

Article 9

Mr. Vice-President : The motion before the House is:

that article 9 form part of the Constitution.

Shri C. Subramaniam (Madras : General) : Sir, I move:

“That the second para. of clause (1) of Article 9 be numbered as new clause (1a), and the words ‘In particular’ in the new clause so formed, be deleted.”

The reason for the amendment is this: article 9 as it stands is a little bit misleading. 9(1) says: “The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or any of them”. Then it says: “In particular, no citizen shall, on grounds only of religion, race, caste, sex or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainments, or.....”.

It would look as if, after a general clause saying that the State shall not discriminate, we give instances wherein the State shall not discriminate by using the words ‘In particular’. As a matter of fact it is not so. After the words ‘In particular’ that clause refers to access to shops, etc. That is not a case where the State has the power to discriminate. Therefore it should read as a separate clause. That is why I have suggested that the words ‘In particular’ should be removed and it should form a separate clause as 9(1a) thus: “No citizen shall, on grounds only of religion, race, caste, sex or any of them be subject to any disability,.....”.

Mr. Vice-President : The Member who has given notice of amendment No. 276 may now move the second part of it, viz., to insert the words “discrimination” and “and public worship” after the words ‘liability’ and ‘public resort’ respectively.

(The amendment was not moved.)

Mr. Vice-President : The next two, (277 and 278) are verbal amendments and are therefore disallowed. The words “class or community” are, in my opinion, not necessary. These are implied in the word ‘religion’.

Amendment No. 282 standing in the name of Shri Prabhu Dayal Himatsingka is a comprehensive amendment and may now be moved.

As the Member is absent, Syed Abdur Rouf may move amendment No. 280.

Syed Abdur Rouf (Assam : Muslim): I move, Sir:

“That in Article 9, after the word ‘sex’ wherever it occurs, the words ‘place of birth’ be inserted.”

The intention of this article is to prohibit discrimination against citizens. We have prohibited discrimination on grounds of ‘religion, race, caste or sex’. But I am afraid, Sir, the evil elements who might attempt to make discrimination against citizens will do so not on the ground of religion, race, caste or sex. To attempt to make discrimination on grounds of religion will be too frontal an attack for anybody to dare. As for caste, the same argument applies. As for “sex”, I do not think that in the middle of the twentieth century there will be anybody attempting to make any discrimination on that ground. What was possible in bygone days is not possible now. Now, let us examine whether the word “race” can save the situation. Race has got a very comprehensive meaning

and applies in cases like the Aryan race, the Dravidian race, the Mongolian race, etc. If anybody wants to make any discrimination on the ground that a particular gentleman belongs to a particular province, the word “race” cannot stand in his way. In my opinion attempts may be made to make discrimination against citizens on ground of place of birth and that under the guise of local patriotism. To guard against this possibility, I have brought in this amendment and I hope that it will be accepted.

Mr. Vice-President : I will not allow amendment No. 279 to be moved but it will be put to the vote. We next come to amendment No. 281. I regard this amendment as merely verbal and therefore over-rule it. Then we come to amendments Nos. 283 and 285. Amendment No. 283 may be moved. Professor K. T. Shah.

Prof. K. T. Shah : It is more or less the same as the one moved recently and I do not wish to waste the time of the House by further remarks.

(Amendments Nos. 284, 285, the latter part of 288, and No. 291 were not moved.)

Mr. Vice-President : Then we come to amendment No. 286, first part. This is merely a verbal amendment and therefore it is disallowed. I need hardly point out that the word “creed” is unnecessary in view of the more comprehensive word “religion”. Then we come to amendment No. 286, second part. Amendments Nos. 293 to 301, 304, 305, 306 and 308, are all amendments of similar import and therefore are to be considered together. It seems to me that amendment No. 293 standing in the name of Professor K. T. Shah is the most comprehensive.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

“That in clause (1) of article 9, for sub-clauses (a) and (b) the following be substituted :—

‘any place of public use or resort, maintained wholly or partly out of the revenues of the State, or in any way aided, recognised, encouraged or protected by the State, or place dedicated to the use of general public like schools, colleges, libraries, temples, hospitals, hotels and restaurants, places of public entertainment, recreation or amusement, like theaters and cinema-houses or concert-halls; public parks, gardens or museums; roads, wells, tanks or canals; bridges, posts and telegraphs, railways, tramways and bus services; and the like.’ ”

Sir, in seeking to move this amendment, I am not merely trying to give a list of places of public use or resort, or those dedicated to public service, from which in the past discrimination has been made and individuals of particular communities or classes have been excluded for no other reason except their caste or birth. In a Constitution founded upon the democratic equality of all citizens, I think it would be absurd, it would be wholly out of place, to allow any such discrimination being made. All places, therefore, which are either wholly or partly maintained out of public funds, or in any way encouraged, supported or protected by the State, should be accessible, I suggest, in equal measure to all citizens irrespective of caste, sex, birth, etc.

