

[Shri K. Hanumanthaiya]

progressive ideas. The abolition of capital sentence is a matter open to argument, and I wish to differ from him. We have to look at this problem from two points of view: one from the point of view of the convict himself and the other from the point of view of the State. From the point of view of the convict, I had an idea that the convict would relish a life sentence in preference to execution. Some days back, I happened to read one of Bernard Shaw's dramas; it was a very good drama concerning the great heroine of France and there she prefers to be burnt alive rather than be kept in prison for a life time. He brings out that idea very beautifully in the drama, I had to change my opinion that the convict would prefer to be kept alive almost untouched by social intercourse and aloof behind the prison walls. The convict would any day prefer to go out of the world instead of being kept almost like a dead person behind the prison walls for a life time.

Then from the point of view of the State, a man who has no consideration for human lives does not deserve any consideration for his own life. Society is based not merely on reformation, but also on the fear instinct principle. To forget all other considerations except the question of reforming the convict does not hold the field and it has never held the field. If every man who takes away the life of another is assured that his life would be left untouched and it is a question of merely being imprisoned, probably the deterrent nature of the punishment will lose its value. The practice in prisons today is if a man is sentenced to life, he will be released, after concessions and remissions now and then given, in the course of about seven and a half years. Therefore, if a man who kills another is assured that he has a chance of being released after seven or eight or ten years, as the case may be, then everybody would get encouragement to pursue the method of revenge, if he has got any. For example, let us take this Godse incident.

**Mr. Vice-President :** No reference should be made to this particular individual.

**Shri K. Hanumanthaiya :** If a man who resorts to kill an important or a great man and if he is assured that he would be released after seven years or eight years, as the case may be, he would not hesitate to repeat what he has done, and conditions being what they are today, it would be very unwise from the point of view of the safety of the State and stability of society, to abolish capital sentence.

**The Honourable Dr. B. R. Ambedkar** (Bombay: General): I do not accept the amendment.

**Mr. Vice-President :** I shall put the amendment to vote. The question is:

That after article 11 the following new article be inserted:—

“11-B. Capital punishment except for sedition involving use of violence is abolished.”

The amendment was negatived.

#### Article 10

**Mr. Vice-President :** We can now go back to Article No. 10. The motion before the House is:

“That Article 10 form part of the Constitution.”

I shall now go over the amendments and then we may have a general discussion.

Amendment No. 326 is verbal and is disallowed.

As regards No. 327 perhaps Mr. Tahir will meet the objection which has been held by some people that the amendment is unintelligible.

**Mr. Mohd. Tahir** (Bihar: Muslim): Sir, I beg to move:

That in clause (1) of article 10, after the words “of employment” the word “acquisition”, be inserted.

In this connection, I do not want to make any long speech. I simply want to mention that there are two aspects, one of employment and one of acquisition. Employment has already been mentioned; so I want that acquisition also should be added. That is all.

(No. 328 and No. 329 were not moved.)

**Mr. Vice-President** : Nos. 330 and 331 being verbal are disallowed.

(No. 332 was not moved.)

Amendments Nos. 333, 335 and 337 (first part), are the same. I can allow the first part of amendment No. 337.

**Mr. Naziruddin Ahmad** (West Bengal: Muslim): Sir, I beg to move:

“That in clause (2) of article 10, for the words “on grounds only” the words “on grounds” be substituted.

It is really a motion for deletion of the word “only” which seems to be redundant or rather causing some difficulty. The same difficulty has been felt by a large number of Honourable Members, as is evidenced by several amendments to the same effect.

**Mr. Vice-President** : The next one is No. 334.

**Shri Lokanath Misra** (Orissa: General): Sir, I beg to move:

“That that clauses (2), (3) and (4) of article 10, be deleted.”

On this matter I need not make a long speech. To my mind clause (1) covers all cases and clause (2) is definitely included in clause (1), and clause (3) which refers to reservation of appointments to backward classes is really unnecessary because it puts a premium on backwardness and inefficiency. Everybody has a right to employment, food, clothing, shelter and all those things, but it is not a fundamental right for any citizen to claim a portion of State employment, which ought to go by merit alone. It can never be a fundamental right. If we accept that as one, it may be generous but this generosity will itself be a degradation to those people who are favoured with it. I think clause (4) is quite unnecessary because ours being a secular State, it should keep its hands clean of all religious institutions and the State need not bother about the management of any religious institutions. Therefore, here should be no thought of reservation of appointments in committees with reference to those religious institutions which are outside the care of the State. For these reasons, I consider clauses (2), (3) and (4) unnecessary.

**Mr. Vice-President** : Amendments 336 and 341 are of similar import. I can allow 336 to be moved.

**Mr. Naziruddin Ahmad** : I beg to move:

That for clause (2) of Article 10, the following clause be substituted:—

“(2) Every citizen shall be eligible for office under the State irrespective of his religion, caste, sex, descent or place of birth.”

I have slightly altered my amendment in consequence of the form ‘the State’ adhered to by the House.

The only reason for suggesting this amendment is that it is more direct in form.

**Shri H.V. Kamath** : (C. P. and Berar: General): I do not move amendment No. 341, Sir.

**Mr. Vice-President :** Mr. Tahir may now move the second part of his amendment No. 338; the first part being verbal, I disallow it.

**Mr. Mohd. Tahir:** I move:

That in clause (2) of Article 10, after the words 'for any office', the words 'or employment' be inserted.

Sir, the clause as proposed to be amended by me would read:

"(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth or any of them, be ineligible for any office or employment under the State."

It is very simple and clear that, so far as 'office' is concerned, the clause is all right. But, as regards employment which in my opinion means also employment elsewhere than in an office, there is no provision. I therefore think it necessary that the words 'or employment' should be added after 'office'. I hope the Mover will accept it.

**Mr. Vice-President :** Mr. Ananthasayanam Ayyangar may now move No. 342.

(Amendment No. 342 was not moved.)

**Mr. Vice-President :** Professor Shah may now move amendment No. 339.

**Prof. K. T. Shah (Bihar: General):** I beg to move:

That in clause (2) of Article 10, after the words 'place of birth' the words 'in India' be added.

The clause as proposed to be amended by me would read:

"No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth in India, or any of them be ineligible for any office under the State."

Sir, the object of moving this amendment is to point out that this country is vast enough to meet from her own resources of manpower all that is needed to fill any office of responsibility and trust with efficiency in this country. We have examples of other dominions and countries making an implied reservation in their countries; that is to say, reserving offices, reserving posts, and reserving employment primarily for their own citizens and so we shall not be lacking in models to copy or precedents to follow. I suggest that if these words 'in India' are added to the clause as it stands, it does not necessarily mean that discrimination shall be made against those not born in India. All that it wants to convey is that no discrimination shall be made against anybody born in India, on account of his place of birth. I consider this is not only a very reasonable suggestion, but also a very necessary one. In the short space of time that we have achieved this independence of ours, and given the influence that seems to be still working to pull us along the lines of commonwealth allegiance and association, we do not know how and where we may be getting to. Personally, I hold the view that by making a reservation of this kind, not only is no injustice or invidious discrimination intended, but what is necessary for our own protection, development and advancement can only be achieved by our own children, by the sons and daughters of the soil only. As such the first claim, a preferential claim for any available employment in this country, should be that of the natives of the land.

Sir, it is unnecessary to point out that the citizens or the nationals of this country have been discriminated against, and discriminated against very shamefully, in certain parts of the commonwealth as it is called now, like South Africa. Elsewhere, if they do not say so openly in the Constitution, if they do not say so by any specific legislation, they nevertheless maintain a policy of "White Australia", or White Canada, impliedly conveying the desire that coloured people are not wanted; or if they go there, they shall be under disabilities that will for ever handicap them.

If this is the experience that we are getting even today, even after achieving our independence. I do not see why we in this country should not also take

care, that our Constitution primarily and preferentially reserves all available places of employment, of trust, or responsibility for the children of the soil.

As I started by saying, this does not at all mean that you shall make a categorical discrimination against the citizens of other countries, though there are plenty of examples of that kind even in the existing Constitutions of some of the leading countries of the world. We would certainly not be starting on a new track altogether, even if we were to make a provision of that kind. Given the history that we have, given the suffering that we have endured, given the exclusion of our own countrymen from our public service in all branches by the foreigners who ruled and distorted the requirements of country's advancement it would be, to me at any rate, not only nothing surprising, but nothing in proper if we do make a categorical and positive provision, making a clear exception in the case of those who have exploited and abused their position in this country.

However, Sir, we have been told on good authority that we should let bye-gones be bye-gones, and that we must forget the unfortunate past of this kind. I personally would not be responsible for reviving unpleasant memories, if we can overcome them. It is, therefore, I want to add a clear injunction, that only those born in India, and owing allegiance to this country, shall get any place of responsibility or trust in this country. I would not, indeed, lay it down in the Constitution negatively, i.e., I would not require that no one born outside India shall hold any place of trust or responsibility, profit or power in this country, however justified one may feel from past experience. But while that amount of liberalism may well be shown even by us in spite of our memories, I should certainly think that the reservation I am suggesting is equally necessary, if not more so, *viz.*, that the responsible employment in places of trust available in this country should be reserved for the nationals of this country only. We have in the recent past been obliged to use powers of this kind against those who have discriminated against our nationals in their own jurisdiction. This might be difficult to do hereafter under the new Constitution if a provision of this kind remains in the Constitution, and there was no authority for us to make a discrimination of the kind I am conveying. I therefore think that there is nothing improper, that there is nothing out of order in making a suggestion that the places of employment, opportunities of service in the country should be reserved for the nationals of the country. I hope the House will accept it.

**Shri M. Ananthasayanam Ayyangar** (Madras: General): Sir, I want to say a few words.

**Mr. Vice-President** : You can do it during the general discussion.

**Shri M. Ananthasayanam Ayyangar** : Sir, when you called out amendment No. 77 in List No. 2, I did not follow you. It also arises in connection with article 10. With your leave I beg to move:

“That with reference to amendment No. 338 of the List of Amendments.....”

**Shri H. V. Kamath** : On a point of order, Sir, is the amendment now under discussion or the article and the amendments?

**Shri M. Ananthasayanam Ayyangar** : I am moving an amendment.

**Mr. Vice-President** : The position seems to be that, when I called out his name previously to move his amendment, Mr. Ayyangar's mind was elsewhere and he did not follow what was happening. He wants to move his amendment now. Am I right?

**Shri M. Ananthasayanam Ayyangar** : Yes, Sir, that is the position.

**Mr. Vice-President** : You can move it as a special concession. I hope I have the support of the House behind me.

**Honourable Members** : Certainly.

**Shri M. Ananthasayanam Ayyangar :** Sir, with your permission, I beg to move—

“That with reference to amendment No. 338 of the List of Amendments:—

(i) in clause (1) of article 10, for the words “in matters of employment”, the words “in matters relating to employment or appointment to office” be substituted; and

(ii) in clause (2) of article 10, after the words “ineligible for any” the words “employment or” be inserted.”

This is only intended to clarify the position and also to include the word “office” so that it may be more comprehensive. This does not require any further elaborate speech. I request the House to accept this amendment.

**Shri Jaspat Roy Kapoor** (United Provinces: General): Mr. Vice-President, Sir, I beg to move:

“That in clause (2) of article 10, after the word ‘birth’ the words ‘or residence’ be inserted.

Thereafter the clause will read as follows:—

“No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth or residence, or any of them, be ineligible for any office under the State.”

