

institutions. I do not find what is wrong with religion itself. There might be something wrong with religion if it is handled by wrong people, if it is propagated by incompetent people.

Shri Rohini Kumar Chaudhari (Assam : General): Sir, I oppose the motion which was moved by my honourable Friend Professor Shah. I do not understand why he should be so much against religious heads. My honourable Friend, I think, knows that there are provisions in the Civil Procedure Code whereby even ex-Ministers may be exempted from appearing in court for some months. In our part of the country there are Shatradhikars who are exempted generally speaking from appearing in any court. It would revolutionise the minds of their disciples if by any chance they are made to appear in any court and give evidence. When Professor Shah is not saying any word against the privileges which are now enjoyed by some privileged persons like high officials and Ministers of the State, why is he so anxious to curtail the privileges of heads of religious organisations in the Constitution itself, instead of allowing it to the discretion of the courts to extend the exemptions or privileges in some cases which are really necessary?

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, the amendment probably is quite laudable in its object but I do not know whether the amendment is necessary at all. In the first place, all these titles and so on which religious dignitaries have cannot be hereafter conferred by the State because we have already included in the fundamental rights that no title shall be conferred and obviously no such title can be conferred by the State. Secondly, as my honourable friend is aware perhaps, no suit can lie merely for the enforcement of a certain title which a man chooses to give himself. If a certain man calls himself a Sankaracharya and another person refuses to call him a Sankaracharya, no right of suit can lie. It has been made completely clear in Section 9 of the Civil Procedure Code that no suit can lie merely for the enforcement of what you might call a dignity. Of course if the dignity carries with it some emoluments or property of some sort, that is a different matter, but mere dignity cannot be a ground of action at all.

With regard to the amenities which perhaps some of them enjoy, it is certainly within the power of the executive and the legislature to withdraw them. It is quite true, as my honourable Friend Mr. Chaudhari said, that in some cases summons are sent by the magistrate. In other cases when the man concerned occupies a bigger position in life, instead of sending summons, he sends a letter. Some persons, when appearing in courts, are made to stand while some other persons are offered a chair. All these are matters of dignity which are entirely within the purview of the legislature and the government. If there was any anomaly or discrepancy or disparity shown between a citizen and a citizen, it is certainly open both to the legislature and the executive to remove those anomalies. I therefore think that the amendment is quite unnecessary.

Mr. Vice-President : The question is:

“That after article 22, the following new article be inserted :—

‘22-A. All privileges, immunities or exemption of heads of religious organisations shall be abolished’.”

The motion was negatived.

Article 23

Mr. Vice-President : We shall now proceed to the next article. The first amendment is No. 673 which is disallowed for the obvious reason that it practically amounts to a negative vote. Then we come to amendment No. 674.

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

“That for article 23, the following article be substituted :—

‘23. Without detriment to the spiritual heritage and the cultural unity of the country, which the State shall recognise, protect and nourish, any section of the citizens residing in the territory of India or any part thereof, claiming to have a distinct language, script and culture shall be free to conserve the same’.”

Sir, in moving this substitution for the existing article No. 23, I am speaking nothing new nor anything against what has been said in article 23. It is a fact and it has been rightly recognised in article 23 that we have different scripts, different languages and even different cultures in the territory of India and they have been recognised and, preserved and they must flourish, but I should say, as all roads lead to Rome and ought also to lead to Rome, all these cultures, all these languages and all these scripts must be taken as a means to a common end, which the State must recognise, nourish and protect. In fact, it has been our desire and it has been the very soul of the birth of our freedom and our resurgence that we must go towards unity in spite of all the diversity that has divided us. I, therefore, submit to the House that although we have many languages, many cultures, many scripts, many religions, it may not yet be impossible for us to find out if there is something common for India bequeathed even from the hoary past, which has been running on till today, vitalizing and inspiring us. Just as there is the ocean to which all the rivers go, to the cultural ocean, to the spiritual ocean that is India, that has been our heritage, all our rivers of culture, language and script, hopes and aspirations must go and from a mighty ocean ever full. Sir, this article 23 which is an article recognising diversity must find out a way for our unity and unless we have that unity, the State administration or the State rolling machine, just a rule of external law, cannot bring us to unity. Therefore for a real unity, for a homogeneous unity, and natural unity, we must evolve a certain philosophy, a certain culture, and a certain language which will contain and carry everything and still be more than everything and must at the same time be running from the ageless past to the eternal future. I therefore, submit, Sir, this amendment, which I am suggesting will find favour with the House and the House will realize that, without developing this unity which can be brought about only on a very high plane, on the plane where we are one, inspite of the appearance that we are many and in the plane of the heart, which is the home of the spirit and also in the sphere of culture, which we have all been nourishing, there cannot be a real unity and we will have no real contribution to the world civilization or the amity of man, his peace and prosperity. I therefore commend this amendment to the favourable consideration of this House.

Maulana Hasrat Mohani (United Provinces : Muslim): May I suggest that we keep this amendment for a decision afterwards or till such time as we decide what shall be the language which will be accepted as the universal language for the whole country and which is the script? May I suggest that this amendment shall stand over?

Mr. Vice-President : Maulana Sahib, I have not been able to make out what you wish to say. Do you mean amendment No. 674 or the whole article?

Maulana Hasrat Mohani : This amendment, Sir.

