

Friday, 2nd May, 1947

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# CONSTITUENT ASSEMBLY DEBATES

## OFFICIAL REPORT

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## CONSTITUENT ASSEMBLY OF INDIA

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## CONSTITUENT ASSEMBLY OF INDIA

*Friday, the 2nd May, 1947*

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair.

### INTERIM REPORT ON FUNDAMENTAL RIGHTS—*contd.*

**Mr. President :** We shall resume further discussion on the remaining clauses of the Fundamental Rights. Clause 19.

Clause 19.—Miscellaneous Rights.

**The Hon'ble Sardar Vallabhbhai Patel** (Bombay: General): I beg to move clause 19. The clause runs thus:

“No property, movable or immovable, of any person or corporation including any interest in any commercial or industrial undertaking, shall be taken or acquired for public use unless the law provides for the payment of compensation for the property taken or acquired and specified the principles on which and the manner in which the compensation is to be determined.”

I do not expect any amendments to this motion, but if there are any, we shall consider them in time.

(Amendment Nos. 86 and 87 were not moved.)

**Raja Jagannath Bakhsh Singh** (United Provinces: General): I do not move amendment No. 88. Sir, I shall, with your permission, move amendment No. 89. I move:

“That in clause 19, after the words ‘the payment of’ the word ‘just’ be inserted.”

I congratulate the Advisory Committee on the labour they have devoted to the difficult and complicated question of framing the fundamental rights. Clause 19 provides:

“No property, movable or immovable, of any person or corporation, including any interest in any commercial or industrial Undertaking, shall be taken or acquired for public use unless the law provides for the payment of compensation.”

I have no doubt that the Advisory Committee had in their mind that, whenever an occasion arises to take property, movable or immovable, it should be after payment of compensation which is just compensation. But I think that without the insertion of the word “just” which I am moving, the meaning of the clause may be left a little vague.

Then, Sir, there are a number of precedents in support of my contention. I believe the Advisory Committee had in their view the American constitution in framing the fundamental rights. In paragraph 3 of the Report of the Advisory Committee it is stated:

“We attach great importance to the constitution making these rights justiciable. The right of the citizen to the protection in certain matters is a special feature of the American Constitution and the more recent democratic constitutions.”

If you look at Article V of the American Constitution, 1791, the, last two lines read thus:

“... nor shall private property be taken for public use without just compensation.”

[Raja Jagannath Bakhsh Singh]

This makes it clear that the American Constitution lays particular emphasis on this word "just" in qualifying the word "compensation". Next, Sir, if we look at the Constitution of Danzig—I am referring to the Third Series of Constitutional Precedents, page 69, you will find:

"The right of property shall be secured Expropriation may only be effected in accordance with the provisions of the law and for the benefit of the whole, community, and in return for due compensation, in case of dispute with regard to the amount of compensation, recourse may be had to the law-courts."

Further, if I have your permission to quote one more constitution, namely, that of Australia, it will be found that in section 51 of the Constitution of the Commonwealth of Australia the following provision is incorporated:

"The acquisition of property on just terms from any State or person in respect of which the Parliament has power to make laws."

I do not wish to take the time of the House in reading the Constitutions of other countries, but I may add that the House will find in the Constitutions of Belgium, Bulgaria, Denmark, Finland, Albania, and Yugoslavia—in a number of these countries the word "just" qualifies "compensation" in others a similar expression has been used. I, therefore, submit that so far as precedents are concerned, I am well supported in my motion. I think it is unnecessary for me to put before the House all the arguments in support of this amendment, as I know the House is pressed for time. Therefore, Sir, with these words I commend my amendment for the acceptance of the House.

**Prof. K. T. Shah** (Bihar: General): Mr. President, I have given notice of an amendment to add the following proviso to clause 19:

"Provided that no rights of individual private property shall be recognised in forms of natural wealth, like rivers or flowing waters, coastal waters, mines and minerals, or forests."

But as this raises many complicated issues, I do not move it but suggest that this should go back to the Advisory Committee.

**Mr. President:** Do you move the amendment?

**Prof. K. T. Shah:** No, Sir.

**Mr. President:** There is only one amendment to this clause. The clause and the amendment are both for discussion.

**Shri S. Nagappa** (Madras: General): Mr. President, I rise to offer my support to this clause proposed by the Hon'ble Mover of this Report. This is a clause that gives some hope to the poor tiller of the soil. This clause gives a promise to the people of the country that the Union Government or the Unit Governments are going to acquire property, landed or other sort of property, from either individuals or corporations or from industrialists or commercial concern, in the public interest and that, when they do so, they are going to compensate them. Now, Sir, what sort of compensation is to be paid? There are difficulties in the way of settling this matter. I want that in paying compensation we must be reasonable. Now the question arises as to what is reasonable compensation. It seems to me, Sir, that when we are acquiring landed property from a zamindar, we need not pay as much as he wants. We need pay only what is reasonably required to enable him to maintain himself and his family for one or two generations. That is the only thing necessary to do to fulfil the kind of assurance which the Congress has given to these zamindars and jagirdars in their election manifesto. My humble request that the

Government should accept my interpretation of what reasonable compensation is. For instance, if a poor man's property is acquired for a particular purpose, then, in giving him compensation, care must be taken to see that it is reasonable in the particular case. In such a case the Government must pay him the cost of the land and something more even. But when the Government acquire lands from a zamindar, they need not pay the actual market rate or the local rate to make the compensation paid reasonable. You have to fix the compensation keeping in view the manner in which the zamindar acquired that property. That is my contention, Sir.

Then, Sir, I submit that when once you acquire land, you must see that the tiller of the soil is made the owner of the soil. Then alone we will be able to give a kind of encouragement to the toilers and make them increase the produce and the national wealth for the maintenance of the country. I hope this clause will not stand in the way of the provinces pushing forward land legislation which they have in some cases already undertaken. For instance, my respected leader of Andhradesa, Sri T. Prakasam, has already done a lot for the abolition of the zamindari system in Madras and the Madras Government are pushing forward legislation for the abolition of zamindaris. Once the zamindaris are abolished and the Government acquire their properties, it must be their endeavour to make the best use of such properties. The Government must see to it that collective farms are formed and that, through them, the maximum is produced and the tiller is given sufficient for what he does. These are the hopes which the particular clause gives to the poor tillers of the soil.

Now, Sir, so far as the industries are concerned, I have been day in and day out asking in the Madras Legislative Assembly, for their nationalisation. That does not mean that we need not encourage private bodies to take to industrialisation. We have to go forward in this respect. Our country is very backward industrially. If we are to move quickly forward, we must go to the extent of granting subsidies to our industries and nationalise them as soon as possible. When private enterprise has fully developed and when the country thinks that particular industries should be taken over by the Government for public benefit, reasonable compensation must be paid. In these cases it would be reasonable compensation if we offer the persons who started those industries ample funds to fall back upon. That is my interpretation of the word 'reasonable' in this respect.

Sir, these are two main points that should be borne in mind when legislation is undertaken for the abolition of zamindaris and nationalisation of industries.

Once again, I offer my thanks to the Hon'ble Mover for bearing in mind this particular class of tillers of the soil who would be getting their due share of the results of their labours. I also thank you, Mr. President, for giving me this opportunity to speak on this motion.

**Dr. Suresh Chandra Banerjee** (Bengal: General): Mr. President, Sir, I had naturally hoped that we would make some progress towards socialisation at least when we gained our independence within a few months, but in these fundamental rights nothing has been put in regard to socialisation. I would have been really happy, had the amendment of Prof. K. T. Shah been accepted, because there is an element of socialisation there. I feel that in a country like India where poverty is so acute, where general condition of the workers and peasants is so miserable, nothing but socialisation can give some hope of improvement in the future. So, I would have been happy if the House had accepted the amendment of

[Dr. Suresh Chandra Banerjee]

Prof. Shah. But I know, Sir, the difficulties with which we are faced at present. We know, Sir, how many interests are represented here. Here, we have to consider the case of the Indian Princes, we have to consider the case of the Anglo-Indians, of the Christians and so many other people. As a matter of fact, it is a matter of great consolation to us that we have been able to find out a solution for reconciling so many interests. So, in the present context, we cannot press for any amendment like this, but still I do hope that in the near future when India gets her independence, it will be possible to have some kind of socialisation. With these words, Sir, I support the clause as it stands.

