

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 11th August 1949

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

DRAFT CONSTITUTION—(Contd.)

Articles 5 to 6—(Contd.)

Mr. President : We shall now take up consideration of articles 5 and 6. I have been looking into the amendments of which notice has been given. A large number of the amendments relate to the original Draft, but quite a good number relate to the present Draft also. I think the consolidated form in which the proposition is now placed before the House meets the point of view of many of the amendments of which notice has been given. There are some which touch the details. I would ask honourable Members to confine their attention to only such of the amendments as are of substance and leave out the others.

With regard to the amendments relating to the original Draft I find there are some amendments which deal with matters altogether outside the Draft. For example, there is an amendment dealing with the status of women after marriage—whether they become citizens or not. There are others also which deal with the position of persons who are not born Indians or born of parents or grand-parents who were Indians. I think all these matters under the present Draft are left to be dealt with by Parliament in due course. I would, therefore suggest that amendments of this nature might also be left over to be dealt with by Parliament at a later stage and we might confine ourselves to the limited question of laying down the qualifications for citizenship on the day the Constitution comes into force.

Dr. Ambedkar drew the attention of the House to two important limitations. The first was that this Draft dealt with the limited question of citizenship on the day the Constitution comes into force. And the other point was that all other matters, including those which are dealt with by the present Draft, are left to be dealt with by Parliament as it considers fit. With these limitations in mind I think the discussion of these two articles can be curtailed to a considerable extent and the matter might be disposed of quickly.

I would suggest to Members to bear these considerations in mind when moving their amendments. We shall now take up the amendments of which I have received notice and I will take them up in the order in which they are in the list of the current session. Dr Deshmukh.

Dr. P. S. Deshmukh (C. P. & Berar: General) : May I also refer to the other amendments of which I have given notice?

Mr. President : Yes, you may take them together.

Dr. P. S. Deshmukh : Sir, this article on the question of citizenship has been the most ill-fated article in the whole Constitution. This is the third time we are debating it. The first time it was you, Sir, who held the view which was upheld by the House that the definition was very-very unsatisfactory. It

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was then referred to a group of lawyers and I am sorry to say that they produced a definition by which all those persons who are in existence at the present time could not be included as Citizens of India. That had therefore to go back again and we have now a fresh definition which I may say at the very outset, is as unsatisfactory as the one which the House rejected and I will give very cogent reasons for that view of mine. But if it is necessary that I should move my amendment before I do so, I am prepared to do it. I would, therefore, like to move amendment 164 which is the same as amendment 2 in List III of Second Week. Sir, I move:

“That in amendment No. 1 of List I (Second Week) of Amendments to Amendments, for the proposed article 5, the following be substituted:—

- ‘5. (i) Every person residing in India—
 - (a) who is born of Indian parents; or
 - (b) who is naturalized under the law of naturalization; and
- (ii) every person who is a Hindu or a Sikh by religion and is not a citizen of any other State, wherever he resides

shall be entitled to be a citizen of India.’ ”

There are also, Sir, standing in my name other amendments which refer to the draft article that is before the House. By these amendments I have suggested the alteration of the article as proposed by the Honourable Dr. Ambedkar. The first of these amendments is No. 116 in List III of the Third Week. It reads as follows:

That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed article 5, the words ‘at the date of commencement of this Constitution’ be deleted.”

Mr. President : They are all consolidated in List I of the Third Week.

Dr. P. S. Deshmukh : Yes, Sir. But I have taken them from previous lists. I have suggested the omission of the words : “At the date of commencement of this Constitution”.

I do not propose to move No. 117. I would like however to move 118 in List III of the Third Week. I move :

“That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, for clause (a) of the proposed article 5, the following be substituted :—

‘(a) who was born of Indian parents in the territory of India.’ ”

Thirdly, I would like to move amendment No. 119 in List III of the Third Week. I move :

“That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in clause (c) of the proposed article 5, for the word ‘five’, the word ‘twelve’ be substituted.”

This is the number of years for which residence is required for any person.

I would also like to move amendment 120 in List III of Third Week, which I believe is going to be accepted because a similar amendment has been moved by Shri Gopalaswami Ayyangar: Sir, I move:

“That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, the Explanation to the proposed article 5 be deleted.”

I would next like to move amendment 172 in List III of Second Week. Sir, I move :

“That in amendment No. 1 of List I (Second Week) of Amendments to Amendments, in the proposed new article 5-A, after the words ‘territory of India’ the words ‘of Indian parents’ be inserted.”

“The last amendment is No. 183 in List III of Second Week. I move :

“That in amendment No. 1 of list I (Second Week) of Amendments to Amendments after the proposed new article 5-A, the following new article be inserted:—

‘5-B. Every citizen shall—

- (a) enjoy the protection of the Indian State in foreign countries;
- (b) be bound to obey the laws of India, serve the interests of the Indian communities, defend his country and pay all taxes.’ ”

These are all the amendments that I would like to move. The rest may be treated as not moved.

Mr. Naziruddin Ahmad (West Bengal: Muslim) : May I suggest that all the amendments be moved first and then there can be a general discussion? Members could then have an overall picture of the proposals.

Mr. President : If that is the wish of the House, I have no particular objection.

Dr. P. S. Deshmukh : As the number of amendments is very large it would create confusion to let members only move the amendments and then call them to speak.

Mr. President: It seems that Members find it more convenient to speak when they are moving their amendments.

Dr. Deshmukh, you may proceed.

Pandit Hirday Nath Kunzru (United Provinces: General): Can you kindly tell us which amendments have been moved ?

Mr. President : I will give you the numbers in this week’s list: they are Nos. 3, 17 and 29.

Then from List III of the Third Week: amendment Nos. 116, 118, 119 and 120.

Dr. P. S. Deshmukh : The Honourable Dr. Ambedkar admitted that this was a sort of a provisional definition and detailed legislation was going to be left to Parliament. I quite agree with the objective, but I am afraid that the definition and the article that he has suggested would make Indian citizenship the cheapest on earth. I would like to proceed with an analysis of the article that he has proposed. I do not see any reason why it is necessary to say “at the date of commencement of this Constitution”. The whole Constitution is going to be promulgated on a specific day. Whatever provisions there are will come into force and be applicable from that day alone. So, I submit that the words “at the date of the commencement of this Constitution” are entirely superfluous, so far as this article is concerned. It is sufficient to say that every person, wherever domiciled in this territory of India shall be entitled to be called a citizen of India.

Secondly, all these sub-clauses of this article will make Indian citizenship very cheap. I am sure neither the Members of this House nor the people outside would like this to happen. The first requirement according to this article is domicile. After that, all that is necessary according to (a) is that he should be born in the territory of India. This has no relationship whatsoever to the parentage. A couple may be travelling in an aeroplane which halts at the port of Bombay for a couple of hours and if the lady happens to deliver a child there, irrespective of the nationality of the parents, the child would be entitled to be a citizen of India. I am sure this is not what at least many people would like to accept and provide for. Indian citizenship ought not to be made so very easy and cheap.

