

## CONSTITUENT ASSEMBLY OF INDIA

*Friday, the 12th 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 and 6—(contd.)

**Sardar Bhopinder Singh Man** (East Punjab: Sikh) : Sir, in the 'definition of citizenship' which covers fairly extensive ground the view-point of Hindu and Sikh refugees has been met to some extent by the Drafting Committee whom I congratulate on that account. But, as usual, a weak sort of secularism has crept in and an unfair partiality has been shown to those who least deserve it. I was saying that the Hindu and Sikh refugees view-point has been met to some extent, but not wholly. I do not understand why the 19th July 1948 has been prescribed for the purpose of citizenship. These unfortunate refugees could not have foreseen this date; otherwise they would have invited Pakistan knife, earlier so that they might have come here earlier and acquired citizenship rights. It will be very cruel to shut our borders to those who are victimised after the 19th July 1948. They are as much sons of the soil as anyone else. This political mishap was not of their own seeking and now it will be very cruel to place these political impediments in their way and debar them from coming over to Bharat Mata. Our demand is that any person, who because of communal riots in Pakistan has come over to India and stays here at the commencement of this Constitution, should automatically be considered as a citizen of India and should on no account be made to go to a registering authority and plead before him and establish a qualification of six months domicile to claim rights of citizenship. There may be victims of communal frenzy in our neighbouring State hereafter; it is not only a possibility but a great probability in the present circumstances. Any failure of the evacuee property talks may lead to a flare-up against Hindus and Sikhs in Pakistan, and we must have a clause that these people will in no case be debarred from coming over and becoming citizens of this Union.

Article 5-AA lays down in the beginning.

"Notwithstanding anything contained in 5 and 5-A, a person who has after 1st of March 1947 migrated from the territory of India to the territory now included Pakistan shall not be deemed to be a citizen of India."

The purpose of this clause will be completely nullified, because we who are refugees, due to this exchange of population which necessarily involves exchange of property, will be put to serious trouble. This securing of permit from the Deputy High Commissioner's office, I can assure you, is a cheap affair in its actual working. Besides these permits when they were issued, they were issued for various other purposes commercial trade, visiting, purposes etc. and never at any rate for citizenship. We should not give citizenship merely on the ground that a person is in a position to produce this permit, which he can secure from the Deputy High Commissioner's office somehow or other. I feel that if at all the permit system was intended to confer benefits of citizenship, then a particular authority specifically constituted for that purpose should have been there and that authority should have realized at the time of giving the permit the implication that this is not simply a permit to enable a person to visit India for trade or Commerce but, that it will entail along with it citizenship rights also. Apart from

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that, let us see how this will adversely affect evacuee property. Very recently an Ordinance has been promulgated throughout India that the property of a person who has migrated to Pakistan after March 1947 will accrue to the Custodian-General of India and that property will be, to that extent, for the benefit of the rehabilitation of refugees. The Indian Government is already short of property as it is and it is unable to solve the rehabilitation problem. The difference of property left by Indian nationals in Pakistan and the one left behind by Muslims, in India—this difference of property cannot be bridged. Pakistan has not given you a satisfactory answer how it is going to re-pay that difference. Naturally, our policy should have been to narrow down this difference of property. This clause, instead of narrowing down that difference, will widen it. Thus, while on the one hand we are unable to help refugees, on the other hand we are showing concession after concession to those people who least deserve it. I am told that these permits will be granted only in very rare cases. I am told that only 3,000 of them have been granted. Now, I do not know how much property will be restored back to those people who will come under this permit system—may be a crore or may be much less—a few lakhs. My point is this : that this property which will eventually go to these permit-holders will go out of the evacuee property and out of the hands of the Custodian-General and the very purpose of the Ordinance which you recently promulgated will be defeated.

The securing of a chance permit from the Deputy High Commissioner's office or any other authority should not carry with it such a prize thing as citizenship of India, or that the holders be considered to be sons of Bharat Mata. I will cite one instance. Meos from Gurgaon, Bharatpur and Alwar not very long time ago, on the instigation of the Muslim League, demanded Meoistan and they were involved in very serious rioting against the Hindus—their neighbours at the time of freedom. Right in 1947 a serious riot was going on by these Meos against their Hindu neighbours. These Meos, under this very lax permit system, are returning and demanding their property. On the one hand, we are short of property and on the other hand, concessions are being given to them. This is secularism no doubt, but a very one-sided and undesirable type of secularism which goes invariably against and to the prejudice of Sikh and Hindu refugees. I do not want to give rights of citizenship to those who so flagrantly dishonoured the integrity of India not so long ago. Yesterday Mr. Sidhva gave an argument that this proviso will not only cover Muslims who had gone to Pakistan and will return later on, but also other nationals, *e.g.*, Christians. But may I inform him that there is not a single Christian living in India who has gone over to Pakistan and who will come back later on?

It is only certain Christians now finding themselves living in a theocratic State and finding things were uncomfortable that will come in. It is not the case of those Christians who are gone over and then will come back, whereas this proviso relates to those people who were once nationals of India but at the inauguration of Pakistan went over to Pakistan for the love of it.

I certainly grudge this right and concession being given to those people who had flagrantly violated and dishonoured the integrity of India, but, however, if Mr. T. T. Krishnamachari, or the Chairman of the Drafting Committee, or better still, Mr. Ayyangar who daily carries on such protracted, patient and fruitless negotiations with Pakistan, can promise to us a certain strip of Pakistan territory to India in lieu of this increase of population and release of property, I will certainly not press my amendment.

**Mr. Mahboob Ali Baig Sahib** (Madras: Muslim) : Mr. President, Sir, there are three amendments which stand in my name, amendments Nos. 120, 125 and 126. The purpose of my amendment No. 125 is to deal with cases of displaced persons who have come from Pakistan to India and who may file their

applications after the commencement of this Constitution. The definition, as it has been placed before us, does not deal with the question of grant of citizenship to persons after the commencement of this Constitution except in the case of persons who are living overseas. But it has been stated by Dr. Ambedkar that this will be left to the Parliament. As has been pointed out by my honourable Friend Mr. Kapoor in between the date of the passing of this Constitution and the enactment by Parliament which might take five or ten years, there may be cases cropping up for decision whether a certain person is a citizen of India or not. The purpose of my amendment No. 125 also is similar. It is to give an opportunity to persons to file petitions for enrollment as citizens even after the passing of this Constitution.

Amendment No. 126 reads as follows:—

That in amendment No. 1 of List I (Third Week) of Amendments to Amendments for the proposed new article 5-C. the following be substituted:—

“Subject to the provisions of any law that may be passed by the Parliament in this behalf, the qualifications for citizenship mentioned in the foregoing provisions, shall apply *mutatis mutandis* to persons entitled to citizenship after the commencement of this Constitution.”

Article 5-C deals with the question of continuation of the citizenship acquired on the date of the passing of this Constitution. I submit that 5-C is unnecessary. A man once declared a citizen on the date of passing of the Constitution will continue to be so unless Parliament disqualifies him. Therefore 5-C to my mind is unnecessary. On the other hand what is necessary is to say who would be entitled to citizenship after the passing of this Constitution, That is more important, that is necessary. For that purpose I have suggested amendment No. 126, in order to give a complete picture of citizenship not only on the date of the passing of this Constitution but even afterwards, until such time as the Parliament may pass a legislation abrogating it or varying it or doing whatever it wanted to do. I submit that this amendment is necessary in order that you might determine who will be the citizens even after the passing of this Constitution,

So, amendments Nos. 125 and 126 are meant to fill the lacuna which I find in this article. It is stated by Dr. Ambedkar that we are not legislating now for the future, that is why we are not laying down any qualifications to deal with cases of persons who might become citizens after the passing of this Constitution, My submission is that many persons who might, under the qualification laid down in this definition, become citizens or be entitled to citizenship, will be left out and we will not be in a position to help them until the Parliament passed an enactment.

Sir, with regard to amendment No. 120 I have suggested that the explanation to the proposed article 5 be deleted. The explanation reads :—

“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.

The explanation is found in the amendment given notice of on 6-8-49. When subsequently Dr. Ambedkar moved a revised amendment to articles 5 and 6, although this explanation was deleted its place was taken by article 5-AA which is in effect the same thing as the explanation. Now, Sir, I wish that this explanation or this 5-AA is deleted altogether. I do not want that our dealing with the subject of displaced persons must be undignified. It is enough if we have stated what qualification persons should have, been displaced. That has been dealt with in 5-A. That is enough. I do not see any reason why, we should make mention of displaced persons from India to Pakistan who might return. The other qualifications are there. In this respect I ‘submit

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that it must be noted that persons who migrated from one Dominion to another whether it is from Pakistan to India or India to Pakistan did so under very peculiar and tragic circumstances. If persons migrated from Pakistan to India, as has been suggested in many amendments, they did so on account of disturbances, civil disturbances or fear of disturbances. What applies to them might equally apply to persons who migrated from India to Pakistan. I do not see any reason why we should make such an invidious distinction.

Sir, now I would like to refer to two or three points discussed yesterday. Yesterday the discussion centered round two topics. The first was that the definition of citizenship was too easy and cheap, and Dr. Deshmukh even said that it was ridiculously cheap. Another Member remarked that it was commonplace and easy. Those were the remarks made by some honourable Members. It was Dr. Deshmukh who said if a foreign lady visiting India gives birth to a child say, in Bombay, her child will be eligible for citizenship of India. Such an interpretation, making the provision look ridiculous, is correct. The condition of domicile is very important. Domicile in the Indian territory is a prerequisite for citizenship. The other conditions are that the claimant or his parents should have been born in India and been here for five years. Therefore the interpretation put upon the provision by Dr. Deshmukh is not at all correct. In support of his observations he quoted the instances of the United States of America, Australia and South Africa. He said. "Look at those countries. They do not give citizenship rights to Indians even when they have been in those countries for thirty or thirty-five years." May I put him the question whether we should follow their examples? Can we with any reason or pretence tell these persons: "Look here, you have not given citizenship right to Indians living in your countries for decades?" Can we complain against them if we are going to deny them citizenship rights here? Let us not follow those bad examples. There are persons in India owning dual citizenship. We in India are having dual citizenship. Whether it is possible or not, shall we now follow these retrograde countries like Australia in the matter of conferring citizenship rights and say that citizenship will not be available except on very very strict conditions? It is very strange that Dr. Deshmukh should contemplate giving citizenship rights only to persons who are Hindus or Sikhs by religion. He characterised the provision in the article granting citizenship rights as ridiculously cheap. I would say on the other hand that his conception is ridiculous. Therefore let us not follow the example of those countries which we are condemning everywhere, not only here but also in the United Nations and complaining that although Indians have been living in those countries they have not been granted citizenship rights there.

Now, Sir, my view is that I should congratulate the Drafting Committee for having brought out this article in this form. My criticism with regard to it is that it is not complete. In the first place, it does not deal with case, of person who might claim citizenship after the passing of this Constitution till such time as Parliament decides the question.

My second point with regard to this is that in articles 5-A and 5-AA there are two defects. Article 5-A says that any person who has come to India from Pakistan must have a certificate. I ask, why-? Why do you want a certificate. You have stated that if a person is born in India as defined in the 1935 Act he is a citizen of India. Why do you want a certificate from him when, he returns to India?

**Shri M. Ananthasayanam Ayyanagar** (Madras: General). Why did he go to Pakistan?

**Mr. Mahboob Ali Baig Sahib** : He did not go there. He was there. I am speaking of a person who was in Pakistan and is returning.

**Shri M. Ananthasayanam Ayyanagar** : When did he return?

**Mr. Mahboob Ali Baig Sahib :** He, was a citizen of India when Pakistan was included in India under the 1935 Act. I am speaking of a person who has been living in Pakistan which formed part of India and wants to return. Why do you want a certificate from him? Why do you want that he should reside here for six months? Why do you expect him to file a petition and be here for six months? He is an Indian and comes down here, not voluntarily, but under very tragic circumstances. He comes over to India because he could not live there on account of civil disturbances or for fear of civil disturbances. I do not want that any 'certificate should be produced by a person who comes from Pakistan to India.

**The Honourable Shri K. Santhanam (Madras : General) :** it is only from those who would return after 19th July 1948 that a certificate would be needed.