**Shri Ajit Prasad Jain** (United Provinces: General): I rise to make a few observations on this clause. I had given an amendment for the total deletion of this clause, but it became unnecessary to move that amendment for I could express my ideas during the course of general discussion. This clause reproduces a part of Section 299 of the Government of India Act, 1935, with a certain amount of amplitude. It says that no property, whether movable or immovable, shall be acquired for public use unless the law provides for the payment of compensation. We have some experience of the working of Section 299 of the Government of India Act. The House must be aware that in several Congress Provinces measures for the abolition of zamindari system are under consideration. In the United Provinces we passed a resolution for the abolition of zamindari system on payment of equitable compensation. That resolution follows the line laid down in the Congress Election Manifesto. In working out how the compensation should be calculated, we were faced with great difficulties. There was the question of the financial capacity of the State. If we fix compensation at a figure which the State could not pay, it would mean that the zamindari should continue to exist. We had also to see how much profits the landlords have made in the past from the zamindari. The question of the origin of zamindari also became relevant. Some of the zamindaris in our provinces have been acquired for helping the British by acts of treachery during the first war of independence in 1857. We could not ignore the market price of the zamindari either. After a careful consideration of these various factors we are trying to fix compensation for the zamindaris. On the other hand, the landlords have been interpreting the word 'compensation' to mean full compensation, *i.e.*, the market price of the land. Some of them have threatened that they will go to the Federal Court for interpretation of the word 'compensation'. We have no manner of doubt that it is impossible for the State to pay full compensation. Then the choice before us is to leave the zamindari as it is. Sir, land acquisition may take either of two shapes. It may be acquisition of a specified property for a specified purpose. In that case the State may pay not only its full value but something more for the compulsory acquisition as is provided in the Land Acquisition Act. There may be other cases in which property may not be acquired as a solitary thing. It may take the shape of a measure of social or economic reform for the welfare of the society. For instance, we may have to acquire factories, mines and industries for nationalisation. In such cases the acquisition of the property will be for social use for the upliftment and betterment of the society. The property is being acquired in the interest of the large masses of the people. And in such cases considerations which may prevail in the cases of isolated acquisition will not apply. The State may not be in a position to pay full compensation. In fact, there may be only a nominal compensation or no compensation at all. This clause, if accepted as it stands, will stand

in the way of large scale social and economic reforms. It will cover all the cases where property is being acquired for social or economic improvements. It is none of my intentions that the State should act as a robber or a bandit and arbitrarily seize properties of the people, but measures of social reforms stand on quite a different level. That is the reason why a number of amendments, which were not moved, had been tabled in the direction pointed out by me. Fundamental Rights in my opinion are embodied in the Constitution with a view to protect the weak and the helpless. The present clause will have just the contrary effect. It will protect the microscopic minority of propertied class and deny rights of social justice to the masses. I am, therefore, totally opposed to this clause and I do hope that the Hon'ble Mover will keep this in mind and refer the clause back to the Advisory Committee so that any provision which we pass today may not stand in the way of social and economic reforms which are necessary to bring prosperity and plenty to the country. With these few remarks, I commend my point of view for the consideration of the House.

**Mr. R. K. Sidhwa** (C.P. and Berar: General): Mr. President, Sir, one would have expected that under the present economic conditions prevailing in the country, there would be a clause for acquiring property in a different manner. It is very deplorable that at the present moment when various legislatures are out to abolish the jagirdari and zamindari systems by payment of a small compensation or no compensation under this clause we are asked to pay compensation for any property that is going to be acquired. In free India where we should expect the property clause to be more liberal and beneficial to the people, we find that we are helping the upper class people by passing this clause.

Sir, the word 'property' is very vague. "Property" includes public utility concerns like electric corporations, transport organisations etc. We are well aware that in many provinces these public utility concerns are being nationalised and I am sure that in a very short time to come almost all the public utility concerns will be nationalised. In fact, under the bureaucratic system of Government, all the railways have been nationalised by payment of any 'goodwill' that may have been specified under the agreement. I know, Sir, that the agreements with local bodies under which some electric concerns are working, provide for acquiring such concerns without any compensation being given. If you pass this clause, it would mean that although the agreements do not provide for it, we have to pay compensation to these public utility concerns when we acquire them. Is it fair, may I ask, that the public utility concerns which are for the benefit of consumers and the people, and which in all countries eventually may become the property of the people, are to be taken over by paying the actual invested capital plus compensation even if there is no clause as to the payment of compensation? I do feel, Sir, that this clause requires amendment at least as far as the public utility concerns are concerned. But, Sir, I am helpless as I could not move an amendment I would have been desired that this clause should have been amended or have gone back to the Advisory Committee under the circumstances I mentioned. If it is not going, I hope that this will receive the consideration of the Mover, because it will be really doing great injustice to the consumers,—that though in the agreement there is no clause of compensation we shall be bound to give it and in a small province they would have to take over concerns by paying them the actual amount invested plus compensation.

**Mr. President:** Do you mean to say that an agreement will be affected by this clause?



**Mr. R. K. Sidhwa:** Yes, Sir, No property shall be taken or acquired for public use unless the law provides for the payment of compensation, says the clause. Now, Sir, the law will be made certainly in accordance with this clause and a demand for compensation will be made even if there is nothing in the agreement.

**Mr. President:** The acquisition itself will be provided for in the agreement.

**Mr. R. K. Sidhwa:** If the law provides that a compensation is to be paid and if in the agreement there is no clause, then we will be bound down. I, as a common sense man, feel—of course, the legal luminaries may say, if they enlighten me I shall welcome it, but, as a common sense man, I feel that, if there is an agreement in which there is no clause for compensation and if you are enacting an Act for giving the compensation, they will claim from us the compensation. And owner of the property in that event will go to the Supreme Court and get his demand fulfilled under the clause.

**Shri Vishwambhar Dayal Tripathi:** \*[Mr. President, I stand here to oppose the amendment moved by my friend, Raja Jagannath Bakhsh Singh. His amendment says that the word “just” should be added before the word ‘compensation’ here. I oppose this most emphatically. So far as this clause is concerned, not only I but most of my friends apprehend, that its wordings are such that their effect, particularly the legal effect, would not be to the good of the country to the same extent as it ought to be. I want that the words in the clause be changed so that it may not go against the interests of the country as apprehended by us. I would appeal to the gentlemen who drafted this clause to reconsider it and put before us a new “formula”.

It is proper and I accept it that when we acquire property of any one it is necessary to give compensation for it. This too I accept that in most cases compensation should correspond to the value of the property. But at the same time I also believe that we must also see as to how the property was originally acquired by the person concerned. If it was acquired justly, compensation ought to be given according to its value. If the property was not acquired justly or if the holder has earned sufficient profit from the same it is wrong to give him full compensation or to pay its full price. If we want to change the existing social order, if we want to change the present order of zamindari and capitalism and at the same time say that full compensation should be given for the property taken by the State, it would mean that we would not be able completely to do away with the present social order. If we have really to change this order, if we really want to implement the resolution passed by A.I.C.C. on 8th August, 1942, which promised to frame a constitution wherein the real power is vested in the workers in farms and factories, we have to reconsider these clauses. If this clause is left as it is, undoubtedly various obstacles will come up in our way of fulfilling the promises and declarations made by us before the country from time to time. Therefore, I again request the framers of this clause to reconsider it.

