

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 2nd December 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Half Past Nine of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee), in the Chair.

DRAFT CONSTITUTION—(Contd.)

Article 13—(Contd.)

Mr. Vice-President (Dr. H. C. Mookherjee): We shall resume discussion of Article 13.

I should like to know the views of the House as to the way we should deal with the following amendments—we postponed consideration of these amendments yesterday:

Amendments No. 442, No. 499, second part of No. 443, No. 468 and No. 501.

Shri M. Ananthasayanam Ayyangar (Madras : General): May I suggest that in as much as these relate to the free choice of vote and some other matters which are not already prescribed in article 13, these may stand over and be allowed to be moved as a separate clause later on in the Fundamental Rights, and that we need not delay the passing of article 13, amendments with respect to which have already been moved, and the discussion may start?

Mr. Vice-President : Is that the view of the House?

Honourable Members: Yes, yes.

Mr. Vice-President : Then we shall proceed with the general discussion of the article. A large number of honourable Members desire to speak on this article. Therefore, with the permission of the House, I would like to limit the duration of the speeches to ten minutes each ordinarily. I shall extend the time wherever I consider necessary. Have I the permission of the House to fix this time-limit?

Honourable Members: Yes.

Shri H. V. Kamath (C. P. and Berar : General): On a point of order, Sir. Two amendments have been held over. Unless they are moved, how can general discussion on the article as a whole go on?

Mr. Vice-President : What are those amendments please?

Shri H. V. Kamath: No. 499 and No. 442.

Mr. Vice-President : They will form part of a new clause.

Sardar Bhopinder Singh Man (East Punjab : Sikh): *[Mr. Vice-President, I regard freedom of speech and expression as the very life of civil liberty, and I regard it as fundamental. For the public in general, and for the minorities in particular, I attach great importance to association and to free speech. It is through them that we can make our voice felt by the Government, and can stop the injustice that might be done to us. For attaining these rights the country had to make so many struggles, and after a grim battle succeeded in

* [] Translation of Hindustani speech.

[Sardar Bhopinder Singh Man]

getting these rights recognised. But now, when the time for their enforcement has come, the Government feels hesitant; what was deemed as undesirable then is now being paraded as desirable. What is being given by one hand is being taken away by the other. Every clause is being hemmed in by so many provisos.

To apply the existing law in spite of changed conditions really amounts to trifling with the freedom of speech and expression. From the very beginning we have stood against the existing laws, but now you are imposing them on us. You want to continue the old order so that there should be no opportunity of a trial, of putting up defence and of an appeal. If a meeting is held, then for breaking it up lathi may be used, and people may be put into jail without trial; their organisations may be banned and declared illegal. We do not like this shape of things. If you want to perpetuate all that, then I would like to say that by imposing all these restrictions you are doing a great injustice. There are a few rights to which I attach very great importance. You have included them in the articles relating to directive principles of State policy, and so we cannot go to a Court of law for their enforcement. You are diluting these rights with the result that nothing solid remains.

Mr. Vice-President, I want that these rights should not be restricted so much, and all opposition that is peaceful and not seditious should get full opportunity, because opposition is a vital part of every democratic Government. To my mind, suppression of lawful and peaceful opposition means heading towards fascism.]

Seth Govind Das (C. P. and Berar : General): *[Mr. Vice-President, article 13 is the most important of all the articles concerning Fundamental Rights. The rights that have been granted to us by these articles are all very important. Yesterday Shri Damodar Swarup Seth and Shri K.T. Shah moved their amendments in this House. The purport of the amendments is that the rights which have been given to us with one hand are being taken away by the other hand. This may be true to some extent but if we consider the present national and international situation as also the fact that we have achieved freedom only recently and our government to is in its infancy, we shall have to admit that it was necessary for the government to retain the rights it has done after granting these fundamental rights. We should see what is happening in our neighbouring country, Burma. We should also keep in view what is happening in another great country of Asia—I mean war-torn China. In view of what is happening in our neighbouring countries and of the situation in our own country, we should consider how necessary it is that the Government should continue to have these powers.]

I would have myself preferred that these rights were granted to our people without the restrictions that have been imposed. But the conditions in our country do not permit this being done. I deem it necessary to submit my views in respect to some of the rights. I find that the first sub-clause refers to freedom of speech and expression. The restriction imposed later on in respect of the extent of this right, contains the word 'sedition'. An amendment has been moved here in regard to that. It is a matter of great pleasure that it seeks the deletion of the word 'sedition'. I would like to recall to the mind of honourable Members of the first occasion when section 124 A was included in the Indian Penal Code. I believe they remember that this section was specially framed for securing the conviction of Lokamanya Bal Gangadhar Tilak. Since then, many of us have been convicted under this section. In this connection many things that happened to me come to my mind. I belong to a family which was renowned in the Central Provinces for its loyalty. We had a tradition of being

*[] Translation of Hindustani speech.

granted titles. My grandfather held the title of Raja and my uncle that of Diwan Bahadur and my father too that of Diwan Bahadur. I am very glad that titles will no more be granted in this country. In spite of belonging to such a family I was prosecuted under section 124 A and that also for an interesting thing. My great grandfather had been awarded a gold waist-band inlaid with diamonds. The British Government awarded it to him for helping it in 1857 and the words "In recognition of his services during the Mutiny in 1857" were engraved on it. In the course of my speech during the Satyagraha movement of 1930, I said that my great-grandfather got this waist-band for helping the alien government and that he had committed a sin by doing so and that I wanted to have engraved on it that the sin committed by my great-grandfather in helping to keep such a government in existence had been expiated by the great-grandson by seeking to uproot it. For this I was prosecuted under section 124 A and sentenced to two years' rigorous imprisonment. I mean to say that there must be many Members of this House who must have been sentenced under this article to undergo long periods of imprisonment. It is a matter of pleasure that we will now have freedom of speech and expression under this sub-clause and the word 'sedition' is also going to disappear.

The next matter to which I would like to draw your attention is sub-clause (b) of this article. The expression "to assemble peacefully without arms", occurs in it, I want to draw your attention to the words "without arms" in particular. I agree that we should have the right of assembling in this way without arms only. We had accepted the creed of non-violence and through it we have achieved freedom. It is true that in the present world situation we are compelled to maintain armies. But I hold that the welfare of humanity can be secured by means of non-violence alone. We should have a right of assembling but assembling without arms.

I would also like to draw your attention to the two following sub-clauses and these are sub-clauses (f) and (g) which run as follows:

"to acquire, hold and dispose of property." and

"to practise any profession or to carry on any occupation, trade or business."

Speaking for myself I may say that just as I hold that humanity cannot achieve its welfare except through non-violence so also I do believe that there cannot be stable peace, unless and until private property is abolished. I am not a socialist or a communist but at the same time I hold that what the big capitalists, traders, zamindars, taluqdars have to do to protect their property does not allow of their enjoying true happiness. It is not true to say that people lacking wealth alone are unhappy. They are no doubt unhappy but in the present economy the moneyed are more unhappy than the moneyless, and this band of gold is today crushing the richman's neck. This wealth has been in their possession for long and that is why they are anxious to retain it. It is not for pleasure that they want to keep it. If they are forcibly deprived of their wealth, socialism or communism would not be established. The example of Russia bears testimony to it. Individual property was expropriated there by force and the result has been that it could not be destroyed. On the other hand it is increasing. But if we make an effort to change values in this country and the world and bring about such a psychological atmosphere as makes people eager to rid themselves of the burden of property, we would have reached the desired goal and there would then be the possibility of the establishment of a true socialistic state. There has been change in values in the world from time to time. It is a historical fact that at one time man devoured man. At that time the man who had the capacity of devouring the greatest number

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of men, must have been worshipped by the society, because he must have been recognised as the bravest among them. Times changed to usher in the epoch of slave-trade. Respectability was judged by the number of slaves one had. Those conditions changed. Today the capitalists are characterised by our society as plunderers and dacoits. They no doubt make such remarks about capitalists, but I may be excused for saying that the majority of the socialists are such that if they were to get hold of this property, they would forsake socialism. The necessity is for a change in outlook. If there is a change in values by the propagation of these ideas in society and if the capitalists are looked down upon as thieves and pilferers by everyone they would not like to keep their wealth. Such a change of mind and heart can be brought about only through non-violence. I hope that in time to come the articles concerning property will not find a place in the Constitution.

I heartily support the whole of the article 13 on the Fundamental Rights.]

Shri Jaipal Singh (Bihar : General): Mr. Vice-President, Sir. So far as I am concerned, this particular article in no way frightens me, although the various fundamental rights have been hedged in by so many exceptions. To me it is obvious that whatever we put into the Constitution, its value, its use to us will depend upon the way we work all these things. But there are one or two things on which I would like Dr. Ambedkar to enlighten me. The first point on which I would like his clarification is in regard to the amendment which he has moved, amendment No. 491, wherein he seeks to substitute the word “aboriginal” by the word “scheduled”. Sir, I am always at a disadvantage whenever anything affecting aboriginals has to be discussed at this stage for the obvious reason that the two reports of the Tribal sub-committees have not been fully discussed on the floor of this House, with the result that the House has not been able to obtain its collective view point or arrive at a collective decision as has been the case with all the other articles, that is to say, articles which affect the non-tribals of our country.

Take the question of this word ‘tribal’. As far as I know neither of the sub-committees had gone into the work of scheduling. I know it for a fact that the sub-committee of which I was a member did nothing of the sort and, in fact, bodily the Drafting Committee has just put into the Draft Constitution whatever obtained in the Government of India Act. Now, look at the list.

My second point that I want to have clarified is whether the advisory councils or the regional councils, which are envisaged in the recommendations of the two sub-committees, will operate outside the so-called scheduled areas. If they do not, then I want to know from Dr. Ambedkar what is going to happen to the Adibasis, who are in millions, outside those scheduled areas. As far as I can understand the language of the Constitution, the regional councils and the advisory councils are to advise the Governor to participate as it were in the legislation of the State only in regard to the scheduled areas. Well, once it is accepted that the regional councils and the advisory councils may operate also outside the scheduled areas then my point is met.

Take the case of West Bengal. In West Bengal, according to what is proposed, there shall be no scheduled areas; in West Bengal there are 16 lakhs of Adibasis. I want to know what is going to happen to them. There is no regional council; there will be no advisory council there. Who is going to advise the Governor in regard to their welfare, in regard to whatever should be done or should not be done, what act may operate for them or against them? I think that is a point that has to be clarified.

Sir, the Tribes inventory that is in this Draft Constitution is most unsatisfactory. I will exemplify one or two cases. Sir, you yourself come from West Bengal. Bengal has been carved into three provinces, Bengal united, now West Bengal, Bihar and then Orissa. The British had their own arguments for their territorial boundaries. At the present moment, you know it only too well that none of these three provinces seems to be satisfied with the boundary alignment. West Bengal wants something of Bihar; Bihar also wants something of West Bengal. Orissa also is clamouring for some more territory from Bihar. That is the present political situation, but, how does it affect the Adibasis? Now the Tribal Sub-Committee in a way has been outmoded to this extent that lakhs and lakhs of States people have been integrated into provinces. Take the question of Orissa. When the Tribal Sub-Committee went to Orissa it had to deal only with those areas that were excluded or partially excluded. The present position is that about 24 States have been integrated into Orissa and several others into the Central Provinces. Most of these States are overwhelmingly populated by Adibasis. What happens in regard to them? Whatever scheduled areas the Sub-Committee has recommended is really insignificant. It does not cover the whole Adibasis population, particularly of the two provinces of the Central Provinces and Orissa.

I would like Dr. Ambedkar, therefore, to tell me quite clearly that whatever provisions, whatever little concessions that he desires this Constitution should have, will apply also to those areas that are not particularly specified within the scheduled areas.

Then I come to article 13 (1) (b), namely, to “assemble peaceably and without arms”. I have to point out that this matter of the Arms Act has been very mischievously applied against the Adibasis. Certain political parties have gone to extremes to point out that because Adibasis carry bows and arrows, lathis or axes, which they do daily as a normal part of their life, which they have done for generations and generations, and what they are doing today they have done before, that they are preparing for trouble.

Let me give you the instance of the Oraons. We have in this Assembly only one Oraon member. Now the Oraon group of Adibasis constitutes the fourth largest block of Adibasis in India. Just about now, they have what we call Jatras or Melas. These are annual occasions for their cultural activities. They have a certain ceremony in which the head of the Oraon village will carry the flag and the rest of them carry lathis with them and proceed into the various akhadas or villages. It is a festival for the people; they have done it in a harmless way for generations and generations and, now we have been told last year and the year before last that we should not carry weapons. I do not mind pointing out there are several Members here from Bihar who will never be able to get back to their homes unless they are escorted with people and with arms. In my own part, we live in the jungles and every one, even women, may I point out, carry what might be designated arms, but they are not arms in that sense. Whenever we have to hold meetings, if people come with their own usual things, I want to know whether it is going to be interpreted that we are assembling unpeaceably and carrying arms for an unlawful purpose. These are the only points, Sir, that I want to have clarified.

I will give one more instance. Every seven years, it is the custom in Chota Nagpur to have what they call. Era Sendra, Janishikar. Every seven years, the women dress as men and hunt in the jungles—dressed as men, mind you. That is the occasion when naturally women like to show masculine prowess. They arm themselves like men with bows and arrows, lathis, belas and so forth. Now, Sir, according to this particular article in the Constitution, the Government might interpret that women every seven years were getting together for a dangerous purpose. I urge the House to do nothing that is going to upset the simple folk. They have been among the most peaceful citizens in our

[Shri Jaipal Singh]

country and we should be very very cautious in doing anything which might be misunderstood by them and lead to trouble.

