

Saturday,
3rd April, 1948

THE
CONSTITUENT ASSEMBLY OF INDIA
(LEGISLATIVE) DEBATES

Official Report

VOLUME IV, 1948

(19th March to 5th April, 1948)

SECOND SESSION

of the

CONSTITUENT ASSEMBLY OF INDIA (LEGISLATIVE)
1948



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CONSTITUENT ASSEMBLY OF INDIA (LEGISLATIVE)

Saturday, 3rd April, 1948

The Assembly met in the Assembly Chamber of the Council House at Quarter to Eleven of the Clock, Mr. Speaker (The Honourable Mr. G. V. Mavalankar) in the Chair.

ELECTION TO STANDING FINANCE COMMITTEE FOR RAILWAYS

Mr. Speaker: I have to inform the Assembly that upto 12 Noon on Friday the 2nd April, 1948, the time fixed for receiving nominations for the Standing Finance Committee for Railways, eleven nominations were received. As the number of candidates is equal to the number of vacancies, I declare the following members to be duly elected: (1) Shri Khandubhai K. Desai, (2) Shri L. S. Bhatkar, (3) Shri Satyanarayan Sinha, (4) Srijuti Robini Kumar Chaudhuri, (5) Mr. Frank R. Anthony, (6) Shri Ramnath Goenka, (7) Pandit Lakshmi Kanta Maitra, (8) Shri Balkrishna Sharma, (9) Shri K. Santhanam, (10) Mr. Naziruddin Ahmad, and (11) Shri Jaspat Roy Kapoor.

INDIAN LAC CESS (AMENDMENT) BILL

The Honourable Mr. Rafi Ahmed Kidwai (Minister for Communications): Sir, I beg for leave to introduce a Bill further to amend the Indian Lac Cess Act, 1930.

Mr. Speaker: The question is:

"That leave be granted to introduce a Bill further to amend the Indian Lac Cess Act, 1930."

The motion was adopted.

The Honourable Mr. Rafi Ahmed Kidwai: Sir, I introduce the Bill.

INDIAN AIRCRAFT (AMENDMENT) BILL

The Honourable Mr. Rafi Ahmed Kidwai (Minister for Communications): Sir, I move:

"That the Bill further to amend the Indian Aircraft Act, 1934, be taken into consideration."

The purpose of the amending Bill has been explained in the aims and objects. The scope of the Act has been extended to the States that have acceded so that we may take up the control of aircraft and aerodromes situated in the States that have acceded to the Indian Union.

Mr. Speaker: Motion moved:

"That the Bill further to amend the Indian Aircraft Act, 1934, be taken into consideration."

Mr. B. K. Sidhva (C.P. and Berar: General): May I know the meaning of the Latin words "proprio vigore" in the statement of objects and reasons?

Mr. Speaker: Is the Honourable Minister in a position to satisfy the Honourable Member?

Mr. Naziruddin Ahmad (West Bengal: Muslim): Something vigorous!

Mr. Speaker: The question is:

"That the Bill further to amend the Indian Aircraft Act, 1934, be taken into consideration."

The motion was adopted.

Shri K. Santhanam (Madras: General): I want to know what exactly is the scope of clause (b).

"to British subjects and servants of the Crown in any part of India wherever they may be:"

Why are "British subjects" included? Is it because we have no definite Indian citizenship?

Mr. B. K. Sidhya: That is so.

Mr. Speaker: The question is:

"That Clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

The Honourable Mr. Rafi Ahmed Kidwai: Sir, I move:

"That in clause 3 of the Bill, for the words 'British India', the words 'the Provinces' be substituted."

Prof. N. G. Ranga (Madras: General): I am glad that at least in regard to this particular matter our friends are willing to drop this obnoxious word "British". The Government have been drawing upon our goodwill to accept or to agree with them whenever any of these Bills are introduced here to put up with this indignity of having to say "British subjects", British this and British that. I would like to suggest very seriously that the Government should take an early opportunity of bringing forward a suitable amending Bill for the General Clauses Act, so that it will be possible for them to avoid a repetition of these words any longer in our legislation.

Shri Biswanath Das (Orissa: General): May I know why this was not taken up in the Adaptations? This could have been done there and the whole problem would have been over.

Mr. Speaker: The Honourable Member will have noticed that this was not a case of Adaptation. We are here amending another Act and the amendment at present is that, in place of the words "British India" the words "the Provinces" should be used, because the amendment is wherever "British India" occurs "India" should be substituted. It seems that in the Act sought to be amended, the word must have been "Provinces" but the draftsman here, perhaps through oversight, instead of putting the words "the Provinces" has put the words "British India". That is what I imagine has happened. Therefore, I shall put the amendment to the House.

The question is:

"That in clause 3 of the Bill, for the words 'British India', the words 'the Provinces' be substituted."

The motion was adopted.

Mr. Speaker: The question is:

"That Clause 3, as amended, stand part of the Bill."

The motion was adopted.

Clause 3, as amended, was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Mr. Rafi Ahmed Kidwai: Sir, I move:

"That the Bill, as amended, be passed."

Mr. Speaker: The question is:

"That the Bill, as amended, be passed."

The motion was adopted.

DISCUSSION OF NON-OFFICIAL RESOLUTION ON A DAY ALLOTTED
FOR OFFICIAL BUSINESS

Mr. Speaker: Before I call upon the Honourable Minister, I should like to announce to the House that the second session of today's meeting is reserved for the consideration of private Resolutions. So the legislative business will go on up to 1 p.m. and in case we are able to finish it earlier, I will immediately take up the resolutions. In case the legislative business is not finished by 1 p.m. the discussion on the resolutions will start from 2-30 p.m. to 5 p.m.

Haji Abdus Sattar Haji Ishaq Seth (Madras: Muslim): Sir, may I make a submission? This day was set down as an official day. We never knew that this half day is going to be available for non-official members. If we had known it we could have given notice of resolutions. Is it the Government which is giving us half a day or is it given by the Chair?

Mr. Speaker: It is by agreement with Government that they are taking up certain private Resolutions for discussion.

Haji Abdus Sattar Haji Ishaq Seth: The arrangement is between the movers of the resolutions and the Government and not with the House and the Chair.

Mr. Speaker: The Chair was requested to allot sometime and the Chair has consented.

Haji Abdus Sattar Haji Ishaq Seth: If we had known about it we could also have tried to bring up our Resolutions.

Mr. Speaker: This was not allotted by the Chair as a private day. Certain Resolutions had been tabled by certain members. Any business could be taken up on any Government day with the consent of the Government. That is the position, not that it is a private day.

Haji Abdus Sattar Haji Ishaq Seth: How does the Chair come in?

Mr. Speaker: The Chair comes in because without the consent of the Chair no kind of business can be placed before the House.

Haji Abdus Sattar Haji Ishaq Seth: I quite understand that the Government can give half a day. There is no difficulty about that but when the Chair comes in, it ought to have informed us also.

Mr. Speaker: Even the day to day agenda is coming to the Chair for its consent or approval. I am not concerned with what business the Government is placing before the House but so far as the allotment of time for Government business is concerned, the Chair has certainly a hand in it. It is for the Chair to allot the days.

Haji Abdus Sattar Haji Ishaq Seth: The announcement that the Chair made just now was only the effect of an arrangement between the Government and the Members, not that the Chair is going to fix a day.

Mr. Speaker: It has come in with the consent of the Government: that is all I can say

The Honourable Pandit Jawaharlal Nehru (Prime Minister and Leader of the House): As I understood it, it is an official day today. Normally we do not sit on a Saturday but because of a number of holidays, etc., it was decided to meet on this day as an official day. It is not a day normally reserved 11 A.M. for non-official business but in view of the fact that over a hundred members of this House approached me for time to discuss a certain Resolution we decided to give part of the official day for the Resolution. It has nothing to do with any Resolutions on any other subject. It is not a non-official day but in view of the desire of a very large number of members of this House, Government decided to give part of an official day for this purpose and we approached the Honourable Speaker.

PROVINCIAL INSOLVENCY (AMENDMENT) BILL

The Honourable Dr. B. R. Ambedkar (Minister for Law): Sir, I move:

"That the Bill further to amend the Provincial Insolvency Act, 1920, as reported by the Select Committee, be taken into consideration."

Sir, I should like to explain to the House what exactly the Select Committee has done to the Bill, as it was introduced originally in the House. The Bill, as the House will remember, is intended to correct a decision of the full bench of the Madras High Court which held that under the Provincial Insolvency Act the son's interests did not pass to the official assignee or to the official receiver, a proposition which according to Government and according to all other High Courts in India was not within the ambit of the original intention of the Act itself. As proposed in the original Bill what was intended to be done was to incorporate into the Provincial Insolvency Act the provisions contained under Section 52 of the Presidency Towns Insolvency Act, so that the two Acts would be absolutely on a par so far as this question was concerned.

When the Select Committee met, the Committee examined the provisions contained in Section 28 of the Provincial Insolvency Act and Section 52 of the Presidency Towns Insolvency Act, which was to be inserted as Section 28A to the Provincial Insolvency Act and the Committee found that a large number of the provisions contained in Section 28 of the Provincial Insolvency Act were absolutely the same as the provisions contained in Section 52 of the Presidency Towns Insolvency Act. Consequently, if the original purpose of the Bill had been carried out, viz., to bodily incorporate in toto Section 52 of the Presidency Towns Insolvency Act, there would be a considerable repetition in the Provincial Insolvency Act when compared with Section 28 of that Act. It was found therefore that all that was necessary to incorporate was that part of Section 52 of the Presidency Towns Insolvency Act which related to the capacity of the insolvent over his own property as well as his power of disposal over the property of others for his own benefit. The Committee, therefore, came to the conclusion that instead of adopting the original provisions in the Bill all that was necessary was to introduce a new Section 28A, embodying nothing more than that part of the section 52 of the Presidency Towns Insolvency Act, which dealt with the capacity to transfer property. That is, therefore, the first change that the Committee has made, as members will see from the report on the new draft of the Bill.

The House will also remember that at the time the Bill was introduced it was not the intention of the Government to give that Bill retrospective effect. The Committee, however, on a fuller consideration of the matter decided that it was desirable and necessary to give this particular provision, viz., Section 28A, retrospective effect. Consequently the Committee used the words, as stated in the report, that this shall always be deemed to have been the law.

These are the two principal changes which the Select Committee has made in the original draft of the Bill. The Committee also felt that it was necessary to limit the effect of this retrospective clause in certain respects. As a matter of fact the retrospective effect had to be limited only to cases that have been decided after the year 1942, the year of the full bench decision of the Madras High Court.

The Committee also felt that this retrospective effect should not give rise to litigation which would have the effect of reopening cases which have been decided earlier than the amending Act, i.e., before 1942. Therefore the two provisos which have been introduced by the Select Committee have the effect, firstly that any litigation which has been closed shall not be reopened and secondly, the retrospective effect shall not be given to any transactions that have taken place after the year 1942, so far as Madras Province is concerned.

These are the provisions in the Bill as amended by the Select Committee and I hope the House will accept the Bill as reported by the Select Committee.

Mr. Speaker: Motion moved:

"That the Bill further to amend the Provincial Insolvency Act, 1920, as reported by the Select Committee, be taken into consideration."

Pandit Lakshmi Kanta Maitra (West Bengal: General): I want to know from the Honourable the Law Minister whether the opinion of the High Court of Madras and other High Courts was obtained on this provision for giving retrospective effect.

The Honourable Dr. B. R. Ambedkar: So far as the other High Courts were concerned their opinion was not taken because their decisions were always in accord with the previous Act. With regard to the Madras High Court I cannot say that it was consulted, but I can tell my honourable friend that the Select Committee was packed with Madras lawyers—Shrimati Durgabai, Mr. Ananthasayanam Ayyangar and Mr. Alladi Krishnaswami Ayyar. I think they would very perfectly reflect the opinion of the Madras High Court.

Shrimati G. Durgabai (Madras: General): Sir, I rise to welcome the Bill as it has emerged out of the Select Committee. I would not have had any necessity to speak on this but for the fact that there is another Bill here pending before the Assembly the principle of which has been accepted by the Select Committee when incorporating the clause which sought to give retrospective operation. With regard to cases of retrospective operation I need not say much because I have already placed my views before the House in my attempt to make out a case for retrospective operation of the Bill. Therefore I do not wish to say much on this point.

The point raised by my Honourable friend Pandit Maitra was answered by the Honourable the Law Minister partly. There is also a decision of the Madras High Court in a case reported. Second Appeal No. 1307 of 1945 in which Justice B. Somayya had delivered his judgment in the following words, and I do not think it would be out of place if I read a few sentences from that judgment. He said:

"The sales which took place between 1900 and 1943 were affected by that decision (1943, Madras, 83, Full Bench) and in most cases purchasers would have no remedy, whatsoever particularly as there is no warranty of title in cases of sales held by the official receiver. It was high time that the legislature moved or was moved in the matter and necessary legislation made in order to protect the title that has been acquired between 1900 and 1943 and thereafter. It was regrettable that in spite of the defect being pointed by a Full Bench of the High Court as early as 1942, the legislature should not have acted during all these four years to set the matter right."

This was the judgment delivered by the Madras High Court Judge, Justice B. Somayya. From this it is clear that in regard to the titles which were acquired between 1900 and 1943 till this Full Bench ruling which made a wide departure from practically a long chain of decisions which were practically unanimously on this point, though the son's share as such does not vest in the Official Receiver the father's power to dispose of the son's share does vest as such. That was the law which was held unanimously for two decades and a half. This long chain has been departed from by this Full Bench decision of the Madras High Court in 1943. Therefore, unless this Bill is given retrospective operation it would purely remain academic and a statutory directive for the future. I, therefore, sought in my Bill to give that effect of retrospective operation to the Bill introduced by the Honourable the Law Minister. I am glad that the Select Committee after full consideration of the case law on this subject examined this point which was raised and amended their Report accordingly.

[Shrimati G. Durgabai]

I have nothing further to add except to say that the case for retrospective operation was ably made out because of the suffering involved here by a number of creditors and purchasers who have purchased the property in the belief that the Official Receiver had the right in this matter. Therefore they had paid full value and they would suffer and lose the property if the retrospective operation is not there. It is these titles which were uprooted by the Full Bench decision which were sought to be protected. And by this retrospective effect those would be protected.

I congratulate the Honourable the Law Minister and also the other Members of the Select Committee who have fully considered this point and amended their Report accordingly. I welcome the Bill as it has emerged from the Select Committee.

Dr. B. Pattabhi Sitaramayya (Madras: General): Mr. Speaker, the House must be somewhat surprised that a mere saw bones should be taking part in a legal discussion. I may at the outset say that I was not one of the Madras lawyers with whom the Select Committee was packed, nor was I on the Select Committee. But sometimes the legal sense of High Court Judges and lawyers is so acute that it runs counter to commonsense altogether. That was why on a previous occasion when the Constituent Assembly appointed an Expert Committee of three eminent lawyers in order to make a report upon citizenship I requested that in addition to the three lawyers of legal sense a man of common sense may also be added to it. As I anticipated, they made a report relating to the citizenship of persons born after creation of the Union, but they never spoke about those who were born before the creation of the Union. Their report had to be sent back to them. The technical sense of lawyers and judges is so amazing that they lose the forest in the trees.

In this particular case it is an extraordinary circumstance that the Madras High Court in a Full Bench ruling should have given a decision opposed to the catena of decisions of Bengal, Allahabad, Bombay, Lahore, Patna etc. Why they suddenly discovered a flaw in the Provincial Insolvency Act passes my understanding. But they have done something which is still more extraordinary. They gave a decision upon a point which was not before them. The point before the Madras High Court in 1942 was

Mr. Speaker: I may just invite the attention of the Honourable Member to the fact that, the judgment of the Madras High Court is not a subject matter for discussion before the House; nor should there be any discussion on that.

Dr. B. Pattabhi Sitaramayya: It is that decision which has given rise to this amendment. And in respect of that decision, it is open to me. I submit to say what was the issue before the High Court and what was the judgment; and in the judgment they have gone farther than the issue.

Mr. Speaker: I am afraid it is not open for argument here. We have to take the judgment as it is and find out what remedy can be had to rectify what we think to be a wrong thing.

Dr. B. Pattabhi Sitaramayya: Any way I can summarize the judgment I believe.

Mr. Speaker: But there should be no criticism as to whether the judgment was right or wrong.

Dr. B. Pattabhi Sitaramayya: Now, the manager of a joint Hindu family could not sell away the shares of nephews or coparceners. But the judgment added that the father in a joint Hindu family could not part with the property of the sons. That is the bone of contention now. The Honourable Member

Pandit Maitra has raised a pertinent point whether the Judges of the Madras High Court have been consulted in this matter. It would have been but fair to do so. But that was unnecessary for the reason that the Judges themselves have added a rider in their judgment. There is one redeemable feature in this Full Bench decision, namely, that the Judges have expressly held that their view is only technical, based upon supposed defects in the language of the Act, and that it is really necessary that the Official Receiver should be vested by an express section in the Act with the power to sell sons' shares also; and they have added that the Central Legislature should remedy the defect by passing an Act incorporating a provision in the existing Act of 1920 enabling Official Receivers to sell sons' shares.

This must set at rest the doubts of my Honourable Friend, Pandit Maitra. That being the case, what has the Central Legislature done? It has tried to remedy the defect without curing the disease. Therefore, the Select Committee's recommendation that retrospective effect should be given to pending suits after 1942 remedies the situation and that is why we support this amendment. Of course, for the future no safeguard is necessary because our present Act will itself guide the future. It is for the past and the intermediate periods that it is necessary to provide remedies. After the judgment of 1943 so many cases have been filed in the District Courts of Kistna and Gunjur in which the claim to the properties of fathers which have been sold away by the official assignee has been challenged and the property is sought to be recovered by the sons who say that their shares cannot be appropriated in this manner. Of course it was open to the creditors to have brought them to a civil court, but the official assignee being the custodian as it were of the properties under debt and his duty being to sell the properties and apportion them among the creditors thought that he had the power to sell the sons' shares also. Now this has been upset by the Madras decision and therefore, the Bill now on the tapis makes provision to give retrospective effect to all cases pending subsequent to 1942.

Shri C. Subramaniam (Madras: General): Sir, in my view giving retrospective effect to the clause as it stands is likely to lead to a certain amount of difficulty. It is a well known fact, Sir, that in Hindu law the father has got the right to sell the sons' shares for his own debts i.e. his personal debts, provided they are not immoral or illegal. And apart from the father the Manager of a Hindu family has got the right to sell other co-parcener's shares for debts binding on the family, debts incurred for a legal necessity. As far as the Manager is concerned, he has got certain restricted powers to transfer properties belonging to the joint family and the father has got a higher right to sell the son's shares for his own personal debts also, provided they are not immoral or illegal. These factors have to be kept in mind.

Now in the Provincial Insolvency Act property is defined as follows in Section 2 (d):

"'Property' includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit."

Sub-section (2) of section 28 of the same Act reads:

"On the making of an order of adjudication the whole of the property of the insolvent shall vest in the Court or in a receiver as hereinafter provided, and shall become devisable among the creditors"

Now it had been held in a long series of decisions by all the High Courts prior to 1942 that because of the wording of section 28 the power of the father as well as the power of the Manager vests in the Official Receiver for the purpose of selling the joint family properties. It has got to be borne in mind that it has been held throughout that not only the father's powers, but the

[Shri C. Subramaniam]

Manager's powers also vested in the official receiver. Now, the Select Committee has recommended the insertion of a new section which runs as follows:

"The property of the insolvent shall comprise and shall always be deemed to have comprised also the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the insolvent for his own benefit at the commencement of his insolvency or before his discharge."

It is important to note the words "for his own benefit" Sir, this would restrict the scope of the Bill only to father's power to the exclusion of the manager's power, because a manager cannot sell joint family property for his own benefit, while a father, except in cases where the debt is immoral or illegal, can sell the shares of his sons in the family property for his personal debts. Now, Sir, up to 1943, I will take it for granted that it had been held by all the High Courts the father's powers over the sons' shares and the Manager's powers over the joint family property vested in the official receiver. Many persons might have made purchases in the belief that not only the father's powers, but also the Manager's powers in the joint family property vested in the Official Receiver. Now by bringing in this amending Bill you are giving retrospective effect only to father's powers. You are protecting the purchasers in respect of the father's insolvency. What about the cases of persons who have purchased property from Manager; in the belief that they would be entitled to the co-parceners interests also. Why should the Select Committee make a distinction between the two classes of purchasers?

Shri M. Ananthasayanam Ayyangar (Madras: General): May I ask if it is the intention that today if a Manager is adjudged insolvent his power over the joint family should vest in the receiver?

Shri C. Subramaniam: My Honourable friend, Mr. Ananthasayanam Ayyangar wants to know whether as a matter of fact Manager's powers also vested in the official receiver. That was so. As a matter of fact, if my honourable friend would look to the decision in 1943 Madras, he will find that this principle has been accepted till it was reversed by that decision. I would also refer my honourable friend to the decision in 52 Madras (page 246). It was the decision of a Bench consisting of two Judges and because there was a difference of opinion it was referred to a third judge who held that under the law as it stood the power of the Manager also vested in the official receiver.

My question therefore, is this. If you are going to protect one class of purchasers why should you make a distinction in the case of the other class of purchasers. What is the justification for that distinction? I hope the Honourable the Law Minister will give an answer to this.

The Honourable Dr. B. R. Ambedkar: If my Honourable friend will allow me to do so at this stage, I will answer his point. I think his point was that the Bill only seeks to protect the transferees as against the father and not against the manager. Now my friend has entirely misunderstood what the Bill proposes to do. The Bill has really to do with section 2 sub-clause (d) which deals with the definition of property. The definition of property as given here is:

"Property" includes any property over which or the profits of which any person has disposing power which he may exercise for his own benefit."

The important words are "for his own benefit." Under Hindu Law the father alone can exercise any disposing power over the interests of his son for his own benefit. The manager does not and cannot. The manager can provide it is for the family as a whole, not for his personal benefit. We are dealing with the case of the father. We are dealing with the manager. That is the reason why the Select Committee confined itself to the case of the father.

Shri C. Subramaniam: That was my complaint that you deal only with the father's power and not with the manager's power.

The Honourable Dr. B. E. Ambekar: He has no such power at all. I was just going to put that question to the Honourable Member. The father has got certain exceptional power in addition to the powers of the manager, and in so far as the manager manages the joint family property, there are certain limitations and restrictions within which he can do it as manager but not because of the relationship of his being manager or of being a member. A father, by the very fact of being father, is vested with certain further rights. But I have not read the Full Bench judgment. The Full Bench judgment raises the question of the father's special powers and it is with a view to remedy what the Full Bench has done that this Bill has been brought.

Shri C. Subramanyam: No, Sir. The Full Bench decision deals with manager's power.

Mr Speaker: That is the complaint which the Honourable Dr. Pattabhi has made, that it is *obiter dictum* by the High Court.

Shri C. Subramaniam: I thought I had made the distinction clear between the manager's power and the father's power when I began my speech, that as far as the manager is concerned, he can sell property only for debts binding on the family incurred for a legal necessity, but the father can sell property of his sons even for his own personal debts provided they are not immoral or illegal. The Honourable Minister said referring to section 2(d), that the definition in 2(d) refers to the father's power of disposal over the son's property. Section 2(d) says:

“‘Property’ includes any property over which or the profits of which any person has disposing power which he may exercise for his own benefit.”