We have before us the question of ending zamindari in several provinces. We have also before us the question of payment of compensation to the Zamindars. There are all kinds of difficulties before us. I am a member of the U.P. Zamindari Abolition Committee which has to deal with such questions. I can say with all the authority at my command that if we have to pay the compensation for zamindari according to its market value, I have no doubt that it will be almost impossible for us to

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\*[English translation of Hindustani speech begins.]

end zamindari: and even if it could be made possible, it would result in the peasantry remaining burdened for another 20 or 25 years to the same extent as they are today. After all from what source the compensation will be paid ? It will be taken from the pockets of the poor. Under these circumstances for another 20 or 25 years the peasants will have to remain under the same financial burden which they have to bear today. They will not benefit in any way for this period of 20 or 25 years. Besides the statement of Raja Sahib that "just" compensation should be paid is rather extremely odd. Is Raja Sahib prepared that a general examination of the titles of the Zamindars in respect of their landed property be undertaken to verify as to how many of these titles can be termed just ? If he agrees to this his amendment may be considered. There are many estates in the country and particularly in Oudh, to which province Raja Sahib belongs, which were acquired by the present holders as rewards for their traitorous support to the English during the Mutiny of 1857. The recipients of these estates had no estate previously. The Englishmen gave them these estates for their treachery against India. Raja Jagannath Bakhsh Singh claims that the Zamindar participated in the war of liberation of 1857. I welcome those who had fought for freedom and I do recommend that they should be given the maximum concessions. Raja Sahib knows that there are instances of many who betrayed their countrymen and in return for their treachery received big estates. Such people have no right to demand compensation. Many of them enjoy exemption from payment of revenue, and have been continuously enjoying the profits of these estates for the last 90 years. They have been realising rent from the tenants for the last 90 years without having had to pay even a pie of land revenue. If any body had even paid the price for it, he has already received five times its value. Those who acquired these estates as a reward for their betrayal of the country now demand compensation! The question of 'just' compensation does not arise so long as we have not examined the validity of the titles to these estates. Even if the word 'just' is not added here the clause as it stands, can be widely interpreted to include compensation to those who were never entitled to receive these estates, who have been receiving the profits of the estates for nearly 90 years and many of whom had not even to pay any land revenue to the Government. It would be improper to pay any compensation to these people. There is a 'saving grace' in this clause that the Government would consider the principles and basis on which compensation should be given.

It is my frank opinion that they should be given something as maintenance allowance for some years so that they may be able to live in, and adjust themselves to, the new and changed circumstances. I have no objection to this. I do not like, and nobody would like, that many of these people should be reduced to destitution and starvation. Therefore, if compensation can be supported it can be only on the basis that zamindars and capitalists should be given some amount for maintenance for a few years so that they may keep themselves alive without difficulties in the new economic set-up. If we want that the existing order of zamindari and capitalism should be done away with, it is desirable that compensation should be given on the basis of maintenance for a few years. But what I fear and suspect is that the clause in question may be legally so interpreted that our economic progress may be retarded, and the Congress and other important public organisations may not freely advance in the direction they intend to. Therefore, I oppose the amendment moved by Raja Sahib and at the same time request my respected friends, who have framed this clause, to reconsider it. If it is accepted

[Shri Vishwambhar Dayal Tripathi]

as it is, disastrous consequences may follow. Therefore I beg to put these two requests of mine before you and hope that the Hon'ble President and my other friends would accept them]\*

**Shri V. C. Kesava Rao** (Madras: General): Mr. President, Sir, I stand to support the clause, but I want to make some observations on that.

This clause provides compensation to the citizen whose property will be acquired for the use of the public. When the State acquires any person's property, it is only for the benefit of the public and not of any individual. If such acquiring deprives a citizen of his livelihood, it is necessary to pay compensation equivalent to the property one loses. And I think nobody disputes such a compensation.

We are framing a constitution for free India. We are asking the British to quit India though they came here 200 years ago. We know that the British acquired India by foul means and not by hard labour. As the owners of this country, we have the right to ask them to leave the country, and in response to our demand, they are quitting India by June, 1948. In free India nobody wishes to be exploited by another. The big landlords and the Zamindars did not get their land and property by hard labour. In this respect there is no difference between the Zamindar and the British imperialist. The British acquired Empires and the Zamindars acquired large fortunes—both by means of exploitation.

In Free India it is necessary to keep all the citizens on the same footing. This may not be possible for some time to come due to the system prevalent in this country. The common cry of the tenant is that the whole produce collected by him is taken away by the landlord even though he requires some of it for the maintenance of his family. There is no other way for him except starvation. Is the State prepared to give him any livelihood or a compensation for the loss of his energy and for his labour? But if a Zamindar who exploits the poor and amasses wealth is deprived of a portion of his property for the benefit of the public, the State thinks of giving compensation for the loss, though it is not a loss to him actually. The present day request of a tenant is the reduction of rent for his land. But this request will lead to the snatching away of the little land he has been cultivating and maintaining his family with. The Zamindar is prepared to keep the land waste and not to reduce the rent. Thus he allows his tenant to starve.

Lastly, I wish to point out that the Indian National Congress has been fighting for the abolition of the system of Zamindari and even in the last election, it gave an undertaking to the masses that the Zamindari system will be abolished as soon as the Congress comes into power. And accordingly, the Congress Provincial Governments have prepared their Bills for the abolition of it. Now, when we are asked to frame the Constitution for Free India, we want to compensate them in the manner in which the law fixes. The law will be always in their favour and they get more than what is necessary.

In view of the above facts, I request the House to consider and amend the clause in such a way that only a nominal compensation may be payable for acquisition of the property of a citizen or a Corporation.

**Rai Bahadur Syamanandan Sahaya** (Bihar: General): Sir, I would like to make a few submissions in connection with the amendment which

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] \*English translation of Hindustani speech ends.

has been moved by my hon'ble friend, Raja Jagannath Bakhsh Singh, his amendment only suggests the addition of the word "just" before the word "compensation". I have been anxiously and carefully listening to the debate and I must say, I have heard nothing so far that there should be no justice exercised in the matter of the payment of compensation. No one has suggested, and I dare say, no one will suggest, that once we accede to the principle that acquisition of private property must be preceded by the payment of compensation, such compensation should be an unjust one. This, I submit, cannot be the contention of anybody in an august assembly like this. After all, the future of this country depends on the justice and fair-play that we exercise in dealing with the different problems confronting us here and in the tact and ability that we display in dealing with the affairs of international policy. I submit, Sir, whatever may be said about those who own lands at present, it cannot be denied that at one time they were the pioneers in building up the economic structure of this country a couple of centuries ago. They have earned and they have made money, but is that a ground for now taking away the property from them and paying them no compensation and even going to the extent of incorporating in the fundamental rights that they should get compensation and then arguing that it should be an unjust compensation. I do not think that any such proposition can be placed before this House, and even if it is placed, I do not think it will find acceptance in this House.

Well, Sir, what is the demand that the amendment puts forward ? It says the word "compensation" should be qualified. The Hon'ble Mover has referred to other constitutions in the world where the word "compensation" has been qualified by the word "just". This is not the only word which has been used. If we refer to the constitutional series on Fundamental Rights which was circulated to us by Sir B. N. Rau, it will be found that even in the German Constitution the words used are "due compensation". It is said there—

"Expropriation may be effected only for the benefit of the general community and upon the basis of law. It shall be accompanied by due compensation."

I therefore submit, Sir, that the use of the word "just" could only indicate the real purpose behind what is embodied in the Report of the Fundamental Rights Sub-Committee, unless some members are prepared to argue that you might as well put the word "compensation" there but be prepared to face the fact that it might be unjust compensation in certain circumstances. I contend, Sir, that that cannot be a correct and a proper approach to the problem nor a valid argument.

Then, Sir, the whole argument of all those who have opposed the amendment has centred round the question of the acquisition of the Zamindari. These friends unfortunately have either ignored knowingly or failed to appreciate that this compensation clause does not cover Zamindari alone. It covers the whole field of movable and immovable property in the country,—in the Union or in the Units. It may be necessary in the larger interest of the country at a later stage even to acquire "Kashtakari", *i.e.*, tenants' lands. If you want to introduce cooperative farming or communal farming, it may be necessary to acquire even the tenants' lands. Would you deny them a just compensation? A proposition therefore like this which covers such a wide field—not merely Zamindari but even commercial interests and so many other interests—must, I submit, be placed beyond all doubts and suspicions. If I may submit, Sir, the right to private property and the protection of private property are the acceptance of the principle of right over might. You may choose to do away with it if you like, but we shall then all slowly

[Rai Bahadur Syamanandan Sahaya]

drift towards jungle laws rather than good laws meant to keep society together. Some friends have also referred to the fact that certain zamindars got all their property for anti-national work during 1857 Revolution. The Hon'ble Mover of the amendment has questioned this remark. I will go a little further and submit that these hon'ble friends have probably incomplete knowledge of the Zamindari system and therefore it is that they have come to the conclusions that many or most of the Zamindars acquired their property as a gift after the 1857 Revolution. They forget that in certain parts of the country the Permanent Settlement Act was enacted as early as 1793 much before the 1857 Revolution. It cannot be said of them that they got their Zamindari because of certain anti-national work. There may have been some people, whose conduct may not have been such as one would like, but you are dealing with a community and not individuals. You are dealing with the whole land problem, and when you are doing that, it is essential that the whole question and the entire picture must be within your consideration. There are also a large number of people who have paid good money and purchased Zamindari—not a hundred years before as some think. Zamindaris have been bought and sold every day. People have bought Zamindari only this year by paying good money, earned money which they have accumulated as their life's savings. Who does not know that until only a few years ago our main investment out of our savings was only in lands? It will certainly be unfair not to give them compensation—and a compensation which is just and fair. My suggestion, Sir, to the Hon'ble the Mover of the main clause and to the Mover of the amendment will be that the word "compensation" itself means "just and fair compensation". Compensation cannot be, in my opinion, unjust and unfair, and I submit that if the Hon'ble Mover of the main clause feels precisely as I do, that compensation means just and fair compensation, then my advice to the Hon'ble the Mover of the amendment would be that he need not press his amendment.

