

made by Parliament, and the brunt of this difficulty will be felt even by several members of this House who have been recently married including even Honourable Ministers who may have children born immediately after 26th January 1950 and who will find themselves in the very unhappy and uncomfortable position of being parents of children who are not citizens of this country. The anomaly of the position becomes more funny when we find this in article 5-B the relevant portion runs thus :

“He shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefore to such diplomatic or consular representative, whether before or after the commencement of this Constitution.”

I particularly wish to draw attention to the word ‘after’ which means that whereas article 5-A confines itself to defining citizenship only at the date of commencement of this Constitution, according to 5-B, in respect of persons who are not born or residing here but who have been born in a foreign country or residing there, even on a date subsequent to commencement of this Constitution, if an application for registration is made to our embassy there, they shall be registered as citizens. So obviously persons born in this country are going to be placed at a disadvantage as compared to persons born in a foreign country—of course of Indian parents. It may be said that such persons would not necessarily become automatically citizens because they will have to be registered and it may be said that certain rules may be framed by our Government laying down the conditions under which only they could be registered, or that a subsequent law may be made a comprehensive law—on the subject which would take note of all these contingencies. According to article 5-B, a citizen of Pakistan whom we are trying to eliminate from our definition of citizenship, if he goes over to a foreign country and presents an application to our embassy, he can be registered as a citizen of India. In this article 5-B the condition that he should not have acquired the right of citizenship of any foreign State which we find in article 5-A does not find place. It may be said that we shall not allow such an anomalous position to stand and we shall make necessary legislation on the subject. True, but then what I find is that this very safeguard which there was originally in the original article 5-B incorporated as follows : “and subject to the provision of any law made by Parliament” is proposed to be deleted. Originally it stood like this : “Notwithstanding anything contained in articles 5 and 5-A of this Constitution and subject to the provisions of any law made by Parliament etc.” If the saving clause be there, of course any defect that may have appeared to us in the provisions of 5-B could be removed. Now Mr. T. T. Krishnamachari yesterday moved an amendment which has been very generously and gladly accepted even before it was moved, by Dr. Ambedkar. I do not see with what object Mr. Krishnamachari suggests that these words should be deleted. If his contention be that this is redundant because under article 6 Parliament shall have the right to frame any new law laying down what qualifications there shall be for the right of acquisition of citizenship. I submit.....

Shri T. T. Krishnamachari : (Madras: General): May I point out that if he reads article 6 as amended, he will find the explanation for my amendment.

Shri Jaspal Roy Kapoor : I did rightly anticipate the argument that would be placed before us by Mr. Krishnamachari in reply to my objection, but if article 6 as amended covers such case and makes these words redundant may I ask where is the necessity for these very words being inserted in article 5-C ? Article 5-C says “Every person who is a citizen of India under any of the foregoing Provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen”. We have these

[Shri Jaspat Roy Kapoor]

words in article 5C. But in article 5B these words, which were originally there, are now proposed to be dropped. If they are redundant and are covered by the newly drafted article 6, they must go from both these articles. If they are necessary in article 5C, they are still more necessary in article 5B.

I submit that I consider that it is necessary to retain these words in article 5B. I do not think it will be open to Parliament to enact any law by virtue of the powers conferred on it by article 6, which is in contravention of the provisions of article 5B. 5B, is a definite article laying down the qualifications for citizenship in respect of the persons mentioned therein. A definite article conferring the right of citizenship under the Constitution cannot, I think, be tampered with by any subsequent law made by Parliament. Be that as it may, to avoid the possibility of any ambiguity it is necessary either to have these words both in articles 5B and 5C or not to have them in any one of them. Having them only in article 5C may lead to the presumption that 5C only is subject to the provisions of any subsequent law on the subject and article 5B is not subject to any such subsequent law.

My submission with regard to the point that I had raised originally is that we should amend article 5 in such a manner as to cover the cases also of those persons who are newly born of Indian parents on Indian soil after the 26th January 1950. I see absolutely no difficulty in my suggestion being immediately accepted. Even if it is accepted article 5 would not become an absolutely permanent definition of citizenship : that can be amended, varied or altered under article 6, as has just been pointed out by Mr. T. T. Krishnamachari. I only want that the lacuna that is there must be filled in. Let it not be said that the period immediately following the auspicious day of 26th January 1950 was so inauspicious that persons born in this country after that date and before the enactment of a new law was so unlucky that children born therein were not citizens of this land by birth. I therefore, suggest very seriously and respectfully that article 5 be amended in the way I have suggested. This can be done merely by incorporating the two words “and thereafter” after the words “At the date of commencement of this Constitution”.

The other point that I would like to refer to is regarding article 5A. This article relates to those persons who have migrated to India after the partition. They are to be “deemed to be citizens of India” I particularly object to the retention in this article of the words “deemed to be.” The article reads like this :

“Notwithstanding anything contained in article 5 of this Constitution, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the date of commencement of this Constitution.”

I do not know with what particular object these words “deemed to be” have been incorporated herein.

This article relates to the acquisition of the right of citizenship by persons who have migrated into India. I do not see any reason why they should not be considered after having migrated into India as citizens of India as of right, and why it should be suggested that we are conferring on them this right by way of grace, as it were. It seems to me that it is likely to be felt very seriously and bitterly by those of our brethren who took all the trouble and who underwent all that misery and agony by migrating from Pakistan to this dear and sacred land of theirs. All the while that they were on their way to this land, they were thinking of this beloved country of theirs, pining and praying to reach our borders, and immediately on reaching those borders, with a great sense of relief they cried out “Jai Hind”, a cry which touched every one of us. They had such tremendous loyalty and affection for this country. They were so, eager to rush to this country, to offer their loyalty to it, and yet we say that we are

conferring on them this right of citizenship more by way of grace than by way of right. I do not see any-reason for it, Sir. On the contrary, I see very great reason that these words must be deleted and satisfaction given to our refugee brethren. In matters like this, it is always best to act gracefully and to give a psychological satisfaction to our refugee brethren. I Would, therefore, respectfully and earnestly suggest that these words might be deleted, for nothing is to be lost by the deletion of these words, and much is to be gained.

Similarly, Sir, in article 5-B these words ‘deemed to be’ may be deleted, though it is more necessary to delete these words in article 5-A than in article 5-B.

Then I turn to amendment No. 124 which I have already read out. It says that in the proposed new article 5A, after the word “who” a comma and, the words ‘on account of civil disturbances or the fear of such disturbances,’ be inserted. So after the incorporation of these words, article 5A would read thus :

“Notwithstanding anything contained in article 5 of this Constitution, a person who, on account of civil disturbances or fear of such disturbances, has migrated to the territory of India.....”

Now, Sir, the object of this amendment of mine is to bring it in line with certain other legislation already in force : I mean the legislation relating to the evacuee property. We have, Sir, not only at the Centre but also in several of the provinces in the country—almost every other province, excepting West Bengal, Assam and probably Madras too—an Evacuee Property Ordinance in force. According to that Ordinance, an evacuee has been defined as one who has left a territory because of civil disturbances or because of fear of such disturbances. It appears to me very rational and reasonable, Sir, that in a provision like article 5A, we must say what are the particular reasons which are guiding us for making a provision like this. We must make it known definitely here that it was not our intention to confer the right of citizenship on anybody who wanted to migrate to this country; but we want to confer this right on such persons because of certain reasons, the particular reason being that such persons found it difficult to stay in the place of their original domicile. We must lay it down definitely what are the reasons which are guiding us in making a provision as is contained in article 5A. I therefore think that the inclusion of the words which I have suggested is very necessary to make our intention very clear.