Evidently the Honourable the Minister for Law is under the impression this includes father's power of disposal over the son's share. Unfortunately in the series of decisions by the various High Courts it has been held that 2(d) does not cover the case of a father's disposing power over the son's share because that power is limited as in the case of immoral or illegal debts, he cannot sell the son's property. Therefore father's power of disposal cannot come under the definition of 2(d). That is the view of the Madras High Court and also the other High Courts. Therefore the vesting of father's power could not come in under section 2(d). It is only a limited power vested in him that in certain circumstances he can sell the property of his son. Therefore it was held it would not come under the definition of 'property' in Section 2(d); but it had been held that under section 28, even though father's power does not come under the definition of 'property' under 2(d), because of the wording of section 28, even the power of the father and the power of the manager would vest in the Official Receiver for the purpose of sale of the joint family property to be distributed among the creditors. Therefore it is wrong for my learned friend the Law Minister to say now that 2(d) deals with the father's power of disposal over the son's share. It does not deal with the father's power. It is only because of this the Privy Council held in 17 Lahore that the power either of the father or the manager would not come under the definition of 'property'. And section 28 says 'the property of the insolvent vests in the Official Receiver.' Once power of father is not property, certainly it cannot be held for the purpose of section 28 that power to be property so as to vest the power in the Official Receiver. Therefore they said in the absence of a provision like section 52 of the Presidency Towns Insolvency Act it has got to be held that power either of the manager or of the father could not vest in the Official Receiver. That is the decision in 17 Lahore.

[Shri C. Subramaniam.]

Therefore we are now considering the effect of 1943 Madras decision. Up to 1943 Madras decision or rather up to 17 Lahore decision in the Privy Council it has all along been held that the father's power as well as the manager's power vested in the Official Receiver and he can exercise that power. My point was this. There has been a long series of decisions to that effect. Therefore people went and purchased in the insolvency court in the case of the father's insolvency as well as in the insolvency of the manager, they purchased the property under the impression that they would be getting the son's share in the case of the father's insolvency and the co-parceners' interests in the case of the manager's insolvency where the debts are binding on the family. Apart from that limitation, there was no other limitation even as far as the manager was concerned. That the debt was binding on the family was a condition precedent. Purchasers certainly would have purchased with the belief of purchasing the other co-parceners' interests also. Therefore up to this decision, since it has been held that the powers of the manager and the father vested in the Official Receiver, all the purchasers went and purchased in that *bona fide* belief. Now by this Act you are giving relief to one class of purchasers whereas you do not try to protect the other class of purchasers. My honourable friend the Law Minister pointed out that the difficulty arose because there was no corresponding section which corresponded to section 52 of the Presidency Towns Insolvency Act. It has been held that the power of the father or the power of the manager could not vest in the absence of such a provision. Therefore my contention is this—that you are making discrimination in favour of one class of purchasers as against others. You are prepared to protect purchasers in the case of the father's insolvency, but you are not prepared to protect purchasers in the case of the manager's insolvency where it was intended that other co-parceners' interests also should pass to the purchaser. By passing this legislation, as a matter of fact you recognize that there was a *lacuna* here in the Provincial Insolvency Act that the power of the father and the power of the manager could not have vested and you are prepared by an Amending Act to vest the father's power alone. Therefore, Sir, it is my respectful submission that in view of the fact that you are legislating only in respect of the father's power, leaving the manager's power, you are not taking into consideration a body of purchasers where the manager was adjudged insolvent and the property was sold for debts binding on the family. That is my first point. My second point is this: Certain provisos have been made to this section:

"Provided that nothing in this section shall affect any sale, mortgage or other transfer of the property of the insolvent by a Court or receiver or the Collector acting under section 60 made before the commencement of the Provincial Insolvency (Amendment) Act, 1948 (acting under section 53) which has been the subject of a final decision by a competent Court:

Provided further that the property of the insolvent shall not be deemed by reason of anything contained in this section to comorise his capacity referred to in this section in respect of any such sale, mortgage or other transfer of property made in the Province of Madras after the 28th day of July, 1940, and before the commencement of the Provincial Insolvency (Amendment) Act, 1948."

Now, take a class of cases which would come under the following analogy. Suppose a sale was made in the year 1940 by the Official Receiver and the son's share also was sold and a certain person had purchased it. The effect of the full bench decision delivered on the 28th July 1942 by the Madras High Court would be to make the sale, as far as the son's share is concerned, void. Therefore, every person was entitled to take it for granted that that sale, as far as the son's share was concerned, was void even though the Official Receiver had purported to sell the son's share also. Because of this decision, a third person goes and purchases *bona fide* the son's share from the son because the Official Receiver's sale of the son's share was void.

Here is a conflict of interests. In the year 1940 the Official Receiver had sold the son's share. After this decision in 1942 a third person goes and purchases from the son because he *bona fide* believes that there is a full bench decision which declares the sale as void. Should we not protect this third person who made a *bona fide* purchase from the son believing that this full bench decision is going to be operative. Even in the Legislature when this Bill was introduced it was not said that the amendment would have retrospective effect. So the purchaser could not have contemplated, even after the introduction of the Bill, that it is going to be retrospective. Even after the introduction of this Bill in the Assembly the purchasers were of the *bona fide* opinion that as far as the amending legislation is concerned it is going to be prospective, and that the sales made prior to the amending Act would not be effected in any way by this legislation. They were quite satisfied that they were quite safe under the circumstances in purchasing the son's share from the son himself. Then, should we not protect the case of these third persons? If we are anxious to protect *bona fide* purchasers in the Official Receivers' sales, what about these third class of persons? There is absolutely nothing in the proviso which contemplates these cases at all.

After the full bench decision of the Madras High Court, thousands of cases had been disposed of and final decrees passed. No doubt they are protected, but what about the other cases which had been filed under the *bona fide* belief that this amending legislation is going to be prospective? They have filed suits in courts thinking that this Act will be only prospective in effect and that it will not affect sales prior to the amendment of this Act. A large number of cases are still pending in the High Court and other courts. What about them? At the time the suits were filed, they were justified in filing those suits. Even the Bill introduced in the Legislature, as it stood, was only prospective. What about these cases pending in the High Courts and other courts. Who is to bear the costs? Therefore, by giving retrospective effect, you are creating a large number of difficulties, rather than solve the difficulties.

In this connection, I would refer to certain series of decisions on the position held by the High Courts. Even in 1924-25, in—6, Lahore case, the Privy Council definitely laid down that 2(d) cannot include the power of the father or the power of the manager. But the learned Law Minister wanted to contend that 2(d) would include the father's powers also. The Privy Council definitely held that it would not come under the definition in section 2(d). Again in the year 1936 in 17 Lahore case they gave a decision. There is section 2(e) of and section 17 of the Presidency Towns Insolvency Act; the wording of these is almost identical with sections 2(d) and 28 of the Provl. Insolvency Act though there are slight differences in the language of section 17 of the Presidency Towns Insolvency Act and section 28 of the Provincial Insolvency Act—that does not affect the matter in any way. The Privy Council held that the power of the father does not vest because of 2(e) or because of section 17 of the Presidency Towns Insolvency Act; that power was available to the Official Assignee only because of section 52; and there was no section corresponding to section 52 in the Provincial Insolvency Act. Therefore, in 1963 the Privy Council clearly laid down that in the case of Provincial Insolvency Act there was no question of the power of either of the father or the manager vesting in the Official Receiver. For the first time it came up for consideration in 1942 before the full bench in the Madras High Court. What would be the effect of that.....

M. Speaker: May I make a suggestion to the Honourable Member? The matter is highly technical and I am afraid all the points that he is trying to make out are very difficult to grasp in all their details and to come to a conclusion immediately. As I have understood it, his grievance has been that while

[Mr. Speaker] -

one kind of purchaser is being protected, the other is not. That seems to be his grievance and that, to that extent, the Bill is defective.

Shri C. Subramaniam: That is my first objection.

Mr. Speaker: That seems to be his first objection. He has raised a number of difficulties which happen to fall on purchasers who he assumes to be *bona fide* purchasers. It is possible that many people may have filed suits or purchased property in a litigious spirit, but that is a different matter.

So far as the first point is concerned, I may suggest to him that, instead of arguing the matter here, it would be better if he could convince the Law Minister, by argument outside, to put it in the hands of legal experts and to bring in a fresh Bill to supplement the defect which he points out, if it really exists. Otherwise, we shall be taking up a lot of the time of the House. I do not mean to say that it is wasting time, but the argument is practically going over the heads of lay men. That is how I feel and that is why I make this suggestion, with a view to save time and to have the case effectively examined.

Shri C. Subramaniam: Sir, I would be as brief as possible and would try to appeal to the lay men as far as possible. The point is this: It is said that after 1942 there might have been speculative purchases. My case was that even prior to 1942 there were speculative purchases. As lawyers we know what sort of advice we were giving to the intending purchasers, in the Insolvency Court. We always had this as a doubtful point and we were also advising our clients so. Therefore, it is only with the full knowledge that they were only purchasing litigation, even prior to 1942, the purchases were being made. After the Privy Council decision in 1936 we were saying that the Privy Council has now decided and that therefore that position would have to be reviewed. All the purchases in the Insolvency Courts subsequent to 1936 therefore were nothing but speculative. So, after 1936 every person who went and purchased the son's share or the other co-parcener's share purchased it for much less value because there was doubt on this point. That is why I say we are protecting a particular class of people who were only speculative purchasers. A pronouncement by the Privy Council said that the father's power and the manager's power could not vest, in the absence of a section like 52 of the Presidency Towns Insolvency Act. That was the advice given to clients; we know it. Therefore, now by giving retrospective effect, if you are protecting any class of purchasers you are protecting a class of speculative purchasers. That is my point. Therefore, my suggestion is that in such cases it is better and just that we give prospective effect only instead of retrospective effect.

Another thing also you will be pleased to find. Even if those cases where the sons had gone and filed suits for the purpose of getting their shares holding that the Official Receiver's sale of their shares was void, it had been held even in the Madras High Court that the sons should pay the proportionate share of the debt. Therefore, when a share is allotted to the son by holding that the Official Receiver's sale of the son's share is void, in equity the son is asked to pay the proportionate share of the debt. Therefore, by leaving the decision in 1943 Madras as it is without affecting it, by giving it retrospective effect no injustice is being done, because even when the sons go and file suits for the purpose of getting their shares, it has been held that they should pay a proportionate share of the debt. Hence these speculative purchasers in the Insolvency Court would not in any way be affected. Under those circumstances, I would suggest that giving retrospective effect to this amendment would create more difficulties and we would be only protecting the interests of certain elements among the capitalists namely, the money lenders. I am not going to say by this that my friend Mr. Ananthasayanam Ayyangar wanted

to protect, the money lending class or that he had any sympathies with the money lending class, but the effect in practice is that these money lenders, who are mostly the purchasers in the Insolvency Courts are being protected as against the poor debtor's sons.

Dr. P. S. Deshmukh (C.P. and Berar: General): Sir, as the members of the House must have seen, I have signed the report of the Select Committee subject to a minute of dissent. My Honourable friend Mr. Maitra made two very pertinent enquiries. The first one was whether the High Court Judges were consulted in regard to the draft amendment that is before the House now and secondly, he wanted to know the number of cases that were going to be affected by this amendment. I am afraid, Sir, that those were precisely the grounds on which I dissented from the majority. We were working in the dark somewhat. We did not know how many people would be affected either way. We did not know what were the number of cases in which sales had finally been held which included the son's share of the property; how many cases there were in which the sons had filed suits as a result of the decision in 1943 re-claiming the shares that had been sold under the older decisions of the Madras High Court; and so, we did not exactly know the extent to which the decision of the Madras High Court in 1943 had led to the reopening of the previous decisions and transactions.

Secondly, Sir, as may be observed, the amendment which was proposed originally, although it is not fundamentally different from the one that is now before the House, does differ a good deal.

The third question worthy of consideration is to what extent retrospective effect has been given by this amendment. On the one hand, the Honourable Shrimati Durgabhai wanted a wholesale retrospective effect, whereas the Select Committee has modified the retrospective effect by adding two provisos so as to see that in those cases where sales have been held, and the son's share has passed to the purchasers, should not be re-opened. On the other hand, the Bill, as amended, seeks to see that in those cases wherein the share of the son has been let off as a result of the decision of 1943 neither the Official Assignee nor the creditors should be able to get hold of it so as to oust the son. So it is the intention of these two provisos to regulate the retrospective effect and minimise reopening of closed transactions. Subject to these provisos, I find myself in agreement with the Bill as I consider it unobjectionable.

But I would still urge that, in view of the fact that we do not know how many cases there are which are likely to be affected; in view of the fact that we have had no time to consult the High Court Judges; in view of another one or two points which have been just raised as to the position of the Manager's authority, and how far his authority has been affected, and to what extent this Bill will enable a creditor or an Official assignee in an Insolvency case to get hold of joint family property which a Manager of a Hindu family has a right to dispose of—in view of all these considerations, it is far better to leave it to the Madras Legislative Assembly to deal with this matter as the representatives there will be in a far better position to know and judge the position correctly. But perhaps it is too late for me in the day to urge this point and the Honourable the Law Member may probably not accede to my request. If he does not, I do not mind supporting the Select Committee's report. But I would still urge that in view of the special difficulties that I have pointed out, there is every reason for leaving this matter for being considered by the Madras Legislative Assembly, because nowhere else has there been any trouble except the Madras Presidency and it is the Madras High Court's decision which has led to this trouble and to the amendment that we are seeking to make. This is all, Sir, that I have to say.

Shri M. Ananthasayanam Ayyangar: Sir, the principle is that a father can dispose of certain sons' property also for debts which are necessary for the purposes of the family as also for his personal debts. That is the principle of the Hindu law whereas the Manager cannot dispose of Joint family property except for the purposes of necessities arising out of the family. That has been the distinction between the father's power and the Manager's power all along. It is also the duty of the son to discharge his father's debt, provided they are not illegal or immoral. Let us see how far these have been carried out and what the objection of my friend Mr. Subramaniam is.

In 1943, this matter came up in a Full Bench decision of the Madras High Court where the power of a father to dispose of his son's share also or Manager's power to dispose of the right of the other members of the family in case the Manager is declared insolvent, whether the Manager had the right to extend it to the rights of the son or to the rights of other members of the family, was considered. The matter arose particularly in 1943 regarding the right of a Manager to dispose of the rights of other members of the family in the family property. Incidentally, the father's right also came up for consideration. Their Lordships found so far as the Manager's right was concerned, even so early as 1928 there was a difference of opinion in Madras. Two Judges differed. One said that the Manager's right of disposal could be exercised for his own benefit apart from the question whether it was property which would vest in him or not under that clause. That Division Bench of two Judges who disagreed regarding this matter referred it to a third Judge who agreed with the Judge who said that the Manager's right to dispose of the property of the junior members also vested in the Official Receiver. But in the same judgment he said that this is a matter which is not free from doubt and that it must be considered very soon. That was so in 1928. He was not himself convinced about the propriety of allowing the right of a Manager to dispose of certain property of junior members of the family.

Shri C. Subramaniam: He mentions, about "father's" power also not merely about the Manager's power in that judgment.

Shri M. Ananthasayanam Ayyangar: So much the better, for the reason that if even in the case of the father's power, they held like that, it should be more so in the case of the Manager. They went to the length of saying that even in the case of a father they had found so early as 1928 that if the power vested in the Official Receiver to dispose of the property, they did not agree with it. But the Judge said that for the time he agreed with the other Judge that it vests in the Official Receiver but he said "I myself am not convinced that this law as it stands should stand as a good law for all time." In 1936 the Privy Council decision came. In 1943 the matter was considered by the Full Bench of the Madras High Court. I want the Honourable Members of this Assembly to consider this as a matter of principle. I am not in favour of this Bill at all for the reason I am opposed to the power being vested under the Hindu Law either in a Manager or in the father of the Joint Hindu Family to dispose of property. That discretionary power is vested only in particular persons. The Official Receiver cannot stand in the shoes of either the father or the manager for all purposes. That is a special right.

As a matter of principle I am for this that this right shall not vest with the Official Receiver whether the father becomes insolvent or the Manager becomes insolvent. A wholesome principle was enunciated in the Hindu Law by protecting the rights of minor sons lest a vagrant father might dispose of his properties for his own benefit. The son after attaining majority can file a suit to set aside the alienation on the ground that it is made for immoral or illegal purposes. That provision is in the Hindu Law. The father can as a general rule dispose of the property. That position for the right of the father to take

away the right to sell the son's share even in certain cases, I consider that is no ground for the Official Receiver not to exercise that right. To that extent I agreed in the Select Committee that the father's right alone might vest in the Official Receiver to dispose of the son's share also. The son is liable to pay his father's debt and a creditor can file a suit against the son for recovery of that property and attach his property and sell it away. It is only to avoid multiplicity of suits that we agreed to that but the matter rests on an absolutely different principle so far as the Manager is concerned. He cannot exercise any rights for his own benefit even under the existing law. It was misunderstood in 1928; in 1936 it must have been set right; it took 1943, seven years more for that matter to be settled. I am not in principle agreeable to this clause of restoring sales by Official Receivers and in case the Manager becomes an insolvent, he ought not to be clothed with the right to sell away those powers. Even the Hindu Law must be modified. So far as a lacuna has already occurred we are entitled to take advantage of this and we ought to see that the right of sale of Managers ought not to be restored. Of two things we accepted only one. The judgment of the Madras High Court of 1943 was not accepted in full. We accepted the suggestion only so far as the father's alienation is concerned. It was open to us to have not accepted even that suggestion, but in as much as the principle is there in the Hindu Law that the father can dispose of the share we said that the power may vest with the Official Receiver and to extend that power to the Manager also. By this I fear the very principle of the rights of property would be affected. I would not advise the Honourable the Law Member to bring in another piece of legislation. (Interruption)

Certainly I wanted in Madras to safeguard the rights of those persons who purchased property after 1943 and before this Act comes into existence. The Full Bench decision of the Madras High Court was that any purchaser would have purchased only that property of the father himself and not the share of the son. The Full Bench decision is clear that the share of the son does not vest in the Official Receiver who would have purchased the share of the father. The further proviso is not made—it is an omission—that though he purchased the father's share, it would also include the son's share. That would mean if there is no proviso here that the entire property of the father and the son also would be sold away. We should have made that provision. Mr. Subramaniam says that we have made that provision that wherever the Official Receiver has sold, we have restricted it only to the share of the father. But after 1943 if a son taking advantage of this decision has sold away his share to some other person, why should we not protect it. It is likely that this retrospective portion if the cases are pending they might upset sales in favour of *bona fide* purchasers. That is no doubt a matter which requires some consideration, but I would say that even from 1943 to 1947 it is not likely that many a sale would have happened. It is not that absolutely fool-proof legislation can be made or legislation which would not affect anybody under any circumstances whatever. The balance of convenience has to be taken; some legislation would affect some people and the majority of the people would not be affected in this case. On that ground also no further alteration need be made in this Bill. In the Bill as it emerges from the Select Committee, ample provision has been made for safeguarding the interest of all *bona fide* purchasers of certain property and it is also intended not to clothe him with a larger right than what he has bargained for. I therefore think this motion for consideration may be accepted.

The Honourable Dr. B. E. Ambedkar: Sir, I think the points raised by Mr. Subramaniam would not have been raised if he had really considered the question in general terms as it stands. He has in mind the consideration of the father and the manager of the family. Personally, I have no such consideration in my mind at all. I am looking at the whole thing in general terms. We

[Dr. B. R. Ambedkar] have got in the definition clause the definition of property. That definition includes two classes of property, property as such owned by him and over which he has physical possession. Secondly it includes what is clear dominion or power to dispose of it for his own benefit. The question that has arisen is this, whether under the Provincial Insolvency Act the power to dispose of vests in the Official Assignee. The answer given is that it does not vest because there is no such clause in the Provincial Insolvency Act analogous to section 52 in the Presidency Towns Insolvency Act. In the Presidency Towns Insolvency Act there is special provision in one of the parts of section 52 that wherever there is power which an insolvent possesses by which he can dispose of another person's property for his own benefit that power will vest in the Official Assignee. Unfortunately the Provincial Insolvency Act did not contain such a provision and that is the reason why this difficulty has arisen. What the Bill seeks to do is to provide a remedy which says that wherever there is such a power under the Provincial Insolvency Act that power shall vest in the Official Assignee. The question about the father and about the Manager of the Joint family to my mind are irrelevant and quite out of consideration. They come in only because they happen to be fitting in as illustration of the proposition that we are dealing with I am very sorry to say that Mr. Subramaniam bothered himself so much about case law which I believe is the wrong method of studying law; most of the case laws are so bad that even the sneezes of the judges are apt to be reported. Therefore, my submission is that that we are not considering the case of the 'father' or the 'Manager' at all. Here is a definition of property given in the Provincial Insolvency Act. The question is: "Is there a provision which permits the vesting of that property?" The answer is that there is no such provision, which permits automatic vesting. As my honourable friend Mr. Ananthasayanam Ayyangar quite rightly pointed out that even if there was no such provision it would be perfectly open for the Official Assignee to proceed against the son's property and take his share, separately but at I say and as he rightly pointed out, we do not want the multiplicity of prosecutions of such suits and claims. That is the reason why we are providing an automatic remedy. Therefore one of the points that he made as to why we are not providing for the Manager's cases is beside the point and as you, Sir, very rightly pointed out, if he made out a case that there was a case for such protection, there is nothing in this Bill to prevent a separate Bill to be brought in for the purpose of dealing with the cases my honourable friend has in mind. With regard to the point that he made that we are protecting only certain classes of purchasers and not others, I would have thought that if instead of taking the time of this House on this occasion he had reserved his remarks on the amendment which he has got, much economy in time would have been effected. I do not propose to say anything on that point at this stage but I will certainly try to give him a reply when he moves his amendment on that particular point.

Mr. Speaker: I may say that I do not propose to allow the Honourable Member to repeat his arguments when he moves his amendment. Practically he has spoken in the points raised by his amendments and the Honourable Minister can say all that he has got to say, about those points.

The Honourable Dr. B. R. Ambedkar: With regard to the point made by my Honourable friend Dr. Deshmukh that such a Bill should be left to be brought in the local legislature, I should have thought that this was a matter of an all-India character; it affects title. One does not know who would be the purchaser of a property in Madras, whether he would come from Bombay or from any other province; and I think questions of title ought to be protected by central legislation. His point was that we had not been able to collect a number of cases that have arisen in matters of this sort in order to justify an all-India legislation. It seems to me a most extremely difficult proposition

for the Central Government to enter upon a census of all cases that have occurred in different parts of India. It is enough for the Central Government if its attention has been drawn to a serious *lac a* by so important a High Court as that of Madras, and that would justify legislation of this sort being undertaken.

Dr. P. S. Deshmukh: Sir, on a point of explanation, it is an admitted fact that this situation has not arisen in any province, or in any High Court at all except in Madras.

The Honourable Dr. B. E. Ambedkar: It is not an admitted fact. Although generally it is true, I am not prepared to say that we have examined every case in every province so as to give a categorical answer that there may be no such case requiring protection.