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Then sub-clause (b) says “either of whose parents are born in the territory of India”. This is still more strange. It is not necessary that the boy or the girl should be born on the Indian soil. It is sufficient not only if both the father and the mother have been born in India but if even one of them, happens to be born on the Indian soil as accidentally as. I have already pointed out, *viz.*, a lady delivering a child in the course of an air-journey through India. Under the proposed sub-clause (a) the child would be entitled to claim Indian citizenship and under (b) even the son of that child (which happened to be born so accidentally) can claim the same important privilege without any restriction and without any additional qualification whatsoever. Nothing more is necessary except that they should acquire a domicile.

According to sub-clause (c) Indian citizenship is obtainable by any person “who has been ordinarily resident in the territory of India for not less than five years”. This has also no reference to parentage, it has no reference to the nationality or the country to which they belong, it has no reference to the purpose for which the person chose to reside in this country for five years. For aught I know he might be a fifth columnist: he might have come here with the intention of sabotaging Indian independence; but the Drafting Committee provides that so long as he lives in this country for five years, he is entitled so to be a citizen of India.

The whole House and the whole country is aware of the way in which Indian nationals are treated all over the world. They are aware of the kind of colour prejudice that used to be there in England, the kind of persecution through which Indian citizens are going even now in South Africa, how they are persecuted in Malaya and Burma, how they are looked down upon everywhere else in spite of the fact that India is an independent country. The House is aware how it is not possible except for the merest handful to obtain citizenship in America, although they have spent their whole lives there. I have known of people who have been there in America and holding various offices for fifteen, twenty and twenty-five years and yet their application number for citizenship is probably 10,50,000th. There is no hope of such a person getting his citizenship until the 10,49,999th application is sanctioned. In America Indians can obtain citizenship at the rate of 116 or 118 per annum. That is the way in which other countries are safeguarding their own interests and restricting their citizenship. I can well understand, if India was a small country like Ireland or Canada (which are held out as models for our Constitution) that we want more people, no matter what their character is or what the country's interests are. But we are already troubled by our own overwhelming population. Under the circumstances how is it that we are making Indian citizenship so ridiculously cheap? There is no other word for it.

As I have already pointed out one of the sub-clauses says anybody who has chosen to stay in India for five years shall be a citizen of India. I had asked the Honourable Commerce Minister (when Mr. C. H. Bhabha was in charge) a question, when sitting in the other Chamber, as to whether there was any register of foreigners coming to India. He said “No”. I asked if there were any rules and regulations governing the entry into the country of people from foreign countries and he said there were none. I have no doubt the situation continues very much the same today. Such is the administration that we have. Is it then wise that we should throw open our citizenship so indiscriminately? I do not side any ground whatsoever that we should do it, unless it is the specious, oft-repeated and nauseating principle of secularity of the State. I think that we are going too far in this business of secularity. Does it mean that we must wipe out our own people, that we must wipe them out in order to prove our secularity, that we must wipe out Hindus and Sikhs under the name of secularity, that we must undermine everything that is sacred and dear to the Indians to prove that we are secular? I do not think that

that is the meaning of secularity and if that is the meaning which people want to attach to that word “a secular state”. I am sure the popularity of those who take that view will not last long in India. I submit therefore that this article is unsatisfactory and worthy of being discarded as we did the previous article, because there is nothing that is right in it. If really we want a tentative definition we can have it from other people, who are probably wiser than us and that should be quite enough for us. That is one of the definitions that I have proposed in, my amendment No. 164, *viz.*,

“Every person residing in India—

- (a) who is born of Indian parents; or
- (b) who is naturalised under the law of naturalisation.....”

I do not mind if it is left to Parliament to debate the whole question of the citizenship of India. But for the present this very short and brief definition may be absolutely sufficient and that is my contention and my submission to the House. It must be made clear that citizenship shall be primarily obtainable by a person who is a born of Indian parents and I do not exclude even those who had been in India previously, provided the requirement of domicile is satisfied. If they are resident here in this country, or if they have not claimed citizenship of any other country or if they are born of Indian parents they shall be entitled to citizenship of India. So far as other persons are concerned, there will be the law of naturalisation which would make detailed provisions. We can lay down the business, the purposes for which or the way in which a person who claims Indian citizenship chooses to live in India. There would be ample time for the Parliament to debate this question and to lay down the principles. But if you are going to have this definition at this moment you are going to tie your hands, you are going to tie the hands of Parliament from interfering later. Will you then have the courage to deprive them of citizenship, the hundreds and thousands of them who have had it under the Constitution ? It is impossible, it is quite improbable and no Parliament in India is going to take such a drastic step as to correct the foolishness that we are complacently committing today. I do not think any Parliament will be able to do it. Therefore I do not like citizenship to be made so cheap or so easily obtainable, because once you do it in this Constitution it will be very difficult for you to go back on it.

And then, this is not a definition in an Act of Parliament that is easily changeable. So, if by the Constitution you are going to give this right of citizenship in the way proposed in this article, you cannot change it later on and this will go against the interests of the Indian nation. So I have proposed that the circumstances and conditions of naturalisation should be left to be decided later on. Nothing need be done on this question by the Constituent Assembly at this stage. Every condition and every circumstance, which we are convinced should be laid down and satisfied for the conferment of citizenship right on an individual, should come into play when we pass the Naturalisation Act in Parliament. We should not lay down some conditions here in the Constitution and some conditions elsewhere for the grant of citizenship rights. The fact that a person is born in India should not be sufficient ground for the grant of citizenship, nor should five years’ residence be sufficient. I say that we should leave all these things for the Parliament to lay down. We should merely say here that every person residing in India who is naturalised under the Law of Naturalisation will be a citizen of India.