**Raja Jagannath Bakhsh Singh:** In view of the discussion that has taken place, Sir, I would not like to press my amendment. I beg leave to withdraw my amendment.

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

**Mr. President:** Now, the discussion will only be about the whole clause.

**Sri Lakshminarayan Sahu** (Orissa: General): Mr. President, Sir, while I approve of the clause as it stands now, I want to make certain observations especially with regard to Orissa Zamindaris. In Orissa the state of tenants is very bad and that is due to the people of Orissa receiving English education a little later than the people of Bengal and elsewhere. What happened was the Zamindaris that were in Orissa were transferred to the hands of absentee landlords in Bengal and the result has been that two-thirds of North Orissa—as it is called now—*i.e.*, the districts of Balasore, Cuttack, Puri and Sambalpur—two-thirds of the land in these districts are in the hands of absentee landlords and the result has been extremely disastrous. When they bought these Zamindaris they did not purchase them for a fair price. In fact, the Government records say that there was broad day-light robbery and that is how these Zamindaris were purchased, I, therefore, do not see why we should give any compensation to such Zamindars who bought these lands by a fluke or acquired them by broad day-light robbery.

Secondly, I want to draw the attention of the House to another Zamindar, the Zamindar of Jeypore. Now Jeypore Zamindari constitutes the whole of the Koraput District, which is one of the six districts of Orissa. It is a great pity that the Zamindari gives 16,000 rupees per annum to the Government but enjoys an income of Rs. 16 lakhs per annum. This state of things is extremely bad and it must be cured. It is very difficult to run the administration in the presence of such Zamindars. I, therefore, say that while giving compensation—and I also say while giving just compensation—we should be very just to these absentee landlords of Bengal and also to such landlords as the landlord of Jeypore Zamindari in Orissa. These are the things that I wanted to say, in particular, about Orissa.

Another thing I want to say is that in future when trying to build up a democratic State, we cannot bear that such a state of things as the existence of these Zamindars, which is very galling, should be allowed to continue for some time more to come. The sooner the Zamindars are paid off the better. I have nothing more to say except to add that out of 100 zamindars at least 99 today have a very bad name and the duties that have been imposed on them are not performed by them. Take, for instance, one duty of the Zamindar. It is a part of their duty laid down by Government that they should look after the interests of the cultivators. They never look to the interests of the cultivators. On the other hand, the cultivators are rack-rented too much. There are so many illegal cesses which they take. If I were to narrate them one after another, it would make a very long list. In fact, there has been great agitation in one of the Zamindaris in Orissa—*i.e.*, the estate of Kanika where 64 different kinds of illegal cesses, were taken. Now, in spite of agitation the same situation exists even today. The tenants are harassed in many ways. Therefore, when we are promised a democratic republic and that too very soon, I say we cannot bear the oppression of Zamindars. The sooner the Zamindars are paid off the better.

**Mr. Satyanarayan Sinha** (Bihar: General): I move: Sir, that the question be now put. The matter has been sufficiently discussed.

**Mr. President:** I have got some more names. Mr. Phool Singh.

**Shri Phool Singh** (United Provinces: General): \*[Mr. President, Sir, several speeches have been made from the floor of the House, which go to show that some compensation is proposed to be given in lieu of the abolition of Zamindari. It is true, as Bishwambhar Dayal Tripathi has said, that many people acquired their zamindari by being traitors to the country. In reply to that a Raja Sahib has said that some of them have also helped in the freedom-struggle of the country. I submit that no reward has been given to men who helped the country. In that war, lands were forfeited. It would be an unusual case if one was granted an estate for fighting against the Government. Anyway, the question just now is one of compensation. One of the reasons that is constantly advanced in favour of granting compensation is the Government of India Act of 1935, and whenever any person raises the point that no compensation should be paid then he is told that it can only be done after the repeal of the Government of India Act of 1935. But today the very same clause is being passed by the Constituent Assembly, and I think, by putting it, not in the country's Constitution but in the list of its Fundamental Rights, the question is being closed once for all. Many people have spoken on the question of zamindari, but there is a much bigger problem than zamindari. It is industry. Who does not know that during

\*[English translation of Hindustani speech begins.

[Shri Phool Singh]

the last five or six years of the war, many Mill-owners have earned profits several times more than their invested capital? Take the Textile Industry in which, on the paid-up capital of nearly fifty crore rupees; some hundred crores of rupees have accrued as profits. It would not be very proper to compare this country with others. During this war capitalists of no other country have reaped as much profits as Indian capitalists. Therefore, what I want to say is that by passing the clause in its present form we would be running the risk of permanently obstructing the possibility of reform in this country for ever. I appeal to my elders and others, who guide the thinking of this House, to ponder again over this clause and to re-shape it in a way so as not to make it impossible for the coming generations to introduce reforms if they choose. Section 16 in its present form, as it has been placed before the House, if passed, will make nationalisation of industry very difficult, if not impossible. I do not want to take any more time of this House, but I request you to refer this clause back for further consideration.]\*

**Sri Rajkrushna Bose** (Orissa: General): Sir, I move that the question be now put.

**Mr. President:** There is a motion that the question be now put. I think we have had enough discussion and I would like to take the sense of the House. The question is:

“That the question be now put.”

The motion was adopted.

**Mr. President:** Sardar Patel will give his reply.

**The Hon'ble Sardar Vallabhbhai Patel:** Sir, the discussion on this question has gone on a wrong track. An amendment was moved by somebody, which has been subsequently withdrawn, but those who took part in the debate assumed that this clause was intended for the purpose of acquiring Zamindaris. That is, to say the least, not understanding the real meaning of the clause. Land will be required for many public purposes, not only and but so many other things may have to be acquired. And the State will acquire them after paying compensation and not expropriate them. That is the real meaning of the clause. But the Zamindars or some of their representatives thought that their interests must be safeguarded by moving an amendment or by making a speech here. But they are not going to safeguard these interests in this way. They must recognise the times and move with the times. This clause here will not become the law tomorrow or the day after; it will take at least a year more, and before that, most of the Zamindaris will be liquidated. Even under the present Acts or laws in the different provinces legislation is being brought in to liquidate Zamindaris either by paying just compensation or adequate compensation or whatever the legislatures there think fit. Therefore, it is wrong to think that this clause is intended really for them. It is not so. The process of acquisition is already there and the legislatures are already taking steps to liquidate the Zamindaris. Therefore, we must not or need not go into the question whether the Zamindars have in the past been patriotic or a nuisance or anything of that kind. It is all irrelevant and we need not go into the past.

There is no amendment to this clause and, therefore, I do not have to say anything by way of answer. I move that the clause as moved by me be passed.

**Mr. President:** I put clause No. 19 to the House.

Clause 19 was adopted.

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] \*English translation of Hindustani speech ends.

**Mr. President:** We now come to Clause 20.

CLAUSE 20

**The Hon'ble Sardar Vallabhbhai Patel:** I move clause No. 20.

“(1) No person shall be convicted of crime except for violation of a law in force at the time of the commission of that act charged as an offence, nor be subjected to a penalty greater than that applicable at the time of the commission of the offence.

(2) No person shall be tried for the same offence more than once nor be compelled in any criminal case to be a witness against himself.”

I do not suppose there will be any amendment to this clause, and I move that this clause be accepted.

**Mr. President:** I have got notice of several amendments to this clause also. I will ask the movers if they want to move them. Mr. Kamath.