Then, Sir, I have one thing more to say with regard to another amendment which has been moved by Shri T. T. Krishnamachari—that is amendment No. 131. This amendment stands in the name only of Shri T. T. Krishnamachari. I do not know what particular reason there was for Dr. Ambedkar to dissociate himself from this amendment, though of course, while moving his amendment as a whole, he has accepted it. I do not know why he should have accepted it, when originally he did not like the idea of himself being associated with it.

The Honourable Dr. B. R. Ambedkar (Bombay: General) : But he has not even moved it Oh, that proviso-yes, I have accepted it.

Shri T. T. Krishnamachari : It is not in Dr. Ambedkar’s name but in Shri Gopalaswami Ayyangar’s and mine.

Shri Jaspat Roy Kapoor : That is exactly what I was submitting. Therefore, I was perfectly correct. I am glad to find that it has come to Dr. Ambedkar as a surprise. I have said that this amendment has been accepted by him. He was under the impression that it had not been moved at all, and if he has accepted it in an unguarded moment, or under any misapprehension, I hope he will immediately correct himself and make it clear to us that it is not his intention to accept this amendment.

Shri T. T. Krishnamachari : May I interrupt my honourable Friend and tell him that he knows very well that amendment has been moved.

Shri Jaspat Roy Kapoor : Yes, I know very well why this amendment has been moved : I know also very well why this amendment is a very obnoxious one, and why it should not be accepted. I say it is obnoxious even to this extent that Dr. Ambedkar did not originally consider it necessary and advisable and proper to associate, himself with this amendment.

Why is it, Sir, that I consider it obnoxious? It says that those persons who migrated from India to Pakistan if, after 19th July 1948 they came back to India after obtaining a valid permit from our Embassy or High Commissioner, it should be open to them to get themselves registered as citizens of this country. It is a serious matter of principle. Once a person has migrated to Pakistan and transferred his loyalty from India to Pakistan, his migration is complete. He has definitely made up his mind at that time to kick this country and let it go to its own fate, and he went away to the newly created Pakistan, where he would put in his best efforts to make it a free progressive and prosperous state. We have no grudge against them.

Shri Brajeshwar Prasad (Bihar: General): May I ask my honourable Friend whether it is true that all those persons who fled over to Pakistan did so with the intention of permanently settling down there and owing allegiance to that State ? Is it not a fact that they fled in panic ?

Shri Jaspat Roy Kapoor : My honourable Friend Mr. Brajeshwar Prasad even today, on the 11th August 1949, doubts as to what was really the intention of those persons who migrated to Pakistan. I do not want to refer to this unpleasant subject, because the sooner we forget the bitterness of the past the better. But do we not know that Muslim Leaguers wanted division of the country and exchange of population, and that the number of persons belonging to the Muslim League was tremendously large? To our misfortune, only a handful of nationalist Muslims were opposed to the idea of Pakistan. The vast majority of the Muslims and most certainly those of them who went away to Pakistan immediately after Partition had certainly the intention of permanently residing in Pakistan. May be that some of them or quite a good number of them went to Pakistan at that particular time because of the disturbances here: but has my honourable Friend any doubt that even if there were no disturbances, many of them, almost all of them, would have gone away to Pakistan, because they were themselves demanding that there should be a transfer of population ?..... (Interruption by Shri Brajeshwar Prasad.)

Mr. President : The honourable Member is entitled to his own views and it is no use cross-examining any Member across the floor of the House. If Mr. Brajeshwar Prasad has his views, let him have them and let Mr. Kapoor express his own views.

Shri Jaspat Roy Kapoor : I know that my honourable Friend Mr. Brajeshwar Prasad does not agree with any sensible view or proposition that is advanced in this House, and it is no surprise to me that he is not agreeing with me on this occasion as well. What I was submitting is that those persons who went away to Pakistan went definitely with the intention of settling down there permanently. They gave up their loyalty to this country and they gave their allegiance to the new country of Pakistan. Their migration was therefore complete and absolute and, therefore, the right of citizenship which they had before their migration is eliminated altogether. There have been cases of a large number of government employees, both in the higher and lower posts and particularly in the railways, who had opted of their own free will for Pakistan, even before Partition had taken place; and quite a large number of them, particularly railway employees, after going over to Pakistan came back

to India finding that they had no scope for a decent existence in Pakistan, after obtaining valid permits. Could it be said in their case, as Mr. Brajeshwar Prasad is contending, that they had left this territory because of fear of disturbances ? They had definitely said even before there was any sign of disturbance that they would like to go and settle down permanently in Pakistan and serve the Pakistan Government. There should, therefore, be no doubt in the mind of anyone of us that such persons definitely went away with the idea of settling there permanently. Now if they want to come back to India to settle down here permanently, we may welcome them as we would welcome any other foreigner. Once they became, foreigners to our land they must be treated on the same footing as any other foreigner. If any permit is given to them to come over and settle down permanently, it only means that we are showing consideration to them and telling them. "You can come back again and settle permanently here if you like; but please do not think it is for the reason that you kicked this country once. We do not wish to put a premium on this conduct and grant any concession therefore. But we are prepared to give you the same facility for reacquiring the right of citizenship of India as we are prepared to give to any foreigner." It means let them come back by permit and settle here for five years, and thereafter perhaps they may be permitted to acquire the right of citizenship as any other foreigner may be permitted by any subsequent law made by Parliament. Therefore it is a matter of principle and we should not throw away this principle for any reason, without any valid reason.

Also it has certain financial implications which we should not forget to realise at this stage. The question will arise as to whether in regard to the property which such persons had left at the time of migration they will be entitled to get them back along with their citizenship after they are allowed to come back and resettle here. In the various Ordinances that have been promulgated an attempt has been made to vest in the Custodian of Evacuee Property the right of management of all the property which has been left over by evacuees. Now such persons, even though they have come back after the 19th July 1949 under a valid permit continue to be evacuees under the definition of the various Ordinances. There will be an anomalous position then. While on the one hand we confer on them the right of citizenship, the property which they had left behind at the time of migration will continue to be evacuee property. You will perhaps treat the question with fairness and generosity, and I agree that it must be treated with fairness and generosity, because every great nation must always adopt that attitude. With that attitude of fairness and generosity, I am afraid it will be well nigh impossible for you to say to them that "Though we adopt you as citizens of this country, yet we would treat your property which you had left behind at the time of migration as evacuee property." That may not be possible and, therefore, property worth crores of rupees will be going out of your hands. I need not elaborate this point because the implications of this are very clear to every one of us and more particularly to those who are responsible for sponsoring this amendment.

I would only say one word. While it is good to be generous, generosity loses much of its virtue when it is at the cost of others, because this generosity will be at the cost of nobody else but ultimately perhaps at the cost of our refugee brethren. Eventually it may or may not be so we do not know, but we will very much regret it, if that becomes the position. It is the refugees who are going to benefit from all such property and if we are going to make a free gift of all this property to those who migrated but have come back it is the refugees who are going to suffer and none else. I would, therefore beg of Mr. T. T. Krishnamachari and also Mr. Gopalaswami Ayyangar not to press this amendment and let this article 5A remain as it is in the draft without the proviso.

[Shri Jaspat Roy Kapoor]

I have done, Sir. I will only repeat the appeal I have already made, that this particular amendment at least of Shri T. T. Krishnamachari should not be accepted.

Mr. President : Professor Shah may now move amendment No. 6 (List I- Third Week).

Prof. K. T. Shah (Bihar: General): Sir, I have some amendments in the Printed List. Vol. I which have not been covered by the revised Draft. I would like to move them with your permission.