Sir, the object of my amendment is that every citizen of the country, where ever he might be living, should have equal opportunity of employment under the State. (Every citizen irrespective of his place of residence should be eligible for employment under the State anywhere in the country. Sir, there being only one citizenship for the whole country, it should carry with it the unfettered right and privilege of employment in any part and in every nook and corner of the country. A citizen residing in the province of Bengal, Madras, Bombay or C. P. should be eligible for employment in the U. P. and similarly a resident of the U.P. should have the right and privilege of employment in any other province of the country, provided of course he possesses the other necessary qualifications for the office. Every citizen of the country, Sir, I think, must be made to feel that he is a citizen of the country as a whole and not of any particular province where he resides. He must feel that wheresoever he goes in the country, he shall have the same rights and privileges in the matter of employment as he has in the particular part of the country where he resides. Unfortunately, Sir, for some time past we have been observing that provincialism has been growing in this country. Every now and then we hear the cry, “Bengal for Bengalis”, “Madras for Madrasis” and so on and so forth. This cry, Sir, is not in the interests of the unity of the country, or in the interests of the solidarity of the country. We find that some provincial governments have laid it down as a rule that for employment in the province the person concerned should have been living in the province for many years. One of the provinces, Sir, I am told, has laid it as a rule that they will employ only such persons as have resided within the province for fifty two years. I do not know how far it is correct. Possibly there is some exaggeration in the report that has been conveyed to me, but the fact remains that provincial governments are being pressed by the citizens of the province to lay down such rules in order to prevent residents of other provinces from seeking service under that provincial government. I can easily understand a provincial government laying it down as a rule that only those who possess adequate knowledge of the provincial language shall be eligible for employment in the province. I can also understand, Sir, a rule being laid down that a person who wants employment in the province should have adequate knowledge of local conditions.

**Mr. Vice-President :** I am hearing other honourable Members more than the Member who is occupying the rostrum.

**Shri Jaspat Roy Kapoor :** I was submitting, Sir, that I can easily understand provincial governments, in the interests of efficiency of the services, laying it down as a rule that only those who have adequate knowledge of the pro-

vincial language shall have employment in the province. I can also understand their laying down that persons seeking employment in the province must have adequate knowledge of the local conditions. All that is easily understandable in the interests of efficiency of the services, but to lay it down as a rule that one should have resided in the province for fifty-two years to become eligible for employment seems to me, Sir, to be simply absurd. If a man of fifty-two seeks employment, he can serve only for three more years. I submit, Sir, that this is a tendency which must be checked with a strong hand. I, therefore, submit that in the matter of employment there should be absolutely no restriction whatsoever unless it is necessary in the interests of the efficiency of the services. The unity of the country must be preserved at all costs; the solidarity of the country must be preserved at all costs. We must do everything in our power to preserve the unity of the country, and the amendment that I have moved aims at this and is a step in this direction; and I, therefore, commend it for the acceptance of the House.

**Mr. Vice-President :** There are two amendments to amendment No. 340. The first is Amendment No. 81 in list III.

**Shri K. M. Munshi** (Bombay: General): I beg to move:

“That in amendment No. 340 of the List of amendments, in clause (2) of article 10, for the words ‘or residence’ proposed to be inserted, the word ‘residence’ be substituted.”

This is a verbal amendment, because in the next phrase the words “or any of them” are used. This is just to bring the whole language of the clause to run in an appropriate way, I move this amendment.

**Mr. Naziruddin Ahmad :** Are not verbal amendments prohibited now?

**Shri K. M. Munshi :** It is for the Chair to rule whether this falls within this category or not.

**Mr. Vice-President :** I am very thankful to the honourable Member for the suggestion he has made. It will be taken into account. Mr. Munshi, you may go on.

**Shri K. M. Munshi :** That is all I want to say. It only eliminates the word ‘or’ which occurs after the word ‘residence’ in the clause as it stands.

**Shri Alladi Krishnaswami Ayyar** (Madras: General): The amendment which I have the honour to move runs in these terms:

That with reference to amendment No. 340, after clause (2) of article 10, the following new clause be inserted:—

“(2a) Nothing in this article shall prevent Parliament from making any law prescribing in regard to a class or classes of employment or appointment to an office under any State for the time being specified in the First Schedule or any local or other authority within its territory, any requirement as to residence within that State prior to such employment or appointment.

The object of the amendment is clear from the terms and the wording of it. In the first part of the article, the general rule is laid down that there shall be equal opportunity for all citizens in matters of employment under the State and thereby the universality of Indian citizenship is postulated. In paragraph 2 of article 10, it is expressed in the negative, namely that no citizen shall be ineligible for any office under the State by reason of race, caste, sex, descent, place of birth and so on. The next two clauses are in the nature of exceptions to the fundamental and the general rule that is laid down in the first part of the article. Now what the present amendment provides for is this that in case of appointments under the State for particular reasons, it may be necessary to provide that residence within the State is a necessary qualification for appointment by and within the State. That is the object of this amendment and instead of leaving it to individual states to make any rule they like in regard to residence, it was felt that it would be much better if the Parliament lays down a general rule applicable to all states alike, especially having regard to the fact

[Shri Alladi Krishnaswami Ayyar]

that in any matter concerning fundamental rights, it must be the Parliament alone that has the power to legislate and not the different Units in India. Under these circumstances, I propose this amendment for the consideration of the House.

**Shri H. V. Kamath :** On a point of clarification, Sir, may I know from my honourable friend, Mr. Alladi Krishnaswami Ayyar whether the words here expressed “any State for the time being specified in the First Schedule” applies to all the four parts of the First Schedule? The first Schedule consists of four parts. Three parts refer to the States and the last part refers to the Andaman and Nicobar Islands; and we have already adopted article 1 which states in sub-clause (2) that “the States shall mean the states for the time being specified in Parts I, II and III of the First Schedule.” May I know from him whether “any State for the time being specified in the First Schedule” means all the States and territories comprised in all the four parts of the First Schedule? In that case the language of this amendment will have to be modified. It will have to read “under any state or territory in the first four parts, I, II, III and IV of the First Schedule,” and if you want to retain only the word ‘State’, then it will be ‘under any State specified in Parts I, II and III of the First Schedule.’

**The Honourable Dr. B. R. Ambedkar :** It is quite obvious that we have not specified parts. We have merely said ‘First Schedule’ and First Schedule includes all the States in the first Schedule.

**Shri H. V. Kamath :** Article 1 says ‘the States included for the time being specified in Parts I, II and III of the first Schedule.’ The territories comprised in Part IV is not a State according to our Constitution.

**The Honourable Dr. B. R. Ambedkar :** There should be no attempt to make any distinction at all.

**Shri H. V. Kamath :** If my point is unanswerable, I have nothing to say.

**Shri Alladi Krishnaswami Ayyar :** If you only refer to the First Schedule, you will find that Part I refers to the territories known immediately before the commencement of this Constitution as the Governor’s Provinces. Part II deals with the territories known immediately before the commencement of this Constitution as the Chief Commissioners’ provinces, of Delhi, Ajmer-Merwara and so on. Part III deals with Indian States. All these three categories are referred to and described as ‘States’ in Article 1. Part IV of Schedule 1 are Andamans and Nicobar Islands. These are not States but territories.

**Shri H. V. Kamath :** I do not know how you get over this difficulty; Andaman and Nicobar Islands is not a State.

**Shri Alladi Krishnaswami Ayyar :** The Andamans would be under the jurisdiction of the Centre and they will be a part of the Central jurisdiction. There this principle as to residence within that particular locality does not apply to Andaman and Nicobar Islands. The idea is that so far as Andaman and Nicobar Islands are concerned, the Centre must have a free hand. So far as States in parts I, II and III alone are concerned they must be invested with the authority to provide ‘residence’ within the State as a necessary qualification.

**Shri H. V. Kamath :** It will be consisted if you say ‘under any State or territory comprised in Parts I, II, III and IV of the First Schedule,’ or “any State specified in Parts I, II and III of First Schedule”. Otherwise it will not.

**Mr. Vice-President :** I suggest that the House will kindly let me go on with the other amendments and in the meantime the honourable Member may go and try to persuade Mr. Alladi Krishnaswami Ayyar to accept his point of view. I think that is the most practical solution of our difficulty. (*Interruption*).

**Mr. Naziruddin Ahmad :** I suggest that as this is only a verbal amendment, the matter may be left over the Drafting Committee.

**Mr. Vice-President :** Let me pass on the next amendment. We are not putting it to the vote just now.

**Shri M. Ananthasayanam Ayyangar :** Sir, I beg to move:

“That in clause (2) of article 10, after the word ‘ineligible’, the words “or discriminated against” be inserted.

Sir, not only can discrimination be made at the outset when a person is appointed, but after the appointment takes place, he may be permanently kept in the first post which he occupied originally. In the matter of promotions etc., there may be discrimination. Ineligibility for appointment may not cover these classes of cases. Therefore, to make it clear and to give effect to the intention of the particular clause, the words “or discriminated against” are necessary. I request the House to accept the same.

(Amendment No. 343 was not moved.)

**Shri Damodar Swarup Seth** (United Provinces : General) : Sir, I beg to move:

“That clause (3) of article 10 be deleted.”

Sir, the reason for my submission is that though the clause on the face of it appears to be just and reasonable, it is wrong in principle. Who will not believe it, Sir, that reservation of posts or appointments in services for the backward classes means the very negation of efficiency and good Government? Moreover, it is not easy to define precisely the term ‘backward’; nor is it easy to find a suitable criterion for testing the backwardness of a community or class. If this clause is accepted, it will give rise to castism and favouritism which should have nothing to do in a secular State. I do not mean that necessary facilities and concessions should not be given to backward classes for improving their educational qualifications and raise general level of their uplift. But, Sir, appointments to posts should be only left to the discretion of the Public Services Commission, to be made on merit and qualification, and no concession whatever should be allowed to any class on the plea that the same happens to be backward.

**Mr. Vice-President :** Then, we come to amendment numbers 345 to 349. These are of similar import.

**Pandit Lakshmi Kanta Maitra :** (West Bengal : General) : I am not moving amendment No. 345, Sir.

**Mr. Vice-President :** From amendments numbers 346 to 349, I have selected amendment No. 348 which stands in the name of Pandit Hirday Nath Kunzru.

**Pandit Hirday Nath Kunzru :** (United Provinces : General) : Mr. Vice-President, Sir, I beg to move:

“That in clause (3) of article 10, for the words ‘shall prevent the State from making any provision for the reservation’ the words ‘shall, during a period of ten years after the commencement of this Constitution, prevent the State from making any reservation’ be substituted.”

If this amendment is made, Sir, clause (3) would read as follows:

“Nothing in this article shall, during a period of ten years after the commencement of this Constitution, prevent the State from making any reservation of appointments of posts in favour of any backward class of citizens who.....etc.”

Sir, I am not in principle against the protection of the interests of classes that are at present unable to look after themselves unaided; but this article, as it is, presents several difficulties. In the first place, the word ‘backward’ is not defined anywhere in the Constitution. There is another article in the Constitution, namely article 301, that provides for the appointment of a Commission to enquire into the condition of the backward classes. But, it is stated there that only those classes will come within the purview of the enquiry that are educationally or socially backward. There too there is no enumeration of the



[Pandit Hirday Nath Kunzru]

classes to which the enquiry will refer. This article is even more indefinite. Whether any class is backward or not, should be left to the law courts to decide. It is therefore our duty to define the term 'backward' so that there may be no dispute in the future about its meaning.

My second point Sir, is this. While granting protection to communities that have been left behind in the race of life, is it desirable that any special provisions laid down for them should operate indefinitely? Or is it desirable both in the interest of the backward classes and the State that any special provisions made for these classes should be of limited duration? If this article remains as it is and if reservation of appointment or posts can be made in favour of any backward class indefinitely, the State might come to think that it had done its duty by these classes by making this provision. I think and I believe that the House, if left to itself, would agree that it is desirable that the operation of such a provision should come under review from time to time so that we may be able to see whether the State had taken such steps as were necessary in order to lift these classes from their present position and enable them to compete on terms of equality with the other classes.

