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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

Thursday, the 1st 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 proceed with the discussion of the remaining clauses.

CLAUSE 10—RIGHTS OF FREEDOM*

The Hon'ble Sardar Vallabhbhai Patel (Bombay : General): Clause 10 reads as follows :

“Subject to regulation by the law of the Union trade, commerce, and Intercourse among the Units by and between the citizens shall be free:

Provided that any Unit may by law impose restrictions in the interest of public order, morality or health or in an emergency;”

In paragraph 2 we have dropped the word “reasonable”.

“Provided that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties and taxes to which the goods produced in the Unit are subject;”

After this word “subject” we have decided to add the words, “and under regulations and conditions which are non-discriminatory.”

“Provided further that no preference shall be given by any regulation of commerce or revenue by a Unit to one Unit over another.”

So these are the few changes that are suggested and in order to cut short the discussion and save the time of the House I have mentioned these changes which were reached after certain discussions. I move.

Mr. K. M. Munshi (Bombay : General): Mr. President, Sir, I beg to move the following amendment to clause 10.

“In paragraph 2, clause 10, delete the word ‘reasonable’.”

The word “reasonable” gives a certain amount of vagueness and therefore it is not necessary. The second amendment which I beg to move is :

“That after the word ‘subject’ in the 3rd paragraph of clause 10, add the words ‘and under regulations and conditions which are non-discriminatory’.”

*10. Subject to regulation by the law of the Union trade, commerce, and intercourse among the Units by and between the citizens shall be free:

Provided that any Unit may by law impose reasonable restrictions in the interest of public order, morality or health in or in an emergency:

Provided that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties and taxes to which the goods produced in the Unit are subject:

Provided further that no preference shall be given by any regulation of commerce revenue by a Unit to one Unit over another.

[Mr. K.M. Munshi]

The proviso contemplates that a Unit can impose certain customs duty with a view to bring up the level of the price of goods imported to the level of the price of the goods manufactured in the Unit itself. Otherwise, the goods produced in other Units will flood that particular Unit. With that view only has this proviso been added. Provinces, therefore, can impose certain duties and taxes on goods imported from other units with a view to bring up the value to the level of goods manufactured in the Unit itself. But it was felt, Sir, that this was incomplete. Such regulations and conditions may be made as to favour the goods produced in the Unit and, therefore, the words 'and under regulations and conditions which are non-discriminatory' have to be added, so that conditions must not be such as to force up the price of the goods imported. Therefore, the whole point is that there should not be any regulation or any conditions of such a nature which would favour the goods produced in the Unit as against those produced and imported from outside.

Sri K. Santhanam (Madras : General): Sir, I have given notice of an amendment. It was more or less to meet the point raised in it that Mr. Munshi has moved the present amendment. But, in my opinion, the amendment moved by Mr. Munshi does not fit in with the clause, because the point of my amendment is that when a Unit imposes certain conditions besides duties on goods within its own frontiers, it should be able to insist that the goods coming from other Units should also conform to the same conditions. For example, there may be regulations about packing, labelling, disclosure of the materials used in an article and many other conditions and the goods produced from other Units should not have in these matters any advantage over goods produced in the same Unit. As Mr. Munshi's amendment stands, it will be subject to regulations and conditions which are non-discriminatory, but it does not say that the Unit concerned will have the right to impose these regulations on goods produced from other units. Therefore, either his amendment should be properly integrated with the clause or my amendment which says that in the second proviso to clause 10, for the words 'the same duties and taxes' the words 'the same regulations, duties and taxes' be substituted should be accepted. I am quite willing to accept any amendment which makes it clear that the Unit can impose the same conditions and regulations on goods produced from other Units as on the goods produced in the Unit. Therefore, I move my amendment.

Prof. K. T. Shah (Bombay : General) : I do not propose to move the amendments in my name.

Mr. President: So we have, as a matter of fact, two amendments before us, one moved by Mr. Munshi and the other moved by Mr. Santhanam.

The Hon'ble Sardar Vallabhbhai Patel: There is one thing to which I wanted to draw the attention of the House that is paragraph 5 of the Report which I forgot, which provides for the different conditions prevailing in the States for which provision has to be made. We have mentioned in the Report, para 5:

"We, therefore, consider that it would be reasonable for the Union to enter into agreement with such States, in the light of their existing rights, with a view to giving them time, upto a maximum period to be prescribed by the constitution, by which internal customs could be eliminated and complete free trade established within the Union."

About the amendment of Mr. Santhanam, I think Mr. Munshi's amendment which I propose to accept, satisfies the requirements because it is non-discriminatory. I do not think any further discussion on this is necessary.

I therefore move the clause as amended for the acceptance of the House.

There is a clerical error in the third proviso. The words "by a Unit" are unnecessary. The clause will read:

"Provided further that no preference shall be given by any regulation of commerce or revenue to one Unit over another."

Mr. President: Now, I will put this clause to vote.

"Subject to regulation by the law of the Unit trade, commerce, and intercourse among the Units by and between the citizens shall be free."

There is no amendment to this clause.

The clause was adopted.

Mr. President: First Proviso:

"Provided that any Unit may by law impose reasonable restrictions in the interest of public order, morality or health or in an emergency."

The amendment proposed is that the word "reasonable" should be dropped.

The amendment was adopted.

Mr. President: Second Proviso:

"Provided that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties and taxes to which the goods produced in the Unit are subject."

There are two amendments to this, one by Mr. Santhanam and the other by Mr. Munshi. I shall put Mr. Santhanam's amendment first. As amended, it reads:

"Provided that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties, taxes and restrictions to which the goods produced in the Unit are subject."

He had at first used the word "regulations". He has changed the word "regulations" into "restrictions". The last portion will read—

"the same duties, taxes and restrictions to which the goods produced in the Unit are subject."

The other amendment of Mr. Munshi is:

"Provided that nothing in this section shall prevent any Unit from imposing on goods imported from either Units the same duties and taxes to which the goods produced in the Unit are subject and under regulations and conditions which are non-discriminatory."

Sri M. Ananthasayanam Ayyangar (Madras : General): I would like to add the word "similar". Otherwise, it is meaningless.

Mr. President : I have not got your amendment. (To Mr. Ananthasayanam Ayyangar).

Mr. Santhanam's amendment was negated.

Mr. Munshi's amendment was adopted.

Mr. President: Third Proviso:

"Provided further that no preference shall be given, by any regulation of commerce or revenue by a Unit to one Unit over another."

[Mr. President]

Here there is a verbal change suggested. We are asked to omit the words "by a Unit" because they are unnecessary. The proviso will read like this:

"Provided further that no preference shall be given by any regulation of commerce or revenue to one Unit over another."

As amended the proviso is put to the House.

The proviso, as amended, was adopted.

Mr. President : I shall now put the whole clause as amended. Mr. C. Rajagopalachariar suggests that the first proviso should come last and the other should be changed.

The Hon'ble Sri C. Rajagopalachariar (Madras : General): The reason is this. The restrictions to be imposed in the interests of public health will certainly differ from Unit to Unit. If we say in the second proviso that there shall be no discriminatory restrictions, it will mean that when there is infection, you will have to impose on all Units whatever you impose on one Unit. That will be avoided if you add the special proviso as the last proviso instead of that being the first.

Mr. President: I put the whole clause as amended with the change in the order of provisos.

Sri L. Krishnaswami Bharathi (Madras : General): The word "further" must be added so as to read "Provided further."

Mr. President: The amendment is:

"That the word 'further' be added to the first proviso which becomes the third."

The amendment was adopted.

Mr. K. M. Munshi: It is only a matter of arrangement. I do not want to argue. At the time of drafting the Act, it will be placed here.

Mr. President: The clause, as amended, is put to the House.

The clause, as amended, was adopted.

CLAUSE 11.—RIGHTS OF FREEDOM

The Hon'ble Sardar Vallabhbhai Patel : Clause 11 is as regards forced labour and it reads:

"11. (a) Traffic in human beings, and

(b) forced labour in any form including *begar* and involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted,

are here by prohibited and any contravention of this prohibition shall be an offence."

Explanation—

"Nothing in this sub-clause shall prevent the State from imposing compulsory service for public purposes without any discrimination on the ground of race, religion, caste or class."

Now we have to try to discuss this and abridge it and put it in a comprehensive form instead of separate clauses and put it in one clause "traffic in human beings".

Mr. President: The suggested amendments have not been circulated to the Members and they do not know what changes are suggested. I would request that you move the clause and then the amendments may be moved.

The Hon'ble Sardar Vallabhbhai Patel: Then I move this clause.

Mr. President: I have got notice of a number of amendments to this clause. Mr. Munshi's amendment has not been circulated. I have got this only two minutes ago. Still we have to go on with the work. I will take the other amendments first.

Mr. M. R. Masani (Bombay : General): It is very difficult to decide whether to move the other amendments until Mr. Munshi's amendment is moved. I would suggest that the agreed amendment be moved.

Mr. President: I am not aware of any agreed amendment.

Mr. K. M. Munshi: Mr. President, Sir, the amendment I move is the following—

“That for clause II the following be substituted:

‘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 object is to deal in one sentence with both subjects.

The Explanation has to be dropped because in view of the shortening of the whole sentence, the Explanation is not necessary at all. The object of this is that if there is any sort of forced labour like *begar*, it will be prohibited. Traffic in human beings will be prohibited. But the other forms of labour *e.g.* labour for educational purposes or for any other purpose of public service, will be regulated by legislation.

Mr. P. R. Thakur (Bengal : General): The word ‘*begar*’ should be in italics.

Mr. President: The clause, as amended, if the amendment is accepted, will read thus—

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

The Explanation to the sub-clause (b) is dropped, and so the whole thing will be much shorter and more comprehensive.

There are a number of amendments of which notices have been received. I will call the members to move one after another.

The Hon'ble Mr. Jagjivan Ram (Bihar : General): In view of this amendment, I do not want to press my amendments. (Nos. 27 and 28 of the Supplementary List II).

Mr. H. V. Kamath (C.P. and Berar : General): In the event of acceptance by the House of Mr. Munshi's amendment, there is no necessity for my amendment. (No. 29 of the Supplementary List II). If it is not accepted, I will reserve the right to move my amendment later on.

Mr. M. R. Masani: Mr. President, I had given notice of an amendment (No. 36 of the Supplementary List II) in order to safeguard the rights of Conscientious Objectors in view of the very wide powers given to the State by the Explanation.

I am glad to see that the Explanation has been dropped. I do not, therefore, wish to press my amendment at this stage.

Mr. President : Now the motion and the amendment are open for discussion.