Clearly this is the intention of the article, and I am only seeking to expand and express it more clearly than has been done in the wording of the article as it stands. It is the more so as, in later articles, there seems to have been some exceptions introduced which might permit denominational, sectarian, or communal institutions not only to flourish; but to flourish at the cost of the public. I think it would be a very vicious principle if we tolerate this kind of exclusiveness which would be a blot on real democracy. If you mean definitely and clearly that there shall not be any sectarian or denominational exclusiveness; if you mean definitely and clearly that places of such utility as schools, or hospitals or asylums shall not be reserved for any reason for the members of a given sect or community, then I think it is not too much to demand that these should be made open and accessible to all citizens of this country. And because we have

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had in the past very distressing experience of, let us say, wells not being allowed to be used by members of a particular class, or canals not being allowed to be used except on certain occasions or under certain conditions, and still more so, schools, hospitals and other places of this kind which are of very urgent public necessity, I think it would be not acting up to the ideals of this Constitution if there is not perfect and real equality amongst the citizens of this country.

The excuse is often made that a given institution is maintained, or at least initially founded, by some donations of a munificent member of a given community, and that in his original deed of trust setting up the institution and providing the funds, he makes it a condition that only members of a given community or members of a given caste or sub-caste are to be admitted to the benefit of such an institution. I think it is a lack of civic sense, and evidently against the idea of equality of citizenship, that such institutions were maintained exclusively or predominantly for certain communities.

In the past, when the Government of the country was in the hands of an alien race, and that race itself was deliberately making exclusion against the children of the soil a common feature of this policy for holding this country by maintaining clubs, hospitals, schools and other such places for their own compatriots so to say, there could be some understanding why their example might be followed also by those, at any rate, who imitated them in most respects. But now that principle,—the cause of all exclusiveness, is no more in this country, now that we are directly recognising and founding our constitution on the equality of all citizens, I submit that to introduce or permit exclusiveness in any way, whether directly stated or through a provision like this included in the Constitution, will make for a tendency of exclusiveness which should be reprobated by us, and should be therefore disallowed.

Our Constitution should make it expressly clear that all citizens being equal, their public institutions, and places of public resort, etc., which I have mentioned in my amendment, should be quite open, and must be open, to all those who are citizens of the country. There may be, it is possible, some claim that any particular class or community bears the cost of maintenance, if not wholly, at least in part, on its own shoulders. I have tried to make the amendment so far comprehensive that, even where an institution of this kind, or a place of public resort of this kind, is founded exclusively and maintained entirely by the donation of any particular individual, if it receives any public recognition, protection, safeguard, or encouragement of any kind, from a public authority, it would come within the scope of this article and as such would be made accessible to all equally.

I do not think that in any such provision, there would be any injustice to any vested interests, not only because from its very start such a vested interest would be regarded as objectionable in my eyes. It would be open to such munificent founders without losing so to say their cheap and easy method of securing immortality for themselves, to widen the terms of that trust, if the trust deed stands in the way, and make it possible for all to enjoy the benefits or advantages of such an institution equally.

We have had in every city in India, such exclusive institutions devoted to a sect. Recently we had a distressing spectacle of a public hospital in Bombay, not being accessible to any other community than that of the founder, which raised a considerable agitation in certain quarters. The refusal of the use of that hospital was openly defended on the ground that the foundation was a particular class foundation expressly so stated, and as such not available for use to members of other communities.

I think examples like this can be quoted without number from the experience of any place of considerable population in this country. But the fact that such examples do occur, and that such experience is within the memory and recollection of almost every member of this House, is in itself the strongest argument for us to accept this amendment of mine, and make it impossible hereafter to authorize any person or any community or class to say that given institution, whether schools, temples, hospitals, theatres, restaurants or what not shall be exclusively reserved for their benefit, if in the slightest degree it receives financial help or assistance or encouragement or safeguard from the State. I hope the amendment will commend itself to the House and the principle of it will be incorporated in the Constitution.

(Amendments No. 38 of List I, Nos. 294, 295, 296, 297, 298, 300, 301, 304, 305, 306, 308, and 287 were not moved.)

Mr. Vice-President : Amendment No. 288 standing in the name of Mr. Naziruddin Ahmad consists of three separate amendments. The first amendment is merely verbal and is therefore disallowed. The second and third are the same as amendments Nos. 278 and 284. I am therefore not allowing these also.

(Amendments Nos. 292 and 302 were not moved.)

Shri Guptanath Singh (Bihar: General): Sir, I have not come here to compete with my honourable Friends who table and move irrelevant and useless amendments, but I have come here to make.....

Shri H. V. Kamath (C. P. and Berar : General): Mr. Vice-President, is the honourable Member in order in making such a statement in this House?

Mr. Vice-President : I think you had better go on with your speech.

Shri Guptanath Singh : I have come, Sir, to move this little amendment to make the article comprehensive. So, Sir, with your permission, I beg to move:

“That in sub-clause (b) of the second paragraph of clause (1) of article 9, after the words ‘wells, tanks,’ the words ‘bathing ghats’ be inserted.”

I have deleted the word: ‘kunds’ from the original amendment and I only want that “bathing ghats” should be included here:

(Amendment No. 307 was not moved.)

Mr. Vice-President : Amendment Numbers 309 and 322 are the same. Amendment No. 322 is more comprehensive. I shall allow that amendment to be moved at the proper time.

Then, Amendment Nos. 310, 312, 320 and 321 are of similar import. Of these I think Amendment No. 310 is the most comprehensive one.