Mr. President : I had one such amendment of yours in mind when I made certain remarks in the beginning.

Prof. K. T. Shah : That is a new article. That comes later. I am speaking just now of amendments 203 and 208 which relate to the restriction of parents on the paternal side. That has not been moved.

Mr. President : You may move amendment No. 203.

Prof. K. T. Shah : With your permission, Sir, I would move all my amendments and then speak on them collectively.

The first amendment I would like to move is:

“That in clause (a) of article 5, after the words ‘grand-parents’ the words ‘on the paternal side’ be added.”

The numbering of the clauses will have to be altered. As the same idea is repeated in amendment No. 208 I am not repeating it. The next amendment of mine in the Printed List is No. 227. As it is included in the new amendment I have given notice of, I do not read it just now. My next amendment is No. 231. As it relates to a new article, I do not propose also to read it just now. Then I move :

“That in amendment No. 1 above, in the proposed article 5—

- (i) after the figure ‘5’ the brackets and figure ‘(1)’ be inserted;
- (ii) before the Explanation, the following proviso be added :—

‘Provided further that the nationality by birth of any citizen of India shall not be affected in any other country whose Municipal Law permits the local citizenship of that country being acquired without prejudice to the nationality by birth of any of the citizens; and

Provided that where under the Municipal Law no citizen is compelled either to renounce his nationality by birth before acquiring the citizenship of that country, or where under the Municipal Law nationality by birth of any citizen does not cease automatically on the acquisition of the citizenship of that country.’;

- (iii) after the Explanation, the following new clause be added:—

‘(2) Subject to this Constitution, Parliament shall regulate by law the grant or acquirement of the citizenship of India.’ ”

I also move :

“That in amendment No. 6 above, after the proposed new clause (2) of article 5, the following proviso be added :—

‘Provided that Parliament shall not accord equal rights of citizenship to the nationals of any country which denies equal treatment to the nationals of India settled there and desirous of acquiring the local citizenship.’ ”

Then there is my amendment No. 152 in today’s list (List V of Third Week).

Mr. President : But, then, are you not moving amendment No. 20, (List I of Third Week) ?

Prof. K. T. Shah : I am Moving it.

I move:

“That in amendment No. 1 above, in the proposed new articles 5-A and 5-B, for the word ‘Dominion’, wherever it occurs, the word ‘Republic’ be substituted.”

The next amendment that I move is No. 152 in List V of Third Week. I move :

“That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, at the end of sub-clause (i) of clause (b) of the proposed new article 5-A, but before the word ‘and’, the following proviso be added:—

“Provided that any person who has so migrated to the areas now included in Pakistan but has returned from that area to the territory of India since the nineteenth day of July, 1948, shall produce such evidence, documentary or otherwise, as may be deemed necessary to prove his intention to be domiciled in India and reside permanently there.”

These are all the amendments which I move in this connection at the present time. While commending these amendments to the House, may I offer my sincere congratulations to the draftsman for the great erudition and mastery of a very complicated subject that he has shown and also, in the midst of very serious difficulties, tried to keep a balanced judgment on an admittedly very difficult subject where feelings run high ? It is not customary for me to throw many bouquets at the learned draftsman of this Constitution. I therefore trust that as I do such a thing so rarely, let me for once offer this bouquet of roses which I trust he will appreciate, even though there are some thorns ‘in the bouquet.

Sir, I have been obliged to move these amendments, spread over a number of items and dealing with a number of aspects, because I think a number of vital principles are involved. Would you permit me to simplify the entire series of amendments by formulating in general terms my idea why they have become necessary in the face of this Draft, which I consider to be of importance, and why, if they are included, the Draft would be very much improved in my opinion ?

Sir, to put the matter briefly and succinctly citizenship of a State is had or acquired in a variety of ways. Therefore the first proposition that may be laid down is that anyone, born in a country is automatically a citizen of that country, unless by his own act, when he attains maturity, he or she renounces that privilege. This is a simple proposition to which there ought to be no exception. It goes further and makes citizenship not only a birthright, but also an inheritance. That is to say any one whose father or mother according to my amendment and according to this Draft whose grand-parents, or whose grandfathers on the paternal side according to my amendment were born in this country, would also acquire automatically the privilege of being a citizen of this country, unless it is specifically renounced by any act of the person concerned.

Sir, it has been said by previous speakers, and I would like to endorse it, that the privilege of citizenship of India should not be regarded as something very commonplace affair, cheap and easy. It is, I submit—and it promises to be still more, a great privilege, of which not only those of us who are now citizens may be proud, but even those who may hereafter become citizens of India should also be proud. It was the proud privilege in the days of the Roman Republic for any Roman citizen simply because of that citizenship to regard himself as equal to any King. The last word in status and importance was said when he proudly asserted : “*civis Romanum sum*=I am a Roman citizen”. I hope the time is coming when the same proud boast may justly be made by Indians, when the citizenship of India will not be merely regarded

[Prof. K. T. Shah]

as a burden of our 'nativity'—for we were used to be called 'natives' in the dead and buried past—but it would be regarded as something to which the rest of the world will look up with respect.

Holding this opinion, Sir, as I do regarding the great privilege of being a citizen of India, I entirely agree with those who think that we should not make it too cheap and easy. Nor should we be unduly niggardly about any reasonable demand or reasonable claim by birth or inheritance to that citizenship.

Sir, I think now that the subject of citizenship has become complicated, we would be landing ourselves into great difficulties if we continue this right of inheritance almost *ad infinitum*. For, though you take it only up to the grand-parents on both sides,—that is to say, the inheritance by descent from the mother and father of the mother and father of the person claiming citizenship, it is a very difficult matter to prove and establish. It has been said, Sir, that whereas maternity is a fact, paternity is an assumption. It is difficult to prove paternity beyond the shadow of a doubt, though there may be unimpeachable evidence in support of maternity. Nevertheless, for centuries, if not millenia past, we have been accustomed to reckon descent only on the paternal side. And hence my amendments. Under these circumstances, and especially in view of our country's 'very poor registration system, where the, evidence of birth and death is not easy to obtain, I am afraid that the extension in this manner to inheritance of citizenship is bound to create difficulties especially in view of the circumstances that led to the partition of this country, and the aftermath of terror and migration that has followed that partition. I would, therefore, willingly accept for my part the suggestion of Dr. Deshmukh, which would restrict the privilege of citizenship by birth only to the second degree, which can be more easily established or proved. If you go further, if you want to be more liberal and generous, you may take it up to the third generation. But there I would stop and try to keep the right of inheritance of citizenship only on the paternal side.

I say this with no desire to suggest, even by implication, that I have any lack of belief in the equality of men and women, so far as citizenship rights are concerned. I say it because of the many complexities and difficulties involved in this tracing of inheritance from the maternal side, not the least of which is the problem of proof. I would, therefore, suggest, either and preferably, that the definition suggested in this regard by Dr. Ambedkar be accepted in preference to my own suggestion; or at any rate, if you wish to be generous in this regard, you might keep it to the male grand-parent of the person claiming to be a citizen by inheritance.

Sir, inheritance is a thing that can be acquired; and it can also be renounced; and, therefore, in the case of those who have voluntarily or, as some honourable Member has suggested, in panic, gone out of this country, and have indicated by every act in their power that they would have nothing to do with this country, that they belong to a different nation, that they are different in race, language, culture and religion, or whatever the reason that inspired them, we would be justified in presuming that they have renounced their birthright. They having renounced their birthright, we are justified in saying that they would not be entitled to the right of inheritance.