**Mr. H. V. Kamath** (C.P. & Berar: General): Sir, as regards amendment No. 95 subsequent scrutiny shows that my point comes under clause 9 and therefore there is no necessity to move my amendment. As regards my amendment No. 96, I would like to reserve my right to move it later.

**Mr. President:** Shri Rohini Kumar Chaudhury, No. 97.

**Srijut Rohini Kumar Chaudhury** (Assam: General): I may move my amendment now if you would permit. This relates to the important question of possession of fire-arms and abolition of death sentences. But if this is treated as a new clause, it would be better to move it with other new clauses.

**Mr. President:** It will be a new clause.

**Srijut Rohini Kumar Chaudhury:** Then I do not move.

**Mr. President:** That means there are no amendments to this clause. I put the clause to the House.

Clause 20 was adopted.

**Mr. President:** Then we come to clause 21.

CLAUSE 21

**The Hon'ble Sardar Vallabhbhai Patel:** Sir, I move clause 21:

“(1) Full faith and credit shall be given throughout the territories of the Union to the public acts, records and judicial proceedings of the Union and every Unit thereof and the manner in which and the conditions under which such acts, records and proceedings shall be proved and the effect thereof determined shall be prescribed by the law of the Union.

(2) Final civil judgements delivered in any Unit shall be executed throughout the Union subject to such conditions as may be imposed by the law of the Union.”

I move this formally for consideration of the House.

**Mr. President:** I have got no notice of any amendments to this clause. So I shall put the clause.

Clause 21 was adopted.

**Mr. President:** Clause 22.

CLAUSE 22—RIGHT TO CONSTITUTIONAL REMEDIES

**The Hon'ble Sardar Vallabhbhai Patel:** Sir, I move clause 22:

“(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights guaranteed by this part is hereby guaranteed.

(2) Without prejudice to the powers that may be vested in this behalf in other courts, the Supreme Court shall have power to issue directions in the nature of the writs of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari* appropriate to the right guaranteed in this part of the Constitution.

(3) The right to enforce these remedies shall not be suspended unless when, in cases of rebellion or invasion or other grave emergency, the public safety may require it.”

There may be some amendments to this clause, Sir.



**Mr. President:** There are several amendments of which I have got notice. There is one from Sir B. L. Mitter.

**Sir B. L. Mitter** (Baroda): I am assured that this matter will be considered when the Judiciary Report comes up. In view of this assurance I do not move my amendment.

(Amendment Nos. 99 to 101 were not moved.)

**Sri K. Santhanam** (Madras: General): I move:

“That in sub-clause (3) of clause 22, after the word ‘emergency’, the following words be inserted:

‘declared to be such by the Government of the Union or of the unit concerned.’”

This is an obvious slip and I think it is acceptable to the mover. I do not want to say anything more. I move the amendment.

(Amendments Nos. 103 to 106 were not moved.)

**Mr. President:** There is only one amendment which has been moved.

**Mr. K. M. Munshi** (Bombay: General): There is one amendment of which I have given notice this morning. That is a purely verbal amendment, just re-arranging the wording. The amendment that I am moving is only to remove a little inelegance of language in sub-clause (1) of clause 22. The sub-clause says:

“The right to move the Supreme Court by appropriate proceedings for the enforcement of any of the rights guaranteed by this part is hereby guaranteed.”

The word “guaranteed” appears twice, and it is felt that it is not an elegant phraseology. I therefore move the following amendment:

“In clause 22(1), for the words ‘any of the rights guaranteed by this part is hereby guaranteed’ substitute the words ‘any of the rights provided for in this part is hereby guaranteed.’”

**Mr. President:** The two amendments and the clause are open now for discussion.

**Sri K. Santhanam:** I am afraid that the clause, as has been framed, is very defective, and it is one of those clauses which require careful consideration and revision. I understand that this is one of those things which will be considered by the Committee which is dealing with the judiciary. I wish this clause had also been left to them. As it stands, it is liable to serious misinterpretation. For instance, sub-clause (1) says :

“The right to move the Supreme Court by appropriate proceedings for the enforcement of any of the rights guaranteed by this part is hereby guaranteed.”

It might possibly imply that the Supreme Court is to be vested with exclusive original jurisdiction on all the matters governed by the fundamental rights, or it may mean that it is invested with concurrent original jurisdiction with another court. I would like to ask Dr. Ambedkar what it means—“the right to move the Supreme Court is guaranteed”. I can come at any time to the Supreme Court and move the Court on any of the matters connected with this. It may be by way of original jurisdiction, it may be by way of appellate jurisdiction. The matter is not clear, and therefore it is one of those things which ought to be made clear. Then in paragraph (2) of the clause, we have:

“Without prejudice to the powers that may be vested in this behalf in other courts.”

Which is the authority to vest it? Is it the Union legislature or the Unit legislature? I think in matters of interpretation of the Constitution or enforcement of fundamental rights the vesting of powers in the courts should be purely a Union matter and it ought not to be given to the units, because the units may practically defeat the exercise of these fundamental rights in two may different ways. For instance, if they say, all

original jurisdiction shall be in the Supreme Court, the ordinary citizen will not be able to go up every time to the Supreme Court. Or if they vest it in the magistracy, then he will have to get redress only by way of appeal, which is always dilatory and inconvenient. Therefore, the vesting of jurisdiction is an important matter for the citizen. I think all original jurisdiction in the matter of enforcement of fundamental rights should be vested only in the High Court of the Unit. It should not be given either to inferior courts, or to the Supreme Court except in matters concerning the Unit and the Union of inter-Unit matters. Therefore the High Courts in the Units should be the lynch-pin for the enforcement of these rights. I think this matter must have been made clear. I hope it will be made clear. As it stands, it is very defective and I reserve my right to ask for a review of this clause when the matter comes up again.

**The Hon'ble Sardar Vallabhbhai Patel:** This is a clause which provides a judicial remedy. If we provide for fundamental rights, it is necessary that we must provide also for a remedy. But it does not mean that this excludes or appropriates the jurisdiction of other courts or High Courts. It has nothing to do with that. When the whole judicial set-up will be considered, everything will be considered in proper order and in an appropriate manner, and, therefore, Mr. Santhanam's apprehensions are unnecessary. He reserves his right; everybody has reserved his own right, but reservations are unnecessary because the whole thing will have to be incorporated in the Constitution, and the final clause will have been considered several times before they are inserted in the Constitution. There is no reason to apprehend anything of that kind. I, therefore, move that the clause be accepted with the amendments which have been moved. I accept the two amendments.

**Mr. President:** The Mover is prepared to accept the two amendments—one moved by Mr. Santhanam and the other by Mr. Munshi.

The two amendments were separately put and adopted.

Clause 22, as amended, was adopted.

**Mr. President:** Clause 23.

#### CLAUSE 23

**The Hon'ble Sardar Vallabhbhai Patel:** I move clause 23:

"The Union Legislature may by law determine to what extent any of the rights guaranteed by this part shall be restricted or abrogated for the members of the armed forces or forces charged with the maintenance of public order so as to ensure fulfilment of their duties and the maintenance of discipline."

This is a clause on which there can be no controversy and I hope there will be no amendment. I move.

Clause 23 was adopted.

**Mr. President:** Clause 24.

#### CLAUSE 24

**The Hon'ble Sardar Vallabhbhai Patel:** Sir, I move clause 24:

"The Union Legislature shall make laws to give effect to those provisions of this part which require such legislation and to prescribe punishment for those acts which are declared to be offences in this part and are not already punishable."

This is a consequential clause and therefore there will be no amendments to it. I commend it for the acceptance of the House.

Clause 24 was adopted.

**Mr. President:** Now there are two clauses that had been referred to a committee of five. We may now take them up one by one. The new clause 3 may now be moved.

**Mr. K. M. Munshi:** I move that the following clause be substituted for the original clause:—

“Every person both in the Union and subject to its jurisdiction, every person either of whose parents was at the time of such person’s birth, a citizen of the Union, and every person naturalised in the Union shall be a citizen of the Union.

Further provision regarding the acquisition and termination of Union citizenship may be made by the law of the Union.”

The reasons have already been given fully in the Report of the *Ad Hoc* Committee. I have nothing to add to it.