Sir, my third argument is that the provision with regard to the reservation of seats in the legislatures for the minorities, which must include the depressed classes and the scheduled tribes, according to the draft constitution is to be of limited duration. Now nobody can deny at the present time that a provision of this kind is necessary for these classes and it must be obvious to everybody here that representation in the legislature is of far greater importance than representation in services. If a community is represented in the legislature, its representatives can voice its demands from time to time and can see that any injustice done to that community either in the matter of appointment to posts or in any other matter is rectified. But if it ceases to be represented in the legislature, whatever protection might be granted to it in this or that matter, it will be in a far more helpless condition than if it were deprived of any other special aid. Now it has been provided in the Constitution that the reservation of seats for the minorities which include the scheduled tribes and depressed classes, who must according to any definition be regarded as backward, is limited to ten years. Article 305 lays down that the provision for the reservation of seats for the minorities according to their population shall continue in force unchanged for ten years and no more. On the expiration of ten years from the commencement of the Constitution this "provision shall lapse unless its operations is extended by an amendment of the Constitution. Now is it not desirable that a similar limitation should be laid down in clause (3) of article 10? Indeed it can be applied with greater force to article 10 than to the reservation of posts for the minorities in the Central and Provincial administrations. If clause (3) of article 10 is to be in conformity with the scheme for the protection of the interests of the backward classes, I submit that it is not merely desirable but necessary that the amendment that I have proposed should be made.

Lastly, Sir, I should like to know what is the relationship between clause (3) of article 10 and article 296. Article 296 provides that the claims of minority communities shall be taken into consideration consistently with the maintenance of efficiency in the administration in the making of appointments to services and posts in connection with the affairs of the Union or of a State for the time being specified in Part I of the First Schedule. Now in so far as clause (3) of Article 10 applies to all States specified in the First Schedule, the difference between it and article 296, which applies only to States specified in Part I of the First Schedule, is clear. But beyond that it is far from clear what the relationship between these two articles is. Article 296 relates to minorities. The claims of the minority communities can be taken into consideration in making appointments to services only on the ground that they are backward. Though it is the

word 'minority' that is used, in article 296 and the expression 'backward classes' is used in article 10 (3), it seems to me that in fairness to the country protection can be granted to any class, whether you call it a backward class or a minority, only on the ground that it is backward and if left to itself, would be unable to protect its interests. This shows the need for clearing up the connection between the two articles that I have just referred to. Apart from this, I should like to know whether if clause (3) of article 10 were passed, it would be possible for sections within the various communities to ask for special protection for themselves in the matter of appointments to services or posts. It may be that if clause (3) of article 10 is passed, it will not be possible for State to make any reservations in the services for minorities as such. But will it not be a temptation to sections of these and other communities to claim that they are backward in order to get the protection of clause (3) of article 10? Sir, I submit that we should have a system that would not encourage fissiparous tendencies and under which it will not be to the interest of any class to claim that it is backward. It is desirable therefore to limit the operation of any special protection that we may grant—protection of whatever kind—that its duration should be limited, so that the legislature may from time to time be able to see how it has worked and how the State has discharged its duty towards the protected classes. Unless this is done, I venture to think that article 10 would not be in conformity with the intention of the constitution to remove all those conditions on account of which special protection is necessary. We are all aware that when the Report of the Minorities Committee was considered by the House, the entire House was anxious that reservations of whatever kind should be done away with as quickly as possible. It was recognized that for the time being they were necessary, but it was insisted on that whatever protection might be considered necessary now, should be granted temporarily only, so that the population of the country might become fully integrated, and no community or class might be tempted to claim special advantages for itself. On these grounds, Sir, I venture to put forward my amendment though I have no doubt whatsoever, that it will not find favour with my friend Dr. Ambedkar.

**Mr. Vice-President :** The other amendments which are placed in the same category are Nos. 346, 347, and 349. I want to know whether it is proposed that I should put them to vote.

(Amendment Nos. 346, 347, 349, 350, 351 and 352 were not moved.)

No. 353 and 360 are of the same nature, and I would like to have them considered together.

(Nos. 353 and 360 were not moved).

**Shri V. I. Muniswamy Pillay** (Madras: General): I do not move amendment No. 353, but would like to make a statement.

**Mr. Vice-President :** You can do so during the general discussion.

Then we come to No. 354 to No. 357.

(No. 354 and No. 355 were not moved).

**Mr. Aziz Ahmad Khan** (United Provinces: Muslim): \*[Mr. President. I propose:

That in clause (3) of Article 10 the word "backward" be omitted.

Sir, I would like to submit that at the time when the minority Report was submitted to this House, the word "backward" was not there and we had finally decided that it is unnecessary to include the word "backward". Moreover, if you look at the Draft Constitution, you will find that there are several articles

---

\* [ ] Translation of Hindustani Speech.

[Mr. Aziz Ahmad Khan]

of such a nature that in case this amendment is not accepted, those articles become opposed to article 10; I refer to articles 296 and 299.

I have listened with attention the speech just delivered by Shri Kunzru. His object was to emphasise that under the new conditions created in India, if any protection is to be given, it could be given only to those particular classes of people who are educationally or culturally backward. Only such people require protection and not the minorities. In his opinion, no class or group as such requires any protection under the existing conditions. In my opinion, however, only those people require protection who have misgivings that in case protection is not given, their rights will not be preserved. I think that in case state services are monopolised by one particular class, then others might think that their existence has been ignored. This very idea will become a source of creating unpleasantness in the country. To my mind, therefore, this amendment is essential. I am of the opinion that in the new set up which we have to make in the country, we should neither create nor multiply differences. Nevertheless, it is a fact that due to the changes which we are introducing in the country, there are minorities who require protection. Safeguards should be provided for them and this can be done easily.

Sir, by article 296 such a safeguard has been provided and in article 299 also a similar provision has been made. I would like to submit that if as a matter of fact we are shaping this country in such a manner that there should not remain any difference, then it is necessary that there should not be any impediment that might create a feeling in the mind of an individual who has educational and citizenship qualifications that his claims are being ignored. Therefore, if this Article is not amended, then there will be doubts and misgivings among the minorities that they are being ignored. I do not say that it is necessary to recruit 20 per cent. Sikhs, 15 per cent. Christians or 15 per cent. Muslims in the public services of our country. I want only this much that if the Sikhs, the Muslims, the Christians and similar other groups living in the country, have educational and other requisite qualifications, then their claims should not be overlooked. Therefore, I think if this word be deleted from this article, then we shall not be accused of overlooking the claims of any particular class. To my mind if the word 'backward' is deleted, then the hand of the Government will be strengthened in such a way that it will enable the Government from time to time to make adequate arrangements in case the claims of any particular group are overlooked in public services. I think that this article would fetter the powers of the Government so tightly that they will not be able to remove the defects and the differences which exist today and they will continue. On these grounds, I hope that the House will accept this amendment which is certainly inconsonance with the Minority Committee's Report.]

**Mr. Vice-President :** There is an amendment to this amendment, that is No. 43 of List No. 1. I see it is not going to be moved. Then there is amendment No. 357 standing in the name of Shri Shankar Rao Deo and Acharya Jugal Kishore; they are not in the House. We next come to amendment No. 358 which is a verbal amendment. I can allow amendment Nos. 359, 361 and 362 to be moved. No. 359 is in the name of Shri Ranbir Singh, he is not in the House. Then comes No. 361—Shri Lokanath Misra.

**Shri Lokanath Misra :** I am not moving.

**Mr. Vice-President :** Then 362 stands in the names of Dr. Pattabhi and others. They are not moving it. Then No. 363 in the name of Prof. Shah. The second part of this amendment and amendment No. 366 are the same.

**Prof. K. T. Shah :** Sir, I beg to move:

“That in clause (4) of article 10, after the words ‘in connection with’ the word ‘managing’ be added, and the words ‘or denominational’ and ‘or belonging to a particular denomination’ be deleted.”

The amended article as suggested by me would read:—

“Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with managing the affairs of any religious institution or any member of the Governing Body thereof shall be a person professing a particular religion.”

The other words would be deleted.

As I understand the purpose of this article, I think what is wanted is that any exclusive religious institution, specifically concerned with a particular sector denomination, should be conducted by people professing that religion, sect or faith, and that none not so professing should be allowed to be associated with the management of it. If you use the very much broader words, that is to say “in connection with”—“any person holding any office in connection with”—I venture to think that those words may also include any *honorary* office or a mere place of honour in recognition of some donation, or some special gifts or some other service, which it would not be right and proper should go wholly unrecognised for mere reasons of difference in religious belief, especially if such institutions are conducting or having other activities besides merely religious or sectarian.

As illustration, may I give this. I can conceive of, let us say, educational institutions like universities or hospitals or other similar foundations, which may be regarded as devoted to or connected with a particular religion, in the governance of which a provision like this, without the amendment I am suggesting, may work needless mischief. In those bodies the mere holding of an honorary fellowship, or senatorship, or some kind of an honorary lecturership should not be excluded. I am sure it was not the intention of the draftsmen to exclude such merely honorary connection. But I feel that their wording, as it stands, is liable, at least in the laymen’s judgment, to be misconstrued; and at times offer opportunity to extra-clever lawyers to make new capital out of such provision.

So, I for one would not like to leave any room for the exercise of such ingenuity at the expense of the Community, or of the interests or the ideals which we are accepting here. In making provision of this kind, it seems to me, if I may make a general observation, that the draftsmen seem to be torn between two rival ideals: one suggesting the Constitution for a wholly secular State, in which religion has no official recognition, and therefore trying to make, so far as the civic life of the community is concerned, no provision or distinction in favour or in connection with a religion, sect or a denomination.

On the other hand, there seems to me to be a pull—somewhat sub-conscious pull, if I may say so—in favour of particular religions or denominations, whose institutions, whose endowments, whose foundations, are sought to be protected and kept exclusive by making exceptions of this kind. After all, this clause (4) is an exception to the main principle of the article; and, being an exception, it seems to secure immunity or exclusiveness for the management of the institutions of particular denominations, which the draftsmen somehow sub-consciously have sought to provide. That is to say, without denying the basic principle of a secular State, they have introduced by the back door so to say new amendment or exceptions, which seem in my eyes to take away the spirit of the whole provision as contained in this article.

I think, therefore, that if it was made clear by the addition of the words that I have suggested, namely, that no one not professing a particular religion need be associated with *managing* the affairs of that institution it would suffice. It would serve the purpose, if such purpose is to be served, of the original Foundation; and at the same time it would give you all the safety, all the unconcern, if I may put it that way, of a State which favours no particular religion.

[Prof. K. T. Shah]

There is nothing objectionable in my amendment that I can see, though I shall listen with interest to any opposition or objection which the draftsmen or their champions may have. Until they say no, and convince me to the contrary perhaps it would be just as well to commend this amendment with these words to the House.

(Amendments Nos. 367 and 368 were not moved.)

**Mr. Vice-President :** No. 365 is verbal and is disallowed.

(Amendments Nos. 367 and 368 were not moved.)

**Mr. Vice-President :** Regarding No. 82 on list II, there was some objection raised by Mr. Kamath.

**The Honourable Dr. B. R. Ambedkar :** He is satisfied with the explanation given by Mr. Munshi.

**Shri H. V. Kamath :** No, Sir. It has not removed my difficulty. It has not removed the doubts in my mind. Let them explain again, if they can. I do press my point.

**The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar):** The point raised by Mr. Kamath is really ticklis hand it requires some consideration. There seems to be no doubt about it. Now, Sir, the amendment reads thus:

“Nothing in this article shall prevent Parliament from making any law prescribing in regard to a class or classes of employment or appointment to an officer *under the State* for the time being specified in the First Schedule or any local or other authority within its territory any requirement as to the *residence within that State* prior to such employment or appointment.”