If they want to return and desire to become once again the citizens of India, in such cases, also, I hope the House will agree with me that we would be entitled to see to it that there would be no Quislings amidst us. It, is but fair, therefore, that such persons be required to produce sufficient evidence documentary or otherwise, not only of their right by descent, but also to show their

intention to permanently reside in this country, and be its loyal citizens. For that purpose, Sir, the amendment that I have suggested would, I think, be much more adequate, much more appropriate, and much more necessary than the Draft before us. I, therefore, commend that item to the honourable Draftsman.

Coming next, Sir, to the case of those who happen to be away, who by settlement in other lands for business connection or by a formal act of acquisition of another citizenship, under the Naturalisation laws of that country, become citizens of that country, we would be right in providing that, if they desire to acquire the citizenship of India, their path should be simplified. Subject however to the condition that I have already indicated, *viz.*, that there must be some concrete evidence that they really intend to reside in that country, be part and parcel of that country, would share all the duties and obligations of that country's citizenship, and would not be traitors to their country of adoptions

If citizenship is given as a matter of course to those who by settlement, by business connection, or otherwise, claim the right of being citizens of this country, and demand all the advantages that accrue from it, I think we must have reasonable evidence, we must demand reasonable proof that they intend permanently to live here, and be part of this land, loyal and devoted to her; and not merely for taking advantage of our generosity or liberalism in this regard.

I am thinking, Sir, in this connection much more of those foreign capitalists or businessmen who had been with us, and who had claimed in the past that there should be no discrimination against them. The Government of India Act, 1935, is disgraced by a whole chapter of many discriminatory provisions,—the discrimination being always against Indians and in favour of those outsiders. With that experience before us, and with the possible development of our future fiscal policy in such a manner that Indian citizenship in business, in industry or any other enterprise may receive special protection, may receive, special benefit, we must take good care against foreign capitalists who might come and settle here, merely to enjoy those benefits of our fiscal or industrial policy, without their heart being in this country. I, therefore, suggest that whether in the Constitution, or in any legislation that Parliament may make in this regard, we should see to it that such citizens by self-interest furnish evidence, sufficient evidence of their intention to make India their permanent home, and not merely being mere birds of passage, exploiting the country, and only taking advantage of any fiscal legislation or financial advantage, and then quitting the country after their purpose is served.

Sir, here is a point, which, may I say with all respect does not seem to me to be sufficiently born in mind by the Drafting Committee; and perhaps the amendment of the kind that I have suggested, or some other amendment in that sense may be necessary to cover that position. I frankly confess, with the views that have been expressed from the highest quarters about the need for foreign capital, and about the necessity for offering all kinds of advantageous terms to these foreign investors, we are not going to end exploitation of this country, if we permit the citizenship of India; and its attendant privileges to be lightly acquired. Unless the Constitution contains some provisions which entitled Parliament to make discrimination,—I have no hesitation in using that word,—so that indigenous talent and enterprise will be sufficiently protected and safeguarded against their foreign competitors, unless there is some such provision and authority in the Constitution itself, Parliament itself may be unable to protect adequately, our own enterprise as against those People whose only purpose in acquiring Indian citizenship is to take advantage of our fiscal policy, or any other cognate: advantage, and not make any adequate return to the country that gives them that advantage I, therefore, trust, Sir, that my reasoning in this regard will at least commend itself to the Honourable

[Prof. K. T. Shah]

the Drafting Committee Chairman, even if the actual wording may not I would trust to his erudition, to his understanding, to his patriotism to see to it that some such provision as I have asked for would be incorporated in the Constitution in any form which he thinks most appropriate. So far as the actual technical drafting is concerned, I have not the slightest hesitation in admitting that the Chairman of the Drafting Committee is a far greater master than I could ever pretend to be; and that, therefore, I would leave it entirely to him, if he accepts the reasoning I have put forward to put up Such an amendment as he may think necessary in his own words.

I now come, Sir, to the next amendment, I mean, that which relates to those countries, our near neighbours in Asia, where large numbers of Indians have settled; and where, under the new upsurge of local nationalism, their treatment is not all that can be, desired. There is a feeling that in Burma, in Ceylon, or in Malaya for instance, our *citizens* are not meeting with all the equality of treatment or reciprocity that we may desire. Hence it is that by two of the amendments in amendment No. 6, I am trying to suggest that wherever the local legislation permits an Indian to acquire all the rights and advantages of citizenship, without prejudice to his own nationality by birth, we should give the same treatment. We should also preserve the nationality of that person of Indian birth who has settled, and who owes allegiance to the Government of another country, though that country's legislation permits him to do so.

Permit me to add, Sir, that in this demand it is not that I am becoming self contradictory, because just a moment before I said that a person who has settled in India should be guarded against as much as we can by our Constitution, lest the privilege of such acquired citizenship be used to our prejudice. I am not-debarred from making the suggestion. I am now putting forward. I repeat, I am not becoming inconsistent, because, according to the information I have received there are 8 lakhs of Indians in the Federated Malay States. Under the new Constitution of the Federated Malay States, they permit such Indians settled there, to: acquire the fullest rights of local citizenship, without losing their Indian nationality by birth. On the other hand, in Ceylon and Burma, according to the information I have, the position of Indians is very much more invidious. Burma for example, I have been informed by people who should know provides that an Indian can acquire Burmese citizenship according to certain formalities prescribed by the Burmese, legislation. But before a certificate of naturalisation can be delivered to him, he will have to make, an express declaration that he renounces his Indian citizenship. Speaking for myself, I would say that this is not fair. But even if it be taken as fair dealing with good neighbours we can make an exception in the case of those Indian citizens, who have leave to live their lives there, and who cannot remain Indians under the Municipal law, if they wish to remain in that country where their own life work lies. In that case, I would make an exception and not insist on Indian nationality being retained by one who has had to renounce it. But there is another case, that of Ceylon. Again I am speaking from the information that I have gathered—in Ceylon the local legislation for acquiring Ceylonese citizenship automatically denies or destroys the citizenship of the previous origin by birth or otherwise if once a person acquires by naturalization the citizenship of Ceylon. The obligations of citizenship are plenty,—and none would be more aware of them than I am of such obligations,—and would require allegiance to one's country of adoption, without however there being any necessity automatically to forego the nationality by birth. That I think is asking a little too much. But even so, I recognise that Ceylon is an independent dominion and is entitled, to make its own laws, On that basis,

we must allow those Indians, who are settled there, to follow the local legislation without any objection on our side as to their retaining their nationality by birth, even after acquiring Sinhalese citizenship. We need not insist that they shall continue to remain Indian nationals.

The case that I now come to is the reverse of these, and provokes much more strong sentiment than these three other cases, which are or were also British Dominions or Protectorates, until recently. I am now thinking of those other Dominions, countries like Australia, New Zealand, or Africa, where Indian do not receive equal treatment. I need not weary this House with a tale of woe of Indians in Africa. They are all fresh to us. We are all full of resentment against such legislation as is being perpetrated now in that country. With that our experience, I see no reason why we should not reserve in our fundamental Constitution express power that Parliament shall not grant rights of equal citizenship, or equal treatment to those who deny our nationals,—law abiding, peaceful, enterprising, carrying on business and adding to the prosperity of that country,—the same treatment that they accord to other classes within their jurisdiction.

Africa is perhaps the most glaring, the most poignant case of invidious discrimination against Indians; and as such I should say, it is not enough to tell me as this Draft says, that Parliament is free to pass legislation for regulating the acquisition or termination of citizenship; and that under that power such cases will be dealt with. I would add a provision, making it incumbent upon Parliament also not to grant equal treatment to the nationals of those countries who discriminate in this manner against Indians settled there, working there for all their lives, and adding by their labour, by their enterprise, by their skill, to the wealth of that country, remaining peaceful, loyal, law-abiding citizens of that country.