(Amendment Nos. 310, 312, 320 and 321 were not moved.)

Mr. Vice-President : So, these amendments go. Then, we take up Amendment No. 311.

(Amendment No. 311 was not moved.)

Mr. Vice-President : Amendment No. 313 is disallowed as being verbal. Amendment No. 314. Dr. Ambedkar.

Shri H. V. Kamath : Mr. Vice-President, Sir, may I ask whether this is merely a verbal or at best a formal amendment liable to be disallowed? It merely seeks to substitute the words ‘State funds’ in place of the words ‘the revenues of the State’.

Mr. Vice-President : I shall keep that in mind. Dr. Ambedkar, will you please deal with that point also?

The Honourable Dr. B. R. Ambedkar : Sir, I move:

[The Honourable Dr. B. R. Ambedkar]

“That in sub-clause (b) of the second paragraph of clause (1) of article 9, for the words ‘the revenues of the State’ the words ‘State funds’ be substituted.”

The reason why the Drafting Committee felt that the words “the revenues of the State” should be replaced by the words “State funds” is a very simple thing. In the administrative parlance which has been in vogue in India for a considerably long time, we are accustomed to speak of revenues of a Provincial Government or revenues of the Central Government. When we come to speak of local boards or district boards, we generally use the phrase local funds and not revenues. That is the terminology which has been in operation throughout India in all the provinces. Now, the honourable members of the House will remember that we are using the word ‘State’ in this Part to include not only the Central Government and the Provincial Governments and Indian States, but also local authorities, such as district local boards or taluka local boards or the Port Trust authorities. So far as they are concerned, the proper word is ‘Fund’. It is therefore desirable, in view of the fact that we are making these Fundamental Rights obligatory not merely upon the Central Government and the Provincial Governments, but also upon the district local boards and taluka local boards, to use a wider phraseology which would be applicable not only to the Central Government, but also to the local boards which are included in the definition of the word ‘State’. I hope that my honourable Friend Mr. Kamath will now understand that the amendment which I have moved is not merely verbal, but has some substance in it.

Sir, I move.

Mr. Vice-President : There is an amendment to Amendment No. 314. That is Amendment No. 40 in List I standing in the name of Pandit Thakur Das Bhargava. He is not here. Therefore, I need not discuss the relevancy or otherwise of this particular amendment. The next one is Amendment No. 41 in List I, in the name of Shri Phool Singh. He is also absent. We now pass on to Amendment No. 315 standing in the name of Mr. Mohd. Tahir and Saiyid Jafar Imam.

Mr. Mohd. Tahir (Bihar : Muslim): Sir, with your permission, I want to bring to your notice that I had one Amendment No. 286. We have not decided anything about that amendment. Of course, the first part has been disallowed; the second part still remains.

Mr. Vice-President : I said that that will be put to the vote. Now, I cannot allow you to speak on that. If I make an exception in your favour, everybody else would claim the same right.

But, I think I have to make one point clear. This does not preclude the honourable Member from speaking on his Amendment No. 286 if he gets a chance to speak while participating in the general discussion.

Mr. Mohd. Tahir : Sir, I beg to move :

“That in sub-clause (b) of clause (1) of article 9, for the words ‘State or dedicated to the use of the general public’ the words ‘State or any local authority or dedicated to the use of the general public and any contravention of this provision shall be an offence punishable in accordance with law’ be substituted.”

Sir, in moving this amendment I submit that so far as the first part of my amendment is concerned, *viz.*, the addition of ‘local authority,’ I do not press because the definition which has been given of ‘State’ includes local authority as well and therefore I do not press it. But so far as the penal clause is concerned, I will submit a few words and I will press it. Sir, in fact this article in our Constitution gives us a lesson that we should realise the equality of human beings as such and therefore it is necessary that some penal clause should be added in

this article. For your information I may bring it to your notice and to the notice of the House as well that in certain parts of our country as we know there are roads through which the people of scheduled castes and other low castes are not allowed to walk. In certain parts of our country we have found that if a scheduled caste man goes to draw water from the well, he immediately meets with his death. These are the sentiments which are working in the minds of certain sections of our country and therefore if we are really sincere that we are going to give relief to those who have been disregarded so long, then I submit that this penal clause must be added in this article. In view of this I hope that the whole House will agree, if at all they are sincere to give this relief to the general people, to add this penal clause and accept my amendment as such. With these few words, I move.

Mr. Vice-President : Amendments Nos. 316 to 319 not moved. No. 323 Prof. K. T. Shah.

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

“That at the end of clause (2) of article 9, the following be added:—

‘or for Scheduled Castes or backward tribes, for their advantage, safeguard or betterment’.”

The clause, as it is, stands thus:—

“Nothing in this article shall prevent the State from making any special provision for women and children.”

Sir, it must be distinguished from the preceding article. I read it, at any rate, that this is a provision for discrimination in favour of women and children, to which I have added the Scheduled Castes or backward tribes. This discrimination is in favour of particular classes of our society which, owing to an unfortunate legacy of the past, suffer from disabilities or handicaps. Those, I think, may require special treatment; and if they do require it, they should be permitted special facilities for some time so that real equality of citizens be established.

