

Mr. President : The question is:

“That in clause (3) of article 269, the words and figures ‘for the time being specified in Part I or Part III of the First Schedule’ be omitted.”

The amendment was adopted.

Mr. President : The question is:

“That article 269, as amended, stand part of the Constitution.”

The motion was adopted.

Article 269, as amended, was added to the Constitution.

Articles 5 and 6

Mr. President : We have now to take up articles 5 and 6 of the original draft. I find there is a veritable jungle, of amendments, something like 130 or 140 amendments, to these two articles. I suggest that the best course will be for Dr. Ambedkar to move the articles in the form in which he has finally framed them and I shall then take up the amendments to this amended draft. Both 5 and 6 go together I think. Dr. Ambedkar.

Prof. K. T. Shah : May I know what happens to the amendments in the Printed List? They have all been tabled as amendments to the original draft. I do not quite understand your suggestion as to the process in which the amendments would now be taken up.

Mr. President : If there is any amendment which is of a substantial nature, which touches any of the amended drafts as proposed by the Drafting Committee, I shall certainly take it up, but I leave it to the Members to point out to me which particular amendment they wish to move.

Dr. P. S. Deshmukh : If the original draft is not moved, all the amendments tabled to that draft go by the wind.

Mr. President : We do not move the original draft, but it will be taken as moved and then the other amendments come in.

Members will find that Dr. Ambedkar has given notice of certain amendments which have been circulated to Members. The first is No. 1 in List I.

The Honourable Dr. B. R. Ambedkar : Sir, May I give the references? The amendments of which notice has been given about the citizenship clause are spread over various lists, and I propose to give in the beginning to Members the references to the various lists. The first amendment is No. 1 of List I. Then come amendments Nos. 128, 129, 130, 131, 132 and 133 of List IV. These are the various proposals of the Drafting Committee with regard to this article. I feel that the House may not be in a position to get a clear and complete idea if these amendments were moved bit by bit, separately. Therefore what I propose to do is this that I will move a consolidated amendment, so to say, which I have prepared, consisting of amendments Nos. 1, 128, 129, 130 and 133. My Friend, Mr. T. T. Krishnamachari, will subsequently move the other two amendments which are Nos. 131 and 132 in List IV. In amendment No. 129, it should read “of the proposed article 5A” instead of “of the proposed article 5”. It is a printing error. With these preliminary observations, so to say, I move my amendment:

“That for articles 5 and 6, the following articles be substituted:—

- “5. At the date of commencement of this Constitution, every person who has his domicile in the territory in India and—
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| Citizenship at the date of Commencement of this Constitution. | <p>(a) who was born in the territory of India : or</p> <p>(b) either of whose parents was born in the territory of India; or</p> <p>(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding the date of such commencement,</p> |
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shall be a citizen of India, provided that he has not voluntarily acquired the citizenship of any foreign State.

5-A. 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 if-

- (a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and
- (b)
 - (i) in the case where such person has so migrated before the nineteenth day of July 1948, he has ordinarily resided within the territory of India since the date of his migration; and
 - (ii) in the case where such person has so migrated on or after the nineteenth day of July 1948 he has been registered as a citizen of India by an officer appointed in this behalf by the Government of the Dominion of India on an application made by him therefore to such officer before the date of commencement of this Constitution in the form prescribed for the purpose by that Government:

Provided that no such registration shall be made unless the person making the application has resided in the territory of India for at least six months before the date of his application.

5-AA. Notwithstanding anything contained in articles 5 and 5-A of this Constitution a person who has after the first day of March 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India :

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 5-A of this Constitution be deemed to have migrated to the territory of India after the nineteenth day of July 1948.

Shri Jaspat Roy Kapoor (United Provinces : General): This, you, had said, would be moved by Mr. T. T. Krishnamachari.

The Honourable Dr. B. R. Ambedker : I have been considering that, but I ted article as I am proposing to accept the amendment which will be moved by him.

5-B. Notwithstanding anything contained in article 5 and 5-A of this Constitution, any person who or either of whose parents or any of whose grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted) and who is ordinarily residing in any territory outside India as so defined 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 therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form prescribed for the purpose by the Government of the Dominion of India or the Government of India.

5-C. Every person who is a citizen of India under any of the foregoing provisions of this Part shall. Continuance of the rights of subject to the provisions of any law that may be made by Parliament, continue citizenship. to be such citizen.

6. Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship."