Dr. B. R. Ambedkar (Bengal: General) : The point that I want to make is this, that, while I have no objection to the redrafting of sub-clause (a) and (b) in order that they may run in a compact manner, I have a certain amount of doubt as to whether the dropping of the Explanation is in consonance with the desire of the majority of the members of the Advisory Committee that the State should not have power in any way for introducing compulsory service. Mr. Munshi suggests that, if the clause stands as redrafted and if the Explanation is omitted, none-the-less, the State will have the right to introduce compulsory military service. I have not had sufficient time to apply my mind to the consequences of the proposed change, *i.e.*, the dropping of the Explanation but I fear that the dropping of the Explanation and retaining the clause in the form in which it is stated may have opposite and serious consequences. Because 'begar' is also something which is imposed by the State. So far as I know, in Bombay, 'begar' is demanded by the State for certain public purposes, and if the State is prohibited from having 'begar' it is perfectly possible for anybody to argue that even compulsory military service is *begar*. I am, therefore, not quite satisfied that the dropping of the Explanation is something which is advisable at this stage. I am not in a position to suggest any definite course of action in this matter, but I think I shall be sufficiently discharging my duties if I draw the attention of the House to the doubt which I have in mind about the effect which the dropping of the Explanation may have on the right of the State in regard to compulsory service either for military purposes or for social purposes for the State. My suggestion would be that at this state we should not drop the Explanation, but leave it as it is and have the whole matter reconsidered when the Provincial Constitution and the Federal Constitution are drafted in their final form.

Shrimati Dakshayani Velayudan (Madras : General) Mr. President, I have great pleasure in commending Clause 11 because it is a clause which mostly relates to a community, a vast regiment of people who are subjected to untold miseries for so many centuries. Sir, even now-a-days we find traffic in human beings in some parts of India and this clause will have a great effect on the underdogs of this land who will have a voice when India gets her independence. This clause will bring about an economic revolution in the fascist social structure existing in India. All the disabilities of the underdogs of this land are mainly due to the economic backwardness of the unfortunate brethren of the neglected community. It is unfortunate that a section of the people of this land will have to work without getting any remuneration whatsoever, even for their daily maintenance and the people who work in the fields or in other places will have to go back to their homes even without getting a single pie. They have not got the right to demand the wages even though they will work for day and night. If the people are called upon to work and if they do not go for that work they will get punishments. That is what we find in certain Provinces of India like the United Provinces. Even if there is not the system of 'begar' in other parts of India, almost a similar sort of compulsion exists throughout India and the majority of the people are subjected to exploitation economically and in all sorts of ways. The underdogs of this land are deprived of all the facilities that make life happy. This System ought to have been, abolished even before the Provinces got self-government. Even if there are rules and regulations regarding this in certain provinces, the system still prevails and the people who are subjected to the system have no voice whatsoever in deciding their fate. So, this clause when it comes

into existence will give great relief to a great number of people who are subjected to economic exploitation. When this sort of economic exploitation is eliminated from this land, the underdogs also will rise up and will be in a position to assert their rights and keep up their self respect and dignity and they too will have a right to enjoy like the people belonging to the upper class and upper caste. I have great pleasure in supporting this clause.

Mr. B. Das (Orissa: General): I have great pleasure in supporting Mr. Munshi's amendment to Clause 11. I accept the new draft of the clause. Sir, I have studied a good deal of forced labour problems since 1929. I was a member of the Forced Labour Convention in Geneva in 1929. India accepted the Forced Labour Convention in 1930, but the Indian States, with certain exceptions, did not accept it. That practice does not exist among the major States whose representatives I find today in this House. Sir, in my part of the country forced labour has been taken advantage of by most of the small Indian States. They receive grants from the Government of India for the construction of roads and utilise the money for their own purposes and by means of forced labour they construct roads and other civil works. Therefore, Sir, I do not apprehend the trouble which my friend Dr. Ambedkar has just now voiced. In case of national emergency the State must come forward and everybody must compulsorily work for the country, be it war or famine or drought. But I do not want any lacuna left over which will allow some of the Indian Princes to use forced labour for their own gains.

Sir, one point I am not satisfied with is whether traffic in human beings includes women traffic. Sir, some of us have studied this problem about women's traffic for the last ten years or more. Unfortunately, every year thousands of women of Orissa and the Province of Bengal, where there are surplus women, are carried away to other parts of India. There is a regular traffic going on by crooks and gangsters who carry away these women to some outside Provinces. I do not know whether they are regular house-wives or whether they lead the life of shame. We do know that in provinces like the Punjab and the Frontier the number of women is less than the population of men.

Sir, we had the painful experience during the Bengal famine when lakhs of women were spirited away. Whether these women were taken to the provinces where there are less women or whether they were used to supply women to the huge British army that was then in the eastern part of India, that is a problem that social workers must work out. But I would have been happy to see "traffic in women" being specifically mentioned in the clause. Those of us who belong to the eastern part of India still apprehend that in spite of this provision in the Fundamental Rights, traffic in women will be carried on by unscrupulous money makers. I, therefore, want Sardar Patel to assure me whether he has in contemplation some kind of legislation by which this traffic in women may be stopped for ever.

Sir, I want a further assurance from the representatives of the Indian States here whether they will persuade their colleagues in the less advanced States to abolish forced labour which is a source of profit and gain to many small principalities in India.

Dr. P. K. Sen (Bihar: General): Sir, might I be permitted to point out some of the difficulties that would present themselves if we put the clause in the truncated form suggested? First of all, there can be no question, nobody can doubt for a moment that forced labour in any form

[Dr. P.K. Sen]

must go. But there were certain qualifying explanations in the original form of the clause which have now been omitted. Those are—

“involuntary servitude except as punishment for crime whereof the party shall have been duly convicted.”

Now, it is well known that it is not only from children in the reformatory schools or from adolescents in the Borstal institutions, but also from adults—grown up people who may be regarded as under State tutelage, during their incarceration—it is right and legitimate, in fact, necessary, to exact labour according to the rules of the prisons. All that may really become very difficult if we put the clause in the form, that *begar* or forced labour shall be prohibited and any contravention of this rule would be regarded as an offence. I quite agree with my friend, Dr. Ambedkar, that the only way of getting out of this difficulty would be to retain the Explanation and then such cases would come under the expression “for public purposes”, because even in jails and prisons or any other organisations where people are under State tutelage, forced labour can legitimately be exacted for the good of the inmates and also for the good of the State. If there is still any doubt, we can add the words “in the case of those under the State tutelage” or some such expression as that. But the amendment as it has been put, *i.e.*, Traffic in human beings, and *begar* and forced labour in any form are hereby prohibited.....”

Mr. K. M. Munshi : There are also the words “other similar forms.”

Dr. P. K. Sen: ‘Similar’ is a very vague word. I really cannot imagine what difficulty or objection there can be in the way of retaining the Explanation. The Explanation is quite innocuous, and it only says that for certain public purposes as in all civilized countries, it is necessary to get compulsory service from the citizens, for their own good and for the good of the State. I, therefore, submit that the Explanation either in the form as it stands or with any requisite modification may be accepted. Otherwise, all sorts of complications might arise.

Dewan Bahadur Sir Alladi Krishnaswami Ayyar (Madras: General): Mr. President, going into the question as to whether there is necessity for the retention of the Explanation or not, I am quite clear in my mind. So far as the first sub-clause is concerned, it will not preclude military conscription. In the Committee, there was a special clause inserted by Mr. Masani to the effect that there shall not be military conscription; but that has been omitted. In spite of the existence of the slavery and anti-slavery clause in the United States Constitution, the Supreme Court of the United States has held that there is nothing to prevent military conscription being introduced. The learned Judges referred to various writers on international law and they pointed out that the very existence of the State depends upon military force, and the slavery and antislavery or servitude clause cannot be construed as precluding the United States of America from introducing conscription. Therefore, the words ‘*begar* and similar forms of forced labour’ cannot possibly be interpreted as excluding conscription. That is my view and I do not think that the future legislatures will be precluded from introducing conscription by reason of a clause like this. The word “similar” occurring in the clause makes it quite clear that it cannot have in view a military conscription law. Therefore, under those circumstances, there need not be any apprehension. That does not, however, mean that I am opposed to the retention of the Explanation. The retention, it was pointed out yesterday in the Committee, might give rise to considerable difficulties in the working of the village economy and village institutions, and no

harm would result by the omission of the Explanation, and therefore, yesterday, in the course of the discussions in the Committee, it was omitted. I do not think there is any danger of military conscription being ruled out as a power inherent in the Union by reason of the forced labour clause as it stands.

Sri M. Ananthasayanam Ayyangar: I was also of the same opinion as Sir Alladi Krishnaswami Ayyar, when in the party meeting I consented to the change of the present clause, but I find on reconsideration that the original clause might stand. I shall presently give the reasons. The reasons are these. Two points referred to in the clause are, one, traffic in human beings is prohibited, and, secondly, forced labour ought not to be allowed. Both these are already provided for in the Penal Code. Section 370 of the Indian Penal Code prohibits traffic in human beings, and section 374 makes it an offence to compel any person to labour against his will, but the word "unlawful" is used there. "Unlawful" means, it is lawful for any legislature to pass a law that for particular purposes labour may be enforced, as when a person is convicted of a crime and he is sentenced to penal servitude. Or in the interests of village administration when there are floods, the villagers may be obliged or forced to repair breaches in tanks, etc. it also allows compulsory military service. Now, that these two provisions which are already in the general law under sections 370 and 374 of the Indian Penal Code are raised to the status of fundamental rights, we have to be a little careful. When we are giving the status of fundamental rights, unless we add other explanations allowing the State to make an exception to these two fundamental rights which are now being given, it might appear, and courts may also interpret that by taking these out of the ordinary law and placing them in the Statute Book as fundamental rights—that the States jurisdiction to legislate for such purposes, for forced labour even under an emergency has been taken away. If Mr. Munshi who has moved this amendment has at the back of his mind that the State ought not to be prevented from introducing conscription whenever or wherever necessary, let the matter be cleared here and now. I do not see any objection to having an Explanation or even having the original clause as it stands. There is no need to make the amendment. Let us be clear in our minds. Otherwise, it will mean that we have given up, irrespective of any considerations requiring conscription, or irrespective of other considerations requiring any local legislature or any particular unit to compel persons to come and help by way of forced labour—irrespective of all these considerations the fundamental right has been given, and that means that the right of the State has been abrogated once and for all. There is much force in the argument of Dr. Ambedkar, and I am not in favour of this amendment. The original clause as it stands may stand. Let us be clear in our minds whether we want conscription here and now or not. Let us not leave it to the judges to decide. Sir Alladi Krishnaswami Ayyar said that it has been interpreted by the American Court. The American Law was framed so long ago, and therefore, it is necessary to interpret it from time to time to enlarge its scope. We know too well that the Justinian Code running into 150 volumes has been developed by interpretation of the Twelve Tables. People are not in favour of modifying the statute from time to time, but lawyers have introduced various things as interpretations and have been evolving new law out of that. Now, that we are making a statute, why should we rely upon the future interpretation and leave it to the judges to decide? I oppose the amendment and I am in favour of retaining the original clause.