Now, the word “State” occurs in two places in the Draft Constitution. One is in Article 1 and the other is in Article 7. The meaning of the word state in Article 1 is comprehensive and mostly relates to the territorial side of it, and in Article 7 it relates to the authoritative side of it, the Government part of it. I shall read the latter: Article 7 says:

“Unless the context otherwise requires, the State includes the Government and the Parliament of India and the Government and the Legislature of each of the States and of local or other authorities within the territory of India or under the control of the Government of India.”

So Article 7 which defines the word “State” does not define the territory but it defines the authority of the State. Article 1 defines the territory of the State. The amendment speaks of both. So, when we say employment or appointment to an office under any State, there we say the authority of the State; so there is nothing wrong because Article 7 would mean all the territories of the States in Schedule I. As soon as we say that “In this part, unless the context otherwise requires, the State includes all.....” so far as this article 7 is concerned, the whole of Schedule I is covered and there is no doubt about it. Then, Sir, Article 10 refers to appointment to an office under the State,—there is nothing wrong because here “under the State” means as defined in Article 7, and because the definition of article 7 covers the whole of the State including the territories in the First Schedule. That is all right. But when we come to the other part of it, as to residence within that State, there the rub arises. The residence cannot be in the authority; the residence must be in the territory and therefore we cannot invoke Article 7; we must necessarily go to Article 1 and when we go to Article 1, there in part (4) of Schedule I becomes excluded. This is my point.

**Mr. Vice-President :** Before we start the general discussion, I would like to place a particular matter before the honourable Members. The clause which has so long been under discussion affects particularly certain sections of our

population—sections which have in the past been treated very cruelly—and although we are today prepared to make reparation for the evil deeds of our ancestors, still the old story continues, at least here and there, and capital is made out of it outside India. Every time we seek to place discussions in the international sphere on a high plane, it is at once thrown in our teeth that we have been treating certain sections of our brethren in a very unjustifiable way. I would therefore very much appreciate the permission of the House so that I might give full freedom of discussion on this particular matter to our brethren of the backward classes. Do I have that permission?

**Honourable Members:** Certainly.

**Mr. Vice-President :** I will first call upon Mr. Gurung.

**Shri H. V. Kamath :** Before you proceed to the discussion of the article, won't you finalise the amendment of Mr. Alladi Krishnaswami Iyer? The difficulty raised by me has not yet been answered.

**Mr. Vice-President :** That will be taken up later on.

**Mr. Naziruddin Ahmad :** I have a preliminary matter. This contravenes some amendment which has already been accepted. There is in line 3 in Amendment No. 82 the expression "any State." We have accepted the expression "the State."

**Mr. Vice-President :** I cannot permit you to speak now. Mr. Gurung may speak.

**Shri Ari Bahadur Gurung** (West Bengal: General) Mr. Vice-President, I thank you very much for the opportunity given me to speak on this occasion. I am particularly happy to note the provision in Clause 3 of this article which says.

'Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens who, in the opinion of the State, are not adequately represented in the services under the State.'

Sir, may I take it that the word 'backward' includes three categories of people, namely Scheduled Castes, and Tribals and one particular class which is not included so far, under the term 'backward' although it is educationally and economically backward? If I may say so, Sir, 90 percent. if not more of the Indian people are educationally and economically backward; the meaning of the word 'backward' seems to be vague to me. I feel I shall be failing in my duty to a particular section of the Indian people, viz., the Gurkhas, if I do not voice their feeling at this stage.

The Gurkhas, I must bring to the notice of the House, are three millions, if not more, domiciled in India. They are educationally and economically backward. I feel that the Gurkhas who are domiciled in India should have the same privilege as other backward communities in India. Sir, it is a known fact that the Gurkhas have played their part in the preservation of the independence of India and are now actually fighting in Kashmir after fighting in Hyderabad. They have had their share of the work in the preservation of India's independence. I assure the House that the Gurkhas who are now domiciled in India owe their full allegiance to the Indian Government. There had been a deep-rooted suspicion in the minds of many that the Gurkhas owe allegiance to the Government of Nepal. Today, on the floor of the House, I assure you that the Gurkhas who are domiciled in India owe allegiance to the Government of India and not to the Government of Nepal. These Gurkhas will not hesitate to shed their last drop of blood to preserve the independence that we have got.

There has been a very good gesture since the 15th August 1947 regarding the Gurkhas. When the Britishers were ruling in India, the Gurkhas were given only Viceroy's Commissions in the Army, but since 1948, many Gurkhas have been given emergency commissions as officers and I understand some of them

[Shri Ari Bahadur Gurung]

have risen to the rank of Colonels too. This grant or recognition has been a very good gesture.

Now this clause in article 10 makes a provision in favour of the backward classes of citizens who in the opinion of the State are not sufficiently represented in the services of the State. Today, I feel that the Gurkhas who had their opportunity to serve in the army and are educated, with this provision, may be taken to the civil side of the administration. I hope that the Gurkhas who have shown their bravery and valour in the army would show equal intelligence and integrity in the civil departments.

Thank you very much, Sir.

**Shri R. M. Nalavade** (Bombay: General): Mr. Vice-President, Sir, I am very glad to express the support of the depressed classes to article 10 which is now under discussion. In this article, particularly in clause (3) there is provision made for reservation in the services for the backward classes. But the words 'backward classes' are so vague that they could be interpreted in such a way as to include so many classes which are even educationally advanced. They are found mentioned in the list of backward classes. If the words 'Scheduled Castes' might have been used it would have been easier for the depressed classes to get adequate representation in the services. Our experience in the provinces, though there are provisions for reservation in the services, is bitter. Even though the depressed classes are educated and qualified, they are not given chances of employment under the Provincial Governments. Now that we have provided for this in the Constitution itself, there is no fear for the Scheduled Castes. According to this clause we can be adequately represented in the provincial as well as in the Central services. I therefore support this clause on behalf of the depressed classes.

**Dr. Dharam Prakash** (United Provinces: General): \*[Mr. Vice-President, it is an undoubted fact that "backward" class has not been defined so far and there is no possibility of its being defined in the near future. In fact there is no community which does not have a section of people which is backward, whether economically or educationally or socially. Thus there are backward people in every community. Personally I believe that if there is to be any reservation for backward classes in the services it is very necessary to see as to what is the present position and what is to be the future of a particular class which has been backward for centuries, whether religiously or economically or socially. This view needs careful consideration.

The first objectionable feature of this clause is that it can be instrumental in bringing about a great crisis even in the present circumstances. Every honourable Member knows that our national government has inherited an administrative machinery which always had a very narrow communal, provincial or religious outlook. Even now it is an undeniable fact that whenever the question of reservation in services arises, the people of any province holding a majority of posts or the person holding any office are led by provincial or individual interests in making appointments. If the person concerned belongs to the province of the officer he is favoured from the provincial point of view. If he belongs to his community, he is favoured from the communal point of view and if he belongs to his caste, sub-caste or section, he is favoured from that point of view. The officer does not take into consideration the merit of the candidate but only sees whether he can serve his interest. Therefore he encourages such people alone to join the services. It cannot be expected of this machinery of the old pattern, which is moving at its present speed with great effort, that it will act impartially in making appointments to the services. This is a great danger and to remove it, I think, it is necessary to clarify impartially

---

\*[ ] Translation of Hindustani speech.

as to who are the backward classes. This may remove the difficulty. The atmosphere in the country today is such as compels us to demand reservation not in the services but also in the Legislatures. Otherwise I am of the opinion that in a country, which has become free and the constitution of which is being framed with full freedom, there is no necessity for reservation. But the great difficulty which forces us to make a demand for reservation is that there is no such generosity and impartiality in our society as a society needs for its welfare nor is there any possibility of its being there in the near future. Therefore, as it has been suggested by the amendment, I submit that the words 'backward class' should be substituted by 'depressed class' or 'scheduled class' because the latter have a definite meaning. Among the scheduled castes have been included a number of those classes which are accepted by all to be backward. Therefore I support this amendment in the form that the words 'backward class' should be substituted by the words 'scheduled caste.' I think that reservation in services too is necessary for them for some time. Otherwise I do not even like to have any reservation in the legislatures. I personally hold the view that in this free country it is not proper to make reservation for Hindus, Muslims, Christians and Sikhs on the ground that they are minorities. But in so far as that section of Hindus is concerned who are called Harijans, and they are really backward,—it appears to be appropriate that there should be reservation for some time. That too should be for some time only. When they reach the same level of culture as other sections of the population have, I would be the first person to oppose any reservation whatsoever for them. So long as they do not attain that position, I favour reservation. Therefore, I submit that with the addition of these words reservation in services will prove to be useful instead of being harmful.]

**Shri Chandrika Ram** (Bihar: General): \*[Mr. President, I rise to express my support for Article 10. Several amendments have been moved for inserting the words "Scheduled Castes" after the words "Backward classes" in this article. I would like this to be done. Members are perhaps aware of the fact that the question of reservation for Depressed Classes and Scheduled Castes was discussed by the Advisory Committee but it was lost by a single vote. Otherwise there would have been, legally binding provisions for reservation in services for the Harijans. But as it is, I find that people are wondering why the expression "Backward Classes" has been put in this article and why is it that 'Backward Class' has not been properly defined. The members of the House who have had occasion to go through the Census Reports specially of the years 1921 and 1931, would have found that the expression 'Backward Class' has, in away, been defined there in. So far as I think, and this opinion is borne out by these Reports, our society is divided into three sections—The highest consisting of that section of our society which is known as 'Caste Hindus' and the lowest of the section known as Scheduled Castes or Harijan, while the third occupying a middle position between these two and consisting of a large portion of our people is what may be termed as the Backward Class. I am sorry that this backward class for whose cause Honourable Pandit Hirday Nath Kunzru has pleaded, has not been given reservation in Legislatures, that is neither in the assemblies nor in the councils. I may cite Bihar as a case in point. According to the Census Report, the backward class constitutes a major section of the population of the province. But you will find that with the only exception of Ahir community no other community has been given representation in the Council or Assembly of the province. Their population in the province is about five millions. There are altogether 152 seats in the Assembly and 30 seats in the Council; but in both the Houses the Backward Class has got only two seats. No doubt they are not treated as untouchables. Moreover from the educational and economic point of view they are in a much better condition than the other communities. If a community, however, is to progress and occupy a high position in

---

\*[ ] Translation of Hindustani speech.



[Shri Chandrika Ram]

society it is essential that it must possess political rights. If a community, howsoever large it may be within a society and whatever pre-eminence it may have reached in the matter of its culture, does not possess political rights and has also no political representation in the Council and the Assembly, I am afraid, I cannot see how it can have the same status as the other communities in the eyes of the State. I, therefore, think that just as we have provided for reservations for the Harijans in Services, in Assemblies and in Councils, it would be proper on our part to make similar provision for backward classes also for whom Pandit Hirday Nath Kunzru has argued so feelingly. We have provided so many privileges to Harijans on the ground that they are backward and I fail to understand why the same argument should not be applied for providing reservations for the backward classes. I think that this is a view requiring serious consideration. We are framing a constitution for our country by which we intend, and this has been specifically stated in the preamble, to secure to all citizens 'Justice, social, economic and political.' But I think that we are actually denying political rights to a large section of our countrymen who constitute in my opinion, a majority of the population. We profess to be providing equal opportunity to all but in fact we are denying this to the backward classes. Therefore, if we really mean to secure equal opportunity to all we should, in Article 10, not only provide for reservation of appointments or posts in favour of backward class of citizens but should also provide for reservation of seats in Legislatures for them. I would like to answer the objection of many members against the retention of the words 'backward class' in this article.