**Sri K. Santhanam;** Sir, I move that the following be added at the end of the first paragraph of this clause:

“Every person born or naturalised in India before the commencement of the Union and subject to its jurisdiction shall be a citizen of the Union.”

The necessity for this amendment is simply this: You are conferring citizenship on people who are to be born hereafter and on those who are born citizens on the date the Union comes into existence. That means that unless any of us are born within the territories of the Union, we shall not be citizens. I have consulted Sir Alladi Krishnaswami Ayyar. This clause only covers the cases of persons who are born citizens on the day the Union comes into existence. Under the Cabinet Mission Plans, Union territories were expected to be co-extensive with the territories within the frontiers of India. In that case my amendment may not be necessary. But there is the possibility that the Union territory will be much smaller than the present territories. Supposing there is a man in the Union born in Sind. According to this definition he will not be a Union citizen. He will become an alien. Do you want that consequence to happen? I want to say that, at the beginning of the Union, anybody who has been born in India and who is subject to the jurisdiction of the Union, shall be a Union citizen. After the Union has come into existence I have no objection to this clause. Therefore it is a fundamental point. I hope it will be fully considered and, either in this form or in some other form, provision will be made to see that those who are citizens of India at the time of the commencement of the Union are treated as citizens and not deprived of citizenship simply because they are born outside territories of the proposed Union.

**The Hon’ble Sardar Vallabhbhai Patel:** It is not necessary to consider such questions at this stage. We are at present providing for citizenship for people residing in the Union. Nobody can now say what will be the situation when the Constitution is finally drafted. Nobody can now say whether any part of India is going to be separated from the rest. When finality is reached in regard to these matters we can consider what should be the adjustment to be made between the parts if there are to be parts. It is unnecessary to consider it at this stage. I hope the Mover will withdraw his amendment.

**Sri M. Ananthasayanam Ayyangar** (Madras: General): What about persons born in the Union?

**The Hon’ble Sardar Vallabhbhai Patel:** You will be considered to have been born in the Union when the Constitution is passed.

**The Hon’ble Sri C. Rajagopalachariar** (Madras: General): The point to be covered is not a ridiculous or simple thing as has been imagined.

The Union will consist of defined areas. It may not consist of the whole of India, but of certain parts of India only. Let us admit that. Now I will cite a concrete case. Suppose I am born in Mysore. I am a man who was born in Mysore. Mysore does not join the Union. Let us take it like that. Then, I shall not have been born in the Union according to the clause by any process of legal construction which is to be provided for legally. Therefore it is that it is suggested that any person who is born in any part of India at the time of the commencement of the Union shall be deemed, when by long previous residence he becomes subject to the jurisdiction of the Union, to be a citizen.

This is a very substantial question. Probably under this category will come a considerable section of the present population who should automatically be taken to be citizens of the Union so soon as it is formed. It does not depend merely on a process of interpretation or explanation. It has to be definitely provided for. This has to be considered and included.

**Mr. R. K. Sidhwa:** Sir, as stated by Mr. Santhanam, if the position is left as it is, this clause will deprive many persons who are born in the Union, which is going to be defined later on,—I hope it will comprise all parts of India—of their rights of citizenship of the Union. What will be their position? I am born in Sind. Supposing Sind is not going to be part of the Union, what will be my position? Am I to lose my citizenship of the Union? That is a point which has to be considered later on. As I said the other day, citizenship right is a fundamental right. Why should a law hereafter provide for that? The right of citizenship has a first place in the Fundamental Rights. Foreigners who come to India for their own personal interest and gain can make an application for citizenship and can get it immediately, whereas those who are born in India will be under a disadvantage. For the foreigners a period of ten years must be mentioned. If the State is satisfied that after ten years they have their stake in India they can have the right of citizenship. This matter was discussed for a number of hours in this Chamber yesterday. We did not like to treat this matter lightly. We wanted to give this matter very serious consideration and you, Sir, were good enough to impress upon those who differed from us the need for giving this matter sufficient consideration and warned us against ignoring it in view of the fact that every person should have the right to become a citizen of this country. After all, we want to be in the Union. We cannot forget that we are Indians, that we were born here. If India is to be divided into parts, what kind of rules are we going to make for citizenship? I consider, Sir, that those who were born here before the Union should be given full guarantee that they are citizens of the Union and that they would not be deprived of their citizenship.

Then, about naturalisation. Any man who comes here from a foreign country for his personal gain, for his personal benefit, has only to say, "I want to be naturalised" to become a citizen of the Union. I am born in India but I am to be deprived of my citizenship. A foreigner by simply giving a declaration that he wants to become naturalised, gets all the rights of citizenship.

With due deference to the framers of this clause, I do not think this matter has been given due consideration although it has been stated that:

"Further provision regarding the acquisition and termination of Union citizenship may be made by the law of the Union."

[Mr. R.K. Sidhwa]

I do not want any law to provide for my citizenship. Therefore, this matter should be discussed here, Sir.

**Dewan Bahadur Sir Alladi Krishnaswami Ayyar:** (Madras: General): I think, Sir, there is some force in Mr. Santhanam's argument. We did not, it must be admitted, consider in the Committee this particular question now before the House, but it may not be wise to put in an amendment on the spur of the moment. If a person was a resident of India, and makes the Union his home after the Union comes into existence, in such a case he might get citizenship. The mere accident that he was born in India or British India but not in the Union cannot give him the right of citizenship. We might have to add a further condition to this clause saying that they must make the Union of India their permanent residence.

So far as the term "born in the Union" is concerned, I do not think there need be any difficulty. Union: there is a geographical concept. It is not a political concept. No man can be born in a political concept. "Born in the Union" only means "born in the territories comprising the Union".

There is certainly some force in the objection raised by Mr. Santhanam. We do not want suddenly to disenfranchise any persons, possibly very distinguished people born in a Native State but today permanent residents of British India. Therefore, so far as that particular class is concerned, we might consider an appropriate formula. We may not be in a position to give the right of citizenship to every person born in any part of India. Suppose some of the States keep out of the Union, we may have to consider whether we should give the rights of citizenship to the people of those States. Therefore, we will carefully consider this aspect and put in an appropriate clause. In the Committee—I am a member of the Committee and Dr. Ambedkar is a member—we did not consider this particular complication that might arise. I think we should not push through an amendment on the spur of the moment.

But so far as the general principle is concerned, there cannot be any exception. "Every person born in the Union and subject to the jurisdiction; every person either of whose parents was, at the time of such person's birth, a citizen of the Union, and every person naturalised in the Union", so far as that part is concerned, there can be no exception. That was considered by the Committee in all its aspects. This particular class of people which Mr. Santhanam mentioned will have to be separately dealt with and provided for. On the understanding that this class of people will be provided for, this clause should be passed, or the whole clause might stand over, I have no objection. But so far as the main principle is concerned, we are all agreed and there is absolutely no difference of opinion. It was discussed threadbare by the Committee which was appointed by this House and we unanimously came to the conclusion that this should be adopted.

**Shri M. Ananthasayanam Ayyangar:** I do not agree with Sir Alladi. He says that Union means Union territory. The clause says, "subject to the jurisdiction thereof". Is it subject to the jurisdiction of the territory or the Government of the territory? Mere territory is not enough. I therefore urge upon the House to remit this clause for the reconsideration of the Expert Committee.

**Diwan Bahadur Sir Alladi Krishnaswami Ayyar:** We may have remittance or re-remittance but I do not think that that Committee

can throw any additional light on this. If there is any other class to be provided for, we will provide for them. I am merely answering the suggestion of remittal and all that. I was stating that it was not fair to that Committee to remit. This is a political question and not a legal question. We must come to a conclusion on that point. We were only anxious to get the help of that Committee for the purpose of determining the question whether 'birth' shall be the foundation of a nationality or not, and that Committee has given its opinion. We may have any number of commitals and re-commitals, so far as the Committee of this House is concerned. The Committee which considered this consisted of Members of this House and also persons who are not members of this House. Under these circumstances, I would suggest that we have had all the help from people who are not members of this House and from the gentleman who was the President of that Committee. I do not think it will be fair to that Committee to remit it as if they had not considered any particular aspect of the question. It is a new question that has cropped up before the Committee and let us deal with it squarely. And before we next meet, there will be no difficulty in providing so far as that particular class of cases is concerned. This general principle may be passed and the other clause may be brought in later on or the whole thing may stand over. I am not wedded to either one theory or another, but let it be clearly understood that so far as the main principle is concerned, we accept the recommendation of the Committee presided over by a very distinguished lawyer.