In the second sub-clause I have proposed, I want to make a provision that every person who is a Hindu or a Sikh and is not a citizen of any other State shall be entitled to be a citizen of India. We have seen the formation and establishment of Pakistan. Why was it established ? ‘It was established because the Muslims claimed that they must have a home of their own and a

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country of their own. Here we are an entire nation with a history of thousands of years and we are going to discard it, in spite of the fact that neither the Hindu nor the Sikh has any other place in the wide world to go to. By the mere fact that he is a Hindu or a Sikh, he should get Indian citizenship because it is this one circumstance that makes him disliked by others. But we are a secular State and do not want to recognise the fact that every Hindu or Sikh in any part of the world should have a home of his own. If the Muslims want an exclusive place for themselves called Pakistan, why should not Hindus and Sikhs have India as their home? We are not debarring others from getting citizenship here. We merely say that we have no other country to look to for acquiring citizenship rights and therefore we the Hindus and the Sikhs, so long as we follow the respective religions, should have the right of citizenship in India and should be entitled to retain such citizenship so long as we acquire no other. I do not think this claim is in any way non-secular or sectarian, or communal. If anybody says so, he is, to say the least, mistaken. I think my description (amendment) covers every possible case. The only thing we are agitated about is that our people, thinking that Pakistan would be a happy country, went there and came 'back, Why should we recognise them by means of this or that provision in the Constitution? Because, nothing of the sort is necessary. So long as they are resident in India when the Constitution is promulgated and they are born of Indian parents, they should be entitled to citizenship rights without any fresh registration or evidence. That is what is contemplated in my definition. I hope the House will accept it.

Prof. Shibban Lal Saksena (United Provinces: General) : You say, 'being born of Indian parents'. How do you define 'Indian parents'?

Dr. P. S. Deshmukh : I think it should refer to all those persons who are resident in India. It would be quite easy to define it. If the Professor thinks a definition is necessary, it would be quite easy to frame one.

Prof. Shibban Lal Saksena : Then give a definition?

Dr. P. S. Deshmukh : Yes. I thought that an Indian is a very easily recognisable person. When combined with domicile, it is easier to define it. But if the Professor thinks that an Indian cannot be recognised and that it is necessary to lay down who is an Indian, what is his colour and complexion and so on, I would leave it to him to suggest a suitable definition. I think the existing definition is capable of being understood without any difficulty. I do not think that a definition is necessary for every expression used. If you examine the Constitutions of other countries, the Constitution of Poland for instance you will find that all that they provided is that any person who is born of Polish parents is a citizen of Poland. They know who is a Pole, just as we know who is an Indian. I do not think therefore that any definition is necessary in this connection. If we want a tentative definition, an article which will serve as a transitory provision, my article should be quite enough.

I now come to my remaining amendments. In case my definition and the article, the substance of which I have given, are not accepted, I have suggested that, in the article proposed by the learned Doctor, the words "at the date of the commencement of this Constitution", should be omitted. Then, in (a), after the words 'who was born in the territory of India', the words 'born of Indian parents' should be added, and in (c) the words 'at least' should be added before the words 'five years'. I would like the word 'five' to be altered to twelve so as to make it necessary for anybody to obtain citizenship by residence, in India for that period.

So far as the Explanation is concerned, I think the Doctor himself is convinced that it is not necessary to retain it and for very good reasons. It says: "For the purposes of this article, a person shall not be deemed to be a citizen of India if he has after the first day of April 1947 migrated to the territory now included in Pakistan". I see no reason why Pakistan should be singled out. The word 'migrated' has a definite meaning. It means going out of the country with the intention of settling permanently in some other country and not remaining in the country from which he has migrated. If the meaning of the word 'migrate' is clear, then nobody who leaves the Indian shores and goes out—it does not matter whether he goes to Pakistan or Honolulu or the North or the South Pole, he will not be entitled to the citizenship of India. Therefore the explanation is meaningless.

In addition to this I have proposed that there should be some responsibility which ought to be shared by every one who claims to be a citizen of India and for that purpose I have proposed amendment No. 29 that 'Every citizen of India shall enjoy the protection of the Indian State in foreign countries; and (b) be bound to obey the laws of India, serve the interests of the Indian communities defend his country and pay all taxes'. I would not like to press this very much because even this it must be possible to include in the Naturalisation Act, when we pass it. You have also suggested, Sir, that all these might be left to Parliament. In view of that I would not mind withdrawing this amendment. But I would like to move my other amendments. If, however, my whole article is accepted, then there would be no need to move the other amendments which deal with the wording of the article as proposed. Otherwise it will be necessary that those words to which I have objected ought to be omitted.

Mr. Naziruddin Ahmad : Mr. President, Sir, I have a few amendments to move. Before I do so, may I request your ruling as to whether I am to speak on my own amendments or to speak generally on the article. I think it would be inconvenient if I have to speak on the article generally. This should actually be at the end, because I do not know what further amendments would be moved. I however would like to say that there would be no repetition. Sir, may I have your ruling as to whether I should only move and speak on my amendments or generally on the article.

Mr. President : I think it would be much better if you make only one speech.

Mr. Naziruddin Ahmad : There is no doubt about it, but it will be inconvenient to speak generally on the article unless we get all the amendments before us. That is the difficulty. Further, I find that in spite of your kind help to inform the Members as to what amendments are to be moved, there is yet some amount of confusion among some Members as they still do not know what amendments have been moved. The difficulty has been caused by last-minute changes, and the number of Amendments is due to the fact that there have been constant changes.

Mr. President : I think the difficulty has arisen because Members have been offering to lists of previous weeks. The system that has been followed by the Office is to consolidate all the amendments at the end of the week and to put them into the first list of the next week, so that all the amendments that remained by the end of the second week are consolidated in the first list of the third week, and any further amendments that come in the third week are put down in the subsequent lists, II, III, etc. Dr. Deshmukh referred to the previous week's lists but I have mentioned the corresponding numbers in the existing week's lists. So, if the Members refer to the lists of the current week, they will find all the Amendments according to their number. If the Member so desires, I will mention the members once again.

Mr. Naziruddin Ahmad : I do not know whether all Members have got the correct numbers by this time, but so far as I am concerned, I know what amendments I shall move. I shall move from List I amendment Nos. 4, 18, 22 and 30 and from List V amendment Nos. 148, 149, 151, 153, 154, 155 and 156. There may be, one or two others, but I hurriedly noted down only these numbers.

Sir, I move amendment No. 4 in List I—

“That in amendment No. 1 above, in the proposed article 5, for the words ‘At the date of commencement of this Constitution every person who’ the words ‘Every person who at the date of the commencement of this Constitution’ be substituted.”

Sir, I will omit the word “date”, and so my amendment will substitute the words “Every person at the commencement of this Constitution” for the words “At the date of commencement of this Constitution every person who”. I shall explain the necessity for this amendment at once. The expression “date of commencement of this Constitution” is not proper. We have throughout this Constitution always referred to the “commencement of this Constitution”. That clearly and distinctly refers to the “date” of the commencement. Commencement only refers to the date. So, the “date of the commencement of this Constitution” is unnecessary. Therefore I have sought to remove the words “date of”. It is unnecessary and in other contexts it does not appear. The rest of this amendment is merely a rearrangement of the article to give more emphasis to the words “every person”. That is my first amendment.

Then I come to amendment No. 18 in the First List. Sir, I move:

“That in amendment No. 1 above, in the proposed new article 5-A, for the words ‘now included in Pakistan’ the words ‘which at the commencement of this Constitution is situated within the Dominion of Pakistan’ be substituted.”