Dr. B. R. Ambedkar: May I make a suggestion? We have heard the arguments of Sir Alladi Krishnaswami Ayyar who has said that

[Dr. B.R. Ambedkar]

according to his reading of the rulings of the Supreme Court of the United States, even if the Explanation was not there, the State would be permitted to have compulsory military service. Fortunately, for me I also happened to look into the very same cases which I am sure Sir Alladi has in mind. I think he will agree with me, if he looks at the reasoning of the judgment given by the Supreme Court, he will find that they proceeded on the hypothesis that in a political Organisation the free citizen has a duty to support the Government and as every citizen has a duty to support the Government therefore compulsory military law was doing nothing more than calling upon the citizen to do the duty which he already owes to the State. I submit that that is a very precarious foundation for so important a subject as the necessity of compulsory military service for the defence of the State.

I submit that we ought not to rest content with that kind of reasoning which the Supreme Court in India may adopt or may not adopt. Therefore, my suggestion is this, that, just as in the case of the other clause dealing with citizenship you were good enough to remit the matter to a small committee to have it further examined. It will be desirable that this question as to whether the Explanation should be retained or not may also be remitted to a small committee which should report to this House. It will then be possible for the House to take a correct decision in the matter.

Mr. President: I think it is not necessary to have any further discussion if the suggestion which has been made by Dr. Ambedkar is acceptable to the House.

Mr. R.K. Sidhwa (C.P. and Berar: General) : The question regarding compulsory military service may be discussed here.

Mr. President: We are not deciding here whether we ought to have conscription or not. The question is whether under fundamental rights conscription is prohibited. I think it is best to refer it to the same committee to which the other clause has been remitted.

An Hon'ble Member: The whole clause 11.

Mr. President: Yes, the whole clause 11.

The clause was remitted.

CLAUSE 12.—RIGHTS OF FREEDOM.

Mr. President: Clause 12.*

The Hon'ble Sardar Vallabhbhai Patel: I move clause 12. Clause 12 says :

“No child below the age of 14 years shall be engaged to work in any factory, mine or any other hazardous employment.”

It is proposed to delete the Explanation. But I move the clause as it is, and deletion of the Explanation may be moved as an amendment.

Mr. K. M. Munshi: I move that the Explanation be deleted. The Explanation says:

“Nothing in this shall prejudice any educational programme or activity involving compulsory labour.”

That has nothing to do with this clause and I submit it should be deleted.

Mr. President: Amendment No. 37—Mr. Kamath.

*No Child below the age of 14 years shall be engaged to work in any factory, mine or any other hazardous employment.

Explanation: Nothing in this shall prejudice any educational programme or activity involving compulsory labour.

Mr. H. V. Kamath: I am told that this clause deals only with children below 14, and that, therefore, expectant mothers and old people are out of place. I shall reserve my right to move my amendment at a later stage. I do not move it now.

Mr. R. K. Sidhwa: As regards amendment No. 43, they are all new clauses, and as decided by the Honourable House yesterday, I will take them at the end of all these clauses.

Mr. President: These are the amendments. I will put the amendment of Mr. Munshi for deletion of the Explanation, to the House.

The amendment was adopted.

Clause 12, as amended, was adopted

CLAUSE 13—RIGHTS RELATING TO RELIGION

The Hon'ble Sardar Vallabhbhai Patel: Sir, I move the adoption of clause 13, *viz.*,

"All persons are equally entitled to freedom of conscience, and the right freely to profess, practise and propagate religion, subject to public order, morality or health, and to the other provisions of this Part.

Explanation 1.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation 2.—The above rights shall not include any economic, financial, political or other secular activities that may be associated with religious practice.

Explanation 3.—The freedom of religious practice guaranteed in this clause shall not debar the State from enacting laws for the purpose of social welfare and reform."

I see that there are a number of amendments on the Order Paper. I shall speak on them when they are moved and, if there is any that could be accepted, I shall accept.

Mr. K. M. Munshi: Sir, I move an amendment to the effect that, after the last Explanation, the following words be added:—

"and for throwing open Hindu religious institutions of a public character to any class of section of Hindus."

After the Explanation above was drafted it was thought that the practice of religion referred to should not be of such a character as will interfere with the right of the Legislature to legislate on social questions. The question arose with regard to the throwing open of all temples to all classes of Hindus, whether it would be religious practice. In order to prevent any such construction of clause, it was decided that the throwing open of Hindu religious institutions shall not be held to contravene the practice of Hindu religion.

Mr. President: I shall now call upon Members who have given notice of amendments to this clause, to move them(after a pause.....) As I find that there is no amendment moved to the clause I shall put it to the vote of the House.

Mr. H. J. Khandekar (C. P. and Berar): Sir, in case Mr. Munshi's amendment to this clause is accepted, it may be necessary to have a definition for "places of public worship". Unless this is done it may be difficult for people to know which is a place of public worship. Even where admission to people of all classes is given, depressed classes are not allowed. Even when there is a written record that a certain temple is open to worship by depressed classes, the *pujaris* obstruct and say that that temple is a private one and, therefore, not open to depressed classes. So, Sir, if there is definition of "places of public worship" there will be no difficulty. I suggest, therefore, that there should be a definition for "places of public worship".

Mr. President: May I know in which clause that expression occurs?

Mr. H. J. Khandekar: Explanation 3.

Mr. President: I do not find this expression there. There is no mention of any place of public worship there.

Mr. H. J. Khandekar: I want a definition for "religious institutions of a public character".

Mr. President: Mr. Khandekar wants some explanation of the term "religious institutions of a public character" so that it may be clear what religious institutions are referred to.

Shri L. Krishnaswami Bharathi: Sir, the clause reads: "other provisions of this Chapter". It should read "other provisions of this Part".

The Hon'ble Sardar Vallabhbhai Patel: The word "Chapter" has been substituted by the word "Part".

I accept Mr. Munshi's amendment and I congratulate the House on agreeing to pass this very controversial matter which has taken several days in the Committees and gone through several Committees. There might be differences of opinion, but on the whole we have tried our best to accommodate all sections of the people. I move that this clause as amended be passed.

Mr. President: I am putting to the vote first the amendment to Explanation No. 3. The amendment is:

"That the words 'and for throwing open Hindu religious institutions of a public character to any class or section of Hindus' be added at the end of Explanation No. 3".

The amendment was adopted.

Mr. President: Now I put the clause as amended to the House.

Clause 13, as amended, was adopted.

Mr. President: Now we go to clause.

CLAUSE 14.

The Hon'ble Sardar Vallabhbhai Patel: Now I move clause 14.

"Every religious denomination shall have the right to manage its own affairs in matter of religion and, subject to the general law, to own, acquire and administer property movable and immovable, and to establish and maintain institutions for religious or charitable purposes."

There is a little addition by way of an amendment which Mr. Munshi will move. I move this clause for the acceptance of the House.

Mr. K. M. Munshi: Sir, I move an amendment that in clause 14 the words "or a section thereof" be added between the word "denomination" and the word "shall". It was felt that the use of the term "religious denomination" may prevent a section of a denomination from being protected.

Sri K. Santhanam: What is meant by "general law".

Mr. K. M. Munshi: There is a general law of the country as apart from any special legislation. When the word 'law' is used, it means the law of either the Unit or the Union according to the power which is being exercised. If it is a Union subject, it is Union law. If it is a Unit subject, it is Unit law.

Mr. President: Has the word “general” any special significance here, Law is law.

Mr. K. M. Munshi: The intention was that any specific legislation was to be excluded. There are certain legislations specifically intended for certain classes of people. If the desire of the House is that it should be ‘law’, I have no objection.

Some Hon’ble Members: “.....subject to ‘law’.”

Mr. President: Mr. Santhanam, there is an amendment to be moved by you, amendment No. 63.

Sri K. Santhanam: No, Sir. I am not moving it.

Mr. President: Mr. Rajagopalachariar, you have an amendment.

The Hon’ble Sri C. Rajagopalachariar: No, Sir. I am not moving it.

Mr. President: The clause and the amendment are now open for discussion.

Sri M. Ananthasayanam Ayyangar: I oppose the omission of the word ‘general’ which is opposed to special or local laws which are defined in the Indian Penal Code as relating to a particular subject or a particular part of British India. There ought to be no restriction on the acquisition of rights and property by any religious institution under any special law. The same definition relating to special and local laws will be found in the General Clauses Act also. I, therefore, want the retention of the word ‘general’. I think the framers of the clause were right in including it.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar : The General Clauses Act and the Penal Code will not apply to the interpretation of our Constitution. We must have an interpretation clause in our Constitution when the Constitution is finally framed.

Mr. H. V. Kamath: I could not hear a word of what Sir Alladi said.

Mr. President: Sir Alladi’s view was that the General Clauses Act and the Penal Code will not apply to our Constitution and, therefore, we need not attach any importance to them.

Mr. D. N. Datta (Bengal: General): If the words “existing Indian law” are there, the General Clauses Act will apply.

Mr. President: You are at liberty to differ from Sir Alladi.

The Hon’ble Sri C. Rajagopalachariar: Apart from the question of how words should be interpreted, it is very necessary that this special right that we are giving to religious denominations should be subject to all the laws that will be enacted and, therefore, the expression should be only ‘law’ and not any particular portion of the law.

Sri M. Ananthasayanam Ayyangar: We are trying to get these on the statute book. What is the meaning of taking these technical objections?

Mr. President: As a matter of fact, the point has been discussed, and if there is anything else, then the Drafting Committee will attend to them.

Now I will put the various amendments. The first amendment I will put is that the words “or a section thereof” be added between “denomination” and “shall”. That part of the clause will read as follows:

“Every religious denomination or a section thereof shall have the right to manage its own affairs.....”

and so on.

The amendment was adopted.

Mr. President: The next amendment is that the words "the general" be omitted.

The amendment was adopted.

Mr. President: The clause as amended will read:

"Every religious denomination or a section thereof shall have the right to manage its own affairs in matters of religion and, subject to law, to own, acquire and administer property movable and immovable, and to establish and maintain institutions for religious or charitable purposes."

I put the clause, as amended, to the House.

Clause 14, as amended, was adopted.

CLAUSE 15

The Hon'ble Sardar Vallabhbhai Patel: Clause 15.

"No person may be compelled to pay taxes, the proceeds of which are specifically appropriated to further or maintain any particular religion or denomination."

I do not think that there is any amendment to this clause and I move this clause for the acceptance of the House.

Mr. President: As there is no amendment to this clause, I put it to the vote of the House.

Clause 15 was adopted.

CLAUSE 16

The Hon'ble Sardar Vallabhbhai Patel: Clause 16. This clause was passed in the Advisory Committee, but I think that it may be referred back to the Advisory Committee, because there are some difficulties and it has been suggested that it may be referred back. The House agrees that this clause may be referred back to the Advisory Committee.

Mr. President: Then you formally move it.

The Hon'ble Sardar Vallabhbhai Patel: I formally move:

"No person attending any school maintained or receiving aid out of public funds shall be compelled to take parts in the religious instruction that may be given in the school or to attend religious worship held in the school or in premises attached thereto."

Mr. President: On the vote of the House this clause is referred back to the Advisory Committee.

CLAUSE 17

The Hon'ble Sardar Vallabhbhai Patel: Sir, I move Clause 17.

"Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law."

Mr. K. M. Munshi: Sir, I beg to move the following amendment,

"That for clause 17 substitute the following clause:

'Any conversion from one religion to another of any person brought about by fraud, coercion or undue influence or of a minor under the age of 18 shall not be recognised by law.'

The additions that are made to the clause as it is originally moved are these. First of all, the word 'fraud' is added to the words, 'coercion and undue influence'. The second matter is with regard to the conversion

of a minor. As a matter of fact, it was proposed by one of the other Committees in some form or other, and it is the general feeling that this clause should be restored in this form,—any conversion of a minor under the age of 18 shall not be recognised by law. The only effect of non-recognition by law would mean that even though a person is converted by fraud or coercion or undue influence or be converted during his minority he will still in law be deemed to continue to belong to the old religion and his legal rights will remain unaffected by reason of his conversion. The idea behind this proposal is that very often, if there are conversions by fraud or undue influence or during minority, certain changes in the legal status take place, certain rights are lost. This will have only this effect that the rights will remain exactly the same as at the moment a person was converted by fraud or coercion or undue influence and in the case of a minor at the moment of conversion.

If Hon'ble Members desire I will read the whole clause. The whole clause is put in this form.

“Any conversion from one religion to another of any person brought about by fraud, coercion or undue influence or of a minor under the age of 18 shall not be recognised by law.”

Srijut Rohini Kumar Chaudhury (Assam: General): May I ask you to explain as to what is meant by the words “undue influence”? Is it used in the sense laid down in the Contract Act or in the general sense?

Mr. K. M. Munshi: It is difficult for me to say, but I am sure “fraud” is fraud all the world over and in all systems of jurisprudence. There is no difference between the two words coercion and undue influence as understood in India and in other countries. There may be little shades of difference but the free India will form its definitions and it may not be different from the Oxford dictionary meaning so far as I can see.

Shri Phool Singh (United Provinces: General): In view of the amendment moved by Mr. Munshi, my amendment will not fit in. But I suggest, Sir, that conversion by coercion should be made an offence. I would suggest he might move an amendment to this effect.

The Hon'ble Mr. Jagjivan Ram: I am not moving my amendment (No. 72 of the Supplementary List II).

Mr. President: Amendment No. 73 of the Supplementary List II.

Mr. R. K. Sidhwa: This is a new clause. It may be taken up later.

Mr. F. R. Anthony (Bengal: General): Mr. President, my amendment, is with specific reference to Mr. Munshi's amendment, “or of a minor under the age of 18”. To this part of the clause I want to add these words: “except when the parents or surviving parents have been converted and the child does not choose to adhere to its original faith”. This was more or less the form in which the particular clause was accepted by the Minorities Sub-Committee. We discussed it at length and it was felt that in the form, I have sought to re-introduce, it would best serve the interests that we were considering there.

I agree that conversion under undue influence, conversion by coercion or conversion by fraud should not be recognised by law. I am only interested in this question, Sir, on principle. My community does not propagate. We do not convert, nor are we converted. But I do appreciate how deeply, how passionately millions of Christians feel on this right to propagate their religion. I want to congratulate the major party for having, in spite of its contentious character, retained the words “right to practise and propagate their religion”. Having done that, I say that after

[Mr. F.R. Anthony]

giving with one hand this principal fundamental right a right which is regarded as perhaps the most fundamental of Christian rights, do not take it away by this proviso, "or of a minor under the age of 18". I say that if you have this particular provision, or if you place an absolute embargo on the conversion of a minor, you will place an embargo absolutely on the right of conversion. You will virtually take away the right to convert. Because, what will happen? Not a single adult who is a parent, however deeply he may feel, however deeply he may be convinced, will ever adopt Christianity, because, by this clause you will be cutting off that parent from his children. By this clause you will say, although the parents may be converted to Christianity, the children shall not be brought up by these parents in the faith of the parents. You will be cutting at the root of family life. I say it is contrary to the ordinary concepts of natural law and justice. You may have your prejudices against conversion; you may have your prejudices against propagation. But once having allowed it, I plead with you not to cut at the root of family life. This is a right which is conceded in every part of the world, the right of parents to bring up their children in the faith that the parents want them to pursue. You have your safeguards. You have provided that conversion by undue influence, conversion by fraud, conversion by coercion shall not be recognised by law. I have gone further, and unlike the position in other parts of the world, I have even given discretion to the child provided it has attained the age of discretion, to adhere to its original faith. The wording is "and the child does not choose to adhere to its original faith". If both the parents are converted and if they want their children to be brought up as Christians, if these children have reached the age of discretion and say that in spite of the conversion of their parents, they do not want to be brought up as Christians, under the restriction which I have introduced, they will not be brought up in the Christian faith.

I have also added the word "surviving parent". for this reason, I say that if you restrict it to both the parents,—What will happen? If a widow, let us assume, adopts Christianity, do you mean to say that if she wants to bring up her children in the Christian faith, and if those children themselves want to be brought up in the Christian faith, you are placing an embargo on this? If you do not use the word "surviving parents", if the father who happens to be a widower adopts the Christian faith, and the children wish to be brought up as Christians, it may be said that since both the parents are not alive, the father cannot bring up the children in his faith. He will automatically be cut off from his children.

I realise how deeply certain sections of this House feel on this question of conversion. But I do ask you, having once conceded the right to propagate, to concede this in consonance with the principles of family law and in consonance with the principles of natural law and justice.

Mr. P. R. Thakur: Sir, I am a member of the Depressed classes. This clause of the Fundamental Rights is very important from the standpoint of my community. You know well, Sir, that the victims of these religious conversions are ordinarily from the Depressed Classes. The preachers of other religions approach these classes of people, take advantage of their ignorance, extend all sorts of temptations and ultimately convert them. I want to know from Mr. Munshi whether "fraud" covers all these things. If it does not cover, I should ask Mr. Munshi to re-draft this clause so

that fraud of this nature might not be practised on these depressed classes. I should certainly call these "fraud".

The Hon'ble Rev. J.J.M. Nichols-Roy (Assam: General):
Mr. President, Sir, it appears to me that the clause as it came out of the Advisory Committee is sufficient and should not be amended at all. The amendment seeks to prevent a minor, who is of twelve years of age, or thirteen years of age, up to eighteen years of age from exercising his own conscience. The age limit may be quite right in law. But to think that a youth under the age of eighteen does not have a conscience before God and, therefore, he cannot express his belief is wrong. That side of the question must be appropriately considered. There is a spiritual side in conversion which ought to be taken notice of by this House. Conversion does not mean only that a man changes his form of religion from one religion to another, or adopts a different name of religion, such as, a Hindu becomes a Christian. But there is the spiritual aspects of conversion, that is, the connection of the soul of man with God, which must not be overlooked by this House. I know there are those who change their religion being influenced by material considerations, but there are others who are converted being under the influence of spiritual power. When a boy feels that he is called by God to adopt a different faith, no law should prevent him from doing that. The consciences of those youths who want to change their religion and adopt another religion from a spiritual standpoint should not be prevented from allowing these youths to exercise their right to change their legal status and change their religion. We know, Sir, in the history of Christianity, there have been youths, and I know personally, there have been many youths, who, have been converted to Christianity, who are ready to die for their conviction and who are ready to lose everything. I myself was converted when I was about fifteen years old when I heard the voice of God calling me. I was ready to lose anything on earth. I was ready to suffer death even. I did not care for anything save to obey and follow the voice of God in my soul. Why should a youth who has such a call of God be prevented by law from changing his religion and calling himself by another name when he feels before God that he is influenced by the Spirit of God to do that end is ready even to sacrifice his life for that. This part of the amendment about minors is absolutely wrong when we consider it from the spiritual standpoint. From the standpoint of conscience I consider that it is altogether wrong not to allow a youth from the age of twelve to eighteen to exercise his own conscience before God. It will oppress the consciences of the youths who want to exercise their religious faiths before God. Therefore, I am against this amendment as it is. The clause should be left as it was before. The legal and other aspects have been discussed by Mr. Anthony regarding the conversion of the children of the converted parents. Certain minors should be allowed to follow their own conviction if they have any, and should not be forced to do anything against their own conviction. Why should the law not allow them if they themselves do not care for their former legal status? Why should they be prevented from changing their religion? Why should their consciences be oppressed? That is a very important point, Sir, to be considered by this House. This freedom I consider to be a Fundamental Right of the Youths. No law should be made which will work against good spiritual forces. India, especially, is a country of religions, a country where there is religious freedom. If this amendment is carried in this House, it will only mean that in making a law to prevent the evil forces our minds lose sight of the real religious freedom which the youths of this land ought to have. Therefore, I am against this very principle of forcing the youths

[The Hon'ble Rev. J.J.M. Nichols-Roy]

by not allowing them to exercise their religious conviction according to their consciences. I would suggest, Sir, that if in the amendment moved by Mr. Anthony the words 'or save when the minor himself wants to change his religion' are included, then I do not object to this amendment. I am against any conversion by undue influence or by fraud or coercion. When we make a law against all these evils we should be careful to see that that law does not oppress the consciences of the youths who also need freedom.

The Hon'ble Shri Purushottamdas Tandon (United Provinces: General):
 *[Mr. President, I am greatly surprised at the speeches delivered here by our Christian brethren. Some of them have said that in this Assembly we have admitted the right of every one to propagate his religion and to convert from one religion to another. We Congressmen deem it very improper to convert from one to another religion or to take part in such activities and we are not in favour of this. In our opinion it is absolutely futile to be keen on converting others to one's faith. But it is only at the request of some persons, whom we want to keep with us in our national endeavour that we accepted this. Now it is said that they have a right to convert young children to their faith. What is this? Really this surprises me very much. You can convert a child below eighteen by convincing and persuading him but he is a child of immature sense and legally and morally speaking this conversion can never be considered valid. If a boy of eighteen executes a transfer deed in favour of a man for his hut worth only Rs. 100, the transaction is considered unlawful. But our brethren come forward and say that the boy has enough sense to change his religion. That the value of religion is even less than that of a hut worth one hundred rupees. It is proper that a boy should be allowed to formally change his religion only when he attains maturity.

One of my brethren has said that we are taking away with the left hand what we gave the Christians with our right hand. Had we not given them the right to convert the young ones along with the conversion of their parents they would have been justified in their statement. What we gave them with our right hand is that they have a right to convert others by an appeal to reason and after honestly changing their views and outlook. The three words, 'coercion', 'fraud' and 'undue influence' are included as provisos and are meant to cover the cases of adult converts. These words are not applicable to converts of immature age. Their conversion is coercion and undue influence under all circumstances. How can the young ones change their religion? They have not the sense to understand the teachings of your scriptures. If they change their religion it is only under some influence and this influence is not fair. If a Christian keeps a young Hindu boy with him and treats him kindly the boy may like to live with him. We are not preventing this. But the boy can change his religion, legally only on attaining maturity. If parents are converted why should it be necessary that their children should also change their religion? If they are under the influence of their parents they can change their religion on maturity. This is my submission.