The rage for equality which has led to provide equal citizenship and equal rights for women has sometimes found exception in regard to special provisions that, in the long range, in the interest of the country or of the race, exclude women from certain dangerous occupations, certain types of work. That, I take it, is not intended in any way to diminish their civic equality or status as citizens. It is only intended to safeguard, protect or lead to their betterment in general; so that the long-range interests of the country may not suffer.

In regard to the scheduled castes and backward tribes, it is an open secret that they have been neglected in the past; and their rights and claims to enjoy and have the capacity to enjoy as equal citizens happens to be denied to them because of their backwardness. I seek therefore by this motion to include them also within the scope of this sub-clause (2), so that any special discrimination in favour of them may not be regarded as violating the basic principles of equality for all classes of citizens in the country. They need and must be given, for some time to come at any rate, special treatment in regard to education, in regard to opportunity for employment, and in many other cases where their present inequality, their present backwardness is only a hindrance to the rapid development of the country.

Any section of the community which is backward must necessarily impede the progress of the rest; and it is only in the interest of the community itself, therefore, that it is but right and proper we should provide facilities so that they may be brought up-to-date so to say and the uniform progress of all be forwarded.

I have, of course, not included in my amendment the length of years, the term of years for which some such special treatment may be given. That may

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be determined by the circumstances of the day. I only want to draw your attention to the fact that there are classes of our citizens who may need through no fault of theirs, some special treatment if equality is not to be equality of name only or on paper only, but equality of fact. I trust this will commend itself to the House and the amendment will be accepted.

Mr. Vice-President : Now the article is open for general discussion. I call upon Mr. Raj Bahadur of Matsya Union to speak.

Shri Raj Bahadur (United State of Matsya): Mr. Vice-President, Sir, as you announced to-day in this House that amendments Nos. 280, 282 and 279 would be taken up for discussion, I studied them again and a new meaning, which did not occur to me previously, disclosed itself to me. In amendment No. 280 which was moved by my Friend Syed Abdur Rouf, the words used are "place of birth", whereas in the amendment that was to be moved by Mr. Prabhu Dayal, the word 'descent' also occurs. It is unfortunate that that amendment of Mr. Prabhu Dayal has not been moved. Even so, when we study the article we observe that whereas discrimination is sought to be eliminated on other grounds, nothing has been said about the discrimination on the basis of descent, on the basis of privileges enjoyed by some on account of their dynastic or family status. I, therefore, suggested an amendment to amendment No. 280, to the effect that the words "place of" be deleted, from the words sought to be inserted in the article by the amendment No. 280. It is clear that the words "place of" occurring before the word "birth" have restricted and limited the meaning of the whole Amendment to the "place of residence" only. Therefore, if the words "place of" are deleted, we may achieve a double objective. Firstly that the word 'birth' when it occurs in the context of the whole article would imply not only residence, but also "descent", and as such the purpose which was contemplated by the mover of the amendment 282 shall be satisfied.

Mr. Vice-President : I said this would be a general discussion but you are putting forward your amendments; I can hardly allow that. You can speak upon the whole clause and incidentally refer to your amendment. Kindly excuse me if I ask you to carry out my wish and speak on the article generally.

Shri Raj Bahadur : Yes, Sir. What occurs to me is this. We have seen it in the past and even at present, in the matter of distribution of offices and appointments in the State or in the matter of rights and privileges enjoyed on the basis of property etc., that there has been some discrimination on account of "descent"; on account of dynasty or family status as also on account of factors of an allied nature. It is my humble submission that when we are here to forge our constitution, we should eliminate all sorts of distinctions arising on the basis not only of religion, caste, sex etc. but also on the basis of family and descent. While I agree that the purpose and the idea that is covered by amendment No. 280 is necessary, I would also suggest that something must be put in this article which may obviate all possibilities of, and eliminate all chances of discrimination, favouritism, or nepotism, on the basis of birth or descent. It is common experience, rather it is a kind of grievance with most of us that in the distribution of offices and appointments of the State and also in the services, some discrimination is observed on the basis of birth and descent. We see it in the recruitment to the Air Force, and to some extent in the Army or elsewhere in the services of the Government. It is a grievance with us that people who are better placed and who happen to be born with a silver spoon in their mouth get better chances than those born in mud huts or cottages in the villages. All must, however, have equal chances.

There is to be a provision in the Constitution to the effect that there shall be Raj Pramukhs and not Governors, in the States and the States' Union and in this we observe there would be discrimination again on the basis of birth or descent, on the basis of one's being a prince or a member of a royal family or not. That sort of discrimination also should be eliminated. In fact all such discrimination should be eliminated.

Shri S. Nagappa (Madras : General): Mr. Vice-President. Sir, this clause as a whole gives independence, especially to the class for which this amendment is intended. I think you are aware that as a result of the hard labour and struggle under the leadership of Mahatma Gandhi, the country has become free politically. But this particular section of the population is doubly free, in that it is not only politically free, but it is also socially free. I hope the Honourable Pandit Jawaharlal Nehru who is the true successor of Mahatma Gandhi will see to it that we in this section of the population are made economically free too and are elevated. Freedom means political, social and economic freedom. Two aspects of freedom have been covered by this particular amendment, thanks to the efforts of Gandhiji who has brought about such a social revolution.