I submit, Sir, that in the context of article 5-A as proposed by Dr. Ambedkar, the word “now” is extremely ambiguous. It is at any rate unprecise. If the words “territory now included in Pakistan” are used, we do not know to what period of time the word “now” refers. Does it refer to this date, the date on which this amendment is accepted? Does it refer to the 11th August 1949 or does it refer to the date when the Constitution comes into effect, or does it refer to the time when any lawyer or jurist reads the article? In fact, the word “now” is very unprecise. It has never been used in any part of this Constitution. Therefore for the word “now” I would like to substitute the words “commencement of this Constitution”. The rest is merely verbal. The word “now” is highly objectionable, it is vague and it may lead to some difference of opinion.

The next amendment which I would like to move is amendment No. 22 in the First List. Sir, I move :

“That in amendment No. 1 above, in sub-clause (ii) of clause (b) of the proposed new article 5-A, the words ‘date of’ be deleted.”

I have already explained the reason for removing these words. If we remove these words, it will read “the commencement of the Constitution”. It certainly means the date of commencement of the Constitution.

Sir, I move :

“That in amendment No. 1 above, in the proposed new article 5-B, for the words ‘made by Parliament’ the words ‘made in this behalf by Parliament’ be substituted.”

This is merely verbal and I suggested this by way of improvement. This may be considered by the Drafting Committee. That concludes List No. 1 of Third week. Then I come to List V, Third Week.

Sir, I move:

“That in amendment No. 1 of List I (Third Week) of Amendments to Amendments in the proposed article 5, in line 1, the words ‘date of’ be deleted.”

It refers to the same thing and perhaps it is a duplication of Amendment No. 4 and if that is so, then it would be unnecessary. I move also Amendment No. 149 in List No. V.

Sir, I move :

“That in amendment No. 1 of List I (Third Week) of Amendments to Amendments in clause (c) of the proposed article 5, the words ‘the date of’ be deleted.”

I have already explained the need. Then I move amendment No. 151.

“That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed new article 5-A, for the words ‘a person’ the words ‘any person’ be substituted.”

In proposed article 5-A the text of the article runs thus: “Notwithstanding anything contained in article 5 of this Constitution a person who has migrated to the territory of India” and the word “any person” would be better. The word “any person” has been used in a similar context in proposed article 5-B. “A person” is rather vague and “any person”, though meaning the same thing, is more precise and besides this amendment, if accepted, would make the drafting of this clause and clause 5-B the same. It is a drafting amendment and may be left over for consideration by the Drafting Committee.

I then move amendment No. 153:

“That in amendment No. 1 of List I (Third Week) of Amendments to Amendments in sub-clause (ii) of clause (b) of the proposed new article 5-A, the words ‘date of’ be deleted.”

It occurs in connection with the date of the commencement of the Constitution. These words, as I have Already explained are unnecessary.

Then I move amendment No. 154:

“That in amendment No. 130 of List IV (Third Week) of Amendments to Amendments, in the proposed new article 5-AA, for the words ‘a person’ the words ‘any person’ be substituted.”

I have already explained the necessity for this amendment.

I also move amendment No. 155:

“That with reference to amendment Nos. 130 and 131 of List IV (Third Week) of Amendments to Amendments, in the proposed new article 5-AA, for the words ‘now included, in Pakistan’ in the two places where they occur, the words ‘Which at the commencement of this Constitution is included in the Dominion of Pakistan’ be substituted.”

The main purpose of this amendment is to remove the word “now” and to put in its place a more precise expression, namely, “at the commencement of in the context of the article. The rest of this amendment is merely verbal.

Then I also move my amendment No. 156:

“That in amendment No. 133 of List IV (Third Week) of Amendments to Amendments, for the proposed article 6, the following be substituted :—

‘6. Notwithstanding anything contained in the foregoing provisions of this Part. Parliament may by law make further provisions with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

Provided that the making of any law by Parliament referred to in this article shall not be deemed to be an amendment of this Constitution within the meaning of article 304 of this Constitution.’ ”

[Mr. Naziruddin Ahmad]

With regard to this amendment, the first part the body of the proposed article 6 is more or less verbal, but the proviso is new and I have suggested it simply to obviate the difficulties which would attend to the amendment of the Constitution itself. We are providing some rules of citizenship in the Constitution. By article 6 we authorize the Parliament to make further laws lest it be said later on if the Parliament does so, it would have the effect of amending the Constitution itself, because it is quite conceivable that Parliament may make laws which will undo or at least modify clauses which are under consideration. That would involve the amendment of the Constitution itself. We have in a similar context taken care to provide that these amendments which are merely of a mechanical nature and not likely to go into the root of the Constitution may be done by Parliament and we have provided in those cases as a matter of caution that these amendments made by Parliament shall not be deemed to be amendments of this Constitution within article 304. So any possible controversy that the amendments are amendments of the Constitution itself would lead to almost an *impasse* by setting in motion the entire apparatus of amending the Constitution which would be highly inconvenient. On a small matter like this the matter should be left entirely to Parliament without it being considered to be an amendment of the Constitution itself. These are my amendments.

With regard to the entire set of articles proposed by Dr. Ambedkar, his amendments are needlessly cumbersome and as Dr. Deshmukh has pointed out, will lead to the introduction of “cheap” citizenship in India. I should suggest that it would introduce something more. Continuing the example cited by Dr. Deshmukh that a foreign lady, while passing through India on an aeroplane journey, gives birth to a child in Bombay, the child at once acquires the citizenship of India. Dr. Deshmukh thinks that this would be too flimsy a ground to give the child the status of an Indian citizen. I should submit it would lead to other serious consequences. The mother of the child in the example is a foreigner. It is conceivable, and it is easy to take it that the law of the country of her domicile will claim the child as her own citizen. In fact, citizenship follows parentage. The father’s domicile would also be the child’s domicile. So, the father’s or the mother’s domicile will compete with the child’s citizenship of India. On the one hand, India will claim the child to be the citizen of India and the mother of the child will claim the child to be a citizen of her domicile. It is conceivable that the father has another nationality and he claims the child to belong to that nationality. All the three countries will compete with one another and claim the child to belong to his or be own nationality. Carrying the illustration a little further, there are the grand parents; the four grand parents father and mother of the mother and father and mother of the father. There are thus again four sets of claimant whose nationality will decide the citizenship of the grand-child. The four different countries may claim the child to belong to them. What is more, the child is in a particularly favourable or unfavourable position of claiming or disclaiming the nationality of India or the nationality of the mother or the father and those of the four grand parents. It will mean a confused state of affairs. The manner in which these articles have come into being and have been presented to the House and the way in which amendments have been coming in from day to day, to say the least and to quote Dr. Deshmukh, is very unfortunate. I think a subject of this difficulty and complexity should not have been dealt with in this fashion and I should have thought it much better to have postponed the consideration of these articles and allow the Members to have an over-all picture, of the entry subject together with the suggested amendments. I find that I am not the only member of this House who finds it difficult to follow even the reprint of the entire Draft because we have to consider the amendments and place them in their context and con-