Sir, I have, as I have said, no difficulty in accepting this particular article, but I thought I should seek clarification from Dr. Ambedkar on these two particular points.

Mr. Vice-President : Mr. Hanumanthaiya.

Kazi Syed Karimuddin : (C. P. & Berar : Muslim): I have not caught your eye, Sir.

Mr. Vice-President : Unfortunately, I have only two eyes. They will be turned to your side the next time.

An Honourable Member : Why do you not have a third eye, Sir?

Mr. Vice-President : Why can you not come to the front Bench? I say it is the fault of the House that they unanimously chose an old man as the Vice-President. His eye-sight is not as good as that of younger men. Mr. Hanumanthaiya.

Shri K. Hanumanthaiya (Mysore): Mr. Vice-President, Sir, this article incorporates some of the most cherished rights of us all. For the last sixty and odd years during which the freedom movement was taking shape, we made innumerable speeches and sacrifices in order to win the fundamental rights that are incorporated in this article. But, the point of view of many members here as well as the opinion of some people outside is that these fundamental rights have been so much curtailed that their original flavour is lost. Sir, every law, whether it is in the form of a right or a duty, takes shape according to the condition of the society then prevailing. We went through a course of suffering and sacrifice which were imposed upon us by the repressive laws of British imperialism; this naturally made us votaries of unadulterated fundamental rights and that was our hope. But, ultimately when we emerged out of those innumerable difficulties, we are faced, within our own society, with elements who want to take advantage of those rights in order to do violence to men, society and laws. Hence it is that the Drafting Committee as well as the Governments in the various provinces and the Centre, are hard put to safeguard these rights in their pristine purity. No man who believes in violence and who wants to upset the State and society by violent methods should be allowed to have his way under the colour of these rights. It is for that purpose that the Drafting Committee has thought it fit to limit the operation of these fundamental rights.

The question next arises whether this limiting authority should be the legislature or the court. That is a very much debated question. Very many people, very conscientiously too, think that the legislature or the executive should not have anything to do with laying down the limitations for the operation of these fundamental rights, and that it must be entrusted to courts which are free from political influences, which are independent and which can take an impartial view. That is the view taken by a good number of people and thinkers. Sir, I for one, though I appreciate the sincerity with which this argument is advanced, fail to see how it can work in actual practice. Courts can, after all, interpret the law as it is. Law once made may not hold good in its true character for all time to come. Society changes; Governments change; the temper and psychology of the people change from decade to decade if not from year to year. The law must be such as to automatically adjust itself to the changing conditions. Courts cannot, in the very nature of things, do legislative work; they can only interpret. Therefore, in order to see that the law automatically adjusts to the conditions that come into being in times to come, this power of limiting the operation of the fundamental rights is given to the

legislature. After all, the legislature does not consist of people who come without the sufferance of the people. The legislature consists of real representatives of the people as laid down in this Constitution. If, at a particular time, the legislature thinks that these rights ought to be regulated in a certain manner and in a particular method, there is nothing wrong in it, nothing despotic about it, nothing derogatory to these fundamental rights. I am indeed glad that this right of regulating the exercise of fundamental rights is given to the legislature instead of to the courts.

Then, Sir, here in article 13, about seven fundamental rights are incorporated. I wholeheartedly feel the Drafting Committee has done well in incorporating the first four freedoms, freedom of speech and expression, freedom to assemble peaceably and form associations, and to move freely throughout the territory of India. The next three clauses, to reside and settle in any part of the country, to acquire, hold and dispose of property, and to practise any profession, or to carry on any occupation, trade or business, Sir, in my opinion do not take the character of fundamental rights. They are not really fundamental rights. They are matters incidental to legislation, that can be passed either by the Parliament or the legislatures of the Units. I find these three rights which are incorporated as fundamental rights in this article 13 are not so treated by any other country except, perhaps, Ireland and Switzerland. In America, we do not find these three rights incorporated as fundamental rights. To acquire property, to settle down in a particular town, to practise any trade or profession in any part of the country he likes, are not really fundamental rights. I may be pardoned if I say this that the men who did the work of shaping these constitutional proposals, a majority of them, have come from the upper most strata of society. After all, they can think of what suits their psychology and their class or their strata of society. It is from that point of view they have framed these three rights. Really speaking, whether these three rights are fundamental or not, we ought to judge from the point of view of the people of the villages and people of the Units. I for one feel that these are rather not rights, but liabilities that are sought to be imposed upon the people of the villages and of the Units. I very much wish that the Drafting Committee and this Assembly could now delete these three rights and relegate them to the discretion of the legislature of the Units but now it is too late and we have to accept them somehow or anyhow. Here arises a conflict in the future that the Units in order to safeguard the rights and interests of the people within their respective areas, may try to circumvent these three rights that are conferred by this Constitution. It will happen. I have no doubt whatsoever in my mind, that here arises a plentiful source of litigation. Yesterday I happened to read Sir Ivor Jennings' opinion about our Fundamental Rights. He says, the rights conferred in this Chapter and especially in this section are so complicated, are worded in such a verbose manner, that it will be a fruitful source of income to constitutional lawyers. There is a good deal of truth in it. The enunciation of the Fundamental Rights and the exceptions added on by provisos are so worded—and they had to be like that because it is impossible to foresee all exigencies, and make provision for them now alone—that there will be litigation on a scale which none of us have ever seen or contemplated. Every man who feels aggrieved can go to any Court of Law and the Supreme Court will be full of cases between individuals and individuals, between individuals and State, between State and State, between the Central Government and State Governments. This litigation—I do not suppose—will be helpful to the interest of the country. Litigation—I need not argue about it—litigation surely ruins both the Parties to it. There is a Kannada proverb the meaning of which is “a successful party in a case is as good as defeated and a defeated party in a case is as good as dead”. And whenever there arises litigation in interpreting these clauses, political controversies also arise conferring

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fundamental rights in this manner—especially the last three clauses—will continuously raise political storms in the shape of litigation in regard to interpretation of these Fundamental Rights.

Kazi Syed Karimuddin : Mr. Vice-President, Sir, there is no denying the fact that this article is the very life of the Draft Constitution. Without this article the Constitution will be a dead letter. It must also be understood that the Rights contemplated under article 13 are admittedly inalienable rights and the point involved is whether these rights can be delegated to the Governments or we are going to lay down principles which cannot be subject matter of legislation or the vagaries of the legislatures. My submission is that these are Fundamental Rights regarding individuals as contemplated under article 13 which cannot be made subject matter of the vagaries of the Legislatures. Clauses (2) to (6) of this article rob the people of the only guarantee which will make them secure and my submission is that clauses (2) to (6) are very dangerous clauses. Suppose, in a State there is a political party, which is hostile to the Central Government and they frame laws to the great detriment of the political minority or the religious minorities. What can be done? People have to suffer and there would be untold miseries. Particularly the wording 'subject to operation of existing laws' is very unjust. What is the situation today in India? Practically there is a state of siege. There are Goonda Public Safety Act, etc. in all the provinces in which there is neither appeal, nor any warrant is necessary for arrest, and searches can be made without justification. In spite of this, the article lays down that the existing laws will be recognized. These unjust laws which do not provide appeals and which do not provide any proper representation will be recognized under article 13. There is no doubt that we are living in an emergency period but that does not mean that article 13 should be in consonance with emergencies. Another part of the article is the right to assemble peacefully and without arms. What greater restriction could have been laid down by the framers of the Constitution than this and in spite of that the legislatures of the States are empowered to have more restrictions as embodied in clauses (3) and (4). Now the point is whether a particular legislation is in the interest of the people, or whether that can be delegated to the judiciary or to the States' Legislatures. My submission is that you must realise that we cannot entrust the interpretation of these clauses in the Fundamental Rights to the vagaries of legislatures. In the State Legislatures the majority is capable of practically oppressing the minorities, political or communal. The very purpose of this Fundamental Right is being defeated. The Fundamental Rights are being enacted only with a view to placing restrictions on the legislation. By these clauses (2) to (6) we are enlarging the scope of this article 13 and we are enlarging the scope of the powers of the Provincial Legislatures or States. This is entirely to the detriment of the political or religious minorities. If this article as it stands is passed, my submission is that it will be taking away those rights which are given in article 8 of the Constitution. There is no parallel to these restrictions in any Constitution of the world. In the American Constitution all these rights have been entrusted to the judiciary simply because the political parties who are elected from time to time cannot be entrusted with the interpretation of laws. The main principle should have been whatever is not forbidden should have been allowed. Apart from that, two amendments have been moved, one by Mr. Mohamed Ismail and the other by Mr. Tahir. My submission is that both these amendments are very innocent and both these are very necessary for the protection of the minorities. Mr. Ismail's amendment advocates that personal law should be respected and this should be embodied in this Constitution. The people outside and the Members of the Constituent Assembly must realize that a Muslim regards the personal law as part of the religion and I really assure you that there is not a single Muslim in the country—at least I have not seen one—who

wants a change in the mandatory provision of religious rights and personal laws and if there is any one who wants a change in the mandatory principle, or religion as a matter of personal law, then he cannot be a Muslim. Therefore if and if there is any one who wants a change in the mandatory principle, or religion—does not mean that people should have no religion—if this is the view of the minority Muslims or any other minority that they want to abide by personal law, those laws have to be protected. The amendment of Mr. Tahir is very important and I feel that every Member of the Constituent Assembly must realize that it is important because we have seen after 15th August, whether Muslims are responsible or the Hindus are responsible for communal passion, it has eaten away everything that is good in society. It was really a canker that was destroying the society and would have done so but for the Central Government. Then communal passion should be made an offence. In my opinion this is a very vital amendment that has been moved and it should be accepted by Dr. Ambedkar; Sir, as I have said even Dr. Ambedkar in his book ‘States and Minorities’ has said—

“No law shall be made abridging the freedom of the press, of association and of assembly except for consideration of public order and morality.”

In 1947 he was agreeable that only the first part of article 13 should be enacted in our Constitution and within a year he is so changed that he has placed so many restrictions that take away what has been given under article 8.

Mr. Vice-President : You seem to make the mistake that Dr. Ambedkar is responsible for everything connected with this Draft Constitution. There was the whole Drafting Committee.

Kazi Syed Karimuddin : My submission is that if you take the opinion of the minorities in this House—a Sikh representative has spoken, and I am speaking now—and if you take votes, you will find that the minorities in the country will say that article 13 is not sufficient protection for them. Therefore, I earnestly plead for deletion of clauses (2) to (6). I strongly support the other two amendments to which I have referred. If article 13 is passed as it stands, it is not acceptable to the minorities. It is no freedom of speech that you are guaranteeing. It is no freedom of the press that you are giving. You are giving by one hand and taking it away by the other.

Chaudhari Ranbir Singh (East Punjab : General): Mr. Vice-President, Sir, I am not in agreement with those who are for abolition of these provisions from the text during the transitional period. This is why I gave notice of two more provisions to article 13. They are as under:

“That the following new clauses (7) and (8) be added to article 13:

‘(7) Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law or prevent the State from making any law imposing restrictions on non-agriculturists to acquire and hold agricultural land, for the protection of the interests of the tillers of the soil or the peasantry.

(8) Nothing in sub-clauses (d), (e) and (f) of the said clause shall prevent the State from making laws to declare the minimum of economic holdings of land inalienable’.”

Sir, after further consideration, I changed my mind and did not move these amendments, because I think in sub-clause (5) of the article, the words “in the interests of the general public” denote, mean and cover my point that whenever the imposition of restrictions is found to be necessary for the protection of the interests of the tillers of the soil and labourers, the Governments will have the right to impose the necessary restrictions on any section of the society, or may allow to continue such laws as are already in existence, which the Governments think are necessary for the protection of the interests of the peasantry or labourers.

I come from East Punjab, and there is a law which is known as the Land Alienation Act, according to which certain classes are debarred from acquiring

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land, by law. I agree with my Friends, specially Harijans who advocate that the Harijans and other persons who are actually the tillers of the soil should have the right to acquire land. But I fail to understand the argument that each and every person whether he is a tiller of the soil or not, should be put on a par with the tillers of the soil, and should have the liberty to acquire agricultural land. If that is to be the case, then we will be creating a new problem—the problem of zamindaries,—the same problem of zamindaries which we are abolishing or have promised to abolish from our country. In several provinces, laws for the abolition of the zamindari system have already been enacted. As regards the Punjab, I am of the view, that it cannot be denied that the absence of zamindari system in the Punjab in its acute form as it exists in other provinces is the result of the Land Alienation Act, and this is the real reason why the agriculturists are in a more advanced position in the Punjab than in other provinces. I therefore, feel very strongly and rightly that the legislatures of the State and the various governments should have the full liberty to impose restrictions on the non-tillers of the soil on acquiring or holding agricultural lands, and to declare a minimum economic holding of land inalienable, for the protection of the interests of the tillers of the soil or the peasantry.

Moreover, the overwhelming majority of the population of our country depends on agriculture and they are the tillers of the soil. So the words “general public interests” can mean only the interests of the peasantry and the labourers, and not only the interests of the vocal middle intelligentsia and vested people.

Mr. Vice-President : Maulana Hasrat Mohani (*Cheers*) I am glad the House recognises the excellent services rendered by Maulana Hasrat Mohani to this country. He was the first to stand for total independence of our Mother-Land.