I would have been much more pleased, if this clause which intends to give social rights to this particular community had been more expansive and explanatory. Take for instance, the question of access to shops. Shops means places where you can purchase things by paying money. But there are places where you can purchase service. I would like to know if these places are also included in the word 'shop'. When I go to a barber's shop or a shaving saloon, I do not buy anything concrete, but I purchase labour. So also laundries. There I purchase the services of a washerman. I would like to know from the honourable the Mover if the word 'shop' includes all these kinds of places like laundries and saloons.

I come to clause (b) where reference is made to places of public resort maintained wholly or partly out of the revenues of the State. But what about other places which are not maintained either partly or wholly out of the revenues of the State? I would request that these words "maintained wholly or partly out of the revenues of the State" to be deleted. That would be better. Any way, I would like to get some explanation from the mover of this clause as to what places are covered by this clause. I am glad of the social revolution brought about by Mahatma Gandhiji, within such a short period of years, from 1932 to 1948—only 16 years. Within this short period age-long disabilities and sufferings have been removed. I am confident that it will not take much time, especially with a statutory provision of this sort to carry the reform further. I hope that the Prime Ministers in the provinces would take note of this particular provision and see that before the Act is adopted, even the remaining disabilities vanish away, without waiting for the adaptation of this Act.

The third aspect of freedom remains, that is, economic freedom, and I hope that our Prime Minister will look to the economic elevation of the downtrodden classes. I support the clause whole-heartedly, and in doing so, request the mover to explain whether the word shop includes places of the kind I have referred to, and also whether places of public resort include places like burial or cremation grounds. These are not maintained out of public revenues or by public bodies, they being generally maintained by religious bodies. I would like to know whether there is to be a separate burial or cremation ground for these unfortunate sons of the soil, or whether all aspects are covered by this clause. I have raised this point so that these points may go down in the record of the proceedings of the House and be useful, if some lawyer were to misinterpret the meaning of the clause in some court of law. Most of our courts are courts of law and not justice. One

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should be more correct in framing the clause. I would like to know whether the honourable the Mover has considered this aspect of the matter. If he can include these words now I shall be pleased; otherwise if he can come forward and explain whether these disabilities are covered I shall be satisfied. At least it will be on record of the proceedings of this House, so that lawyers who attempt to misrepresent.....

Shri K. Hanumanthaiya (Mysore State): Sir, I take objection to the honourable Member's remarks about lawyers that they are used to "misrepresenting".

Mr. Vice-President : I would ask Mr. Nagappa not to try to answer the honourable Member.

Shri S. Nagappa : I am not abusing lawyers. I am only saying what they are doing.....

Shri K. Hanumanthaiya : That is worse.

Mr. Vice-President : Mr. Nagappa is not carrying out my request.

Shri S. Nagappa : Besides wells and tanks there are other places where one can draw water. I would like to have a full explanatory answer from the honourable Member.

Sardar Bhopinder Singh Man (East Punjab : Sikh): *[Mr. Vice-President, I feel that the Fundamental Rights, which are being conceded, will be incomplete if places of worship are not included in the list. It is often seen in life in India that the doors of many temples and other places of worship, meant for the public use, are not kept open for all sections of people by their custodians or Pujaris. This is a dark aspect; its prevalence has reduced these centres of love and fellow-feeling into breeding grounds for communalism and mutual hatred. This begets ill-will and hatred against one another. The greatest achievement of the Father of the Nation was to have the gates of temples opened for the untouchables. Today, we have yet to fulfil those expectations. An argument may be advanced that people, who are not aware of the ways to be followed and of the reverence to be shown there, cannot be allowed entry into temples or the places of worship. But my answer to that would be that if any such person wants to visit a temple, due precaution should be taken about him. But there is no reason for the discrimination, that one person may be allowed entry while another is stopped from doing so. I say this gap should be filled up, and this stigma should be removed from the face of India. These barriers of religion, which divide people of India from one another, should be uprooted forever. Therefore, I wish that this lacuna should be removed by accepting the amendment of Prof. K. T. Shah or amendments Nos. 296 and 297.]

Mr. Mohd. Tahir: Sir, this article says:

"The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or any of them.

In particular, no citizen shall, on grounds only of religion, race, caste, sex or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment."

In this connection I have my amendment in which I have suggested that after the word 'hotels' the words "*Dharamsalas, Musafir khanas*" be added. Sir we find that these two institutions are regularly run throughout our country by private funds. If a traveller who is in need of accommodation happens, fortunately or unfortunately, to be a scheduled caste or any other caste man who is not liked by the management of the *Dharamsala* he is not allowed to halt in the *Dharamsala*. And so is the case in respect to *Musafir khanas* also. Therefore I submit that these words "*Dharamsalas, Musafir khanas*" should be added

*[] Translation of Hindustani Speech.

