

[Shrimati G. Durgabai]

Sir, with these few words I have great pleasure in supporting this article. I commend it to acceptance of the House.

Rev. Jerome D'Souza (Madras : General): Mr. Vice-President, I too should like to join my distinguished colleague, Shrimati Durgabai, in expressing gratification at the passing of this very important article which may justly be considered to be of the gravest character, and of the most far-reaching importance. I am sure, Sir, that Members of this House will recall to their minds that today is exactly the second anniversary of the opening of this great Assembly, and surely it is not without some significance that, nearing the end of our discussion on the Fundamental rights, this coping-stone of the structure of those rights should be placed today.

I should like to draw the attention of the House, Sir, to the implications of this article, implications which possibly are not obvious at the first reading. This House, and through this House the Legislatures that have to rule this country in future, by a laudable and significant act of self-denial or self-abnegation, places under the power of a Supreme Judicature the enforcement of certain laws and certain principles, and remove them from the purview and the control of the Parliaments which will be elected in future years. They wish to put these rights beyond the possibility of attack or change which may be brought about by the passions and vicissitudes of party politics, by placing them under the jurisdiction of judges appointed in the manner provided for later on in this Constitution. Sir, it is because we all believe,—and that is the implication of this chapter of fundamental Rights,—that man has certain rights that are inalienable, that cannot be questioned by any humanly constituted legislative authority, that these Fundamental Rights are framed in this manner and a sanction and a protection given to them by this provision for appeal to the Supreme Court.

As I said, Sir, the implication of this is that an individual must be protected even against the collective action of people who may not fully appreciate his needs, his rights, his claims. And the sacredness of the individual personality, the claims of his conscience, are, I venture to say, based upon a philosophy, an outlook on life which are essentially spiritual. Sir, if all our people and their outlook were entirely materialistic, if right and wrong were to be judged by a majority vote, then there is no significance in fundamental rights and the placing of them under the protection of the High Court. It is because we believe that the fullest and the most integral definition of democracy includes and is based upon this sacredness of the individual, of his personality and the claims of his conscience, that we have framed these rights.

I say, Sir, further that in the last analysis we have to make an appeal to a moral law and through the moral law to a Supreme Being, if the highest and the fullest authority is to be given and the most stable sanction to be secured for these fundamental rights. Sir, Mahatma Gandhi, in one of his unforgettable phrases, referring to the desire to have a secular Constitution and to avoid the name of the Supreme Being in it, cried out, “You may keep out the Name, but you will not keep out the Thing from that Constitution”. And, Sir, I believe that these fundamental rights and their implications are really tant amount to a confession that beyond human agencies and human legislatures there is a Power which has to be submitted to, and there are rights which have to be respected.

Sir, we have introduced in these Fundamental Rights certain provisions—necessary perhaps in present conditions—that in Government institutions instruction in different religions may not be given, in order that the calm atmosphere of our institutions may not be disturbed by controversies. But I hope and pray that those provisos, prudent though they are, may not exclude the teaching of ethical principles based upon truths acceptable to all, upon the existence

of a Supreme Being and the rights of the individual conscience formed under His guidance. I am sure that religious controversies could be avoided on the basis of those universally accepted truths. It is certain that our national culture and civilization are based upon and permeated by this belief and this conviction; otherwise there would be no meaning in these fundamental rights. A speaker who preceded me asked: "Why is it that provision has been made to change this Constitution? Why should not these sacred rights be placed beyond the possibility of abrogation?" I would answer him: "If the convictions and the faith of our people go away, there is no use in trying to protect these rights by sanctions. The rights and the sanctions would be illusory. But if faith remains, no one will want to touch them."

By this article we give to our Supreme Judicature a power, a status and a dignity which will call from them the highest qualities of integrity and uprightness. The full meaning of this article should be borne in mind when we come to that Part of the Constitution beginning with article 103, when we shall have to scrutinise the steps by which an upright and absolutely fair judiciary will be established in this land. When we consider that Part, let us recall these Rights and make sure that all these various provisions will be enforced in a just and fearless manner.

I now pass on to the next consideration and I beg the indulgence of the House to permit me to say a few words about the manner in which the Minority rights and Fundamental Rights are inextricably mingled together in this Part of the Constitution. Sir, I believe this is a right and necessary mingling. After all, what the minorities ask is that the right of the individual may be safeguarded in an inescapable manner. If that is done, "minority rights" as such would not and need not exist. It is because in a democratic system of Government where a majority vote may do injustice to a minority, that certain specific references to the minorities have to be made. But ultimately, in the last analysis, if the individual's right to his religious convictions, to his cultural preferences, to the rights which accrue to him as a man endowed with free will and reason and charged with the obligation of personal salvation, if these are safeguarded, "minority rights" as such need not find expression. That is why, mingled with these general rights, references are made to minorities. I should like to say on behalf of my own community which I have the honour to represent here—I am sure I am also voicing the feelings of many others—that if these rights are really safeguarded in the manner in which they are sought to be safeguarded in this Constitution, if the Fundamental Rights including as they do minority rights, are assured in an absolutely indubitable manner, no kind of political safeguards will be necessary for us and we shall not demand them, as long as, I say, this part of the Constitution is enforced without any kind of "encroachment" or misinterpretation.

Sir, the desire of our country and of our leaders is to work for the political homogeneity of this vast country. Unfortunately that political homogeneity was threatened, and to some extent destroyed by the need to give political safeguards to minorities. But remember those safeguards were asked for or were deemed necessary for the sake of religious and cultural and individual rights and not merely for the sake of political privileges or any emoluments which might come from them. And, as long as these, cultural and personal rights are safeguarded, we do not need any other political safeguard. Therefore, Sir, I hope and beg that we may ever remember that in the measure that these fundamental rights, protected in the last analysis by the Supreme Court, are enforced and carried out integrally and honourably, to the last implications of them, the desire for political safeguards and to that degree of political separatism and partial autonomy which it implies will not arise in this country. We will do nothing to raise that slogan once again. As far as the small Christian community is concerned