Maulana Hasrat Mohani (United Provinces : Muslim): *[Mr. Vice-President, when I rose to speak, my first impulse was to support whole-heartedly the amendment moved by Mr. Kamath and even now I have come here with that idea. In the later speeches and amendments, one amendment has been moved by Mr. Mohamed Ismail of Madras and I give my full support to it. Besides, I also support the amendment of Mr. K. T. Shah. Mr. Mohamed Ismail in the second part of his amendment has made mention of personal liberty. Mr. K.T. Shah's amendment is also of similar nature. I shall speak at the end about his amendment. First of all, I would like to give full support to Mr. Kamath's amendment. Mr. Kamath has said that everyone should have the right to bear arms. This is a test amendment. If Dr. Ambedkar and his committee are honest, then surely they ought to accept this section and include it in the article at once. If he wavers or raises any objection as I know he is capable of doing, as Dr. Ambedkar's legal abilities are established, and if he wishes, he can turn night into day and day into night and can prove it conclusively,—then I would like to tell him that this is a test amendment and, if you do not include it, it would mean that your tendency is the same as that of the British Government. You know what the Britishers had done. They had promulgated the Arms Act in India. The result was that all the inhabitants of Hindustan were kept as imbeciles. If you also have the same design, then it is a different matter. But if there is any national Government and an Indian Government, then there is no reason why you should deprive anybody of this right. If you too will forge an Arms Act and will deprive the people of this right, then I would say that your attitude and way of doing things is much worse than that of the Britishers. It will be much worse. The Arms Act, enforced by the British Government, was applicable to one and all with the exception of the ruling class. We were under the impression that under our own Government this restriction will be removed. Unfortunately at present here we have

*[] Translation of Hindustani speech.

a party Government and they want to retain it, so that the Act may be applied against their political opponents and may not be enforced against their own party men.

On the basis of my own experience, I would like to say something about U.P. In particular I would tell you about Kanpur city which I represent. The U. P. Government there have singled out the Socialists, the Communists, Independent-Socialists,—including Muslims—Forward Blockists and even those who were suspected of standing against them as rival candidates in the elections and put restrictions on them, and on one plea or the other they were brought under the provision of the Defence of India Act. Some were branded as Goondas, others were stamped as Communists, there were others who were told that they were supporting Hyderabad and collecting funds. There were yet others who were told that they were connected with those members of the Communist Party who are working under-ground and they were sent to jails. In short, they applied this Act against all rival parties, and such was the ill-treatment against the Muslims that every Muslim of position at Kanpur was house-searched and even if a kitchen-knife was found in his house, the Arms Act was applied and he was sent to jail. Some of them have been released and some are still in jails. Therefore, I would like to submit that for you, who are a party Government, this is a test amendment. You ought to accept Mr. Kamath's amendment and give the right of bearing arms to everybody. If you are not prepared to do this, then you will be setting an Indian bureaucracy in place of the English bureaucracy.

Another point which I should like to submit is that the amendments of both Mr. Ismail and Prof. Shah are of similar nature. As regards personal rights and liberty I would like to say that so long as you do not prove anything openly against anybody in a court of law, it should not be lawful to detain anybody under Defence of India Rules, be he your rival party man or any other. If you send somebody to jail under Defence of India Act or under some other ordinance, then what would happen to the right of *Habeas Corpus*, and who would give that right, since the High Court will have no jurisdiction over it? And even if High Court interferes in one or two cases, it does not mean that it will be possible in all cases. Therefore, I submit that this should not be included and that everybody should have personal liberty.

I would like to submit my third point in few words, namely, regarding Mr. Ismail's amendment which has been supported by several members. I would like to say that any party, political or communal, has no right to interfere in the personal law of any group. More particularly I say this regarding Muslims. There are three fundamentals in their personal law, namely, religion, language, and culture which have not been ordained by human agency. Their personal law regarding divorce, marriage and inheritance has been derived from the Qoran and its interpretation is recorded therein. If there is any one, who thinks that he can interfere in the personal law of the Muslims, then I would say to him that the result will be very harmful.]

I say from the floor of this House that they will come to grief. Mussalmans will not submit to any interference in their personal law, and if anybody has got the courage to say so then I declare.....

Mr. Vice-President : Order, order.

Maulana Hasrat Mohani: He should remain convinced—and I declare in the House—that Mussalmans will never submit to any interference in their personal

[Maulana Hasrat Mohani]

law, and they will have to face an iron wall of Muslim determination to oppose them in every way.

(Interruption)

Shri Vishwambhar Dayal Tripathi (United Provinces : General) : Will you give the right of human sacrifice to those who believe in it and may claim it under the pretext of their personal law?

(More interruptions)

Mr. Vice-President : Will honourable Members please take their seats?

Shri Brajeshwar Prasad (Bihar : General) : I rise to support article 13 with all its reservations and safeguards. These restrictions are necessary in our national interest. Let me adduce the reasons for saying so.

An Honourable Member : Is the honourable Member reading his speech?

Mr. Vice-President : He is reading his speech and I have given him permission to do so.

Shri Brajeshwar Prasad : Personal freedom has to be curtailed if the menace of capitalism is to be met. Nation-states of the nineteenth century were not confronted with even a small part of the dangers that confront a modern state. Political conspiracies of international dimensions were unknown. The political criminal in the pursuit of his nefarious designs resorted to methods and antics very well known to the administrators of old. The laws and judicial institutions were strong enough to grapple with these problems. The technique and methods widely employed by modern law-breakers cannot effectively be checked by judicial institutions and ordinary laws of the nineteenth century. The state must be vested with wide discretionary powers and the freedom of the individual must be seriously curtailed if the parasitical class that thrives on profit and exploitation is to be liquidated and the communists are to be checked from endangering the safety and existence of all the institutions of our modern life.

Shri Rohini Kumar Chaudhari (Assam : General) : The honourable Member is reading his speech so swiftly that we cannot follow him. May I suggest that his speech should be taken as read?

Mr. Vice-President : Do you agree, Mr. Brajeshwar Prasad, that it should be taken as read? (After a pause) Mr. Brajeshwar Prasad does not agree to the suggestion made by the Honourable Member Shri Rohini Kumar Chaudhari.

Shri Brajeshwar Prasad : It is wrong to regard the State with suspicion. Today it is in the hands of those who are utterly incapable of doing any wrong to the people. It is not likely to pass into the hands of the enemies of the masses. And constitutional guarantees of individual freedom will not for long remain sacrosanct if the machinery of the State passes into the hands of the reactionaries. If you want to prevent the political reactionaries from gaining political power and ascendancy, the rulers of the land must be vested with large discretionary powers.

In a modern progressive State there is not much conflict between the individual and the State. For the State is composed of individuals. It is we ourselves purged and purified of our selfishness. The individual has no power of his own, separate and distinct from the State. The State and the individual are the two sides of the same coin.

In the nineteenth century the executive authority had not developed the technique and mechanism of the modern State. It had very little part to play in the life of its citizens. The executive authority in the modern State has a dominant part to play. It is not handicapped by any lack of technique.

The needs of modern life, of socialism and collectivism cannot be fulfilled if the State is not vested with ample powers. The trend of modern politics is towards regimentation of ideas and conduct. The doctrines of Mill and Spencer have become thoroughly unrelated to the needs and demands of the age. It is the society and not the individual which has become the object of primary concern and loyalty both of political theorists and actual administrators. The objective conditions of our modern life have relegated the individual from the Olympian heights of honour and glorification accorded by the individualist school to a position of utter insignificance and neglect.

Individual freedom is risky in a community where more than 80 per cent of the people are sunk in the lowest depths of poverty, illiteracy, communalism and provincialism.

It is sheer illusion to think that the personal rights of the individual can be firmly secured if these are laid down in the Constitution in clear language without any reservations and safeguards. The enjoyment of these rights is dependent upon the fulfilment of certain social conditions outside the scope of any constitution. Man can never enjoy the blessings of personal freedom as long as society remains organized on the basis of capitalism, as long as the menace of war and foreign intervention looms large on the horizon, as long as poverty, illiteracy, communalism and provincialism remain in our midst. It is only with the decline of the forces of organized religions and the establishment of a World State based on the ideals of economic equality and political liberty that man will be able to achieve the content of personal freedom.

It is not entirely due to the wickedness or ignorance of constitution makers that there are restrictions on individual rights. The legacy of centuries of backwardness and foreign misrule cannot be wiped out by one stroke of the pen. The concomitants of the age cannot be brushed aside by any constitutional guarantees. Constitutional guarantees merely facilitate the achievement of personal rights, which are essentially of an inward character, to be secured by the exercise of reason and proper conduct. We must think, speak and act properly if we are to obtain and enjoy the rights of personal freedom. It is only with the growth and development of education to communal dimensions that the foundations of personal liberty can be securely laid.

Shri H. V. Kamath : Sir, may I request my Friend to have a few full-stops if not other punctuation marks?

Mr. Vice-President : The Honourable Member's time is up. But what Mr. Kamath said has certainly not added to the dignity of the House.

Prof. Yashwant Rai (East Punjab : General): *[Mr. Vice-President, Sir, the Harijans of the Punjab are very much indebted to the Chairman of the Drafting Committee for having included article 13 in the Constitution. At present it is the custom in the Punjab that only one particular community can purchase land and take to agriculture. But the Harijans, 90 per cent of whom are cultivators, are not permitted to purchase land to cultivate, or to build houses. When this article receives the assent of the House, they will have the facility of purchasing land for building their houses, as also land for agricultural purposes if they have the capacity to do so. I hope that the many handicaps from which the Harijans suffer in Punjab, causing the clashes that are taking place in almost every village between them and the landlords, as a result of which they are kept confined to their houses in some villages, as also their other difficulties will not have to be faced by them in future. They find themselves in their present plight though they thought that the Congress Government would be a national Government and on coming to power it would permit them to purchase land and would remove all their difficulties. Our

*[] Translation of Hindustani speech.

[Prof. Yashwant Rai]

Indian National Congress was wedded to the creed that on establishing its Government every one will get house-building and agricultural facilities and no one will have any difficulty on these accounts. People are also realising that now the Congress is in power all these facilities will have to be afforded to the Harijans.

Therefore clause (f) of article 13 is very necessary because it provides the facilities we wanted. I think that the difficulties with which we are faced today will soon disappear. I therefore support this article.]

Shri Rohini Kumar Chaudhari: Mr. Vice-President, Sir, I must congratulate the House for having decided to drop the word “sedition” from our new Constitution. That unhappy word “sedition” has been responsible for a lot of misery in this country and had delayed for a considerable time the achievement of our independence.

While on this article, I should also like to draw the attention of the House to the unhappy condition which had prevailed so far as the relations between us and the people of the tribal areas were concerned. The British Government wanted to keep these regions as their own preserve, not having imagined for a moment that they will have at any time to quit this country. They wanted to keep the tribal people completely under them for all ages to come and they wanted to have the hills as their own place of preserve and therefore they had introduced rules which prevented the ordinary people of the plains from mixing with their brethren in the hills. I am glad, Sir, that in this article we have laid down that all people will be able to travel freely throughout the territory of India. But it is most unfortunate that we cannot do away with the proviso to say that a particular State may lay down a law by which this freedom of movement can be restricted. Sir, I can only draw the attention of the House to a very unfortunate incident which took place even after the achievement of independence. A few months ago some Members of the Central Legislature headed by our friend the Honourable Mr. Santhanam had occasion to pay a visit to the Manipur State. Although the officers of the Provincial Government had allowed us to go there freely, we were held up there for more than an hour by the orders of the Manipur State. I believe that after the passing of this Constitution such a state of things will never occur and that immediately after the passing of this Constitution steps will be taken to allow us free ingress and egress to those parts of the States which are now inhabited by the scheduled tribes. There should be greater friendliness between the scheduled tribes and the people of the plains and all steps should be taken to remove the barriers to our movement in those places.

Then, Sir, I am glad to find in this article that people will be free to carry on their profession in any part of India. That is quite good in so far as it stands on paper, but many times the British Government said they would never allow a lawyer to practise in any of these hills. I believe, Sir, after the passing of this article of the Constitution, steps will be taken to remove any restriction on any professional man practising in any part of India.

It is now my misfortune to have to say a few words about Professor Shah’s amendment No. 416. It is very easy, I should say much easier, to deal with one who writes out his amendments and thinks over them. But it is very difficult and dangerous to deal with one who carries all his amendments, thousand and one of them, in his brain and then directly pours them out from his brain on the floor of this House. Sir, amendment No. 416 introduces certain words about things being subject to the provisions of this Constitution, and all those things. On the one hand we find that the House has practically agreed to remove these words “Subject to the provisions of this Constitution”.

But we find the Professor Sahib has put that jumble of words in that amendment. Does he want to use these words to rhyme in the Constitution? Poets are fond of using several words just for the sake of rhyming. If it is intended for the sake of rhyming to use all those words, I can understand it, but otherwise I think they are meaningless. I would also warn my friends against the use of the word 'guaranteed'. We have seen, Sir, advertisements of all and sundry articles promising guarantee. I have myself been a victim of such an advertisement. A big full-page advertisement of a certain medicine guaranteed that if you use that medicine for seven days you will benefit your health and become strong like Sandow. The word 'guarantee' was actually there. But what I found after using that medicine for seven or fourteen days was that the medicine had no effect. It did not bring about any improvement in my health. Also in the case of a lot of jewellery in the market, though they were all chemical jewels, the merchants offer guarantee to the effect that the jewellery will retain its brightness and quality. But after a fortnight the brightness disappears and the thing becomes black in colour. So, the use of the word 'guarantee' is very perilous. It is not necessary to use that word in this country. We in India are so much used to this word that when we see it used we begin to suspect it. When we see anything guaranteed, we understand that it is not guaranteed and is not genuine. Therefore it is better to leave the Constitution as it is without the word 'guarantee'. Without that word we can understand it better. Then we shall know that there is no attempt to cover-up anything not wanted. The clause, as it is without the word 'guarantee' is quite all right.