Sir, I would reserve my remarks after the amendments to my draft are moved by Mr. T. T. Krishnamachari and that will complete the thing.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, the amendment that has been moved is a last-minute consolidated amendment taken from several

amendments in the printed amendments. Though in the profession of law for a very long time, I find it a bit confusing to follow how the scattered amendments have been consolidated and whether any departure has been made in the process. In trying to consolidate a large number of amendments and redrafting them, unconscious departures often happen. It is again extremely difficult for us to consider our own amendments as to whether they are accepted or whether they are rejected in the consolidated draft or if they are to be moved, if they are to be moved in an altered form just as a consequential measure.

I submit that substantially in amendment No. 1 in List I and in some other amendments in other Lists which are now consolidated there has been a great deal of departure from the Draft Constitution and the point that I took the other day is more applicable today than at any other time. There are absolutely new clauses, which purport to be amendments of articles 5 and 6, for instance proposed new articles 5A, 5B, 5C; then there are other articles like 5AA; then there is a new proviso in amendment No. 131 and amendment No. 130 is entirely new. Then in amendment No. 133 there is a new redraft of article 6. I submit, Sir, these amendments or this consolidated amendment amounts largely to an amendment in the Constitution itself or rather a large number of new amendments to the Constitution itself. As I submitted the other day there was a time fixed by you for submitting regular amendments and then it was ruled by you, and it was applied in many cases, that amendments to amendments alone would be submitted; but then this present amendment or a consolidated amendment, consisting of a large number of amendments, consists of amendments of the Constitution itself and that is creating a considerable amount of difficulty. We are departing from the Draft Constitution every day and today the departure is still more complete. I hope that there will be some limit to this migration from the original Draft Constitution. I ask you, Sir, to consider whether these amendments introducing absolutely new clauses which amount to amending of the Constitution itself should be allowed at this stage, and if they are to be allowed whether it would not be proper to give us a consolidated amended draft which could be considered by the Members in order to see whether their own amendments really fit in into it or they require readjustment or fresh amendments. Sir, I ask you to consider the practical difficulties of the procedure. Clause 5 has been before the House for some time and amendments to amendments alone would now be regular, but every day new amendments and new ideas are coming in. Articles 5A, 5B and 5C are new. Article 5AA has been brought today and its proviso has come in by a different amendment. The explanation to article 5 is deleted today. These have been all put together in our *ex tempore* amendment. I do wish that the Constitution should be finished as quickly as possible; otherwise this taste for new changes would go on unabated. I ask you, Sir, to give us a ruling and to suggest a convenient method by which we can deal with the situation.

Mr. President : I have considerable sympathy with the honourable Member's objection that in this amendment new ideas have been brought in, but Members will remember that when this Constitution was taken up for discussion during the winter Session, these articles were over for further consideration and I suppose it was accepted that fresh amendments would be brought in. All those articles and those which were reached but not considered were held over to enable the Drafting Committee to reconsider the original draft and propose new drafts where necessary.

In that view, the Drafting Committee has considered that draft and has proposed new drafts, and they have suggested certain amendments to their

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own draft. What Dr. Ambedkar has done is to put together all the amendments which they have proposed and he has read out a consolidated amendment. But I can fully appreciate the difficulties of Members when these various amendments are spread over a number of pages and a number of lists, and I would ask the Office to circulate to Members the consolidated amendment as proposed by Dr. Ambedkar. We can take up the discussion of the consolidated amendment which has been moved by Dr. Ambedkar tomorrow morning, and the Members will have time by then to study the amendments in the consolidated form. In the meantime, I do not like to waste even the half hour that we have, and if Members have any other amendments to move, they might move them today so that we might take up the consideration of the amendments as well as the draft as moved by Dr. Ambedkar tomorrow morning.

Prof. Shibban Lal Saksena : May we have Dr. Ambedkar's speech today?

Mr. President : Yes, I would ask Dr. Ambedkar to explain his amendment.

Mr. Naziruddin Ahmad : Amendment Nos. 130 and 131 have been circulated only this morning and we have had no opportunity of considering them. Then if we are to get the consolidated amendment today, there will be no time to suggest amendments which will be in time before the House.

Mr. President : If there is any reasonable grievance on that account, I will take that into consideration.

Shri T. T. Krishnamachari : I move amendment No. 131 of List IV. I move :

"That in amendment No. 130 above, to the proposed article 5-AA the following proviso be added:—

'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 law and every such person shall for the purposes of clause (b) of article 5-A of this constitution be deemed to have migrated to the territory of India after the nineteenth day of July 1948.' "

There is one other formal amendment which I have to move. It is No. 132.