Sir, it is an unfortunate fact that, for whatever reasons, we are still members of the so-called Commonwealth of Nations dominated by Britain our former exploiter. In the Commonwealth of Nations, even though theoretically we are supposed to be equal members, equality is shown more in exclusiveness by some, and maintaining their superiority of the old imperialist days by others, than in the real spirit of true brotherhood that might make that Commonwealth more honest and attractive. I for one have never been an admirer of the Commonwealth. Nor have I been converted by the recent utterances of high authority and the latest developments.

Accepting that as a fact, we must nevertheless preserve our right, as we have done in other cases, of retaliation, may I use the word, against those Dominions, against those countries, which do not give equal rights to our people. Even in the case of Australia, while it may not be so clear, so pointed, so invidious as in the case of South Africa, there is the policy of “White Australia” which is being proclaimed from the house-tops, and which is spoken of with pride by the present Prime Minister of that country; he has even asserted that the highest authorities in this country have also agreed to his ideal. I do not know how far that is true. Whether it is so or not, with this insistence of the Policy of “White Australia”, I do not see why we cannot discriminate in our own Constitution, against these people, who without regard for good neighbourliness, without regard to the many proofs of friendliness that we have given in the past and we are still giving, would insist upon their narrow, restricted, geographical nationalism. That does not suit a new country of that type, which has yet to develop all its resources, and where its own population is hardly adequate to the climatic and other conditions prevailing in that country. It does not become such a country to say that they would insist on the superiority of the heaven-born white race, and that that race alone could settle and the citizens there, and all others, whatever their claim may be have no chance of becoming full citizens.

[Prof. K. T. Shah]

This applies even to that country which now claims to be the leader of all civilised, 'progressive, western nations, I mean America. The United States of America is very rich in high professions about equality of human rights. But when it comes to implementation of those rights in their own land, I am afraid, the U.S.A. has not given in the past, and is not giving today, any concrete indication that there is a complete unanimity between the tongue and the heart. In fact there is a large gulf between the two. In the United States, until recently, Indians could not acquire full citizenship rights. Even today, so far as my memory goes,—I am open to correction by the superior knowledge of the Drafting Committee,—Only about one hundred Indians every year can immigrate into that country and become eligible for full citizenship of that country a country which professes to have advanced views on liberalism, a country which speaks of equality of human rights, a country which professes to be the pioneer and promoter of the famous four freedoms in the world, but which every lay violates the "freedom". That is not quite compatible with their own professions of equality all round in the world, and to whom anybody who wants dollars should go with bended knees, with the beggar's bowl, ready to submit to any condition that the masters of the mighty Dollar are prepared to lay down.

This country need not be very much afraid of them, because we may have industries to develop and our resources are undeveloped. We are told by some that we have not our own capital resources adequate to do so. I am not one of those who believe that. We need not show any apprehension; we need not be so hesitant about ourselves that we should not lay down, quite clearly and categorically, that those who do not treat us equally shall not be treated equally in this country. Whatever may be the consequences, I am not afraid. I do not see why this country, though only two years old as an independent sovereign State, should show, in its Constitution in the fundamental law of its being and working, that it is going to be afraid of any people lest that people be displeased, and lest they should regard us as out-castes. If they do so, it will be to their own prejudice, and it will not be to our loss. The sooner the day comes when we learn by bitter experience to stand on our own legs, and fight with our own arms, the better for us. So long as we want to be protected, supported, assisted from outside, we shall not be able to call our soul our own.

Hence it is that without any ambiguity, without any circumlocution, I would lay down this point in the constitution itself regarding citizenship. Whatever that may be, hereafter Parliament shall not be free to accord equal rights to those who deny such equal treatment to us. We are prepared to accord full reciprocity to all, be they Pakistan, America, Australia, Africa or Britain; we are prepared to grant equality, if equality is given to us. We are not prepared to take merely the word of these great white gentlemen if their acts do not correspond to their words. We are not prepared to accept merely their verbal professions of equality, like the spider's proverbial saying to the fly "come into my parlour." I do not compare ourselves to a fly but we need not go to be devoured in a Battering manner by the spider, be the web in New York, or London or Brisbane, or Canberra. It does not matter two hoots where they are, and what they are, so long as their words do not correspond to their deeds. We cannot take our stand too strongly and guard ourselves against being humbugged against being deceived betrayed and sold, too effectively. I, therefore, suggest that Parliament itself should be restricted by the Constitution against granting, as we have unfortunately granted and agreed to grant to the members of the Commonwealth, equal treatment to those that do not give us the same treatment.

We have recently undertaken many international obligations. I call to mind only one of these just now, that of the so-called Havana Agreement or the Havana Trade Agreement—I forget the exact words—one is so bewildered by this plague of initials that one cannot remember the original Christian name of these organisations. I take it that the House is aware that we are undertaking these international obligations. But these international obligations should not act, and I hope they are not acting, against us only. When it did not suit Britain for example to act up to the spirit of the Havana Charter, she was quite free to and has entered into trade agreements with Argentina, which I am told has seriously displeased the New York money market. That may be so, but Britain has not hesitated to seek her own interest. If an occasion like this should arise, we also ought to have this power with us to deal with these people and to deal with these circumstances when they arise without fear or favour. So, I say that by the amendments I have suggested,—I repeat I am not insisting upon the letter of the amendments,—by the spirit of the suggestion, we would be able to guard against any such mischance. I hope nobody will consider me to be a narrow nationalist, though I am not ashamed to be called so. But this is essential to all those who would like to stand on their own legs, who would like to fight with their own arms, who would not care for any men on earth as to what they think or what they feel, provided we believe that we are right. On a famous occasion, when the timorous Generals of the civil war came to President Lincoln on the eve of a great battle and said, “We hope, Sir, that God is with us,” President Lincoln replied, “It does not matter if God is with us”, it matters a great deal if we are with God.” I am quite sure that we are with God and I am perfectly certain that if we accept the spirit of the amendments that I am suggesting, we shall have nothing to regret.

Shri Krishna Chandra Sharma (United Provinces : General) : Sir, I beg to move :

“That in amendment No. 1 above, at the end of clause (c) of the proposed article 5. the words ‘and subject to the jurisdiction thereof’ be inserted.”

The meaning is this that without these words the is on will come in conflict with international law, *i.e.*, the children of the embassy station here are not subject to the law of this land. For instance, you cannot haul them for conscription and it is an elementary law that a man would not enjoy the right of citizenship unless he takes up the obligation thereof. Therefore, you cannot bestow citizenship on a person from whom you cannot expect or you cannot call him to take up the obligation and therefore it is just to be in consistency with international practice and would bring the provisions in accord with the international law. This is necessary and I hope the Honourable Dr. Ambedkar will accept this.

Prof. Shibban Lal Saksena : Sir, I beg to move:

“(a) That in amendment No. 1 above—

‘(i) in the proposed article 5—

for the words ‘has not voluntarily acquired the citizenship’ the words ‘is not already the citizen’ be substituted;

(ii) in the Explanation for the word ‘had’ the word ‘had’ be substituted; the word ‘now’ be deleted; and the following be added at the end:-

‘at the commencement of this Constitution.’

(b) in the proposed new article 5-A, for the words ‘now included in Pakistan the words ‘included in Pakistan at the commencement of this Constitution’ be substituted.’ ”

I have another amendment in common with Sardar Bhopinder Singh Man and I leave it to the Sardar Sahib to move it.

