

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.)

Mr. Vice-President : No. 372. Mr. Naziruddin Ahmad.

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

“That for article 11, the following article be substituted:—

‘11. No one shall on account of his religion or caste be treated or regarded as an ‘untouchable’; and its observance in any form may be made punishable by law.’ ”

I submit that the original article 11 is a little vague. The word “untouchability” has no legal meaning, although politically we are all well aware of it; but it may lead to a considerable amount of misunderstanding as in a legal expression. The word ‘untouchable’ can be applied to so many variety of things that we cannot leave it at that. It may be that a man suffering from an epidemic or contagious disease is an untouchable; then certain kinds of food are untouchable to Hindus and Muslims. According to certain ideas women of other families are untouchables. Then according to Pandit Thakurdas Bhargava, a wife below 15 would be untouchable to her loving husband on the ground that it would be ‘marital misbehaviour’. I beg to submit, Sir, that the word ‘untouchable’ is rather loose. That is why I have attempted to give it a better shape; that no one on account of his religion or caste be regarded as untouchable. Untouchability on the ground of religion or caste is what is prohibited.

Then, Sir, I have one more word to say in this connection and that is that in line 3 of this clause in the midst of the sentence, the word ‘Untouchability’ begins with a capital letter. This is a matter for the Drafting Committee.

(Amendments 373 and 378 were not moved.)

Mr. Vice-President : Amendments Nos. 374, 376, 377, 379, 380 and 381. I regard as verbal amendments and they are disallowed. Amendment No. 372 alone is moved. The article is now open for general discussion. I call upon Mr. Muniswamy Pillai to speak.

Shri V. I. Muniswamy Pillai (Madras : General): Mr. Vice-President, it is a matter of great satisfaction that this Constitution has brought out a very important item and thereby untouchability is to be abolished in this great land of ours. Sir, though article 9 concedes many of the facilities that are required for the abolition of untouchability, the very clause about untouchability and its abolition goes a long way to show to the world that the unfortunate communities that are called ‘untouchables’ will find solace when this Constitution comes into effect. It is not that a certain section of the Indian community that will be benefited by this enactment, but a sixth of the population of the whole of India will welcome the introduction and the adoption of a section to root out the very practice of untouchability in this country. Sir, under the device of caste distinction a certain section of people have been brought under the rope of untouchability, who have been suffering for ages under the tyranny of the so-called caste Hindus and all those people who style themselves as landlords and zamindars, and were thus not allowed the ordinary rudimentary facilities required for a human being. The sting of untouchability went deep into the hearts of certain sections of the people and many of them had to leave their own faiths and seek protection under religions which were tolerant. I am sure, Sir, by the adoption of this clause many a Hindu who is a Harijan, who is a scheduled class man will feel that he has been elevated in society and he has now got a place in society. I am sure that the whole country will welcome the inclusion of article 11 in this Constitution.

Dr. Monomohon Das (West Bengal : General): Mr. Vice-President, Sir, this clause about untouchability is one of the most important of the fundamental

[Dr. Monomohon Das]

rights. This clause does not propose to give any special privileges and safeguards to some minority community, but it proposes to save one-sixth of the Indian population from perpetual subjugation and despair, from perpetual humiliation and disgrace. The custom of untouchability has not only thrown millions of the Indian population into the dark abyss of gloom and despair, shame and disgrace, but it has also eaten into the very vitality of our nation. I have not a jot of doubt, Sir, that this clause will be accepted by this House unanimously; not only the Indian National Congress is pledged to it, but for the sake of fairness and justice to the millions of untouchables of this land, for the sake of sustaining our goodwill and reputation beyond the boundaries of India, this clause which makes the practice of untouchability a punishable crime must find a place in the Constitution of free and independent India. I refuse to believe, Sir, that there is even a single soul in this august body who opposes the spirit and principle contained in this article. So, I think, Sir, that today the 29th November 1948 is a great and memorable day for us the untouchables. This day will go down in history as the day of deliverance, as the day of resurrection of the 5 crores of Indian people who live in the length and breadth of this country. Standing on the threshold of this new era, at least for us, the untouchables, I hear distinctly the words of Mahatma Gandhi, the father of our nation, words that came out from an agonized heart, full of love and full of sympathy for these down-trodden masses. Gandhiji said: "I do not want to be reborn, but if I am reborn, I wish that I should be born as a Harijan, as an untouchable, so that I may lead a continuous struggle, a life-long struggle against the oppressions and indignities that have been heaped upon these classes of people." The word Swaraj will be meaningless to us if one-fifth of India's population is kept under perpetual subjugation. Mahatma Gandhi is no more among us in the land of the living. Had he been alive today, no mortal on earth would be more pleased, more happy, more satisfied than him. Not only Mahatma Gandhi, but also the other great men and philosophers of this ancient land, Swami Vivekananda, Raja Ram Mohan Roy, Rabindranath Tagore and others who led a relentless struggle against this heinous custom, would also be very much pleased today to see that independent India, Free India has at last finally done away with this malignant sore on the body of Indian society. As a Hindu, I believe in the immortality of the soul. The souls of these great men, but for whose devotion and life-long service India would not have been what she is today, would be smiling upon us at this hour at our courage and boldness in doing away with this heinous custom of untouchability.

