shall, continue for ever in future to interpret our Constitution in English language and whether we shall expect our judges in future always to be acquainted with English language so that they might interpret our Constitution in the future. If the Constitution is passed in the English language, I suppose that will be the natural consequence. It is difficult at the present moment to make a suggestion which will resolve this difficulty. I was wondering whether we could have a translation made of this Constitution as it is drafted as soon as it is possible, and ultimately adopt that as our original Constitution. (*Cheers*). In case of any ambiguity or any difficulty arising as to interpretation, the English copy will also be available for reference, but I would personally like that the original should be in our main language and not in English language, (*Loud Cheers*), so that our future judges may have to depend upon our own language and not on a foreign language. (*Cheers*).

As I said, I do not expect an answer to a question like this, but I would like Members to take this matter into consideration, and in the meantime, if I have your permission, I shall try to get the Constitution as it is drafted translated into our language as soon as possible. I realize the difficulty of putting it in a form in which it

will have the same interpretation, because appropriate terms of art will not be found in our language and we have naturally to add clauses which will explain those expressions of art. But if I have your permission, we might make an attempt. I am afraid our present staff the staff we have got for translating these things, is not adequate for this purpose and we shall have to take the help of persons who are really persons of a very high order and who can do that. I do not know if it will be possible for me to do it, but if I have your leave, I might attempt it. I thought I might bring this to your notice for your consideration because, if this Constitution is going to be a Constitution which is expected to last, at any rate, for some time, then we cannot expect to have it in a language which is not our language. We must provide for a time when we shall have to depend on our own language, and that, at a not very distant date. Therefore I have brought this to the notice of the House so that Members might also take this into consideration and offer their suggestions, if not today, at least at a later stage before we have actually finalized our Constitution.

(Some Members at this stage rose to speak.)

Mr. President: I did not expect any discussion on this. I simply expressed what I was feeling and I expect this thing would be taken into consideration at a later stage.

There is one other matter.

Shri Vishwambhar Dayal Tripathi (United Provinces: General): *[In this connection I have to...]*

The Hon'ble Mr. B. G. Kher (Bombay: General): On a point of order, Sir. This is discussing.

Mr. President: Anyway, let him finish.

Shri Vishwambhar Dayal Tripathi: *[I do not wish to say any thing in this connection. But rules provide that all the proceedings of the Assembly e.g., agenda, etc., will be supplied to Members in Hindustani. True, there are difficulties. Nevertheless it is very important. I would request that some arrangements should positively be made for this in future.]*

Mr. President: *[Yes. I tell you why this could not be done. Our Hindustani Staff was not yet complete but arrangements are being made and I think it should be possible to arrange for it at an early date.]*

Shri Balkrishna Sharma (United Provinces: General): Without in any way going against the orders which have already been given in regard to the subject, may I just know whether the arrangement that is going to be made for the translation of the Constitution in our language will be in Hindi, Urdu or will be in a language which will be a conglomeration of both ?

Mr. President: It will be in a language which will be intelligible. (*Laughter*).

Mr. President: Then, one other matter which I think we have to decide, i.e., the next session of the Assembly. At the last session the House passed a Resolution fixing the month of April for this meeting. I would suggest that instead of fixing any date or

even a month the House should leave it to me to fix the time of the next meeting.

Hon'ble Members: Yes.

Mr. President: I can give this undertaking that I shall do it as soon as I feel that we have got material ready for the meeting.

Sri K. Santhanam: I suggest, Sir, that a formal motion to this effect may be moved.

Mr. President: That is what I am also suggesting. A formal motion may be moved.

Shri Vishwambhar Dayal Tripathi: *[In this connection, I would like to add....]*

Mr. President: *[Let this be over.]*

Mr. Satyanarayan Sinha: Mr. President, Sir, I move that this Constituent Assembly do adjourn till such date as the President may fix.

Mr. President: The motion is that the Constituent Assembly do adjourn till such date as the President may fix. Do I take it that the House accepts the proposition ?

The motion was adopted.

Mr. R. K. Sidhwa: I wish to make one request. That is, now that the date has been left to you, Sir, will you kindly see that the agenda is supplied to us in sufficient time at our residence, so that we may study it?

Mr. President: I have told you at the very beginning that I will fix the time when I have got the material ready for discussion.

(To Mr. Tripathi), You wanted to say something.

Shri Vishwambhar Dayal Tripathi: *[I have only to repeat what Mr. Sidhwa has said before you and nothing else.]*

Mr. President: I think we have now finished our work. So the House now stands adjourned till such time as I may fix.

The Constituent Assembly then adjourned till such time as the President might fix.

[English translation of Hindustani speech.]