Particularly my socialist friends Seth Damodar Swarup and Pandit Lokanath Misra have moved amendments seeking deletion of the word 'backward class.' The first observation I would like to make in this connection is that I do not understand why Sethji who is a member of the Socialist Party, which, as is well known, desires to secure representation for every section of the population, should be raising an objection against the provision in this clause which is for the benefit of the 'Backward Class.' To those who think that no backward class exists in the country, I would only say that they are blind to the facts of the history of our country, to the progressive society of today and to the conditions obtaining at present. I therefore commend wholeheartedly the labours of the Drafting Committee in this respect. With these words, Sir, I support the amendment as it is.]

**Shri P. Kakkann** (Madras: General): Mr. Vice-President, Sir, I am very glad to support Article 10. The poor Harijan candidates hitherto did not get proper appointments in Government services. The higher officers selected only their own people, but not the Harijans. Sir, even in the matter of promotions, we did not get justice. The Government can expect necessary qualifications or personality from the Harijans, but not merit. If you take merit alone into account, the Harijans cannot come forward. I say in this House that the Government must take special steps for the reservation of appointments for the Harijans for some years. I expect that the Government will take the necessary steps to give more appointments in Police and Military services also. For example, in Kashmir the poor Harijans are fighting with great vigour. I say in this House that the Harijans must be given more jobs in this Government and be encouraged by the Government. With these few words, I finish my speech, Sir.

**Shri V. I. Muniswamy Pillay** : Mr. Vice-President, Sir, in the first two clauses of Article 10, it has been made clear that all citizens will have a general right for the services, but when we come to clause (3), by putting the word 'backward' which has already been pointed out by one of the honourable members, it has not been defined properly. So this throws me in confusion, whether the communities that were left out early in the administration for their due share have

been provided for. Sir, in the great upheaval of making a Constitution for this country, I feel that the communities that have not enjoyed the loaves and fishes of the services should not be left out. It is for this purpose, I gave notice of an amendment and a further amendment signed by more than fifty members has been presented to this House, but for reasons well-known to you, Sir, I could not move that amendment. But I wish to make it clear that unless there is an assurance that these communities—I specially mean the Scheduled castes—are given a chance, unless there is an assurance that these communities will at all times be taken into account and given enough and more chances in appointments, their uplift will still stand over. The other day, Sir, our Honourable Deputy Premier, Sardar Patel, has clearly said that not only justice must be done to the Harijans, but their case must be treated with generosity. It is in that view and spirit I request that a clear indication should be given by this House that the interests of the Scheduled Castes will be looked after. Sir, some honourable Members feel that reservation is not necessary. I think this is unwholesome thinking, because so long as the communal canker remains in the body politic, I feel there will be communities coming up for reservation; but the case of the Scheduled Caste is not pleaded on a matter of communalism, because they have been left in the lurch and due to their lack of social, economic and educational advancement for years and decades it is necessary, and I also feel that their case must be presented in this House vehemently, so that we may get justice at all times. At the same time I may tell this House that it is not the object of any of the leaders of the Harijan community to perpetuate the communal bogey in this land for ever, but so long as they remain so backward in getting admission into the services, it is highly necessary that they must be given some protection. Sir, in the past, the Government of India had made provision experiencing their inadequacy in the services; and even in my own province the Government of Madras have issued a communal G. O. and thereby they have given chances for the Harijans. Apart from that all those people who have been recruited from the Scheduled Castes have proved worthy of the choice. If I may say so, Sir, even in the Military, we know that in Kashmir they have played their part most efficiently and the very existence of the Chairman of the Drafting Committee here shows the ability that the Scheduled Castes possess.

**Shri T. Channiah** (Mysore): Mr. Vice-President, Sir, the retention of the word 'backward' in clause (3) of article 10 has created some doubt among honourable members from the Madras province. It is a fact, of course, Sir, that the word 'backward' has not been specifically defined in the Draft Constitution. Honourable Members coming from Northern India have been puzzled to note that honourable members coming from the south are very particular about this coming from Northern India are aware that there is a clear distinction between Hindus and Muslims; that much they understand very clearly. They also know that among the Hindus there are classes of people who are agricultural classes, and also people who are engaged in artisan works. They also belong to the backward class. In South India, Sir, the term 'backward classes' is very distinct. The Backward classes in South India, as I am aware, are either socially backward or educationally backward. The only classes who do not fit in this context namely clause (3) of article 10 are those who are economically forward. They feel that the word backward, if retained, will come in the way of their interest, namely, entertainment of these classes in the services. Therefore, Sir, the backward classes of people as understood in South India, are those classes of people who are educationally backward, it is those classes that require adequate representation in the services. There are other classes of people who are socially backward; they also require adequate representation in the services. The economically forward class of people are really disinterested in the word 'backward' appearing in clause (3) of article 10.

[Shri T. Channiah]

To give a clear picture of this, Sir, I would like to state what obtains in Mysore. There are two classes of vacancies, A and B classes. For the A Class vacancies, both the Brahmins and the Non-Brahmins are competent to apply, whereas for the B class vacancies, only the backward classes are entitled to compete. Sir, these backward communities suffer from two disabilities, namely, social disabilities and educational disabilities. It is from these two points of view, that the State Government has specifically provided the appointments in the B class. Therefore, Sir, it is but right that the word “backward” appearing in clause (3) of article 10 should be retained. As the Honourable Dr. Ambedkar has rightly said, the retention of the word ‘backward’ will be very appropriate also for this reason, namely, that clauses (1) and (2) of article 10 would be null and void if this word ‘backward’ is not retained in clause (3) of article 10.

**Mr. Vice-President :** Sorry, there are other speakers who want to speak.

**Shri T. Channiah :** I am really sorry that the honourable Pandit Kunzru should have felt that the backward class should be given this opportunity only for a period of ten years. Sir, I want this reservation for 150 years which has been the period during which opportunities have been denied to them.

**Mr. Vice-President :** Mr. Channiah, will you please go to your seat?

**Shri Santanu Kumar Dass (Orissa : General) :** \*[Mr. Vice-President, it is not my desire to say anything in connection with Backward classes which are being discussed here. The evil effects of foreign rule in our country prevent us from immediately deleting all provisions relating to Reservations from our Constitution. So long as these conditions continue in our country we will continue to demand reservations in the services for the Harijans and the scheduled castes, for these are covered by the term ‘backward class’. We will go on scrutinising the number of Harijans, Muslims and Christians in the services. Now-a-days a minority fears that without reservation it would not be able to gain seats in Elections or employment in services. You know that there are many vacancies in the Railway and Postal Departments. These posts are advertised. We receive interview letters and our candidates come from distant places for interview, but their cases are not at all considered and they are totally ignored, whereas those who have been working as apprentices are selected as they have a strong backing from their departments. What do we gain by these advertisements? When there is a chance we are ignored. Then, why do you advertise at all? Is it only to please Panditji or Sardarji?]

**Mr. Vice-President :** You are wandering from the point.

**Shri Santanu Kumar Dass :** \*[This also puts the gazetted officers of the scheduled castes and minority community into difficulty. Seth Damodar Swarup has just said that there is no need for reservations as Public Service Commission would secure impartiality. But in this connection I would like to point out that though there is a Public Service Commission, and candidates appear at its examination and many of those who qualify appear in the lists, yet when there is a chance of filling posts those who have not even appeared at the examination are taken in. How does it happen? It happens because such people have a strong backing which enables them to get selected. I am afraid the continuation of Public Service Commissions would be of no use for us.

At present there is reservation in the elections and thereby we get a chance to discuss our problems here. But If there was no such reservation it would not be possible for us to come here as we would not be able to win in the

---

\*[ ] Translation of Hindustani speech.

general elections. I therefore, submit that there should be reservation in services and elections.

There is one thing more: It has been said that reservation should be kept for ten years. Why only for ten years? If we get equal rights within two years all would be on the same level after that period and there would be no need for reservations. With these words I support the article.]

**Shri Jaspat Roy Kapoor :** Sir, may I submit that many of us do not appreciate the Marshal going to the speaker and asking him to resume his seat?

**Mr. Vice-President :** I am sorry for what the Marshal did; but it was not at my request. He is over-zealous.

**Shri H. J. Khandekar :** (C. P. & Berar : General): Sir, may I request you one thing with reference to the time limit? The speakers here are mostly Harijan speakers and they require some time to explain the situation. I would therefore request you to increase the time limit so that they can explain and support this article very well.

**Mr. Vice-President :** Yes.

**Shri H. J. Khandekar :** Mr. Vice President, Sir, I have come here to support article 10 which is being discussed in the House. Before supporting it I congratulate the friend who in the Drafting Committee has inserted this word 'backward' in article 10 clause (3). If this word 'backward' had not been here, the purpose of the scheduled caste would not have been served as it should be. The condition of the scheduled castes has been explained by many friends who made their speeches in the House. The condition is so deplorable that though the candidates of the scheduled castes apply for certain Government posts, they are not selected for the posts because the people who select the candidates do not belong to that community or that section. I can give so many instances about this because I have got the experience from all provinces of the country that the scheduled caste people though they are well qualified do not get opportunity and fair treatment in the services. It would have been better if the word 'scheduled caste' as has been proposed by an amendment by my friend Mr. Muniswamy Pillay would have been inserted in this article. Because the term 'backward' is so vague that there is no definition of this word anywhere. I do not agree with my friend Mr. Chandrika Ram saying that the definition of the word 'backward' is given in the census report. That is the definition of the word 'scheduled caste' and a list of the castes included in the scheduled caste. But I think the friend who has inserted this word in this article is aiming at the community known as the scheduled caste and when this Constitution is passed and when the article comes into operation, I hope that the Executive who will operate this clause or this Constitution will also aim at the community known as scheduled castes. Our revered leader Thakkar Bapa is in the House. He has been working for this community for about sixteen years as the General Secretary of the Harijan Sewak Sangh. He knows the difficulties of this community socially, economically, educationally, religiously and even politically. If I may say here leaving aside all these aspects, and if we consider the aspect politically, this community is not represented anywhere if no reservation of seats are given to that community.

**Mr. Vice-President :** You had better confine yourself to the article under discussion. How does politics enter into the picture at all?

**Shri H. J. Khandekar :** Therefore, if I leave aside the political aspects of the community and come to the social, educational, economical and religious aspects, the condition of the scheduled caste in this respect also is more deplorable than that of any man living in this country. I may say, that if a candidate of the scheduled caste applies for a particular post in the Government of

[Shri H.J. Khandekar]

India or in the Provincial Governments he is ordinarily ignored. There are commissions for recruiting these candidates. There is a Federal Public Service Commission, there are provincial Commissions; and while recruiting—you know, Sir, we people are educationally backward and we cannot come in competition with the other communities—If the qualifications for the Harijan candidates are not relaxed, our candidates will not be able to compete with the candidates of the Brahmin community or the so-called Savarna Hindus. Then if our candidates go to the F.P.S.C. or the Provincial Commissions they will not be successful in the selections as these commissions are not represented by us. I therefore think that while bringing this clause into operation, the F.P.S.C. or the Provincial Commissions should be instructed to relax the qualifications in connection with the Harijan candidates or the Scheduled Caste candidates and there should also be Harijan representatives on these commissions. Moreover, Sir, I know and the House and you too, Sir, know that the Government of India—I mean the present Government of India—has issued a circular about the services for the Scheduled Caste. They have said that in higher services  $12\frac{1}{2}$  per cent. of the seats are reserved for the scheduled caste and in the lower services  $16\frac{1}{2}$  per cent. are reserved for them.