**Mr. Mahboob Ali Baig Sahib :** I know that. It does not make any difference at all. The question of a person who migrates from Pakistan to India is a very touchy question. People have become excited over it and also sentimental and aggressive. It is all unnecessary for us. Let us calmly consider this matter. What is the difference between a person who has gone away, to Pakistan under the same and similar circumstances as those which Compelled persons remaining in Pakistan to migrate to India ? I can understand the cases, where people went away to Pakistan or came back to India in order that they might live in Pakistan or Hindustan. There may be instances where for reasons of service, persons who are employed in the provinces of Pakistan coming back to India. There are cases of that kind. Sir, it is correct that when partition took place, when the June 3rd Agreement was entered into by both parties, it was expected that the minorities would remain where They were in the two Dominions and safeguards would be given to them. That was the honest expectation , that was the honest undertaking, but what happened was that after the transfer of power there was a holocaust, there were disturbances there were tragedies which compelled persons to migrate. Now, Sir, when these were the circumstances, is there any justification for us to draw any distinction—I would go to the length of saying any discrimination—between those persons who migrated to India and those who migrated to Pakistan under—the same circumstances? Let us not forget what during his life-time Mahatma Gandhi was preaching. What did he say? He invited the persons who had gone to Pakistan to return to their homeland. So, Sir, let us look at this matter calmly. I know there are many persons who are affected in this Assembly, who have lost their houses, who have lost their property, who have lost their professions, their status, everything. I know they are really affected. They are really touchy about this matter, but let us calmly think, over these matters. Let it not be said that because certain Members of this Assembly were hard hit on account of the Partition and were in a very-bad mood, in their bad mood they have passed this article 5-AA. So far as it goes it is tolerable, as, if a person wants to resettle, he can made a citizen; but the real point is about those people who come back—I do not know whether people are coming back. I am very much surprised to hear that such persons who are coming back may be traitors. The arm of the law should be so strong, that it must be able to get at any man who becomes a traitor. What would you do if one of your men becomes a traitor, a Communist and tries to overthrow the Government ? So, to say those people coming to India might become traitors and therefore they should not be allowed to come back, that is no reason at all. With this temperament you will never become strong. That kind of psychology should be shunned, must be got rid of. Moreover, we are only legislating for the present. Parliament may in its discretion, if it thinks it to be necessary, deprive any person of his citizenship and expel him. Parliament is supreme in this matter. Therefore I do not see any reason why you should make a distinction between persons, who go from here to Pakistan and persons who come from Pakistan.

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This is based on pure sentiment and does not inspire confidence not only among those persons but also amongst others. I would conclude by saying, let us consider this matter calmly and if we think that Mahatma Gandhi's teachings were correct, let us not go against his teachings and legislate like this, making a distinction between these two sets of people.

**Mr. President :** There are one or two amendments. Notice of one of them was given rather late yesterday by Mr. Krishna Chandra Sharma, but I , would permit Mr. Sharma to move it. There is another amendment, notice of which was given today by Mr. Jai Sukh Lal Hathi. I do not think I can allow it. It has come too late. Mr. Krishna Chandra Sharma.

**Shri Krishna Chandra Sharma** (United Provinces : General) : Sir, I do not propose to move it.

**The Honourable Shri Jawaharlal Nehru** (United Provinces : General) : Sir, I wish to support the proposals made by Dr. Ambedkar as well as the amendment which Mr. Gopalaswami Ayyangar has proposed. All these articles relating to citizenship have probably received far more thought and consideration during the last few months than any other article contained in this Constitution.

Now, these difficulties have arisen from two factors. One was of course, the partition of the country. The other was the presence of a large number of Indians abroad, and it was difficult to decide about these Indians whether they should be considered as our citizens or not, and ultimately these articles were drafted with a view to providing for these two difficulties. Personally I think that the provision made has been on the whole very satisfactory. Inevitably no provision could be made, which provided for every possibility and provided for every case with justice and without any error being committed. We have millions of people in foreign parts and other countries. Some of those may be taken to be foreign nationals, although they are Indians in origin. Others still consider themselves to some extent as Indians and yet they have also got some kind of local nationality too, like for instance, in Malaya, Singapore, Fiji and Mauritius. If you deprive them of their local nationality, they become aliens there. So, all these difficulties, arise and you will see that in this resolution we have tried to provide for them for the time being, leaving the choice to them and also leaving it to our Consul—Generals there to register their names. It is not automatic. Our representatives can, if they know the applicants to be qualified for Indian citizenship, register their names.

Now I find that most of the arguments have taken place in regard to people who are the victims in some way or other of partition. I do not think it is possible for you to draft anything, whatever meticulous care you might exercise which could fit in with a very difficult and complicated situation that has arisen, namely the partition. One has inevitably to do something which involves the greatest amount of justice to our people and which is the most practical solution of the problem. You cannot in any such provision lay down more or less whom you like and whom you dislike; you have to lay down certain principles, but any principles that you may lay down is likely not to fit in with a number of cases. It cannot be helped in any event. Therefore you see that the principle fixed fits with a vast majority of cases, even though a very small number does not wholly fit in, and there may be some kind of difficulty in dealing with them. I think the drafters of these proposals have succeeded in a remarkable measure in producing something which really deals with 99.9 per cent. of cases with justice and practical common sense; may be some people may not come in. As a matter of fact even in dealing with

naturalization proceedings, it is very, difficult to be dead sure about each individual and you may or you may not be taking all of them. But the chief objection, so far as I can see, has been to the amendment that Mr. Gopaldaswami Ayyangar has moved to the effect that people who have returned here permanently and in possession of permanent permits shall be deemed to be citizens of India. They are rejected and presumably their presence is objected to because it is thought that they might take possession of some evacuee property which is thus far being considered as an evacuee property and thereby lessen the share of our refugees or displaced persons, who would otherwise take possession of it.

Now, I think there is a great deal of misunderstanding about this matter. Our general rule as you will see in regard to these partition consequences, is that we accept practically without demur or enquiry that great wave of migration which came from Pakistan to India. We accept them as citizens up to some time, in July 1948. It is possible, of course that in the course of that year many wrong persons came over, whom we might not accept as citizens if we examine each one of them; but it is impossible to examine hundreds of thousands of such cases and we accept the whole lot. After July 1948, that is about a year ago, we put in some kind of enquiry and a magistrate who normally has *prima facie* evidence will register them; otherwise he will enquire further and ultimately not register or he will reject. Now all these rules naturally apply to Hindus, Muslims and Sikhs or Christians or anybody else. You cannot have rules for Hindus, for Muslims or for Christians only. It is absurd on the face of it; but in effect we say that we allow the first year's migration and obviously that huge migration was as a migration of Hindus and Sikhs from Pakistan. The others hardly come into the picture at all. It is possible that later, because of this permit system, some non-Hindus and non—Sikhs came in. How did they come in ? How many came in ? There are three types of permits, I am told. One is purely a temporary permit for a month or two, and whatever the period may be, a man comes and he has got to go back during that period. This does not come into the picture. The other type is a permit, not permanent but something like a permanent permit, which does not entitle a man to settle here, but entitles him to come here repeatedly on business. He comes and goes and he has a continuing permit. I may say; that, of course, does not come into the picture. The third type of permit is a permit given to a person to come here for permanent stay, that is return to India and settle down here.

Now, in the case of all these permits a great deal of care has been taken in the past before issuing them. In the case of those permits which are meant for permanent return to India and settling here again, a very great deal of care has been taken. The local officials of the place where the man came from and where he wants to go back are addressed; the local government is addressed, and it is only when sufficient reason is found by the local officials and the local Government that our High Commissioner in Karachi or Lahore, as the case may be, issues that kind of permit.

**Shri Gopikrishna Vijayavargiya (Madhya Bharat) :** What is the number of such permits ?

**The Honourable Shri Jawaharlal Nehru :** I have not got the numbers with me but just before I came here, I asked Mr. Gopaldaswami Ayyangar; he did not know the exact figures and very roughly it may be 2,000 or 3,000.

Now, normally speaking these permits are issued to two types of persons. Of course, there may be others but generally the types of persons to whom these are given are these. One is usually when a family has been split up, when a part of the family has always remained here, a bit of it has gone away, the

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husband has remained here but has sent his wife and children away because of trouble etc.; he thought it safer or whatever the reason, he continued to stay here while his wife and children want to come back, we have allowed them to come back where it is established that they will remain here throughout. Normally it is applied to cases of families being split up when we felt assured that the family has been here and have no intention of going away and owing to some extraordinary circumstances, a bit of that family went away and has wanted to come back. It is more or less such general principles which have been examined and the local government and the local officials have recommended that this should be done and it has been done. That is the main case. Then there are a number of cases of those people whom you might call the Nationalist Muslims, those people who I had absolutely no desire to go away but who were simply pushed out by circumstances, who were driven out by circumstances and who having gone to the other side saw that they had no place there at all, because the other side did not like them at all; they considered them as opponents and enemies and made their lives miserable and right through from the beginning they expressed a desire to come back and some of them have come back. My point is that the number of cases involved considering everything, is an insignificant number, a small number. Each individual case, each single case has been examined by the local officials of the place where that man hails from; the local government, having examined, have, come to a certain decision and allowed that permit to be given. Now, it just does not very much matter whether you pass this clause or not. Government having come to a decision, any person after he has returned he is here; and having come here, he gets such rights and privileges, and all these naturally flow as a consequence of that Government's decision. It is merely clarifying matters. It does not make any rule. Suppose a question arose in regard to a very little or an insignificant property is concerned, not only because the principles involved; but also because a certain family or a part of a family was split up but otherwise here held on to the property, so that the family that came back came to the property which is being held by the other members of the family and no new property is involved. No new property is involved and if some new property is involved, it is infinitesimal. It makes no great difference to anybody. From a person coming here after full enquiry and permission by the Government, after getting a permit, etc., certain consequences flow even in regard to property. If these consequences flow, if he is entitled to certain property, it is because he is a citizen of India and the local Government has decided, whether it is the East Punjab Government or the Delhi Government or the U.P. Government. You do not stop them by not having this amendment or by having it. You can stop them, of course, by passing a law as a sovereign assembly. It is open to you to do that; but it does not follow from this. I would beg of you to consider how in a case like this, where after—due enquiry Government consider that justice demands, that the rules and conventions demand that certain steps should be taken in regard to an individual,—I do not myself see how—without upsetting every canon of justice and equity, you can go behind that. You may, of course, challenge a particular case, go into it and show that the decision is wrong and upset it, but you cannot attack it on 'Some kind of principle'.

One word has been thrown about a lot. I should like to register my strong protest against that word. I want the House to examine the word carefully and it is that this Government goes in for a policy of appeasement, appeasement of Pakistan, appeasement of Muslims, appeasement of this and that. I want to know clearly what that word means. Do the honourable Members who talk of appeasement think that some kind of rule should be applied when dealing with these people which has nothing to do with justice or equity? I want a clear answer to



that. If so, I would only plead for appeasement. This Government will not go by hair's breadth to the right or to left from what they consider to be the right way of dealing, with the situation, justice to the individual or the group.

Another word is thrown up a good deal, this secular State business. May be beg with all humility those gentlemen who use this word often to consult some dictionary before they use it? It is brought in at every conceivable step and at every conceivable stage. I just do not understand it. It has a great deal of importance, no doubt. But, it is brought in all contexts, as if by saying that we are a secular State we have done something amazingly generous, given something out of our pocket to the rest of the world, something which we ought not to have done, so on and so forth. We have only done something which every country does except a very few misguided and backward countries in the world. Let us not refer to that word in the sense that we have done something very mighty.

I do not just understand how anybody possibly argue against the amendment that Mr. Gopalaswami Ayyangar has brought forward. To argue against that amendment is to argue definitely for in justice, definitely for discrimination, for not doing something which after full enquiry has been found to be rightly done, and for doing something which from the practical point of view of numbers or property, has no consequence. It is just dust in the pan. In order to satisfy yourself about that little thing, because your sense of property is so keen, because your vested interest is so keen that you do not wish one-millionth part of certain aggression of property to go outside the pool, or because of some other reason, you wish to upset the rule which we have tried to base on certain principles, on a certain sense of equity and justice. It will not be a good thing. I appeal to the House to consider that whether you pass this amendment of Mr. Gopalaswami Ayyangar or not, the fact remains that this policy of the Government has to be pursued and there is no way out without upsetting every assurance and every obligation on the part of the Government every permit that has been issued after due enquiry. Again, so far as this matter is concerned, please remember that the whole permit system was started some time in July 1948, that is to say after large-scale migration was over completely. To that period, from July 1948 up till now, this amendment refers to in a particular way, that is to say, it refers to them in the sense that each such person will have to go to a District Magistrate or some like official and register himself. He cannot automatically become a citizen. He has, to go there and produce some kind of *prima facie* etc., so that there is a further sitting. He has to pass through another sieve. If he passes, well and good; if not, he can be rejected even at this stage. The proposals put forward before the House in Mr. Gopalaswami Ayyangar's amendment are eminently just and right and meet a very complicated situation in as practical a way as possible.