**The Hon'ble Sri C. Rajagopalachariar:** I am sorry, Sir, the discussion has proceeded on lines which create a certain amount of confusion. I wish that attention should be bestowed on one important and entirely non-controversial matter, namely, that there are numerous persons in India today, who will be within the jurisdiction of the Union, however restricted it may be, however small it may be, who were born in other parts of India and who are now resident within the territories which are going to be in the Union. The formula as it stands today will exclude those large classes of people, not intentionally, but unintentionally. Therefore, the formula has to be corrected. It has to be corrected so as to give automatic citizenship to those large numbers of people who are born in various parts of India, as we today understand it, and who will be old and permanent residents of the areas which will be comprised within the Union. That exclusion would be wholly unintended and wrong. Therefore, the formula has to be revised. I myself believe that it can be revised, if Sir Alladi and Dr. Ambedkar sit at it, in the course of 15 minutes; but if it is considered difficult, the whole thing should be remitted, because if we pass a clause like this solemnly in the Constituent Assembly, it cannot be added to afterwards without much ceremonial. I would suggest that it be deferred. Sir Alladi and Dr. Ambedkar may meet today, discuss and finish it in a few minutes. If they do not think so, let them take their own time, but it cannot be simply ignored on the ground that it is a small matter. It is too large a matter to be put aside.

**Mr. K. M. Munshi:** Nobody suggests for a moment that this is not an important matter. The Committee did not consider it, but when the original draft was placed this difficulty was present in my mind. But this, as Sir Alladi very rightly said, is not a question of fundamental rights only. It is a question which will have to be decided in future in the setting of the political situation at the time when we finally draft the Constitution. Of course, it is very easy to move an amendment, but we do not know today what is going to be the position of the

[Mr. K.M. Munshi]

Union with regard to its territory, whether it is going to be the whole of India, or part of it, or whether some portions are going to be hostile. The second question that has to be considered is whether people born in the Union, who are residing in other parts of India, will have rights as regards citizenship in those territories. An instance was given of Mysore. I will restrict myself to that case. Suppose Mysore stays out of the Union and makes a law like this, that any Indian born in any other part of India, though residing in Mysore for a whole life-time shall not be a citizen. This House will be in a position to consider those intricate problems not merely as a matter of fundamental right but as a question dependent upon the political situation at the time we pass it finally. This fundamental right, as drawn up, is the minimum right, the basic right. The fluctuating situation today is such that you cannot possibly draft any amendment to this clause. Let us, therefore, see the political situation between now and the day when the situation is going to be finally considered. At that time it will be possible to produce a proper formula which will find a place either in the Fundamental Rights or in some other convenient place. It has been said that several fundamental rights are going to be considered hereafter. It has also been said that this is a preliminary draft and any situation arising hereafter will be considered. I, therefore, submit that we should take the clause as it is, and with regard to the amendment of Mr. Santhanam, it should be referred to the Advisory Committee together with the other amendments which are going to be referred, so that a proper aspect of the question may be brought before the House again.

**Dr. B.R. Ambedkar** (Bombay: General): Mr. President, Sir, I think there can be no doubt that the point raised by Mr. Santhanam is a point of great importance and we have to take this matter seriously. The difficulty that has arisen will be seen easily if one reads the very first sentence of the clause as drafted by the Committee. The draft says, "every person born in the Union". Obviously that has reference to future, those who will be born in the Union after the Union is formed. The question is this. What is going to be the position of people who are born in India, but who are born before the Union has come into being? In my judgment, in order to cover that case, we shall have to introduce another clause. I am not suggesting an amendment, I am putting forth an idea. The new clause shall have to be something like this :

"All persons born in India, as defined in the General Clauses Act and who are residing in the Union and subject to the jurisdiction of the Union shall be citizens of the Union."

I think that a clause somewhat on these lines is necessary and it will cover the case of people who are born in India, who will be the subjects of the Union, when the Union comes into being. Without this clause, large numbers of people will be denationalised. They will have no nationality at all. I, therefore, suggest that it may be as well to send the whole clause back for further consideration.

**Mr. President:** A suggestion has been made that the whole clause be held over for further consideration.

**Mr. R. K. Sidhwa:** This is not a matter for lawyers only. This question has a bearing on every ordinary person.

**Mr. President:** The Advisory Committee will be free to consider it, and if it so feels, it can put forward any suggestions at the next sitting.

Do I take it that the House agrees that this clause be held over for further consideration ?

**Many Hon'ble Members:** Yes.

**Mr. President:** It is held over. Now we take up clause 11.

#### CLAUSE 11

**Mr. K.M. Munshi:** The clause which has emanated from the Committee to which it was referred runs in thus.

“Traffic in human beings, and *begar* and other similar forms of forced labour are prohibited and any contravention of this prohibition shall be an offence.”

The Explanation which was dropped is in the view of the Committee necessary in order that the wording “forced labour” may not have a controversial interpretation. Sir, there was a conflict of opinion in several sections of the House as regards the Explanation and this Report was placed before the House only this morning. I, therefore, submit that it will be fair that this clause also should stand over till we meet again, because, I believe, certain Members would like to move amendments. I, therefore, feel it will not be proper that this clause should be considered today. It should stand over.

**Mr. President:** Instead of moving it, do you suggest that it should be held over ?

**Mr. K.M. Munshi:** Yes.

**Mr. President:** Is it the wish of the House that this clause also should be held over ?

**Many Hon'ble Members:** Yes.

**Mr. President:** It stands over.

We had a number of new propositions which were sought to be put forward in the form of amendments by certain Members, and it was decided by the House that they should be taken up after the clauses were disposed of. We have got a large number of such clauses which have not been considered. I do not know in what form the House would like to take up these.

**Seth Govind Das (C.P. and Berar: General):** I move, Sir, that all these new clauses be referred to the Advisory Committee so that the Advisory Committee may first consider them and then they may be brought before this House.

**Mr. President:** Seth Govind Das has made a suggestion that these clauses be referred to the Advisory Committee for consideration and that they may be brought up here with the Report of the Advisory Committee. May I take it that it is the sense of the House that all these clauses be referred to the Advisory Committee ?

**Hon'ble Members:** Yes.

**Mr. President:** All these clauses are referred to the Advisory Committee.

**Mr. R.K. Sidhwa:** Sir, paragraph 9 of the Report of the Chairman of the Advisory Committee states:

“The Fundamental Rights Sub-Committee and the Minorities Sub-Committee were agreed that the following should be included in the list of Fundamental Rights :—

“every citizen not below 21 years' of age shall have the right to vote at any election.....”

“While agreeing in principle with this clause, we recommend that instead of being included in the list of fundamental rights it should find a place in some other part of the Constitution.” The opinion of the House has to be taken whether it is in favour of putting this clause in the Fundamental Rights or whether it should



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form part of the Constitution. That question has to be decided and discussed here. Otherwise, what would be the effect of paragraph 9 of the Report of the Chairman of the Advisory Committee which has been submitted to you ? Does it automatically go into the Constitution ? the Chairman of the Advisory Committee by this para. desires to know the view of the House.

**Mr. President:** What is your suggestion? Do you move any proposition?

**Mr. R.K. Sidhwa:** I have no objection to this clause forming part of the Constitution.

**Mr. President:** What is your suggestion, whether this should form or should not form part of the Constitution ?

**Mr. R.K. Sidhwa :** It should form part of the Constitution.

**The Hon'ble Sardar Vallabhbhai Patel:** We have stated in the Report, "while agreeing in principle with this clause, we recommend that instead of being included in the list of fundamental rights, it should find a place in some other part of the Constitution."

**Mr. President:** This is the Report of the Committee and the House has to express itself on this part of the Report. That is why I asked Mr. Sidhwa whether this should be accepted and it should find a place in some other part of the Constitution.

**Mr. R. K. Sidhwa:** I said it should form part of the Constitution.

**Mr. President:** Mr. Sidhwa's proposition is that that paragraph should be adopted. Does any one wish to speak on this?

(None).

I put it to the House that paragraph 9 of the Report be adopted.

Paragraph 9 of the Report was adopted.