With your permission, Mr. President, I would like to address a few words in English that such of my friends who do not know Hindi may follow me.]*

*[English translation of Hindustani speech begins.

] *English translation of Hindustani speech ends.

Sir, I am astonished at the manner in which some Christian friends have advanced the claim to convert minors. We have agreed to the right of conversion. Generally, we, Congressmen do not think it at all right—I say so frankly—that people should strenuously go about trying to convert peoples of other faith into their own, but we want to carry our Christian friends with us—friends who feel that they should have the right to make conversions—and we have agreed on their insistence to retain this formula about “propagation”. They know that we are opposed to it, yet we have agreed.

Mr. C. E. Gibbon (C.P. & Berar : General): It is quite wrong.

The Hon’ble Shri Purushottamdas Tandon: I am speaking, Sir, as a Congressman. I say that the majority of Congressmen do not like this process of making converts (interruption), but in order to carry our Christian friends with us.....

Mr. C. E. Gibbon: On a point of order, Sir.

The Hon’ble Shri Purushottamdas Tandon: There can be no point of order. There may be a point of opinion.

Mr. C. E. Gibbon: I do not think, Sir, that the Speaker is competent to speak for all Congressmen.

Some Hon’ble Members: Why not?

Mr. President: That is no point of order.

Shri Balkrishna Sharma (United Provinces : General): The Speaker has every right to speak on behalf of most of the Congressmen. He is most certainly entitled to do so.

The Hon’ble Shri Purushottamdas Tandon: I know Congressmen more than my friend over there. I know their feelings more intimately than probably he has ever had an opportunity of doing, and I know that most Congressmen are opposed to this idea of “propagation”. But We agreed to keep the word “propagate” out of regard for our Christian friends. But now to ask us to agree to minors also being converted is, I think, Sir, going too far. It is possible that parents having a number of children are converted into some other faith but why should it be necessary that all these children who do not understand religion should be treated as converts? I submit it is not at all necessary. The law of guardianship will see about it. Guardians can be appointed to look after these children, and when they grow up, if they feel that Christianity is a form of religion which appeals to their minds they will be at liberty to embrace it. That much to my Christian friends.

I understand, Sir, that it is possible that difficulties may be raised by some lawyers. What is the legal difficulty about this matter? The ordinary law of guardianship will see about this. When we say that minors cannot be converted, that implies that when parents go to another faith and they have a number of children to look after, the law of the country will take care of those children. You can always enact a law of guardianship and you can, if necessary, add to the laws which at present exist on the subject so that in such cases the minors should be taken care of. I do not, Sir, therefore, see that there is any legal difficulty in the way of the amendment which Mr. Munshi has proposed being accepted. I heartily support Mr. Munshi’s amendment.

(Mr. Dharendra Nath Datta rose to speak).

Sri Ramnath Goenka (Madras : General): Mr. President, I rise on a point of order.

Mr. President: But Mr. Datta has risen before you on a point of order.

Mr. D. N. Datta: Mr. President, I would not have risen but for the speech of the previous speaker.....

Mr. President: I thought you were raising a point of order.

Mr. D. N. Datta: No, Sir. I do not raise a point of order.

Mr. President: Then, please wait. Yes, Mr. Goenka.

Sri Ramnath Goenka: My point of order is, Sir, that under clause 13 which we have passed, all persons are equally entitled to freedom of conscience. "All persons" must necessarily include at least those persons who have attained the age of discretion. It is not necessary that they must attain the age of 18 before developing conscience, it may be at the age of twelve, fifteen, sixteen or seventeen. If we pass clause 17 and prescribe the age of 18, then it will be inconsistent with clause 13. We have said in clause 13 "all persons". They must, I think, attain freedom of conscience any time before 18. So if we pass this clause 17 and prescribe the age of 18, it will be inconsistent with clause 13 which we have just now passed.

Mr. President: But what is the point of order ? (*Laughter*)

Sri Ramnath Goenka: It is that it will be inconsistent with clause 13 which we have passed.

Mr. President: That is on the merits of the thing. You do not say that the House cannot take it up because it is inconsistent.

Sri Ramnath Goenka: I say the amendment is out of order.

Mr. President: Which amendment?

Sri Ramnath Goenka: The amendment moved by Mr. Munshi. It is out of order if you agree with me that the age of discretion will be any time before eighteen years. Sir, my point of order is that the amendment of Mr. Munshi will be out of order.

Shri Mahavir Tyagi (United Provinces : General): But Mr. Munshi is above that age.

Sri Ramnath Goenka: It is not a question of Mr. Munshi being over eighteen. (*Laughter*).

Mr. President: I take it that the point of order raised by Mr. Goenka is that we have already taken a decision with regard to clause 13 and, therefore, the House is not entitled to take-up this amendment moved by Mr. Munshi. But I believe the House is always free to revise its own decision

Sri Ramnath Goenka : Certain, Sir. But as long as clause 13 stands as it is, this amendment will be out of order.

Mr. K. M. Munshi: May I reply to this, Sir?

Mr. President: Yes.

Mr. K. M. Munshi: Sir, my friend, Mr. Goenka, I think should not have ventured in the region of construction. If you look at clause 13, you will see that it says—

"All persons are equally entitled to freedom of conscience, and the right freely to profess-practise and propagate religion subject to public order, morality or health and to the other provisions of this Part."

This provision is generally subject to the other provisions of this Part and if the House passes this clause, that freedom will be subject to this particular clause. The matter is as plain as a pikestaff.

Sri Ananthasayanam Ayyangar: Sir, I want to oppose this point of order raised by Mr. Goenka in a different way. The mover of this point of order said he has no objection to persons who are of the age of discretion being converted. But the age of discretion has not been defined anywhere. It is open to this Assembly to say that the age of discretion is eighteen. Therefore, there is really no point of order, or there is no point in this point of order.

Mr. President: I think this amendment is in order. Now we can discuss the motion as well as the amendment.

Mr. D. N. Datta : Mr. President, Sir, I feel that the whole of this clause 17 should go into the Fundamental Rights Committee and I would be glad if the whole clause could be deleted. I know the reasons for enumerating this under Fundamental Rights, because we are now working under the present setting. But as it is going to be enumerated in the fundamental rights, it has to be seen, Sir, whether the amendment of Mr. Munshi is to be accepted or the amendment of Mr. Anthony should be accented. Mr. Anthony wants that the option of the minors to join the religion they like on attaining majority, should be retained, just as the choice is given to Mohammadan children given in marriage during minority to repudiate the marriage on attaining majority,—What we call the option of puberty. A similar right he intends to be given to the children of the parents who have been converted. On attaining majority the child shall have the right of declaring whether he adheres to his original faith or whether he will join the faith of his parents who were converted. I for myself, do not see any reason, why that right should not be given to the child on attaining majority. On attaining, he may declare, if he was a Hindu, that he will adhere to Hinduism or if his parents have taken to Christianity, whether he will become a Christian. I think this right should not be taken away. It should be given and how it is to be given, it is for the Drafting Committee to determine. For that, Sir, I suggest that the whole clause should go to the Drafting Committee, or, better still, that it should go to the Fundamental Rights Committee to determine whether this clause should remain or how it should remain.

And before I go, I must say that the remark of Mr. Tandon that the majority of the Congress members are not in favour of introducing the word 'propagate' in clause 13 is not correct. This matter was discussed yesterday and the majority were in favour of keeping the word 'propagate'. Therefore, the contention of Mr. Tandon is not correct.

Sri Lakshminarayan Sahu (Orissa : General): Mr. President; Sir, I welcome this clause in the Fundamental Rights, but I have a little doubt to start with, as to what should be called a minority. I think that doubt may be cleared afterwards. As the conditions are today, I would like to point out to the House how in the Midnapore District, half of which is Oriya speaking, the language has been killed there from 1891 to 1931. I will give the census figures for that. In 1891, the number of Oriyas in the District of Midnapore was 6 lakhs. Ten years after, in 1901 it was less than 3 lakhs. From 6 lakhs it went down to about 3 lakhs. And in 1911.....

Mr. President: Mr. Sahu we are not on the question of language now, we are dealing with clause 17, about religion, and not clause 18.

Sri Lakshminarayan Sahu: I am sorry.

Rev. Jerome D'Souza (Madras : General): Mr. President; I regret, Sir, that this discussion should have taken a turn which makes it look as if it is almost exclusively a minority problem, and as a result of that, a degree of heat has been imported into it which most of us regret very much indeed. Sir, when this matter was discussed at the committee stage, quite independently from the question of minorities, legal difficulties with which this question bristles were brought home to us by men of the highest authority like Sir Alladi. As far as the minority rights, are concerned, I can only say this, that the way in which clause 13 has been handled by this House is so reassuring and so encouraging to the minorities that we have no reason at all to quarrel or to ask for stronger assurances. That attitude must provoke on the part of the minorities an equally trustful attitude which I hope will inspire future relations and future discussions. I appreciate Mr. Anthony's stand that this is a question of a wider nature of principle and family authority. I assure you I am speaking from that point of view. This question of conversion of minors may affect not only majorities in relation to minorities but the minorities among themselves,—one Christian group in relation to another Christian group, as Catholics and Protestants, and so on. But among all sections, in regard to the authority of a man over his family, I think certain rights should be assured and must be part of fundamental rights. We have nothing in these fundamental rights that safeguards or encourages or strengthens the family in an explicit way, and indeed I do not think this is necessary at this stage, because that is not a justiciable right. There are certain constitutions where the wish of the State to protect and encourage the family is explicitly declared. I hope in the second part, among these fundamental rights which are not justiciable, some such declaration or approbation of the institution and rights and privileges associated with family life will be introduced. It may perhaps be thought that in our country such a declaration is not necessary because among us the strongest family feeling is universal; we have not merely individual or unitary families but we have also joint families. I believe the discussion on this point has been partly influenced by that background of the joint family system. I am sure that Tandonji, if I may be permitted to refer to him by name, when he was speaking of the minor child of converted parents, was thinking really in terms of the joint family where there are people ready to take over and bring up such children. But we are legislating for all sections of our people, for those also who are not in joint families but in unitary families. We are legislating for them, and, therefore, some provisions must be made which, in the last analysis, will safeguard the authority of the parent, both parents or the surviving parent, in particular, as Mr. Anthony has said in regard to babies in the arms of their mothers. To take them away from the mother or father who are one with them, practically identified physically and juridically with them, is to introduce into our legislation an element which certainly weakens the concept of the authority and sanctity of the family. On this ground, as well as on the legal implications to which attention has been drawn. I mean difficulties in connection with the death, the marriage, the succession rights, of these minors, I oppose Mr. Munshi's amendment as it stands. Take the question of marriage. Marriage is permitted before 18 years. Now Mr. Munshi has carefully explained that his amendment

does not prevent the minor children from going with the parents. But if they are to be married, under what law, by the ceremonies of which religion will they be married? If they follow their conscience and the religion they have adopted, whether they be Hindus, Muslims, or Christians, the question of the validity of that marriage will come in. All this is bristling with legal and juridical difficulties, quite apart from those other considerations into which, as I said, I regret we have entered with undue warmth. While I want to support Mr. Anthony's motion, I am more inclined to support the suggestion of the speaker who immediately preceded me, and ask the House to refer the entire clause back to the Advisory Committee so that the wording of it may be most carefully weighed. It can be brought back to this House just as we have decided, to bring back three or four other controversial matters. That is my suggestion and I would request.....