Sir, this article with the amendments which have been accepted has my whole-hearted acceptance.

Prof. Shibban Lal Saksena (United Provinces : General) : Mr. Vice-President, this article may be truly stated to be the charter of our liberties and this is probably the most important article in the whole Draft Constitution. In the original form in which it was presented to this House, it was open to many criticisms and they were justified. Now I think it has been materially altered. The promise made by Dr. Ambedkar to accept the amendment of Mr. Bhargava and others gives me hope that this article in its final form will be a real charter of our liberty.

Sir, let us analyse the criticisms made in some of the amendments moved by my friends. First of all, the criticism is that all the provisos were meant to nullify the liberties given in the first clause. But if we carefully examine each of the sub-clauses, we will find that this criticism is not justified. In clause (2), the word 'sedition' has been taken away, and the word 'authority' has been dropped. So that, what remain in clause (2) are the exemptions of laws relating to libel, slander, defamation, or any matter which offends against decency or morality or undermines the foundation of the State. These alone will remain on the Statute Book.

As was pointed out yesterday, even in America where the courts are given absolute power, the Supreme Court has been obliged to limit it. What we are doing is that instead of the Supreme Court we ourselves are limiting this thing. This limitation in the present form is less wide than it originally was. I think this should satisfy the House.

In this connection I only want to say one word more. Clause (1) (a) says that every citizen shall have the right to freedom of speech and expression. As proposed in one of my amendments we should bring in here the freedom of the press. I hope Dr. Ambedkar would bring in some amendment to include freedom of the press in this sub-clause.

As regards clause (3), I am glad that after the addition of the word 'reasonable' it has become a much wider charter of liberty. It now reads:

[Prof. Shibban Lal Saksena]

“Nothing in sub-clause (b) of the said clause shall affect the operation of any law, or prevent the State from making any law, imposing in the interests of public order ‘reasonable’ restrictions on the exercise of the ‘right conferred by the said sub-clause’.”

Under this, the existing laws, in so far as they impose restrictions which are not in the interests of public order or morality, are nullified. Everybody will admit that public order has to be provided for. The sub-clause as amended is much better than what it was. The Supreme Court could now lay down what offends against public order and what does not.

Coming to clause (4), must say that labour will now feel that today they have got their charter of liberty. They can now form unions subject to reasonable restrictions in the interests of public order or morality. So, labour today will thank Dr. Ambedkar for accepting amendments which modified the original clause. In the original form you could not hold a meeting because it would be against the wishes of the general public. Now you will have to prove that the decision to ban a meeting is in the public interest or morality. This is the great charter of liberty for labour.

Then I come to clause (5). This qualifies sub-clauses (d), (e) and (f). It says: “Nothing in sub-clauses (d), (e) and (f), shall affect the operations etc. etc.” “or for the protection of the interests of the Scheduled Castes”. We have added the word ‘reasonable’ therein. It is very important. The rights such as freedom to move about throughout the country are very important. Some friends pointed out that there are many laws at present in existence in the East Punjab, for instance, which are really very bad and that this clause will not nullify many of them.

And then there is clause (6) which relates to carrying on of professions. After the amendments that have been accepted this clause also has become much better.

One thing more I want to say. Mr. Kamath in his amendment wants the right to bear arms. In most Constitutions throughout the world this right has been recognised. We ourselves throughout recent history have asked that this should be our right. In fact I remember, when Mahatma Gandhi wrote to Lord Irwin in 1930 about the Eight Points, which he wanted to be accepted, one was about this right to bear arms. The question of this right to bear arms dates back to 1878 when, after the mutiny, the British Government disarmed the Nation. I think that after freedom we should at least allow this thing, as only an armed people can support the Government. I hope Dr. Ambedkar will do something about it.

Then as regards sedition, our great leaders like Lokmanya Tilak and others were the victims of section 124-A. I congratulate Dr. Ambedkar for having put in the clause as it has emerged.

Shri H. J. Khandekar (C. P. and Berar : General): *[Mr. Vice-President, I rise to submit to the House my views on article 13. I believe that if the man-in-the-street were to read this article up to sub-clause (g) he would most likely begin to believe that this country has secured its freedom and that every individual within it has also been granted the right of freedom. But if the same person were to proceed further in his study of this article and goes through the sub-clauses (2), (3), (4), (5) and (6) he would revise his opinion and become fully convinced that our country has not as yet attained Swaraj in its correct sense. It would mean that what had been granted by the right hand has been taken away by the left, in the succeeding sub-clauses. I believe

*[] Translation of Hindustani speech.

that a majority of the Members of this House hold the same view in this respect as I do.

If we confine ourselves to an examination of clause (1), we find, Sir, that the rights granted to the citizens of India under this article are many. Sub-clause (a) specifically grants freedom of speech and expression—for securing which, as you and the majority of the Members of this House are aware, we resorted to individual Satyagraha under the leadership of Mahatma Gandhi in the year 1941, and as a consequence thousands, nay, hundreds of thousands of people of this country had to rot in the prisons. At that time all of us believed that when Swaraj is established every citizen of this country would also secure for himself the right of freedom of speech and expression. We, no doubt, find that article 13 grants this freedom of speech and expression. But all this has been taken away indirectly by clause (2).

I may point out that the Provincial Governments have recently enacted many repressive laws. I am afraid that article 13 will allow these laws to remain in force even in the future. What is worse, this article leaves scope for the enactment of further repressive laws in future. In several provinces such laws as the Goonda Act, Essential Services Act, and Public Safety Act have been passed. It may come as a surprise if I inform the House that, since the advent of the Popular Ministries, Section 144 has been constantly reigning in the big cities of this country. Consequently there cannot be a public gathering of even five or seven persons in cities, nay, not even for carrying on conversation among themselves or giving vent to their ideas and feelings. If this situation continues also in the future, I am afraid that the freedom which he had been wishing to establish in this country, the freedom that has been granted in Clause (1) (a) of article 13, will be entirely lost under clause (2) of that article.

I feel, Sir, that I should discuss before you each of these sub-clauses, one by one, so that I may be in a position to request you in the end that this article should be sent back to the Drafting Committee with a request that, after having carefully reconsidered it and having put in it what is really required in the circumstances of the country, it should resubmit it to the House. I believe that the House would then pass it with pleasure. But I am afraid that all would be lost if the article is passed as it is today.

Again sub-clause (b) of clause (1) grants, Sir, the right “to assemble peacefully and without arms.” But clause (3) of the article takes away the entire significance of this sub-clause. Similarly sub-clause (c) grants the right ‘to form associations or unions’. Thus we are given the impression that we would have the right to form associations or unions and thus to carry on organised agitation. For instance, we are given to believe that we could carry on organised agitation for the welfare of Labour, that we can make, in an organised fashion, a demand for the grant of bonus, and if necessary can assemble in public meetings to back up this demand. The truth is that the law restricting the right of holding public meetings would be enforced. Consequently in view of such a law or laws of this kind to be passed in future it may not be possible to hold any public meeting. Thus it is clear that the Government would be in a position to prevent if it so desires, any agitation by Labour for demanding bonus, since all these restrictive laws would be applicable to the workers also. I, therefore, fail to see the significance of the right of forming associations when I find that its substance is taken away by clause (4). I submit that this article is neither for the good of labour nor of the general community.

Further we read of the right to ‘move freely throughout the territory of India’. This is sub-clause (d). Under it every citizen of India would have

[Shri H. J. Khandekar]

the right to move freely into any province or any village of India. But the substance of this right is taken away by clause (5). I would make this clear by an illustration. It is a matter of great amazement that in this country there is a law known as the Criminal Tribes Act under which a person is considered a criminal from the moment of his birth. There are also some unfortunate communities in this country whose members would not have the right to move freely in the territory of India granted under this sub-clause to every citizen of India. I believe, Sir, that you are aware that under the Criminal Tribes Act the people following pastoral occupations cannot go to any particular part of India they would like to go. Now they do not have that freedom. We have in our province a tribe known as Mang Garodi. If it has to go from the village of Khape to the village of Janwanver it is followed by the Police who sees to it that it goes only to the latter village and nowhere else. Similarly if it goes from Janwanver to Katol the Police of the former place would go up to Katol to entrust the Police of the latter place to keep watch over it. Thus they have no freedom of movement, whatever freedom of movement is now given under sub-clause (d) is taken away by clause (5) of the same article. If the intention is not to give to the criminal tribes, who are also citizens of India, the freedom which they are entitled to, it is something extremely unjust.

Similarly further on we find the right 'to acquire, hold and dispose of property'. My friend Prof. Yashwant Rai has said with reference to this freedom that there is an unfortunate section—the scheduled castes—in the Punjab who cannot purchase land on account of the provisions of the Land Alienation Act. Moreover the right that you have granted by this sub-clause to every citizen has been taken away by the clause which permits the Land Alienation Act to remain in force even in future. Thus the right which the Harijans should also, like other citizens, get under this Constitution would not be available to the Harijans of the Punjab on account of the Land Alienation Act of the Punjab.

Pandit Thakur Dass Bhargava (East Punjab: General): *[This article would most certainly confer this right.]

Shri H. J. Khandekar : By what article please?

Pandit Thakur Dass Bhargava : It will be conferred by this very article 13.

Shri H. J. Khandekar : I do not find this specified here. If this article is passed as it is, the rights that the Harijans of the Punjab should get will not be available to them.

Mr. Vice-President : May I point out to you that it would be better if you address the Chair and not carry on conversation among yourselves?

Shri H. J. Khandekar : Very well, Sir, Sub-clause (g) grants the right to practise profession or to carry on any business etc. But all these rights are taken away by clause (6) I would like to place before you, Sir, the difficulty we would be placed in by these provisions. The most unfortunate people in this country, in my opinion, are the sweepers. Whatever we may talk about the grant of rights to these unfortunate sweepers the fact remains that these unfortunate people have never been given any rights by any person in India nor have they ever enjoyed any right said to have been granted to them. To talk of their "freedom to practise any profession or trade" is a mockery to them. I do not know of the conditions prevailing in other provinces but I know what happens in my province. If a sweeper working

*[] Translation of Hindustani speech.

under a Municipal Committee desires to give up his work, in my province, he would have to give a notice in writing addressed to the District Magistrate of his intention to do so and can leave his service only if that officer agrees to release him. I am of the view that even the very name of sweeper is a matter of contempt by people. I have consequently held the opinion and have repeatedly said to the sweepers, and I would like again to communicate this opinion through you, Sir, to the sweepers of this country, to give up their present occupation which makes them looked down upon as untouchable by the people of the country, because their work is considered to be so dirty and polluting. I advise them to take to such occupations as are followed by other people. If the sweepers of the whole country were to leave, on my advice, their present occupation, and which they could in exercise of the freedom granted by the clause (8), I am sure that they would invite against them the objection of clause (6) which refers to service in the interest of public or as now Dr. Ambedkar seeks to amend service in public interest. The fact is that if all the sweepers of Delhi or Bombay or Calcutta were to stop cleaning latrines, sweeping the streets, they would be said to be acting against public interest; and under this law and under the Essential Services Act they would be compelled to do this work. Then how can you say that all human beings shall have equal rights under this sub-clause? The handicaps from which we suffer, from which the peasant suffers, from which the workers suffer, from which the sweepers suffer would continue to remain even under this article, if it remains as it is. It is, therefore, my submission, and I believe that the House after having heard what I have already said, would consider it proper, that this article should be referred back to the Drafting Committee for being amended. It may then be placed before the House for adoption. This is my proposal. With these words I resume my seat.]

Shri Algu Rai Shastri (United Provinces : General): *[Mr. Vice-President, all the important aspects of fundamental freedom have been dealt with in article 13. From this point of view this article is very important. It is going to be accepted with some minor amendments. Many friends have attacked its provisions on the grounds that the fundamental rights conferred by this article have been taken away by the limitations imposed therein. I feel that along with freedom responsibility is essential. The friends who urge that the rights given in this article have been taken away under the sub-clauses (2), (3), (4), (5) and (6), have not taken into consideration the people who will elect members to the legislatures which have been authorised under these provisions to apply these restrictions, and the people who would compose these legislatures. I submit that those who would sit in the legislatures would be representatives of the people and they will impose only those restrictions which they consider proper. Such restrictions would be in the interest of the people. Only those restrictions will be imposed which would be necessary in the interest of public health, unavoidably necessary for the maintenance of public peace and desirable from the viewpoint of public safety. No restriction will be imposed merely to destroy the liberties of the people.]

Freedom is a great art—even greater than the art of music and dancing. One who is adept in music or dancing keeps his voice under control and maintains restraint and control over his bodily movement, and on the movement of his feet. He has to move in accordance with certain recognised rules of music and dancing. He cannot sing and dance out of tune and time, in an unrestrained manner. He remains fully bound to the rules. Full freedom is being conferred upon us but it can never mean that we should not be under any restrictions whatsoever. Freedom of speech does not mean that we can

*[] Translation of Hindustani speech.

[Shri Algu Rai Shastri]

give expression to whatever comes to our mind without observing any limitation or rule in this respect. In legislatures we have to follow certain rules and regulations. We are here as the representatives of the sovereign people but even then there are hundreds of restrictions upon us. Freedom by its nature implies limitations and restrictions.

‘Kavihin Arth Akhar Bal Sancha, Kartal Tal Gatihin Nat Nacha’

The dancer dances to the measure of clapping. The poet is bound by the significance of words. A dancer dances according to certain fixed timings and never makes a false movement. His movements are in harmony with the tal. When a nation or a community attains freedom, it begins to bear a great responsibility on its shoulders. We cannot therefore say that the restrictions that have been imposed will retard our progress.