sider their effect. To do so accurately is not an easy job. As I have already submitted, there are many slow Members like me in this House who find it also equally difficult not only to follow the intricacies of this proposed new clause, but also the amendments to be proposed. It is this state of affairs which almost forces many Members to be inattentive and we appreciate the very just remarks which you made yesterday that many Members are interested in discussions having nothing to do with the -amendment or the subject under consideration. the real reason is that the amendments and the new ideas come in too late to the Members for real consideration. The subject of these series of articles will inevitably lead to in attention because it is a little bit difficult to follow them without mistake. As these are difficult matters and as there are anomalies. I feel, that if we postpone the discussion of these articles for further consideration, more complications will follow. Therefore, the best course would be to adopt these articles and to provide for any correction or supplementation if there is necessity through the excuse of article 6. That would to a certain extent avoid any complications which may unconsciously be created by further amendments. That would afford an excuse to Members for going more deeply into the matter; we relegate our thoughts and our labours to the future Parliament which may cure defects if there are any in these drafts. It will be very difficult to follow them and. it will lead to confusion of nationalities landing us in difficulties, not merely granting cheap citizenship. These are the few words that I have to submit before the House.

Shri Jaspat Roy Kapoor: (United Provinces: General) : Mr. President, Sir, the first amendment that stands in my name is amendment No. 5 in the First List, Third Week which relates to the, definition of citizenship subsequent to the date of the commencement of this Constitution. In view of the explanation which Dr. Ambedkar gave yesterday that his intention was to confine the definition of citizenship only at the date of the commencement of this Constitution and more particularly in view of your advice that we should confine our remarks only to this aspect of the question, I should not venture to move this amendment. But, Sir, I find that the Draft which has been moved by Dr. Ambedkar is not only a provisional Draft, but it is of such a limited nature that it does not make any provision for the acquisition of the right of citizenship subsequent to the date of the commencement of this Constitution even up to the period that Parliament may make any law in this respect. I, therefore, suggest to Dr. Ambedkar to seriously consider whether it would not be advisable, to accept the suggestion contained in this amendment. The suggestion reads like this :

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

after the words ‘at the commencement of this Constitution’ the words ‘and thereafter’ be inserted;
and

in clause (a), after the word ‘was’ the words ‘or is’ be inserted;

or alternatively, that with reference to amendment No. 1 the following new article be inserted as 5-D :—

‘After the date of the commencement of this Constitution, every person who possesses the qualifications mentioned in article 5 of this Constitution shall, subject to the provisions of any law that may be made by Parliament be a citizen of India provided that he has not voluntarily acquired the citizenship of any foreign State.’ ”

Mr. President : You drop ‘continue to be’.

Shri Jaspat Roy Kapoor : This is a misprint. It will only read as “shall be a citizen of India.....” I hope Dr. Ambedkar will give serious consideration to this suggestion and find it acceptable.

The next amendment that stands in my name is No. 13, but in view of the fact that the substance of this amendment is covered by amendment No. 130

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which has already been moved by Dr. Ambedkar, I do not propose to move it. I am not moving Nos. 8 and 9 either. Then I pass on to No. 31 which I beg to move:

“That in amendment No. 1 above, in the proposed new article 5-B, the words ‘deemed to be’ be deleted.”

There is another amendment No. 19 in my name as well as in Mr. Sidhva’s name but I leave it to be moved by Mr. Sidhva because he is my senior partner in this amendment.

The next amendment which I would like to move is amendment No. 124 which runs thus :

“That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed new article 5-A, after the word ‘who’ a comma and the words ‘on account of Civil disturbances or the fear of such disturbances.’ be inserted.”

There are some other amendments also standing in my name but I do not propose to move anyone of them.

Sir, this article 5 which relates to the definition of citizenship has had rather a chequered history. The Drafting Committee has placed before us for but consideration various drafts from, time to time, each draft being supposed to be an improvement on the previous one, but every time that it came before us for scrutiny and consideration, it was found to be defective and not comprehensive enough, and, therefore, it had to be sent back to the Drafting Committee for being recast and improved upon. Even during this Session one amendment after another has been pouring in from the Drafting Committee until we have before us the Draft as has been moved by Dr. Ambedkar yesterday. Let us see whether even this Draft is satisfactory enough. I am afraid even this is not satisfactory and is not comprehensive enough. First of all, we find that it confines itself to defining Citizenship at the date of commencement of Constitution and makes no provision for the acquisition of the right of citizenship subsequent to that date. Of course under article 5(c) the right acquired on the day of the commencement of this Constitution will continue to rest with the citizens even thereafter, but with all that it makes no provision for acquisition of the right of citizenship subsequent to that date. It has been conveniently left over to be dealt with by Parliament. Now, the date of commencement of the Constitution is going to be under the schedule which has been thought of at present as 26th January, 1950. So it means that 26th January 1950 is going to be the deadline by which the right of citizenship should be acquired and no provision has been made for the acquiring of this right subsequent to the midnight of 26th January 1950. I consider this to be rather a very unsatisfactory state of affairs. I can quite appreciate the view that it may not be very easy today to make an exhaustive definition of citizenship. It may not be possible to envisage at this stage as to what possible qualifications should be provided for the acquisition of the right of citizenship, and it should be left to Parliament to make a very comprehensive definition of citizenship; but I see no reason why we should not make an attempt, when it is easy enough —according to me—to provide for acquisition of this right during the period intervening the date of commencement of this Constitution and the date on which the Parliament may enact any new Law on the subject. Is it not very unsatisfactory that we should make no provision for all those persons who may be born after midnight of 26th January 1950, and should we not make any provision for acquisition of the right by those who may have been domiciled in this country and some time, after January 1950 may be completing the period of five years of residence ? That seems to be an obvious lacuna. Lacs of persons would continue to be considered as non-citizens of this country between the date of commencement of this Constitution and the date when the new law will be

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

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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.

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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

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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

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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.