With regard to the observations of my Honourable friend Dr. Pattabhi Sitaramayya, I do not suppose he expects me to take them very seriously. I know he has a grudge against lawyers and never misses any opportunity to have a dig at them. But I should like to say that lawyers all over are very humble people. They undoubtedly exercise such skill as they possess in drafting legislation and in giving judgments, but they are always ready and prepared to submit the results of their labour to a body of laymen, irrespective of the question whether they possess common sense or do not possess it. They are quite prepared to abide by the decision of a body of laymen, and this is what I have done. I do not suppose, therefore, that Dr. Pattabhi Sitaramayya would have any grudge in a matter of this sort where, although the Madras High Court may have bungled or the Government Law Officers may have bungled, they have already agreed to submit it to the decision of this House.

Shri L. Krishnaswami Bharati (Madras: General): Sir, on a point of clarification, I should like to know whether under the Presidency Towns Insolvency Act as it is today the manager insolvent's property vests in the Official Receiver.

The Honourable Dr. B. E. Ambedkar: As I said, I am not concerned with that. As I stated in this House repeatedly, I am concerned with the general proposition. There is a definition of 'property' which is identical in both Acts, and property includes power of disposal that one owns for his benefit. The *lacuna* is that one Act contains power to vest and the other does not.

Mr. Speaker: The application of that definition to Hindus is only part of the whole thing; it is not intended only for Hindus.

The question is:

"That the Bill further to amend the Provincial Insolvency Act, 1920, as reported by the Select Committee, be taken into consideration."

The motion was adopted.

Shri C. Subramaniam: Sir, I do not propose to move my first two amendments but I would like to know the attitude of the Honourable Minister with regard to my alternative amendment about the rights of the transferees in Madras for consideration prior to this Act of any property over which the insolvent had only a disposing power.

The Honourable Dr. B. E. Ambedkar: Sir, the amendment does not on the face of it express what the objective of the amendment is. But I have spent some time in trying to give it a concrete shape in order to understand what is exactly the objective behind it. I will give you an illustration like this. Suppose A is the father and B is the son; C purchases and then A becomes insolvent. C purchases—he is purchaser of the interests of the father and the son and he is purchaser in the year 1941. I have taken that deliberately, it

[Dr. B. R. Ambedkar]

is one year before the Madras decision. Then the sons after the Madras decision sell their property to another purchaser by name D in the year 1943. The question according to this amendment, as I understand it, is this. C is of course protected; the question is whether D should be protected. My submission is that the man who has purchased the property after 1943, after the decision of the Madras High Court, should not be protected for the simple reason that his sale is a purely speculative sale. First of all he is not a *bona fide* purchaser because he had notice of a previous sale which had already taken place in 1941. Secondly, I take it that ordinary procedure, namely, to file a suit for a declaration that this property is free of all encumbrances and of all previous claims, has not been adopted, and he has therefore on an off-chance taken the property in the hope that the decision given by the Madras High Court would be applied to this case. Therefore I think that such a speculative purchaser should not be protected.

Then, Sir, I should like to say in a general way that where cases of this sort arise, my Honourable friend will agree that it is extremely difficult to adjust two equities to the satisfaction of everybody. Some one must suffer and I think the speculative purchaser should suffer in cases of this sort.

Mr. Speaker: The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

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

"That the Bill, as amended, be passed."

Mr. Speaker: The question is:

"That the Bill, as amended, be passed."

The motion was adopted.

JUNAGADH ADMINISTRATION (PROPERTY) BILL.

Mr. Speaker: Who is moving the Bill with regard to the property belonging to the State of Junagadh?

The Honourable Dr. B. R. Ambedkar (Minister for Law): I am

Mr. Naziruddin Ahmad (West Bengal: Muslim): I have a point of order with regard to the legality of this Bill. I am seeking the direction of the Chair as to the proper stage at which I might rise on this point of order. Is it after he moves it or after he speaks?

Mr. Speaker: What is the point of order? I would like to know, if I may, the nature of it.

Mr. Naziruddin Ahmad: The point of order is to the effect that the Bill relates to certain properties standing in the name of the Nawab of Junagadh and these properties are now alleged to be the properties of the State, though they stand in the name of the Nawab of Junagadh State which has perhaps acceded on certain terms to the Dominion.

My point of order is that the subject-matter of this legislation with regard to that State is beyond the terms of the Instrument of Accession, if any, and to that extent it is not within the competence of this Legislature to deal with it. That in short is the nature of the objection that I am putting forth.

With regard to the merits, I will not raise it at this stage. That will be dealt with later on.

Mr. Speaker: May I know the Honourable the Law Minister's views on this point of order?

Mr. Naziruddin Ahmad: I have not fully argued my point. I only want to know at what proper stage I should come in.

Mr. Speaker: I should first have clarification on the facts. I understand on the 9th November 1947 the Indian Union was requested to take over the administration of Junagadh. The Administrator has been in possession from that date. So far as the Accession is concerned, I do not know whether there has been any formal agreement by now, or whether any instrument has been executed or not. I am not clear on those facts.

The Honourable Dr. B. R. Ambedkar: This Bill has really nothing to do with the question of Accession. The two main things in the Bill are these:

The Administrator found himself in the possession of certain property which is believed to be belonging to the State of Junagadh and standing in the name of the Nawab, or the Dewan, or the Private Secretary and so on.

What we are concerned with is that the Administrator has found himself in the possession of certain properties—notes, bank deposits and so on. The Administrator must be clothed with legal authority so that his possession of those assets may not be challenged in a Court of Law: so that he may not be regarded as a thief, or a robber or a dacoit. That is the first point in this Bill, namely, that the possession of the Administrator is being sought to be clothed with the law, so that his possession under this Act would be regarded as lawful possession, and nobody would be entitled to question it.

The second main point is that certain securities which are mentioned in the Schedule are being dealt with under the Government of India Act dealing with public debt. The bank is authorised to issue new securities to the Administrator under certain circumstances.

These are the two principal points. I am not dealing with the minor ones. These two points can be dealt with under the ordinary Indian law without reference to the question whether Junagadh has acceded or not, and therefore my submission is that the point of order is not a point of order at all.

Mr. Speaker: In view of the fact that, the Honourable Member said that he did not fully set out his case—I think I have sufficient facts now—if he has anything further to say now he might say it.

Mr. Naziruddin Ahmad: The main point in this Bill is whether certain property mentioned in the Schedule, parts I, II, and III do really belong to the State. My Honourable friend is certainly right in saying that he is dealing with certain securities which are subject to the jurisdiction of the Government of India. But the main purpose of this Bill is to declare that these are properties of Junagadh State. You will be pleased to consider the second paragraph of the preamble:

"And whereas it is necessary to provide for the vesting of certain property belonging to the said State"

What is attempted by this Bill to declare is that the properties set out in the three parts of the Schedule do really belong to the State. This is the gravamen of the whole Bill, and it is sought to make out, although in ambiguous language, that the properties really belong to the State. Therefore, the Administrator as representing the State should be clothed with authority. It is not the clothing of the Administrator that is the gist of the Bill, nor is it what I object to. The important objection is to deal with ~~it~~ as part of the State property. From that point of view we are really legislating for a subject which must be covered by the Instrument of Accession, otherwise, we have really no jurisdiction to deal with it in this way. This is the first point.

[Mr. Naziruddin Ahmad]

The other point is that we are preventing the authority of the Court from deciding the matter. The question is

Mr. Speaker: That will be a point which the Honourable Member might urge when we come to Clause 7.

Mr. Naziruddin Ahmad: Yes, it can be deferred. But then we have no right to debar Courts from any jurisdiction to look into the matter. We are by the draft Constitution providing that anyone has the right to approach the highest Court in the land.....

Mr. Speaker: The draft Constitution will not apply.

Mr. Naziruddin Ahmad: The point will arise in this way.

Mr. Speaker: The Honourable Member may raise his point when we come to Clause 7.

Mr. Naziruddin Ahmad: Can we oust the jurisdiction of Court?

Mr. Speaker: We have done it, in this way on many occasions when we give authority and then wish to protect the officers concerned in respect of things done by them in the discharge of their duties.

Mr. Naziruddin Ahmad: This is affecting fundamental rights.

Mr. Speaker: That is a different matter. This Bill is not the Constitution. To my mind, the first point is very clear and it has been explained by the Law Minister. It is not a question of accession. At the request of the Junagadh Government themselves, the administration was taken over. When it is taken over, it becomes necessary to invest all those who are carrying on the administration with full legal authority on behalf of the Government of India: otherwise the Administrator will not be able to claim from the banks these various securities, deposits, etc., and perhaps it will not be also competent for the banks to pay to the Administrator or to recognise him as the proper legal person, who is entitled to administer the affairs of Junagadh.

So far as the other question is concerned, whether it is competent for the Junagadh administration or the Dewan to hand over the administration to the Indian Union, or whether it is competent for the Indian Union to take over the administration, I think it is a matter which is practically beyond the scope, decision and discussion of this House. So we need not go into those questions at all.

The third point mentioned by the Honourable Member is that he seems to dispute the fact of the ownership of the property.

Mr. Naziruddin Ahmad: That has been assumed.

Mr. Speaker: To that, the reply may be that the Honourable Member is assuming that it is not the State property. As a matter of fact, if it be not the property of the State, then whosoever's property it legally is, he can take any steps he likes whether in a Court of law or outside.

Mr. Naziruddin Ahmad: That is barred by this Bill.

Mr. Speaker: If the legality of the whole Bill is accepted, then the question of ownership may be barred. If the very power of the Indian Government to treat this property as the property of the Junagadh State is challenged, or if the fact of the property belonging to the Junagadh State is challenged, I do not think this Bill seeks to bar the private rights of His Highness the Nawab Sahib. He can take such steps as are open to him.

Pandit Lakshmi Kanta Maitra (West Bengal: General): How can it be a point of order?

Mr. Speaker: Therefore this can hardly be called a point of order. Any opinion expressed in this House is not going to affect the final decision, whether it be by the Federal Court or by the U.N.O. or any other authority. We are not concerned with that.

The Honourable Dr. B. E. Ambedkar: Sir I beg to move:

"That the Bill to provide for the vesting of certain property belonging to the State of Junagadh in the Administrator appointed by the Central Government, be taken into consideration."

The Statement of Objects and Reasons makes clear the grounds why this Legislation has become necessary. To put it simply when the administration was handed over to the Government of India on the 9th November, 1947, the Government of India and the Administrator came into possession of certain properties which were handed over to the Administrator for purposes of administration. The powers of the Administrator and the vesting of this property in him were regulated in the beginning by an Ordinance, Ordinance No. 30 of 1947. That Ordinance will now come to an end on the 24th June, 1948. It is therefore necessary to replace the Ordinance by this Bill.

Mr. Speaker: The question is:

"That the Bill to provide for the vesting of certain property belonging to the State of Junagadh in the Administrator appointed by the Central Government, be taken into consideration."

The motion was adopted.

Mr. Speaker: The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Shri K. Santhanam (Madras: General): Sir, there is an amendment to clause 2 in my name which has been passed over.

Mr. Speaker: I am sorry I missed it: the Honourable Member also does not seem to have been alert. But is the amendment really necessary?

The Honourable Dr. B. E. Ambedkar: I do not think it is necessary.

Shri K. Santhanam: If there be any gap in the office of Administrator it only helps the Government.

The Honourable Dr. B. E. Ambedkar: I have no objection to the amendment.

Mr. Speaker: The difficulty that has arisen is that clause 2 has been put to the House and adopted. It is now sought to move the amendment.

Shri K. Santhanam: I will not press my amendment, Sir.

Mr. Speaker: If it is really necessary we might then consider as to what the position would be.

Mr. Naziruddin Ahmad: Sir, I move:

"That in sub-clause (1) of clause 3 of the Bill, for the words 'Notwithstanding anything contained in any law', the following be substituted:

"Subject to the provisions of the Indian Independence Act, 1947, the Government of India Act, 1935, as adapted by the Indian Independence Order, 1947, any other similar subsequent Orders, and of the provisions of the Constitution of Free India that may hereafter be passed by the Constituent Assembly of India (Constitution), and notwithstanding any other law."

Sir, clause 3 is of a very drastic nature. It says that properties mentioned in the different parts of the Schedule really belong to the State and on that footing clause 3 makes provision for vesting of that property in the Administrator. That in short is the substance of clause 3. It is also provided at the beginning "notwithstanding anything contained in any law for the time being in force". We should be particularly careful what the laws are over which we are riding roughshod.

[Mr. Naziruddin Ahmad.]

Before proceeding further I should at the outset make one point clear, viz. that the personality of the Nawab of Junagadh or his personal interest in the properties is a matter of insignificance to me. I take it that he is an individual and apart from that I have no sympathy for the great Nawab who acted in a dubious fashion in these transactions.

Shri K. Santhanam: Sir, on a point of order, this amendment as it stands is not quite proper. One part of it refers to the constitution under which the legislature is functioning and that is altogether superfluous. The other half is speculative, in that it refers to the constitution which might hereafter come into existence. The amendment is improper. It is either superfluous or improper and the amendment is not valid.

Mr. Naziruddin Ahmad: I am prepared to answer my learned friend's point. Before proceeding further I should say that the question which is before the House is one of constitutional law. It is from that point of view that I have ventured to stand before the House. A point of order has been raised with regard to the drafting of this amendment. It is said that it is speculative to this extent that it has also attempted to survey a field of legislation which has not yet come into being. I should submit that it is a fact that the Constituent Assembly has sat for three sessions and it has passed certain resolutions. It has appointed a drafting committee of which the Honourable Minister in charge of the Bill was the President and a Bill has been drafted. It has been circulated to all and it is before the Members. The exact nature of the Constitution which the Constituent Assembly would pass is a matter for speculation but the fact that they will pass a Constitution is provided in the Indian Independence Act. The point arises in this way that if this Bill is enacted into law it bars all laws, not only the existing laws but laws which may come into being in the future. We have to guard against effect being given to this Bill to bar all laws. We can take it that some sort of constitution is coming. It is necessary to guard against the application of the Bill to the exclusion of a great constitution which we are going to have. In this way both the existing laws as well as the future laws, to my humble mind, come into the picture. We must guard against both. From the beginning of clause 3 there are attempts to prohibit the application of every law, whether existing or which may be passed hereafter. On the basis that we are going to pass a constitution it would be proper for this House to guard against the exclusion of the great constitution which we are going to pass. It is from this point of view that I have drafted the amendment. But the point which I am going to submit before the House is a matter of general importance.

Mr. Speaker: I may just inform the Honourable Member that the words "Notwithstanding anything contained in any law" do not seem to be intended to refer to any constitution or constitutional provisions but they seem to govern the particular law under which the banks are holding the deposits or the public Debts Act dealing with securities. Is that the position?

Shri M. Ananthasayanam Ayyangar (Madras: General): Yes.

Mr. Speaker: If those statutes provide anything which casts any responsibility on the banks or prevents the recognition of the Administrator as the legal holder in his dealing with the banks, under the Public Debts Act in regard to the securities, such provisions in the other Statutes shall not be taken into consideration. That seems to be the only point in having the words "Notwithstanding anything contained in any law", it does not refer to the constitution or to any political position.

Mr. Naziruddin Ahmad: I should have been extremely happy if that was clearly apparent to me.

Mr. Speaker: The Honourable Member may read the further words after "Notwithstanding anything contained in any law for the time being in force", namely, "the property described in the Schedule.....shall be deemed on and from the 9th day of November 1947 to have vested in the Administrator". That is the effective part of the whole provision.

Mr. Naziruddin Ahmad: I submit that the gravamen of this clause is the vesting of certain properties mentioned in the Schedule in the Administrator notwithstanding any law, that is any law which may come into force hereafter and not merely the existing laws connected with the subject like properties, securities, banking and other laws. I submit that the vesting of the property in the Administrator notwithstanding any law contravenes certain provisions of the Government of India Act and certain other Acts and the Constitution which will be passed. It is necessary to guard against this. I am trying to do nothing more than seeing that we guard against the exclusion of any such laws. The language of the clause is so wide that it is difficult to restrict it to laws affecting securities, banking, contract and other things only. It seems to me that it should be clarified that 'any law' does not include the constitutional law of the country. Although that point of view may appear to be so, on a consideration of its wider implications I submit that it is necessary for us to guard against the constitution. We do not know how far we would have the power to set aside the constitution, the Government of India Act or the future Constitution which may be passed. If we have the power it will lead to serious results. In fact, in trying to vest certain property in the Administrator we would be contravening the application of the Constitution where rights of third persons are involved. When we remember that we are trying to bar the jurisdiction of all courts in deciding these matters I think we should be particularly careful. It is not here alone that the matter is touched; it is touched also in clause 6. They are parts of the same subject, and once we commit ourselves to clause 3, I am afraid we will be partly committed to clause 6 also. That is the fear which induced me to guard against the exclusion of constitutional rights. It is a matter of some complexity and I am grateful to you for giving us the light. I submit that my fears are not absolutely unjustified. What the constitutional position will ultimately be it is difficult to say at present.

Prof. N. G. Ranga (Madras: General): Is the Honourable Member arguing on the point of order or on his own amendment?

Mr. Speaker: I am allowing him to argue both—and even clause 6 as he feels that that is connected. Any way the discussion can take place only once.

Mr. Naziruddin Ahmad: I do not want to repeat the contention that the constitutional point being of great importance should be thoroughly discussed. I ask you, Sir, to tell me on a point of order as to whether the clause does not exclude the present constitution,—the Government of India Act and the Indian Independence Act—or whether it will not bar the Constitution when it comes into effect. It may be that in effect they will not be barred because the section might be *ultra vires*. In that case the best thing is not to pass the law at all. I will ask you to give me a ruling. But my fear is that a mere ruling, however binding on the House, will not bind the question of interpretation by the Federal Court.

Mr. Speaker: Therefore it is no use trying it.

Mr. Naziruddin Ahmad: Then the point becomes absolutely clear that if the ruling will not bind a court of law, it is far better to be cautious and introduce the amendment which I am seeking to introduce. The question does not depend upon drafting or upon any speculative nature of the matter; it arises rather on a general point of view. In this way the question is should we, impliedly even, attempt or pretend to bar the constitutional law of the country. That is the object of the amendment. I submit that the amendment on its principle should

[Mr. Naziruddin Ahmad.]

be accepted. I say "Subject to the provisions of the Indian Independence Act, 1947, the Government of India Act, 1935.....and of the provisions of the Constitution of Free India that may hereafter be passed by the Constituent Assembly of India..." It may be that within a month or two, or three months, we may have a new law and the question may then arise as to whether by the operation of clause 3 the application of that law is barred. If it is doubtful as to whether it will or will not bar it, and if it is intended not to bar the law at all, it is better to state it. As to the exact wording of the draft, that is not the point I am canvassing. I am canvassing before the House the general question whether we should not guard against the exclusion of the constitutional law.

That being the position, I think, Sir, the matter should be clarified by the insertion of this amendment or some other suitably worded amendment. At present I am concerned with the principle whether we should really exclude the application of the law irrespective of consequences. In these circumstances I submit that the principle of the amendment should be accepted, but if it is sought by a careful wording of this draft to shut out the constitutional law, that is a different matter. This question of point of order does not arise, but if it is not really desired to shut out the law, what is the harm in making that also clear? I think, Sir, the matter should be clarified in the interests of a large number of the litigant public. Our laws should be absolutely clarified, there should be no ambiguity or room for argument, and I think there is something more than room for argument. I am not absolutely clear whether the Honourable Minister for Law really wants to shut out these things. If he does not really want to shut out the application of those laws, this along with clause 6, then of course we should be on our guard.

Mr. Speaker: Amendment moved:

"That in sub-clause (1) of clause 3 of the Bill, for the words 'Notwithstanding anything contained in any law', the following be substituted:

'Subject to the provisions of the Indian Independence Act, 1947, the Government of India Act, 1935, as adapted by the Indian Independence Order, 1947, any other similar subsequent Orders, and of the provisions of the Constitution of Free India that may hereafter be passed by the Constituent Assembly of India (Constitution), and notwithstanding any other law.'

First of all, I deal with the point of order raised. I am not inclined to hold that this particular amendment is necessarily out of order, because of certain alleged speculative elements therein or because of a contradictory nature. That is a question more or less of the merits of the amendment and not of its admissibility. So far as the merits of the amendment itself are concerned, I do not think it is, in my province to express an opinion, but I have just told the Honourable Member what I felt about the meaning of the words "Notwithstanding anything contained in any law"; and as regards the other points that he has raised, I may invite his attention to the provisions of section 6, subsection (2) of the Indian Independence Act, which says:

"No law and no provision of any law made by the Legislature of either of the new Dominions shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of this or any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Legislature of each Dominion,"

When the constitution makes any provision, it will always be supreme, in pursuance of some provision which the Constitution itself will make. We need not worry ourselves on that question. The other questions are on merits. I need not discuss the merits. I am merely deciding that the amendment is admissible.

Shri M. Ananthasayanam Ayyangar: I am afraid my Honourable friend has the knack of smelling a rat where there is none. Here it consists of two portions: Whatever legislation we pass is always subject to the Independence Act and the Government of India Act 1935, as adapted, and also when we pass a law here, do we not amend it tomorrow? Do we say we prevent our successors and posterity from doing anything which is contradictory to what we do? He wants to avoid the existing law: he wants to safeguard future law. In his own amendment he says "and notwithstanding any other law". Therefore whatever we may do now is not going to upset the present or future constitution. That constitution itself can be modified by another constitution. So far as this law is concerned, certainly it can be modified by either a constitution Act or any other law.

Mr. Speaker: Does the Honourable Member want the amendment to be put to the House?

Mr. Naziruddin Ahmad: Yes, the amendment may be put to the House, but the Honourable the Law Minister has not replied.

The Honourable Dr. B. R. Ambedkar: I cannot accept this amendment and for two simple reasons. One is this, that the clause as it stands intends that the vesting of the property in the administrator shall be absolute so far as this Legislature can confer on him absolute vesting. Now the amendment moved by my Honourable friend makes the vesting contingent and I am therefore unable to accept that amendment on that ground.

With regard to the second fear which he has expressed that by putting forth this clause we are really setting aside the various constitutional statutes to which he refers such as the Indian Independence Act and also the future Constitution, I must say that his fears are not only completely unfounded, but he seems to have altogether missed the very important point that constitutional law always overrides the ordinary law of the Legislature. If there is any provision in the Indian Independence Act which affects the legislative power of this House, or if there is any provision in the new Constitution which affects the power of the Legislature to make law such as the one we are making, it is quite obvious that that law will be declared by the judiciary to be *ultra vires*, and therefore that sort of fear is absolutely unnecessary and the provisions that he is trying to introduce are therefore uncalled for.

Mr. Naziruddin Ahmad: May I point out one thing? You have just now pointed out that under the Indian Independence Act, section 6, sub-section (2), this Legislature has power to set aside any law of the British Parliament. Now the Government of India Act and the Indian Independence Act are statutes passed by the British Parliament.....

Shri M. Ananthasayanam Ayyangar: Has the Honourable Member the right of reply?

Mr. Speaker: He is just inviting attention to one more point.

Mr. Naziruddin Ahmad: The point is that you have rightly pointed out that this House has the power to set aside those laws. Supposing that we cannot set aside our own laws, we can set aside at least the Government of India Act and the Indian Independence Act.

Mr. Speaker: We need not re-argue that point.

The Honourable Dr. B. E. Ambedkar: I would like to suggest to my Honourable friend, even if such a clause was introduced and if the Legislature has power, how can it prevent the Legislature from making law?