Prof. Shibban Lal Saksena (United Provinces : General): Sir, this article should not have been put in this form. I would have wished that only the first three lines of this clause remained in the Draft and the rest were omitted. "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or any of them", should be enough; by adding the sub-clauses we are really subtracting from the generality of the first clause. I personally also think that after we have provided for the abolition of untouchability under article 11, this particular sub-clause providing for the elimination of disabilities in regard to tanks, wells and roads is unnecessary. So far as such disabilities arise from untouchability, nobody will henceforward be able to practise them. Under article 11 no one can discriminate against any person on the ground of untouchability, as it has been made an offence punishable by law. I personally feel that the clause about the use of wells, tanks, roads, etc., does not seem to be worthy of finding a place in our constitution; for such disabilities as exist are merely transitory and will vanish with time. But if it becomes permanently incorporated in the constitution people in other parts of the world will despise us for the existence of such discrimination in the past. Article 11 is in fairly wide terms, so that every discriminatory action which is supposed to be due to untouchability will be forbidden. I therefore think that these sub-clauses are unnecessary and all these amendments would not have been moved if we had confined the article to the first three lines only. I may also point out the revolutionary character of this article. I know that there are hundreds of Hindu shops where food is served to Hindus only. Food is a matter where Hindus have got special habits and they generally will not allow anybody to enter the place where they eat food. I hope that the Hindu society will realise that they have now to change those habits and that anybody who is not a Hindu will be able to enter these shops or hotels where so far food is served to Hindus only. I think this is a very serious thing because henceforth it will be a fundamental right of every citizen to enter any Hindu Hotel. Anybody can now claim entry to any place where food is sold. I therefore think that we must prepare the ground to give effect to this change which is of a far-reaching character. Otherwise, there will be clashes everyday. I wish this clause (a) were kept as a Directive Principle of State Policy and were not made a fundamental right. That would have given the necessary time to Hindu Society to adjust itself to the needs of the situation. This portion of the article is particularly unnecessary in view of article 11 which provides for the banning of untouchability.

Shri R. K. Sidhwa (C.P. & Berar : General): Mr. Vice-President, Sir, I consider this sub-clause—sub-clause (b) of article 9—an important clause, I see that under this clause "places of public resort" cover places of amusements and the like and therefore there is no necessity to mention all the places like theatres and cinemas. Personally I feel that gardens and all these things are covered by this word "resort". It has been suggested that the words "places of worship" should also be included here. So long as this country has many religions I do not think it advisable to insert these words in this clause. It can be done only when we attain one religion in this country.

But there is one point to which I would like to draw the attention of the mover of the article. The words used here are "the use of wells, tanks, roads and places of public resort..." Ordinarily what we mean by "public" is every person or collection of persons of all communities, irrespective of caste or creed. But while I was referring to the Indian Penal Code I found the word "public" is defined in a restricted manner. Section 12 of the Indian Penal Code says that the word "public" includes any class of the public or any community..." The description "any class of the public" means that a Sanatani will be a "class of the community". The definition of the word 'public' is in such a restricted

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manner that if a well is to be dug by a Sanatani in a village he will not allow the use of that well to the reformist or the Scheduled Caste. I do not know whether the attention of the honourable Mover has been drawn to this. I am only giving an illustration about one community. The Hindu will not allow the Muslim to draw water from that well, or *vice versa*. It may be said that this relates to the offences caused under the Indian Penal Code. But the Indian Penal Code relates to so many other offences. I do not know whether there is another Act where the word “public” is defined collectively irrespective of any caste or community. I had tabled an amendment also and I do wish that this should not be left in any ambiguity because this is the fundamental, the basis, on which we are protecting the rights of every citizen. For any breach of the fundamental right anybody can go to a court. Why should we leave it ambiguous and allow the public to go to the Supreme Court for getting the meaning of the word “public” defined? Why should we not make it very clear here and say that “public” means everyone irrespective of caste or creed, particularly when you have a restricted definition in the Penal Code? I therefore submit, with due respect to the knowledge of the legal luminaries that this matter should be made clear. To me, to every layman the meaning of the word ‘public’ is clear; but we find the meaning different in the law books. This matter therefore requires explanation to avoid any kind of complication in the future.

(One or two honourable Members rose to speak.)

Mr. Vice-President : You must forgive me if I am unable to meet the wishes of honourable Members. I want the full co-operation of the House and I ask it specially just now. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, dealing with the amendments which have been moved, I accept Amendment No. 280 moved by Mr. Rouf.

Shri Syamanandan Sahaya (Bihar : General): Will the honourable Member give his views also about amendments which have not been moved?

The Honourable Dr. B. R. Ambedkar : I am very sorry I cannot give opinions regarding amendments which have not been moved.

Shri Syamanandan Sahaya : It was no fault of the member concerned.

The Honourable Dr. B. R. Ambedkar : I cannot help it. I accept the amendment of Mr. Rouf adding the words “place of birth”, I also accept the amendment (No. 37 in List I) by Mr. Subramaniam to amendment No. 276 dropping the words “In particular” in clause (1) of article 9.

With regard to amendment No. 303 moved by Mr. Guptanath Singh, I am prepared to accept his amendment provided he is prepared to drop the word “kunds” from his amendment.

Shri Guptanath Singh : I have already done that, Sir.