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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 day 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

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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 satisfied 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 leads 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

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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

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agitating the minds of every evacuee. Though *bona fide* refugees have not yet been rehabilitated, the houses in Delhi etc. were reserved for those who had yet to arrive from Pakistan and many of such returned people have got their houses back. There is a good deal of confusion and uncertainty in the minds of the refugees that they do not understand the position of the Government of India. At a Conference recently held some responsible person stated that some people came here with temporary permits obtained from the High Commissioner or Deputy High Commissioner in Pakistan and were taken by Muslim dignitaries and ministers to our high placed ministers and leaders and recommended for permanent permits. This may or may not be so. But even if there was a single instance of this nature, this must give rise to agitation in minds of refugees who are driven from pillar to post and not rehabilitated properly. Therefore I say that, apart from rights to property which may run to crores, I for one do not understand how, according to law and equity, we can hold to a proposition that if any person gets a permit for resettlement in India, *proprio vigore* he becomes a citizen of India. It means that the High Commissioner at Karachi, has got the power of making any person he likes a citizen of India. It virtually comes to that. By saying- this, I may be doing some sort of injustice to that dignitary. I should say in fairness that he never knew that any person to whom a permit has been given was proposed to be made a citizen of India. Therefore my humble submission is, that if he knows that his permit will have this effect, he will consider twice, before issuing a permit. May I know, Sir, how any person can justify that position because the permits have been begun to be given after the 19th July 1948 ? Those persons who came before were less fortunate, because they did not get any permits. Those, persons who will come after the 26th July 1949 will not have completed six months before they apply for registration. Therefore I beg to point out that permits issued between the 19th July 1948 and 26th July 1949 will only come under the provisions of this rule. After all, what is the difference between the two persons? How can anybody justify different treatment in their cases? All such persons could be considered under article 6.

Then again, Sir, when a permit for entry has been given, it means that the person concerned wants to come in and rehabilitate himself, and the provisions of the Naturalisation Act which I have read out require that this man should be of good character. I will not say that all the persons who want to come in for resettlement are coming with sinister motives, but it is true that the majority of them come with sinister motives, with a view to making money, with a view to dispose of their property and for other purposes. After all Sir, there are many here who have got sons there, wives there and just a son or wife here, and they get all the advantages here and all the advantages there. Now, Sir, those specially in Western Pakistan have got much more facilities, much more comfort than we enjoy in East Punjab. There is no reason why they should come here at all. My submission is that they are coming not with, the idea of remaining here. Of course they have got permits, but we all know how permits can be obtained. Sir, those people do not take any oath of allegiance to this country. We are not sure that these people are of good character. All the Provisions of sections 6 and 8 of the Naturalisation Act should apply to them. With your permission, I would just read out section 8, under which a foreigner from any other country would be subjected to certain liabilities and there is no reason why people coming from Pakistan and thereafter choosing to, remain here for a year or two and then going back should be treated in a different manner. The relevant portion of section 8 says—

Where the, Central Government is satisfied that a certificate of naturalization granted under this Act, or the Indian Naturalisation Act, 1852, was obtained by false representation or fraud or by concealment of material circumstances or that the person to whom the certificate has been granted has shown himself by act or speech to be disaffected or disloyal to His Majesty, the Central Government shall, by order in writing, revoke the certificate."

In the case of a man who comes to this country by obtaining a permit, where is the guarantee that he will stay here ? Even if we see under the Naturalisation Act that he behaves well, where is the guarantee, that he will not go back after he has disposed of his property ? My submission is that there is no reason why the Government of India or we should have a soft corner for these people, who come in in order to take advantage of our weakness or leniency towards them. I do not say that they should not have the right to be repatriated according to law when we have passed a Naturalisation Act under article 6 or any other article. I only want that they may be given their proper rights and to that end. I have proposed amendment No. 164 which says such persons

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

I do not disqualify him for all time. I have only sought to give him his due.

"He shall be eligible for citizenship by naturalisation 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 naturalisation the certificate of naturalisation can be cancelled."

Now, Sir, one of the conditions is that if during the first five years, a man goes to jail for committing any crime, then his certificate, will be revoked. Now, I do not see why this condition should not apply to those gentlemen who come here after obtaining permits. Now, Sir, with regard to 5AA, I do not want to take the time of the House any further.

I would now proceed to 5B. In regard to 5B, I have already submitted that it is no -use giving rights of citizenship to any person whose parents or grand-parents were born in India as defined in the 1935 Act and who is now residing outside India. He has to apply before an Embassy and this can be done before the commencement of the Constitution and even after that My submission is that in 5A, 5AA and 5C the words used are "before the commencement of this Constitution." It is only article 5B in which it is contemplated that even after the commencement of the Constitution a person can become a citizen. Now, has such a person got any sort of connection with India? His grand-parents might have been born in some far-off corner of India, but I do not see what possible connection can there be between him and India. My submission is that unless and until he can prove and show that he possesses, at least a remote, idea of returning to India, that person has no right to become a citizen of India. To be consistent, I propose that the words "whether before or after" should be replaced by the word "before" because after the commencement of the Constitution we propose to enact a law which will provide for these contingencies. In connection with 5B and 5C the words used are "subject to any law made by Parliament" and I welcome these, because after all even if we are passing today rather hastily these provisions which are not justifiable after the commencement of the Constitution Parliament will have the right to rectify them. In article 5B as well as in 5C I welcome, these words and I want that those words should be retained. I oppose the amendment which says that these words should not be there. After all, Parliament should be armed with

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powers to rectify these if it thinks them unjust, My submission is that these words “of the Government of India” should not also find a place there, because before the commencement of the Constitution ours is the Dominion Government of India. My submission is that all these three amendments should be accepted.

As regards amendment No. 32, as I have already submitted, if a person has acquired the citizenship of any other country, he cannot become a citizen of this country. These words do not find a place in 5B. If they are good for 5, I submit these words are good for 5B also. Therefore they should find a place in 5B also.

Now, Sir, I have come to the end of all my amendments. I have one more word to submit for your consideration. When the Act relating to these permits was placed in the House, we did not know that they would acquire this force. Now, since we find that attempts are being made, to make citizens of people who have got these permits, I would beg and humbly beg the Ministry concerned not to issue any further permits. What is the meaning of taking people from Pakistan and foisting them on us when our own people are suffering ? My submission is that any further issue of these permits would not be just and would riot be conducive to the solidarity of this country.

Shri R. K. Sidhwa (C. P. & Berar : General) : Mr. President, Sir, I beg to move :

“That in amendment No. 1 above, in the proposed new article 5A, the words ‘deemed to be’ be deleted.”

Before giving the reasons as to why I move this amendment, I would like to make few observations on the main article. Sir, the Honourable Dr. Ambedkar has rightly stated that it has given them a headache for framing this article. Originally in the Draft Constitution it comprised only one main clause and three sub-clauses. In the new article there are 6 main clauses and 6 sub-clauses. In the old article the clauses were so vague and conflicting with each other that the Drafting Committee—I am very glad had to reconsider the whole question *de nova* and submit to this House a very comprehensive article, which in my opinion covers all the points. I have gone through it very carefully and from the experience that they have gained for eighteen months, they have come to the right conclusion and of including, even future events that are likely to occur. I therefore congratulate and compliment the Drafting Committee, not only myself, but I think the whole House will compliment them for the trouble they have taken in framing this article. It is true that there are many amendments, but I do feel that in proposing these amendments, Members do not wish to belittle the work of the Drafting Committee and the pains that they have taken to bring about such a comprehensive article; but what these amendments mean is that if there are some loop-holes or there are some points and difficulties, they would like to point them out to the Drafting Committee, so that they may consider and accept them wherever possible.