Mr. Vice-President : Mr. Lokanath Misra says “without detriment to the spiritual heritage and cultural unity of the country which the State shall recognise, etc.” Therefore, the question of language and script does not occur anywhere. It is quite possible to think of cultural unity, though the languages

used in different parts of India may be different. So I do not quite see your objection.

Shri Lokanath Misra : What I referred to are our hopes and aspirations, the future to which we will go in our pilgrimage. I do not say that we do something here and now.

Maulana Hasrat Mohani : I think that this amendment should stand over as you have decided in the case of many other amendments. We cannot possibly decide this, unless we decide which will be the language of the whole country and which will be the script. How can we say that now?

Mr. Vice-President : This amendment has nothing to do with the national language or the script. It is quite in order here.

(Amendment No. 675 was not moved.)

Mr. Z. H. Lari : Mr. Vice-President, Sir, I move:

“That for clause (1) of article 23, the following be substituted :—

‘(1) Minorities in every unit shall be protected in respect of their language, script and culture, and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect’.”

This amendment which I have moved is not a new motion. It is really a motion to restore the original decision of this House taken in April 1947. You will remember, Sir, I was not then a Member, but I find from the reports of the Committee, First series, 1947, that the Committee on Fundamental Rights reported that this clause should run in the way in which I have put. At page 30 of that report, the clause runs thus:

“Minorities in every unit shall be protected in respect of their language, script and culture, and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect.”

This recommendation of the Committee on Fundamental Rights was approved by this August House in April 1947. But curiously enough, the Drafting Committee.....

Mr. Vice-President: Is it a sub-committee of the Fundamental Rights Committee?

Mr. Z. H. Lari: Yes; it was a sub-committee and it was approved by this House as well, but the Drafting Committee which was charged with the duty of framing the Draft Constitution on the basis of resolutions adopted by this House changed the phraseology and the present sub-clause stands thus now:

“Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script and culture of its own shall have the right to conserve the same.”

The reasons which have led me to move this amendment in order to restore it to its original condition can be briefly stated.

Sir, I believe it is accepted on all hands that cultural and educational rights have to be protected and this is the intention of article 23. There can be no gainsaying on that point. The clause as it originally stood and as it was approved by this House intended to lay down that no laws, no regulations shall be passed which would adversely affect a minority in maintaining and fostering their own culture and language. That is to say, no such laws shall be passed which would nullify a right which was being conceded to a linguistic minority. If the clause were to stand as I have put it and as the House originally approved, the result would be that there will be adequate remedy at the disposal of a minority, to see that the intentions of this House are carried into effect. But, if you look to the language used in the Draft Constitution, it comes to this only that the minority or a section of the citizens shall be entitled

to conserve its own language. What does it mean? What is its effect? It simply means this that a body of citizens shall be entitled to use their own language in their private intercourse. But the question is whether they will be entitled to use their own language in elementary education given at the state expense. No doubt, under another clause of this article, a minority can establish institutions of its own and by virtue of this clause (1), it will be open to that minority to impart, say, elementary education through its own mother tongue. But if the State were to establish institutions as it would do,—naturally there will be so many minorities which will not be in a position to start institutions of their own—, then the question arises, will it be possible for the minority to demand that, in those institutions which are being established by the State, in pursuance of any legislation, municipal or provincial, which makes free elementary education compulsory, elementary education be imparted through the medium of their own language?

An Honourable Member : Impossible.

Mr. Z. H. Lari : There is a voice which says it is impossible. If it is impossible and if the intention of the House is that even while receiving elementary education, it will not be necessary for the State to make adequate arrangements, then, my submission would be that the whole clause will be a paper transaction and nothing more. Anyway, at present I am drawing the attention of the House to its own decision and beg of them to consider whether there is any reason why their decision, arrived at after due consideration, should be set at nought. If the language were an improvement on the original clause, I would necessarily submit that improvement is permissible. But the question is, does the changed phraseology of this clause improve on the intention of the House, does it give effect to the intention of the House, or does it nullify the intention of the House? For the time being, I would request the Members to concentrate on this point. If it be the opinion of Dr. Ambedkar that really by the changed and different phraseology, the intentions, the import of that article are not changed and the same remains, then I have no objection. But my submission is this: the clause as it stands becomes innocuous: it is of no effect at all. It states a truism; it is not a fundamental right at all. Who can prevent any minority or any class of citizens from using their own culture and language to the extent that it is possible for them to do so irrespective of legislation or regulation that may be made by the State? The House will recognise that the field of education will be entirely covered by state institutions and unless the old clause is put in, I think there will be great difficulty. This is not the only place where such a clause was sought to be placed on the statute book. I may refer to article 113 of the German Constitution which runs like this:

“Sections of the population of the Reich speaking another language may not be restricted whether by way of legislation or administration in their free racial development. This applies specially to the use of their mother tongue in education as well as in the question of internal administration and the administration of justice.”

Therefore, it is not a new thing that this House has done, or the Committee on Fundamental Rights had proposed. Considering the import of this article, my submission would be that the original clause should be restored and this changed phraseology should not be accepted by this House.

With these words, Sir, I move.

Mr. Vice-President : The House stands adjourned till 10 A.M. tomorrow.

The Assembly then adjourned till Ten of the Clock on Wednesday, the 8th December, 1948.