One of my friends made a reference to the Bhangi community. I have been working amongst them since 1924. I have thus a personal experience extending over a period of twenty four years. There can be no doubt about the indescribable wretchedness of the Bhangis and of our other so called untouchable brethren. It is indeed very deplorable. But the restrictions provided for in article 13 do not imply that Bhangis will continue to remain bound to their present occupation. Under this article there would be no compulsion for any person to follow any particular occupation. This article as a matter of fact, instead of prescribing the compulsory pursuit of any occupation, provides for unrestricted freedom to every individual to follow any vocation he pleases. I think that the freedoms granted under sub-clauses (f) and (g) need clarification. In sub-clause (f) is specified the right of a person to acquire, hold and dispose of property; while in sub-clause (g) it is stated that there is freedom of a person to practise any profession or to carry on any occupation, trade or business or other means of livelihood of one's choice. It is true that the State has been authorised to restrict this freedom in sub-clauses (5) and (6). But a little reflection would show that it was necessary to limit the freedom so widely provided for in sub-clauses (f) and (g) of clause (1) of article 13. Such unrestricted freedom as is provided in these two sub-clauses could not be free from grave danger. For instance, we have in our society the practice of prostitution. Is this to continue in future also as it has done till now? It should not in any circumstances be permitted to continue. Evidently there must be some provision whereby its practice may disappear by providing for a profession worthy of being adopted. Evidently restrictions have to be imposed on it.

Again, there is freedom in our society to earn one's livelihood by selling intoxicants. In the Directive Principles we have now included a provision for the introduction of Prohibition but in the Fundamental Rights we have given every one the unrestricted rights to earn his livelihood. Both the provisions appear to be contradictory to each other. Thus it is necessary to provide that no one shall be permitted to earn a living by selling intoxicants except for medicinal purposes.

Again begging is a common profession in our society today. Should it be permitted to continue as it is? I submit that there should be a good arrangement for bringing it to an end.

We have now attained freedom. We should do nothing which may endanger it. It is our duty to be good citizens. We have also to see that freedom is not misused. Up till now we were under foreign rule. Indian subjects received step-motherly treatment from the rulers. In England no intoxicant can be mixed with any medicine other than in the prescribed proportion but here bottles of country wine are being sold openly in the market. Our 'Freedom'—our own mother—can never permit us—her children—to have this because she cannot permit her children to go astray.

Good citizenship implies restrictions:

“Satyam Bruyat Priyam Bruyat Na Bruyat Satyamapriyam”

Be truthful and sweet in speech, but do not speak out the unpleasant truth. Anyone has the freedom to state the truth, but not the freedom to speak out the unpleasant truth. This is a restriction and good citizens have to accept this restriction. I beg, therefore, to express my appreciation of article 13 read with the amendment moved by Dr. Ambedkar and which already been referred to.

I would like to make another observation. I feel that the rights guaranteed in sub-clauses (f) and (g) are rather too wide. I have already said something about freedom of making a living.

I shall resume my seat after saying a few words about the right to acquire property. The type of freedom being guaranteed implies that the capitalists and feudal aristocrats would have full rights to acquire and dispose of property. But the mode in which property is being acquired and held is such as permits the property owners to have all the benefits while workers who create this property have all the toil as their share. 'The ox produces and the horse consumes'—this saying is being fulfilled. Of course, this should not be so. I submit that this right of property should be so interpreted in future as to permit the transformation of individualistic capitalism into State capitalism. All the means of production and the distribution of the commodity should be owned and controlled by the State and not by the individual. "Unless the individual ownership yields place to collective ownership—social ownership—there cannot be real Swaraj."

To reach this goal it is necessary that these restrictive provisions should be interpreted in this way. With these words I express my support for this article.]

Shri Amiyo Kumar Ghosh (Bihar : General): Mr. Vice-President, Sir, we are dealing today with one of the most important clauses of this Constitution. We are dealing with the freedom of citizens. That is to say what rights the Indian people have under this Constitution. On reading the entire clause, I feel that the rights which have been recognised under sub-clause (1) of this article have been to a great extent abrogated by the subsequent provisos. In a Constitution, there are two important points, namely what are our rights and what form of Government we are going to have. These are the two important subjects in a Constitution and others flow from them and therefore one expects that so far as the rights of the people are concerned, they should be expressed in clear, simple and straight language, so that a common man when he reads the Constitution can understand exactly and precisely what are his rights and what are the checks to his rights. I do not propose to say that at times of emergencies or grave needs, freedom does not require to be checked to a certain extent. I believe in checks and balances, but at the same time, I must say that those checks should be very precise, and clear and should not be couched in ambiguous language and left to courts for decisions.

Now you will find, Sir, that in all these sub-clauses (2), (3), (4), (5) and (6) we have used the words "interest of general public", 'general public interest',

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‘public order’ and ‘property’ without defining them and I think it will take centuries for the Supreme Court to exactly say what really these words mean. By incorporating such words in the sub-clauses, wide powers have been given to the Central and the Provincial Legislatures to frame laws by which they can restrict the freedom which has been given to the people under sub-clause (1) of this article. I do not like to enter into any criticism of this article, but the only thing I want to say is that the entire clause is very disappointing.

Specially, I will draw the attention of the Honourable Dr. B. R. Ambedkar to sub-clause (5). Now, Sir, in this sub-clause (5) the rights which have been recognised in sub-clauses (1) (d), (e) and (f) above have been practically negated and have given rise to grave anxiety in the minds of many regarding the exact position in matters of residence, acquisition and disposition of properties. The exact significance of clause (5) in respect of (e) and (f) requires further clarification. Next I cannot understand why in this clause, the words, “for the protection of the interests of any aboriginal tribe” have been incorporated. What it exactly means I fail to understand. Does it mean the ‘tribal area’ or does it mean that wherever any aboriginal tribe lives, irrespective of their numbers the legislatures can frame laws safeguarding their interest as, for instance, if there be 15 aboriginals living in Delhi, can the Central Legislature frame a law by which they can restrict the rights of other people in the interests of these fifteen or sixteen aboriginals? I could understand that if that had been in respect of the tribal area, but one cannot understand that wherever there may be some aboriginals the legislature can make a law, by which they can restrict the rights of all others for the protection of those few.

Sir, I feel the position is ambiguous and clumsy and should be made clear. I fail to understand why clause (d) has been tacked with sub-clause (5). Free movement has been restricted by that sub-clause. My own personal view is that there should not have been any restriction regarding movement. The citizens should have been given a free right to move. Only on administrative or political grounds the Central or provincial legislatures could be empowered to frame laws judiciously by which they can restrict the movement of the people and this power should be worked sparingly and in very emergent circumstances. In every matter of freedom, restrictions have been imposed in the interest of general public. What this interest is, we do not know and has not been stated anywhere. Such words can be interpreted differently in different States and the Centre and may give rise to separate and conflicting laws. Sir, this would create great confusion. Therefore, I submit, if this article is read and viewed, it only gives rise to disappointment, and with a little more effort and with as light inclination this article could have been framed in such a language that it would have been a model article in the whole of the Constitution.

Mr. Vice-President : Mr. T. T. Krishnamachari.

Shri Mahavir Tyagi: May I know, Sir, is it by reference to the slips that you are calling the speakers?

Mr. Vice-President : I am not prepared to give you information as to how I conduct my work.

Shri Gopal Narain (United Provinces : General): So that we need not stand every time. Have we to stand every time or send slips, Sir?

Mr. Vice-President : The remedy lies in your hands; you can do both, you can send a slip and stand, or you can do neither.

Shri T. T. Krishnamachari (Madras : General): Sir, as the Speaker that spoke before me said, this is perhaps the most important article in this Part

and one which enumerates the rights for the attainment of which we in India have undergone all the troubles to obtain our freedom. Actually, Sir, it is in the manner in which the State is going to allow the people to use the rights enumerated in this particular article that the people can feel that all that they have done in the past and the sacrifices that they have made in the past to obtain freedom was worth while.

Sir, I do not say that this article is perfectly worded; nor can I maintain that the exceptions to parts of this article provided by clauses (2), (3), (4), (5) and (6) do not curtail the liberty and the right conceded to individual citizens in clause (1). But, as a student of politics, I have to realise that there can be no absolute right and every right has got to be abridged in some manner or other under certain circumstances, as it is possible that no right could be used absolutely and to the fullest extent that the words conveying that right indicate. It is merely a matter of compromise between two extreme views. Having got our freedom only recently, it is possible that we want all the rights that are possible for the individual to exercise, unfettered. That is one point of view. The other view is that having got our freedom, the State that has been brought into existence is an infant State which has to pass through various kinds of travail, and what we could do to ensure that the State continues to function un-impaired should be assured even if it entails an abridgment of the rights conferred by this article. I have no doubt in my mind that, though I have had to say something perhaps harsh on certain occasions in regard to what the Drafting Committee has done generally, in this article, the Drafting Committee has chosen the golden mean of providing a proper enumeration of those rights that are considered essential for the individual, and at the same time, putting such checks on them as will ensure that the State and the Constitution which we are trying to bring into being today will continue unhampered and flourish.

Sir, language is always rather a difficult affair. What language conveys to me it may not convey to another person, and as my honourable Friend Dr. Ambedkar put it, we are legislating in a language which is foreign to us, the exact import of which we do not understand. Should we do it in one of our own languages? The difficulty would be all the greater for the reason that the language of one set of people is not the language of another set of people. Besides, precise thinking in our own language so that we could adopt it for constitutional purposes has not yet developed. Actually we have to depend for the interpretation of the particular restrictions that are enumerated herein on the Supreme Court or some other authority that would come into being in the future, to ensure that the peoples' rights are not abridged.

Speaking today in the context of the situation in which we are placed, we cannot but envisage that those rights will be abridged in order to maintain the stability of the State. This State that has now been brought into being has been put to a lot of travail in the first eighteen months of its existence and every Member of this House knows it. Special powers are needed by the Government to meet not merely with the refugee problem, not merely with the fact that there are various forces in this country which do not like this State to grow in the present form, but also with the various economic troubles that now face this country. Are we to build up our Constitution, putting in these restrictions which are necessary today in the light of things that stand as they stand today, or are we to visualise a time when things will be normal and when it will not be necessary for the State to use these powers, is the problem. Again, I think, the Drafting Committee and my honourable Friend Dr. Ambedkar have chosen the golden mean in this particular matter.

There is one other matter on which I would like to lay stress before I sit down. We in this House, though the bulk of us belong to one party, have got

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different ideas on economic matters. We were all together in one particular fact that the British should go; we are all united in the desire that we should have a stable constitution which will ensure to the common man what he needs most, what he did not obtain in the former regime. But, in the achievement of that goal in the methodology to be adopted for the achievement of that goal our ideas vary considerably, and vary from one end to the other. I am happy to see that the Drafting Committee has chosen to avoid importing into this particular article the economic implications in the enumeration of fundamental rights that obtain in other constitutions. I think it has been a very wise thing. I know a friend of mine in this House has objected to one particular sub-clause (f) of article 13, namely, to acquire, hold and dispose of property. I would like to assure him and those who hold the opinion that he holds that this does not really mean that there is any particular right in regard to private property as such, no more than what any person even in absolutely socialistic regime will desire, that what he possesses, what are absolutely necessary for his life, the house in which he lives, the movables that he has to possess, the things which he has to buy, should be secured to him, which I think any socialistic regime, unless it be communistic, will concede, is a right that is due to an individual.

Actually the economic significance that attaches to any enumeration of Fundamental Rights, such as the rights conceded in the Bill of Rights in the American Constitution and the addition to these in the Fourteenth Amendment, finds no place so far as this particular Constitution is concerned, and I am able to say that that is one of the bull features of this Draft Constitution. We have chosen to avoid as far as possible, in spite of the fact that the vested interests are still with us and they have a certain amount of influence—we have chosen to avoid as far as possible laying that stress on the importance of the economic surroundings which is a significant feature of the American Constitution, and I do hope that my honourable Friend, who objected to a particular sub-clause in this article namely clause (f), will now realise that it has no meaning so far as property rights are concerned except in something that is dear to an individual and which is very necessary to concede in an enumeration of rights of this nature.

Sir, the future, what it is going to be none of us really know, but we almost of us—envisage that the future will be one which will be bright, the future will be one where the State is going to be progressive, where the State is going to interfere more and more in the economic life of the people not for the purpose of abridgement of rights of individuals, but for the purpose of bettering the lot of individuals. That is the State that I envisage, a State which will not be inactive, but will be active and interfere for the purpose of bettering the lot of the individual in this country; and I do feel, Sir, that as it is a well known canon that in any Constitution that is forged there should be a reconciliation of past political thought which will at once pave the way for a new level of thinking, a new level of progressive and critical thinking. I think those conditions are at any rate possible in an enumeration of the rights such as is found in article 13. Sir, there is no use our comparing this particular article which happens to be the crux of the Fundamental Rights with either what obtains in the commentaries of the English Constitution or what obtains in the text of the American Constitution or any other Constitution, for the reason that the setting is totally different. There is no use anybody saying that a particular feature is not found in the English Constitution. English jurisprudence is something totally different for the reason that English Parliament does not provide for the enumeration of all these rights which is absolutely based on custom on which you cannot depend for ever because Parliament there is supreme and can make laws contravening every

recognised custom. They do not have to have a Constitutional amendment for that purpose. Parliament can formulate new laws which might cut right across the conventions, and the usages of the Constitution established over centuries. But so far as the American example is concerned—and certainly there are other examples which are modelled on the American example—there is one distinction between our own way of thinking and what the Founding Fathers in America thought and what was sustained in America until recently, *viz.*, the economic basis of the American Constitution is something totally different from what we envisage to be the economic basis of our Constitution. So any analogy is only applicable up to a point, and therefore any of our friends who seek to import particular provisions of the American Constitution or particular words either in this particular article or in later articles, have to recognize that the bulk of the opinion of this House is something totally different from the economic bias that more or less determined the American Constitution, right at the inception and later on as well, on which bias legal literature has built up several conventions attached to that Constitution.