[Prof. Shibban Lal Saksena]

Sir, this is one of the most difficult articles in our Constitution, and as the speeches so far made have shown, and even Dr. Ambedkar has himself confessed that though this Draft has been put forward after the most careful consideration, still friends have come forward to point out its defects. I want to say, first of all, that my Friend Dr. Deshmukh has moved a very important amendment to the first clause of article 5. His Contention that we are making this 'Citizenship of India' very cheap whereas it is a very difficult thing to acquire in other countries. I concur fully with him and think that the article as it stands needs to be altered in sonic form. Let us see what would happen otherwise. The article says :

"At the date of commencement of the Constitution every person who has his domicile in the territory of India and was born in the territory of India or either of whose parents were born in the territory of India shall be a citizen....."

This clause will give citizenship to a class of persons to whom probably we would not like to give it. Mr. Amery was also born in India in my District of Gorakhpur where his father was a Forest Conservator and his son John Amery will get our citizenship if he only stays here for some time before 26th January 1950, and we shall not be entitled to stop him from acquiring that. In clause (c), five years residence is sufficient to give citizenship to anybody. I think we are making our citizenship very cheap. We have said 'if he has not voluntarily acquired the citizenship of any Foreign State'. I think it should be 'unless he is already a Citizen of any Foreign State'. This clause has to be amended accordingly. Dr. Deshmukh suggested 'that he should be born of Indian parents'. Now 'Indian parents' will have to be defined because we are defining 'Indian' in this clause and I suggest that by Indian should be meant 'whosoever may be called a citizen of India under the 1935 Act, and if a man is born of such parents, he shall certainly be called a citizen of India.' Dr. Deshmukh's amendment is quite correct, for the Hindus and Sikhs have no other home but India and I do not see how we can include everyone in this category unless we say it bluntly in this form. We should not be ashamed in saying that every person who is a Hindu or a Sikh by religion and is not a citizen of another State shall be entitled to citizenship of India. That will cover every class whom we want to cover and will be comprehensive. The phrase 'Secular' should not frighten us in saving what is a fact and reality must be faced. I therefore think that Dr. Deshmukh has given a very good suggestion. The present Draft is too wide and gives citizenship to almost everybody. In fact some friends from Nepal met me and asked me whether the Nepalese living in this country shall be called citizen of India and I was really at a loss to give an answer. But clause (c) gives an answer. If they have been here for five years, they will be citizens. Dr. Deshmukh's amendment would give them citizenship here if they wanted. So this article needs to be amended. We must not make our citizenship very cheap; but for those who owe allegiance to this State, whosoever they may be, they must be allowed to have the citizenship of India and we must say so in our Constitution. The word "voluntarily" should go. Anybody who has acquired the citizenship of any foreign State should not be entitled to citizenship of India. If you say "voluntarily acquired" he may say 'I did not voluntarily acquire it' that it was something involuntary and all that sort of therefore think that my amendment to this article should be accepted.

In regard to article 5-A I agree with Mr. Jaspat Roy Kapoor that the words "deemed to be" should not be there. Those who have come to India from Pakistan are citizens of India. Why say "deemed to be" ? These words do not add any lustre to the article. We should give dignity to our friends who have come over here. They are citizens of India and there is no question of their being "deemed to be" citizens of India.

Then the words “now included in Pakistan” are ambiguous—particularly the word ‘now’. This Constitution is made for a long time to come. Whenever it is read, the words “now in Pakistan” will not convey the proper meaning, as the word ‘now’ will have changing meanings. For instance, today some areas are in Pakistan, tomorrow they may not be there. Or, today some areas are not in Pakistan, but later on they may be acquired by it. Then it will mean that everybody who is a citizen of Pakistan at that time shall, if he had migrated, be a citizen of India. I therefore suggest that instead of saying, now in Pakistan” we might say “in Pakistan at the commencement of this Constitution”. We must limit what Pakistan means. As I said, “now” will be a word with a changing meaning according to the area of Pakistan. I therefore suggest that the word “now” should be deleted and the words at the commencement of this Constitution” be added at the end of the Explanation. This is my amendment. I hope Dr. Ambedkar will carefully see whether the words “now in Pakistan” may not be differently interpreted at a later period of time.

In my amendment No. 163 of List VI, which my Friend Sardar Bhopinder Singh Man will move, I have desired the deletion of the proposed proviso to the proposed new article 5-AA. My Friend Mr. Jaspat Roy Kapoor was very frank in giving his opinion, in this respect. Apart from his reasons I will say one thing. This will allow the executive authority to give anybody a permit and he shall become a citizen of India, so that it will be something changing and it may have repercussions which we do not like. We must definitely say what we have said in clauses 5-A and 5-AA, that a person who has migrated from India will be treated as a foreigner and when he comes back he will have to acquire citizenship by residence of five years and so on. I do not think the proviso is necessary and I therefore think amendment No. 163 seeking to delete the proviso should be accepted. I would request the Honourable Mr. Gopalaswami Ayyangar and Mr. T. T. Krishnamachari to withdraw the amendment which they have moved, or the House should reject it. This proviso should not nullify what is contained in the other portions of the article.

In clause 5-B, my Friend Mr. Jaspat Roy Kapoor suggested that the omission of the words subject to the provisions of any law that may be made by Parliament was incorrect and Mr. T. T. Krishnamachari pointed out that as article 6 is there it is not necessary. I do not agree with Mr. T. T. Krishnamachari, because it will again become a question of interpretation. I do not want it to be a matter for litigation. Parliament must have full authority to put limitations on the rights of diplomatic and consular representatives to enrol men as citizens of India. Otherwise it will be very easy for anybody to acquire citizenship of India. I think these words should remain in this very article 5B. Article 6 is of course an overall clause, but unless the thing is mentioned in the other articles also, Parliament’s power will be limited. Article 5B is absolute and therefore it should not be limited by the omission of these words. These words are not superfluous there. The words were there in the original Draft and I do not know why they were omitted. They should remain there so that the intention may be clearer than what it is.

Our learned Professor Shah has just now told us how keenly we feel the discrimination against Indians in other countries. In amendment No. 7 he says that “Parliament shall not accord equal rights of citizenship to the nationals of any country which denies equal treatment to the nationals of India settled there and desirous of acquiring the local citizenship”. I think ourself respect demands that this proviso should be there. Otherwise it is hopeless that when we are discriminated against by any country, still to the nationals of such country when they come here we accord equal rights of citizenship. I personally feel, and the people also feel, that if they kick us they shall also be kicked. This amendment No. (7) is a very important amendment and should be accepted.

[Prof. Shibban Lal Saksena]

His suggestion about foreign capitalists coming here and trying to take advantage of this article is also worthy of consideration and I hope learned Doctor will give it the weight it deserves.

There is another word "Dominion" here. The word "Dominion" will jar on the ears of people after India has obtained freedom and has ceased to be a Dominion. I therefore think that in article 5-B, the words "Dominion of India" should be changed to some other languages. In fact in connection with another article of the Constitution we felt that the word "Dominion" in the Constitution should not be a reminder of the days of slavery, which we have passed. This should also be changed and the amendment contained in Professor Shah's amendment No. 20 should be accepted.

The whole article is a difficult one and Dr. Ambedkar has said that this contains the greatest common measure of agreement. The article still leaves much room for improvement. There are still many lacunae in the article which will affect millions of countrymen and also the future. The article must therefore be properly considered and amended as required.

Pandit Thakur Das Bhargava (East Punjab : General) : Sir, I beg to move:

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, clause (c) of the proposed article 5, for the words 'five years' the words 'ten years' be substituted."