#### CLAUSE 2

**Sri Biswanath Das** (Orissa: General): I propose to invite the serious attention of the House to the implications of clause 2. It has been laid down:

"All existing laws, notifications, regulations, customs or usages in force within the territories of the Union inconsistent with the rights guaranteed under this part of the Constitution shall stand abrogated."

In this connection, I wish to refer to paragraph 7 of the Report wherein they have stated that they had not sufficient time to examine in detail the effect of this clause on the mass of existing legislation.

**Mr. President:** We have already considered clause 2 of the Fundamental Rights.

**Sri Biswanath Das:** I am not proposing to revise the clause. I am only referring to something which arises out of the acceptance of clause 2. I am going to suggest what further action is necessary as a result of the acceptance of clause 2. A thorough examination of its implications is necessary in the sense that we have got local laws and Indian laws and the extent to which these laws and regulations, etc., are going to be abrogated as a result of the acceptance of these fundamental rights, will have to be examined. This could be examined either by the Government of India and the Provincial Governments or by a committee of this House. It is rather unfortunate that we members; of the Agenda Committee could not go into this question because it was not before us. In these circumstances, I beg to suggest that it is necessary for us to take note of this question and to examine the implications in full before we again

assemble in this House. Unless we fully examine the extent of abrogations, it will not be possible for this House to realise the full implications and to make any interim arrangements in the Constitution. I am only referring to certain circumstances flowing from the acceptance of clause 2 and offering certain suggestions.

**Mr. President:** I take it you are referring to the last sentence of paragraph 7 of the Report which says:

“We recommend that such an examination be undertaken before this clause is finally inserted in the Constitution.”

It has been accepted. We are going to have an examination as suggested.

**Mr. H. V. Kamath:** My suggestion is that it should be undertaken immediately so that we may have a report as to the implications before us.

**Mr. President:** When the House has accepted it, that means that action will be taken.

**Mr. H. V. Kamath:** How will these clauses go to the Committee?

**Mr. President.** They will go as they are. The Secretariat will refer them to the Advisory Committee.

PRESIDENT'S REMARKS REGARDING THE RESOLUTIONS RELATING TO LINGUISTIC AND CULTURAL PROVINCES AND THE LANGUAGE OF THE CONSTITUTION TO BE FRAMED.

**Mr. President:** There are one or two matters to which I should like to make a reference. Hon'ble Members will recollect that notice was given of Resolutions regarding the formation of linguistic and cultural provinces by several Members in the last Session of the Assembly and those Resolutions were held over and it was expected that they would be taken up in this Session. But as we have already under Resolution of this House decided to constitute two Committees, one for drawing up the principles of the Union Constitution and another for drawing up a model Constitution for the provinces, I announced the other day that those Committees would take into consideration those Resolutions also. I take it that that would be done and nothing further need be done now regarding those Resolutions.

Then there is one other matter about which I have been feeling a bit worried and I wish to share that worry with the House—not that expect any answer to it just now but I would like the Members to take that into consideration. All our proceedings are being conducted in English because there are many Members who are not acquainted with the national language and so the drafts also are being prepared in the English language. In the drafts there are many expressions used which may be called terms of art, that is to say, technical language, taken from some constitution or other. Some of these constitutions have been subjected to legal interpretations, and by using that language we are in a way attracting the operation of those interpretations also to our constitution. In future—I do not say immediately, but in the future—a time may come when we shall probably cease to depend upon English as our language, and if the Constitution is passed today in the English language, then that remains the original constitution and any question of interpretation will have to be with reference to the language used in that constitution as it is passed today. The question arises whether we shall, continue for ever in future to interpret our Constitution in English language and whether we shall expect our judges in future always to be acquainted with English language so that they might interpret our Constitution in the future. If the Constitution is passed in the English language, I suppose that will be the natural consequence. It is difficult

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at the present moment to make a suggestion which will resolve this difficulty. I was wondering whether we could have a translation made of this Constitution as it is drafted as soon as it is possible, and ultimately adopt that as our original Constitution. (*Cheers*). In case of any ambiguity or any difficulty arising as to interpretation, the English copy will also be available for reference, but I would personally like that the original should be in our main language and not in English language, (*Loud Cheers*), so that our future judges may have to depend upon our own language and not on a foreign language. (*Cheers*).

As I said, I do not expect an answer to a question like this, but I would like Members to take this matter into consideration, and in the meantime, if I have your permission, I shall try to get the Constitution as it is drafted translated into our language as soon as possible. I realize the difficulty of putting it in a form in which it will have the same interpretation, because appropriate terms of art will not be found in our language and we have naturally to add clauses which will explain those expressions of art. But if I have your permission, we might make an attempt. I am afraid our present staff the staff we have got for translating these things, is not adequate for this purpose and we shall have to take the help of persons who are really persons of a very high order and who can do that. I do not know if it will be possible for me to do it, but if I have your leave, I might attempt it. I thought I might bring this to your notice for your consideration because, if this Constitution is going to be a Constitution which is expected to last, at any rate, for some time, then we cannot expect to have it in a language which is not our language. We must provide for a time when we shall have to depend on our own language, and that, at a not very distant date. Therefore I have brought this to the notice of the House so that Members might also take this into consideration and offer their suggestions, if not today, at least at a later stage before we have actually finalized our Constitution.

(Some Members at this stage rose to speak.)

**Mr. President:** I did not expect any discussion on this. I simply expressed what I was feeling and I expect this thing would be taken into consideration at a later stage.

There is one other matter.

**Shri Vishwambhar Dayal Tripathi** (United Provinces : General): \*[In this connection I have to .... ]\*

**The Hon'ble Mr. B. G. Kher** (Bombay : General): On a point of order, Sir. This is discussing.

**Mr. President:** Anyway, let him finish.

**Shri Vishwambhar Dayal Tripathi:** \*[I do not wish to say any thing in this connection. But rules provide that all the proceedings of the Assembly e.g., agenda, etc., will be supplied to Members in Hindustani. True, there are difficulties. Nevertheless it is very important. I would request that some arrangements should positively be made for this in future.]\*

**Mr. President:** \*[Yes. I tell you why this could not be done. Our Hindustani Staff was not yet complete but arrangements are being made and I think it should be possible to arrange for it at an early date.]\*

**Shri Balkrishna Sharma** (United Provinces : General): Without in any way going against the orders which have already been given in regard

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\*[ ]\* English translation of Hindustani speech.

to the subject, may I just know whether the arrangement that is going to be made for the translation of the Constitution in our language will be in Hindi, Urdu or will be in a language which will be a conglomeration of both ?

**Mr. President:** It will be in a language which will be intelligible. *(Laughter)*.

**Mr. President:** Then, one other matter which I think we have to decide, *i.e.*, the next session of the Assembly. At the last session the House passed a Resolution fixing the month of April for this meeting. I would suggest that instead of fixing any date or even a month the House should leave it to me to fix the time of the next meeting.

**Hon'ble Members:** Yes.

**Mr. President:** I can give this undertaking that I shall do it as soon as I feel that we have got material ready for the meeting.

**Sri K. Santhanam:** I suggest, Sir, that a formal motion to this effect may be moved.

**Mr. President:** That is what I am also suggesting. A formal motion may be moved.

**Shri Vishwambhar Dayal Tripathi:** \*[In this connection, I would like to add...]\*

**Mr. President:** \*[Let this be over.]\*

**Mr. Satyanarayan Sinha:** Mr. President, Sir, I move that this Constituent Assembly do adjourn till such date as the President may fix.

**Mr. President:** The motion is that the Constituent Assembly do adjourn till such date as the President may fix. Do I take it that the House accepts the proposition?

The motion was adopted.

**Mr. R. K. Sidhwa:** I wish to make one request. That is, now that the date has been left to you, Sir, will you kindly see that the agenda is supplied to us in sufficient time at our residence, so that we may study it?

**Mr. President:** I have told you at the very beginning that I will fix the time when I have got the material ready for discussion.

.(To Mr. Tripathi), You wanted to say something.

**Shri Vishwambhar Dayal Tripathi:** \*[I have only to repeat what Mr. Sidhwa has said before you and nothing else.]\*

**Mr. President:** I think we have now finished our work. So the House now stands adjourned till such time as I may fix.

The Constituent Assembly then adjourned till such time as the President might fix.

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\*[ ]\* English translation of Hindustani speech.