**Shri Alladi Krishnaswami Ayyar** (Madras: General): Mr. President, after the lucid exposition of the subject by Dr. Ambedkar in his introductory remarks and the very clear statement of policy and principles by the Prime Minister, I do not propose to take the time of the House with a long speech. I may explain briefly what I consider to be the main principle, of the articles that have been placed before the House.

The object of these articles is not to place before the House anything like a code of nationality law. That has never been done in any State at the ushering in of a Constitution. A few principles have no doubt been laid down in the United States Constitution but there is hardly any Constitution in the world in which a detailed attempt has been made in regard to the nationality law in the Constitution. But, as we have come to the conclusion that our Constitution

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is to be a republican constitution and provision is made throughout the Constitution for election to the Houses of Parliament and to the various assemblies in the units, and for rights being exercised by citizens, it is necessary to have some provision as to citizenship at the commencement of the Constitution. Otherwise, there will be difficulties connected with the holding of particular offices, and even in the starting of representative institutions in the country under the republican constitution. The articles dealing with citizenship are, therefore, subject to any future nationality or citizenship law that may be passed by Parliament. Parliament has absolutely a free hand in enacting any law as to nationality or citizenship suited to the conditions of our country. It is not to be imagined that in a Constitution dealing with several subjects it is possible to deal with all the complicated problems that arise out of citizenship. The question has been raised regarding what is to be the status of married women, what is to be the status of infants or in regard to double nationality and so on. It is impossible in the very nature of things to provide for all those contingencies in the Constitution as made by us.

Then one other point will have to be remembered regarding citizenship. Citizenship carries with it rights as well as obligations. There are obligations also upon the Government of India in regard to their citizens abroad.

Another point that will have to be remembered in this connection is this. While any law as to nationality or citizenship may carry with it certain international consequences, it is not easy to provide against, what may be called double citizenship. The various International Conferences found it very difficult to formulate any principle which can remove altogether the principle of double citizenship. It arises out of the fact that primarily it is for each nation to determine its nationality law and its law of citizenship. At the same time it has its international consequences *e.g.*, the Continental law as to citizenship is not the same as the English law and on account of that certain conflicts have arisen.

Therefore there is no use of our attempting in any Constitution and much less in the present Constitution which is now making a tentative proposal in regard to citizenship to deal with the problem of double citizenship or double nationality. All these considerations have been kept in view in these articles that have been placed before the House. I shall just briefly refer to the principles underlying each one of these articles.

As against article 5(1) a point has been made by some of the speakers that it concedes the right of citizenship to every person who is born in the territory of India and that is rather an anomalous principle. I am afraid the critics have not taken into account that our article is much stricter, for example, than the Constitution of the United States. Under the Constitution of the United States if any person is born in the United States he would be treated as a citizen of the United States irrespective of colour or of race. Difficulty has arisen only with regard to naturalisation law. We have added a further Qualification *viz.*, that the person must have big permanent home in India. I am paraphrasing the word 'domicile' into 'permanent home' as a convenient phrase.

Then clause (c) of article 5 takes notes of the peculiar position of this country. There are outlying tracts in India like Goa, French Settlements and other places from where people have come to India and have settled down in this country, regarding India as a permanent home, and they have contributed to the richness of the life in this country. They have assisted commerce and they have regarded themselves as citizens of India. Therefore to provide for those classes

of cases it is stated in clause (c) that if a person is continuously resident for a period of five years and he has also his domicile under the opening part of article 5, he would be treated as a citizen of this country. Then towards the end it is stated that 'he shall not have voluntarily acquired the citizenship of any foreign State. If a citizenship is cast upon a person irrespective of his volition or his will, he is not to lose the rights of citizenship in this country but if on the other hand he has voluntarily acquired the citizenship of another State, then he cannot claim the right of citizenship in this country. That is the object of the latter part of article 5.

Article 5A is intended to provide for all cases of mass migration—if I may use that expression—from Pakistan into India and to provide for that class of persons who have made the present India as their home. Now they are in our country and want to make this their home. We do not in that article make any distinction between one community and another, between one sect and another. We make a general provision that if they migrated to this country and they were born in India as defined in the earlier Constitution, then they will be entitled to the benefits of Citizenship. That is the import of article 5A, clause (a). Clause (b) provides for registration of migrated people. Certain safeguards are provided for in clause (2) so as to make it quite clear that the authorities accept the migrated people as *bona fide* citizens of this country. That is the object of this clause. There is also a provision to the effect that no registration shall be made unless the person making the application has resided in the territory of India for at least 6 months. Therefore, there are two safeguards, (1) there will be registration and (2) no registration shall be made unless the applicant has resided in the territory of India for at least six months before the date of application. If article 5-A stood by itself it would mean that even if persons went to Pakistan with the deliberate intention of making Pakistan their permanent home, and re-migrated to India they might be entitled to the benefit of 5A. In order to provide against that contingency 5AA is proposed which reads as follows:—

“Notwithstanding anything contained in articles 5 and 5A 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.”

There is no use dealing with this in the abstract. If a person has deliberately and intentionally chosen to be the citizen of another country, after the question had arisen, after Pakistan had been declared territory independent from India, then there is no point in conceding citizenship right to such a person. But this proviso takes note of this important fact that the Government of India have permitted a certain number of people to come and settle down here after being satisfied that they want to take their abode here and in no other country, and that they look upon this country as their own. Having given that assurance, it would be the grossest injustice on the part of the Government of India now to say that they are not entitled to the rights of citizenship of India. The proviso safeguards the dignity, the honour and the plighted word of the Government of India by saying that such a person will be entitled to the benefits of citizenship. This is an exception to the general rule, under article 5AA, namely, that if a person deliberately, voluntarily and intentionally migrated to Pakistan, he shall not be entitled to claim the right of citizenship of our country. It is our duty, to respect the plighted word of the Government of India. That is the object of the proviso.

There is some confusion in the minds of some people as if the rights to property were in some way related to citizenship. There is no connection whatsoever, either in international law or in municipal law between the rights of citizenship and the rights to property. A person has no particular rights to property, because

[Shri Alladi Krishnaswami Ayyar]

he belongs to a particular country. Many of our nationals have property in the United States, in Germany, in England and in several other countries, but these do not depend upon their being the nationals of those countries. Nationality or citizenship has nothing to do with the law of property. At the same time, the exigencies of a situation may require property to be controlled. For instance during a war, the conditions may require the State to exercise some control over enemy property or the property of foreigners. That is not to say that the property of the foreigners or the enemy has been confiscated. No principle of international law, no principle of comity of nations recognizes this principle.

In article 5-B, we have made provision for those of our nationals who are outside India, in the Strait Settlements and in other places. They are anxious to retain their connection with the mother-country. They may or may not have acquired some rights to qualify them for citizenship in those States but in those cases in which they are born in this country or if they are the children or grand-children or persons born in his country, they are to be given the right of citizenship. They had left this country long ago and gone to another country, because we were not able to provide them the necessary means of livelihood—at least not under the British regime. (Let us hope that our record would be better). But they are anxious still to retain the links with the motherland, they have sentimental attachment to this country and are anxious to continue as citizens of our country. They also will be entitled to citizenship. That is the object of article 5-B.

As has been pointed out by the Prime Minister on more than one occasion, we have arrived at the present draft after a number of meetings, and a number of confidences at which different view-points were sought to be met. Of course, it is not possible to satisfy everyone, and it is not possible to arrive at a formula which will satisfy everyone affected.

We are plighted to the principles of a secular State. We may make a distinction between people who have voluntarily and deliberately chosen another country as their home and those who want to retain their connection with this country. But we cannot on any racial or religious or other grounds make a distinction between one kind of persons and another, or one sect of persons and another sect of persons, having regard to our commitments and the formulation of our policy on various occasions.

With these words, I support the articles as placed by Dr. Ambedkar and also the amendments moved by my Friends Shri Gopalaswami Ayyangar and Shri T.T. Krishnamachari.

**Shri Brajeshwar Prasad** (Bihar : General) : Mr. President, Sir, I rise to support the articles moved by Dr. Ambedkar; and I want especially to accord my hearty approval to the proviso moved by Shri T. T. Krishnamachari and accepted by Dr. Ambedkar now and which has been incorporated in the articles moved by Dr. Ambedkar. This article and especially that proviso is a tribute to the memory of the great Mahatma who worked for the establishment of good relations between Hindus and Muslims. Sir, the proviso invites all the Muslims who left this country, to come back and settle in this country, except those who are agent provocateurs spies, fifth columnists and adventurers. I wish the proviso had been more wide. I wish all the people of Pakistan should be invited to come and stay in this country, if they so like. And why do I say so? I am not an idealist. I say this because we are wedded to this principle, to this doctrine, to this ideal. Long before Mahatma Gandhi came into politics centuries before recorded history. Hindus and Muslims in this country were one. We were

talking, during the time of Mahatma Gandhi that we are blood-brothers. May I know if after partition, these blood-brothers have become strangers and aliens? Sir, it has been an artificial partition. I think that the mischief of partition should not be allowed to spread beyond the legal fact of partition. I stand for common citizenship of all the peoples of Asia, and as a preliminary step, I want that the establishment of a common citizenship between India and Pakistan is of vital importance for the peace and progress of Asia as a whole.

Sir, the proviso has been attacked by Shri Jaspat Roy Kapoor on the ground that it will provide an opportunity for spies and adventurers to come to this country. But my view is that Muslims of this country are as loyal to the State as Hindus. On the other hand I agree with the statement made by the Prime Minister at a different place that the security of India today is menaced not by Muslims but by Hindus.

Another point that was raised by my Friend Shri Jaspat Roy Kapoor was that we must have proper regard for the economic consequences of the proviso. I wish this argument had not been raised. We are not a nation of shopkeepers; we cannot dethrone God and worship Mammon. Whatever the economic consequences may be we want to stand on certain principles. It is only by a strict adherence to certain moral principles that nations progress. The material development of life is no index to progress and civilization. I do not think it is politics or statesmanship to subordinate sound political principles to cheap economics. I see no reason why a Muslim who is a citizen of this country should be deprived of his citizenship at the commencement of this Constitution, specially when we are inviting Hindus who have come to India from Pakistan to become citizens of this country. People who have never been in India but have always lived in the Punjab and on the frontier have come and become citizens of this State; why cannot a Muhammadan of the frontier be so when we have always said that we are one?

It has also been asserted that it was the fact of partition that was responsible for mass migration. I do not agree with that proposition. The late lamented Mr. Jinnah stood for the principle of exchange of population. We disagreed. The implication of our rejection of that demand was that the fact of partition would have no bearing on the question of loyalty of Muslims of this country. Partition or no partition, the Muhammadan will remain loyal to this country. That was the meaning of the rejection of the demand of Mr. Jinnah. And how can we say that the fact of partition was responsible for mass migration? It must be realised that it was the riots and the disturbances in certain parts of the country which were responsible for mass migration. Even now the relations between the two Governments have not become stabilised; and it is only with the establishment of good relations between the two States that there can be security and people who belonged to this country and were citizens of this country would come back and settle in this country.

**Maulana Mohd. Hifzur Rehman** (United Provinces : Muslim) : \*[Mr. President Sir, article 5 as amended by Dr. Ambedkar is before us in its present form. So far as I have seen and examined it I understand that sufficient efforts 'have been made to explain at considerable length the rights of citizenship which are due to a person in the capacity of a citizen. Two things have been kept in view. On one hand provision has been made that a citizen should be entitled to those rights which are due to him as a citizen. On the other hand the other thing 'has also been kept in view and it has been considered that in case

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\*[ ] \*Translation of Hindustani Speech.