I further beg to move :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments in the proposed new article 5-A, for the words beginning with 'Notwithstanding anything' and ending 'at the date of commencement of this Constitution if', the following words be Substituted:—

'Notwithstanding anything contained in article 5 of this Constitution a person who, on account of civil disturbances or the fear of such disturbances—

- (a) having the domicile of India, as defined in the Government of India Act, 1935 and being resident in India before the partition, has decided to reside permanently in India; or
- (b) has migrated to the territory of India from the territory now included in Pakistan;

shall be deemed to be a citizen of India at the date of the commencement of this Constitution if.' "

I further beg to move:

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, at the end of the proposed new article 5-A, the following words be added :—

'or if he has before the date of commencement of this Constitution unequivocally declared his intention of acquiring the domicile of India by permanent residence in the territory of India or otherwise and established such intention to the satisfaction of the authority before whom the question of his citizenship arises.'"

I further beg to move:

"That in amendment No. 131 of List IV (Third Week) of Amendments to Amendments, in the proposed proviso to the proposed new article 5-AA—

- (i) the words 'nothing in this article shall apply to' be deleted;
- (ii) the words 'or permanent return' be deleted; and
- (iii) for the words beginning with 'and every such person shall' and ending 'nineteenth day of July 1948' the following words be substituted:—

'shall be entitled to count his period of residence after the nineteenth day of July 1948, in the territory of India in the period required for qualification for naturalization or acquisition of citizenship under any law made by Parliament'."

Sir, I move:

“That in amendment No. 131 of List IV (Third Week) of Amendments to Amendments, in the proposed proviso to the proposed new article 5-A—

- (i) the words ‘nothing in this article shall apply to’ be deleted;
- (ii) for the words beginning with ‘and every such person shall’ and ending ‘nineteenth day of July 1948’ the following words be substituted :—

‘shall be eligible for citizenship by naturalization if he fulfils the condition laid down by law and his permit shall be liable to be cancelled on the grounds on which under the law relating to naturalization the certificate of naturalization can be cancelled.’

Further, Sir, I move :

“That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed new article 5B, after the words ‘any person’ the words ‘having his domicile in the territory of India’ be inserted.”

Further, Sir, I move :

“That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed new article 5B, for the words ‘whether before or after’ the word ‘before’ be substituted.”

Further, Sir, I move :

“That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the Proposed new article 5B, the words ‘or the Government of India’ occurring at the end of the article be deleted.”

With your permission, Sir, I would further move :

That in amendment No. 1 above, at the end of the proposed new article 5B, the following proviso be added:—

‘Provided he has not abandoned his domicile by migrating to Pakistan after the 1st April 1947 or acquired after leaving India the citizenship of any other State.’ “

Mr. President : Am I right if I say that the following amendments have been moved:

List VI/3rd Week: Nos. 160, 161, 162, 164, 165, 167, 168 and 169.

List I/3rd Week: No. 32.

Pandit Thakur Das Bhargava : Yes. A perusal of articles 5, 5A, 5AA, 5B, and 5C will show that it is established that birth, domicile, stay for five years, migration plus birth, or registration by the officers appointed by the mint of India, or some sort of registration in any country with the Embassy have been regarded as giving qualifications for citizenship.

So far as the question of birth is concerned, I for one fail to understand how the birth of a grand-mother the birth of a grand-parent in India or any other country can be regarded to give qualification to any person for citizenship. If you at least consider then articles separately, one by one, it would appear that there is no account taken even of birth because under 5C, if there is a foreigner and he settles in India for five years, he is also entitled to become a citizen provided he has got the domicile of India.

Similarly, with regard to domicile, this is not a condition *sine qua non*, because in 5-B, if a person was born in the territory defined in the Government of India Act, 1935—as India and is then staying in any foreign country, these two are enough for his acquiring the right of citizenship, provided he applies to

[Pandit Thakur Das Bhargava]

the Embassy and registration is allowed. Even the domicile is not required, I do not know, Sir, what is there in this citizenship which is absolutely necessary for a person to be acquired before he becomes a citizen. To my mind, Sir, domicile is a very important factor and I should think that domicile is one of the indispensable conditions of citizenship. Whatever else may or may not be, as I understand the laws of naturalization in all civilized countries of the world, any foreigner can acquire the right of citizenship by naturalization if he satisfies the conditions laid down by the law of the land. But so far as domicile is concerned unless this is present in my humble opinion no person can say that he has got this citizenship of a particular country if he has not got the domicile. After all, the rights of citizenship, the obligations of citizenship, the status of being a citizen is not an ordinary matter. It is not a nebulous thing, it must be definite. I understand that a person gets certain rights by becoming a citizen of a State, and he also takes upon himself, the liability to discharge certain obligations if he belongs to or is a citizen of that State. What I find is that in our desire to spread out our net too wide, we have not cared to see whether we can impose any sort of obligations on those to whom we are giving the right of citizenship : nor have we cared to see that after all, if we make a person a citizen of India we undertake a very large responsibility so far as that person is concerned. Who does not know in this House that when Miss Ellis was captured by the tribal people in the North-West Frontier, the whole of Great Britain was convulsed, because she was a citizen of England ? Now, Sir, do we not find that today those who are regarded as our people, and who may or may not be our citizens, are insulted in different ways and we are helpless ? Do we not know that even our ladies are yet in Pakistan and we cannot recover them ? I do not know, Sir, if a country is so poor and so weak as not even to be able to protect the ladies or citizens of this country, what right it has got to extend its net so wide. If our country is resourceless and if we cannot find solace and comfort for and rehabilitate our refugees, what right have we got to call others from Pakistan and make them our citizens ? What right have we to call South Africans our citizens, if we have no resources in this country even to see that those who live here are properly fed and housed?

My humble submission is that I do not want that we should make our citizenship so cheap because the State has certain obligations, and the obligations of the State are shared by the rest of the citizens : and if a citizen is insulted in any part of the country, it is the duty of the State and of the citizens of this country to see that the insult is avenged and amends are made. If we are not able to deliver the goods, what is the use of taking so many people who may or may not like to be citizens and asking them to call themselves our own citizens ?

In this connection I do not want to take much time of the House, as already some of the Members have spoken in this vein on the subject. I would rather like, Sir, to give you my own views on the matter in regard to the present question. When we are making almost a provincial law I am desirous that not a single person who has come from Pakistan as a refugee should have any trouble in being a citizen of India. I am anxious that no obstacle should be placed in the way of those refugees who have come from Pakistan on account of disturbances and who have left their hearths and homes and come to this country. My second desire is that those who were desirous to become the citizens of Pakistan on the 15th August 1947 or who left this country to become citizens of Pakistan with open eyes and with the song on their lips :

*“Hanske liya Pakistan
Ladke lenge Hindustan.”*

should not be made the citizens of India. Those persons have now forfeited their right to become citizens of this country. Sir, I submit that so far as these 'refugees are concerned they were the nationals of India. By the mere fact of Partition they have not ceased to be citizens of India, provided they have come here and want to settle permanently in this country. They have every right to citizenship and any obstacle in their way I regard as unjustifiable and wrong.

With this view I have tabled my amendments. I would, with your permission, Sir, just state what further corrections or amendments I want to be made in these articles to achieve the two objects I have mentioned.