I move :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed article 5-B, the words 'and subject to the provisions of any law made by Parliament' be omitted."

Sir, I shall not explain these amendments. If necessary, Dr. Ambedkar will explain them.

Shri Jaspat Roy Kapoor : May I suggest that all the amendments which are on the list may also be formally moved today.

Mr. President : First, let Dr. Ambedkar explain his viewpoint and then the other amendments may be moved.

Shri Jaspat Roy Kapoor : I venture to make that suggestion because if all the other amendments are also moved, Dr. Ambedkar will have an opportunity of saying something with reference to those amendments also. The other amendments may simply be moved but no speeches may be made on them, so that the House may be in possession of all the amendments.

Mr. President : If we take up all the other amendments, I think there will not be any end to them. First, let Dr. Ambedkar explain his proposition and then the other amendments may be moved.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, except one other article in the Draft Constitution, I do not think that any other article has given the Drafting Committee such a headache as this particular article. I do not know how many drafts were prepared and how many were destroyed as being inadequate to cover all the cases which it was thought necessary and desirable to cover. I think it is a piece of good fortune for the Drafting Committee to have ultimately agreed upon the draft which I have moved, because I feel that this is the draft which satisfies most people, if not all.

An Honourable Member : Question.

The Honourable Dr. B. R. Ambedkar : Now, Sir, this article refers to, citizenship not in any general sense but to citizenship on the date of the commencement of this Constitution. It is not the object of this particular article to lay down a permanent law of citizenship for this country. The business of laying down a permanent law of citizenship has been left to Parliament, and as Members will see from the wording of article 6 as I have moved the entire matter regarding citizenship has been left to Parliament to determine by any law that it may deem fit. The article reads—

“Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.”

The effect of article 6 is this, that Parliament may not only take away citizenship from those who are declared to be citizens on the date of the commencement of this Constitution by the provisions of article 5 and those that follow, but Parliament may make altogether a new law embodying new principles. That is the first proposition that has to be borne in mind by who will participate in the debate on these articles. They must not understand that the provisions that we are making for citizenship on the date of the commencement of this Constitution are going to be permanent or unalterable. All that we are doing is to decide *ad hoc* for the time being.

Having said that, I would like to draw the attention of the Members to the fact that in conferring citizenship on the date of the commencement of this Constitution, the Drafting Committee has provided for five different classes of people who can, provided they satisfy the terms and conditions which are laid down in this article, become citizens on the date on which the Constitution commences.

These five categories are :

- (1) Persons domiciled in India and born in India : In other words, who form the bulk of the population of India as defined by this Constitution;
- (2) Persons who are domiciled in India but who are not born in India but who have resided in India. For instance persons who are the subjects of the Portuguese Settlements in India or the French Settlements in India like Chandernagore, Pondicherry, or the Iranians for the matter of that who have come from Persia and although they are not born here, they have resided for a long time and undoubtedly have the intention of becoming the citizens of India.

The three other categories of people whom the Drafting Committee to bring within the ambit of this article are :

- (3) Persons who are residents in India but who have migrated to Pakistan;
- (4) Persons resident in Pakistan and who have migrated to India: and
- (5) Persons who or whose parents are born in India but are residing outside India.

These are the five categories of people who are covered by the provisions of this article. Now the first category of people *viz.*, persons who are domiciled in the territory of India and who are born in the territory of India or whose parents were born in the territory of India are dealt with in article, 5 Clauses (a) and (b). They will be citizens under those provisions if they satisfy the conditions laid down there.

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The second class of people to whom I referred, *viz.*, persons who have resided in India but who are not born in India are covered by clause (c) of article 5, who have been ordinarily resident in the territory of India for not less than five years immediately preceding the date of such commencement. The condition that it imposes is this that he must be a resident of India for five years. All these classes are subject to a general limitation, *viz.*, that they have not voluntarily acquired the citizenship of any foreign State.

With regard to the last class, *viz.*, persons who are residing abroad but who or whose parents were born in India, they are covered by my article 5-B which refers to persons who or whose parents or whose grand-parents were born in India as defined in the Government of India Act, 1935, who are ordinarily residing in any territory outside India—they are called Indians abroad. The only limitation that has been imposed upon them is that they shall make an application if they want to be citizens of India before the commencement of the Constitution to the Consular Officer or to the Diplomatic Representative of the Government of India in the form which is prescribed for the purpose by the Government of India and they must be registered as citizens. Two conditions are laid down for them—one is an application and secondly, registration of such an applicant by the Consular or the Diplomatic representative of India in the country in which he is staying. These are as I said very simple matters.