Mr. Speaker: Any conclusion that we come to will be subject to the judicial power outside this House. Therefore it is no use our taking time in that discussion, however interesting it may be.

Does the Honourable Member want the amendment to be put to the House?

Mr. Naziruddin Ahmad: Yes, Sir.

Mr. Speaker: The question is:

"That in sub-clause (1) of clause 3 of the Bill, for the words 'Notwithstanding anything contained in any law', the following be substituted:

'Subject to the provisions of the Indian Independence Act, 1947, the Government of India Act, 1935, as adapted by the Indian Independence Order, 1947, any other similar subsequent Orders, and of the provisions of the Constitution of Free India that may hereafter be passed by the Constituent Assembly of India (Constitution), and notwithstanding any other law.'

The motion was negatived.

Mr. Speaker: What about the Honourable Member's other amendments?

Mr. Naziruddin Ahmad: I shall move them.

Mr. Speaker: Except No. 9, which is only about punctuation, I suggest the three amendments be combined into one.

Mr. Naziruddin Ahmad: I beg to move:

(1) "That in sub-clause (1) of clause 3 of the Bill, the words 'His Highness the Nawab of Junagadh, or' be omitted;";

(2) "That in sub-clause (1) of clause 3 of the Bill, the following be omitted:

'or the Private Secretary to His Highness the Nawab of Junagadh'"; and

(3) "That in sub-clause (1) of clause 3 of the Bill, the words 'or any other person whatsoever' be omitted".

Sir, in this case it is necessary to draw attention to the nature of the different kinds of properties set out in the Schedule. You will be pleased to see that in Part I of the Schedule, there are certain bank deposits. Item (3) is deposit in the National Bank of India, Ltd., Bombay, in the name of the Private Secretary to His Highness the Nawab of Junagadh. With regard to the other three, they are in the name of certain officials of the State as such. That is the great distinction between the two classes of property mentioned in Part I, item (3), and the other items. My contention would be that "standing in the name of the Private Secretary to His Highness the Nawab of Junagadh" should be presumed to be the private property of the.....

The Honourable Dr. B. E. Ambedkar: Sir, may I rise on a point of order? It would save time. My friend has not understood at all what he is doing. All these phrases such as "His Highness the Nawab of Junagadh and his Private Secretary" are merely descriptions of the property, intended for the purpose of identification—they do not involve any question of right, title or interest.

Mr. Naziruddin Ahmad: Sir, I am extremely sorry that the Honourable Minister is in the habit of saying that Members do not understand things. Though as a lawyer I am perfectly agreeable to accept the description that I am a humble man, still I am not incapable of understanding the thing. It is quite apparent to the House that they are descriptions but they also indicate the title.

The Honourable Dr. B. E. Ambedkar: Not at all. For the moment they do not indicate any title at all. They merely describe the property which was found by the Administrator. Without these phrases it would be quite impossible to identify which is which property.

Mr. Speaker: The point which the Honourable Member is making seems to me to be that, if a property stands in the name of a particular person, then *prima facie* that particular person is the owner of the property, and he argues from that. His point seems to be that is so far as property which stands in the name of the Dewan of Junagadh or any other public officer of the State, is concerned, it may be State property, but that, properties standing in the name of the Nawab Sahib or his Private Secretary should be presumed to be the Private property of the Nawab and therefore should not be treated as properties of the State and should not be the subject matter of legislation.

The Honourable Dr. B. E. Ambedkar: My submission is that this section 3 is not a section dealing with evidence at all and it is not a question whether it is raising a presumption or not, nor is it a section which deals with right, title or interest. All that the section does is this. Certain properties were found in the books of certain Banks and they were identified as properties standing in the name of so-and-so. All that we are doing is to incorporate the descriptions in the various Banks and in the various securities and mentioning them for the purpose of defining them as to what exactly is the property that is being vested in the Administrator.

Mr. Naziruddin Ahmad: Sir, I am extremely sorry to be unable to agree with the Honourable the Law Minister.

The Honourable Dr. B. E. Ambedkar: The whole trouble is this. My Honourable friend has completely misunderstood the Bill. The reason why I say he has misunderstood it is to be found in the amendment which he sought to be moved in section 1. He says, "This Act may be called the Junagadh Suppression of Rights (Property) Act, 1948". It is nothing of the kind. All his amendments are motivated by that misunderstanding.

Mr. Naziruddin Ahmad: I beg to submit, Sir, that the Honourable the Law Minister is suffering not from misunderstanding but a little of haste.

Mr. Speaker: Is the Honourable Member likely to finish in half a minute? I think he will take some time?

Mr. Naziruddin Ahmad: Yes, Sir. But may I take this point and say that it was not misunderstanding on my part, but which as you have correctly pointed out is a serious fact, which if the Honourable the Law Minister listens with patience he will agree with me.

Mr. Speaker: Order, order. It is time for the House to adjourn for Lunch.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock.
Mr. Speaker (The Honourable Mr. G. V. Mavalankar) in the Chair.

RESOLUTION RE. ELIMINATION OF COMMUNAL ORGANIZATIONS

Mr. Speaker: Before I call upon any of the members who have given notices of Resolutions, I should like to say something about the time-limit. I find from the nature of the Resolutions and the list of speakers submitted to me that, a large number of Honourable Members are eager to speak. There are two Resolutions and we have two and a half hours at our disposal. So each Honourable Member may take up ten minutes except in the case of the Mover. (An Honourable Member: "Only ten minutes!"). I was saying ten minutes normally, but if an Honourable Member is really making any point, the matter will be seen. But then, if Honourable Members are to the point and short, it will give an occasion to other members to cover ground over such important subjects.

Haji Abdus Sattar Haji Ishaq Seth (Madras: Muslim): Before you call upon the Mover, Sir, may I point out that in the old rules, the time given is 15 minutes for Resolutions. I think it is mandatory and every Honourable Member has a right to speak for 15 minutes. I think the rule states: "The time shall not exceed 15 minutes".

Shri M. Ananthasayanam Ayyangar (Madras: General): It has been changed under the new rules.

Mr. Speaker: So far as Adjournment Motions are concerned, the time-limit is very specific. It shall not exceed even by a single second beyond 15 minutes. As regards others, it is not that every member has got a right to speak for 15 minutes. It is not so. But as I said, I am entirely in the hands of the House.

Mr. Ayyangar may now move his Resolution.

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

"Whereas it is essential for the proper functioning of democracy and the growth of national unity and solidarity that communalism should be eliminated from Indian life, this Assembly is of opinion that no communal organisation which by its constitution or by the exercise of discretionary power vested in any of its officers or organs, admits to or excludes from its membership persons on grounds of religion, race and caste, or any of them, should be permitted to engage in any activities other than those essential for the bona fide religious and cultural needs of the community, and that all steps, legislative and administrative, necessary to prevent such activities should be taken."

Sir, India is an old nation but is a young State. We are in a world torn by factions and camps and unless in a very short period of time India consolidates herself and progresses into a strong and homogeneous State, we will be nowhere and the freedom that has been won will be only transitory. Religion was a binding force in a primitive community. But religion today has egregiously failed in that purpose of binding man with man. The last two Great World Wars have demonstrated unequivocally that religion is no longer a binding force in the world. Christian nations fought amongst themselves. Before this, as a result of the last War, the *Khilafat* was not accepted by one of the premier Muslim nations. Today, there is war going on between one community and another in Palestine. Is there any hope that religion will bind us once again, and prevent the wars, and bring God nearer to man?

In our own history, Sir,—permit me to take you through some of the milestones and epochs which took place in it—our history must start from the days of Indian independence, the battle of Indian independence, so early as 1857. After the Moghul Emperors left, Hindus and Muslims joined together, and hand in hand fought to get rid of the foreign rule. They fought together.

No communalism prevailed. In 1884 the Congress was started and both Hindus, Muslims and all other sections and communities in this country stood in the same platform for achieving the independence of this country. Our white masters then did not like this coming together and uniting against themselves. As everyone is aware, in 1903-05, Lord Curzon tried to split us again. He wanted to effect a partition of Bengal, divide the Hindus and Muslims, and he did so. But ultimately he had to get back, eat his own words and annul the partition which was settled. The settled partition was no longer settled. In 1906 a Pact was entered into which was concluded and finalised in 1916, giving separate electorates with some reservations. So the Britishers played between the two communities successfully and started a game of Divide and Rule, which ultimately ended in the partition of Mother India. Sir, after 1916, finding that once again we have come together and agreed upon a common course of action—I am referring to the adoption of the Lucknow Pact in 1916—which was an eye-sore to the Britishers—they immediately ran from the North to the South and started trouble,—not inter-religious, but sub-communal—setting one section of the Hindu community against another. This went on for a period of ten years and more till the 1931 Round Table Conference. Then they found another easy opportunity for dividing the country. They set the Scheduled Castes against the non-Scheduled Castes. Not that I say that we have been treating these various communities very well, but nothing was in our hands till then. The Britishers could have easily introduced compulsory education for all classes and masses in this country and brought them to the same level. But they were the first persons who with one hand suppressed the toiling millions of this country, and in the other breath went about saying that we stood in the path of progress, and divided our country. Later on, Sir, everyone knows that Mahatma Gandhi was almost determined to sacrifice his life to bring about amity between the various sections of the Hindus at least. We know of the various fasts that he undertook, the *Khilafat* movement etc. which he undertook for bringing about communal harmony in our country between all communities. Then, Sir, in 1940, Lord Linlithgow played another trick. Till then the Hindu Mahasabha was not recognised as a political party. He recognised the Hindu Mahasabha as a political entity and tried to put the Mahasabha sometimes and the Muslim League sometimes and he wanted to throw them both overboard. In 1942, Cripps came and introduced the element that each province of this country would have to proceed on the principle of self-determination. In 1945-46, we know that inspite of attempts to group all parties together, they tried their best and ultimately separation is the result. Have we succeeded in bringing the people—the hearts of the people—together? Separation is there still. I am afraid it continues in our midst.

Now, Sir, with this history before us, let us ask: "Is it all right?" Is it all right that we should pursue the same course and not turn a new leaf and try every means of bringing about unity amongst the various sections? I say, Sir, a stronger bond and greater cementing force than all the religions has to be found. It is not that human brain or human ingenuity is wanting. I do say humanity must be our religion and service our worship. Nothing short of that. Before we attain to that high pedestal, we are all members of the human race—not only of the human race, but the entire creation—we must be one limb of the entire universe, of the entire order of the universal soul, of which we are all parts. It is that *summum bonum* that I am trying to achieve and attain but before we attain to that step, there is the earlier step—the attainment of a nation State, a secular one, which is our object to build.

Every man in India must feel another man as his own brother. I wish if it were possible for me to persuade all my brethren in this country who say that he belongs to this sect or that sect, this creed or that creed that he must only say: "I am an Indian first and I am an Indian last". I hope sooner than

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ever a day will come when I will say: I am merely a human being and nothing short of that and nothing more. That day will certainly come. Let us usher in that day and remove the obstacles in the path of this kind of consolidation. That consolidation is necessary now. I will urge upon all persons who have read history that other countries in the world have attempted and succeeded in that. It is not necessary for me to relate the history of various other countries in the world. The two outstanding examples are the U.S.A. and the U.S.S.R. The U.S.A. today, Sir, is composed of various persons who moved from various parts of the European Continent; there are Spaniards, the Italians—they could not have on account of their large growth of population lived in that country—the Swedes, the French and the Englishmen and a host of others have lived together for three generations and one might still remember when they originally left their homes to settle there, but today they are proud of America and they are citizens of the U.S.A. They would not barter away—to whatever community they belonged originally—their freedom on account of either racial or religious feelings. That is the kind of state which I have in my view and it is for that purpose in my humble view I have set out some methods by which we can attain that purpose. We have to take both positive steps as well as steps to prevent abuses or of such tendencies as are likely to separate man from man and community from community in this great country. The U.S.S.R. is another outstanding example. Now, Sir, to those persons who would like to build a State here on purely religious grounds I would ask them if it is physically possible or it is at all possible? We will assume that the great Hindu community wants to create a Hindu community state in this country. We are alone; let all Hindus know that we are orphans in this world; we have no relations; there is no other Hindu nation in the world; we are all alone. And therefore, if we build up a Hindu state in this country, can we claim as neighbours or relations with any other Hindu state of the world? Therefore that kind of compartment will fail in its purpose. In times of dire necessity we may not be able to get another friend merely because he is a Hindu and we have to find other courses of friendship and other bonds of fellowship. Therefore, so far as the minorities in this country are concerned, if they press for a separate minority organization and want to get themselves as a minority, they will be defeated in their purpose. A minority based on religion can never hope to convert a majority into that religion. I was born a Hindu but not out of my choice, nor am I going to keep it because I want to stick to it. There is a kind of prestige in it. Anybody who claims he is born in any particular community is not on account of his choice, let him be a Hindu, a Muslim or a Sikh. We do not know where we have come from and we do not know where we will go to. This mortal existence has been given to us. Let us all make the best of it; let us all come together behind these apparent differences and find the eternal unity. There is divinity in man if we accept the tenets of Hinduism:

बहूनाम् जन्मनामन्ते ज्ञानवान् माम् प्रपद्यते
वासुदेवा सर्वमिति समहात्मा का सुदुर्लभा ।

If we believe in the wisdom of our ancients and seers, after a cycle of births and deaths the wisemen realized that whatever exists is God. There is divinity in man. There is only a spark that motivates the entire universe. Let us realise the divinity. Islam preaches brotherhood of man. Even according to the tenets of Islam no difference can exist between man and man. The fatherhood of God and sonship of man is an old great teaching of the other great religion. Really in those religions there is nothing which separates man and man. Man as an individual is the compatriot, is the fellow brother of another man. In spite of these religions we are warring merely for the purpose of protecting those religions. I say, Sir, if the minorities insist upon

continuing these religions, they would not be able to convert the majorities into their own religions merely on religious or racial grounds. But there is another chance; if on political grounds or economic issues they differ, then certainly it is open in a democracy to convert the majority into a minority. I will assume the Muslims or other communities in this country want to run a Government of Muslims, is it at all possible that the Hindus will agree to become Muslims? Democracy stands or falls on a party system. Do my friends or whoever may stand for these communal organizations hope early or late to convert the majority Hindu community into their own Muslim fold? I do not believe it is so. If they do, they will be defeating their purpose.

Now, Sir, even from a secular point of view there is the advantage in an Assembly where there are 300 who have come here a minority of 20 or 30, unless it mixes freely with the other communities and evokes their sympathy may not be able to gain its point. If any of our friends who belong to any religious group want to have some decision taken for the betterment of their community, unless the majority community accedes to that request, nothing in this world can possibly help them. Therefore, in their own interest I would advise them not to insist upon these organizations. These organizations developed recently. I am bound to say that they did not stop with the major religions, but the canker has permeated into even sub-sections and sub-castes and creeds of the entire continent. Villagers have been burnt and like water drawn from a high level finds its way to a low level, likewise differences based on religion or community reach all sections. The logical conclusion is that we will find that only condition is possible difference between man and woman. Therefore there is no purpose even if the majority community is converted into the minority community. They may further feel assured that it cannot be easily dislodged on the grounds of religion, because it belongs to a bigger religion. It is open to a minority community to make one of their members the Premier of the Federation of India, an independent State, but so long as a minority community bases its claim upon religion, I assure them and so long as they are also living here, unless the minority community wants to dominate the other communities in this country, they will never reach the top level in the administration of this country.

Therefore judged from any point of view, it is unwise to continue religions on grounds of religion or community. Lastly even from the point of view of religion, I think the time has come when religion ought to be divorced from politics. It is not in the best interests of religion when it is linked with politics.

So far as Muslim faith is concerned Kabir was there who even today is worshipped by large sections of Hindus. Kabir is not merely the saint of Muslims but honoured as a saint of the Hindus. In my part of the country there are temples built to Muslim saints and our children are called *Pirgar*. Pir is a Muslim name but we do not hesitate to give them this name. There is also in my part of the country a temple where the Prophet Muhammad is worshipped. Now various attempts were made to extend religion, but when once a political complexion is given to religion there is an end to all progress in that religion. Even if I take the tenets of Islam in my own heart of hearts, if it encroaches on my civic rights, at once I close the doors of my heart. Therefore even from the point of view of expansion of religion all great teachers are scientists. I have not quarrelled with Marconi merely because he has torn and revised so many things. But now there is a ray of hope and our people are veering round. I find from the deliberations of the Hindu Mahasabha that they have resolved to give up all activities other than *bona fide* religious and cultural activities. I find a similar attitude on the part of the *Akali Dal* which has merged itself in the non-religious and secular body of the Congress. I find also that resolutions were passed by the *Jamiat-ul-Ulema*, the *Ahirs* and others in the Muslim community that they want to

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give up their political activities and confine themselves to the limits of religious preaching. It may be asked then as to what the need for this resolution is if it is like that. I say that in the case of those institutions and communities who have themselves given up all political activities in the name of religion, this only endorses what they have done. With all thankfulness this resolution endorses that. But still there are some who want to bring religious differences in the field of politics; they have still the ambition to have these organisations based purely on religion or culture. To them there is an appeal; if they do not yield to the interest of the larger section they must be made to yield. Lastly I make an appeal in the name of all the Prophets that have gone, the saviours of humanity who wanted to bring all sections of the world together and who preached love and peace. War is not an end in itself, it is the beginning or a step towards peace. In the name of all great saviours of the world, in the name of Mahatma Gandhi who shed his blood and sacrificed his life for the cause of humanity and for the cause of the teeming millions of this country, for the cause of the solidarity of the country, I beseech the House to pass this Resolution with such modifications, if necessary, as the House may think necessary from the social and cultural point of view. It is not intended that social activities are to be banned; all *bona fide* social and religious activities should be allowed. Each religion has to put forth its best efforts; but when it enters politics there is a danger. The clouds of war are thickening in the sky and I do not know when they will burst. Let us stand firm and solid like a rock, separate the armies and preach peace to them. That is the mission of India and to that end and objective I appeal to the House to pass this Resolution.

Mr. Speaker: Resolution moved:

"Whereas it is essential for the proper functioning of democracy and the growth of national unity and solidarity that communalism should be eliminated from Indian life, this Assembly is of opinion that no communal organisation which by its constitution or by the exercise of discretionary power vested in any of its officers or organs, admits to or excludes from its membership persons on grounds of religion, race and caste, or any of them, should be permitted to engage in any activities other than those essential for the *bona fide* religious and cultural needs of the community, and that all steps, legislative and administrative, necessary to prevent such activities should be taken."

The Honourable Pandit Jawaharlal Nehru (Prime Minister and Leader of the House): Sir, before this debate proceeds any further I should like to indicate the attitude of Government in regard to this Resolution. Government welcome this Resolution and desire to say that they wish to do everything in their power to achieve the objective which lies behind this Resolution. After the eloquent speech of the Honourable Mover I need not say much about the desirability of this Resolution; as a matter of fact it is an inevitable policy which an independent country must adopt. There might have been in the past various reasons which came in the way of such policy being given effect to, although I think that even in the past those of us who accepted any measure of communalism erred and acted unwisely, and we have suffered greatly for our unwisdom. However, in the past conditions were different; but when a country is functioning independently there is no alternative except to follow this. The only alternative is civil conflict. We have seen as a matter of fact how far communalism in politics has led us; all of us remember the grave dangers through which we have passed and the terrible consequences we have seen. In any event now there is no other alternative; and we must have it clearly in our minds and in the mind of the country that the alliance of religion and politics in the shape of communalism is a most dangerous alliance, and it yields the most abnormal kind of illegitimate brood. We have talked a great deal about politics being allied to ethics; that is something which I hope we shall always stand for. During the last quarter of a century or more Mahatma Gandhi taught us to place politics on an ethical

level. How far we succeeded it is for the world to judge and for future generations to decide. But it was something at least that we placed that great ideal before us and tried in our own weak and halting way to give effect to it. But the combination of politics and of religion in the narrowest sense of the word, resulting in communal politics is—there can be no doubt—a most dangerous combination and must be put an end to. It is clear, as has been pointed out by the Honourable Mover, that this combination is harmful to the country as a whole; it is harmful to the majority, but probably it is most harmful to any minority that seeks to have some advantage from it. I think even the past history of India will show that. But in any event a minority in an independent State which seeks to isolate and separate itself does some injury to the cause of the country, and most of all it injures its own interests, because inevitably it puts a barrier between itself and the others, a barrier not on the religious plane but on the political plane—sometimes even to some extent on the economic plane; and it can never really exercise the influence which it legitimately ought to aspire to exercise, if it functions in that way. Now the future constitution of India is being hammered out in the Constituent Assembly and no doubt it will give shape to it in the course of the next two or three months and finalise it, and any Resolution that we may pass is not going to alter that constitution as it is finally adopted. But after all the constitution making body is more or less this body; there is not much difference. And if this House thinks in terms of this Resolution I have no doubt that the constitution making body will also think in terms of this Resolution. Further, from such evidence as we have got of the working of that constitution making body, it has already gone a long way in terms of this Resolution. It has put aside many of the dangerous features of our old constitution which led to communalism. Whether other features will remain or not I cannot obviously guarantee. But as far as I am concerned, I think the less we have of any form of communalism the better it is for our constitution and for the practical working of our Government.

Now, Sir, so far as this Resolution is concerned, as I said, we warmly welcome the objective underlying it and the spirit behind it. But this Resolution mentions administrative and legislative measures to be taken to give effect to it. Exactly what those administrative and legislative measures might be, it is impossible to say straight-off; it will require the closest scrutiny, certainly the legislative part of it. And presumably the right course for Government will be—if this Resolution is passed, as I feel sure it will be—to consider this matter and see what administrative and—more specially—what legislative measures are necessary to gain this end; and then later when this House meets again for another session, to consider any recommendations in that respect so far as legislative measures are concerned. Meanwhile, no doubt our new Constitution will have taken shape also and it will help us

3 P.M. then to consider those legislative measures in terms of that new Constitution. But we need not wait till then. The point is so far as the Government is concerned that we should function as closely as possible in accordance with the spirit of this resolution. Further, the purpose of this resolution, I take it, is also to give a lead to the country in this matter, so that the country may realize as clearly as possible that the only right way for us to function is to do away with communalism in its political aspect in every shape and form. That we accept. Now there are at the present moment, as some Members may later point out, in the draft Constitution that has been proposed certain definite communal elements. For instance, I believe that there is a proposal that although there should be joint and common electorates, still there might be some reservation of seats for minorities or for the scheduled castes on more or less, I take it, the population basis. Now what the final decision will be about that I cannot say. I hope personally that the less reservation there is the better, and I think that is so mostly even

[Pandit Jawaharlal Nehru.]
 more from the point of view of the group or the minority that might have that reservation than even more so from the point of view of any other group or majority.

There is another aspect of this matter which must be remembered. We talk about democracy and unity and all that and I hope we shall rapidly have more and more democracy and more and more unity in this country. A democracy is not purely a political affair. The nineteenth century conception of democracy that is each person having a vote was a good enough conception in those days but it was incomplete and people think in terms of a larger and deeper democracy today. After all there is no equality between the pauper who has a vote and the millionaire who has a vote. There are a hundred ways of exercising influence for the millionaire which the pauper has not got. After all there is no equality between the person who has got tremendous educational advantages and the person who has had none. So educationally, economically and otherwise, people differ greatly. People will, I suppose, differ to some extent. All human beings are not equal in the sense of ability or capacity. But the whole point is that people should have equality of opportunity and that they should be able to go as far as they can go.