First of all I come to article 5. Before coming to the cases of those refugees and those who want to re-enter India from Pakistan, I would first refer to the case of those who come under article 5. Under this article according to the definition of the clause, there can be persons who may have never seen India. He should be a person born in India or any one of his parents should be born in India or possesses a domicile. This domicile is merely a mental attitude or conception that he may ultimately have a permanent home in India if a person desires to be a citizen of India. I do not know how this country will be able to impose any obligations on such a person. However, that is about those who were born in India or whose parents were born in India or who had the domicile of India. In regard to foreigners who desire to acquire rights of citizenship there is the Naturalisation Act VII of 1926. This Act with the necessary modifications must be accepted as the law of India. In other countries also there are similar laws regarding naturalisation and if any foreigner wants to become a citizen of this country the law requires not only that he should have lived for five years in the country but insists that, he must be a man of good character, and further that he must take the oath of allegiance to this country. With your permission, Sir, in this connection I would refer you to section 5 of the Naturalisation Act VII of 1926 which gives the conditions under which a person acquires the rights of naturalisation. Among other conditions like possessing a good character, etc., which are given in section 3 a further provision is made section 6:

"Every person to whom a certificate of naturalization has been, granted shall, within thirty days from the date of the grant thereof take and subscribe the following oath, namely :—

'I, A.B. of

do hereby swear (or affirm) that I will be faithful and bear true allegiance to....."

In the case of persons who have been living here in this country, the mere fact of their stay for five years in this country should not be enough, if other conditions relating to citizenship by naturalisation are waived in their favour. My humble submission is that if you study the law of naturalisation you will come to the conclusion that a person who even acquires the right of citizenship by naturalisation has a liability to fulfil certain conditions. He has to perform certain obligations and be a man of good character. All those conditions are being waived and he is regarded as being a citizen of this country. It is therefore only fair that we should provide for a residence of at least ten years to show that as a matter of fact a person means to stay in India. Otherwise there are many persons who have been in the service of the Crown and have stayed here for a good time. They might now prefer to stay here for reasons best known to themselves. The difficulty in my way is that I do not believe that those who come from Pakistan and other countries propose to stay here only for the love of the country. If they stay for that purpose, I have no objection that they become citizens of this. But I know very well that there are a good many people who have not come to this country, or are not staying

[Pandit Thakur Das Bhargava]

in this country with this object. In their case I would like to provide ten years instead of five years which should be regarded as indispensable in the interests of caution.

The second amendment which I have moved is No. 161. In regard to this amendment it would appear that this seeks to make certain changes in the Preamble of article 5A. I have provided for a case in which a person born or domiciled in India as defined in the Government of India Act, 1935, if he came to India three years before Partition and has not been living here for five years. Such a man is not provided for in this article. To safeguard the rights of persons like these about whom I am told there are many in Assam. I have tabled this amendment. I want that every person who had come to India before Partition and has been saying for less than five years and has decided to stay here, because he does not want to go back on account of conditions in East or West Pakistan such a person should be allowed to be a citizen of India. If you do not provide for this class of persons many will be left without citizenship who would like to be citizens of India. This is wrong. This article 5A provides for such people whom everybody will consider to be fit citizens of India.

There is another difficulty and I do not want to concern this fact. I have been told by a reliable authority, by some honourable Members of this House, that after partition as many as three times the Hindu refugees from East Bengal, Muslims have migrated to Assam. If a Muslim comes to India and bears allegiance to India and loves India as we love her, I have nothing but love for that man. But even after the Partition for reasons best known to themselves many Musalmans have come to Assam with a view to make a Muslim majority in that province for election purposes and not to live in Assam as citizens of India. My humble submission is that those persons have come here for a purpose which is certainly not very 'justifiable'. Those who have come here on account of disturbances in Pakistan or fear of disturbances there certainly they must get an asylum in India. If any nationalist Musalman who is afraid of the Muslims of East Pakistan or West Pakistan comes to India he certainly should be welcomed. It is our duty to see that he is protected. We will treat him as our brother and a *bona fide* national of India. In regard to those others who have not come here on account of disturbances, we should not allow them to become citizens of India, if we can help it. Therefore I have added these words :

"Notwithstanding anything contained in article 5 of this Constitution a person who, on account of civil disturbances or the fear of such disturbances.."

I would rather insist that that man should not come here and become a citizen just to bolster up a Muslim majority in one of the provinces of India. Therefore the first Condition of migration would be that he comes here on account of disturbances. For those who want to stay here on account of disturbances the doors of India would be open. But to those who come from sinister motives, from motives of occupy lands and usurping the rightful owners by terrorising them and becoming a majority in this country it is up to us to say that no asylum would be offered here. They are not migrating with a view to live permanently here. Their object is only to create trouble, here. But to achieve our object I would request everyone to agree with me that this innovation should be made in article 5A.

Then I proposed to consider the next amendment (162). In regard to this my own fear is that when article 5A was drafted the possibility of many refugees not being covered by it was not envisaged. I am thankful to the Drafting Committee for accepting my suggestion and for being pleased to waive the condition that all the refugees should file declarations about citizenship. But,

in regard to those who have come after 19th July 1948—there will be some ignorant people, ignorant of the condition that the door will be closed on 26th January 1950—I do not know what will happen to them. Perhaps a new law may provide something for them, that after five years residence they will be regarded as citizens. In regard to such people, I believe we are bound to make a provision that if they come to India and settle permanently, that will give them right to citizenship without ‘any further qualifications. For that, I have provided that, if a person before the commencement of this Constitution unequivocally declares not before any officer, but by his own conduct of permanent residence in the territory of India, he shall be a citizen of India. This question may not crop up now. But sometime it may crop up in some civil or criminal case. So, whenever a question arises whether a person is a citizen of India or not, he should be allowed to say that he came to India before the commencement of the Constitution and by permanent residence unequivocally declared his intention to be a citizen of India. I have included this provision on behalf of those who will not be registered before the commencement of this Constitution. Unless this is included you will be shutting the door against many people who, on account of ignorance or illiteracy, have not been able to take advantage of the new provision. After all, this provision has not been promulgated in the country so far and no officer has been appointed so far. We do not know what steps will be taken to get every refugee registered. When lakhs of people are involved, I think it will be difficult to inform every person to get himself registered. Therefore, no person who came to this country for permanent settlement on account of the troubles in Pakistan should say that no provision has been made by this Government for him. It is only to provide against that contingency that I want amendment No. 162 to be accepted.

Coming now to article 5AA and the provisos thereto, I must submit that I approach this subject with a certain amount of feeling. I am glad that the Drafting Committee accepted the principle suggested by me, that a person who has once migrated from this country has migrated for all time. The legal maxim is that any person who has abandoned his domicile has abandoned it for all time. There is no question of partial abandonment. The Explanation to article 5 which originally did not appear and was subsequently added there is now included in 5AA. That Explanation says that a person who migrated from the territory of India to Pakistan will not be deemed to be a citizen of India. That is good so far as it goes. But so far as the question of persons who have come to this country subsequently, after having migrated to Pakistan is concerned, a new proviso is sought to be added. I have no quarrel with that proviso except in a certain particular. If the Government of India in their wisdom have seen fit to allow thousands of people to come back from Western or Eastern Pakistan and allowed them permits for resettlement, they are themselves responsible for it. Perhaps you are not conscious as to what difficult questions of property and propriety are agitating the minds of the refugees in this connection. Now we all know that Pakistan has refused to give compensation for the properties which it originally agreed to give so far as movable property is concerned. With regard to other properties we know the attitude of Pakistan and how it is behaving. The properties of persons who are living in Pakistan have been declared evacuee property and taken possession of. I do not know how the return of these thousands of Muslims to India will affect the rights of evacuee property here. Now a new Ordinance has been passed by our Government and perhaps another is under contemplation. If a person who comes for resettlement and becomes a citizen and then after that his property is confiscated or seized, I do not know how the provisions of article 24 relating to compensate will affect him. He may in a court of law get a declaration that he has a right to the property taken possession of by the Custodian or apply for restoration. Therefore many difficult questions are likely to arise. These questions are