[Maulana Mohd. Hifzur Rehman]

any person tries to become a citizen by unlawful means, necessary safeguards must be provided against that. I think this step is praiseworthy and to me it appears desirable. In this connection the principle and policy which have been laid out by honourable the Prime Minister and honourable Shri Gopalaswami Ayyangar gives us great satisfaction. In spite of this I feel the absence of two things and I desire to draw the attention of the House towards these.

Of course details are not available regarding those people who have come with permanent permits. But it has also been explained now that those people who have come with permanent permits will be regarded as citizen in a certain way. The other thing which deserves our attention is that perhaps in the date which has been mentioned here no notice has been taken of the notification of the Government of India in which from time to time the government offered facilities to those coming from Pakistan. In article 5 three or four clauses have been made which do not impose restrictions and conditions, and these have been accepted and these four classes will be considered as citizens in this way. Further in 5A where it has been laid down as to who else will be considered as citizen, it has been said that those people who have come before 19th July, 1948, will be regarded as citizens. But those who have come later on have got to get themselves registered by applying. The condition of registration has been made necessary here. I want to say that the date which is mentioned in the notification issued by the Government of India is 10th September. It is made clear therein that they should also be regarded as citizens, provided the local authorities declare their permits as valid and recognize them. I would also say that, as regards those who have come with permanent permits or in any other capacity, this should have also been included in this amendment, if the Government of India in their notification have given this facility that those coming upto 10th of September shall be regarded as the citizens of India.

In the first amendment, instead of 1st August, 1948, 19th July, 1948, should not have been included. It would have been more just if 11th September should have replaced 19th July so that everybody should have availed of the utmost time for securing the right of citizenship. This would have meant that according to the date referred in the notification, issued by the Government of India, those people who would have come till 11th September should be regarded citizens without any condition.

The next question is this, that those who have come with permanent permits shall have to fulfil the condition of registration for their recognition as citizens. In this connection I submit that it has been made clear that the enquiries will be made about those people who have come here from the 19th July to the 11th September and after that they will be considered to be the citizens of India. In my opinion the restriction that has been imposed on them is quite unjust and that it goes against justice and fair play. We know very well and the House also is aware of the fact, that those who are given permanent permits can be recognized citizens only when the bona-fides of the permit holders are enquired into and that conspirators and cheats or those who have come to consolidate their business are not among them. First of all, the local authorities enquire into their details and then given them permits. In other words the local authorities give a permit only when they are completely satisfied and in no way before it. If over and above all this, the restriction of registration is imposed on them. I will say that it is far from just. Therefore, I say that it has not been made clear whether, to acquire the right to citizenship, such a person has only to apply for registration: or is this also essential, that after the submission of such application, the

local officials should make inquiries about it, and get him registered only if they are completely satisfied, otherwise they would have the right to reject his application? You know well that thousands of men have come back to Indian Union by now. A large number of them had come back soon after the disturbances. Of course there are people also who came back rather late, because they had difficulties in getting their permits. They were obliged to come late, for the simple reason that they could not get their permits in time. We have had experience that those persons who after coming back from Pakistan applied to the local officials for their permanent residence in Indian Union, and cancellation of their permit under the notification of the Government of India, were not made permanent residents and their permits were not cancelled within the fixed period.

It is our experience that the administration often creates such difficulties. Such people were assured in various ways by the District Magistrates concerned that their cases were under inquiry and that their applications were with the police for investigation and after receiving the report they would be informed about the acceptance or rejection of their applications. But what came out was this, that even after the lapse of three or four months they did not receive any reply. And when the Government of India issued another notification then the District Magistrates of various Provinces, without informing such persons about the acceptance or rejection of their applications, asked them to go back in view of the said notification. In this way the applications of those persons were rejected, who had come here with one, two or three months permit for the purpose of acquiring permanent citizenship : and instead of granting or rejecting their request, they were asked to go back at once. By doing so, not hundreds but thousands of people were put to difficulties and these people were not given even ten or fifteen days time. The result of this was that many persons in U.P., East Punjab and other Provinces were arrested on the ground that they were going back after the expiry of the fixed period. In fact no action was taken on the applications of those persons who had come here to acquire the right of citizenship and had stayed here for two or three months.

At last Government of India issued another notification. And after that these applicants were referred to this notification and were asked to go back. They requested for ten or fifteen days time, but they were not given even that much time. And any one who over stayed with a view to repeat the request was sent to jail. Some persons are still locked up in jails. In regard to those persons who have come here with permanent permits and registration is required only for the recognition of their citizenship, it seems reasonable to some extent if they are required to make any application only for their registration. But this thing should be clarified here, that they would be required only to apply for registration and thereupon they would be registered as citizens. This Constitution which you are framing here ought to be such that it should not create any difficulty for anybody.

If we do not clarify this point here and now, there may be injustice. Is it fair that after the submission of an application a second enquiry should be made and at the expiry of the enquiry the applicant should be informed as to whether he would be registered or not? I consider it against justice and I think that it would create good many difficulties for thousands of *bona fide* citizens.

By giving them permanent permits you have allowed them to come and live here. But in this Constitution which you are framing here, you are forcing them to apply for registration. On these applications local officials would make enquiry and after that they would tell them whether they are fit to be registered as citizens or not. Do you know that thousands of Meos who had left their houses on account of the disturbances have come back? If they are treated like that, would it be fair?

[Maulana Mohd. Hifzur Rehman]

For this, reason it ought to be clarified in 5-AA, and the condition for registration should be so fixed that local officials may not have the power to cancel it. After this article has been promulgated and this principle has been accepted a declaration, in most clear terms, should be made, and a notification issued to the effect that no registration would be cancelled. This formality would have to be undergone only for the sake of compliance with the rules. They should get them registered as they have come afterwards, but it, in that, a loop-hole for making an enquiry about them is left, then I am totally against it. Surely, it needs to be amended and revised to afford an opportunity to those people, who were residing here but due to disturbed conditions had gone away and have now returned back not to dispose of their property etc., but to settle down here again. All sorts of facilities in this respect should be given to the poor, to the Meos, and to those, who were residing in different parts of India. These will include not only Muslims, but non-Muslims also-like Christians. If that is not done, then they would have to face many difficulties, they will have to suffer at the hands of local officials. Hence, I want that it should contain these two amendments to the article 5 A which should be so amended that the last date fixed by the Government notification, *i.e.*, 19th July, should be changed to September 11, 1948. Though this chance makes a difference of only a month or a month and a half yet that would enable thousands of people to acquire the rights of citizenship, which they ought to get.]\*

My second amendment is:—

**Mr. President :** \*[Maulana Sahib, no such amendment has been tabled.]

**Maulana Mohd. Hifzur Rehman :** \*[That is so. I did not put any such amendment, but I had drawn the attention of some Members of the Drafting Committee. Dr. Ambedkar and Shree Gopalaswami Ayyangar—towards that. As a result, of my talk with them the present amended article regarding the permanent permit holders has been put forth in place of the previous one. I feel that lacuna in it, but now no other course is left open to me except this that I give vent to my feelings here and draw the attention of the Drafting Committee to it. If any legal course is yet left open then they ought to reconsider it.

However, about the other thing I would particularly say this much that if you have included these people in this article then they ought to be given the citizenship rights because they are citizens of India though they had gone away during the time of disturbances. The local government and local officials after enquiry have accepted these men as Indian citizens according to their rules. Now, these men should not be bound by these conditions, *i.e.*, unless they get themselves registered they cannot become Indian citizens and they would lose their citizenship rights if they fail to get themselves registered within six months. What I want to emphasise is this that there are too many people, who are unaware of all these things. Surely, it is not incumbent upon everyone to be aware of all these things yet here no opportunity has been given to such people to easily acquire citizenship rights.]\*

**Pandit Thakur Das Bhargava** (East Punjab : General) : \*[Will Maulana Sahib say in what sense men, to whom permits have been given, are to be regarded as citizens?]\*

**Maulana Mohd. Hifzur Rehman :** \*[Under the prevalent laws.]

**Pandit Thakur Das Bhargava :** \*[No. Never in that.]

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\*[ ] Translation of Hindustani Speech.



**Maulana Mohd. Hifzur Rehaman :** \*[Surely, they have been accepted as such, and the District Magistrates have taken them to be Indian citizens.]\*

**Pandit Thakur Das Bhargava :** \*[They are not residents.]\*

**Maulana Mohd. Hifzur Rehaman :** \*[No. They are. I have got legal proofs with me, wherein it has been stated in writing that they are the citizens of the Indian Union, and that they have been accepted as such in accordance with the Government of India notification. District Magistrate have stated this in writing on the permits.

Therefore, I want you to see the difficulties which they have to face as Indian citizens. So far the residents of India are concerned, you have not fixed any condition as binding on them. However, if they are likely to migrate from here, there is a separate law for them. Otherwise ways have been provided for the cancellation of their citizenship rights. But local officials should in no case be vested with powers to cancel the citizenship rights of those, Who through these permits have been accepted as citizens of India. I would regard that as against all canons of justice, I want these two rights should be given to these men.]\*

**Pandit Hirday Nath Kunzru** (United Provinces : General) : Mr. President, the question of citizenship has been before the Assembly since 1947. When the question was discussed in that year the tests laid down for the determination of citizenship were criticised by the Fundamental Rights Committee on two grounds, namely that they were either too narrow or too wide. The Draft before us is much fuller than that which the Fundamental Rights Committee could lay before us in 1947, yet we find that it has been subjected to criticism on the same old grounds. Dr. Ambedkar very lucidly explained yesterday the provisions of the final Draft laid before us. So far as I can judge from the discussion that has taken place, very little criticism has been urged against article 5. Similarly, with the exception of Prof. K. T. Shah, no speaker, or hardly any speaker has criticised the provisions of article 5B. Criticism has been concentrated on article 5A.

I shall briefly deal with the criticisms urged against articles 5 and 5B before dealing with the position of those who regard article 5A as making it too easy for people to be regarded as citizens of India. The first thing that I should like to say in this connection is that the Draft only lays down who shall be regarded as citizens of India at the commencement of this Constitution. There is nothing permanent about the qualifications laid down in the article, 5 to 5 C. Article 6 makes it absolutely clear that notwithstanding the provisions of these articles, Parliament will have power to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship. Any defects that experience may disclose can therefore be easily rectified.

With this preface I should like to refer very briefly to what was said in criticism of clause (a) of the proposed article 5. One of the speakers, I believe Dr. Deshmukh, said that if the article was retained as it was then the son of a person born while his mother was passing through India would become an Indian citizen. This is a complete misreading of this article. The very first condition laid down in the opening words of this article is that the subsequent provisions apply only to people who have their domicile in the territory of India. Consequently the son born to a traveller from abroad, who is passing through India cannot *ipso facto* become a citizen, cannot by virtue of his birth in India become a citizen of India. Can a man, by reason of his birth here, be supposed to have acquired the domicile of this country?

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\*[        ] Translation of Hindustani speech.

**Dr. P. S. Deshmukh** (C.P. & Berar: General) : Nobody said that.

**Pandit Hirday Nath Kunzru** : Well, one of the speakers said that.

**Dr. P. S. Deshmukh** : I never said that :

**Pandit Hirday Nath Kunzru** : Well, if Dr. Deshmukh is clear on that point or has modified his opinion on that point, I gladly concur in the view that he now holds on this point.

**Dr. P. S. Deshmukh** : I do not think my Friend listened to my speech with any care.

**Pandit Hirday Nath Kunzru** : I was in the House when the honourable Member spoke, but I may have misunderstood him, I may not have heard him correctly. In any case it seems from what Dr. Deshmukh has stated that there is nobody in this House that has anything to say against article 5.