Now, Sir, coming to article 5A, my honourable Friend, Mr. Kapoor has suggested an amendment that after the words “At the commencement of this Constitution” the words “and thereafter” be inserted. Reading English as it is, it appears there is some vagueness in it that at the date of the commencement only those persons will be called as citizens of India, but I understand that under birth-right clause a person wherever he is born, he is supposed to be a citizen of that country. I am not very clear in my mind on that but if that is not so, I would really like to know whether this expression “at the

date of commencement” would mean that even after the date of commencement, that is to say when a person is born after 27th of January 1950 and when he becomes a major, will be entitled to be a citizen of this country. English as it is, I take it that at the date of commencement means at that time only and not ‘afterwards’. As far as my memory goes, there is an Act which says that the birth-right of a person who is born in that country is supposed *ipso facto* to be a citizen of that country. This matter therefore requires looking into.

Then my honourable Friend, Dr. Deshmukh, has suggested an amendment to this very article wherein he wants that the Sikhs and Hindus wherever they are born and whenever they desire shall be entitled to become citizens of India. When he has mentioned names of communities, I would like to point out to you, Sir, and the Members in this House, that there are nearly 16,000 Parsis who are professing the faith of Zorastrian outside India; there are about 12,000 in Iran and those persons who are in Iran are professing the same faith, as the Parsis are professing in India and I know that article 5-B covers the point which my honourable friend Dr. Deshmukh desires wherein it is laid down that even the grand-fathers and their Grand-fathers if they are born in other countries, if they desire to become citizens of India, can so become. Dr. Deshmukh’s amendment causes a wider privilege and right. Although I am not on this amendment if the Drafting Committee is going to consider this, I would like, them to bear in mind that there are other communities and merely to mention the Sikhs and Hindus would not I think be proper. That is only point that I wanted to bring to the notice of the Drafting Committee. There are 12,000 Parsis who are professing the same faith as we here; but their grand-fathers are born in Iran and several of them come to Bombay and to other parts of India; they would like sometimes to make India their home. It is a far-fetched point that I am making, but if at all it is going, to be, considered, then my point is this that we need not mention necessarily ‘any community’; if we do so it would look as if we are ignoring other communities which do require attention and therefore, I place this view-point before the House, if they at all want to take this amendment into consideration.

Then, Sir, I am coming to my own amendment which has a bearing on article 5A wherein it states, “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 want that the words “deemed to be” should be deleted. Sir, we are all very glad that the Drafting Committee has made no distinction between the citizens (original) of India and citizens who unfortunately on account of the division of India have come from Pakistan into India. So far so good : you are giving them equality of right But why do you call them “deemed to be” and why do you “give them a lower status?” In the first paragraph, it is stated “he shall be a citizen of India.” Why these refugees shall be “deemed to be” citizens of India and why a lower status, I rather fail to understand. Probably it has escaped the notice of the Drafting Committee and I would request them to bear this in mind seriously. We know that the refugees who have come to this country, wherever they are placed, they say that they are not wanted by the citizens either by a province or by a Government or by the people, and they always make a grievance that they are sometimes not wanted and wherever they are wanted, they are not rehabilitated and some are treated very badly. I do not share that view. I totally disagree with that view; I know that wherever they have gone, with open arms the citizens of that province have welcomed them : they are trying to rehabilitate them to the best of their ability and to give them all shelter and provide for them houses wherever is possible. But there are many refugees who take the view as mentioned by me. Why do you

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say in the Constitution “Your status will be second, your status will not be first” ? It is a very minor thing but we should remove that kind of sentiment in this Constitution. You have given them equality of right, but why do you say “deemed to be” ? I therefore appeal to the Drafting Committee that they will kindly see that the word, “deemed to be” are deleted. Mr. Kapoor has also explained this view-point elaborately but at the conclusion of his speech he said, “The Drafting Committee might consider this.” I say “The Drafting Committee must consider this.” Sir, why should they “might consider” this point on which you have agreed and you want to give equal right ? But why do you want to say “You might consider” ? I would request them to “do kindly consider” and remove these words. I desire that they must remove them and if they do not want to remove, it is their choice; we cannot force them. When they by this clause want to treat them as equals, I submit, we should not give them the slightest chance to feel that we treat them on a lower status. The refugees are having wrong notions in their minds; you do not give them a cause for complaint by putting these words in the Constitution and say that “you will have a second status in this matter of citizenship.”

Then, Sir, coming to the so-called obnoxious clause, I welcome this clause, both the main clause and the proviso. Those honourable Members who have referred to this proviso are also justified in their complaint; I do not want to belittle their arguments. I want to state that this proviso is necessary. It is not a question of Mussalmans; there are hundreds of thousands of Parsis and Christians today in Pakistan who may like to come back—why should you close the door against them ? They were born in India; they have everything to do with India; for certain reasons they are there. If at any time they want to come, this proviso gives them this right, I do not want that right to be taken away.

But, there is one danger which my honourable Friends Messrs. Jaspat Roy Kapoor and Thakur Das Bhargava rightly stated about evacuee property. Their grievance is a legitimate one. What they stated is this. Recently, the Government of India has issued an Ordinance on the question of evacuee property. This question was the subject of inter-dominion conferences for a number of months and they came to a certain settlement in the month of January this year. The whole thing has come to a fiasco only two months ago. Pakistan broke that agreement. Properties worth crores of rupees were left in the lurch. Our Government all along wanted to take up a persuasive attitude and hoped to bring them round. They made all efforts; but they failed. The point is that under this clause there are many grounds for apprehension. Parliament can make a law that a permit shall be necessary before a man comes hem. After the promulgation of the Ordinance, there has been a stir in that community and the Secretariat office, of the Bombay Government is being flooded by that class of people on the ground that these properties were left only temporarily,, and that they want to come back. I also know of cases where a property was declared evacuee property by the Custodian, and after some influence, and not even compliance of the provisions of the Transfer of Property Act which was passed by this Constituent Assembly (Legislative) last April, that proclamation has been negated to be evacuee property. This has created doubt and sensation. I do not say that there is any place in the law. The law is quite clear. The action of an official has created doubts in the minds of the people. Therefore, my friends say that these people, if they come, they may settle for three years, and after selling their property, they may go back to Pakistan. There should be caution against this. I feel, Sir, that in the proviso, this caution is there, permits are Provided. Parliament will take note of this and see that the object is not nullified. I do not in the least deprecate the apprehension in the mind of my Friends, Thakur Das Bhargava and Jaspat Roy Kapoor; they have

their genuine danger. But I do not want from this point of view that this proviso should be deleted. The reasons I have already explained, Sir. This proviso must remain for future eventualities. It may be in our own interests it may be in the interests of those persons who are anxious honestly to come back to India.