Sir, if you just see how the recruiting of scheduled castes candidates is going on in practice, you will find that not even 1 per cent. of these candidates has been recruited in the higher services and in the lower services of the Government of India. Look at the Provincial Governments that have been run by our popular ministries. Even in those provinces, the scheduled castes have no adequate representation in the services. I, therefore, would have been very glad if after or before the word “backward”, the word “scheduled castes” had been inserted, because this term ‘backward’ is a vague one and while making the selections, communalism will arise and the commissions, I do not blame them, will be helpless. As was said here by certain friends of mine, communalism is going on, and provincialism is going on and other things are also going on and I am afraid if these things are continued, even if this clause is brought into operation, the scheduled castes will never get a chance, as the word ‘backward’ would be interpreted in such a way that we people would get no chance in the services because the people of other castes will also claim to be backward and get the chances on reserved posts. Therefore, Sir, before resuming my seat, I would request you to see that the machinery which will operate this clause should be so pure, that no discrimination of any sort should be made between scheduled castes and other people who come under the category of backward classes. With these words, Sir, I take my seat.

**Mr. Mohamed Ismail Sahib** (Madras: Muslim): Mr. Vice-President, Sir, this word ‘backward’ I cannot understand in the context in which it is put here in clause (3) of article 10. If one reads the clause without this word, then one can quite clearly and easily understand its meaning. But when the word ‘backward’ is inserted, it obscures the meaning a great deal. The word ‘backward’ has not been defined at all anywhere in this Constitution. But I may tell you it has been defined in certain places. In Madras it has got a definite and technical meaning. There are a number of castes and sub-castes called backward communities. The Government of Madras have counted and scheduled more than 150 of these classes in that province and in that province when you utter the word ‘backward’, it is one of those 150 and odd communities that is meant, and not any community that is generally backward. And I may also say that those 150 and odd communities constitute almost the majority of the population of that Province, and every one of these communities comes from the Hindus—the majority community. In that list the scheduled castes are not included, and if you include the scheduled castes also in the class of those backward communities, then all of them put together, will form decidedly the majority of the whole population of that province. I want to know whether by inserting the

word 'backward' here you mean the same backward classes as the Madras Government means, I want to know the meaning of the word. I submit that it should not in any way be taken to mean that the backward classes as those of the minority communities such as Muslims, Christians and the scheduled caste people are excluded from the purview of this clause. As a matter of fact, there are backward people amongst the non-majority people as well. The Christians are backward. As a matter of fact they are not adequately represented in the services of the provinces. So also the Muslims, and also the Scheduled Castes. If any provision is made, it has to be made for such really backward people. It may be pointed out that such a provision is made in article 296 under the minorities rights. But there the article does not speak of the reservation for those people in the services as this clause (3) does. Therefore, it is here, and that in the fundamental rights that such a provision ought to be made for such minorities as the Muslims, Christians and the Scheduled Castes.

Then Sir, I am opposed to the amendment moved by Pandit Kunzru. He says that the Government shall have the right or option of providing for reservation only for a period of ten years. Sir, the measure or yard-stick in any such matter should not be the period of time. The backwardness of the people is the result of conditions which have been persisting and in existence for several centuries and ages, and these will not die off easily. So the measure really should be the steps that are being taken to liquidate that backward condition, and it should be the forwardness of the people which has resulted as a consequence of those steps. Therefore, when these people advance and have come forward as much as any other community in the land, then these very reservations would automatically disappear. I feel that no period need be stipulated at all for this purpose. That period might be less than ten years, or it may be more than ten years, according as the backwardness persists or disappears. The measure, as I said, should be the effect and result of the steps that are being taken for removing and eliminating those conditions which go to make the backwardness. I would now request the mover of the motion to atleast remove the word 'backward' and make it clear to the House that here, when the clause speaks of reservation, it means also minority communities, who stand in need of such reservations.

Sir, there is only one more point which I have to touch upon. When we speak of reservations and rights and privileges, the bogey of communalism is being raised. Sir, communalism does not come in because people want their rights. When people find that they are not adequately represented, they rightly feel that they must have due representation and then such a demand comes up. It comes because of their non-representation in the services, and because of their discontent. When such discontent is removed, the unity of hearts comes in. It is the unity of hearts and not any attempt at a physical unity that will do good to the country and to the people. The differences will be there, but there must be harmony and that is what we all really want, and that harmony can be brought about only by creating contentment amongst the people. And reservation in services is one of the measures we can adopt to bring about contentment among the people. You can then say to the people, "Look here, you have your proper share in the services and you have nothing to complain." When people themselves find that they are given as good an opportunity as others, harmony will be there and the so-called communalism will not come in at all. There are countries which have followed the procedure which I am advocating and quite effectively, they have eliminated communalism. Therefore, I say that one of the ways of removing disharmony and producing harmony, is to make provision for the people's representation in the services and to make them feel that they have got a real share and an effective share in the governance of the country.

**Sardar Hukam Singh** (East Punjab : Sikh): Mr. Vice-President, Sir, the point that I want to press before this House has already been touched upon

[Sardar Hukam Singh]

by one or two Members. The Honourable Pandit Kunzru has said that he wants to enquire what relation there is between article 10 and article 296. Certainly if we take article 10, clause (1), it is laid down there that “there shall be equality of opportunity for all citizens in matters of employment under the State”. That would mean that when posts are to be filled, that would be done by open competition and the topmost men would be taken in. That is quite all right; that should be the procedure.

But when we look at articles 296 and 297, those two articles lay down that claims of all minorities shall be taken into consideration:—

“Subject to the provisions of the next succeeding article the claims of all minority communities shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments.....”

To me it seems that there is some conflict between these two articles. If we are to fill up these posts by open competition and on merit, certainly we cannot give recognition to the claims of all minorities. Then the best men would be taken in and if some members of the minorities do happen to succeed, that would not be on the consideration of their claims as minorities but that would be under article 10 as equal citizens of the State. If they get those posts in open competition, it is all right; but if they are not adequately represented by that method, then what article 296 implies is, that special consideration shall be shown to them to see that their representation is made up.

Sir, there can be only one of these two things—either there can be clear equal opportunity or special consideration. Article 10 says there shall be equality of opportunity, then it emphasises the fact by a negative clause that no citizen shall be discriminated on account of religion or race. It is quite good, but when no indication is given whether this would override article 296 or article 296 is independent of it, we are certainly left in the lurch. What would be the fate of the minorities?

In clause (3) this new phrase “backward class” of citizens has been introduced. We had heard of “depressed classe”, “scheduled castes”, but this “backward class of citizens”, so far as our part of the country is concerned, we have never seen used in any statute. Just now we have been told that “backward classes” have been defined in the Province of Madras; that may be, but that is not within my knowledge. Whereas this new term has made apprehensive the members of the scheduled castes and they have pressed here that it should be made clear that it only applies to them, if it is for their benefit, at the same time it has made the minorities apprehensive whether they are being included, as Pandit Kunzru said, whether “backward classes” would include those minorities as well, whether if they are not adequately represented any concession would be shown to them; and if they are not to be included in this phrase then what would be their fate under article 296. Unless we reconcile these two articles—296 and 10—the safeguards that are being provided in article 296 become illusory and there is apprehension in our minds as to whether that article would be to our benefit at all.

**Shri K.M. Munshi :** Mr. Vice-President, Sir, the criticism that has been placed before the House so far has revolved round two points. The first point is the scope of amendment No. 82 moved by my honourable friend Shri Alladi Krishnaswami Ayyar; the second is about the word “backward”. I propose to deal with the first question particularly in view of what was said by my honourable friend Mr. Gupta and the comments made by my honourable friend Mr. Kamath.

I want the House to realise the scope of this article. In article 10, clause (2), the House has added the word “residence” to the various restrictions that are mentioned there.

**Shri T. T. Krishnamachari** (Madras: General): It has not been added, it was merely suggested.

**Shri K. M. Munshi** : It has been moved that it should be added; I stand corrected. We have moved an amendment to this effect implying thereby that we are going to support it and I hope we are going to get the support of the House. The amendment seeks to insert the word “residence” in clause (2); that would mean that no State, not even a local authority like a municipality or a local board, can ever make a rule that the incumbent of an office or an employee shall be a resident of that particular place. This would lead to great inconvenience. For instance, there is an amendment to insert the words “office” and “employment” separately; that would include offices which do not carry a salary. Then, take for instance the chairman of a local board. It may become necessary for a Provincial Legislature to lay down a residential qualification. The Provincial Legislature, however will not have the power to do so unless the House accepts the amendment which has been moved by my honourable friend Shri Alladi. All that amendment No. 82 seeks to do is this: if the clause with regard to residence has to be qualified and a residential qualification has to be imposed, it can only be done by the Parliament, that is by the Central Legislature. The reason of this change is that there should be uniformity with regard to this qualification throughout the whole country and that this provision should not be abused by some Legislature by imposing an impossible residential qualification.

The second difficulty which evidently has been present before the minds of some of the Members of the House is with regard to the word “State”. I would like to draw the attention of the House to the different meanings of the word “State” used in the Constitution. The amendment says, “Any State for the time being specified in Schedule I”. So we have to find the meaning of the word “State”. I may now refer to article 1 which says:—

“India shall be a Union of States.

The States shall mean the States for the time being specified in Parts I, II and III of the First Schedule”.

Now, if you go to the First Schedule, the Schedule is headed “State and Territories”. So far as the First Schedule is concerned, Parts I, II and III refer to the States organised into a separate autonomous Government; while the territories are described in Part IV—Andaman and Nicobar Islands. Therefore, the words “Any State for the time being specified in the First Schedule” would cover only the States mentioned in Parts I, II and III but would not include the Andaman and Nicobar Islands.

Some difficulty has been felt by one or two members with regard to the definition of the word “States”.

**Shri H. V. Kamath** : May I draw my learned friend Mr. Munshi’s attention to the language used in the First Schedule? Part I refers to “territories” as well—“the territories known immediately before the commencement of this Constitution as the Governors’ Provinces”. The word “territory” is used there and not merely in connection with Andaman and Nicobar Islands. In Parts I, II, and IV the word employed is “territory”.

**Shri K. M. Munshi** : If the Honourable Member is good enough to follow the submissions which I am making, I am sure he will be convinced, unless he is determined not to be convinced, in which case it is a different matter.

**Shri H. V. Kamath** : The boot, Sir, is on the other leg.

**Shri K. M. Munshi** : What I am saying is, if you look at the words of article 1, it says: “The States shall mean the States, &c.”. These do not include the Central Government of the Union. It only means the autonomous States



[Shri K. M. Munshi]

which are mentioned in Parts I, II and III. As regards Part IV you will find in clause 3, sub-clause (2)—“the territories for the time being specified in Part IV of the First Schedule. . . .” Therefore Nicobar Islands are not a State within the meaning of article 1. They are a territory. These territories are not governed by any legislature of their own nor are they a State with any autonomous powers. They are directly controlled by the Centre and the Centre cannot make a distinction with regard to its own services between a resident of one province and another. It must treat every citizen equally. The scheme of this amendment therefore, if it is seen in this light, is that with regard to the States in Parts I, II and III and in respect of any office under such States, a residential qualification can be imposed by the legislature.

The other difficulty was in regard to article 7. The article uses the words “the State”. They are almost made into a term of art and apply only to the words “the State” used in Part III, that is for the purpose of Fundamental rights. It has no application to either the Schedule or to the States falling within article 1. Therefore, when the amendment under discussion says “any State” it cannot mean ‘the State’ as defined in article 7. I submit this amendment makes it perfectly clear that it is for the purpose of services under the States mentioned in Part I, II and III that the Central Legislature can enact a legislation, not with regard to any part of the territory which is directly controlled by the Central Government. It would be quite wrong in principle, I submit, that the Central Government should make distinctions between the residents of one province and another. Therefore, the amendment as it stands, I submit, is perfectly correct.