Now it is patent in India today that there are huge differences between certain groups, classes and individuals. There is a big hiatus between those at the top and those at the bottom. If we are to have democracy it becomes necessary and essential for us to not merely bridge that gap but to lessen it very greatly: in fact to bring them closer together so far as opportunities are concerned, so far as ultimately as general living conditions are concerned and in so far as the necessities of life are concerned, leaving out for the moment luxuries and the rest, though ultimately there seems to me to be no particular reason why any particular group or class should be favoured even in regard to the luxuries of life. But that is perhaps a rather distant picture. Now, because there are such great differences in India, it becomes incumbent upon us, not only from humanitarian reasons but from the standpoint of the fulfilment of democracy to raise up those people who are low down in the social, economic and other levels and to bring to them every opportunity of growth and progress, national and otherwise. That has been the general accepted policy of this country and it is the accepted policy of this Government. Now in pursuance of that policy, certain reservation of seats was granted, for instance to the scheduled castes, and various scholarships and educational amenities, etc., have been granted and no doubt will be granted still more, not only to the scheduled castes but there may be other backward groups in the country. There are tribal people and others who require every help. It is no good for us to say that we have given a vote to the member of a tribal folk and we have done our duty to him; having for hundreds and thousands of years not done our duty to him, by giving him a vote we consider ourselves absolved of all further duty. Therefore, we have to think always in terms of raising the level of all those who have been denied opportunities in the past. I do not personally think myself that the best way to do that on the political plane is reservation of seats and the rest. I think the best way, and the more basic and fundamental way, is to advance them rapidly in the economic and educational spheres and then they will stand on their own feet. There is a great danger whether you deal with an individual, group or community, of giving certain props to that community which gives it a false sense of strength which does not belong to it, which does not come out of its own strength, but which is external to it and which when removed suddenly makes it weak. A nation ultimately ought to stand on its own feet. So long as it relies on some external prop it is not strong. It is weak. So these external props, as I might call them—that is reservation of seats and the rest—may occasionally be helpful possibly in the case of the backward groups, but they produce a false sense of the

political relation, a false sense of strength, and ultimately therefore they are not so nearly as important as real educational, cultural and economic advance, which gives them inner strength to face any difficulty or any opponent. However, I can conceive that in the present context of affairs in regard to these unfortunate countrymen of ours who have not had these opportunities in the past, special attempts should be made of course in the educational and economic field and even in the political field to see that they have a proper place till they find their own legs to stand upon without any external aid.

So I accept this resolution on behalf of Government, but in accepting it I should like to make it perfectly clear again that so far as the implementation of it is concerned, more especially in regard to the legislative aspect of it, it will have to be very carefully considered and will ultimately have to come before this House.

Mr. Speaker: I was told that only one or two amendments were going to be moved. If there are any other amendments to be moved, I have no objection to them. The Members concerned will just move their amendments and then I will call upon them.

The Honourable Pandit Jawaharlal Nehru: I have no objection on behalf of Government to accept the addition of the words "social and educational" which are mentioned in one of the amendments on this resolution. It would read:

" should be permitted to engage in any activities other than those essential for the *bona fide* religious, cultural, social and educational needs of the community,"

Mr. Speaker: Let the amendments now first be moved.

Haji Abdus Sattar Haji Ishaq Seth: Sir, I shall move all the four amendments in my name, as they are really one. I move:

(1) "That the word 'communal' be omitted";

(2) "That for all the words beginning with the words 'which by its constitution' and ending with the words 'or any of them', the following be substituted: 'preaching violence and communal hatred'";

(3) "That for the words 'engage in any activities other than those essential for the *bona fide* religious and cultural needs of the community', the word 'exist' be substituted"; and

(4) "That for the words 'such activities', the following be substituted: 'the existence of such organisations'";

Mr. Speaker: In fact three amendments are all one asking for certain changes to be made in the resolution.

Amendments moved:

(1) "That the word 'communal' be omitted";

(2) "That for all the words beginning with the words 'which by its constitution' and ending with the words 'or any of them', the following be substituted: 'preaching violence and communal hatred'";

(3) "That for the words 'engage in any activities other than those essential for the *bona fide* religious and cultural needs of the community', the word 'exist' be substituted"; and

(4) "That for the words 'such activities', the following be substituted: 'the existence of such organisations'";

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

"That the words 'those essential for the *bona fide*' be omitted."

Mr. Speaker: Amendment moved:

"That the words 'those essential for the *bona fide*' be omitted."

Shri H. V. Kamath (C.P. and Berar: General): Sir, I move:

"That the word 'and' occurring after the word 'religious' be omitted and after the word 'cultural', the words 'social and educational' be inserted."

[Shri H. V. Kamath]

This is the amendment accepted by the Honourable the Leader of the House.

I move the other amendment as well:

"That the word 'race' be omitted."

Mr. Speaker: I will put it to the House as one amendment but in two parts.

Amendment moved:

(i) "That the word 'and' occurring after the word 'religious' be omitted and after the word 'cultural'; the words 'social and educational' be inserted."

(ii) "That the word 'race' be omitted."

श्रेष्ठ गोविन्ददास : सभापति जी, मैं इस प्रस्ताव का हृदय से समर्थन करता हूँ। हमारा देश कितना प्राचीन देश है और हमारे देश का इतिहास कितना प्राचीन है। इस सम्बन्ध में प्रस्ताविक महोदय ने कुछ बातें कही हैं। मैं आपका ध्यान बहुत पुराने समय की ओर ले जाना चाहता हूँ। इस देश के दुर्भाग्य के कारण इस देश पर सदा विदेशियों का आक्रमण होता रहा। जब जब यह आक्रमण हुआ तब तब जातिभेद और साम्प्रदायिकता का प्रश्न इस देश के सामने उपस्थित हुआ। परन्तु आज चाहे इस देश के सामने साम्प्रदायिकता की और जातियता की समस्या सारे संसार के देशों से अधिक हो। परन्तु इसमें सन्देह नहीं हो सकता कि इस देश में आरम्भ से ही इन समस्याओं को हल करने का प्रयत्न किया गया।

मैं आपका ध्यान जिस समय इस देश पर यूनानियों का आक्रमण हुआ उस समय की ओर ले जाना चाहता हूँ। उस समय यूनानियों में और भारतीयों में कोई झगड़ा न रहे दोनों एक हो जायें इस उद्देश्य से चन्द्रगुप्त मौर्य ने सेल्युकस की कन्या से विवाह किया था। उसके पश्चात् जब यहाँ पर शक और हूण आये तब फिर यह कटुता आयी इस बात का प्रकलन हुआ कि शक हूण और आर्यों में कोई भेद न रहे। आज कोई यह नहीं जानता कि हम में से कौन शक है कौन हूण है और कौन आर्य है। उसके पश्चात् जब बौद्धों और हिन्दुओं का संघर्ष हुआ उस समय सम्राट हष वर्धन ने बौद्धों और हिन्दुओं के पारस्परिक सहयोग का प्रयत्न किया यह बात इतिहास से सिद्ध है कि सम्राट हर्ष समय समय पर शिव सूर्य और बुद्ध तीनों की प्रतिमाओं को इकट्ठा कर उनकी सार्वजनिक पूजा कि भा करते थे। मुसलमानों के आने पर सम्राट शेरशाह सूरी और अकबर ने इस सम्बन्ध में जो प्रयत्न किया वह आज भी हम लोगों का मार्ग प्रदर्शक हो सकता है। कहने का मतलब यह है कि यह देश इतना प्राचीन है, इस देश का इतिहास इतना प्राचीन है और इस देश के इतिहास में साम्प्रदायिकता और जातियता की एकता का प्रयत्न इतना प्राचीन है कि आज भी यदि हम उससे शिक्षा लेकर इस बात का प्रयत्न करें जो कि इस समय किया जा रहा है तो हम अपने प्रयत्न में सफलता प्राप्त कर सकते हैं।

इस समय की साम्प्रदायिकता का अधिक जोर लखनऊ की सन् १९१६ की कांग्रेस लीग योजना से आरम्भ होता है। इससे पहले हिन्दू मुसलमान दोनों बहुत समीप आ गये थे। यद्यपि एक मन्दिर में प्रार्थना करना था तो दूसरा मसजिद में इबादत पढ़ता था तथापि एक दूसरे का सुख दुःख का सम्बन्ध था। जितने त्यौहार और दूसरी बातें होती थी एक दूसरे का उसमें योग रहता था। मुझे अपने बाल्यावस्था की ऐसी बातें याद हैं। मुहर्रम और दशहरा के दिनों में हमको यह नहीं जान पड़ता था कि ये किस के त्यौहार हैं मुसलमानों के या हिन्दुओं के। तो उस समय हिन्दु मुसलमान इतने समीप आ गये थे परन्तु उस कांग्रेस-लीग योजना से जो पृथक्-निर्वाचन क्षेत्र हुए और जिन्हें मार्ले-मिन्टो रिफार्म के समय भी स्वीकार किया गया फिर से साम्प्रदायिकता का जो बीज बोया गया वह तरु बना फिर उसमें पल्लव पृष्प आये और उसमें से पाकिस्तान के रूप में फल निकला। पाकिस्तान हो गया और महात्मा गांधी जी की हत्या हुई।

यदि हम इस वैमनस्य के इतिहास को देखें तो हमें जान पड़ता है कि शेरशाह सूर और अकबर ने जो प्रयत्न आरम्भ किया था वह कांग्रेस और लीग योजना से विफल हो गया। साम्प्रदायिकता की भावना का अभी पूरा २ नाश हो गया यह बात मैं नहीं मान सकता। अभी हाल में अलीगढ़ युनिवर्सिटी में जो चुनाव हुए उन चुनावों से हम देखते हैं कि जो साम्प्रदायिकता को मानने वाले थे उन्हीं को बहुमत से चुना गया। मैं आपसे यह कहना चाहता हूँ कि केवल शब्दों की बफादारी से या मुसलिम लीग को बन्द कर देने से या हिन्दु महार्मभा अब राजनैतिक बातों में हस्तक्षेप नहीं करेगी, यह कह देने से काम नहीं चल सकता। हमको साम्प्रदायिकता की जो जड़ हैं उस को खोद कर फेंक देना पड़ेगा और तब जैसा इस प्रस्ताव में कहा गया है कि हमारे प्रजातंत्र और हमारी जातीयता की एकता इस देश में स्थापित हो सकेगी इसके लिए इस प्रस्ताव में सुझाव किये गये हैं और मुझे हर्ष है कि अभी माननीय पं० जवाहर लाल नेहरू ने हम से कहा कि इन सुझावों को कार्य रूप में परिणत करने का प्रयत्न किया जायगा।

मैं अन्त में एक बात और कहना चाहता हूँ। आज भी एक ही कुटुम्ब में एक हिन्दु निवास करता है जो वेद को मानता है और उसी कुटुम्ब में एक सिक्ख निवास करता है जिस का वेद से कोई सम्बन्ध नहीं। एक ही कुटुम्ब में वेदों को मानने वाला हिन्दु रहता है और वेदों को न मानने वाला जैन। इसी प्रकार क्या एक ही कुटुम्ब में हिन्दु और मुसलमान नहीं रह सकते? मैं कहना चाहता हूँ कि वह समाज आयेगा जब हम इस साम्प्रदायिकता और जातीयता को नष्ट कर इस देश में ऐसे समाज की रचना करेंगे जो समाज जाति और सम्प्रदाय पर अवलम्बित न रहकर सच्ची राष्ट्रीयता पर अवलम्बित रहेगा। तभी जैसा इस प्रस्ताव

[सेठ गोविन्ददास]

में कहा गया है हम सच्चे प्रजातंत्र की स्थापना कर सकेंगे और हमारा जो राष्ट्र होगा वह एकता और दृढ़ता का राष्ट्र होगा। मैं इस प्रस्ताव का समर्थन करता हूँ और मैं आशा कर हूँ कि तत्प्रधान मंत्री जी इस प्रस्ताव के अनुसार कुछ न कुछ कार्य करने का शीघ्र प्रयत्न करेंगे।

(English translation of the above speech).

Seth Govinddas (C. P. and Berar: General): Mr. Speaker, I heartily support this Resolution. The Mover of the Resolution has already stated in the course of his speech that India is an old country and it has ancient history. I want to draw your attention to the old times age. Unfortunately, this country has been the victim of frequent raids by foreign invaders. Whenever these invasions took place, this country was confronted with communal problems. Although the present day communal problems rife in this country have assumed far more serious proportions as compared with other countries in the world, yet there can hardly be any doubt that efforts had been made to solve these problems from their very inception.

I would like to draw your attention to the times when the Greeks invaded this country. With a view to eliminate the possibility of any conflict between the Indians and Greeks and to promote mutual unity, Chandergupta Maurya married the daughter of Seleucus. After this, when the *Sakas* and *Huns* came to this country, this bitterness again arose. Efforts were made to remove all sorts of racial discrimination between the *Sakas*, *Huns* and *Aryans*. None amongst us can distinguish today as to who are the *Huns*, *Sakas* and *Aryans*? Afterwards when *Buddhists-versus-Hindus* controversy arose, King Harsha-Vardhana tried to establish mutual amity between the two communities at that time. This fact is supported by the history that King Harsha used to worship in public the three Gods *viz.*, *Shiva*, *Surya* (Sun) and *Buddha* together. On the advent of Muslim rule, the efforts made by the Emperors Shershah Suri and Akbar in this direction can even today serve as our guide. What I mean to say is that ours is an old country with ancient history. The growth of communalism in this country dates back to the ancient days and since then efforts have been made to achieve national unity and solidarity. If we learn a lesson from this even today and make earnest efforts in this direction—as is being done now—we are sure to succeed in our object.

The present day communalism owes its origin to the Lucknow Congress-League Pact of 1916 after the conclusion of which it gained strength. Prior to this, the Hindus and Muslims had become very close to each other. Although the one worshipped in the temple and the other prayed in the Mosque, yet mutual goodwill prevailed. They used to celebrate and observe their festivals and ceremonies together. I remember of many such occasions during the days of my childhood when on *Muharram* and *Dussehra* festivals we could hardly say to which particular community they pertained. The Hindus and Muslims had become very near to each other in those days. But the principle of separate electorates agreed upon in the Congress-League Pact and which was also subsequently accepted at the time of the introduction of Morley-Minto Reforms, sowed fresh seeds of communalism. This resulted in the growth of a tree which later on bore fresh sprouts and flowers and yielded fruit in the form of Pakistan. The state of Pakistan was established and Mahatma Gandhi was assassinated.

If we trace the history of this communal malice and hatred then it would be observed that the efforts made by Akbar and Shershah Suri were rendered infructuous by the Congress-League Pact. I cannot believe that communalism

has been completely wiped off. We find from the result of the recent elections held in the Aligarh University that those who believe in communalism were elected with a majority. I would, therefore, like to tell you that no useful purpose would be served either by owing lip allegiance or in the mere assurances that the Muslim League would be dissolved and the Hindu Mahasabha would not now participate in the political activities. We shall have to destroy the very roots of communalism and then only we would be able to establish democracy, national unity and solidarity in our country as envisaged in the Resolution. I am glad to say that the Honourable Pandit Jawaharlal Nehru has just now informed the House that efforts will be made to implement and achieve the objective which lies behind this Resolution.

In the end, I would like to say that even today a Hindu and a Sikh live in one family—the former believes in *Vedas* and the latter has nothing to do with them. Cannot thus the Hindus and Muslims live together in one family? I might tell you that time will come when we will destroy this evil of communalism and establish a society in this country which would be based on true nationalism instead of communalism. Then only we would be able to establish democracy in the real sense as visualised in this Resolution, and our State would be a symbol of unity and solidarity.

I support this Resolution and hope that the Honourable the Prime Minister will take early steps to implement it.

Haji Abdus Sattar Haji Ishaq Seth: Sir, I have moved four amendments to the Resolution. As they may be rather confusing I shall read the Resolution as it will stand if my amendments are incorporated. If my amendments are accepted the Resolution would read thus:

"Whereas it is essential for the proper functioning of democracy and the growth of national unity and solidarity that communalism should be eliminated from Indian life, this Assembly is of opinion that no organization preaching violence and communal hatred should be permitted to exist and that all steps, legislative and administrative, necessary to prevent the existence of such organizations should be taken."

This is how the Resolution would read if my amendments are accepted by the House. Sir, so far as the objects that my Honourable friend Mr. Ananthasayanam Ayyangar has in mind when moving this Resolution are concerned I accept them wholeheartedly and *in toto*. My amendments do not really try to alter a single word of his preamble. As I said, I am wholeheartedly with him in this objective. The difference is only with regard to the method by which this objective could be achieved. I know in the present conditions of the country, and placed as I am in this country, it is not only delicate but rather dangerous for me to rise today to propose an amendment to what has been described as a unanimously accepted position in this House. The Honourable the Leader of the House rising in his responsible position in this House has accepted this Resolution. Probably many of my Honourable friends thought that after what the Leader of the House has said I will not move the amendments. In getting up to move these amendments, facing all these dangers and the delicate situations, I hope the House will grant me the honesty of my own convictions. I really and sincerely feel that what my Honourable friend Mr. Ananthasayanam Ayyangar and the Honourable that Leader of the House wish to achieve will not be achieved by the means that Mr. Ananthasayanam Ayyangar is proposing.

[At this stage Mr. Speaker vacated the Chair, which was then occupied by Pandit Thakur Das Bhargava (one of the Panel of Chairmen)].

I have sufficient experience of public life in this country. Mr. Ananthasayanam Ayyangar also has. Incidentally, if I may with great respect offer my heartfelt frankfulness for the very careful terms in which my Honourable friend spoke today. I shall be very glad if he will accept it as coming from a sincere person. In future, whenever such occasions arise I hope he will speak with the same restraint and in the same spirit.

[Haji Abdus Sattar Haji Ishaq Seth.]

Coming to my amendments, before I go into the details, may I remind the House and may I take the liberty of reminding the Honourable the Prime Minister that exactly this was the opinion of the Government of which he is the head? Immediately on the great loss that this country suffered by the death of that great man, Mahatma Gandhi, this Government met together and they unanimously passed a Resolution, and that Resolution was issued in a Gazette Extraordinary. What did they say then? They said—I am reading from that Resolution—“There is no place today in India for any organization preaching violence or communal hatred . . . No such organization will therefore be tolerated.” That was the deliberate decision of the Government of this country; and that too was immediately after the grave tragedy that had taken place in this country. They realized then that the only remedy that can meet the situation that has arisen in this country is to put down violence and communal hatred with a heavy hand. And what is my friend Mr. Ananthasayanam Ayyangar now seeking to do? He is seeking to put down what he calls communal organizations dealing with politics. The object, as set forth in the preamble of the resolution, is the establishment of democracy and the growth of national unity and solidarity. Now, Sir, so far as Mr. Ayyangar is concerned, if I start today an organization the membership of which I do not confine to any particular caste, community or race, and yet I preach violence, I preach communal hatred, so far as this resolution is concerned, he will not object to that. I am mentioning the resolution only. I am pointing out the weakness in the resolution. The Government of India say that for putting down communalism the remedy that they have thought of, after deliberation on a very solemn occasion, is the putting down of the preaching of violence and of communal hatred. But so far as my friend Mr. Ananthasayanam Ayyangar is concerned, he has nothing to do with that. He would be happy and satisfied if organizations which confine their membership to one community or one race or one religious group alone are put down if they deal in politics: and therefore, Sir, I say to this House with great respect that I have every right to feel that our ways differ. I consider my way the better, and I am in distinguished company.

Let me now tell the House that so far as the elimination of communalism is concerned, while I have the greatest regard for the masterly analysis that was put before the House by my friend Mr. Ananthasayanam Ayyangar and by Seth Govinddas, I find that they have missed one point. They have blamed the separatist tendencies, the League-Congress Pact of 1916, and agitation, and so on.

Pandit Lakshmi Kanta Maitra (West Bengal: General): We are in the year of grace 1948. There are two independent states in one geographical unit of India.

Haji Abdus Sattar Haji Ishaq Seth: Please do not anticipate what I am going to say. Mr. Ayyangar analysed the sequence of events and blamed everything to the separatist tendencies that the British wanted to create in this country. I agree with him to a certain extent: but I want him to search his heart and to say whether he is not also responsible, just as I am perhaps, for what has happened. I want to take him back to 1937. I believe the Honourable the Prime Minister in one of his publications agreed that the Muslims were not treated in the manner in which they ought to have been treated in 1937. The Mussalman felt that he was dealt a very injurious blow.

Prof. N. G. Ranga (Madras: General): Wrongly of course.

Haji Abdus Sattar Haji Ishaq Seth: From that date up to today, I want Mr. Ayyangar to get up and say after searching his heart, whether anything was done to undo that wrong. Day by day, year after year, this hatred, this desire

to put down the Mussalman was there at least among the back-benchers. My position today is very much different to what it was before the 15th August 1947. Today I am not here to create trouble. Today I am here to see that the Government in this country runs smoothly: but when you sit down to analyse the position, I want that the blame should be placed where it ought to be placed—where it is deserved. Here also I am in very distinguished company. I have got the resolution of the Working Committee of the Congress. That also was passed immediately after the great tragedy that had taken place in our country. What did they say? They said "the Working Committee calls upon all Congressmen and organizations to initiate and carry on an intensive drive against communalism by removing the causes of friction—(I repeat—by removing causes of friction)—by ensuring to all minorities equal rights of citizenship, and by organizing fraternization among members of all communities." Since this resolution was passed . . .

An Honourable Member: What is the date?

Haji Abdus Sattar Haji Ishaq Seth: February 7, the first meeting after Mahatma Gandhi's death. How much was done, may I ask of the Congress people, to remove causes of friction? How much was done in this House, how much was done outside? Therefore, Sir, I think that the remedy suggested by my friend Mr. Ananthasayanam Ayyangar is not the real thing to achieve the object that I and he and everyone else has at heart in this country, including the Prime Minister.

Apart from the communal organizations, apart from what the puny Mussalman can do in this country, what are you facing? You are facing great dangers. The communists are coming up. There is this menace from Russia and yet today, in this House, Mr. Ananthasayanam Ayyangar can think of nothing but the puny communal organizations here and there—even those have given up their politics—just to hang them all and to put this Government, whose energies should be employed on bigger things, to the need of providing the means of banning these puny associations. I say let him give all this up and let the country take the advice that I have given in my amendment—put down violence wherever it exists and is preached, and also put down the preaching of communal hatred. People have talked of this or that. I can also talk of this or that. But that will not lead us to anything. Therefore, Sir, my strong advice is, if you want to eradicate communalism from this country, the only way is to get all the communities satisfied. With these words, I move my amendment.

Shri H. V. Kamath: Mr. Chairman, Sir, while moving my amendments, let me at the outset make it clear that I yield to none in my desire to see the early liquidation of those communal organizations which have promoted or are still promoting communal illwill, malice and hatred, which have become a canker eating into the vitals of our body politic, which have rent our motherland in twain and which have led to the martyrdom of Mahatma Gandhi. These calamities have overtaken us because these communal organizations have functioned on a political plane.

Therefore, I should have welcomed a Resolution which straightly prohibited all communal organisations from indulging in or engaging in any political activity whatsoever. Political activity I would define as any activity which aimed at or aspired after the capture of political power or influence. But the Resolution that has come before us today permits certain activities on the part of communal organisations. Therefore, Sir, I had to send in my amendments.