This proviso also shows that the Drafting Committee is vigilant. Provision has also been made in article 5B for the persons who are now in foreign countries and who may feel at any time to come back. You know, recently there has been an agitation in Malaya. In the past, many Indians went to these Colonies as indentured labour, or for betterment of their future, or from the business point of view. There are lakhs of our brethren there. After attainment of freedom, if some people in these countries want to come back to India, thinking that India is free and their position and privileges would be better off in India, they should be welcomed. But, I do not share the arguments of my honourable Friend Pandit Thakur Das Bhargava, when he states that even his grand-parent was born there why should he be allowed to come here and acquire the Indian citizenship. You will have to remember the circumstances under which they went there. They are our countrymen. They are our own brethren. They had to go to foreign countries from the economic point of view. When India is free, they would like to come back. Why do you want to deny that right to them. I therefore say, not only the grand-father, but the great grand-father was born in India, and if they want to come back, let them come here. They should be welcome. They will be a great asset to us. After their experience in those countries, they will be very useful to us; they will be industrialists, businessmen and ardent labourers who will certainly be an asset to this country. I welcome this article also. We have Indians in South Africa and Ceylon where the new laws of citizenship, have made our Indians feel that they are being discriminated. In that even if they want to establish in India they must be permitted.

As I told you, Sir, such an eventually may not happen. But if it does, we have to make a provision. There are 10,000 Parsis in Iran. When they were ruling until the last Kingdom of Medezand Shariar they were happy. Subsequently, under the Muslim rule, they were driven away, They came to India. Remote as the, case may be, in such an eventuality in future, if these people are driven away, why should you close the door against them? Their grand-parents were born in Iran; but by virtue of their being driven away, they may desire to come to India. Why should we close the door against them ? Therefore, I contend that article 5B is a very helpful one. I think the Drafting Committee in framing this article has taken into consideration the recent agitation in Malaya. South Africa and probably the case of Indians in Iran has not come to their notice. Our nationals have spread all throughout the world. If their parents and grand-parents went thereunder extraordinary circumstances and became citizens of that country, and subsequently and particularly after the attainment of freedom in India if they choose to settle in this country they should not be denied the entry. I feel such *bona fide* citizens should not be denied the right of coming and establishing themselves for the betterment of themselves and for the betterment of this country.

With these words, I support the amendment that I have moved.

Shri B. P. Jhunjunwala (Bihar : General) : Mr. President, there are two amendments in my name Nos. 123 and 150. Regarding 123, a similar amendment has been moved here and sufficient has been said on this point and I would not take the time of the House much but I would only say a few words after reading it :

“That in amendment No. 1 of List I (Third Week) of Amendments to Amendments in the proposed new article 5A, for the words beginning with ‘Notwithstanding anything’

[Shri B. P. Jhunjhunwala]

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.' "

The object of moving this amendment of mine, is that article 5 contemplates the general principle of citizenship and we have given some concession in article 5A to persons who have come from Pakistan. Article 5 says :

- "(a) Any person who was born in the territory of India; or
- (b) either of whose parents was born in the territory of India; or
- (c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding the date of such commencement,

shall be a citizen of India, provided that he has not voluntarily acquired the citizenship of any foreign State."

I want by my amendment to confine the right of acquiring citizenship just after residing for six months, at the date of commencement of this only to displaced persons, and others who come under article 5A can very well acquire the right of citizenship after remaining in India for five years. I not really understand the object of article 5A when it extends the right to persons other than those who have been refugees or who have been displeased or have come from Pakistan on account of civil disturbance or the fear of such disturbances. I do not understand where is the hurry about it. If the right of six months be confined only to such persons, then there is absolutely no difficulty, because after all we are not taking away the right of acquiring citizenship from any persons who come from Pakistan. The only thing we want to know is the real intention of the person who has come to India and is residing here, and we shall know it better during the period of five years, I have been told that from Eastern Pakistan people are infiltrating into Assam for some sinister motive *i.e.*, to increase their population. It is not my first-hand knowledge, but responsible reliable persons have told me like this. This has led me to move this amendment. They are going to Assam, not because they are inconvenienced in Pakistan, but simply with a view to remain in Assam and increase their population there. It is to avoid giving right to such persons that I am moving this amendment.

The other amendment I have proposed is No. 150 and similar amendment has been moved by my Friend Professor Shah and he has spoken a lot over it and I share his views. The amendment reads :

"That in amendment No. 6 of List I (Third Week) of Amendments to Amendments, 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 right of citizenship to the nationals of India settled there and desirous of acquiring the local citizenship.' "

Shri S. Nagappa (Madras : General) : Sir, I beg to move :

"That in amendment No. 1 above, in sub-clause (ii) of clause (b) of the proposed new article 5A, for the words 'on an application made' the words 'on a statement or an application made' be substituted."

I also move :

“That in amendment No. 1 above, in the proviso to the proposed new article 5A, for the words ‘the application’ the words ‘the statement or application’ be substituted.”

Sir, in moving this my intention is that the word “application” means it should be only a written one. In our country, literacy is very low and so the majority of the people who seek citizenship may not be educated and may not be in a position to make an application in writing. So I suggest that a man who is not in a position to make an application can merely make a statement. The statement should be given as much importance as is given to an application. I hope the Honourable Dr. Ambedkar and the House will concede this request.

Sardar Bhopinder Singh Man (East Punjab: Sikh) : Since the time is limited, I request that I may be permitted to move my amendment formally and make my observations tomorrow or I may be permitted to move it tomorrow.

Mr. President : You may move it now and speak tomorrow.

Sardar Bhopinder Singh Man : Sir, I move:

“That in amendment No. 131 of List IV (Third Week) of Amendments to Amendments, the proposed proviso to the proposed new article 5AA be deleted.”

This proviso which has now been incorporated by Dr. Ambedkar reads as follows :

“Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of article 5A of this Constitution be deemed to have migrated to the territory of India after the nineteenth day of July 1948.”

Sir I feel that this Proviso (and we are all agreed on it) is absolutely obnoxious and does injustice to the Hindu and Sikh refugees who have come here and are awaiting resettlement.

Mr. President : The honourable Member may continue his speech tomorrow.

The Assembly then adjourned till Nine of the Clock on Friday, the 12th August 1949.