Sir, I would like to say this that the amendments proposed by my honourable Friend Dr. Ambedkar particularly to clauses (4), (5) and (6) are a great improvement on the original draft and my own view is that they do take away the lacunae that existed in the original draft. But I should like to lay emphasis on one particular amendment moved by my Friend Mr. Munshi who is not here. The value of that amendment happens to be only, to a very large extent, sentimental. The word 'sedition' does not appear therein. Sir, in this country we resent even the mention of the word 'sedition' because all through the long period of our political agitation that word 'sedition' has been used against our leaders, and in the abhorrence of that word we are not by any means unique. Students of Constitutional law would recollect that there was a provision in the American Statute Book towards the end of the 18th Century providing for a particular law to deal with sedition which was intended only for a period of years and became more or less defunct in 1802. That kind of abhorrence to this word seems to have been more or less universal even from people who did not have to suffer as much from the import and content of that word as we did. But all the same the amendment of my honourable Friend Mr. Munshi ensures a very necessary thing so far as this State is concerned. It is quite possible that ten years hence the necessity for providing in the fundamental Rights an exclusion of absolute power in the matter of freedom of speech and probably freedom to assemble, will not be necessary. But in the present state of our country I think it is very necessary that there should be some express prohibition of application of these rights to their logical end. The State here as it means in the amendment moved by my honourable Friend Mr. Munshi as I understand it, means the Constitution and I think it is very necessary that when we are enacting a Constitution which in our opinion is a compromise between two possible extreme views and is one suited to the genius of our people, we must take all precautions possible for the maintenance and sustenance of that Constitution and therefore I think the amendment moved by my honourable Friend Mr. Munshi is a happy mean and one that is capable of such interpretation in times of necessity, should such time unfortunately come into being so as to provide the State adequate protection against the forces of disorder.

Sir, one other matter which I would like to mention before I sit down is this. Sub-clause (c) of art. 13 (1) is very important. I do not know if people really realise as they would know in other countries and particularly in U.S., labour has had to undergo an enormous amount of trouble to obtain elementary rights on matters of the recognition of their rights, in the matter of the

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right to assemble together as a Union. I do not think that in my view clause (4) of this particular article unnecessarily abridges the rights conferred by sub-clause (c) of clause (1). My own feeling is that we have more or less sought to cut across the difficulties which the other countries have faced in this particular matter and we have ensured for labour the very legitimate right to come together, to agitate and to obtain for themselves and for the members of their Union the rights that are justly theirs. That I think is more or less a charter for workers in this country and I am happy to see that the vested interests have not tried in any way to abridge this particular right. On the whole, Sir, this particular article with the amendments proposed by my honourable Friend Mr. Munshi and the three amendments proposed for clauses (4), (5) and (6) by Dr. Ambedkar and also the addition of the word 'reasonable' which has been brought in by my honourable Friend Mr. Thakur Dass Bhargava, represents in my opinion a fairly reasonable enumeration of our rights and a fairly conservative abridgment of those rights. The working of these particular rights depends upon the genius of our people, upon how we develop ideas of liberty which are still today in a very undeveloped state. It is no doubt true that our leaders are sometimes hasty, they want more powers, when they are faced with difficult situations and they think the only way in which they could deal with them is to have more powers. They do not recognize that they are leaders of the people the chosen leaders of this country each one with a personality of his own and the aggregate effect of their personality and their influence can cut right across the necessity for any drastic powers. That kind of confidence will come only later on—at the moment they merely want to follow in the footsteps of people who preceded us in the government of this country, who had no touch or contact with the people, who could never get on to a platform and persuade the people to do any particular thing, who only wanted powers which could be exercised through the medium of the bureaucracy. That mentality will change, and will surely change, because our leaders are very eminent people. Surely, the House will realise that the Prime Minister and the Deputy Prime Minister, if they get upon a platform can sway millions of people if they could only get their voices to reach them. It only depends upon the type of leaders that we get for the abridgment of these rights which are enumerated here to become a dead letter, and that is in the lap of the gods. For the time being we have done the very best possible which human ingenuity can devise.

Sir, I support the article before us.

Shri Lakshmi Narayan Sahu (Orissa : General) : *[Mr. Vice-President, I would like to make an observation with regard to article 13 which is now under discussion. The article confers certain rights on the citizens, but the words 'subject to the other provisions of this article' occurring in the very beginning of the article, serve as a warning to us that the article confers freedom, no doubt, but that it is only within a limited sphere. Moreover the sub-clauses (2), (3), (4), (5) and (6) that follow, re-emphasise that unless the freedom granted is enjoyed within the prescribed limits, people would get into great difficulty. I feel, however, that both the words 'subject to other provisions of this article' and the sub-clauses (2), (3), (4), (5) and (6) should be deleted from the article. We shall be able to visualize the true picture of our freedom only when this has been done. So long as the sub-clauses remain, we can not have a correct picture of our freedom. Moreover I feel that liberty has been considerably narrowed during the drafting process. It is just like the narrowing of the size of a temple as a consequence of its main entrance being made too large during the process of constructing the temple. It is of no

*[] Translation of Hindustani speech.

use whatever. There is an Oriya proverb which is meant for such a situation. It is—

Ghare na pasuna chal vaguchi Devalku Mukhashala Bil Gala.

It means that it is no use making a house with so small an entrance that one's entry into the house is rendered difficult without striking his head against the door-frame. Though there has been considerable discussion on the article, we wish that we discuss it more thoroughly and that the Drafting Committee gives more consideration to it. Thus, whatever drawback we find in the article should be removed. In my opinion sub-clauses (2), (3), (4), (5) and (6), must be deleted. Unless this is done we shall not have the taste of freedom and shall continue to remain in a condition of fear. Those who till recently were seeking to organise disobedience of laws are, being today, in the seat of power, apprehensive of the violation of laws by other people, and under this apprehension, are seeking to make the law so comprehensive and rigid as to prevent any one outside the ruling group from going beyond its control. I would like to say that article 13 which is now under discussion betrays an understandable apprehension on the part of authority. The fact is that there are many provisions in this Draft Constitution which would prevent the citizens from committing any disorder. Thus article 25 provides that "The right to move Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed". I submit, therefore, that all the restrictive provisions contained in article 13 should be deleted. My belief is that article 25 will be as helpful to the government as to good citizens. Unless the restrictive provisions of this article are deleted, we cannot properly enjoy our National Freedom. Moreover it had always been our loud assertion that self-government is better than good government. Now we have grown indifferent to self-government and are raising the slogan of good government. With so many rigid provisions what good government can you have and for whom?

Those who are in power at present are apprehensive that the people and political parties other than those of the ruling group would practise disobedience of laws. That is why so many restrictive provisos have been included in the Draft Constitution. It is precisely why I insist that the Fundamental Rights should be treated as fundamental and inviolable. It is not proper therefore to delimit them by so many restrictive clauses and sub-clauses.

There is one observation I would like to make about the Adibasis. I agree to a certain extent with what Shri Jaipal Singh has said. Adibasis move about with arms. This article lays down that all citizens shall have the right "to assemble peaceably and without arms". We should therefore consider whether or not this clause takes away from the Adibasis their customary right to bear arms. In view of the provisions contained elsewhere in the constitution. I think, this will not affect the right of Adibasis to bear arms. If this view be correct Adibasis need not fear the loss of their right. Though I have no objection to the words "assemble peaceably and without arms" being put in here, yet I feel that nowhere in the Draft Constitution can be found any provision regarding the repeal of the Arms Act and the grant of the right to the people to bear arms—a right which is essential to make our people fearless. Therefore, I would like that a provision for the repeal of the Arms Act and making it permissible to the people to bear arms be included in the Draft. I would not like to say anything more about this matter.

We often talk of minorities today but we should stop this kind of talk now. What is a minority? When we are going to make one and the same provision for all, I fail to see who remains to constitute the minority. It may be said against this view that the Depressed Classes are a minority, the

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aboriginals are in a minority and the Muslims are in a minority. But once it is conceded that a particular group is a minority there is the danger that many other groups would begin to clamour for being considered as minorities. Formerly in the political sphere the Muslims were considered a minority. But then the Depressed Classes got themselves included in this category. I am afraid that among the Depressed Classes themselves new groups would begin demanding the status of a new minority. The same is, in my opinion, the case of the aboriginals. I would, therefore, like that the word 'minority' wherever it occurs in the Draft Constitution should be deleted and the article 13 should be so drafted that all may feel that they have got real Swaraj and that they have no cause for apprehension and that they have as unrestricted a freedom as any one else.

Shri Deshbandhu Gupta (Delhi) : *[Mr. Vice-President, I have had an opportunity once before of representing my views on the recommendations of the Drafting Committee. I was not at that time in a position to congratulate my Friend, Dr. Ambedkar and the Drafting Committee, on certain of their commendations, which related to the Chief Commissioners' Provinces. But today, I feel that on article 13, which relates to our Fundamental Rights, and particularly after this amendment as it stands, the Drafting Committee deserves our hearty congratulations.

Some of my friends here have objected saying that what has been given by one hand has been taken away by the other. But if you ponder a little, you will find that it is not so. If some one is given a freedom by which the freedom of the other is curtailed, then I would say, that such a demand is not for the right type of freedom. For example, it has been stated that restrictions have been imposed on the movement of people belonging to the criminal tribes. I would like to ask, why should not restrictions be imposed on the movement of the criminal-tribe people, when they are a source of danger to other law-abiding citizens? Could anyone be serious in saying that restrictions and conditions imposed on the criminal tribes should not have been imposed at all? Or that the presence of those restrictions and conditions has in any way curtailed our freedom? Similarly in respect of land, it has been stated that henceforth our Harijan brethren would not be able to purchase any land for themselves and the Land Alienation Act would continue to stand as it is. It is perfectly correct to say that the most objectionable feature of the Land Alienation Act was that certain castes had been mentioned therein. For example, a Bania or a Brahmin or a Harijan could not purchase land. It was wrong. But in fact, that restriction is being swept aside today by the conferment of the Fundamental Right that all citizens shall have the right to acquire property. From now on, if any restriction is imposed, it would have to be proved whether it is proper or improper. That question would be decided, under the provisions of this section, by the Supreme Court. It is a big gain. Formerly, the phraseology of the article was defective, but that defect has been removed by the acceptance of the amendment of my Friend, Pandit Thakur Dass Bhargava, which seeks to add the word 'reasonable'. Now, there is nothing to warrant the imposition of any undue restriction. If there would be any, then against that an appeal could be preferred, and that would be decided by our Supreme Court which would be composed of great experts in India. That is why I feel that we should welcome this article and that it would be wrong to give an impression that it curtails our freedom in any sense. We should realise that our country is now a free country. I agree with my Friend, Shri Algu Rai Shastri that, along with rights, certain obligations and responsibilities have also come upon

*[] Translation of Hindustani speech.

us. If we do not stand by those obligations then our freedom would be the freedom of the jungle. That freedom, I think, would not be such as to merit a welcome from us. Therefore, I think, this article as amended, should be accepted by us. We should realise that it forms the basis of our constitution, and it is a thing of which we can rightly feel proud and which will raise us in the estimation of the whole world.]

Shri M. Ananthasayanam Ayyangar (Madras : General): Sir, I consider article 13 as the most important article, as it deals with some of the fundamental rights which are common to all free countries and all free citizens in the world. A number of amendments have been moved to this article which can all be classified under three heads. Some want to remove all restrictions on the rights that have been set out in clause (1). The fundamental rights guaranteed in clause (1) of article 13 are freedom of speech and expression, assembly and association, right to move freely inside the territory, right to practise any profession, right to reside—these are the fundamental rights that have been guaranteed. There are exceptions to these fundamental rights that have been set out in this clause and they are to be found in the subsequent clauses (2), (3), (4), (5) and (6). Some of the amendments are for the deletion of the clauses; and some to make improvements so that these provisos may not take away the rights that have been guaranteed under clause (1).

Pandit Thakur Dass Bhargava has moved an amendment saying that if any restrictions have to be imposed upon these rights that have been guaranteed in clause (1), they must all be reasonable. I believe that that amendment would sufficiently meet the situation.

Regarding freedom of speech we have improved upon the restriction that has been imposed in clause (2). The word ‘sedition’ has been removed. If we find that the government for the time being has a knack of entrenching itself, however bad its administration might be, it must be the fundamental right of every citizen in the country to overthrow that government without violence, by persuading the people, by exposing its faults in the administration, its method of working and so on. The word ‘sedition’ has become obnoxious in the previous regime. We had therefore approved of the amendment that the word ‘sedition’ ought to be removed, except in cases where the entire state itself is sought to be overthrown or undermined by force or otherwise, leading to public disorder; but any attack on the government itself ought not to be made an offence under the law. We have gained that freedom and we have ensured that no government could possibly entrench itself, unless the speeches lead to an overthrow of the State altogether.