Aristotle said that man is a political animal, but, unfortunately for all of us, he is not wholly and solely a political animal. He engages in other activities to satisfy his other needs—the other needs of his mind and spirit, to satisfy

[Shri H. V. Kamath]

the requirements of the human organism as constituted by his Maker. Therefore, Sir, I sent this first amendment as regards *bona fide* educational and social activities. I would have liked, Sir, to include spiritual activities too, because I am not convinced in my own mind that religious activities are synonymous or coterminous with spiritual activities. A person can be religious without being spiritual and also be spiritual without being religious in the accepted or conventional sense of these terms. Names occur in history, names of great men who have been religious without being spiritual and of men who have been spiritual without being religious. In our own time we have had Guru Dev Rabindranath Tagore who certainly was a great spiritual personality, but nobody would say he was a religious personality. Then, Mahatma Gandhi. I would say Mahatma Gandhi was more a spiritual than a religious personality.

Some Honourable Members: Both.

Shri H. V. Kamath: And, Sir, in history there have been famous names. In Europe we have had great men who have been spiritual without being religious. Guiseppe Mazzini was a great spiritual political figure but nobody would say he was a religious figure. Romain Rolland, Tolstoy and among poets Shelley in England, were spiritual men but not religious. In our own time, Netaji Subhash Bose was a spiritual figure but hardly a religious one. Therefore, spiritual activities can be distinct from religious activities. There is a well known *sloka* in Sanskrit:—

*Ijyādhyayinādānāni tṛpāḥ satyaṁ dhṛitih kṣhamā
Alobha iti mārgoyam dharmasyāśhtavidham smṛitah
Tatra poorviṣchaturvṛgō dambhārthamāpi sevṛyate
Uttvāstu chaturvṛgō mahātmanyeva tiṣṭhati.*

That means the first four qualities, *Ijya*, *adhyayana*, *dana* and *tapas* can be part of religion, but certainly *satya*, *dhṛiti*, *kṣhamā* and *alobha* these can come only under truly spiritual activities. We have had great Sufi mystics. There was the famous Mansoor; he was not a religious but a great spiritual personality, a mystic. He said in one of his great exhortations:—

*Na mar bhookha na rakh rōza na jā masjid na kar sijdā
Wazu ka tod de kooji sharābe shauk pitā jā
Again*

nal hak tu kahāṣ jā

And he also said:

*Kahe Mansoor mastānā hak māi ne dilme pehuchānā
Wahī mastōnka maikhānā usī ke beech āṣ jā*

This, Sir, is certainly spiritual; nobody would call it religious in the conventional sense of the word. But, Sir, I think and I have been told on high authority that religious and cultural activities can together comprise spiritual activities. That is why, Sir, I do not press this amendment as regards the spiritual part of it. I would ask for an assurance on the floor of this House from the Mover of this Resolution that the spiritual and cultural activities do include and are synonymous and coterminous with religious activity. For, tomorrow if I start an organisation for promotion of spiritualistic research, it may not admit people who don't believe in re-birth or life after death on religious tenets. Also, *yogic* research is not religious nor is it cultural, but I can certainly exclude from it, or include, certain communities or sections. Any way, I do not want to labour this point because if "religious" is construed in a true sense, in its full and vital sense, and also "cultural" in its comprehensive sense, then they can comprise spiritual activity.

As regards the other two, social and educational, so long as our society is what it is today, we have to make allowance for social and educational activities, because we all know that we have got, for instance, Hindu law and Mohammedan law. I wish, as one of my friends said in this House the other day, there would be only one law, Indian law, but nevertheless there are at present Hindu law and Mohammedan law. We have got Hindu law of inheritance and Hindu law of marriage; we have got Mohammedan law of inheritance and Mohammedan law of marriage, and what not. So long as these things are there, organisations to promote the social welfare or the social needs of a particular community have got to be tolerated—you may not welcome them but you have got to tolerate them until you do away with all this Hindu law and Mohammedan law and bring in only one law, human law or Indian law.

Then, Sir, as far as educational needs are concerned, the Honourable the Prime Minister said in accepting the Resolution that there are certain backward castes or classes or tribes in this country who have got to be catered for more than other castes or communities so far as their educational needs are concerned. Therefore, at this stage it is very necessary that we permit the existence and functioning of organisations who cater to the educational needs of particular castes or sections of communities, though they might be communal in their constitution. Therefore, this amendment relates to these two activities which I want to be included in this Resolution, namely, the social and educational activities.

Then, Sir, the second amendment is a very brief one; it is only for the purpose of clarification that I want the word "race" to be omitted, because to my mind there is only one race in India. I do not feel that Muslims or Christians or anyone else, not even Anglo-Indians, are a separate race. Therefore the question of race should not arise in India so far as Indians are concerned. The resolution deals with Indian life, and so far as Indian life is concerned I think we should all stick to this proposition that we are all one race and one nation. Therefore the word "race" must be deleted. But if the Mover of this Resolution thinks that on ethnological grounds there are so many races—there are the Seythians, the Dravidians, the Aryans, the Mongolians, etc.—If that be the case I have no objection. But to my mind—it is my conviction and I have held it all along—there is only one race in India, the Indian race, and all these ideas of Hindu, Muslim, Christian and Jewish races must be relegated to the limbo of forgotten things, if we aspire to build a sound and strong Indian State.

Sir, my friend Mr. Ananthasayanam Ayyangar said that religion should bring God nearer to man. But today it has not brought God nearer to man. I wish, Sir, that he had said that religion had taken man nearer to God, the God within and without; and if that had been the case, we would not have been in the sorry plight that we are today. We should promote a religion, the religion of humanity, the Universal Religion of our great poets, our saints, our sages, and our seers; that religion we shall promote, the religion of man, neither of a Hindu nor of a Muslim, neither of a Christian nor of a Jew; the Religion of Man in its highest sense. Let us promote that and let us strive for unity, for peace, for equality, for fraternity, on that basis. And let us rebuild our unity, the unity of our motherland, because, Sir, this communal hatred and division has been responsible not only for the vivisection of our motherland but also for the martyrdom of Mahatma Gandhi. Let us go back to the true religion of our Maker. Let us usher in the glorious day when all of us will belong to one Religion. Whether Hindus, Muslims, Jews or Parsis, let us forget our little religions. Let us go to the fountain-head, the source of all religions—the consummation of all, and achieve true Liberty, Equality and Fraternity. Let us usher in a new democracy based on this wider principle, "a democracy" rooted firmly in spiritual equality. Let us, Sir, usher in this New Order, bathed in the refulgent light of a Himalayan dawn.

گہائی گہرے سگے مسافر : سہا پتی جی ! میں اصل ریپوزیشن کے حق میں بولنے کے لئے کھڑا ہوا ہوں۔ میں سمجھتا ہوں کہ ہمارے مانڈیہ پرائم منسٹر جو ہماری پارٹی کے لیڈر بنی ہوں کی تقریر کے بعد کچھ زیادہ بولنے کی ضرورت نہیں ہے۔ لیکن میں اس کے سوا کچھ نہیں کہہ سکتا! ایک دو چھوٹی چھوٹی تجویزیں اس ہاؤس کے سامنے آپ کی وساطت سے رکھنا چاہتا ہوں۔ بعض دفعہ چھوٹی چھوٹی تجویزیں بھی کسی بڑی تجویز کو عمل میں لانے کے لئے اچھی ثابت ہو سکتی ہیں۔ یا مددگار ہو سکتی ہیں۔

ہمارا دیس ایک دھارمک دیس ہے۔ پرانی ماتر کا پہلا چاہنے والے اچھے اچھے کامل گورنر بزرگ اور بہت اس دیس میں پیدا ہوئے۔ کانگریس کئی سالوں سے کمیونزم کے خلاف اس دیس میں پرچار کرتی چلی آ رہی ہے۔ ایک بہت بلندی غلطی جو کہ عوام کی سمجھ میں نہیں آتی یہ ہے کہ دھرم اور کمیونزم جو کہ بالکل دو متضاد چیزیں تھیں انکو ملا دیا گیا ہے اور بعض موقعوں پر دھرم اور کمیونزم میں تمیز بھی نہیں ہو سکتی۔ ایک طرف تو دھرم کو کمیونزم سمجھا جاتا ہے یعنی جو صحیح معنی میں دھرمی ہو اسکو کمیونزم کہ دیا جاتا ہے۔ اور دوسری طرف کمیونزم کو ہی دھرم سمجھا جانے لگا ہے یعنی دھرم کے پردے میں بدترین قسم کے کمیونزم پرچار کیا جاتا ہے۔ یہی وجہ ہے کہ ہم کمیونزم کو بے دیس سے اب تک دور نظر ہوں کر سکے۔

مذہب کو میں نے تھوڑا بہت Study کیا ہے۔ مجھے کسی مذہب میں یہ نظر نہیں آیا کہ ہم دھرم کی بنا پر آپس میں لڑیں اور جھگڑیں۔ گورو نانک جی نے ہم سے پہلا ایڈیٹر جو سانسار کے کارن میں کچھ دیر کی خانہ دہی کے بعد ڈالا وہ یہ تھا کہ نہ کوئی ہندو نہ مسلمان اللہ رام کے پات پیرانہ یہ ہم سے پہلا ایڈیٹر تھا۔ صاحب صدر! گورو جی کی بانی سے میں آپ کو ایک شہد سلاتا ہوں جس سے پتہ لگے گا کہ دھرم اور کمیونزم میں کیا فرق ہے اور جس فرق کو ہم اب تک نہیں سمجھتے ہیں۔

جگت جلیندا رکھلے اپنی کرپا دھار

جگت دروازے اُبھرے تھے لہن اُبھار

جس کا مطلب یہ ہے کہ اے ایشور جلتے ہوئے جگت کو اپنی کرپا سے بچالے اور

جس دروازے کوئی نجات پاسکتا ہے اسکو اسی دروازے سے پار کر دے۔ یعنی جس

راستے کوئی آتا ہے۔ اسکو منزل مقصود پر اسی راستے سے پہنچا دے اور اس کی ہمتی کر

اور ان کو پار کر اس طرح سے میں سمجھتا ہوں کہ جو اتنا فراخدانی سے دھرم کا پرچار

کیا جاتا ہے۔ اُس کا صاف یہ مطلب ہے کہ صحیح معنوں میں کوئی دھرم یہ بات

تہوں سکھاتا کہ ہم آپس میں جھگڑا پیدا کریں۔ اور آپس میں لڑیں اور لوٹ

دوسرے سے نفرت کریں۔ باہمی نفرت کی وجہ سے ہماری قلمی کی ذہنچہریں لمبی ہوئی تھیں باوجود اس کے کہ ہمارا دیہ دھارمک دیہ ہے جیسا کہ میں نے کہا ہے یہاں پر اچھے اور دہڑماتا لوگ پرائی مائر کی بھلائی کے لئے پرچار کرتے رہے۔ اس کے باوجود دہڑم مرض بڑھتا گیا جوں جوں دوا کی ہے۔ یہ مرض ہمارے دیہ میں کیوں بڑھتا گیا۔ اس کی ایک وجہ تو صاف ہے۔ اور وہ یہ اب تک ہمارے دیہ میں بدیشی حکومت تھی۔ میر ہمارے دیہ پر راج کرتے تھے۔ انکا رویہ کچھ ایسا تھا کہ جب انکو اپنا کوئی مطلب ہوتا تھا۔ تو وہ ہندو مسلمان اور سکھ کا آپس میں اتفاق کر لے گا۔ ایدھیہ کرتے تھے۔ اور اسکا پرچار بڑے بڑے تصویروں اور تراسوں کے ذریعہ سے کرتے تھے۔ پچھلی لڑائی میں بڑے بڑے شہروں میں بڑی بڑی تصویریں عام گزرگھوں میں لٹائی گئیں اور ہزاروں کی گنتی میں تقسیم کی گئیں جن میں ہندو مسلمان کے ہاتھ میں ہاتھ ملائے ہوئے دکھایا اور سکھ کو مسلمان کے گلے ملتے ہوئے دکھایا بدیشی حکومت کا ان تصویروں سے یہ دکھانا مقصود تھا کہ ہندو سکھ مسلمان سب ملکر ہمارے لئے لڑیں اور ہمیں بچائیں۔ مگر دوسری طرف اُس وقت ادھر مشرق میں چپ ہندو مسلمان اور سکھوں نے اکٹھے ہو کر ایک آزاد ہند فوج بنالی تو یہ پرچار کرنا شروع کیا کہ آپ کا آپس میں کیا واسطہ ہے۔ سکھ کو کہا گیا کہ تمکو مسلمان سے کیا واسطہ ہے۔ وہ تو حلال کھانے والا ہے اور تم چھٹکا کھانے والے ہو۔ ہندو کو کہا گیا کہ تم مسلمان سے کھسے مل سکتے ہو۔ وہ تو گائے بھکشک ہوں اور تم گٹو رکھشک ہو خیر یہ ایک لمبی بات ہے۔ میرے پاس وقت بہت تھوڑا ہے۔ اسلئے میں اس کی دلائل میں نہیں جاؤنگا بہت دیر پہلے میں نے ایک کویتا لکھی تھی۔ جس کا ایک بلد یہ ہے۔

سکھ چھنی پارسی ہندو یا مسلمان بن

بن جو مرضی او بن انسان پر انسان بن

اب کچھ حالات بدل گئے ہیں۔ اب ہماری اپنی کورنٹ ہے کہسوتنم کو زیادہ پہچانہوالا جو Separate electorate کا زہر تھا۔ وہ اب ہمارے ودھان سے نکلا جا رہا ہے۔ اس وجہ سے فضا کچھ صاف ہوگئی ہے۔ دوسرے ہمارے اپنے جوش بھی تھنڈے ہوگئے ہیں۔ ہمارے مسلمانوں کا جوش اس وجہ سے بھی تھنڈا ہوگیا ہے کہ وہ جس پاکستان کی رٹ لگاتے تھے۔ وہ اُنو مل گیا ہے۔ اب جو ہمارے دیہ میں مسلمان بھائی ہیں وہ ہندوستان کے citizen ہیں۔ اور ہندوستان کو اپنا دیہ سمجھکر اُن کو یہاں رکھا ہے۔ سکھ جو مسلمانوں کے رویہ کی وجہ سے اور اُن کی ریتیں میں اپنا علیحدہ نعرہ لگاتے تھے۔ اُنہوں نے بھی اب اپنا سب کچھ چھوڑ کر واجبی طور پر دیہ کی مشترکہ جماعت لانگریس میں اپنے آپ کو ملا دیا ہے اور کہہ دیا ہے:-

سہر دم بتو مایہ خویش را

تو دانی حساب کم وہبش را

[گھائی گورنمنٹ سکھ مسافر]

کمپونڈ ہر ایک میں تھوڑا بہت چلتا آیا ہے ہندوؤں میں بھی ہے۔ ہاں کسی میں تھوڑا ہے اور کسی میں زیادہ کسی میں aggressive اور کسی میں subtle قسم کا لیکن اب جو حالات یہاں پر پیدا ہو گئے ہیں۔ ان کی بنا پر میں یہ تجویز کرتا ہوں کہ جو کچھ بھی اس میں تھوڑی بہت کسی ہے اس کو بھی دور کر دیا جائے۔ یعنی اس وقت جس طرح سے separate electorate کو دور کیا جائے گا اسی طرح سے ہر کمیونٹی کے لئے علیحدہ reservation کی کوئی ضرورت نہیں ہے۔ اور جب تک ہم اس کو اٹھا نہ دیں اس وقت تک ہم ایک دوسرے کا اعتبار حاصل نہیں کر سکتے۔ اعتبار تب ہی ہو سکتا ہے جب ہم یہ سمجھ لیں کہ ہمیں ایک ہو کر رہنا ہے اور ایک ہی بات پر مرنا ہے اور جینا ہے۔

جس طرح ہم فخر کرتے تھے کہ ہم ہندو ہیں، ہم سکھ ہیں، ہم مسلمان ہیں، ہم راجپوت ہیں، ہم عیسائی ہیں، یہ سب کچھ دھتے ہوئے بھی ہم کو اس بات پر فخر کرنا چاہئے کہ ہم ہندوستانی ہیں۔ ہمیں ہندوستان کے لئے جینا ہے ہندوستان کے لئے مرنا ہے۔ اس کے ساتھ میں ایک تجویز کرنا چاہتا ہوں آپ سمجھیں گے کہ چھوٹا ملہ اور بڑی بات ہے۔ لیکن میں سمجھتا ہوں کہ چھوٹی چھوٹی باتوں میں بھی تک ہمارا نکتہ ناکہ change نہیں ہوا ہے۔ منسٹر صاحبان کی حالت میں بعض دفعہ دیکھنے میں آتا ہے کہ کسی سیکٹری وغیرہ کے چناؤ کے وقت اسی پراونس اور مذہب کے آدمی کو ترجیح دینے کا خیال کیا جاتا ہے۔ جس صوبہ یا مذہب کا منسٹر یا اس کا کوئی بڑا سیکٹری ہو۔ ہو سکتا ہے کہ کام کی آسانی کے لئے ایسا کیا جاتا ہو۔ اور کسی وجہ سے نہ کیا جاتا ہو یہ بات کسی حالت میں ٹھیک بھی ہو سکتی ہے۔ کام میں آسانی ہو سکتی ہے۔ لیکن ہمیں اس چیز کو بدلنا ہے۔ عوام کی ذہنیت کو بدلنے کے لئے کچھ انقلابی باتیں کرنی پڑتی ہیں۔ میں چاہتا ہوں کہ ہمارا کمیونڈ نکتہ ناکہ بالکل بدل جائے۔ چھوٹی چھوٹی باتوں میں بھی ہمیں کہیں کمیونڈ دکھائی نہ پڑے۔ اگر ہم کسی منسٹر کے آفس میں جائیں تو ہمیں صاف نظر آئے کہ یہ ہندوستانی منسٹر کا دفتر ہے نہ کہ کسی ہندو، مسلمان یا سکھ منسٹر کا یا کسی پارسی یا عیسائی منسٹر کا دفتر ہے۔

ایک بات اور میں کہنا چاہتا ہوں کہ جتنی جلدی ہو سکے ہمارا لباس اور ہیری زبان ایک ہونی چاہئے۔ جب ہمارا لباس اور ہماری زبان ایک ہوگی تو ہمارا نکتہ ناکہ بھی ایک ہوگا۔ جس طرح ہماری شکلیں ایک جیسی نہیں ہیں اسی طرح ہماری عقلیں تو ایک نہیں ہو سکتیں۔ اس لئے اختلاف رائے تو رہے گا۔ عقیدہ بھی علیحدہ علیحدہ ہو سکتا ہے مگر اختلاف رائے اور ان سب باتوں کے باوجود جو باتیں ہماری مشترک ہو سکتی ہیں ان میں ہم کو ایک مہلت کے لئے بھی دیر نہیں کرنی چاہئے۔

بلدت تھا کہ داس بھارگو جو اس وقت صدارت کے فرائض سر انجام دے رہے ہیں نے ایک انٹر مہرج (inter marriage) کا نکتہ ناکا پیش کیا تھا وہ تو بہت بڑی بات ہے۔ شاید وہاں تک ابھی ہمارا دیس جانے کے لئے تیار ہو یا نہ ہو۔ مگر جو باتیں میں نے ابھی پیش کی ہیں ان کو عرض کرنے کے بعد میں یہ امید کرتا ہوں کہ ہم اگر اس نکتہ ناکا سے کام کریں گے تو کسی حد تک کمیونلزم کو سوسائٹی سے نکالنے میں کامیاب ہوں گے۔ ہمارا نظریہ یہ ہو :—

ہندو ہیں سب اچھے نہ مسلمان ہیں اچھے

دل نہک ہیں جن کے وہی انسان ہیں اچھے

(English translation of the above speech).

Giani Gurmukh Singh Musafar (East Punjab: Sikh): Mr. Chairman, Sir, I rise to support the original Resolution. I feel that after the speech of the Honourable the Prime Minister who is also our party Leader, it seems hardly necessary to say anything more. But I want to place before the House through you one or two small proposals. Sometimes minor suggestions prove useful and helpful in the adoption of more important ones.

Ours is a spiritual country. Many eminent religious teachers, devotees who always strived for the good of mankind were born in this country. Congress has been carrying on propaganda against communalism in this country for the last so many years. The one fundamental mistake which the people cannot understand is that religion and communalism which are two incompatible things have been combined, and on many occasions it becomes difficult to distinguish between these two. On one side religion is regarded as communalism i.e., a man who believes in religion in the real sense is treated as communalist; and on the other communalism is taken as religion. In other words the worst cult of communalism is preached in the garb of religion. This is the reason that we have not as yet been able to wipe off communalism from our country. I have had some study of various religions but have not been able to find out anything in any religion to incite us to wrangle and quarrel amongst ourselves in the name of religion. The first message which Guru Nanak gave after a brief period of silence in the world was that there is no such thing as Hindu or Muslim and that one God is for them all. Sir, I will recite a *Shabda* (a hymn) from the sayings of the Great Guru which would show what the difference between 'dharma' (Religion) and communalism is, and which we have not been able to understand uptil now:

"Jagat jalanda rakh le apne kirpa dhar,
Jit dowara ubhra tite lein unbar."

(O' God: Have mercy and save this burning world and grant salvation in the way in which the implores).

In other words, whatever path a man may choose and take to reach God, May God grant him success to reach his destination and liberate and emancipate him. It is quite obvious from this that the religion which is preached in such a liberal manner clearly indicates that in reality no religion teaches that we should quarrel and hate each other. The bonds of our slavery were strengthened on account of our mutual hatred. In spite of all this, ours is a spiritual country. Just as I have stated, virtuous persons and saints had been preaching in this country for the good of mankind. But in spite of constant medical treatment the disease went on increasing. What led to the aggravation of this disease in our country? One reason for this is quite apparent and is that we were uptil now under foreign domination and we had an alien Government. They played a double game. They preached Hindu-Muslim and Sikh unity when it suited them and conducted propaganda

[Giani Gurmukh Singh Musafar.]

in this behalf through pictures and dramatic performances. In the last war, many large pictures showing Hindus and Muslims shaking hands and Sikhs and Muslims embracing each other were displayed in public places and distributed in thousands among the people in large towns. By displaying these pictures, the foreign Government wanted to show that all the Hindus, Muslims and Sikhs should combine and fight for their cause and protect them. But on the other side in the East where the Hindus, Muslims and Sikhs jointly organised the Indian National Army, then they started preaching that these communities had nothing common with each other. The Sikh was told that he had nothing in common with a Muslim who takes *Hilal* meat whereas he eats *Jhatka* meat. The Hindu was told that he could not mix with a Muslim who devours a cow whereas he protects and worships a cow. Any way, this is a long tale and I have very little time at my disposal. Therefore, I shall not indulge in any arguments. Many years ago, I wrote some poetry, a couplet of which ran as follows:

*"Sikh-Jaini-Parsi-Hindu ya Musalman ban,
Ban jo marzi oh ban insan per insan ban."*

(You may be a Sikh, Jaini, Parsi, Hindu or Muslim, you may adopt any religion you like, but you must be a man above all).