Now I come to article 5C. Prof. K. T. Shah was probably thinking of the Indians in Malaya when he gave notice of the amendment that if the municipal law of any country did not require that a man should renounce the citizenship of the country to which his ancestors belonged before acquiring the rights of citizenship in that country, there was no reason why our law should prevent him from claiming Indian citizenship. I have taken a great deal of interest in the position of the Indians residing abroad since we got a copy of the Draft Constitution. It has been my endeavour since then to enable Indians living abroad living at least in certain places, to be regarded as Indian citizens without fulfilling difficult conditions. I can say with perfect confidence that article 5C has been so drafted as to take into account the rights of the people whom probably Prof. K. T. Shah had in mind when he sent in the amendment that I have just referred to. Obviously we, cannot allow a man whose ancestors settled down in another country two hundred years ago, to be still regarded as an Indian citizen. There must be some limit to the time during which the descendants of people who were Indians could be regarded as Indians even though they were living outside India. Article 5C lays down that "any person who, or either of whose parents or any of whose grand parents, 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 fulfilled certain conditions. Now, the condition laid down is that he should get himself registered as a citizen of India by the diplomatic or Consular representative of India in the country where he is living. It thus seems to me that article 5C takes full account of the just rights of Indians living not merely in Malaya, but also in other countries where some doubt has been cast on the position of Indians who have been resident there for a long time. If there are among them any persons who still regard themselves as Indian citizens, they will have an opportunity of claiming Indian citizenship under article 5C. If anyone does not take advantage of the provisions of article 5C to get himself registered as an Indian citizen, then that ought to be a proof in the eyes of the authorities of the country where he is living that he is not an Indian citizen but a citizen of the country of his adoption.

I shall now come to article 5A. It is this article that has been occupying the attention of the Members since yesterday. It has been criticised on the ground that its provisions are Undesirably wide and that it throws open the door of citizenship to people who have no moral right to be regarded as Indian citizens. I do not personally agree with the critics of this article. Let us consider calmly what article 5A lays down and the circumstances that require that such an article should form part of our Constitution. Article 5A and article 5AA contain extraordinary provisions arising out of the present extra ordinary circumstances, arising out of the extraordinary situation created by the partition of India. You

will find no counterpart to them in the Constitution of any other country. We have to define clearly the position of those persons who had to leave Pakistan for some reason or other after the partition of India or about that time. There is such a large number of such persons here that their position had to be taken fully into consideration. The representatives of these people have made every effort to get these people recognised as citizens of India from the very start, without being required to fulfil any conditions. The Draft Constitution provided that people coming from outside India should get themselves registered as Indian citizens and that, in order to prove their domicile, they should show that they had been resident in India for a month before their registration. But these conditions were not acceptable to the representatives of the refugees. They wanted that these people should unconditionally be regarded as Indian citizens. Consequently, it has been laid down in article 5C that all those people who migrated to India permanently leaving their homes in Pakistan up to the 19th July 1948 will, without complying with any condition, be citizens of India, if they have been residing here since their migration.

Then, the next category of persons that article 5A takes account of is persons who have migrated to India since the 19th July 1948. Now, if we had listened to those who wanted that all the people, who had come from Pakistan up to the present time or up to the date of the coming into force of this Constitution, should, without any enquiry and without fulfilling any condition, be regarded as citizens of India, I am sure this article would have been subjected to much severer criticism. It would then have been justly pointed out that it provided an opportunity for the acquisition of Indian citizenship by those who had no claim to it.

Sir, it has been said that we should consider whether as desired in an amendment of Pandit Thakur Das Bhargava, that the provisions of this article should not be made more restrictive, so that it may apply only to persons who had left their homes on account of civil disturbances or the fear of such disturbances. It will be very strange if such a condition is laid down. How will it be possible for a person to prove that he left his home on account of the particular cause referred to above? And how would the registering officers be in a position to decide whether the claim was valid or not? There is an even more serious objection to Pandit Thakur Das Bhargava's amendment. He says that the citizenship of India should be open to persons who have not merely migrated to India on account of civil disturbances or fear of such disturbances, but also to persons who having the domicile of India as defined in the Government of India Act 1935 and being resident in India before the partition have decided, to reside permanently in India, or have migrated to the territory of India from the territory now included in Pakistan. Now, the first thing that requires attention in connection with his amendment is the words "having the domicile of India." We know that these words have created difficulties. We know what was said in this connection when the articles relating to the establishment of an Election Commission were placed before the House.

**Pandit Thakur Das Bhargava :** Sir, may I point out in article 5 also the same words occur "having the domicile of India". These are exactly the same words.

**Pandit Hriday Nath Kunzru :** This is true but as my honourable Friend knows, difficulties have cropped up in this connection. But there are other objections too to his amendment. Take the persons who did not leave Pakistan because of civil disturbances or the fear of such disturbances. Take the people who lived in Sylhet .....

**Pandit Thakur Das Bhargava :** Those persons mentioned in (a) are not to be registered as citizens, because they never migrated.

**Pandit Hriday Nath Kunzru :** "Migrated" means, as I understand it, that they have left their previous homes permanently and have now come to live in India. Suppose people who were living in Sylhet after the Radcliffe Award shifted to Assam or Bengal. What will their position be if Pandit Thakur Das Bhargava's amendment is accepted ? Again, take the people who, say, entered a province after 1943, say in 1944 or 1945. They have not had the time to get naturalised in this country, and there will be a large number of such people. What will their position be if Pandit Thakur Das Bhargava's amendment is accepted ? The amendment that he has proposed will raise many difficulties that he has not thought of. It will probably raise difficulties with regard to the position of the people who have migrated from East Bengal to West Bengal. It will be very difficult for these people to prove that they have left their homes in Eastern Pakistan because of civil disturbances or fear of such disturbances. There are millions of non-Muslims still living in Eastern Pakistan. How will these people then be able to prove that there was any justification for their fears that civil disturbances might break out. The House will thus see that Pandit Thakur Das Bhargava's amendment, instead of removing any real difficulty, will create many more difficulties of a more serious character. I do not think, therefore, that it can be accepted.

Sir, there is one other criticism brought against the Draft placed before us that requires consideration. Article 5AA has been criticised by persons holding opposite points of view. There are one or two Members who feel that people who had migrated from India to Pakistan should not be allowed to return to India and claim Indian citizenship except under stringent conditions. There are others who hold a different view and who think that all those persons who left this country after the partition should without any question be allowed to return to their former homes. As regards the people holding the first point of view, I should like to point out that advantage can be taken of article 5AA only by persons who have returned to India under a permit for resettlement or permanent return issued to them under any law. Such permit holders who return to India will be regarded as persons who had migrated to the territory of India after the 19th July 1948. This means that only the permit holders who return to India by the 25th July 1949 will be able to claim citizenship at the date of the commencement of this Constitution. The permit holders returning to India after the 25th July 1949 will not be able to show that they had been living in this country for six months since their return. Now, the permit holders, that is the people who have returned with a permit allowing them to resettle or reside permanently in India, are entitled to be regarded as citizens of India. They were in India and our Government, taking all things into account, taking into account all the fears expressed by Pandit Thakur Das Bhargava and others of his point of view, have allowed them to come back.

Can we in accordance with any canon of justice refuse to regard them as Indian citizens ? It was open to the Government of India not to allow these people to return and it was also open to the Government of India not to allow them to settle permanently in this country; but permission having been given to them to return and settle down here by our Government, I do not think it will be honourable on our part now to go behind this Permission and say that these people should be treated as strangers now. Besides their number is limited. There need therefore be no fear that their return will be detrimental to our interests. As regards the future, Parliament will by law decide the conditions under which a man can acquire and renounce Indian citizenship. I do not think, therefore, that however apprehensive anybody may be of the possible conse-

quences of article 5AA, it can be regarded as dangerous to the peace and security of India. I think the conditions that I have referred to are of such a character as to take full account of the essential interests of this country.

Sir, the point of view of those who hold a different opinion from that just discussed by me is that people who migrated from India to Pakistan should be allowed to come back unconditionally if after living for sometime in Pakistan, they found that the conditions there would not suit them. I have listened very attentively to the appeal made by these persons, but I do not think that their claim is justified. We all know the circumstances in which certain people, or to be more explicit, a certain number of Muslims, left India and migrated to Pakistan and not all of them left India because of civil disturbances. A good many left India in order to settle down in Pakistan because they had supported the idea of the establishment of Pakistan when it was put forward and because they thought that they would be able to lead a fuller life in a Muslim country. Can we justifiably be asked to allow these people to come back without complying with any conditions? When they were in India they were against the maintenance of the integrity of India and they left India at the earliest opportunity that they could get in order to live in the country of their choice. They have no moral right in these circumstances to demand that they should be allowed to return unconditionally to this country. There are, however, Muslims, who wanted to live in India even after the Partition but they had to leave it under compulsion. Any one that remembers the conditions that prevailed, say, in Delhi, in September 1947 can easily visualize the state of mind of the members of the Muslim Community. If at that time thousands of Muslims left Delhi for Pakistan should we be justified in refusing to them the right of re-entry or the right of citizenship after a careful scrutiny of their antecedents? I do not think, Sir, that in the case of these people whom we by our conduct drove out of India we can object to their retention of the right of citizenship under the safeguards that I have mentioned. Fairness and morality require that their right to Indian citizenship should be fully recognised and article 5-AA does nothing more than this I hope Sir, that I have shown that the objections urged against article 5-A and 5-AA are founded either on a misapprehension of the provisions contained in them or on an imperfect realization of the consequences that the amendments would lead to. If my argument is sound, it shows that the draft before us has pursued a middle course; it recognised the just rights of all people without losing sight of the essential condition that only those persons should be regarded as citizens of India who in their heart of hearts owe allegiance to it.

**Mr. President :** I may inform Members that I propose to close the discussion of these articles at a quarter past twelve, when I would call upon Dr. Ambedkar to reply and then the amendments will be put to vote.

**Shri Rohini Kumar Chaudhuri** (Assam: General) : Mr. President, Sir. it is rather unfortunate for me that I should have come to speak at a moment when the debate has been raised to a very high level by my honourable Friends, Shri Brajeshwar Prasad and Pandit Hriday Nath Kunzru. They were speaking in terms of Hindu-Muslim unity. Indo-Pakistan unity and all the rest of it. But, I am here to state some plain facts without any fear, and without any desire for favour. I would ask the honourable Members of this House to judge for themselves after hearing the facts whether we have to support the amendment of Pandit Thakur Das Bhargava or not. The same amendment was also tabled by my honourable Friend Mr. Jhunjhunwala, (he spoke on it 'yesterday') and was tabled by me who is supposed to represent the Assamese Hindus, by my Honourable Friend Mr. Basu Matari who represents the tribal people in Assam and by my Friend Mr. Laskar, who represents the Bengal Scheduled Castes of

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Assam. These are the three different groups of persons who have supported Pandit Bhargava. I would, therefore, once more request the House to consider carefully the actual facts, not merely suppositions, not merely theories or, wish as to how certain things ought to be done and to decide for themselves whether to support this amendment or the amendment of Dr. Ambedkar.

By this amendment, I want citizenship rights for those persons—I am particularly concerned with Assam—who had come from East Bengal because they found things impossible for them there. It may be argued in a narrow way that very one who has come from East Bengal was not really actuated by fear or disturbance or actually living in a place where disturbance had taken place. Can any one imagine for a moment that there is no fear of disturbance in the winds of these East Bengal people who had come over to West Bengal or Assam? Was there any sense of security in their minds? Has that sense of Security, now after a period of two years, been enhanced by the fact that Pakistan has been converted into a theocratic State? I should say in answer to the criticism of Pandit Kunzru, that you need not insist in such cases that the man should be actuated by fear of disturbance or that disturbance should have taken place. The fear is latent in the mind of everybody. The moment any Hindu or a person of any minority community raises a protest against any action which is taken there, disturbances would immediately follow. Is there any doubt about that?

Therefore, Sir, in answer to Pandit Kunzru's criticism, I would say that this condition of fear, of disturbance should not at all be insisted in the case of a person coming from Pakistan over to West Bengal or Assam or any other place in India.

Secondly.....

**Pandit Hriday Nath Kunzru:** You can easily have a permit system there and control the influx of outsiders.

**Pandit Thakur Das Bhargava:** So far, it has not been done.

*(Interruption.)*

**Shri Rohini Kumar Chaudhuri :** Secondly, I want citizenship.....

**Shri Raj Bahadur (United State of Matsya) :** Why not divide East Bengal ?

**Shri Rohini Kumar Chaudhuri :** I want citizenship rights to this class of people, who have originally belonged to Sylhet in the province of Assam, who, long before the partition, have come to the Assam Valley as a citizen of that province and are staying in the present province of Assam. I ask, have they got citizenship or not? These people belonged to the, province of Assam, Sylhet. They had come to Assam on some business or other; they had come as government servants or as employees of businessmen. They had not migrated; no question of migration arose at that time.

They had come on business; they are now in Assam; they want to be in Assam. Have they got citizenship rights or not? I want citizenship rights for them.