**Shri H. V. Kamath :** Mr. Vice-President, if I heard my friend a right, he did say just now that the words “any State” refers to only Parts I, II and III of the first Schedule. Then, why not say specifically and definitely in this amendment—“any State for the time being specified in Part I of the First Schedule to III” and be done with it?

**Shri K. M. Munshi :** I may humbly point out to my friend that the heading of the First Schedule is “the States and Territories of India” under articles 1 and 4, and Nicobar Islands are territories; they are not States. Therefore, it is perfectly clear to any one who compares the two articles. I cannot add any further explanation to what I have given.

**Shri H. V. Kamath :** If the wise men of the Drafting Committee think so, and as ultimately they will have their own way in regard to this amendment right or wrong, I do not want to press this point.

**Shri K. M. Munshi :** The meaning as I understand it,—and I hope I have made it clear to the House—is perfectly clear and requires no further comment on my part.

The other point that has been raised—of course, it will be dealt with exhaustively by my Honourable friend Dr. Ambedkar when he replies generally—is about the use of the word “backward.” There is one point of view which I would like to place before the House. I happen not to belong to the Scheduled Castes; and I am putting that point of view, which possibly may come better from me than my Honourable friend Dr. Ambedkar. Certain members of the Scheduled Castes have expressed a doubt whether by the use of the word “backward classes” their rights or privileges or opportunities will be curtailed in any manner. I cannot imagine for the life of me how, after an experience of a year and a half of the Constituent Assembly any honourable Member of the Scheduled Castes should have a feeling that they will not be included in the backward classes so long as they are backward. I cannot also imagine a time when there is any backward class in India which does not include the Scheduled Caste. But

the point I want to draw the attention of these Members to is this. Look at what has been going on in this House for the last year and a half. Take article 11. From the first time the draft was put before the sub-committee of the Minorities Committee—the Fundamental Rights Committee—there has not been a single member of the non-Scheduled Castes who has ever raised any objection to it. On the contrary, we members who do not belong to the Scheduled Castes, have in order to wipe out this blot on our society, been in the forefront in this matter. Not only that, but article 296 and even this particular proviso has been put in and supported fully by members of other communities and have been supported by the whole House. There need, therefore, be no fear that the House, as constituted at present or hereafter, will ever make a distinction or discriminate against the Scheduled Castes. That fear, I think, is entirely unfounded. What we want to secure by this clause are two things. In the fundamental right in the first clause we want to achieve the highest efficiency in the services of the State—highest efficiency which would enable the services to function effectively and promptly. At the same time, in view of the conditions in our country prevailing in several provinces, we want to see that backward classes, classes who are really backward, should be given scope in the State services; for it is realised that State services give a status and an opportunity to serve the country, and this opportunity should be extended to every community, even among the backward people. That being so, we have to find out some generic term and the word “backward class” was the best possible term. When it is read with article 301 it is perfectly clear that the word “backward” signifies that class of people—does not matter whether you call them untouchables or touchables, belonging to this community or that,—a class of people who are so backward that special protection is required in the services and I see no reason why any member should be apprehensive of regard to the word “backward.”

**Pandit Hirday Nath Kunzru :** This is begging the question. To argue like this is to argue in a circle.

**Shri K. M. Munshi :** Well, I have not been able to trace the circle so far, in spite of my learned friend's attempt to make me do it.

**An Honourable Member :** Who are those backward classes?

**Shri K. M. Munshi :** Article 301 makes it clear that there will be a Commission appointed for the purpose of investigating what are backward classes. Some reference has been made to Madras. I may point out that in the province of Bombay for several years now, there has been a definition of backward classes, which includes not only Scheduled Castes and Scheduled Tribes but also other backward classes who are economically, educationally and socially backward. We need not, therefore, define or restrict the scope of the word ‘backward’ to a particular community. Whoever is backward will be covered by it and I think the apprehensions of the Honourable Members are not justified.

**Shri T. T. Krishnamachari :** Mr. Vice-President, Sir, I am afraid I am in a position of disadvantage, coming as I do after Mr. Munshi, whom the House knows as a very learned lawyer. I now see that his technique in advocacy is to confuse the judge, as—if I had heard him a right—he must have confused the minds of those Members of this House who had some doubts in regard to the provisions of article 10. Sir, I was reading recently in a newspaper the comments on this Constitution by a celebrated authority—Prof. Ivor Jennings, Vice-Chancellor of the Ceylon University—and he characterises this chapter of fundamental rights as a paradise for lawyers. And, as a piece of loose drafting, article 10 takes the palm. My own view, if I may be permitted to state it, is that this article had better not find a place in this Chapter on Fundamental Rights.

Let me take clause (1): “There shall be equality of opportunity for all citizens in matters of employment under the State.” What class of citizens? Literates?

[Shri T. T. Krishnamachari]

Illiterates? Could an illiterate file a suit before the Supreme Court alleging that he has been denied equality of opportunity? This is not my own view. This is a statement of the view which I found expressed in Professor Jennings' criticism.

I now move on to clause (2). I am afraid this House has been put to a lot of trouble merely because of the attempt to accommodate my Honourable Friend Shri Jaspat Roy Kapoor by including the word 'residence' in this clause after the word 'birth'. This has been beginning of all the trouble. We have had an amendment by Shri K. M. Munshi and another by Shri Alladi Krishnaswami Ayyar. Is it at all necessary to include the word 'residence?' I put it to the House that it is not necessary, because if there is discrimination because of 'residence' as there may be, you are not going to cover it up by putting it in here and taking it out in clause 2 (a).

**An Honourable Member :** Delete 2 (a) then.

**Shri T. T. Krishnamachari :** That is a matter for the House. But I suggest to the House that we can be impartial in this matter. We shall deny Mr. Jaspat Roy Kapoor the right to put in 'residence' and we shall deny Shri Alladi Krishnaswami Ayyar the occasion to bring in an explanatory sub-clause which would whittle down the concession given as much as possible.

Now let us turn to the wording of the particular amendment moved by Shri Alladi Krishnaswami Ayyar on which my Honourable Friend Mr. Munshi dilated at length. Sir, as I said before, I am not presuming to give any advice on the matter. Let us see what the Parliament is going to do? Is it going to pass a comprehensive law covering the needs of all the States, all the local bodies, all the village panchayats (which will also be States under the definition in Article 7) and all the universities? Or, is it going to enact fresh legislation as and when occasion arises and as and when a particular local body or university or village panchayat asks for special exemption? Nothing is known as to what is naturally contemplated. We do not know what procedure is going to be laid down for this purpose, and this clause is so beautifully vague that we do not know whether Parliament is at all going to be moved in the matter for a comprehensive piece of legislation. Even then what is the type of legislation it could enact?

The proposal of my friend Shri Jaspat Roy can be nullified if Parliament decides that there should be residence of at least ten years before a person can qualify for an officer in the area. Or, is Parliament going to put down one year or is it going to cover the position of refugees by putting in six months or nothing at all? My own view is that, instead of putting in a clause like 2 (a) which is so vague,—the doubt raised by my friend Mr. Kamath is quite right—we can safely trust the good sense of Parliament. We are leaving the whole thing to the good sense of Parliament, the legislatures, the Supreme Court and the advocates who will appear before that Court when we enact this Constitution in the manner in which it has been presented to us. I am afraid there must be some region where you must leave it to the good sense of some people, because we are here trying to prevent the good sense of people from nullifying the ideas which we hold today.

Sir, the amendment of Shri Alladi Krishnaswami Ayyar says: ".....under any State for the time being specified in the First Schedule or any local or other authority within its territory, any requirement as to residence within that State prior to such employment or appointment." I cannot really understand where any State comes in here, even after hearing the very able advocacy and admirable advocacy of Shri Munshi in support of the amendment. I suggest that both the amendments be dropped. If any particular State disregards our views and insists on residential qualification it would not matter very much.

I now come to clause (3). Quite a number of friends objected to the word 'backward' in this clause. I have no doubt many of them have pointed out that

when this House took a decision in this regard in this particular matter on a former occasion the word 'backward' did not find a place. It was an after-thought which the cumulative wisdom of the Drafting Committee has devised for the purpose of anticipating the possibility of this provision being applied to a large section of the community.

May I ask who are the backward class of citizens? It does not apply to a backward caste. It does not apply to a Scheduled caste or to any particular community. I say the basis of any future division as between 'backward' and 'forward' or non-backward might be in the basis of literacy. If the basis of division is literacy, 80 per cent. of our people fall into the backward class citizens. Who is going to give the ultimate award? Perhaps the Supreme Court. It will have to find out what the intention of the framers was as to who should come under the category of backward classes. It does not say 'caste.' It says 'class.' Is it a class which is based on grounds of economic status or on grounds of literacy or on grounds of birth? What is it?

My honourable Friend Mr. Munshi thinks that this word has fallen from heaven like manna and snatched by the Drafting Committee in all their wisdom. I say this is a paradise for lawyers. I do not know if the lawyers who have been on the Committee have really not tried to improve the business prospects of their clan and the opportunities of their community or class by framing a constitution so full of pitfalls.

**Shri K. M. Munshi :** Well, my honourable friend can attempt to become a lawyer.

**Shri T. T. Krishnamachari :** I am afraid I may have to, when people like Mr. Munshi desert the profession for other more lucrative occupations. If my friend wants me to say something saucy I can tell him that I could attempt that and do some justice to it.

**Shri K. M. Munshi :** You can, I know.

**Shri T. T. Krishnamachari :** I must apologise to you, Mr. Vice-President, for carrying on a conversation with Mr. Munshi notwithstanding the fact that he has been provocative. Anyhow the subject is not one which merits such sallies.

Sir, coming back to the merits of clause (3) my feeling is that this article is very loosely worded. That the word 'backward' is liable to different interpretations is the fear of some of my friends, though I feel that there is no need for such fear, because I have no doubt it is going to be ultimately interpreted by the Supreme authority on some basis, caste, community, religion, literacy or economic status. So I cannot congratulate the Drafting Committee on putting this particular word in; whatever might be the implication they had in their mind, I cannot help feeling that this clause will lead to a lot of litigation.

Sir, before I sit down I would like to put before the House a suggestion not to block the issue further either by admitting the amendment of Shri Jaspat Roy Kapoor or, as an equal to it, the amendment of Shri Alladi Krishnaswami Ayyar.

**The Honourable Dr. B. R. Ambedkar :** Mr. Vice-President, Sir, I am going to say at the outset, before I deal with the specific questions that have been raised in the course of the debate, that I cannot accept amendment No. 334 moved by Mr. Misra; nor can I accept the two amendments moved by my friend, Mr. Naziruddin Ahmad, Nos. 336 and 337. I am prepared to accept the amendment of Mr. Imam No. 338, as amended by amendment No. 77 moved by Mr. Ananthasaynam Ayyangar. I am also prepared to accept the amendment of Mr. Kapoor, viz., No. 340, as amended by amendments Nos. 81 and 82 moved by my friends Mr. Munshi and Mr. Alladi Krishnaswami Ayyar.

[The Honourable Dr. B. R. Ambedkar]

I do not think that I am called upon to say anything with regard to amendments Nos. 334, 336 and 337. Such observations, therefore, as I shall make in the course of my speech will be confined to the question of residence about which there has been so much debate and the use of the word "backward" in clause (3) of article 10. My friend, Mr. T. T. Krishnamachari, has twitted the Drafting Committee that the Drafting Committee, probably in the interests of some members of that Committee, instead of producing a Constitution, have produced a paradise for lawyers. I am not prepared to say that this Constitution will not give rise to questions which will involve legal interpretation or judicial interpretation. In fact, I would like to ask Mr. Krishnamachari if he can point out to me any instance of any Constitution in the world which has not been a paradise for lawyers. I would particularly ask him to refer to the vast store house of law reports with regard to the Constitution of the United States, Canada and other countries. I am therefore not ashamed at all if this Constitution hereafter for purposes of interpretation is required to be taken to the Federal Court. That is the fate of every Constitution and every Drafting Committee. I shall therefore not labour that point at all.