Then there are certain amendments which have been given for adding to the fundamental rights that have been set out. They require some detailed consideration. The foremost of those amendments relates to guaranteeing that every citizen shall have the right to exercise his personal law. Let us see what this means. We have already discussed personal law at some length in the Directive clause where a direction has been given that a uniform code of civil law must be evolved early or late. Amendments have been moved that unless a provision is made in the Fundamental Rights there is no safety and that the majority community may introduce its own personal law or flagrantly violate the personal law of any community. Let us take the communities. There are three main religions. Let us take Muhammadanism. There is absolutely no provision in the Fundamental Rights that you ought to be ridden over by their personal law. The law of the land as it exists today gives sufficient guarantee so far as that is concerned. But our friends who moved the amendments wanted a double guarantee that their personal law ought not to be interfered with. My submission is that it is impracticable, for, in an advanced society, even the members who belong

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to a particular community may desire their personal law to be changed. Let us take the Muhammadan law. I would only refer to two or three amendments that have been made to that law as set out in the Shariat. As recently as in 1939 the Central Legislature passed a law for enabling the dissolution of Muslim marriages under certain circumstances. You will be pleased to note that under the Muslim Law, a man has got the unilateral right to declare a marriage void by pronouncing the word *talak* and there is another form of divorce called *kulamp*. Woman normally has no right to dissolve a marriage. She has to go to a court of law and various matters have to be set out such as impotency and so on. All that has been made easy now. Another consideration is that a woman who cannot lead a family life with the husband in the same household is entitled under certain conditions to separation. These have hitherto not been envisaged nor provided for in the Dissolution of Muslim Marriages Act. As a member of the Assembly I was a member of one of the committees that considered this question. We left the question entirely for the Muslim Members concerned to settle. The Shariat Law was introduced in the Assembly and an Act was passed bringing into line with the Shariat Law the different pieces of legislation in the provinces of India. This was done four years ago. The Wakf Validation Act was passed in 1930. A time may come when members belonging to the particular community may feel that in the interests of the community progressive legislation has to be enacted. But if we make a provision here that the personal law shall not be interfered with, there will not be any right to the members of that community itself to modify that law. Therefore it is not necessary that we should introduce it as a fundamental right. There is absolutely nothing in this Constitution which allows the majority to override the minority. This is only an enabling provision. Without the consent of the minority that is affected, no such law will be framed. I therefore feel it is unnecessary to include it in the Fundamental Rights.

Then my friend, Mr. Kamath wanted that we should have the right to bear arms and that this right should be put in the Fundamental Rights. It is true that for a long time the Congress has been from year to year passing resolutions that we must have the right to bear arms. The situation has changed now. We were then slaves and wanted to equip ourselves sufficiently so that in case of need we can use the arms for getting out of the foreign yoke. But, today in the civilised world I should like to ask my honourable Friend if he feels that everybody should be allowed to fight even to defend himself. Except in extreme circumstances no force should be used. Even when force has to be used, it must be concentrated in the State. The State it is that must stand between man and man and citizen and citizen when they want to fight. No individual citizen ought to be allowed to attack another. Very often the right to bear arms is abused.

Shri H. V. Kamath: Not even in self-defence?

Shri M. Ananthasayanam Ayyangar: Very often defence is offence in the hands of strong young men whose blood is very warm like that of my friend. Mr. Kamath's defence very often means offence.

Shri H. V. Kamath: I strongly protest against that remark, Sir.

Shri M. Ananthasayanam Ayyangar: I am sorry, Sir.

Mr. Vice-President : He has expressed his regret.

Shri M. Ananthasayanam Ayyangar: I have the greatest regard for my young friend and his youthful enthusiasm.

So far as the communal point is concerned, there is an amendment here which requires it to be included as a fundamental right. I am afraid it is

not possible to do so. There is provision made in the Penal Code under sections 153 and 155-A for the purpose. That is ample.

As regards freedom of thought, I am surprised to see an amendment moved saying that freedom of thought ought to be allowed. Nobody can prevent freedom of thought. It is a fundamental right. It is only freedom of expression that has to be allowed. Now, freedom of press means freedom of expression. As regards the secrecy of telegraphic and telephonic communications, it is a debatable point and we ought not to allow any change in the existing provision.

Now, therefore, except the amendments which are acceptable to Dr. Ambedkar, the others should not be accepted. They are objectionable and ought not to find a place in the Constitution.

Shri Satyanarayan Sinha (Bihar : General) : I move that the question be now put.

Mr. Vice-President : An enquiry was made of me as to how I have tried to conduct the proceedings of this House. I refused to supply the information at that time, because I thought it might be left to my discretion to explain how I conduct the proceedings. I see that I have not been able to satisfy all the members who desire to speak. At the present moment I have here 25 notes from 25 different gentlemen all anxious to speak. There is no doubt that each one of them will be able to contribute something to the discussion. But the discussion cannot be prolonged indefinitely. This does not take into account those other gentlemen equally competent to give their opinion who stand up and who have denied to themselves the opportunity of sending me notes. I have tried to get the views of the House as a whole. If Honourable Members will kindly go through the list of speakers who have already addressed the House they will find that every province has been represented and every so-called minority from every province has been represented. In my view, in spite of what Pandit L. K. Maitra says, Bengalees are a majority. In my view therefore the question has been fully discussed. But, as always, I would like to know whether it is the wish of the House that we should close this discussion.

Honourable Members: Yes, yes.

Mr. Vice-President : Then I call upon Dr. Ambedkar to reply.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. Vice-President, Sir, among the many amendments that have been moved to this article 13, I propose to accept amendment No. 415, No. 453 as amended by amendment No. 86 of Mr. Munshi, and amendment No. 49 in list I as modified by Mr. Thakur Dass Bhargava's amendment to add the word 'reasonable'.

Mr. Vice-President : Will you kindly tell us how you propose to accept amendment No. 415 ?

The Honourable Dr. B. R. Ambedkar : The amendment which seeks to remove the words 'subject to the other provisions of this article'.

Mr. Vice-President : And then?

The Honourable Dr. B. R. Ambedkar : Then I accept No. 453 as modified by amendment No. 86, and amendment No. 49 in List I as modified by the amendment of Pandit Thakur Dass Bhargava which introduces the word 'reasonable'.

Now, Sir, coming to the other amendments and the point raised by the speakers in their speeches in moving those amendments, I find that there are just a few points which call for a reply.

With regard to the general attack on article 13 which has centred on the sub-clauses to clause (1), I think I may say that the House now will be in a

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position to feel that the article with the amendments introduced therein has emerged in a form which is generally satisfactory. My explanation as to the importance of article 8, my amendment to the phrase "existing laws" and the introduction of the word "reasonable" remove, in my judgment, the faults which were pointed out by honourable members when they spoke on this article, and I think the speeches made by my friends, Professor Shibban Lal Saksena and Mr. T. T. Krishnamachari and Mr. Algu Rai Shastri, will convince the House that the article as it now stands with the amendments should find no difficulty in being accepted and therefore I do not want to add anything to what my friends have said in support of this article. In fact I find considerable difficulty to improve upon the arguments used in their speeches in support of this article.

I will therefore take up the other points. Most of them have also been dealt with by my friend, Mr. Ananthasayanam Ayyangar and if, Sir, you had not called upon me, I would have said that his speech may be taken as my speech, because he has dealt with all the points which I have noted down.

Now, the only point which I had noted down to which I had thought of making some reference in the course of my reply was the point made by my friend, Professor K. T. Shah, that the fundamental rights do not speak of the freedom of the press. The reply given by my friend, Mr. Ananthasayanam Ayyangar, in my judgment is a complete reply. The press is merely another way of stating an individual or a citizen. The press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of a press or the manager are all citizens and therefore when they choose to write in newspapers, they are merely exercising their right of expression, and in my judgment therefore no special mention is necessary of the freedom of the press at all.

Now, with regard to the question of bearing arms about which my friend Mr. Kamath was so terribly excited, I think the position that we have taken is very clear. It is quite true and everyone knows that the Congress Party had been agitating that there should be right to bear arms. Nobody can deny that. That is history. At the same time I think the House should not forget the fact that the circumstances when such resolutions were passed by the Congress no longer exist.

Shri H. V. Kamath : A very handy argument.

The Honourable Dr. B. R. Ambedkar : It is because the British Government had refused to allow Indians to bear arms, not on the ground of peace and order, but on the ground that a subject people should not have the right to bear arms against an alien government so that they could organise themselves to overthrow the Government, and consequently the basic considerations on which these resolutions were passed in my judgment have vanished. Under the present circumstances, I personally myself cannot conceive how it would be possible for the State to carry on its administration if every individual had the right to go into the market and purchase all sorts of instruments of attack without any let or hindrance from the State.

Shri H. V. Kamath : On a point of clarification, Sir, the proviso is there restricting that right.

The Honourable Dr. B. R. Ambedkar : The proviso does what? What does the proviso say? What the proviso can do is to regulate, and the term 'regulation' has been judicially interpreted as prescribing the conditions, but the conditions can never be such as to completely abrogate the right of the citizen to bear arms. Therefore regulation by itself will not prevent a citizen who wants to have the right to bear arms from having them. I question very much

the policy of giving all citizens indiscriminately any such fundamental right. For instance, if Mr. Kamath's proposition was accepted, that every citizen should have the fundamental right to bear arms, it would be open for thousands and thousands of citizens who are today described as criminal tribes to bear arms. It would be open to all sorts of people who are habitual criminals to claim the right to possess arms. You cannot say that under the proviso a man shall not be entitled to bear arms because he belongs to a particular class.

Shri H. V. Kamath : If Dr. Ambedkar understands the proviso fully and clearly, he will see that such will not be the effect of my amendment.

The Honourable Dr. B. R. Ambedkar : I cannot yield now. I have not got much time left. I am explaining the position that has been taken by the Drafting Committee. The point is that it is not possible to allow this indiscriminate right. On the other hand my submission is that so far as bearing of arms is concerned, what we ought to insist upon is not the right of an individual to bear arms but his duty to bear arms. (An Honourable Member: Hear, hear.) In fact, what we ought to secure is that when an emergency arises, when there is a war, when there is insurrection, when the stability and security of the State is endangered, the State shall be entitled to call upon every citizen to bear arms in defence of the State. That is the proposition that we ought to initiate and that position we have completely safeguarded by the proviso to article 17.

Shri H. V. Kamath : (rose to interrupt).

Mr. Vice-President : You do not interrupt, Mr. Kamath. You cannot say that I have not given you sufficient latitude.

The Honourable Dr. B. R. Ambedkar : Coming to the question of saving personal law, I think this matter was very completely and very sufficiently discussed and debated at the time when we discussed one of the Directive Principles of this Constitution which enjoins the State to seek or to strive to bring about a uniform civil code and I do not think it is necessary to make any further reference to it, but I should like to say this that, if such a saving clause was introduced into the Constitution, it would disable the legislatures in India from enacting any social measure whatsoever. The religious conceptions in this country are so vast that they cover every aspect of life, from birth to death. There is nothing which is not religion and if personal law is to be saved, I am sure about it that in social matters we will come to a standstill. I do not think it is possible to accept a position of that sort. There is nothing extraordinary in saying that we ought to strive hereafter to limit the definition of religion in such a manner that we shall not extend beyond beliefs and such rituals as may be connected with ceremonials which are essentially religious. It is not necessary that the sort of laws, for instance, laws relating to tenancy or laws relating to succession, should be governed by religion. In Europe there is Christianity, but Christianity does not mean that the Christians all over the world or in any part of Europe where they live, shall have a uniform system of law of inheritance. No such thing exists. I personally do not understand why religion should be given this vast, expansive jurisdiction so as to cover the whole of life and to prevent the legislature from encroaching upon that field. After all, what are we having this liberty for? We are having this liberty in order to reform our social system, which is so full of inequities, so full of inequalities, discriminations and other things, which conflict with our fundamental rights. It is, therefore, quite impossible for anybody to conceive that the personal law shall be excluded from the jurisdiction of the State. Having said that I should also like to point out that all that the State is claiming in this matter is a power to legislate. There is no obligation upon the State to do away with personal laws. It is only giving a power. Therefore, no one need be apprehensive

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of the fact that if the State has the power, the State will immediately proceed to execute or enforce that power in a manner that may be found to be objectionable by the Muslims or by the Christians or by any other community in India.

We must all remember—including Members of the Muslim community who have spoken on this subject, though one can appreciate their feelings very well—that sovereignty is always limited, no matter even if you assert that it is unlimited, because sovereignty in the exercise of that power must reconcile itself to the sentiments of different communities. No Government can exercise its power in such a manner as to provoke the Muslim community to rise in rebellion. I think it would be a mad Government if it did so. But that is a matter which relates to the exercise of the power and not to the power itself.

Now, Sir, my friend, Mr. Jaipal Singh asked me certain questions about the Adibasis. I thought that that was a question which could have been very properly raised when we were discussing the Fifth and the Sixth Schedules, but as he has raised them and as he has asked me particularly to give him some explanation of the difficulties that he had found, I am dealing with the matter at this stage. The House will realize what is the position we have laid down in the Draft Constitution with regard to the Adibasis. We have two categories of areas,—scheduled areas and tribal areas. The tribal areas are areas which relate only to the province of Assam, while the scheduled areas are areas which are scattered in provinces other than Assam. They are really a different name for what we used in the Government of India Act as ‘partially excluded areas’. There is nothing beyond that. Now the scheduled tribes live in both, that is, in the scheduled areas as well as in the tribal areas and the difference between the position of the scheduled tribes in scheduled areas and scheduled tribes in tribal areas is this: In the case of the scheduled tribes in the scheduled areas, they are governed by the provisions contained in paragraph V of the Fifth Schedule. According to that Schedule, the ordinary law passed by Parliament or by the local Legislature applies automatically unless the Governor declares that that law or part of that law shall not apply. In the case of the scheduled tribes in tribal areas, the position is a little different. There the law made by Parliament or the law made by the local legislature of Assam shall not apply unless the Governor extends that law to the tribal area. In the one case it applies unless excluded and in the other case, it does not apply unless extended. That is the position.