The Hon'ble Mr. B. G. Kher (Bombay : General): You may refer it to the other Committee which the President has appointed.

Rev. Jerome D'Souza: I accept it. I want it to be discussed in a very much calmer manner. I suggest that it may go back to the Committee which the President has already appointed.

Mr. R. K. Sidhwa: I do not want it to be sent back to the Committee.

Mr. President: I have got a list of a number of names of members who wish to speak on this amendment. I take it that my eye catches members in the order in which I have received the requests. So, I call upon Shri Algu Rai Shastri.

Shri Algu Rai Shastri (U.P. : General): *[Mr. President I stand here to support the amendment moved by Mr. Munshi. I believe that by accepting the amendment we shall be doing justice to those minors who have perforce to enter the fold of the religion which their parents embrace out of their greed. This practice is like the one prevailing in the transactions of transfer of land and which is that 'trees go with the land'. It is on some such basis that the minor children who do not understand what change of religion or coercion or religious practices mean, have to leave their old faith along with their parents. This evil practice has a very bad effect, on the strength of our population. It is proper for us that we, who are framing the charts of Fundamental Rights, should safeguard their interests and save them from such automatic conversion. The dynamic conditions of our society make it more important than ever that we should incorporate such a provision in our Constitution as will prevent such practices. Such minors on attaining majority often regret that they were made to change their religion, improperly. Wherever the Europeans or the white races of Europe, who rule practically over the whole world, have gone, they have, as Missionaries. A study of the 'Prosperous India' by Digby shows that 'cross was followed by the sword'. The missionary was followed by the batons, the swords and the guns, It was in this way that they employed coercion for spreading their religions and for extending their Empire. At the same time, they put economic and political pressure on the indigenous tribes and consolidated the foundations of their dominion. We want such an amendment in this clause of Fundamental Rights that a person who wants to change his religion should be able to do so only after he is convinced through cool deliberation that the new religion is more satisfactory to him than the old one. For example it is only when I am convinced that Sikkism is preferable to Hinduism, that I should be able to change my religion

*[English translation of Hindustani speech begins.

[Shri Algu Rai Shastri]

This right I believe we have. But no one should change religion out of greed and temptation. When the followers of one religion employ, sword and guns to attack a family consisting of a few members, the latter have no option but to accept the religion of the aggressors in order to save their lives. Such a conversion should be considered void and ineffective because it has been brought about through coercion and undue influence. In view of such conditions which exist today, conversion brought about through temptation and allurements is, in fact, not a conversion in the real sense of the term. I have a personal experience extending over a period of 24 years as to how the elders of the family are induced through prospects of financial gain to change their religion and also with them the children are taken over to the fold of the new religion. It appears as if some are taking the land physically in his possession and the helpless trees go with it to the new master.

One particular part of the country has been declared as an "Excluded Area" so that a particular sect alone may carry on its propaganda therein. Another area has been reserved for the "Criminal tribes". Similarly, other areas have also been reserved wherein missionaries alone can carry on their activities. In Chattisgarh and other similar forest areas there are tribes which follow primitive faiths. There the Hindu missionaries cannot carry on their activities. These are called "Excluded and partially Excluded Areas", and no religious propaganda can be carried on in these areas except by the missionaries. This was the baneful policy of the Government. We should now be delivered from this policy of religious discrimination. In his book "Census of India-1930" Dewton writes that the Christian population of Assam has increased 300 times and attributes this increase to certain evils in Hindu Society. It is these evils which gave other missionaries opportunities to make conversions. In his book "Census of India-1911" Mr. S. Kamath has said that the missionaries of one particular religion are reducing the numbers of another by exploiting the evils of that group. They convert some influential persons by inducement and persuasion. The bitterness of the present is due to such activities. I am conversant with what Christian missions have done for the backward classes and I have also seen their work among such classes of people. I bow to them with respect for the way in which they (missionaries), have done their work. How gracious it would have been had they done it only for social service I found that the dispute, if and when it occurs, between members of such castes as the sweepers or the *chamars* on the one side and the land-lords or some other influential persons on the other have been exploited to create bitterness between them. No effort has been made to effect a compromise. This crooked policy has been adopted to bring about the conversion of the former. Similarly, people of other faiths have intensified and exploited our differences in order to increase their own numbers. The consequence is that the grown-up people in such castes as *Bhangies* and *chamars* are converted, and with them their children also go into the fold of the new religion. They should be affectionately asked to live as brothers. This is what has been taught by prophets, angels and leaders. But this is not being practised, today. We are in search of opportunities to indulge in underhand dealings. We go to people and tell them "you are in darkness; this is not the way for your salvation". Thus every body can realise how all possible unfair means have been adopted to trample the majority community under feet. It is in this way that the Foreign bureaucracy has been working here, and has been creating vested interests in order to maintain its political strangle-hold over the people. If we cannot remove this

foundation whom are we going to give the Fundamental Rights? To these minors who are in the lap of their parents? If we permit minors to be transferred like trees on land with the newly embraced religion of their parents, we would be doing an injustice. Many fallacious arguments are offered to permit this. We must not be misled by these. We know that our failure to stop conversion under coercion would result in grave injustice. I have a right to change my religion. I believe in God. If I realise tomorrow that God is a farce and an aberration of human mind then I can become an atheist. If I think that the Hindu faith is false, I, with my grey hair, my fallen teeth and ripe age, and my mature discretion can change my religion. But if my minor child repeats what I say, are you going to allow him also a right to change his religion (at that age)? Revered Purushottam Das Tandon has said in a very appealing manner that if a child transfers his immovable property worth Rs. 100 the transaction is void. How unjust it is that if a minor changes his religion when his parents do so, his act is not void? It has an adverse effect on innocent children. This attempt to increase population has increased religious bitterness. The communal proportion has been changed so that the British bureaucracy may retain its hold by a variation in the numbers of the different communities. I am saying all these things deliberately but I am not attacking any one community in particular. The sole interest of the government in the illusory web of the census lies in seeing a balance in the population of the communities so that these may continue to quarrel among themselves and thereby strengthen its own rule. This amendment of Mr. Munshi is directed against such motives. Nothing can be better than that, and, therefore, I support it.

In my opinion this majority community should not oppress the minority. We respect and honour all and we give an opportunity to everybody to propagate his religion. Those who agree with you may be converted. But convert only those who can be legitimately converted. Improper conversions would not be right. You tempt the innocent little ones whom you take in your lap, by a suit of clothes, a piece of bread and a little toy and thus you ruin their lives. Later, they repent that they did not get an opportunity to have a religion of their choice. I, myself, am prepared to change my religion. But some one should argue with me and change my views and then convert me. Surely, I should have no right to change the religion of my children with me—specially children below a certain age. Those children are considered to be minors who are under teens, *i.e.*, below eighteen.]*

Mr. H. V. Kamath: *[Under teens includes nineteen.]*

Shri Algu Rai Shastri: *[However if it is nineteen, it is all the better. Even if it is not possible they should extend minority by a year of grace. The age limit fixed for minors and majors should be adopted in religious matter as well. They say that there would be no incentive for conversion if people have to forego their children. I hear that in Japan the father has one religion and the child another. What does religion mean? Does the mother feed her baby so that the child's religion might change? If the mother's love is true she will surely feed her baby. Does the mother's milk change the religion? We do not wish to snatch away the child from the mother's lap, but we wish to give to the baby a right to record his (natal) religion in the report of the Census and any other

] *English translation of Hindustani speech ends.

*[] * English translation of Hindustani speech.

*[English translation of Hindustani speech begins.

[Shri Algu Rai Shastri]

government records, till he attains majority and declares his (new) religion. We give him this right in this amendment. Parents need the company of their children. If they have changed their religion discreetly, let them educate their children. But the change in the religion of the children may be considered (only) on their declaration at reaching majority. This is the purpose of this amendment and I support it, and I strongly oppose the view that this right should not be given to children.]*

Mr. Jagat Narain Lal (Bihar: General): *[Mr. President, I was expecting that after the acceptance of clause 13, no representative of any minority in this House will have any ground for any objection. Clause 13 lays down that—

“All persons are equally entitled to freedom of conscious, and the right freely to profess, practice and propagate religion subject to public order, morality or health or to the other provisions of this Chapter.”

This goes to the “farthest limit”. If you look to any of the best of “modern” world Constitutions, you will find that nowhere has this right to propagate been conceded. If you look at Article 50 of the Swiss Confederation, it lays down that “the free exercise of religion is guaranteed within limits compatible with public order and morality.” It ends there. If you look at Article 44 sub-clause (2) 1 of the Irish Free State, you will find there—

“Freedom of conscience and the free profession and practice of religion are subject to public order and morality, guaranteed to every citizen.”

If you refer to Article 124 of the Constitution of the Union of the Soviet Socialist Republics you will find—

“In order to ensure to citizens freedom of conscience, the Church in the U.S.S.R. is separated from the State and the school from the Church. Freedom of religious worship and freedom of anti-religious propaganda is recognised for all citizens.”

If I place before you all the clauses pertaining to “Freedom of professing religion,” it will tax your patience. I do not want to waste more of your time in this connection. My submission is that this House has gone to the farthest limit possible with regard to the minorities, knowing well the fact that there are a few minorities in this country whose right to carry on propaganda extends to the point of creating various difficulties. I do not want to go into its details. The previous speaker had referred to certain things in this connection. I submit that that should be sufficient. Hon’ble Tandonji by his observation that on reading the mind of most of the Congress members of this House he did not want to keep “right to do propaganda” (on the statute), has rightly interpreted the mind of most of us. The fact is that we desire to make the minorities feel that the rights which they had been enjoying till now shall be allowed to continue within reasonable limits by the majority. We have no desire to curtail them in any way. But we do not concede the right to do propaganda. I want to appeal to those who profess to speak for the minorities not to press for too much. They must be satisfied with this much. It will be too much to press for more. That would be taking undue advantage of the generosity of the majority. That will be very regrettable. It is difficult, rather impossible, for us to go to that limit. I think that the amendment tabled by Mr. Munshi becomes essential if the right to propagate is conceded. The House should, therefore, accept it. Various arguments have been advanced in the House, and so

*[English translation of Hindustani speech ends.

*[English translation of Hindustani speech begins.

