

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’

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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.