Last of all, I cannot resist the temptation of saying a few words about our great and eminent Law Minister and Chairman of the Drafting Committee, Dr. Ambedkar. It is an irony of fate that the man who was driven from one school to another, who was forced to take his lessons outside the class room, has been entrusted with this great job of framing the Constitution of free and independent India, and it is he who has finally dealt the death blow to this custom of untouchability, of which he was himself a victim in his younger days.

Sir, I thank you for giving me this opportunity to express my views on this matter.

Shri Santanu Kumar Das (Orissa : General): *[Mr. Vice-President, I am grateful to you, Sir, for giving me an opportunity to express my views on clause 11 of the Draft Constitution.

This clause is intended to abolish the social inequity, the social stigma and the social disabilities in our society. Every body desires that the practice of

* [] Translation of Hindustani speech.

untouchability should somehow be abolished but nobody appears to be very helpful in its abolition. When everybody desires that this practice should be abolished, I fail to see why so much time should be wasted in a long discussion over it. The fact is that we merely want to enact laws about it and expect the rural people to observe these laws. We must ourselves first observe the law for otherwise there would be no sense in asking others to act upon it. If we fail to observe it, it would be impossible to root out this evil. Provincial Governments enact laws for the welfare of the Harijans; they pass bills for the removal of untouchability, for the removal of disabilities and for permitting temple entry but you will be surprised, Sir, if I tell you that our members act as fifth columnists in the rural areas, for they tell the people there that these laws are not in force and thus they themselves act against the law. I would request the Members of the House to try their best to make the law effective so that this present social inequity in the country may be removed. Sir, I support the clause whole-heartedly.]

Shrimati Dakshayani Velayudhan (Madras : General): Mr. Vice-President, Sir, we cannot expect a Constitution without a clause relating to untouchability because the Chairman of the Drafting Committee himself belongs to the untouchable community. I am not going into the details of the history and the work done by all the religious heads from time immemorial. You know that all the religious teachers were against the practice of untouchability. Coming to a later period, we found a champion in the person of Mahatma Gandhi and one of the items of the constructive programme that he placed before the country is the abolition of untouchability. While I was a student in the College, one of my class-mates approached me for subscribing to a fund for the abolition of untouchability. My reply was, 'you people are responsible for this and therefore it is for you to raise the money and it is not proper that you should ask me for money'. Even from my younger days, the very thought of untouchability was revolting to me. Even in public places like schools, untouchability was observed whenever there was a tea party or anything of that kind. What I did on those occasions was that I always non-cooperated with those functions. The change of heart that we find in the people today is only due to the work that has been done by Mahatma Gandhi and by him alone. We find that there is a vast change in the outlook and attitude of the people today towards the untouchables. Nowadays what we find is that the people who are called caste Hindus dislike the very idea of, or the very term, 'untouchability' and they do not like to be chastised for that, because, they have taken a vow that they are responsible for it and that they will see that it is abolished from this land of ours. Even though there is a large improvement on the part of the so-called caste Hindus, we cannot be satisfied with that. When this Constitution is put into practice, what we want is not to punish the people for acting against the law, but what is needed is that there should be proper propaganda done by both the Central and Provincial Governments. Then only there will be improvement that we want. If the Provincial and Central Governments had taken action previously I think there would have been no necessity for an article of this kind in this Constitution. Last year I brought a resolution before the Constituent Assembly for declaring that untouchability should be made unlawful. When I approached Panditji, he said that this is not a Congress Committee to move such a resolution, and that it will be taken up in course of time. My reply was that if a declaration was made in the Constituent Assembly, it will have a great effect. Even people in South Africa were chastising us because we were having this practice here. If a declaration is made by the Assembly here and now, it will have a great effect on the people and there will be no necessity for us to incorporate such a clause in the Constitution.

Mr. Vice-President : You have exceeded the time-limit. It is only because you are a lady I am allowing you.

Shrimati Dakshayani Velayudhan : The working of the Constitution will depend upon how the people will conduct themselves in the future, not on the actual execution of the law. So I hope that in course of time there will not be such a community known as Untouchables and that our delegates abroad will not have to hang their heads in shame if somebody raises such a question in an organisation of international nature.