I do not want to comment upon them again. With these words I support Mr. Munshi]*

Dr. B. R. Ambedkar: Mr. President, Sir, I am sorry to say that I do not find myself in agreement with the amendment which had been moved by Mr. Munshi relating to the question of the conversion of minor children. The clause, as it stands, probably gives the impression to the House that this question relating to the conversion of minors was not considered by the Fundamental Rights Committee or by the Minorities Sub-Committee or by the Advisory Committee. I should like to assure the House that a good deal of consideration was bestowed on this question and every aspect was examined. It was, after examining the whole question in all its aspects, and seeing the difficulties, which came up, that the Advisory Committee came to the conclusion that they should adhere to the clause as it now stands.

Sir, the difficulty is so clear to my mind that I find no other course but to request Mr. Munshi to drop his amendment.

With regard to children, there are three possible cases which can be visualised. First of all, there is the case of children with parents and guardians. There is the case of children who are orphans, who have no parents and no guardians in the legal sense of the word. Supposing you have this clause prohibiting the conversion of children below 18, what is going to be the position of children who are orphans? Are they not going to have any kind of religion? Are they not to have any religious instruction given to them by some one who happens to take a kindly interest in them? It seems to me that, if the clause as worded by Mr. Munshi was adopted, *viz.*, that no child below the age of 18 shall be converted it would follow that children who are orphans, who have no legal guardians, cannot have any kind of religious instruction. I am sure that this is not the result which this House would be happy to contemplate. Therefore, such a class of subjects shall have to be excepted from the operation of the amendment proposed by Mr. Munshi.

Then, I come to the other class, *viz.*, children with parents and guardians. They may fall into two categories. For the sake of clarity it might be desirable to consider their cases separately; the first is this: where children are converted with the knowledge and consent of their guardians and parents. The second case is that of children of parents who have become converts.

It does seem to me that there ought to be a prohibition upon the conversion of minor children with legal guardians, where the conversion takes place without the consent and knowledge of the legal guardians. That, I think, is a very legitimate proposition. No missionary who wants to convert a child which is under the lawful Guardianship of some person, who according to the law of guardianship is entitled to regulate and control the religious faith of that particular child, ought to deprive that person or guardian of the right of having notice and having knowledge that the child is being converted to another faith. That, I think, is a simple proposition to which there can be no objection.

But when we come to the other case, *viz.*, where parents are converted and we have to consider the case of their children, then I think we

*English translation of Hindustani speech ends.

[Dr. B.R. Ambedkar]

come across what I might say a very hard rock. If you are going to say that, although parents may be converted because they are majors and above the age of 18, minors below the age of 18, although they are their children, are not to be converted with the parent, the question that we have to consider is, what arrangement are we going to make with regard to the children ? Suppose, a parent is converted to Christianity. Suppose a child of such a parent dies. The parent, having been brought up in the Christian faith, gives the Christian burial to the dead child. Is that act on the part of the parent in giving a Christian burial to the child, to be regarded as an offence in law ? Take another case. Suppose a parent who has become converted has a daughter. He marries that daughter according to Christian rites. What is to be the consequence of that marriage ? What is to be the effect of that marriage ? Is that marriage legal or not legal?

If you do not want that the children should be converted, you have to make some other kind of law with regard to guardianship in order to prevent the parents from exercising their rights to influence and shape the religious life of their children. Sir, I would like to ask whether it would be possible for this House to accept that a child of five, for instance, ought to be separated from his parents merely because the parents have adopted Christianity, or some religion which was not originally theirs. I refer to these difficulties in order to show that it is those difficulties which faced the Fundamental Rights Committee, the Minorities Committee and the Advisory Committee and which led them to reject this proposition. It was, because we realised, that the acceptance of the proposition, namely, that a person shall not be converted below the age of 18, would lead to many disruptions, to so many evil consequences, that we thought it would be better to drop the whole thing altogether. (*Hear, hear*). The mere fact that we have made no such reference in clause 17 of the Fundamental Rights does not in my judgment prevent the legislature when it becomes operative from making any law in order to regulate this matter. My submission, therefore, is that the reference back of this clause to a committee for further consideration is not going to produce any better result. I have no objection to the matter being further examined by persons who feel differently about it, but I do like to say that all the three Committees have given their best attention to the subject. I have therefore, come to the conclusion that having regard to all the circumstances of the case, the best way would be to drop the clause altogether. I have no objection to a provision being made that children who have, legal and lawful guardians should not be converted without the knowledge and notice of the parents. That, I think, ought to suffice in the case.

The Hon'ble Sardar Vallabhbhai Patel: Sir, this is not a matter free from difficulties. There is no point in introducing any element of heat in this controversy. It is well known in this country that there are mass conversions, conversions by force, conversions by coercion and undue influence, and we cannot disguise the fact that children also have been converted, that children with parents have been converted and that orphans have been converted. Now, we need not go into all the reasons or the forces that led to these conversions, but if the facts are recognised, we who have to live in this country and find a solution to build up a nation,—we need not introduce any heat into this controversy to find a solution. What is the best thing to do under the circumstances? There may be different points of view. There are bound to be differences in the view points of the different communities, but, as Dr. Ambedkar

has said, this question has been considered in three Committees and yet we have not been able to find a solution acceptable to all. Let us make one more effort and not carry on this discussion, which will not satisfy everybody. Let this be therefore referred to the Advisory Committee. We shall give one more chance.

Mr. President: Do I take it that it is the wish of the House that this clause be referred back to the Advisory Committee for further consideration?

The clause was referred back to the Advisory Committee.

CLAUSE 18—CULTURAL AND EDUCATIONAL RIGHTS

The Hon'ble Sardar Vallabhbhai Patel: I move clause 18 now.

“(1) Minorities in every Unit shall be protected in respect of their languages, script and culture, and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect.

(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsory imposed on them.

(3) (a) All minorities whether based on religion, community or language shall be free in any Unit to establish and administer educational institutions of their choice.

(b) The State shall not, while providing State aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language.”

I move this clause for the acceptance of the House.

Shri Mohanlal Saksena (United Provinces: General): Sir, with your permission, I would like to move that this clause be referred back to the Advisory Committee for reconsideration. There are certain aspects which require reconsideration, and, on the whole, I think it would be much better that this whole clause be referred to the Advisory Committee for their reconsideration.

Mr. President: Mr. Mohanlal Saksena has moved that this clause also be referred back to the Advisory Committee for further consideration.

Mr. D. N. Datta: Mr. President, with regard to sub-clause (1) of clause 18, it has been stated that—

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

I want to illustrate my point. If in a particular Unit...

Mr. President: You are going into the merits of the clause.

Mr. D. N. Datta: I am not going into the merits. I want clarification.

Mr. K. M. Munshi: I have got an amendment to move.

Mr. President: There is a motion by Mr. Mohanlal Saksena. He wants that the clause be referred back to the Committee. If that is accepted, no amendment need be moved.

Mr. D. N. Datta: I do not know if my request for clarification will be fulfilled even if the clause be referred back to the Committee. If you would allow me to speak...

Mr. President: If the House wants to refer back the Clause to the Committee the discussion will not be of much help.

Mr. D. N. Datta : If the House intends that this clause shall be referred back, I need not speak. I am not moving any amendment.

Mr. K. M. Munshi: Is it worth while moving any amendment if Mr. Mohanlal Saksena's suggestion is carried ? If that is accepted no amendment need be moved.

Acharya J. B. Kripalani (United Provinces: General): If after discussing we find there are any serious difficulties, then we may send the clause back to the Advisory Committee. If there are no serious difficulties and the House is practically united, then we may proceed with this.

Many Hon'ble Members: That is right.

Mr. President: I take it that the House wishes to discuss this clause. The amendments will be moved. We may take up the suggestion of Mr. Mohanlal Saksena at a later stage.

Mr. K. M. Munshi: I move that sub-clause (2) of clause 18 be referred back to the Advisory Committee. It was the general sense of many of the members that this clause should be reconsidered in the light of discussion that took place.

Mr. President: There are other amendments of which I have got notice. I shall ask the Hon'ble members to move the amendments.

Sri V. C. Kesava Rao (Madras: General): I do not move my amendment. (No. 76 of the Supplementary List No. II).

Dr. Suresh Chandra Banerjee (Bengal: General): In view of the amendment that sub-clause (2) be referred back to the Advisory Committee, I do not see any object in moving my amendment, and I do not propose to move it.

Sri K. Santhanam: I am not moving my amendment. (No. 78 of the Supplementary List No. II).

Shri Phool Singh: I am not moving amendment. (No. 80 of the Supplementary List No. II).

Shri Algu Rai Shastri: *[I do not want to move my amendment.]*

Dr. Suresh Chandra Banerjee: In view of the assurance given by Mr. Munshi, I am not moving amendment No. 72 in the List.

The Hon'ble Shri Jagjivan Ram: I am not moving my amendment (No. 83 of the Supplementary List No. II).

Mr. R. K. Sidhwa: My amendment, *i.e.*, No. 84, is a new clause. It may be taken afterwards.

Mr. D. N. Datta: Amendment No. 85 seeks to introduce new clauses. It may be taken up later.

Mr. President: All the amendments of which I have got notice have been disposed of; they are not moved.

Mr. Munshi's amendment and the clause are now both open for discussion. There is a suggestion that the whole clause be referred back and the amendment is that only sub-clause (2) be referred back.

[] English translation of Hindustani speech.

Shri Mahavir Tyagi: Sir, I rise to support the motion of Mr. Mohanlal Saksena. He has only proposed that this clause be referred back to the Advisory Committee. I think, Sir, we are taking this document lightly. It may be that in matters like these, *i.e.*, cultural and educational rights, they could be defined only as far as they appertain to individuals and the question of minorities had better be left for the future Governments. I think we are binding the hands of our future Governments too much. We should leave them free to do according to the times and the situations they face.

Now, Sir, the question of guaranteeing the rights of minorities with regard to culture and education privileges, I would suggest that in future occasions may arise when the Governments belonging to the Union may have to negotiate with other units and may have to know from them as to what is happening to the minorities that reside in the areas which have not chosen to join the Union. Now, supposing the Governments of the Units which belong to the Union are committed by means of this clause 18 to a certain policy towards the minorities, the people here may feel the necessity of knowing as to what is happening to the minorities who reside in those units which have refused to join the Union and belong to Pakistan or any other parts of India which may organise themselves separately. My suggestion is that on the question of minorities we may not be committed here and this question be left over for the time when we may definitely know as to whether the whole of India is going to be one Unit or is going to be partitioned into two. If there is to be a partition, we must know what is happening to the minorities on the other side, in the other units. Therefore, the question is not so easy to solve just now. I submit that the whole House will support me when I say that this question had better be hanging fire till we definitely know as to what is going to be the final shape of India and how the Units are going to treat the minorities. I therefore support the motion of Mr. Mohanlal Saksena that the consideration of this clause be put off.

Seth Govind Das (C.P. & Berar: General): *[Sir, I think the motion before us contains no such clause which can be considered controversial. Mr. Mahavir Tyagi has said that we do not know till now whether India is to remain one or is to be partitioned. For reasons which lead him to think that this should be sent to the Advisory Committee, I feel that it should be passed by us today. Whether there is one Hindustan or Pakistan, undivided or divided India—the phantom of this thought sticks to us and we look at all problems when they come up, obsessed with that view.