Now, coming to the question of the scheduled tribes and as to why I substituted the word “scheduled” for the word “aboriginal”, the explanation is this. As I said, the word “scheduled tribe” has a fixed meaning, because it enumerates the tribes, as you will see in the two Schedules. Well, the word “Adibasi” is really a general term which has no specific *legal de jure* connotation, something like the Untouchables. It is a general term. Anybody may include anybody in the term ‘untouchable’. It has no definite legal connotation. That is why in the Government of India Act of 1935, it was felt necessary to give the word ‘untouchable’ some legal connotation and the only way it was found feasible to do it was to enumerate the communities which in different parts and in different areas were regarded by the local people as satisfying the test of untouchability. The same question may arise with regard to Adibasis. Who are the Adibasis? And the question will be relevant, because by this Constitution, we are conferring certain privileges, certain rights on these Adibasis. In order that, if the matter was taken to a court of law, there should be a precise definition as to who are these Adibasis, it was decided to invent, so to say, another category or another term to be called ‘Scheduled tribes’ and to enumerate the Adibasis under that head. Now I think my friend, Mr. Jaipal Singh, if he

were to take the several communities which are now generally described as Adibasis and compare the communities which are listed under the head of scheduled tribes, he will find that there is hardly a case where a community which is generally recognised as Adibasis is not included in the Schedule. I think, here and there, a mistake might have occurred and a community which is not an Adibasi community may have been included. It may be that a community which is really an Adibasi community has not been included, but if there is a case where a community which has hitherto been treated as an Adibasi community is not included in the list of scheduled tribes, we have added, as may be seen in the draft Constitution, an amendment whereby it will be permissible for the local government by notification to add any particular community to the list of scheduled tribes which have not been so far included. I think that ought to satisfy my friend, Mr. Jaipal Singh.

He asked me another question and it was this. Supposing a member of a scheduled tribe living in a scheduled area or a member of a scheduled tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local government, within whose jurisdiction he may be residing, the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But, so far as the present Constitution stands, a member of a scheduled tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practically impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them.

Sir, I hope I have met all the points that were raised by the various speakers when they spoke upon the amendments to this clause, and I believe that my explanation will give them satisfaction that all their points have been met. I hope that the article as amended will be accepted by the House.

Mr. Vice-President : I shall now put the amendments which have been moved, which number thirty, to the vote one by one. Amendment No. 412. The question is:

“That for article 13, the following be substituted:—

“12. Subject to public order or morality the citizens are guaranteed—

- (a) freedom of speech and expression;
- (b) freedom of the press;
- (c) freedom to form association or unions;
- (d) freedom to assemble peaceably and without arms;
- (e) secrecy of postal, telegraphic and telephonic communications.

13-A. All citizens of the Republic shall enjoy freedom of movement throughout the whole of the Republic. Every citizen shall have the right to sojourn and settle in any place he pleases. Restrictions may, however, be imposed by or under a Federal law for the protection of aboriginal tribes and backward classes and the preservation of public safety and peace.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 415. I understand it has been accepted by Dr. Ambedkar.

The question is:

“That in clause (1) of article 13, the words “Subject to the other provisions of this article” be deleted.”

The amendment was adopted.

Mr. Vice-President : Second part of amendment No. 416. The first part of the amendment has been already blocked as amendment No. 415 has been accepted.

The question is :

“That in clause (1) of article 13, after the words “all citizens shall have” the words “and are guaranteed” be added.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 420.

The question is:

“That before sub-clause (a) of clause (1) of article 13, the following new sub-clause be inserted:—

“(a-1) to freedom of thought;”

The amendment was negatived.

Mr. Vice-President : Amendment No. 421.

The question is:

“That in sub-clause (a) of clause (1) of article 13, after the word “expression”, the words “of thought and worship; of press and publication;” be added.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 422.

The question is:

“That at the end of sub-clause (a) of clause (1) of article 13, the words “both in the Press and the Platform” be inserted.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 428.

The question is:

“That at the end of sub-clause (c) of clause (1) of article 13, the words “for any lawful purpose” be inserted.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 429.

The question is:

“That in sub-clause (d) of clause (1) of article 13, after the words “move freely” the words “in a lawful manner” be inserted.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 430.

The question is :

“That in sub-clause (e) of clause (1) of article 13, after the words “and settle” the words “in a lawful manner” be inserted.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 432.

The question is:

“That in sub-clause (g) of clause (1) of article 13, after the words “or business” the words “in a lawful manner” be inserted.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 438 as modified by amendment No. 79 of List II.

The question is:

“That for amendment No. 438* of the List of amendments, the following be substituted:—

“That after sub-clause (g) of clause (1) of article 13, the following new sub-clause be added:—

“(h) to keep and bear arms;”

and the following new clause be added after clause (6):—

“(7) Nothing in sub-clause (h) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing, in the interests of public order, peace and tranquility, restrictions on the exercise of the right conferred by the said sub-clause.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 440.

The question is:

“That after sub-clause (g) of clause (1) of article 13, the following new sub-clause be added:—

(h) to follow the personal law of the group or community to which he belongs or professes to belong.

(i) to personal liberty and to be tried by a competent court of law in case such liberty is curtailed.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 502.

The question is:

“That after clause (6) of article 13, the following new clauses be added:—

“(7) Nothing in clauses (2) to (6) of this article shall affect the right guaranteed under sub-clause (h) of clause (1) of this article.

“(8) Nothing in the clauses (2) to (6) shall affect the right guaranteed under sub-clause (i) of clause (1) of this article.

“(9) No existing law shall operate after the commencement of the Constitution so far as the same affects adversely the right guaranteed under sub-clause (i) of clause (1) of this article and no law shall be passed by the Parliament or any State which may adversely affect the right guaranteed under sub-clause (i) of clause (1) of this article .”

The amendment was negatived.

Mr. Vice-President : Amendment No. 445. I shall explain one thing. Honourable Members will note that I am calling out the amendments in the order in which they were moved. That is why the numbers are not consecutive. Amendment No. 445.

* “That after sub-clause (g) of clause (1) of article 13, the following new sub-clause be added:—

(h) to keep and bear arms in accordance with regulations or reservations made by or under Union Law.”

[Mr. Vice-President]

The question is:

“That the following new clause be added after clause (1) of article 13:—

‘Liberty of the person is guaranteed. No person shall be deprived of his life, nor be arrested or detained in custody, or imprisoned, except according to due process of law, nor shall any person be denied equality before the law or equal protection of the laws within the territory of India.’ ”

The amendment was negatived.

Mr. Vice-President : Amendment No. 447.

The question is:

“That clauses (2) to (6) of article 13 be deleted and the following proviso be added to clause (1):—

‘Provided, however, that no citizen in the exercise of the said right, shall endanger the security of the State, promote ill-will between the communities or do anything to disturb peace and tranquility in the country.’ ”

The amendment was negative.

Mr. Vice-President : Amendment No. 453 as modified by amendment No. 86 of List IV. I understand it has been accepted by Dr. Ambedkar.

The question is:

“That for clause (2) of article 13, the following be substituted:—

‘(2) Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to libel, slander, defamation or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State.’ ”

The motion was adopted.

Mr. Vice-President : Amendment No. 449.

The question is:

“That after clause (1) of article 13, the following new clause be inserted:—

‘(1-A) Nothing in sub-clause (a) shall affect the operation of any existing law or prevent any State from making any law relating to sedition or conspiracy.’ ”

The amendment was negatived.

Mr. Vice-President : Amendment No. 450.

The question is:

“That clauses (2), (3), (4), (5) and (6) of article 13 be deleted.”

The amendment was negatived.

Mr. Vice-President : The second alternative in amendment No. 451.

The question is:

“That the following words be inserted at the beginning of clauses (2), (3), (4), (5) and (6) of article 13:—

‘Without prejudice and subject to the provisions of article 8.’ ”

The amendment was negatived.

Mr. Vice-President : Amendment No. 452.

The question is:

“That clauses (2), (3), (4), (5) and (6) of article 13 be deleted.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 458.

The question is:

“That in clause (2) of article 13, after the word “sedition” the words “communal passion” be inserted.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 465.

The question is:

“That clauses (3) and (4) of article 13 be deleted.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 478.

The question is:

“That clause (5) of article 13 be deleted.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 454 as modified by amendment No. 89 of List I. I understand it has been accepted by Dr. Ambedkar.

The question is:

“That with reference to amendment No. *454 of the List of amendments—

(i) in clauses (3), (4), (5) and (6) of article 13, after the words “any existing law” the words “in so far as it imposes” be inserted, and

(ii) in clause (6) of article 13, after the words “in particular” the words “nothing in the said clause shall affect the operation of any existing law in so far as it prescribes or empowers any authority to prescribe, or prevent the State from making any law” be inserted.”

The motion was adopted.

Mr. Vice-President : The question is:

“That in clauses (3), (4), (5) and (6) of article 13, before the word “restrictions” the word “reasonable” be inserted.”

The amendment was adopted.

Mr. Vice-President : Amendment No. 485.

The question is:

“That in clause (5) of article 13, the words “affect the operation of any existing law, or” be deleted.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 467.

The question is:

“(1) That in clause (3) of article 13, after the word “restrictions” the words “for a defined period” be added.”

I think the ‘Ayes’ have it.

But before I declare the result finally I must point out that there is some kind of misunderstanding. Let me read the amendment. It was moved by Mr. Syamanandan Sahaya:

“That in clause (3) of article 13, after the word “restrictions” the words “for a defined period” be added.”

* “That in clauses (2), (3), (4), (5) and (6) of article 13, the words “affect the operation of any existing law, or” be deleted.”

[Mr. Vice-President]

I definitely remember that several people spoke against it. I am going to put the amendment once again. Amendment No. 467.

The question is:

“(1) That in clause (3) of article 13, after the word “restrictions” the words “for a defined period” be added.”

The amendment was negatived.

Mr. Vice-President : I trust that in future, honourable members will take more care before they give their verdict.

Mr. Vice-President : I put amendment No. 474 to vote.

The question is:

“That in clause (4) of article 13 after the word “restrictions” the words “for a defined period” be added.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 476.

The question is:

“That in clause (4) of article 13, for the words “the general public” the words “public order or morality” be substituted.”

The amendment was adopted.

Mr. Vice-President : Amendment No. 483.

The question is:

“That in clause (5) of article 13, after the words “existing law” the word “which is not repugnant to the spirit of the provisions of article 8” be inserted.”

The amendment was negatived.

Mr. Vice-President : I put No. 485 (second part), to vote.

The question is:

“That in clause (5) of article 13, for the word “State” the word “Parliament” be substituted.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 489.

The question is:

“That in clause (5) of article 13, the word ‘either’ and the words ‘or for the protection of the interests of any aboriginal tribe’ be omitted.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 491.

The question is:

“That in clause (5) of article 13, for the word “aboriginal” the word “Scheduled” be substituted.”

The amendment was adopted.

Mr. Vice-President : Amendment No. 497.

The question is:

“That in clause (6) of article 13, for the words “morality or health” the words “the general public” be substituted.”

The amendment was adopted.

Mr. Vice-President : I put amendment No. 500 to vote.

The question is:

“That after clause (6) of article 13, the following new clause be added:

‘(7) The occupation of beggary in any form or shape for person having sound physique and perfect health whether major or minor is totally banned and any such practice shall be punishable in accordance with law.’ ”

The amendment was negatived.

Mr. Vice-President : The question is:

“That article 13 in the form in which it emerges after the different amendments which have been passed here stand part of the Constitution.”

Article 13, as amended, was adopted.

Article 13, as amended, was added to the Constitution.

Article 14

Mr. Vice-President : We come to new article 14.

(Amendment No. 504 was not moved.)

Shri H. V. Kamath: What about 13-A? That is, amendments 89, 90 and 92 of List V.

Mr. Vice-President : That has been held over. I was referring to No. 504.

Now the motion is:

“That article 14 form part of the Constitution.”

Honourable Members have been supplied with a list which indicates the manner in which I propose to conduct the proceedings of the House. No. 505 has been disallowed as being verbal. 506 may be moved.

Pandit Thakur Das Bhargava: May I take the liberty of pointing out that my amendment (No. 505) is not merely verbal? It is an amendment of substance also.

Mr. Vice-President: Then I will give my ruling later on. Mr. Naziruddin Ahmad will carry on his work.

Mr. Naziruddin Ahmad (West Bengal : Muslim): Mr. Vice-President, I beg to move:

“That in clause (1) of article 14, after the words “greater than”, the words “or of a kind other than” be inserted.”

Sir, clause (1) provides—I am reading only the material part—

“No person shall be subjected to a penalty greater than that which might have been inflicted under the law at the time of the commission of the offence.”

It guards against any punishment ‘greater than’ is provided to be inflicted upon a person. I have attempted to insert after the words ‘greater than’ the words ‘or other than’ that which might have been inflicted. There are many cases where a punishment of fine only is provided. Suppose a man is fined one lakh of rupees. An Appellate Court may turn it to an imprisonment during the sitting of the Court. That will violate the provision that where fine alone is provided for, an imprisonment may be substituted on the ground that it is not ‘greater than’ that. My amendment seeks to limit the powers of Courts to inflict punishment not only as to the extent but also to the kind. There are different kinds of punishments—fine, imprisonment, whipping, forfeiture and hanging and the like where only a particular kind of punishment is specifically provided, you should not award any punishment other than that. That is in short the effect of this amendment. Where whipping alone is provided, you cannot award a fine. Where fine alone is provided, you cannot award imprisonment or whipping or forfeiture. Where forfeiture of movables only is provided, you cannot forfeit immovables. Where forfeiture of articles relating to which