Conditions have now changed. We have now our own Government. The venom of separate electorates which accentuated the spread of communalism is now being removed from our constitution. This has to some extent cleared the murky atmosphere. Moreover our own passions have cooled down. The establishment of the Pakistan State for which the Muslims had been clamouring has also calmed their passions. The Muslims living in our country are the citizens of India and have to live here and adopt India as their homeland. The Sikhs too who like the Muslims raised their own separate slogans have now forsaken their political entity and merged themselves into the fold of Congress, which represents all the classes in the country. They have said:

*"Sapurdam bato maya khwesh ra,
Tu dani hasab kamo besh ra"*

Communalism to some extent is present in almost all the religions—amongst the Hindus as well. Of course, it varies in extent and degree. In some religions it exists in an aggressive and in others in subtle form. But in view of the changed circumstances which have now cropped up in this country, I propose that we should take steps to remove whatever shortcomings exist in it. Consequent on the abolition of separate electorates there would hardly be any necessity for separate reservation for each community, and unless we remove this, we cannot repose trust in each other. Confidence can be restored only when we realise that we have to live as one entity and have to sink and swim together. We take pride in being Hindus, Sikhs, Muslims, Rajputs and Christians, but keeping all this in view, we should be proud of the fact that we are Indians and we have to live and die for India. Along with this I would like to submit a proposal. You may not take it seriously coming as it is from a humble man like me, but I feel that we have not yet changed our angle of vision even in petty matters. It has been frequently noticed that while making selection for the posts of Secretaries, etc., the Honourable Ministers prefer to appoint those persons only who belong to his community and hail from his Province or that of his Principal Secretary. It is possible that this might be due for the sake of administrative convenience and not for any other reason. This may be desirable in some cases if it facilitates the conduct of business, but we have to overhaul this system. Certain revolutionary steps have to be taken to change the outlook and mentality of the masses. I wish that our communal view-point should be changed altogether. We should not find the vestige of communalism

even in petty things. If we happen to visit the Office of any Honourable Minister, it should present the outlook of the Office of an Indian Minister and not that of any Hindu, Muslim, Sikh, Parsi or Christian Minister.

One thing more which I would like to say is that we should try to introduce uniformity in our dress and language as early as possible when we have a common dress and language, we will be able to have a common outlook. Just as we have got individual difficulties, similarly we cannot develop common intellect, and for this reason, there will remain some difference of opinion. We may have separate convictions, but in spite of this difference of opinion and all other factors, we should not delay a single minute in fostering things that can be common to all of us.

Pandit Thakur Das Bhargava who is at present occupying the Chair had presented the view-point as regards inter-marriages. It is a very large issue. Perhaps our country may or may not be prepared at present to advance to such an extent. In view of what I have stated above, I hope that if we act upon the suggestions made and view-point placed by me, we will be able to eradicate communalism from our society to some extent. Our view-point should be :

"Hindu hen sab ache nan Musalman hen sab ache,

Dil nek hen jinke wahi insan hen ache."

(Neither all Hindus nor all Muslims are good. Only those who possess pure hearts are good).

The Honourable Dr. Syama Prasad Mookerjee (Minister for Industry and Supply): Mr. Chairman, Sir, I desire to associate myself with the Resolution which has been moved by my Honourable friend Mr. Ananthasayanam Ayyangar. Sir, it is not my intention to refer to past history except for

4 P. M. a very few brief moments. As the Prime Minister himself has explained our attitude in the past was influenced by considerations over which we had not had sufficient control. Communalism did play a very large part in the political life of India. There was the British factor, the policy of divide and rule, which was enunciated nearly about 50 years ago and which came into the forefront in the days of Lord Minto, when he accepted the principle of separate electorate. On the other hand, there was also a policy of concession and appeasement, made sometimes with the best of motives, as the Mover himself referred to including the 1916 Lucknow Pact; the communal award, parity and so forth. Unfortunately all these concessions did not lead to the results which the representatives of the people thought they would achieve. The result has been Pakistan; and even Pakistan has not solved the communal problem. It has indeed given rise to new problems which now almost baffle solution. But, Sir, we have got to look at this great problem from a new angle of vision since 15th August 1947. We are now the masters of our country. There is no third party ruling over our country today. It is for us, therefore, to lay down principles, bearing in mind what happened in past and also bearing in mind what may happen in the future. What happened in the past, Sir? Why is it that India lost her freedom during the last so many centuries? Something or other happened which divided the people of India from one part of the country to another; there was sectionalism; there was provincialism; there was narrowness from various points of view and the result was that we never learnt the wisdom of standing together as sons and daughters of one common motherland and fighting the common enemy which was out to destroy the political liberty of our country. That is what happened in the past. We could not stand together. We were thinking in terms of interests peculiar to sections, groups or provinces. During the British period there were other influences at work which explained with disastrous consequences. We have now to see that history does not repeat itself. So far as political activities are concerned, there is no reason whatsoever why we cannot stand on one common platform as sons

[Dr. Syama Prasad Mookerjee.]

and daughters of Bharatavarsha. Different parties may of course have different political and economic programme. That is the fundamental thing, but of course, it cannot be achieved by coercion or by force. We have got to take into account certain factors which have come into existence in our land. There are sections and communities whose interests have to be protected. On the plea of protecting minority rights, the majority must not become a minority. The Resolution indicates that so far as social, cultural, educational or religious rights of groups or communities are concerned, they will be amply protected; there will be no ban put on the rights of any community to do whatever is lawful for the advancement of such rights, but here again, Sir, I would just sound a word of caution. We have referred to religious rights, cultural rights, social rights. It is quite possible that in relation to every one of these spheres matters may come before the Legislature. What will be the position then? Is it in contemplation that when a particular legislative measure which affects the social or cultural or religious rights of a community or of a particular section of the people comes up for consideration, will they be prevented by law or by administrative fiat the right to put forward their point of view or canvass support for the purpose of influencing the decision of the Legislature? At the time of election will they be able to set up or support candidates who, if selected, would champion them rightly. These are matters which have to be considered very carefully. I believe, Sir, what is intended in the Resolution is that politically there will be no communal parties as such. There is no question of introduction of any religious principle in politics. That is a sound principle and I believe, Sir, that there can be no opposition from any quarter to the acceptance of this principle. I know, Sir, that people are worried about the way in which things are happening in Pakistan. I know, Sir, that events happening in Pakistan may have a repercussion in India. But here the policy of the Government has been that vital matters must be left to the Government of the country. And obviously no Government—which can only rest on the good-will and co-operation of the people at large—can go against the declared will of the vast majority of the people. That Government cannot exist which cannot reconcile itself to the declared will of the people of this country. Here, Sir, there is one matter which has been hinted by the Prime Minister, and I should like to emphasise that point. It is no use our merely passing a pious Resolution; if we are really anxious to uproot communalism from the political sphere in India altogether, we shall have to see that there is no place for communalism of any kind whatsoever in the constitution of our country. You cannot justify reservations on grounds of religion or caste and in the same breath say that you want to banish communalism from the political life of India. I say that the two are entirely contradictory to each other. I know that legitimate apprehensions may be felt by certain minorities who may feel that by taking away the rights which they had so long enjoyed the majority might be trampling under foot the rights of such minorities. But, as the Prime Minister so clearly explained, with no British power to look up to, every minority in India today must obviously look up to the majority for protection. That good will must come, otherwise the minority cannot exist. We have to consider in consultation with minorities as to how protection is to be given in the constitution so that whoever may be backward—no matter what his religion may be—is given equal opportunities. That must not be a provision on paper; it is no use for us who have been more fortunate in life to say that we shall be prepared to treat the minorities equally, unless in actuality we are prepared to lend them a helping hand to come up to the proper level. Every representative of the minority communities will therefore be entitled to ask for such guarantees in the constitution as will give them equal educational facilities, or perhaps more for some years to come, until they reach the proper standard. We have

also to raise their economic standard, remove all social inequalities which are a blot on the good name of this country, and thereby create a society where there will be no difference between man and man, merely because of caste or religion.

My Honourable friend the Mover of the Resolution became very eloquent and referred to equality in the domain of humanity at large. I am afraid I cannot emulate his example entirely; I want equality so far as humanity goes, but let us not forget that we in India have also to organise ourselves and stand on our own feet. If my Honourable friend carries to the logical conclusion his dictum that every one is equal throughout the world, I believe he will have to be a party to extending facilities and privileges to people coming from outside India and carrying on trade, commerce or other transactions in this country to the detriment of the interests of our country. Let us look to our own country first; let us try and organise India in such a way that the freedom which we have got may be maintained and not lost. Let us look round and see where our enemies are lying and the preparations they are making. Every one who lives in this country,—whether Hindu or Muslim, Christian or Sikh,—so long as he is prepared to identify himself with the real national interests of India, he need not be afraid of the authority of Government. Government will give equal protection; but let us not encourage the growth of fifth columnists who may masquerade under various names and do various things openly or secretly which may be inimical to the country as a whole.

As I said at the beginning, so I say at the end, that we need not be apprehensive of the future. We are masters of our own destiny today; the people of the country are there to decide how the country will be governed in the future. We are out to establish a secular State, but that does not mean that the ancient glorious heritage of this country will be destroyed. Obviously a country where 85 per cent., of the population are Hindus will be governed according to standards which will be acceptable to the vast majority of the people. But there again, Sir, the vast majority of the people will not do anything which will go against the legitimate interests of any minority community; that goes without saying. That is against our best traditions. We want not to follow copy-book maxims; we want that our newly born freedom should be developed in such a way in the social, economic and political fields, that we can carve for ourselves our own place in the comity of free nations of the world, proud of what we have done in the past and hopeful and confident of what we may achieve in the future.

श्री एच. जे. खांडेकर: समापति महोदय, मेरे मित्र श्री अनन्तसायनम आयरंगर ने जो रेजोल्यूशन इस हाउस के सामने रक्खा है उसके समर्थन में खड़ा हुआ हूँ। यह जातीयता की बात इस देश में करीबन चालीस साल हुए अंगरेजों ने चलायी। जिस वक्त लर्ड मिंटो साहब यहां गवर्नर-जनरल थे उन्होंने कुछ हमारे मुसलमान दोस्तों को यह मंत्र दिया था, मैं तो उसे विष मंत्र कहूंगा कि वह अपनी जाति के लिये separate electorate मांगें अंगरेजों ने अपनी भेद नीति के अनुसार, मुसलमान भाइयों ने जब separate electorate मांगी तो अंगरेजों ने उन्हें separate electorate दे कर, हिन्दुस्तान में जाति जाति में द्वेष फैलाया और झगड़े बढ़ा दिये। इसके बाद जैसे मेरे एक मुसलमान दोस्त ने कहा कि १९३७ में जब मुसलमान नाराज हो गए, या उनकी मांग उनको नहीं दी गई उस वक्त उनकी मांग देने की किस प्रकार की कोशिश की गई। मुझे बड़ा ताज्जुब मालूम होता है इस बात पर कि जितनी हमारे मुसलमान भाइयों ने demands पेश कीं कांग्रेस और खास

[श्री एच० जे० खांडेकर]

कर हमारे पूज्य महात्मा गांधी जी उन की उन मांगों पर बराबर विचार करते रहे। अबकी १२ प्वाइन्ट्स (points) जिन्ना साहब ने मांगे, कल १५ प्वाइन्ट्स (points) मांगे, परसों १६ प्वाइन्ट्स (points) मांगे और वह मांगें इतनी बढ़ती गई कि आखिर देश के दो टुकड़े हो गए। अब एक ही बाकी मांग देनी थी और वह यह कि अगर जिन्ना साहब यह कहते पाकिस्तान मांगने के पेशतर कि पाकिस्तान नहीं सारे हिन्दुस्तान में रहने वाले मुसलमान बन जायें। यह एक और demand और वह पेश कर देते तो सारा मसला तय हो जाता !

तो मेरे कहने का मतलब यह है कि यह communal organisations communal बातों से हिन्दुस्तान का इतना नुकसान हुआ। करोड़ों आदमी मारे गए। करोड़ों जायदादें लुट गईं। और देश के टुकड़े हो गये। और क्या क्या होगा वह कहा नहीं जा सकता। आज भी देश से जाति की बात नष्ट नहीं हुई और उसको नष्ट करने के लिये और इस देश में सिर्फ एक हिन्दुस्तानी का ही वातावरण पदा करने के लिये मेरे दोस्त अनन्तशायनम आयंगर ने इस हाऊस के सामने प्रस्ताव रक्खा और Leader of the House ने उसे accept कर लिया। इस resolution के पास होने के बाद इस देश में कोई भी जाति-वादी संस्था जो कि politics में भाग लेगी, नहीं रह सकेगी और यह ठीक बात भी है। इस देश में ऐसी कुछ संस्थाएँ हैं कि इस resolution के पास हो जाने के बाद सरकार को उनको जिन्दा रखने का विचार करना होगा। वह संस्था उन जातियों की हैं जो हजारों साल से पिछड़ी हुई हैं। हजारों साल से जिनको हर हालत में, बुरी हालत में हैं, उसका दोष मैं अन्य जातियों पर नहीं दूंगा जो पिछड़ी हुई हैं। इसका सारा दोष उस हिन्दू समाज पर है। जिस हिन्दू समाज ने उन जातियों और खास कर अछूतों को हजारों साल से नीचा दिखा कर उनका सामाजिक जीवन, उनका धार्मिक जीवन, उनका राजनैतिक जीवन, सारे का सारा जीवन नष्ट कर दिया। यह तो ईश्वर की कृपा थी कि महात्मा गांधी इस देश में पैदा हुए और उन्होंने १९२० सँ लेकर लगातार मरते दम दक हरिजनों के उद्धार के लिये उन्होंने कोशिश की। अगर महात्मा गांधी इस देश में पैदा न होते तो मैं यह समझ सकता हूँ कि जैसा पुराने काल में, पुराने जमाने में अगर किसी अछूत ने वेद का मंत्र सीख लिया तो सीसा गरमा कर कानों में डालते थे। इस तरह के resolution और कानून प्रांतों में बस हो गए। मैं अपने प्रांत की बात, सभापति जी, आपके सामने रखूंगा। सी० पी० (C.P.) जिस प्रांत से मैं आता हूँ जो डिसएबिलिटी (Disability) कानून पास होने से पहले थी वह अब भी मौजूद है। तो इस प्रकार के कानून पास होने से हरिजनों का उद्धार होगा मैं यह नहीं समझता हूँ। मुझे हरिजनों में काम करते करते बीस या पच्चीस

साल हो गये और मुझे इस बात का अनुभव है कि कास्ट हिन्दू (Caste Hindu) भाई सुधरे हुए हैं, पिछड़े हुए नहीं अगर हमारे डाक्टर अम्बेदकर साहब की किसी कास्ट धर्म वाले के साथ शादी करा देंगे तो इसका मतलब यह नहीं है कि सारे अछूत समाज का उद्धार हो गया। सामाजिक उद्धार तो रहने दीजिये एज्यूकेशनल में आपके सामने रखता हूँ तो सी० पी० और दूसरे प्रान्तों में गवर्नमेंट आफ इण्डिया (Govt. of India) में हमेशा हमारे यहां के मेम्बरों से यह कहा गया कि उनकी सोशल, (Social) एज्यूकेशनल (educational) और रिलिजिस (religious) उनको रियायतें दी जायेंगी। यह सब बातों ही में होता है करने में नहीं आती है। आज गवर्नमेंट आफ इण्डिया में हमारे लिए रिजर्वेशन आफ सीट्स (Reservation of seats) सर्विसेज (service) में दिया गया है मगर मैं पूछना चाहता हूँ कि जो प्रतिशत और १२ प्रतिशत जगह दी हैं तो इनको किस हद तक हरिजनो को देकर पूरा किया है। अगर यह प्रस्ताव पास हो जायेगा तो हरिजनो की जो संस्थायें हैं वह खत्म हो जायगी। सभापति जी मैं आपको बतलाऊंगा कि पिछले चुनाव में जितनी रिजर्वेशन आफ सीट्स (Reservation of seats), हरिजनो के लिए थी उतने ही प्रान्तों में चुनकर आसके हैं ऐसा कोई प्रान्त न था जिसमें हरिजन जनरल सीट से आया हो।

सभापति जी, मैं दो मिनट और लूंगा जिसमें एक दो अहम मसले बतलाऊंगा। अभी बहुत से मेम्बरों ने कहा कि रिजर्वेशन आफ सीट्स खत्म कर दिया जाय। पूना पेक्ट के अनुसार हरिजनो को सीट मिली हैं कई व्यक्तियों ने इस प्रकार के भाषण दिये कि वे सब खत्म कर दिये जायें। सभापति जी, मैं समझता हूँ कि रिजर्वेशन (Reservation) खत्म होने के बाद कोई भी हरिजन इस देश की प्रान्तीय असेम्बली या केन्द्रीय असेम्बली में चुनकर नहीं आ सकता है? बिल्कुल नहीं आ सकता है। अगर यह हो गया तो मुझे शक है कि मिलनी वाली सीटों पर हमारे कास्ट हिन्दुओं की जो आंख है वह भी चली जायगी। हम कभी रिजर्वेशन (Reservation) आफ सीट्स नहीं मांगते। मगर हमारी हालत ऐसी है कि आज भी हम देवल में नहीं जा सकते हैं। कुओं से पानी नहीं निकाल सकते हैं। देवल में जाने से हमारी जान का खतरा है। इस तरह के दुख हमारे लिए हैं। हिन्दुस्तान की स्वतंत्रता प्राप्त करने के लिए जितने कांग्रेस वाले जेलों में गये या त्याग किया उतनी ही हमारी संस्था के मेम्बरों ने भी वही दुःख बरदाश्त किये और जेलों में गये। उस संस्था का एक object यह था

7. "One of the objects of the Depressed Classes League is to promote good feelings between the Depressed Classes and the Caste Hindus." इस का मतलब यह है यह संस्था हिन्दुओं और अछूतों में झगडा फैलाने की कोशिश न करें। मैं सरकार से यह प्रार्थना करूंगा कि इस संस्था को बैन (Ban) न करें।

[श्री एच० जे० खांडेकर]

दूसरी बात सभापति जी, मैं आप के ध्यान में लाना चाहता हूँ वह यह है कि देश का वातावरण ऐसा हो गया है कि कोई नहीं कह सकता है, कि इस देश का क्या होगा। काश्मीर का मसला हमारे सामने है, हैदराबाद का मसला हमारे सामने है एक तरफ़ सोशलिस्ट (Socialist) कांग्रेस से निकल पड़े हैं। ऐसी परिस्थिति में सरकार को इस रिजोल्यूशन (Resolution) के पास होने के बाद यह भी ध्यान रखना होगा कि जितनी भी संस्थायें गैर कानूनी करार होंगी उन संस्थाओं का ध्यान शायद इस पार्टी की तरफ़ न जाय यह point में सरकार के ध्यान में दिलाना चाहता हूँ और सरकार को ध्यान रखना होगा।

(English translation of the above speech)

Shri H. J. Khandekar (C.P. and Berar: General): Mr. Chairman, I rise to support the resolution moved by my friend Shri Ananthasayanam Ayyangar. The communal question in this country was started by the British about 40 years ago. Lord Minto, who was the Governor-General of India at that time gave advice—I would not call it an advice for it was full of poison—to some of our Muslim friends that they should demand separate electorate for their community. When the demand was made the British in conformity with their policy of divide and rule accepted this demand, spreading hatred and enmity between the two communities and accentuated differences. Later in 1937, as one of my Muslim friends said when the Muslims were not feeling satisfied as their demands were not met and great efforts were being made to meet them. I am really surprised to find that when the Muslims making their demands the Congress and particularly our respected Mahatma Ji were all along considering them. Mr. Jinnah made his twelve-point demand, next day came a 15 point demand, and the third day came a 16 point demand. Thus their demands increased day by day and assumed such proportions that ultimately the country was divided into two parts. After this there perhaps remained only one demand for Mr. Jinnah to make before the demand for Pakistan namely that the entire population of India should accept Islam. If this was demanded then a solution to the entire problem would have been found.

Therefore what I mean to say is that India has suffered enormous losses due to communal organisations and communal talks in this country. Crores of people have been killed. Property worth crores of Rupees has been destroyed; and the country divided into two parts and yet we do not know what may happen later on. Communalism is still persisting in this country. Therefore to destroy this feeling and to create an atmosphere of goodwill and fellow feeling my friend Mr. Ananthasayanam Ayyangar has placed a Resolution before the House, which has been accepted by the Leader of the House. With the passing of this Resolution no communal bodies taking part in politics should be allowed to exist in this country and that is the right course. But there are certain other bodies too which deserve the consideration of the Government for keeping them alive. They are the organisations of the backward classes who are living in a backward condition for thousands of years. I would not blame them for this: it is our society that should be blamed for this. Our Hindu society has kept down these poor men particularly the Harijans for thousands of years and has virtually robbed them of their spiritual, political and social life. Thank God that a person like Mahatma

Gandhi was born in this country who since 1920, strived incessantly for the uplift of these classes and worked for their welfare until the day of his death. I am sure if Mahatma Gandhi was not born in this country the treatment meted out to Harijans would have been the same perhaps today as it was in the olden days when for the fault of learning Vedic hymns hot lead was poured into the ears of Harijans.

Such resolutions and legislations have been passed in the Provinces. Mr. Chairman. I will quote an instance from my own Province C.P.—the province to which I belong—the disabilities noticed before the passing of the legislation are still persisting and I do not think this legislation will ameliorate the condition of the Harijans. I have been working for the Harijans for over 20 or 25 years now, and I can say from experience that our caste—Hindu brethren are advanced people, they are not the backward people now. If Honourable Dr. Ambedkar marries a caste-Hindu lady it does not follow that the entire Harijan society will be benefited. Leaving aside the question of social uplift I do bring to your notice the question of their educational advancement. In C.P. and in some other Provinces our people were told by the Government of India that they will receive concessions in social, educational and religious matters. These have not yet been translated into action. The Government of India have further reserved seats for us in the services but may I know out of the 16 per cent. or 12 per cent. seats reserved for us how many have been filled by Harijans.

If this Resolution is passed then all organisations of Harijans will surely come to an end. Sir, I beg to say that in the last election only as many Harijans were elected in Provinces as there were seats reserved for them. There was not a single Province where a Harijan was elected from a general constituency.

Mr. Chairman. I shall take only a couple of minutes more—to place before you one or two other important matters. Several Honourable Members have said just now that the system of reservation of seats should be abolished. Seats were allotted to Harijans under the Poona Pact, but many Honourable Members have said in their speeches that this must be abolished. Sir if reservation is abolished I feel no Harijan would be able to compete for election of seats for Provincial or Central Assemblies. He has absolutely no chance of being elected. If this is done away with, then I am afraid we might lose the seats reserved for us and on which the Caste Hindus have set their eyes. We never demand for reservation of seats, but we are placed in a sad plight. We cannot enter temples or draw water from the wells. Our life will be in danger if we enter temples. Such misfortunes are in store for us. The sacrifices made by our community in undergoing imprisonment and hardships for the attainment of India's freedom are no less appreciable than those made by the Congressmen. One of the objects of the Depressed classes League is to promote good feelings between the Depressed classes and the Caste Hindus.

It follows from this that this institution will not try to create dissension between the Hindus and the depressed classes. I would, therefore, request the Government not to ban this society.

Mr. Chairman, another thing which I would like to bring to your notice is that the conditions in this country have assumed such proportions that no one can say what might happen. We are faced with the problem relating to Kashmir and Hyderabad. On the other side the Socialists have left the Congress.