The Honourable Dr. B. R. Ambedkar : Then, among the many amendments which I am sorry I cannot accept, I think it is necessary for me to say something about two of them. One is amendment No. 315 moved by Mr. Tahir which requires that any contravention of the provisions contained in article 9 should be made a crime punishable by law. My Friend Mr. Tahir who moved this amendment referred particularly to the position of the untouchables and he said that in regard to these acts which prevent the untouchables from sharing equally the privileges enjoyed by the general public, we will not be successful in

achieving our purpose unless these acts, preventing them from using places of public resort, were made offences. There is no doubt that there is no difference of opinion between him and other Members of this House in this matter because all of us desire that this unfortunate class should be entitled to the same privileges as members of the other communities without any let or hindrance from anybody. But he will see that that purpose is carried out entirely by the provisions contained in article 11 which specifically deals with untouchability: instead of leaving it to Parliament or to the State to make it a crime, the article itself declares that any such interference with their rights shall be treated as an offence punishable by law. If his view is that there should be a provision in the Constitution dealing generally with acts which interfere with the provisions contained in article 9, I would like to draw his attention to article 27 in the Constitution which places an obligation on Parliament to make laws declaring such interferences to be offences punishable by law. The reason why such power is given to Parliament is because it is felt that any offence which deals with the Fundamental rights should be uniform throughout the territory of India, which would not be the case if this power was left to the different States and Provinces to regulate as they like. My submission therefore is that, so far as this point is concerned, the Constitution contains ample provision and nothing more is really necessary.

With regard to amendment No. 323 moved by Professor K.T. Shah, the object of which is to add "Scheduled Castes" and "Scheduled Tribes" along with women and children, I am afraid it may have just the opposite effect.

The object which all of us have in mind is that the Scheduled Castes and Scheduled Tribes should not be segregated from the general public.

For instance, none of us, I think, would like that a separate school should be established for the Scheduled Castes when there is a general school in the village open to the children of the entire community. If these words are added, it will probably give a handle for a State to say, "Well, we are making special provision for the Scheduled Castes". To my mind they can safely say so by taking shelter under the Article if it is amended in the manner the Professor wants it. I therefore think that it is not a desirable amendment. Then I come to my Friend Mr. Nagappa. He has asked me to explain some of the words which have been used in this article. His first question was whether "shop" included laundry and shaving saloon. Well, so far as I am concerned, I have not the least doubt that the word 'shop' does include laundry and shaving place. To define the word 'shop' in the most generic term one can think of is to state that 'shop' is a place where the owner is prepared to offer his service to anybody who is prepared to go there seeking his service. A laundryman therefore would be a man sitting in his shop offering to serve the public in a particular respect, namely, wash the dirty cloths of a customer. Similarly, the owner of a shaving saloon would be sitting there offering his service for any person who enters his saloon.

The Honourable Shri B. G. Kher (Bombay : General): Does it include the offices of a doctor and a lawyer?

The Honourable Dr. B. R. Ambedkar: Certainly it will include anybody who offers his services. I am using it in a generic sense.

I should like to point out therefore that the word 'shop' used here is not used in the limited sense of permitting entry. It is used in the larger sense of requiring the services if the terms of service are agreed to.

The second question put to me was whether 'place of public resort' includes burial grounds. I should have thought that very few people would be interested in the burial ground, because nobody would care to know what happens to him after he is dead. But, as my Friend Mr. Nagappa is interested in the point

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should say that I have no doubt that a place of public resort would include a burial ground subject to the fact that such a burial ground is maintained wholly or partly out of public funds. Where there are no burial grounds maintained by a municipality, local board or taluk board or Provincial Government or village panchayat, nobody of course has any right, because there is no public place about which anybody can make a claim for entry. But if there is a burial ground maintained by the State out of State funds, then obviously every person would have every right to have his body buried or cremated therein.

Then my Friend asked me whether ponds are included in tanks. The answer is categorically in the affirmative. A tank is a larger thing which must include a pond.

The other question that he asked me was whether rivers, streams, canals and water sources would be open to the untouchables. Wells, rivers, streams and canals no doubt would not come under Article 9; but they would certainly be covered by the provisions of Article 11 which make any interference with the rights of an untouchable for equal treatment with the members of the other communities an offence. Therefore my answer to my Friend Mr. Nagappa is that he need have no fears with regard to the use of rivers, streams, canals, etc., because it is perfectly possible for the Parliament to make any law under Article 11 to remove any such disability if found.

Shri S. Nagappa: What about the courses of water?

The Honourable Dr. B. R. Ambedkar: I cannot add anything to the article at this stage. But I have no doubt that any action necessary with regard to rivers and canals could be legitimately and adequately taken under article 11.

Shri R. K. Sidhwa: What about the interpretation of the word 'public'?

The Honourable Dr. B. R. Ambedkar: My Friend Mr. Sidhwa read out some definition from the Indian Penal Code of the word 'public' and said that the word 'public' there was used in a very limited sense as belonging to a class. I should like to draw his attention to the fact that the word 'public' is used here in a special sense. A place is a place of public resort provided it is maintained wholly or partly out of State funds. It has nothing to do with the definition given in the Indian Penal Code.

Shri Mahavir Tyagi (United Provinces: General): May I know what is to happen to the amendments which have been declared by you as verbal amendments? Among them I fear there are some which really aim at making a substantial change in the meaning of the clause or article concerned.

Mr. Vice-President : In that matter I am the sole judge. You have given me discretionary power and I propose to exercise that power in my own way.