I want to make it perfectly clear that I want citizenship-rights for those people of East Bengal who had gone over to West Bengal or Assam out of fear of disturbance in the future or from a sense of insecurity and also for those

people who have come over from Sylhet, who at the time of coming had no fear of disturbance or anything of that kind, but who, on account of fear of disturbances now have decided to live here.

At the same time, I also have the temerity, to say in this House that I would exclude those persons who came only three years ago, who set up the civil disobedience movement forcibly occupied land which was not meant for them, and forced the benevolent and benign Government to have recourse to the military to keep peace in the province I should be the last person to say, and I hope every one has honestly acknowledged that, that class of persons should be any mean be granted citizenship rights in the province. I also make it quite plain that. I desire to exclude those persons who surreptitiously introduced themselves into my province and who now having mixed themselves with their own brethren, now desire to have citizenship rights, not out of any sense of insecurity on their part, in their own provinces but with a desire to exploit more from that province of Assam. I desire to exclude these people because they had not long ago set up the struggle for Pakistan, they had not long before taken an active part in compelling the politicians of India to agree for Partition; they have their own property and are living peacefully on their own property; not only that, they have brought about such a state of things that they have been able to purchase property for mere nothing, property which belongs to the minority who had come out of fear.

**Shri Mahavir Tyagi** (United Provinces : General): What is their number, please?

**Shri Rohini Kumar Chaudhuri** : I do not know. I would ask then honourable Member to listen to me. I am making things quite plain for myself. 'There need not be any doubt or interruption of my speech.

I want make it quite clear that I do not want citizenship rights to be granted to those people who are not enjoying their own property, but enjoying the property of the minority community who have come away, in some places paying nothing and in other cases paying only a nominal price. I do not want these persons to get citizenship rights at all.

I do not know how you have framed this amendment; how defective is the amendment of Pandit Thakur Das Bhargava or how beautiful is the amendment of Dr. Ambedkar. I do not want to waste the time of the House by an interpretation of that. I only want that those classes of persons whom I have mentioned should be included and should get citizenship rights and those classes, of persons whom I want to exclude should not get rights of citizenship. If you adjust them in the light of the facts that I have mentioned, let me see after going through them whether these conditions are satisfied or not. It all depends upon the definition of the word 'migration'. Migration has been defined just now by my Friend who had preceded me. He said, migration means that a person leaves a particular place, having disposed of or having abandoned property which he has and has come and lived in some other place with a view to live there. If that definition is correct, as I am constrained to think that it is correct, if you read Dr. Ambedkar's amendment, you will find exactly that what I want shall not take place and what somebody else, wants will take place.

Now if you define the word migration, according to Dictionary it means mere moving from one place to the other or in the case of birds it is moving times of season from one place to the other. But to my mind the definition which has been given by Mr. Kunzru is the most reasonable definition. If you act upon that you will find the people from Sylhet when it was in the province of Assam and those who came to Assam either as Government servant or businessmen they had not migrated in the sense the word is understood. Therefore they will not fall under the definition of Dr. Ambedkar. They will be

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automatically excluded. It is for this reason that Pandit Bhargava has given this amendment that those people who were domiciled in India under the Government of India Act 1935 would automatically be included as citizens if they are prevented from going back now for fear. Those people who went to Assam for service or business long before Partition, they cannot be said to have migrated. Now they are unable to go back to their own homes for fear of disturbance. If they remain they will not get the citizenship rights under Dr. Ambedkar's amendments. Even as things stand at present they do not get admission for their children in the colleges as they do not fulfil certain conditions *re* domicile of the Province. In order to be domiciled in a province they have to live there for ten years and have their own house and land. What will be their condition now? If under this definition they would not get citizenship either, what will be their position ?

Unless Dr. Ambedkar assures us on the authority of his knowledge of English words and English legal phraseology that the 'migration' will include also such persons, then I submit that this amendment of Pandit Bhargava will have to be accepted. Many persons belonging to Pakistan are coming who have no insecurity there and who can have their vocation and service. I am stating only facts. What is the position of minorities in East Bengal ? They cannot get any Government Service. No person of minority community holds even a junior post there. Go to Assam and you will find high positions like the Secretary of Finance Education etc. are held by minorities. Take the case of business organisations and insurance companies in East Bengal. Many insurance companies have closed their branches there and come away to India, and so where is the vocation for these minorities ? Even doctors have been denied patronage. Even permits by which the majority of business is done are not given to the members of minority community in East Bengal. Then, what is the reason why the people of that majority community in East Bengal who have all these advantages should come to Assam ? The reason is to exploit and get some advantages. Are you going to encourage this ? You will be surprised to learn that the Government of Assam have requested the Government of India to give them the authority to issue permits to restrict such entries, but they have been denied. I stand corrected if my information is wrong. Honourable Friend Pandit Kunzru and other honourable Members of this House must have read in newspapers that in a meeting of the Muslim League at Dacca it was said with some, regret—I hope it was with some real regret that about three lakhs of Muslims had migrated from East Bengal on account of some economic difficulty. Now, you imagine, if three lacs is the figure which is given by the Muslim League in East Bengal, what must have been the real figure of people who have been infiltrating like this. Every province would like to be prosperous but it should not be at the cost of other persons. If you wish to govern a province properly, you should always try to see that the balance of the population is not so much disturbed and you, should see that you do not give citizenship to persons whose presence in that province would be undesirable and prejudicial to the interests of the Dominion of India. That is the test I would apply to these cases. The main condition which ought to be accepted to draw up an article of this kind is absolutely wasted if you are going to give citizenship right to each and everybody irrespective of the fact whether they are likely to be good citizens or not.

Sir, I have said things quite frankly, and I know some honourable Members will be dissatisfied with me. But I have no doubt at all in my mind that the people of all communities in my province, including Muslims who belong to Assam, will absolutely agree with me. Muslims who have made Assam their home will agree with me. But people who have newly come there, expecting



to be in a position to create a barrier to the proper and smooth administration of that province, I know, will resent the remarks which I have made. I quite see that I am subjected to a lot of misunderstanding. Some people have interpreted the amendment which I have tabled as an amendment which aims against the entry of Bengalee Hindus into Assam. That is the interpretation which some friends of mine have unfortunately put on the amendment. I may also remind you that in my own province a number of no-confidence resolutions have been passed against me, because as the adviser of the refugees I had advocated the cause of East Bengal Hindu refugees. And it will be of interest to note that most of these people who have no-confidence in me belong to ladies' associations. Of course my honourable Friend Dr. Ambedkar will say that I should not worry, because women will always be woman : and I also console myself with that thought. I have never been a persona grata with the women of this country or with the women of any country; and at this age I can very easily endure the ordeal of being not a persona grata with the ladies section of the people of this country. But leaving aside the ladies organisations, I only wish that the reasonable men should consider this question in proper perspection. That is my purpose. I will be satisfied if reasonable men support me. If they support Pandit Thakur Das Bhargava, not only will the welfare of my province be safeguarded, not only will the interest of East Bengal refugees be safeguarded but also ultimately it will be to the general welfare of India. You will have a province which will be absolutely loyal, which will be absolutely faithful to the government of the Province and which will be unanimously faithful to the Dominion of India. If you do not accept Pandit Thakur Das Bhargava's amendment, and if you do not bring in any other amendment to the same effect, you will expose your frontier, you will expose that province and that province will become a source of great danger to you. Already I have been to Cachar and I have seen in that district, from which crossing the Barak river you come into India, there is trouble; and if this amendment of Dr. Ambedkar is accepted, this district of Cachar will be entirely one district of Pakistan, and who will be responsible for giving one district which should have been kept in our province and which was retained after a good deal of fight but which will be sent to Pakistan ? It will be this amendment moved by Dr. Ambedkar.

**The Honourable Shri N. Gopalaswami Ayyangar** (Madras : General) : Sir, I do not think I would make a speech covering all the draft articles on this question of citizenship. They have been dealt with very fully by various speakers already. I would confine myself, only to two particular questions that have been the subject of much discussion in the course of this debate.

The first thing that I would take up is the question of persons who migrated from India to Pakistan and subsequently changed their mind and applied for coming back to India, to their own old homes and lands, whether in cases of that description, they should be treated on the same, footing as persons who have merely migrated from Pakistan to India. The general class of people who migrated from Pakistan to India, particularly in or about the time of the Partition were people who had their permanent homes originally in Pakistan and were squeezed out of their homes and had to find their permanent homes in India. With reference to that class, the draft article 5A provides that, if their migration from Pakistan to India took place before the 19th July, 1948, provided they had resided continuously from the time at which they migrated to India, in India, then they will automatically be regarded as citizens of India. In the case of such persons who migrated from Pakistan to India after the enactment of the Ordinance relating to the issue of permits for influx from Pakistan to India, in the case of those persons, we have restricted the acquisition of citizenship only to a small category which would come under the description that they applied for and obtained from the authorities of the Government of India permits enabling them permanently to return to India and resettle there. In the case of these

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persons, they will not be automatically registered as citizens. They have to make applications to authorities who will be designated for the purpose, and those authorities will take the full history of each of these persons into consideration before they grant a recognition of citizenship.

**Shri Mahavir Tyagi:** Could you tell us what will be the approximate number of such persons ?

**The Honourable Shri N. Gopalaswami Ayyangar:** Some time back, the number that was given to me was about 2,000, say, about two months back. It could not now exceed 3,000; that is my present estimate—may be a few persons over this limit or under this limit.

**Sardar Hukam Singh (East Punjab: Sikh) :** What will be the value of their property ?

**The Honourable Shri N. Gopalaswami Ayyangar :** I am afraid I am not in a position to estimate the value of the property belonging to these persons. On this question of property, I want to make the position clear. People who migrated from India to Pakistan, even if they remained permanently in Pakistan, retain their title to properties which they have left behind. When subsequently they obtain permits for permanent return and resettlement in India they come back; and in addition to the ownership title in most cases, if they have been allowed to resettle, they regain possession of those properties. That being so, I do not see how in justice we can refuse recognition of their rights to apply for and obtain citizenship. Citizenship may be refused by the officer who has the right to grant that application on grounds other than these; but so far as property goes I do not see how we can go behind it. But there is of course the legal point which my honourable Friend Shri Alladi Krishnaswamy Iyer made that there is really no necessary connection between citizenship and property. It will be for us to decide what we shall do with the property,—whether having lost possession of their property we should allow them to get back to their property. As a matter of fact the grant of these permits for permanent return and resettlement implies their being allowed to resettle on their property but there have been cases where this has not been found possible and some people who have returned on these permits have been settled on other property. That is a matter of detail which we can settle independently of the question of citizenship. Now so far as this matter is concerned it is a matter of the solemn word of the Government of India, as more than one speaker has pointed out. Having allowed these people to return on the authority of inquiries made by our own officers and documents issued by authorities who were specially empowered for this purpose it would not be in keeping with honesty on the part of any Government to say, “We shall not give the recognition that is due to persons who possess these documents.”

I do not wish to go further into this matter, but there were one or two points which were raised by one speaker. The first point was that people who come back on permits of this description should automatically get back their citizenship and should not be compelled to apply to an officer and await a grant by him of the right of citizenship to them. The point for us to consider is whether in the case of these people it is at all wise or necessary for us to put them on a higher level than people who owned property in Pakistan and have had to give up that property and come here after the 19th July 1948. Though their intention for permanently settling in this country is clear they have to apply to an officer for the purpose of obtaining rights of citizenship. I do not think that people who deliberately migrated from India to Pakistan should be put on a higher level than those people who were squeezed out of Pakistan out of

their properties and had to come here after the 19th July. That is one point which I would like the House to consider. They say that there were cases of a considerable number of people who, on account of statements made by certain persons or supposed notifications issued by people under some authority or other, have returned to this country without obtaining permits and they should not be prejudiced by the fact that they had not obtained these permits. I think, Sir, that so far as people who migrated to Pakistan from India are concerned, there is this definite fact that their first act was one of giving up their allegiance to India and owning their allegiance to a different State. Before we take them back into India and give them rights of citizenship we must have some definite method by which their intention to return to India is unequivocally expressed. Also we must have definite evidence of the fact that they come back to this country which the *imprimatur* of the Government of this country. And that is why in this article 5AA we have restricted this eligibility for citizenship to persons who have come back to India on permits issued under the authority of a law issued by us and by our own officers.