While supporting the resolution of Pandit Jawaharlal Nehru I said that we should not care whether our Muslim League brothers enter the Assembly or not. On the same grounds I again wish to say that we should not care whether India is to remain undivided or is to be divided. We want one India. We want that India should remain one. We are not to stop any of our efforts. I am even against Mr. Munshi's amendment, for I cannot see anything in this whole clause against any caste or community. As I have said that without looking—to what is going to happen to India in future, we should pass this resolution keeping in view as to what our duties are and what should be done in this Assembly.]*

[]*English translation of Hindustani speech.

Mr. D. N. Datta: Mr. President, Sir, clause 18, sub-clause (1) says—

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

I shall illustrate my point. Suppose in a certain unit there are different communities residing, using different scripts, and that unit intends to make a law that there should be one script instead of different scripts now prevailing. I feel that there may be necessity for the unit to promulgate a law that there should be one script for that particular unit for the benefit of the unit itself, and if that is not allowed by the Fundamental Rights, I think the interests of the Unit will suffer. I cannot suggest what should be the language of the clause under which such laws can be promulgated so that there should be one script for the benefit of the whole Unit. I suggest that this matter may also be referred to the Drafting Committee of the Fundamental Rights Sub-Committee because it is a very fundamental matter. The minority must have a right, but at the same time the Unit itself should also have a right to promulgate such a law—that there should be one script for the whole Unit or province. So, I consider that this matter should be considered by the Fundamental Rights Sub-Committee or by Sardarji.

Srijut Rohini Kumar Chaudhury: Mr. President, Sir, I wish to draw attention to sub-clause (2) of clause 18:—

“No minority whether based on religion community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them.”

It refers to the compulsory imparting of religious instruction Clause 16 which also refers to compulsory participation in religious instruction in school has already been referred by this Hon'ble House to the Advisory Committee. So it is only reasonable that we should agree to refer this clause to the same Advisory Committee which will consider clause 16.

I submit, Sir, that other sub-clause of this clause are not inoffensive or free from difficulty as they may seem on surface.

Take for instance, sub-clause (1) which speaks of scripts. Most of the tribal people in our Province have lost their original script. Some have taken to Assamese language and script, but Roman scripts have been recently imposed on them and now most of them are willing to take Hindi scripts which they would not be able to adopt if the sub-clause stands as it is.

Then turning to sub-clause (3) (b), if the clause stands as it is, it will seriously interfere with proper distribution of grants. So, on the whole, I think, instead of remitting sub-clauses piece-meal. It will be wise to refer the whole clause 18 to the Advisory Committee.

Sri Rajkrushna Bose (Orissa: General): I suggest, Sir, that clause 18 as moved by Sardar Patel and the amendment of Mr. Munshi, should be taken up for consideration now and the House should come to a decision in the matter. It seems that there is a move to refer clauses like this back to the Advisory Committee and it has become a little too catching and therefore we are not in a position to do anything here but refer back to the Advisory Committee. Let us not forget that before these clauses passed through the Committee, they had passed through two other Committees, *viz.*, the Minorities Rights Sub-Committee and the Fundamental Rights Sub-Committee. Clause 18 which we are now

considering is so very simple and innocuous that it really needs no referring back to the Advisory Committee again. Three sub-clauses are attached to it, one is that the language, script and culture should be preserved and no laws or regulation may be enacted that may operate oppressively or prejudicially in this respect. If we are going to have one script in India as was suggested by Mr. Datta, it may create difficulties and any unit which wants to have a common script for the whole unit will have difficulties if this sub-clause is kept.

Well, my contention is that the sub-clause should be retained as it is, just because, if today we raise the question of wiping out languages or scripts when we are framing our first independent constitution, there may be any number of complications and difficulties and misunderstandings and at a time when we are having a lot of other difficulties we should not invite any more now. Therefore, we ought to keep the first sub-clause as it has been kept in the original. Then sub-clause (3) (a) reads:

“All minorities whether based on religion community or language, shall be free in any Unit to establish and administer educational institutions of their choice.”

This is a right, Sir, which I think no country can take away and ought to take away and all constitutions should concede this right to the minorities. It is such a simple thing that it needs no reference back to the Advisory Committee again. Now, sub-clause (3) (b) reads:

“The State shall not, while providing State aid to schools discriminate against schools under the management of minorities whether based on religion, community or language.”

This again is such a simple question. If any minority wants to start a school of its own in any unit or in any part of the Union, certainly you are not going to forbid them from doing so, or pass laws whereby they cannot have this ordinary right. If you are going to do that, all your claim to give protection to the minorities will be reduced to a farce. Therefore, I do not see why this simple clause, namely clause 18, with all its sub-clauses should be referred back to the Advisory Committee. Of course, a point has been raised by one of the members that the consideration of matters relating to minorities should be put off till we know the mind of the Pakistanists in the matter and the rights they are going to concede to the minorities in their areas. Well, Sir, if, knowing fully well that those who oppose India's independence today like the Muslim League are adopting dilatory tactics to delay our freedom we put off our business till Doomsday or wait till they have made some decisions, we shall have to wait indefinitely. If, say for instance, they go beyond June 1948 to reach a decision with regard to these matters, are we to postpone our decisions on matters so simple and ordinary. I think, Sir, that it will be foolish on our part to delay decisions on matters like these, and therefore clause 18 as moved by Sardar Patel and amended by Mr. Munshi should be adopted by the House.

Dr. B. R. Ambedkar: Mr. President, Sir, I confess that I am considerably surprised at these amendments—both by Mr. Munshi as well as Mr. Tyagi, They have, I submit, given no reason why this clause 18 should be referred back to the Committee. The only reason in support of this proposal—one can sense—is that the rights of minorities should be relative, that is to say, we must wait and see what rights the minorities are given by the Pakistan Assembly before we determine the rights we want to give to the minorities in the Hindustan area. Now, Sir, with all deference. I must deprecate any such idea. Rights of minorities should be absolute rights. They should not be subject to any consideration as to

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what another party may like to do to minorities within its jurisdiction. If we find that certain minorities in which we are interested and which are within the jurisdiction of another State have not got the same rights which we have given to minorities in our territory, it would be open, for the State to take up the matter in a diplomatic manner and see that the wrongs are rectified. But no matter what others do, I think we ought to do what is right in our own judgment and personally I think that the rights which are indicated in clause 18 are rights which every minority, irrespective of any other consideration is entitled to claim. The first right that we have given is the right to use their language, their script and their culture. We have stated that "there shall be no discrimination on the ground of religion, language, etc." in the matter of admission into State educational institutions. We have said that "no minority shall be precluded from establishing any educational institution which such minority may wish to establish". It is also stated there that whenever a State decides to provide aid to schools or other educational institutions maintained by the minority, they shall not discriminate in the matter of giving grant on the basis of religion, community or language. Sir, I cannot understand how there can be any objection to these rights which have been indicated in clause 18. At any rate, nobody who has supported the motion that this may be referred back to the Committee has advanced any argument that either these rights are in excess of what a minority ought to have or are such that a minority ought not to have them. Therefore, it seems to me a great pity that the labours of three Committees which have evolved these provisions should be so brusquely set aside simply because for some reasons people want that this matter should be referred back to the Committee. I do not know what objection my friend Mr. Munshi has to sub-clause (2) as it stands, but if it is necessary that this sub-clause may be referred back to the Committee I certainly would raise no objection. That sub-clause may be referred back because I understand that we have limited this matter to State educational institutions and we have said nothing about those which are only State-aided. If that point needs to be further clarified the matter may be referred back, but, because there may be something to be said in favour of the reference back of sub-clause (2) I do not see that the same logic could be extended to the whole of the clause. I submit therefore that the clause as it stands, should be passed, barring sub-clause (2) which may, if necessary, be referred back to the Committee for consideration.

Shri Lakshminarayan Sahu: Mr. President, Sir, while I was speaking some time before, I was just telling that I welcomed this clause 18 in the Fundamental Rights, because this is the first time that minorities will feel happy that they have got some definite rights. I was referring to the question of who should be called a minority about which I have my doubts. But I hope they will be cleared by further discussions. But as it is, I welcome this clause. I want to show that in Midnapore district the population of Oriyas has been mutilated to a very great extent so much so that today we do not find in the census figures any Oriya as such. In 1891 the census number of Oriyas was 6 lakhs. In 1901 it was reduced to 3 lakhs and in 1911 it was reduced to less than 2 lakhs. In 1921 it was 1,40,000 and in 1931 the figure is only 45,000.

Now, the same thing has happened in the southern portion of Orissa. The Utkal Union Conference for over 40 years agitated to get a separate province for Orissa only in order to get their minority rights, because as minorities they were not safe in any of the provinces, and when they got a separate province they were very happy. Now the question has come about the language. Referring to only one district there, out of the six

districts of Orissa,—to Ganjam,—there is great language difficulty there. The Vizagapatnam, District Gazetteer of 1906 writes:

“The language of the district forms a veritable bable. In Gunjam 940 out of a 1,000 speak Telugu in their houses, 14 talk Oriya, 9 Khond, 7 Gadaba, 5 Hindusthani. But among the same number in the Agency, 451 speak Orya, 204 Khond, 180 Telugu, 56 Savara, 30 Poroja, 23 Gadaba, 11 Koya, 3 Hindustani, 3 Gondi and 5 other vernaculars such as Labadi, Bastari, Hindi, Chhatiskari, etc.”

This difficulty about language has been felt in our province because a section of the people are Andhras and they are claiming that their children should be educated right up to the college stage through the medium of their own mother-tongue. And this should be decided clearly. I hope that by a clause like this these difficulties will be removed and our culture will be intact in those places where the Oriyas will be left outside their province; and so also the culture of other people who will be left in the province of Orissa will be properly safeguarded. But I would like to know what should be the language of the province and also the language of the different aboriginal people who are in the province of Orissa. As I have already said, there are any number of aboriginals speaking any number of different languages. Some of the aboriginal workers who are coming up claim that their language must be respected. In Orissa, if we respect every language it will be very difficult for the provincial Government to run the administration.

Quite apart from all the above difficulties which may be solved by the Units, I welcome this clause 18 which safeguards our cultural and educational rights.

Mr. President: We have two amendments. One is from Mr. Mohanlal Saksena.

Shri Mohanlal Saksena: Sir, I beg leave to withdraw my amendment.

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

Mr. President: Then the other is from Mr. Munshi to refer back sub-clause (2) to the Committee.

The Hon'ble Sardar Vallabhbhai Patel: I accept it.

The amendment of Mr. Munshi was adopted.

Mr. President: Then I put the amended clause to the House now leaving out sub-clause (2) and retaining sub-clause (1) and sub-clause (3) (a) and (b).

Clause 18, as amended, was, accepted.

Mr. President: I think we have just come nearly to 12-30. So we shall stop today and take up the work again at 9 o'clock tomorrow.

The Assembly then adjourned till Nine of the Clock on Friday, the 2nd May, 1947.