Now, with regard to the question of residence. The matter is really very simple and I cannot understand why so intelligent a person as my friend Mr. T. T. Krishnamachari should have failed to understand the basic purpose of that amendment.

**Shri T. T. Krishnamachari:** For the same reason as my honourable Friend had for omitting to put that word originally in the article.

**The Honourable Dr. B. R. Ambedkar:** I did not quite follow. I shall explain the purpose of this amendment. (It is the feeling of many persons in this House that, since we have established a common citizenship throughout India, irrespective of the local jurisdiction of the provinces and the Indian States, it is only a concomitant thing that residence should not be required for holding a particular post in a particular State because, in so far as you make residence a qualification, you are really subtracting from the value of a common citizenship which we have established by this Constitution or which we propose to establish by this Constitution. Therefore in my judgment, the argument that residence should not be a qualification to hold appointments under the State is a perfectly valid and a perfectly sound argument.) At the same time, it must be realised that you cannot allow people who are flying from one province to another, from one State to another, as mere birds of passage without any roots, without any connection with that particular province, just to come, apply for posts and, so to say, take the plums and walk away. Therefore, some limitation is necessary. It was found, when this matter was investigated, that already today in very many provinces rules have been framed by the provincial governments prescribing a certain period of residence as a qualification for a post in that particular province. Therefore the proposal in the amendment that, although as a general rule residence should not be a qualification, yet some exception might be made, is not quite out of the ordinary. We are merely following the practice which has been already established in the various provinces. However, what we found was that while different provinces were laying down a certain period as a qualifying period for posts, the periods varied considerably. Some provinces said that a person must be actually domiciled. What that means, one does not know. Others have fixed ten years, some seven years and so on. It was therefore felt that, while it might be desirable to fix a period as a qualifying test, that qualifying test should be uniform throughout India. Consequently, if that object is to be achieved, viz., that the qualifying residential period should be uniform, that object can be achieved only by giving the power to Parliament and not giving it to the local units, whether provinces

or States. That is the underlying purpose of this amendment putting down residence as a qualification.

With regard to the point raised by my friend, Mr. Kamath, I do not propose to deal with it because it has already been dealt with by Mr. Munshi and also by another friend. They told him why the language as it now stands in the amendment is perfectly in accord with the other provisions of this Constitution.

Now, Sir, to come to the other question which has been agitating the members of this House, *viz.*, the use of the word “backward” in clause (3) of article 10, I should like to begin by making some general observations so that members might be in a position to understand the exact import, the significance and the necessity for using the word “backward” in this particular clause. If members were to try and exchange their views on this subject, they will find that there are three points of view which it is necessary for us to reconcile if we are to produce a workable proposition which will be accepted by all. Of the three points of view, the first is that there shall be equality of opportunity for all citizens. It is the desire of many Members of this House that every individual who is qualified for a particular post should be free to apply for that post, to sit for examinations and to have his qualifications tested so as to determine whether he is fit for the post or not and that there ought to be no limitations, there ought to be no hindrance in the operation of this principle of equality of opportunity. Another view mostly shared by a section of the House is that, if this principle is to be operative—and it ought to be operative in their judgment to its fullest extent—there ought to be no reservations of any sort for any class or community at all, that all citizens, if they are qualified, should be placed on the same footing of equality so far as the public services are concerned. That is the second point of view we have. Then we have quite a massive opinion which insists that, although theoretically it is good to have the principle that there shall be equality of opportunity, there must at the same time be a provision made for the entry of certain communities which have so far been outside the administration. As I said, the Drafting Committee had to produce a formula which would reconcile these three points of view, firstly, that there shall be equality of opportunity, secondly that there shall be reservations in favour of certain communities which have not so far had a ‘proper look-in’ so to say into the administration. If honourable Members will bear these facts in mind—the three principles, we had to reconcile,—they will see that no better formula could be produced than the one that is embodied in sub-clause (3) of article 10 of the Constitution; they will find that the view of those who believe and hold that there shall be equality of opportunity, has been embodied in sub-clause (1) of Article 10. It is a generic principle. At the same time, as I said, we had to reconcile this formula with the demand made by certain communities that the administration which has now—for historical reasons—been controlled by one community or a few communities, that situation should disappear and that the others also must have an opportunity of getting into the public services. Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity. Let me give an illustration. Supposing, for instance, reservations were made for a community or a collection of communities, the total of which came to something like 70 per cent of the total posts under the State and only 30 per cent are retained as the unreserved. Could anybody say that the reservation of 30 per cent as open to general competition would be satisfactory from the point of view of giving effect to the first principle, namely, that there shall be equality of opportunity? It cannot be in my judgment. Therefore the seats to be reserved,

[The Honourable Dr. B. R. Ambedkar]

if the reservation is to be consistent with sub-clause (1) of Article 10, must be confined to a minority of seats. It is then only that the first principle could find its place in the Constitution and effective in operation. If honourable Members understand this position that we have to safeguard two things namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State, then, I am sure they will agree that unless you use some such qualifying phrase as “backward” the exception made in favour of reservation will ultimately eat up the rule altogether. Nothing of the rule will remain. That I think, if I may say so, is the justification why the Drafting Committee undertook on its own shoulders the responsibility of introducing the word ‘backward’ which, I admit, did not originally find a place in the fundamental right in the way in which it was passed by this Assembly. But I think honourable Members will realise that the Drafting Committee which has been ridiculed on more than one ground for producing sometimes a loose draft, sometimes something which is not appropriate and so on, might have opened itself to further attack that they produced a Draft Constitution in which the exception was so large, that it left no room for the rule to operate. I think this is sufficient to justify why the word ‘backward’ has been used.

With regard to the minorities, there is a special reference to that in Article 296, where it has been laid down that some provision will be made with regard to the minorities. Of course, we did not lay down any proportion. That is quite clear from the section itself, but we have not altogether omitted the minorities from consideration. Somebody asked me: “What is a backward community”? Well, I think any one who reads the language of the draft itself will find that we have left it to be determined by each local Government. A backward community is a community which is backward in the opinion of the Government. My honourable friend, Mr. T. T. Krishnamachari asked me whether this rule will be justiciable. It is rather difficult to give a dogmatic answer. Personally I think it would be a justiciable matter. If the local Government included in this category of reservations such a large number of seats; I think one could very well go to the Federal Court and the Supreme Court and say that the reservation is of such a magnitude that the rule regarding equality of opportunity has been destroyed and the court will then come to the conclusion whether the local Government or the State Government has acted in a reasonable and prudent manner. Mr. Krishnamachari asked: “Who is a reasonable man and who is a prudent man? These are matters of litigation”. Of course, they are matters of litigation, but my honourable Friend, Mr. Krishnamachari will understand that the words “reasonable persons and prudent persons” have been used in very many laws and if he will refer only to the Transfer of Property Act, he will find that in very many cases the words “a reasonable person and a prudent person” have very well been defined and the court will not find any difficulty in defining it. I hope, therefore that the amendments which I have accepted, will be accepted by the House.

**Mr. Vice-President :** I am now going to put the amendments to vote, one by one.

**The Honourable Dr. B. R. Ambedkar :** I am sorry I forgot to say that I accept amendment No. 342.

**Mr. Vice-President :** The question is:—

“That in clause (2) of article 10, for the words ‘on grounds only’ the words ‘on grounds’ be substituted.”

The motion was negatived.

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

“That clauses (2), (3) and (4) of article 10 be deleted.”

The motion was negatived.

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

“That for clause (2) of article 10, the following clause be substituted:—

“(2) Every citizen shall be eligible for office under any State irrespective of his religion, caste, sex, descent or place of birth.”

The motion was negatived.

**Mr. Vice-President :** I shall put to vote amendment No. 338 as amended by No. 77 of List No. 1 which has already been accepted by the Chairman of the Drafting Committee. The question is:—

“(i) That in clause (1) of article 10, for the words ‘in matters of employment’, the words ‘in matters relating to employment or appointment to office’ be substituted.”

“(ii) That in clause (2) of article 10, after the words ‘ineligible for any’ the words ‘employment or’ be inserted.”

The motion was adopted.

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

“That in clause (2) of article 10, after the words ‘place of birth’ the words ‘in India’ be added.”

The motion was negatived.

**Mr. Vice-President :** I will now put amendment No. 340 as modified by amendment No. 81 of List No. III to the vote.

**Shri H. V. Kamath :** I submit, Sir, that amendments 81 and 82 will have to be put to the vote first.

**Mr. Vice-President :** There is no difference so far as I can see in regard to amendment No. 81 and if you insist, I am prepared to put it separately. I would like to carry the House with me, so long as it is legitimate.

**Shri H. V. Kamath :** I think it would be better, but I do not insist.

**Mr. Vice-President :** You do not insist. Then let me proceed in my own inadequate way.

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

“That in clause (2) of article 10, after the word ‘birth’ the word ‘residence’ be inserted.”

The motion was adopted.

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

That after clause (2) of article 10, the following new clause be inserted:—

“(2a) Nothing in this article shall prevent Parliament from making any laws prescribing in regard to a class or classes of employment or appointment to an office under any State for the time being specified in the First Schedule or any local or other authority within its territory, any requirement as to residence within that State prior to such employment or appointment.”

The motion was adopted.

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

“That in clause (2) or article 10, after the word ‘ineligible’ the words ‘or discriminated against’ be inserted.”

The motion was adopted.



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

That clause (3) of article 10 be deleted.

The motion was negatived.

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

“That in clause (3) of article 10, for the words ‘shall prevent the State from making any provision for the reservation’ the words ‘shall, during a period of ten years after the commencement of this Constitution, prevent the State from making any reservation’ be substituted.”

The motion was negatived.

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

“That in clause (3) of article 10, the word ‘backward’ be omitted.”

The amendment was negatived.

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

“That in clause (4) of article 10, after the words ‘in connection with’ the word ‘managing’ be added, and the words ‘or denomination’ be deleted.”

The amendment was negatived.

**Mr. Vice-President :** I shall now put the article as a whole as amended by amendment No. 338, (as modified by amendment No. 77), as amended by amendment No. 340 as modified by amendments numbers 81 and 82 of list III, and as further amended by amendment No. 342. The question is:

That this Article in this modified form stand part of the Constitution.

The motion was adopted.

Article 10, as amended, was added to the Constitution.

#### Article 12

**Mr. Vice-President :** We come to Article 12.

**An Honourable Member :** What about Article 10-A, Sir?

**Mr. Vice-President :** So far as our records show, that was finished. That was not moved.

The motion before the House is:

“That article 12 form part of the Constitution.”

The first amendment is No. 383, standing in the name of Pandit Lakshmi Kanta Maitra and others.

(Amendment No. 383 was not moved.)

**Mr. Vice-President :** Amendment No. 384 is out of order.

(Amendment No. 385 was not moved.)

**Mr. Vice-President :** Amendments Nos. 386 and 392 may be considered together. I can allow amendment No. 386 to be moved. It stands in the name of Shri Kamleshwari Prasad Yadav.

(Amendments numbers 386 and 392 were not moved.)

**Mr. Vice-President :** Amendments Nos. 387 and 394 are of similar import. I shall allow amendment number 387 to be moved. One thing more: before you speak, I want to know whether Mr. A. K. Menon in whose name amendment No. 394 stands, wants to press it.

**Shri A. K. Menon** (Madras : General) : No, Sir.

**Shri T. T. Krishnamachari :** Sir, I move:

“That in clause (1) of article 12, after the word “title” the words ‘not being a military or academic distinction’ be inserted.”

Sir, article 12 clause (1) will read, as amended, as follows:

“No title not being a military or academic distinction shall be conferred by the State.”