If we travel out of this category of persons we shall have to consider the cases of a large number of persons whose title to anything like citizenship in this country is of the flimsiest possible description. It is possible that some people who have come back to India have made India again their permanent home and want to be citizens of India and do not want to go back to Pakistan. Their cases must be left to be decided by laws which will be made by Parliament hereafter. Their cases are not so clear that we must include them in the Constitution itself. Therefore it is that I would earnestly beg the House to accept the position that we have translated into words in this article 5AA. It States the general proposition that a person who has migrated from India to Pakistan shall not be deemed to be a citizen of India. It has one proviso which gives the right to such a person to claim to be a citizen again of India if he applies for and obtains a permit from our own authorities which permits him to come and resettle in India permanently in his own home and on his own lands.

The other point I wish to refer to is one which has been raised by my honourable Friends from Assam. I must say that I have not been able clearly to follow the particular position that they take in regard to the matter which worries them. It is no doubt a fact that a substantial number of Muslims do go from East Bengal to Assam. But this kind of migration from what little study I have made of things happening between East Bengal and Assam in the past is nothing new. The numbers vary a bit perhaps; but the question that is put to us is that under this particular provision in the draft we shall open the door for a very large number of Muslims who will come over to India from Pakistan and who will apply for registration and get registered, much to the detriment of the economy of Assam. Now, let us analyse the position. It is said, for instance, that Assam wanted a permit system to be applied as between East Bengal and Assam. The Assam Government and the Government of India have discussed the matter between themselves. They have held more than one conference for the purpose of arriving at a solution of this trouble. And I shall not be revealing a secret if I say that at the last conference we had on this, subject, the general consensus of opinion amongst both representatives of the Government of India and the representatives of Assam was that it was not wise to introduce anything like a permit system between East Bengal and Assam on the same lines as obtain between West Pakistan and India. There are complications which perhaps it is unnecessary for me to go into in detail. One very big, complication is the repercussion it will have as regards the movement of persons between East and West Bengal. Now, by permitting the extension of the, Permit system as it works between West Pakistan and India to the area between East Bengal and Assam, we shall be inviting Pakistan to introduce such a system

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as between East and West Bengal and I only mention this to people who are acquainted with both West Bengal and Assam for them to realize all the enormous complications, on the economy of West Bengal which it will entail. The last conference merely came to the conclusion that we should seek and apply other methods for preventing or mitigating the influx of a large number of Muslims from East Bengal to Assam, and this matter is being investigated and, for my own part, I think it will be possible to devise some kind of legislation which will enable Assam to stem the tide very substantially. I would not like that we should adopt any methods which would complicate the situation in the eastern borders of the country. I could realize what, for the time being, it does mean to Assam—a number of Muslims coming in who are not wanted there—but we should not altogether ignore the possibility that conditions being what they are in Assam, this kind of thing might be applied by over-zealous officials of the Assam Government so as to be prejudicial to, say, the Bengalis who have migrated from East Bengal to Assam and perhaps even from West Bengal to Assam. We have got to take into consideration all these things. Now, I would earnestly request the House that we should not complicate the solution of this problem of citizenship by bringing in this particular trouble between East Bengal and Assam for which we are devising other measures of solution.

**Sardar Hukam Singh** (East Punjab: Sikh) : Sir, we have been told that the Muslims, who left their property here and have come back, retain their titles to the property that was left here, and when they come back, it is simple justice to return them that property. Government cannot do anything else. This is very good. I want to know from the honourable Mover whether according to his logic, we, who have come from Pakistan and left our properties there, also retain our titles to those properties. Can he suggest us some court or tribunal before whom we can go and place those title deeds to get justice that is being accorded to these people here by this proviso?

**The Honourable Shri N. Gopalaswami Ayyangar** : Sir, there is a slight inaccuracy in the honourable Member's statement of the position I took in, regard to properties left behind in India by the Muslims who have migrated to Pakistan and returned permanently to reside in our own country. My position was that the migration itself did not extinguish their title to property in India. That title continues until a final settlement takes place between the two governments for the extinguishment of titles in both countries. Till then, the title of each person continues with him. The property might have vested in the Custodian, he may be managing it, he may be recovering rents from it, but when a particular person comes back and is allowed to resettle on his own land, the thing that ought to occur and for which, I believe, provision exists in our evacuee property law, is that when he gets the right to resume possession of his land and satisfies every authority here concerned that he has come back for permanently settling in this country, then what was treated as evacuee property could be restored to him. Similar law exists on the other side also. People who have left Pakistan and come to India retain their titles, but if they go back on anything like a permit, of the description that I have given, issued by the Pakistan Government, they will be entitled to the same kind of treatment as we contemplate in the case of Muslims who have returned to India.

Now, I do not want the House to go further and ask me whether this thing actually takes place. I am talking of the law on the subject. There is nothing which prevents us from going back and claiming the land or the property, whatever it may be. As a matter of fact, while we have had about three thousand Persons who have obtained these permits and probably a very much larger number who have applied for them and not got them yet, I am afraid we shall be able to

count non-Muslims who have come over from Pakistan to India and wishing to go back to Pakistan on our fingers' ends. There is no doubt of the fact that there is no desire, anything like a substantial desire, on the part of our own people who have come over as refugees to go back and resume possession of their lands, while it is a fact that a considerable number of Muslims who have, gone over to the other side want to come back.

**Dr. P. S. Deshmukh:** What is the explanation ?

**Shri Mahavir Tyagi:** We are prepared to go back in case the Military also accompanies us.

**The Honourable Shri N. Gopalaswami Ayyangar:** Yes, that is true, but you have got to recognise the fact that the Muslims are coming back here without insisting upon the military.

**Shri Bikramlal Sondhi** (East Punjab : General) : Because it is one-way traffic.

**The Honourable Shri N. Gopalaswami Ayyangar:** Well, the legal position is, I do not think, different in the two countries.

As for the other question which the honourable Member asked me as to which tribunal we can go to for the purpose of having this right to go back and resume possession of our properties on other side enforced, my only answer is that the legal jurisdiction are different. There is no Court of law to which you can go on this question. The only thing you can do is to worry our own Government to see that similar rights are conceded to our people on the other side, and that, as you know, is being done incessantly, constantly by this Government.

**Shri Algu Rai Shastri** (United Provinces : General) \*[I beg to submit Sir, that the articles relating to citizenship which are under consideration at present are very important, ones, and the nature of discussion so far held indicates that they require some further discussion. If we adopt them in a hurry, we may perhaps have to repent for it later on. Before we take any decision regarding these articles, we shall have to decide many important questions relating to them. In my opinion it would be better, Sir, that we consider them again in the next sitting of the Assembly. I beg to submit that if we adopt these articles in a hurry, it would be a grave injustice to such Members as want to express their opinion on it and have not so far got any opportunity to do so. It is necessary to consider the several other questions that are connected with this matter. I would, therefore, request that these important articles relating to citizenship should not be rushed through.]

**Mr. President :** \*[We have already devoted more than nine hours to a discussion of this question.]

**Dr. P. S. Deshmukh :** May I ask a question? The real question which my Friend intended to ask was, to what extent there is reciprocity so far as admission of non-Muslims in the Pakistan areas was concerned, and I do not think any satisfactory answer was given to that question. What we want to know is to what extent has the Honourable Minister found the Pakistan Government reciprocating to the ideas and ideals that we hold, and propagate and the policies that we adopt ?

**The Honourable Shri N. Gopalaswami Ayyangar :** I must confess in practice the response has not been as satisfactory as I should wish.

**Shri Mahavir Tyagi:** Let us not discuss the failure of our Government. Let us look into the Constitution.

**The Honourable Shri N. Gopalaswami Ayyangar:** That is true. The question is that two Governments meet together for settling a proposition. If there is

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\*[ ] Translation of Hindustani speech.

[The Honourable Shri N. Gopalaswami Ayyangar]

no agreement there is a failure. But whether the failure, attaches to one side or to both sides is a question.

**Shri Phool Singh** (United Provinces : General) : \*[Mr. President, what is your decision about concluding the discussion on these articles today?]\*

**Mr. President** : \*[I am just putting the question.]\* I had thought that we had discussed these articles sufficiently during the nine hours that we had spent on them, and I would personally like to put the matter now to vote. As a desire has been expressed by some Members that they would like to speak and further discuss it, I would put it to the House.

The question is:

“That the question be now put.”

The Assembly divided by show of hands.

Ayes—59

Noes—35

The motion was adopted.

**Shri Algu Rai Shastri** : Sir, although the number of votes for closure is greater, considering also the big number who want the discussion to go on, I crave your indulgence to allow more discussion on this point.

**Mr. President** : I do not think any useful purpose will be served by further speeches. The amendments are all there before the Members; they are free to vote in favour of any amendment they like.

**The Honourable Dr. B. R. Ambedkar** (Bombay: General) : Mr. President, Sir, it has not been possible for me to note down every point that has been made by those who have criticised the draft articles which I have moved. I do not think it is necessary to pursue every line of criticism. It is enough if I take the more substantial points and meet them.

My Friend, Dr. Deshmukh said that by the draft articles we had made our citizenship a very cheap one. I should have thought that if he was aware of the rules which govern the law of citizenship, he would have realised that our citizenship is no cheaper than would have been made by laws laid down by other countries.

With regard to the point that has been made by my Friend Prof. K. T. Shah that there ought to be positive prohibition in these articles limiting Parliament's authority to make law under article 6 not to give citizenship to the residents of those countries who deny citizenship to Indians resident there, I think that is a matter which might well be left for Parliament to decide in accordance with the circumstances as and when they may arise.

The points of criticism with which I am mostly concerned are those which have been levelled against those parts of the articles which relate to immigrants from Pakistan to India and to immigrants from India to Pakistan. With regard to the first part of the provisions which relate to immigrants coming from Pakistan to India, the criticism has mainly come from the representatives of Assam particularly as voiced by my Friend Mr. Rohini Kumar Chaudhuri. If I understood him correctly his contention was that these article relating to immigrants from Pakistan to India have left the gate open both for Bengalis as we as Muslims coming from East Bengal into Assam and either disturbing their economy or disturbing the balance of communal Proportions in that Province. I think. Sir he has, entirely misunderstood the purport of the articles which deal with immigrants from Pakistan to India.

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\*[ ] Translation of Hindustani speech.

If he will read the provisions again, he will find that it is only with regard to those who have entered Assam before 19th July 1948, that they have been declared. automatically so to say, citizens of Assam if they have resided within the territory of India. But with regard to those who , have entered Assam, whether they are Hindu Bengalees or whether they are Muslims, after the 19th July 1948, he will find that citizenship is not an automatic business at all. There are three conditions laid down for persons who have entered Assam after the 19th July 1948. The first condition is that such a person must make an application for citizenship. He must prove that he has resided in Assam for six months and, thirdly, there is a very severe condition, namely that he must be registered by, an officer appointed by the Government of the Dominion of India. I would like to state very categorically that this registration power is a plenary power. The mere fact that a man has made an application, the mere fact that he has resided for six months in Assam, would not involve any responsibility or duty or obligation on the registering officer to register him. Notwithstanding that there is an application, notwithstanding that he has resided for six months, the officer will still have enough discretion left in him to decide whether he should be registered or he should not be registered. In other words, the officer would be entitled to examine, on such material as he may have before him, the purport for which he has come, such as whether he has come with a *bona fide* motive of becoming a permanent citizen of India or whether he has come with any other purpose. Now, it seems to me the, having regard to these three limiting conditions which are made applicable to persons who enter Assam after 19th July 1948, any fear such as the one which has been expressed by my Friend Mr. Rohini Kumar Chaudhuri that the flood-gates will be opened to swamp the Assamese people either by Bengalees or by Muslims, seems to me to be utterly unfounded. If he has any objection to those who have entered Bengal before 19th July 1948—in this case on a showing that the man has resided in India, citizenship becomes automatic—no doubt that matter will be dealt with by Parliament under any law that may be made under article 6. If my friends from Assam will be able to convince Parliament that those who have entered Assam before 19th July 1948 should, for any reason that they may have in mind or they may like to put before Parliament, be disqualified, I have no doubt that Parliament will take that matter into consideration. Therefore, so far as the criticism of these articles relating to immigrants from Pakistan to Assam is concerned, I submit it is entirely unfounded.