Shri Mahavir Tyagi: I want information. I do not dispute your judgment or your right. I only want to know whether the sense of the House will be accommodated in regard to the amendments ruled out or whether such amendments will be considered by the Drafting Committee or some other body? My suggestion is that you will be doing well the House if you will kindly appoint a small sub-committee which will go into these verbal amendments and find out whether some of them at least aim at effecting a change in the meaning of the clause concerned. I do not dispute what you said. They are out of order because you have ruled them as such. But even commas and full stops have some value. My only request is that.....

Mr. Vice-President : May I suggest a better way which might appeal to you, a way which is better than the appointment of a sub-committee? Those who

think that their amendments are of some substance may approach the Drafting Committee directly themselves. If they do so I am sure due consideration will be shown to them.

Shri Mahavir Tyagi: Now I am satisfied, Sir.

Mr. Mohd. Tahir: As the Honourable Dr. Ambedkar has answered my points to my satisfaction with regard to amendment No. 315, I ask for leave to withdraw it.

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

Mr. Vice-President : Now I will put the rest of the amendments to the vote of the House. Dr. Ambedkar has accepted the first one.

The question is:

“That for amendment No. 276 in the List of Amendments, the following be substituted:—

‘That the second para of clause (1) of article 9 be numbered as new clause (1a), and the words ‘In particular’ in the new clause so formed, be deleted.’ ”

The motion was adopted.

Mr. Vice-President : The next amendment is 279. The question is:

“That in article 9, after the word ‘race’ the word ‘birth’ be inserted.”

The amendment was negatived.

Mr. Vice-President : The next one is No. 280 which, I understand, Dr. Ambedkar has accepted. The question is:

“That in article 9, after the word ‘sex’ wherever it occurs, the words ‘place of birth’ be inserted.”

The amendment was adopted.

Mr. Vice-President : Then we come to the second part of amendment No. 286. The question is:

“That in sub-clause (a) of clause (1) of article 9, after the words ‘restaurants, hotels’ the words ‘Dharamsalas, Musafirkhanas’ be inserted.”

The amendment was adopted.

Mr. Vice-President : Amendment No. 293. The question is:

“That in clause (1) of article 9, for sub-clauses (a) and (b) the following be substituted:—

‘any place of public use or resort, maintained wholly or partly out of the revenues of the State, or in any way aided, recognised, encouraged or protected by the State, or place dedicated to the use of general public like schools, colleges, libraries, temples, hospitals, hotels and restaurants, places of public entertainment, recreation or amusement, like theaters and cinema-houses of concert-halls; public parks, gardens or museums; roads, wells, tanks or canals; bridges, posts and telegraphs, railways, tramways and bus services; and the like.’ ”

The amendment was negatived.

Mr. Vice-President : Then we come to amendment No. 296. The question is:

“That in sub-clause (a) of clause (1) of article 9, after the words ‘of Public entertainment’ the words ‘or places of worship’ be inserted.”

The amendment was negatived.

Mr. Vice-President : I do not remember what happened to 299. To be perfectly sure, I am going to put it to the vote. The question is:

“That in sub-clause (a) of clause (1) of article 9, the word ‘public’ be deleted.”

The amendment was negatived.

Mr. Vice-President : Then amendment No. 301 standing in the name of Mr. Tajamul Husain. The question is:

“That in sub-clause (a) of clause (1) of article 9, between the words ‘public’ and ‘restaurants’ the words ‘places of worship’ Dharamsalas, Musafirkhanas’ be inserted.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 303 as revised. I understand that Dr. Ambedkar has accepted it. The question is:

“That in sub-clause (b) of the second paragraph of clause (1) of article 9, after the word ‘wells, tanks’ the words ‘bathing ghats’ be inserted.”

The amendment was adopted.

Mr. Vice-President : Then amendment No. 305. The question is:

“That in sub-clause (b) of clause (1) of article 9, after the word ‘roads’ add a comma and also the words ‘hospitals, educational institutions’.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 314. The question is:

“That in sub-clause (b) of the second paragraph of clause (1) of article 9, for the word ‘the revenues of the State’ the words ‘State funds’ be substituted.”

The amendment was adopted.

Mr. Vice-President : Then the last amendment standing in the name of Professor Shah. No. 323. The question is:

“That at the end of clause (2) of article 9, the following be added:—

‘or for Scheduled Castes or backward tribes, for their advantage, safeguard or betterment.’”

The amendment was negatived.

Mr. Vice-President : Now, I shall put the article as revised to the vote. The question is:

That article 9, as amended, form part of the Constitution.

The motion was adopted.

Article 9, as amended, was added to the Constitution.

Article 10

Mr. Vice-President : Shall we pass on to the next article, new article 9-A? The amendments here are in the form of Directive Principles. I disallow them. Then we go to article 10.

Shri T. T. Krishnamachari (Madras : General): I think the idea is to hold this over.

The Honourable Dr. B. R. Ambedkar : I request you to hold this article over.

Mr. Vice-President : Then we may go to the next article, 10-A.

(Amendment No. 369 was not moved.)

Article 11

Mr. Vice-President : We now come to article 11. The motion before the House is that article 11 form part of the Constitution. We shall now take up the amendments one by one. No. 370 is out of order. Amendments Nos. 371, 372, 373 and also 375 and 378 are of a similar character. I suggest that amendment No. 375 be moved.

(Amendments No. 375 and No. 371 were not moved.)