Prof. K. T. Shah : Mr. Vice-President, Sir, lest I be misunderstood on the remarks that will follow, may I say at the very outset that I am not against the spirit of this article, or even its actual wording. I think, however, that the wording is open to some correction; and if the Honourable the Chairman of the Drafting Committee will consider what I am going to place before him just now, and before the House, I believe he might find room for some amendment himself of this article.

In the first place I would like to point out that the term 'untouchability' is nowhere defined. This Constitution lacks very much in a definition clause; and consequently we are at a great loss in understanding what is meant by a given clause and how it is going to be given effect to. You follow up the general proposition about abolishing untouchability, by saying that it will be *in any form* an offence and will be punished at law. Now I want to give the House some instances of recognised and permitted untouchability whereby particular communities or individuals are for a time placed under disability, which is actually untouchability. We all know that at certain periods women are regarded as untouchables. Is that supposed to be, will it be regarded as an offence under this article? I think if I am not mistaken, I am speaking from memory, but I believe I am right that in the Quran in a certain 'Sura', this is mentioned specifically and categorically. Will you make the practice of their religion by the followers of the Prophetan offence? Again there are many ceremonies in connection with funerals and obsequies which make those who have taken part in them untouchables for a while. I do not wish to inflict a lecture upon this House on anthropological or connected matters; but I would like it to be brought to the notice that the lack of any definition of the term 'untouchability' makes it open for busy bodies and lawyers to make capital out of a clause like this, which I am sure was not the intention of the Drafting Committee to make.

One more example I will give, Sir, which is of a hygienic, or rather sanitary, character, that seems to be completely overlooked by the draftsman. What about those diseases, and people who suffer from, which are communicable, and so necessarily to be excluded and made untouchable while they suffer? I remember, Sir, the case of a very well-known personage who was suffering from leprosy, and whom consequently a Public Carrier Company refused to carry from a particular place to another place. All the wheels of Government were moved to obtain a certificate that he may be carried in the plane without any harm to other passengers. I do not know whether it was his cheque-book or his munificence that helped him to get over that particular disability. But I am sure the example should be a warning to our Drafting Committee. Again, if a municipality, for instance, makes a temporary regulation about Quarantine, and makes it necessary that people suffering from communicable diseases or infectious or contagious diseases shall be segregated for a while until they are cured, and shall be regarded as untouchables, will it be an offence under this article? Surely it ought not to be possible for anybody to say that the action of that particular municipality is "unconstitutional" and so an offence at law. I trust the Chairman of the Drafting Committee will find that there is some sense in the suggestion I have put forward; and that he will not deal with it as a common opposition.

The Honourable Dr. B. R. Ambedkar : I cannot accept the amendment of Mr. Naziruddin Ahmad.

Mr. Vice-President : Dr. Ambedkar, do you wish to reply to Mr. Shah's suggestion?

The Honourable Dr. B. R. Ambedkar : No.

Mr. Vice-President : I now put amendment No. 372 to vote.

The question is:

"That for article 11, the following article be substituted:—

'11. No one shall on account of his religion or caste be treated or regarded as an 'untouchable'; and its observance in any form may be made punishable by law.' "

The amendment was negatived.

Mr. Vice-President : I now put article No. 11.

The question is:

"That article 11 stand part of the Constitution."

The motion was adopted.

Article 11 was added to the Constitution.

Honourable Members: "Mahatma Gandhi ki Jai".

Articles 11-A and B

Mr. Vice-President : We have five minutes and I propose to utilize it. There are two new articles 11-A and B standing in the name of Mr. Lari. Amendment No. 382.

Mr. Z. H. Lari (United Provinces : Muslim) : Mr. Vice-President, I move:

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

'11-A. Imprisonment for debt is abolished.

11-B. Capital punishment except for sedition involving use of violence is abolished.' "

Sir, the two clauses are distinct and consequently when considering and adopting them it is not necessary for the House to accept both simultaneously or to reject both. It is open to the House to accept one and not to accept the other or to accept both.

Mr. Vice-President : Why not move that separately.

Mr. Z. H. Lari : Then I move 11-B first. The House will remember that in the last session of the House, when sitting as the law making body, a Bill was before the House to amend Section 53 of the Indian Penal Code. That Bill went to the Standing Advisory Committee of the Ministry of Home Affairs that met on 20th March 1948. There they thought and decided that this matter of capital punishment should be considered by this body. That is why they deferred consideration of that Bill. Now I put it before the House in the form as desired by the Standing Committee.

So far as the question of abolition of capital punishment is concerned, it has been done so in various other countries. At least in thirty countries, including the Dominion of New Zealand, Russia, Holland, Belgium, Switzerland, capital punishment has been abolished. Only the other day this question came up before the House of Commons and the principle was accepted. No doubt, the House of Lords came in the way and the result was that the Bill before the House of Commons providing for the abolishing of capital punishment had to be rejected. But so far as the House of Commons is concerned, the principle of it has been accepted.