Then I come to the criticism which has been levelled on the provisions which relate to immigrants from India to Pakistan. I think that those who have criticised these articles have again not clearly understood what exactly it is proposed to be done. I should like, therefore, to re-state what the articles say. According to the provisions which relate to those who are immigrants from India to Pakistan, any one who has left India after the first March 1947, barring one small exception, has been declared not to be citizens of India. That, I think, has got to be understood very carefully. It is a general and universal proposition which we have enunciated. It is necessary to enunciate this proposition, because on' the rule of International Law that birth confers domicile, a person has not to acquire what is called domicile of origin by any special effort either by application or by some other method or by some kind of a grace. The origin of domicile goes with birth. It was felt that those persons who left India, but who were born in India, notwithstanding that they went to Pakistan, might, on the basis of the rule of international Law, still claim that their domicile of origin is intact. In order that they should not have any such defence, it is thought wise to make it absolutely clear that any one who has gone to Pakistan after the 1st March—you all know that we have taken 1st March very deliberately, because that was the date when the disturbances started and the exodus began and we thought that there would be no violation of any principle of International justice if we presumed

[The Honourable Dr. B. R. Ambedkar]

that any man who, as a result of the disturbances went to Pakistan with the intention of residing permanently there, loses his right of citizenship in India. It is to provide for these two things that we converted this natural assumption into a rule of law and laid down that anyone who has gone to Pakistan after 1st March shall not be entitled to say that he still has a domicile in India. According to article 5 where domicile is an essential ingredient in citizenship, those persons having gone to Pakistan lost their domicile and their citizenship.

Now I come to an exception. There are people who, having left India for Pakistan, have subsequently returned to India. Well, there again our rule is that anyone who returns to India is not to be deemed a citizen unless he satisfies certain special circumstances. Going to Pakistan and returning to India does not make any alteration in the general rule we have laid down, namely that such a person shall not be a citizen. The exception is this: as my honourable Friend Shri N. Gopalaswami Ayyangar said, in the course of the negotiations between the two Governments, the Government of India and the Government of Pakistan, they came to some arrangement whereby the Government of India agreed to permit certain persons who went from India to Pakistan to return to India and allowed them to return not merely as temporary travellers or as merchants or for some other purpose of a temporary character to visit a sick relation, but expressly permitted them to return to India and to settle permanently and to remain in India permanently. We have got such persons in India now. The question therefore is whether the rule which I have said we have enunciated in this article, not to permit anyone who has gone from India to Pakistan after the 1st March 1947, should have an exception or not. It was felt, and speaking for myself I submit very rightly felt that when a Government has given an undertaking to a person to permit him to return to his old domicile and to settle there permanently, it would not be right to take away from that person the eligibility to become a citizen. As my Friend, Mr. Gopalaswami Ayyangar has said, the class of people covered by this category, having regard to the very large population both of Hindus and Muslims we have, is very small, something between two to three thousand. It would, in my judgment look very invidious, it would in my judgment look a breach of faith if we now said that we should not allow these people whom our own Government, whether rightly or wrongly, allowed to come away from Pakistan for the purpose of permanent residents here, to have this privilege. It would be quite open to this House to bring in a Bill to prevent the Government of India from continuing the permit system hereafter. That is within the privilege and power of this House, but I do not think that the House will be acting rightly or in accordance with what I call public conscience if it says that these people who, as I said, are so small, who have come on the assurance of our own Government to make their home here, should be denied the right of citizenship. Sir, I do not think therefore that there is any substance in criticism that has been levelled against these articles and I hope the House will accept them as they are.

**Mr. President :** Now, I will have to put the various amendments to the vote. It is somewhat difficult to decide the order in which these amendments should be taken up.

**The Honourable Dr. B. R. Ambedkar :** Let all of them be withdrawn.

**Mr. President :** I will put the amendments to the vote in the order in which they were moved by the various speakers and if any honourable Member wishes to withdraw any amendment, he may express his desire to that effect. I will first take up the amendments moved by Dr. Deshmukh.



The question is :

“That in amendment No. I above, 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 naturalised under the law of naturalisation; 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’.”

The amendment was negatived.

**Dr. P. S. Deshmukh :** I beg leave to withdraw amendment nos. 29, 116, 118 and 119. Amendment Nos. 29, 116, 118 and 119 were, by leave of the Assembly, withdrawn.

**Mr. President :** Then I will take up Amendment No. 120.

**Shri T. T. Krishnamachari** (Madras : General) : If amendment No. 130 is accepted this does not arise.

**Mr. President :** No. 120 goes out. Then the amendments moved by Mr. Naziruddin Ahmad. They are all of a verbal. nature. No. 4.

**Mr. Naziruddin Ahmad** (West Bengal: Muslim): No reply has been given to this, but I do not press it.

The amendment was, by leave of the Assembly, withdrawn.

**Mr. President :** Then amendment No. 18. These are all of a verbal nature and they might be left to the Drafting Committee for its consideration.

**Mr. Naziruddin Ahmad:** All my amendments may be considered by the Drafting Committee.

**Mr. President :** Mr. Naziruddin Ahmad leaves all his amendments to the Drafting Committee to consider. So, they are not to be put to the vote. Does the House permit him to withdraw his amendments in that sense ?

All the amendments of Mr. Naziruddin Ahmad were, by leave of the Assembly, withdrawn.

**Mr. President :** Then we come to the amendments moved by Mr. Jaspat Roy Kapoor. Amendment No. 5.

**Shri Jaspat Roy Kapoor** (United Provinces: General) : I want to spare my amendments the fate of being defeated. Therefore I would like to withdraw them.

All the amendments of Mr. Jaspat Roy Kapoor were, by leave of the Assembly, withdrawn.

**Mr. President :** Then amendment No. 203 by Professor Shah.

The question is :

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

The amendment was negatived.

**Mr. President :** The question is:

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

The amendment was negatived.

**Mr. President :** The question is :

“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.’ ”

The amendment was negatived.

**Mr. President :** The question is:

“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.’ ”

The amendment was negatived.

**Mr. President :** Then we come to amendment No. 20 by Prof. K. T. Shah. I think this is more or less of a drafting nature. Could it be left to the Drafting Committee ?

**An Honourable Member :** Yes.

**Mr. President :** I had better leave it, to the Drafting Committee to consider this amendment.

Amendment No. 152. The question is:

“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 the 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.’ ”

The amendment was negatived.

**Mr. President :** The question is:

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

The amendment was negatived.

**Mr. President :** Then there is amendment No. 12 by Prof. Shibban Lal Saksena.

**Prof. Shibban Lal Saksena** (United Provinces: General) : I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

**Mr. President :** The question is :

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

The amendment was negatived.

**Mr. President :** The question is:

“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” ”

The amendment was negatived.

**Mr. President :** The question is :

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’.”

The amendment was negatived.

**Mr. President :** The question is:

‘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 naturalisation or acquisition of citizenship under any law made by Parliament.’

The amendment was negatived.

**Mr. President :** The question is:

“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) 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 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.’”

The amendment was negatived

**Mr. President :** The question is:

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

The amendment was negatived.

**Mr. President :** The question is:

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

The amendment was negatived.

**Mr. President :** The question is:

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

The amendment was negatived.

**Mr. President :** The question is:

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

‘Provided he has not abandoned his domicile by migrating to Pakistan after 1-4-1947 or acquired after leaving India the citizenship of any other State.’”

The amendment was negatived.

**Mr. President :** The question is :

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

The amendment was negatived.

**Mr. President :** Then there is amendment No. 123.

**Shri B. P. Jhunjunwala** (Bihar: General): Sir. I beg leave to withdraw my amendment.

**Mr. President :** Amendment No. 150 also is in your name.

**Shri B. P. Jhunjunwala:** I withdraw that also.

The Amendments were, by leave of the Assembly, withdrawn.

**Mr. President :** Then we come to amendment No. 21 by Shri S. Nagappa.

**Shri S. Nagappa** (Madras: General): Dr. Ambedkar has expressed his willingness to accept this amendment, Sir.

**The Honourable Dr. B. R. Ambedkar:** We shall consider it when we go over the whole thing if the language is appropriate.

**Mr. President :** It is a question of drafting more than anything else. So then it is left to the Drafting Committee.

The question is :

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

The amendment was negatived.

**Mr. President :** The question is:

“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, after the word ‘before’ the words ‘or after’ be inserted.”

The amendment was negatived.

**Mr. President :** The question is :

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

‘Subject to the provisions of any law that may be passed by the Parliament in this behalf, the qualification for citizenship mentioned in the foregoing provisions, shall apply *mutatis mutandis* to persons entitled to citizenship after the commencement of this Constitution’.”

The amendment was negatived.

**Mr. President :** I think this disposes of all the amendments. I shall now put the original proposition as moved by Dr. Ambedkar. Is it necessary to read it ?

**Several Honourable Members:** No. Not necessary.

**Shri Jaspat Roy Kapoor:** Mr. President, may I submit, Sir, that there are other amendments standing in the name of Dr. Ambedkar and Mr. T. T. Krishnamachari, and they might also be taken up as amendments.

**Mr. President :** I am putting the consolidated proposition incorporating all the amendments.

**Shri Jaspat Roy Kapoor :** With regard to that, I have to make one submission. With regard to amendment No. 132 moved by Mr. T. T. Krishnamachari, I would request Mr. Krishnamachari to consider the advisability of withdrawing it here and referring it to the Drafting Committee. It may be dropped here and referred to the Drafting Committee which might consider the advisability or otherwise of allowing these words to be omitted.

**Mr. President :** If it is only a question of drafting, the Drafting Committee has always the power. If it is a substantial matter, it cannot be left to the Drafting Committee.

**Shri Jaspat Roy Kapoor :** If amendment No. 132 is accepted here, we shall be trying down the hands of the Drafting Committee. I understand Mr. T. T. Krishnamachari himself has some doubts about the advisability or otherwise of retaining these words.

**Mr. President :** Mr. T. T. Krishnamachari will say whether he has any doubt about the wisdom of the amendment.

**Shri T. T. Krishnamachari:** I may explain, Sir, that my amendment was necessitated by the amendment to the wording of article 6. If necessary this matter will no doubt be examined further. I simply said I shall put Mr. Jaspat Roy Kapoor’s views before the Drafting Committee. That does not, mean that I have any doubts in the matter. We have provided for this contingency in article 6. Speaking for myself I am prepared to examine practically every word of the entire set of articles 5, 5-A, 5-AA, 5-B, 5-C and 6 independently.

**Mr. President :** I now put the consolidated amendment as moved by Dr. Ambedkar, articles 5 and 6 which includes articles 5-A, 5-AA, 5-B, and 5-C.

The question is :

“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 of India and—  
Citizenship at the date of commencement of this Constitution.

- (a) who was born in the territory of India, or
- (b) either of whose parents was born in the territory of India: or

[Mr. President]

- (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.

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—

Rights of citizenship of certain persons who have migrated to India from Pakistan.

- (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 therefor 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 lest 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 :

Rights of citizenship of certain migrants to Pakistan.

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.

5-B. Notwithstanding anything contained in articles 5 and 5-A of this Constitution, any person who or either of whose parents or any of whose grand-parents 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 therefore 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.

Rights of citizenship of certian persons of Indian origin residing outside India.

5-C. 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.

Continuance of the rights of citizenship.

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.”

Parliament to regulate the right of citizenship by law.

The amendment was adopted.

**Mr. President :** The question is :

“That articles 5,5-A, 5-AA, 5-B, 5-C and 6, as amended, stand part of the Constitution.”

The motion was adopted.

Articles 5, 5-A, 5-AA, 5-B, 5-C and 6, as amended, were added to the Constitution.

**Mr. President :** We are now adjourning till Thursday next. Under the rules, the consent of the House has to be given if there is to be an adjournment for more than three days. As this happens to be an adjournment for five days, I take it that the House gives the leave.

**Honourable Members :** Yes.

**Mr. President :** We adjourn now till nine of the Clock on Thursday next.

**Shri Syamanandan Sahaya** (Bihar: General) : May I suggest, Sir, that on the 18th we may assemble in the afternoon, in view of the fact that some trains come late ?

**Mr. President :** I have personally no objection if the Members so wish. Is that the general wish of the House?

**Honourable Members:** Yes.

**Mr. President :** We adjourn to Three P.M. on Thursday next.

The Assembly then adjourned till Three of the Clock in the afternoon on Thursday, the 18th August, 1949.

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