Under such circumstances, even after passing this Resolution, the Government should keep in view that the attention of the institutions which are declared as unlawful is not drawn towards this Party. This point I would like to bring to the notice of the Government and the Government should look to

مسٹر محمد طاہر: جناب صدر! میں چند الفاظ میں اس تجویز کی تائید کرتا ہوں۔ پہلی ترمیم کے متعلق چند باتیں کہونا - ہندوستان میں آزادی حاصل کرنے کے بعد ہندوستان کے ہر ایک بچے کا اس کے ذریعے اور اس کے درویدیوار کا مقصد اگر ہے تو یہ ہے۔ کوئی خواہش اگر ہے تو صرف یہ ہے کہ ہندوستان دنیا کے تمام ملکوں میں زیادہ بلند زیادہ طاقتور اور زیادہ اونچے ہو - اور اپنے اثر سے وہ دنیا کے تمام غلام ملکوں کو آزاد کر سکے - اور اگر یہ ہماری آزادی کا مقصد ہے تو میں سمجھتا ہوں کہ ہماری آزادی بالکل بے کار ہے میں سمجھتا ہوں کہ ہمارے دوست مسٹر انلتھا سیٹھم آئیٹیکو کی تجویز اس مقصد کو حاصل کرنے کی راہ میں پہلا قدم ہے لہذا میں چاہتا ہوں کہ اس مقصد کو صرف کاغذی روپ میں نہ لایا جائے بلکہ اس پر عمل کیا جائے ایسا ریپزولوشن پاس کرنا مشکل نہیں ہے - یہ بہت جلد پاس ہو سکتا ہے - لیکن اس ریپزولوشن کا جو spirit ہے - ہمیں چاہیے کہ ہم اس کے پیچھے نظر یہاں اور سارے ملک میں عمل کریں اور ان کو اپنے دلوں میں جگہ دیں اگر آپ ایسا نہ کریں تو آپ اپنے ریپزولوشن کو کامیاب کرنے میں کامیاب نہیں ہو سکتے ہیں لیکن اس کے بعد میں چند الفاظ صرف اپنی ترمیم کے متعلق کہونا - میری ترمیم یہ ہے کہ religion word کے قبل الفاظ "those essential for bona fide" کے الفاظ آتے ہیں جہاں تک ذاتی خیال ہے وہ یہ ہے کہ جہاں تک religion کا تعلق ہے - میں سمجھتا ہوں کہ ہر چیز جو اس کے متعلق ہے وہ essential اور bona fide ہے لہذا آپ جب ایک طرف religious organization کی اجازت دیتے ہیں لیکن دوسری طرف اس کو qualify کر رہے ہیں - تو گویا اس طرح سے آپ religion میں interfer کرتے ہیں - جو آپ کو نہیں کرنا چاہیئے اس لئے میری گزارش یہ ہے کہ اگر آپ religious organizations کی اجازت دیتے ہیں تو آپ سچے دل سے دیں اور اسکو qualify کرنے کی کوشش نہ کریں - اس لئے میں یہ عرض کروں گا کہ ان الفاظ کو اس ریپزولوشن سے اٹھا دیا جائے مجھے اُمید ہے کہ میرے دوست اس تجویز کو ہائیڈنگے اگرچہ موجودہ حالات میں میں یہ سمجھتا تھا چونکہ ہمارا نیا constitution آنے والا ہے - اور اس کے پیچھے نظر یہ ریپزولوشن قابل غور نہیں ہوگا - لیکن ہمارے معزز برائمنز مسٹر نے فرمایا ہے کہ جو constitution ہماری constituent Assembly پاس کریگی اُسکی روشنی میں موجودہ ریپزولوشن کو عمل میں لایا جائیگا تو اس طرح فی الحال میرا شک دور کیا تو ان حالات میں میں پھر ایک بار عرض کرتا ہوں کہ آپ religious organization کی اجازت دیتے ہوئے کسی qualifications کو عاید نہ کریں - اگر آپ ایسی qualification کو عاید کرتے ہیں تو آپ اس میں interfere کرتے ہیں جو ہر صورت جائز نہیں اس لئے میں پھر یہ کہونا کہ ان الفاظ کو اس ریپزولوشن سے اٹھا دیا جائے۔

(English translation of the above speech)

Mr. Mohd. Tahir: Mr. Chairman, Sir, in supporting the motion I would say only a few things about my amendment. After the attainment of freedom for the country, every child and every animate or inanimate object here, has but one object in view that India should be the greatest and the most powerful country of the world, and that through its influence it may bring freedom to other slave countries of the world. If that is not the aim of our freedom I think our freedom has absolutely no meaning. I consider, the motion moved by our friend Mr. Anathanasayanam Ayyangar is the first step to achieve that object. I wish that the object is not left on paper only, but is given a practical shape. It is quite easy to adopt such a resolution. It can be passed very soon, but keeping the spirit of this Resolution in our view we should act upon it, and respect it. If you cannot do so, you cannot make it a success. After this, I have to say only a few words about my amendment. I have moved that the words, "those essential for *bona fide*," preceding the word 'religious' should be deleted from the Resolution. So far as religion is concerned I personally think that anything connected with religion is essential and *bona fide*. Now, on the one hand you are permitting religious organisations and on the other you are qualifying them which means you are interfering with religion. This should not be done. I, therefore, beg to say that if you are permitting religious organisations you should do that with open heart and not try to qualify it. I would, therefore, request you to remove the words from the Resolution. I hope my friends will accept my amendment. Under the present circumstances, and in view of the fact that our new constitution was in sight, I thought that this Resolution would not be considered. But our Honourable Prime Minister has stated that this Resolution will be brought into practice in the light of the constitution which our Constituent Assembly passes. Thus my suspicions have been removed for the time being. I, therefore, again, under these circumstances beg to state that while permitting the religious organisations no qualifying word should be introduced. If you qualify it you are interfering with religion which is in no way permissible. I, therefore, repeat my request that these words should be deleted from the Resolution.

Mr. Tajamul Hasain (Bihar: Muslim): Sir, in my opinion, no country in the world is entitled to call itself civilised unless it has in it equality and fraternity and is non-communal. If my view be correct, then I am ashamed to confess that we are uncivilised. I can quote numerous instances and give concrete examples to show that in this country there is no equality and it is full of communalism. Take the case of the ruling princes and the tillers of the soil. Is there any equality or fraternity among them. Even in sports there is communalism. In all the civilised countries you will find that there is no communalism in sports but in this country what do we find. There are the Bombay Yacht Club and the Bombay Gymkhana. Both are meant exclusively for Europeans and non-Europeans are not allowed to enter them. Then there is the Pentangular Cricket. You have got teams on communal lines. You have the Muslim team, the Hindu team and the Parsee team and so on and so forth. In Bengal when you play football you have the team known as Mohammedan Sporting, etc. I want that all these distinctions should be abolished.

We see inequality in social life also and there is no fraternity but there is communalism in it. For instance there is the Bengal Club in which only Europeans are admitted and non-Europeans cannot get in. Then there are the Brahmin Clubs, the Bengalee Association and the Marwari Association. Even in business in this country you have got the Chamber of Commerce for the Muslims and another for the Hindus. In the political sphere there is the Hindu Mahasabha. Of course recently it resolved that there will be no politics in it but in spite of that it is a communal body into which no non-Hindu can

[Mr. Tajamul Hasain]

get admission. Then there are the Momin Conference, the Depressed Classes League and the Muslim League. All these are exclusive or communal.

In this country there are class distinctions. There are the *Brahmins* and the *Sudras*. There are the *Syeds* and *Momins*, the *Maulanas* and *Pandits*. Why should Hindus be addressed as Babus and Muslims as Maulvis. In every civilised country there is a family name but in this country there is none. You can find out what religion a man professes by his name, which does not happen in any other country. The moment you hear the name Ram Parshad you know he is a Hindu and the moment you hear the name Asaf Ali you know he is a Muslim. A Sharma is a Brahmin, a Mukerjee is a Bengalee Brahmin, a Menon is a Madrassee. All this is peculiar to this country. Such distinctions should be removed.

Look at the railway compartments. There are five classes,—Air-conditioned, First class, Second class, Intermediate and Third class. Is this equality? In England and Europe there was no uniformity in dress at one time but by law it was made uniform. In this country there is no uniformity of dress. Some are in *dhoties*, some in *pyjamas*, some in coats and some in *sherwanies*. You will not find in any civilised country visible signs to show that a man belongs to a particular religion. I say that if there is a sign on the forehead showing that the man belongs to a particular class let every one have that sign and so remove the class distinction or have no sign. Of if a man has a pigtail or teek let every one have the same or none at all. Why should a particular sign indicate his caste or religion? Why should any visible mark or sign be connected with religion? Religion is a personal matter. Why should it be made a show?

In every country there is one language. In this country there are hundreds of languages. There should be one language and one script. Among lawyers, there are barristers, Advocates, vakils, pleaders and mukhtars. The law of inheritance is different. There is one law by which women inherit and another by which they do not. There must be a common law of India like the Common Law of England.

The most important thing is common food. On the railways formerly we had Hindu and Muslim refreshment rooms. Now they have been changed to orthodox and unorthodox—orthodox for Hindus and unorthodox for Muslims. The communal distinction is still there. Only name is changed. I can appreciate that there should be vegetarian and non-vegetarian food. But there must be one kitchen and there must be one refreshment room in which food should be served—both vegetarian and non-vegetarian, for Hindu, Muslim, Christian, and anybody who goes there must be able to have his food. Take drinking water. There is Hindu water and Muslim water, and orthodox and unorthodox. I cannot understand it. You may have vegetarian dishes but how can you have vegetarian water. Still you find such communal distinction.

I should like to say one word about inter-marriages. This is absolutely essential in this country. There must be inter-marriages. Unless you have that this country cannot progress. If husband and wife can have two different political views why can they not have two different religions.

I am giving only the points because you have given me only one or two more minutes. As regards reservation of seats, I would like to say that England which is a very advanced country had no reservation except one for University and even that they have recently abolished. The moment you have reservation the same thing will happen. You know how people are fighting with one another under the reservation of electorates—Muslims, Depressed Classes and the like. Something was said by an Honourable Member that reservation is necessary in the case of the Depressed Classes because we want to bring them to a higher level. This is a wrong policy. If you want to bring them to a

higher level, give them general free education up to the Matriculation Standard. Let everybody be educated so that the Depressed Classes may come to the same level as the others. There should be no reservation at all. You will be playing with fire if you reserve seats for any class. It will be communal.

I am afraid that our position is the same now as that of the Europeans was before the Renaissance. Before the Renaissance they were an uncivilized people; they used to kill one another; the Jews used to be burnt alive; the Roman Catholics and the Protestants persecuted each other. The same thing has happened in India—Hindus and Muslims fighting and killing each other. But just as the Renaissance came in Europe it will come to India. I say this is the transitory period in India. We were ruled by the British. They have all now gone away. These were the domes of the British. A time will come when all the communal thing will go away all the difference would be abolished, and we will become the greatest country in the world. I would have liked to say much more but my time is over.

Dr. P. S. Deshmukh (C.P. and Berar; General): Sir, there has been considerable discussion on this Resolution and very many speakers have spoken in favour of the Resolution. My friend from C.P., Mr. Khandekar, of course struck a different note. The Resolution as it stood in the beginning was not quite up to my liking. I am however very glad that two more words have been added to it and a good deal of my objection to the Resolution has been removed.

My attitude to this Resolution, I am not sorry to say, is somewhat different from that of many Members. I look at this Resolution firstly from the point of view of the liberty of association of the people of India. We have already passed certain Resolutions and certain items regarding the fundamental rights that the citizens of India are supposed to enjoy. I have before me the draft clause 13(c) which gives to every citizen in India a justiciable right of forming associations or unions. I quite agree that we have to aim at the abolition of communalism. Although we might not be able to reach the heights preached by my Honourable friend Mr. Ananthasayanam Ayyangar, of *Advait Vedant*, still every one of us is desirous of doing our utmost for the eradication of this poison from the community. Even so, I would like the House to look at this Resolution from a somewhat different angle, namely whether we are not—after we have solemnly decided upon the fundamental rights, and we have resolved to confer these fundamental rights on the people of India—circumscribing those rights already, and whether it is not somewhat premature for us to give such a blank cheque to the executive government of the country. I think the wording of the Resolution is vague and indefinite in many respects. The vagueness which is apparent did I think bother and was present before the mind of the Honourable the Prime Minister himself. When he referred to the words 'legislative and administrative measures' which figure in the resolution we found that he had a certain amount of difficulty in trying to tell us what the promoter or the acceptor of the Resolution meant by it, because under the name of legislative and administrative steps almost anything in the world can come in. It was easily noticeable that the Prime Minister did halt and hesitate although only for a moment. In my opinion the Resolution does constitute a certain amount of encroachment on the fundamental rights which we have decided upon. Even so I would have been prepared to accept it if it had been clearly and precisely limited to political activities alone. That was how I had worded my Resolution of which I had given notice and which wanted to be substituted in place of the one before the House. It would have been far to my liking if it positively restricted the political activities and political activities only of any particular group or community. The Resolution as we have it before us is an exclusive one, that is, it excepts certain activities and bans all the rest. I have a certain amount of administrative experience and I believe—I may probably be at variance with the tenets or principles according to which the

[Dr. P. S. Deshmukh]

present members of the government are acting—but I would have tackled communalism in the country and the activities of communal organisations in a more direct fashion. I would have preferred to ban all those activities and all those associations whose organisations are a menace to the country and its tranquility and therefore deserved to be condemned. It is not up to my liking very much that we should evolve a very vague and an all-pervading sort of a formula and then try to apply it to one organization or the other. I personally feel that it is one of the defects of the way in which we have started managing our affairs in India that we are more fond of abstruse formulas rather than precise acts of administrative policy. The amendment that has been accepted makes the Resolution much less objectionable than it originally was, nonetheless I am constrained to point out that the approach I have suggested would have been more prudent and administratively advantageous.

My Honourable friend who proposed the Resolution referred to America and said that slavery had been abolished and America is now a very fine country. Slavery was abolished by an Act of the legislature. Even so we know the persecution which is still prevalent there against the Negroes.

As my time is short I will only briefly indicate one or two other points and I will finish. The word 'communalism' has been used more than once in the Resolution. Communalism was understood to have a somewhat specific meaning so far. We all knew what it meant, what it predicated. But I am afraid there is at the moment a tendency in some parts of the country to ban, under the name of communalism, certain activities which cannot properly speaking be styled as communalistic. I would therefore caution the Government that the terms of the Resolution should not be so interpreted at any time as to rub on the wrong side some people or groups or castes who are not communalistically inclined or whose aim is not to encourage any *fissiparous* tendencies or to create any trouble or encourage quarrels between one caste or community and another. But rather their endeavours are directed towards their own uplift and progress. Then, Sir, it should also be understood that the real remedy against communalism lies in our mental approach. Communalism is a thing which cannot really be abolished by rules and regulations, and if we are going to rely merely on legislative enactments and administrative orders, I feel certain we will be sorely disappointed. We have very great faith in, and we are all devoted to, the Honourable the Prime Minister, and whenever we find that he has agreed to a certain thing, when he approves of a certain matter, we are very reluctant to say anything that may hinder in what he wishes to do. Nonetheless it should be the care of everyone of us that no group or community in India should be rubbed on the wrong side so that the devotion and loyalty which all of us owe to him personally and as the Prime Minister of India may not be strained to any particular degree. That should be the care of every one of us, and if these few warnings and cautions that I have made bold to indicate briefly are borne in mind, any harm that may flow from the passing of this Resolution, may be reduced to the absolute minimum.

Kazi Syed Karimuddin (C.P. and Berar: Muslim): Mr. Chairman, Sir, At the very outset, because the time is very short, I assert that the objective of the Resolution which has been moved by the Honourable Member Mr. Ananthasayanam Ayyangar is acceptable to me and it should be acceptable to every member of the House. Sir, in India we have reached that stage in political life when communalism is positively injurious to the higher interests of the nation. Sir, the Honourable Member Mr. Ishaq Seth has said that there is absolutely no difference between the objective of the amendment that he moved and the objective of the Resolution that has been moved by my Honourable friend Mr. Ananthasayanam Ayyangar, and that there is only a difference of method and not of principle. I dare say that between the amendment and the Resolution there is a difference of fundamentals and not only that of method.

What Haji Ishaq Seth wants is that communal organisations may be allowed to continue, but no organization should be allowed to preach violence and hatred. My Honourable friend Mr. Ayyangar has never stated that he is for preaching violence and hatred, and violence and hatred cannot be taught or preached on any account according to the law of the land. It has not been the policy of the government and it is not necessary that many more things which are prohibited already should be mentioned in the resolution.

Now, Sir, it has been stated, and with great vehemence by many of the speakers, that in the past communalism has done great harm to the country. In my opinion this is not the time to refer to what has been happening or has happened in the past except that we should draw historical inferences from the events that took place before the 15th August. Now, Sir, there is civil strife facing the country, there is an impending international war; there is the huge problem of rehabilitation and development of the country; there is loot, murder, arson and killing going on in some places in the country. It is necessary to stop all this and India should stand as one man against all aggression, against all communalism and against all civil strife in the country that is there. Now looking to these dangers, Sir, my submission is that this is one occasion when it should be the unanimous verdict of this House that communalism should go from the body politic. India has been declared a secular state. It is in the interests of the minorities of this country that this secular state should exist. If any community wants to say that there should be communalism or that communal activities should be allowed to be practised, then the majority cannot be prevented from preaching communalism which will go to the great detriment of the minorities in this country.

Sir, with regard to the second part of the resolution, I have no difference of opinion, but as the Prime Minister said, it is very difficult to give an indication as to what would be the legislation which has been referred to in the resolution. My submission is that, more than anything else, the atmosphere of this country can be cleared by creating goodwill and harmony instead of making legislations in which the activities will be suppressed and will not be voluntarily liquidated. The measure of joint electorates that is to be introduced is bound to kill communalism in this country. In France and other European countries there were Roman Catholic parties; there were Protestants, but by creating necessary public opinion and by proving the futility of such communal organizations in Europe, they have been uprooted and no more is heard of any communal parties in Europe. In India also, Sir, this is one occasion when we should abolish all communal parties in this country. I hope this communalism will be uprooted and the sons and daughters of India will stand as one man and woman against all aggression and against all communalism.

Sir, I want to clear one misunderstanding which has been referred to by Seth Govinddas. He said that the elections in the Aligarh University were decided on the slogans of League and communalism. It is not correct. I have personal knowledge to say that there were differences between communism and the rest, and the communists have been defeated because their programme was not acceptable to the students in Aligarh. Therefore, Sir, I appeal to this House to pass this resolution with a unanimous verdict.

Shri Satyanarayan Sinha (Bihar: General): I move:

"That the question be now put."

Mr. Chairman: The question is:

"That the question be now put."

The motion was adopted.

An Honourable Member: The Mover has the right of reply.

Mr. Chairman: I would request Mr. Ayyangar to waive his right of reply.

Shri M. Ananthasayanam Ayyangar: I will be very brief in my reply. Sir, I thank the Honourable the Prime Minister and the Cabinet for having accepted this Resolution, of course with the limitations which the Honourable Prime Minister has been pleased to lay before the House. The Honourable Premier has shown by his very example how he could work as a team with all those others who were leaders of various communal organizations. The Cabinet is working as a team in one spirit. I do want that that pattern should be followed in the rest of India. Everyone of my friends—Dr. Syama Prasad Mookerjee, Dr. Ambedkar, Dr. John Matthai, and all others have come and have agreed to work with him, for the building up of a good, secular State in this country, a homogeneous one.

Sir, I am obliged to all the other Members of the House who spoke and supported the Resolution that I brought. I accept the amendment moved by my Honourable friend Mr. Kamath to add the words social and educational after the word "religious". So far as the word "race" is concerned, I do not accept it. The word "race" ought to be there; the omission of that word will lead to a number of conflicts. We find in the United States of America a conflict is even today going on between the one race, the Negroes, and the others. It is as essential as it is dangerous if we omit it.

There has been almost a unanimous acceptance of this Resolution barring the single dissentient note of discord by my friend Mr. Ishaq Seth. I have got the greatest regard for him. I and he were living together in Simla for many a long months. We were calling ourselves "gangsters". I knew no difference between him and myself; every Sunday we will meet and have dinners by rounds. We were living as brothers, as members of the same family. But unfortunately events so happened that he went into one group, I continued in the same old group—I did not change. Now, Sir, my friend said that he, in moving this amendment, fears, and in spite of dangers ahead he is moving this amendment. I tell him, today he is more safe in this country than the Honourable the Prime Minister. The Prime Minister has to go about with a number of men around him. We also know the difficulties for persons who cry for peace in this country between warring communal elements; their life is in danger. I am like a drum which is beaten on either side—that is my position. I am not accepted wholly because I am not a rabid Hindu, nor am I welcomed by my friend Mr. Ishaq Seth. I know he is a pious Muslim, I also claim to be a pious Hindu. Still, I feel that he and I can live together as members of a body-politic—our religions need not stand in the way. I assure him that the greatest difficulty is for those persons who want to bring about a reconciliation between the erstwhile warring elements. Now that the third party has gone there would be absolutely no difficulty for us to come together. I wish, and we must all wish, that this Government must continue and the Honourable the Prime Minister will fulfil the huge task that he has undertaken, of welding all the warring elements into one, and placing this country on the high pedestals of the world.

I once again thank the Honourable Members for kindly accepting this Resolution.

I do not accept the amendment of my friend Mr. Ishaq Seth.

Mr. Chairman: I shall now put the amendments to the House. I shall first put the amendments moved by Haji Abdus Sattar Haji Ishaq Seth.

The question is:

- (1) "That the word 'communal' be omitted";
- (2) "That for all the words beginning with the words 'which by its constitution' and ending with the words 'or any of them', the following be substituted: 'preaching violence and communal hatred';";

(3) "That for the words 'engage in any activities other than those essential for the *bona fide* religious and cultural needs of the community', the word 'exist' be substituted" and

"That for the words 'such activities', the following be substituted :

'the existence of such organisations'."

The motion was negatived.

Mr. Chairman: I shall now put the amendment of Mr. Mohd. Tahir.

The question is:

"That the words, 'those essential for the *bona fide*' be omitted."

The motion was negatived.

Mr. Chairman: Then there are Mr. Kamath's amendments.

Shri H. V. Kamath: May I ask, Sir, for leave of the House to withdraw my amendment No. 13 regarding the word "race"?

Mr. Chairman: Has the Honourable Member leave of the House to withdraw his amendment?

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

Mr. Chairman: The question is:

"That the word 'and' occurring after the word 'religious' be omitted and after the word 'cultural', the words 'social and educational' be inserted"

The motion was adopted.

Mr. Chairman: The question is:

"Whereas it is essential for the proper functioning of democracy and the growth of national unity and solidarity that communalism should be eliminated from Indian life, this Assembly is of opinion that no communal organisation which by its constitution or by the exercise of discretionary power vested in any of its officers or organs, admits to or excludes from its membership persons on grounds of religion, race and caste, or any of them, should be permitted to engage in any activities other than those essential for the *bona fide* religious, cultural, social and educational needs of the community, and that all steps, legislative and administrative, necessary to prevent such activities should be taken."

The motion was adopted.

The Assembly then adjourned till a Quarter to Eleven of the Clock on Monday the 5th April 1948.