We now come to the two categories of persons who were residents in India who have migrated to Pakistan and those who were resident in Pakistan but have migrated to India. The case of those who have migrated to India from Pakistan is dealt with in my article 5-A. The provisions of article 5-A are these—

Those persons who have come to India from Pakistan are divided into two categories—

- (a) those who have come before the 19th day of July 1948, and
- (b) those who have come from Pakistan to India after the 19th July 1948.

Those who have come before 19th July 1948, will automatically become the citizens of India.

With regard to those who have come after the, 19th July 1948, they will also be entitled to citizenship on the date of the commencement of the Constitution, provided a certain procedure is followed, *viz.*, he again will be required to make an application to an officer appointed by the Government of the Dominion of India and if that person is registered by that Officer on an application so made.

The persons coming from Pakistan to India in the matter of their acquisition of citizenship on the date commencement of the Constitution are put into two categories—those who have come before 19th July 1948, and those who have come afterwards. In the case of those who have come before the 19th July 1948 citizenship is automatic. No conditions, no procedure is laid down with regard to them. With regard to those who have come thereafter, certain procedural conditions are laid down and when those conditions are satisfied, they also will become entitled to citizenship under the article we now propose.

Then I come to those who have migrated to Pakistan but who have returned to India after going to Pakistan. There the position is this. I am not as fully versed in this matter as probably the Ministers dealing with the matter are, but the proposal that we have put forth is this if a person who has migrated to Pakistan and, after having gone there, has returned to India on the basis of a permit which was given to him by the Government of

India not merely to enter India but a permit which will entitle him to resettlement or permanent return, it is only such person who will be entitled to become a citizen of India on the commencement of this Constitution. This provision had to be introduced because the Government of India, in dealing with persons who left for Pakistan and who subsequently returned from Pakistan to India, allowed them to come and settle permanently under a system which is called the 'Permit System'. This permit system was introduced from the 19th July 1948. Therefore the provision contained in article 5-B deals with the citizenship of persons who after coming from Pakistan went to Pakistan and returned to India. Provision is made that if a person has come on the basis of a permit issued to him for resettling or permanent return, he alone would be entitled to become a citizen on the date of the commencement of the Constitution.

I may say, Sir, that it is not possible to cover every kind of case for a limited purpose, namely, the purpose of conferring citizenship on the date of the commencement of the Constitution. If there is any category of people who are left out by the provisions contained in this amendment, we have given power to Parliament subsequently to make provision for them. I suggest to the House that the amendments which I have proposed are sufficient for the purpose and for the moment and I hope the House will be able to accept these amendments.

Shri B. M. Gupte (Bombay: General): Was the permit system brought in on 19th July 1948 ?

The Honourable Dr. B. R. Ambedkar : Yes, on the 19th July '48 there was an ordinance passed that no person shall come in unless he has a permit, and certain rules were framed by the Government of India under that on 19th July 1948, whereby they said a permit may be issued to any person coming from Pakistan to India specifically saying that he is entitled to come in. There are three kinds of permits, Temporary Permit, Permanent Permit and permit for resettlement or permanent return. It is only the last category of persons who have been permitted to come back with the express object of resettlement and permanent return, it is only those persons who are proposed to be included in this article, and no other.

Mr. President : I think we shall take up the amendments tomorrow. But before I adjourn, there is one thing about which I would like to take the sense of the House. In the next week, Monday which happens to be the 15th of August, is a holiday, and then Wednesday the 17th is also a holiday on account of *Janamashthmi*. It has been suggested to me that we might not meet on Tuesday so that Members might have a continuous four or five days from Saturday to Wednesday, and we might meet on Thursday; and instead of Tuesday, we might meet on the following Saturday. If that meets the wishes of the House, we can arrange our programme like that.

Honourable Members : Yes.

Mr. Naziruddin Ahmad : A long adjournment might make us forget everything.

Mr. President : I think you will get time again to study. So, we shall sit up to Friday next, and then adjourn till 9 O'clock on Thursday, and we shall sit on the following Saturday also.

Now the House stands adjourned till 9 O'clock tomorrow morning.

The Assembly then adjourned till Nine of the Clock on Thursday, the 11th August 1949.