

Tuesday, 29th April, 1947

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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

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CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 29th April 1947

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

EXTENSION OF TIME LIMIT FOR THE REPORT OF THE ADVISORY COMMITTEE

The Hon'ble Sardar Vallabhbhai Patel (Bombay: General) : Sir, I move:

“That the Constituent Assembly do extend the time fixed for the presentation of the report of the Advisory Committee appointed by the resolution of the Assembly of the 24th January, 1947 until such date or dates as the President may choose in his discretion.”

The House is aware that when this Resolution was passed we were required to submit an interim report on Fundamental Rights within six weeks, an interim report on Minorities Rights within ten weeks and our final report within three months from the date of our appointment. We have tried our best to adhere to this time table, but regret that it has not been possible for us to carry it out. At our first meeting held on the 27th February, 1947, we decided unanimously to request you to extend the time limit for the submission of the reports in anticipation of the sanction of the Assembly.

We are full conscious of the necessity of completing our work with the utmost despatch, but we fear it is not possible to work to a rigid time table. We request therefore that the Assembly may be moved to extend the time limit to such date or dates as you may choose in your discretion.

Mr. President: The question is:

“That the Constituent Assembly do extend the time fixed for the presentation of the report of the Advisory Committee appointed by the resolution of the Assembly of the 24th January, 1947 until such date or dates as the President may choose in his discretion.”

The motion was adopted.

INTERIM REPORT ON FUNDAMENTAL RIGHTS*

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

“That the Constituent Assembly do proceed to take into consideration the interim report on the subject of Fundamental Rights submitted by the Advisory Committee appointed by the resolution of the Assembly of the 24th January, 1947.”

Sir, this is a preliminary report or an interim report, because the Committee when it sat down to consider the question of fixing the fundamental rights and its incorporation in the Constitution, came to the conclusion, firstly, that the fundamental rights should be divided into parts—the first part justiciable and the other part non-justiciable. Even while considering the first part it came to the conclusion that we could not come to a final decision as to what fundamental rights are to be incorporated in the Constitution. Considering all the circumstances that exist today and that may

*Appendix at end.

[The Hon'ble Sardar Vallabhbhai Patel]

arise within the course of the consideration of the various Committees' reports and the drafting of the Constitution, points may arise for suggesting additional fundamental rights and also for making minor alterations or suggestions that may be considered advisable. This report is a draft report. I may also suggest for the consideration of the House that in considering the various clauses that have been recommended by the Advisory Committee, the House may not strictly consider the wording of each clause of the rights suggested. Certain changes may be required while actually legally drafting the clauses, and it would be better to leave the drafting to the Drafting Committee which will make such changes as may be necessary to put them in proper phraseology. What I would submit to the House to do today is generally to accept the principles of each of the clauses that have been suggested for consideration, so that we may not have to devote more time in considering the technical legal details of the phraseology to be adopted.

We have now suggested for the consideration of the House those rights that are justiciable. The second chapter we have ourselves not been able to consider. The Fundamental Rights Sub-Committee met and considered this matter for a fortnight and devoted considerable labour and time. After that, the Report was passed on to the Minorities Rights Sub-Committee. That Committee also sat over this Report and anxiously considered various clauses and made certain changes and those changes were adopted. They sat for three days, and then this report was again placed before the Advisory Committee for its consideration. The Advisory Committee sat for two days and at their two sittings they considered the whole thing over again—so, the House will see that this is not a haphazard Report, it has been considered in all its various aspects. It is quite possible to make suggestions, alterations and additions and move amendments, but the House may not have that time which the Committees had, I would humbly submit to the House carefully to consider the various clauses that have been suggested, and when amendments are put forward before the House, they will also be carefully scrutinised. There are about 150 amendments, I hear and scrutiny of the amendments will take some time. The Office has been able to scrutinise about 25 or 30 amendments and that will perhaps take the whole of today's meeting. I move that the Report be taken into consideration, and if that motion is adopted, then we can go and consider the rights clause by clause.

Mr. President: Motion moved:

“Resolved that the Constituent Assembly do proceed to take into consideration the interim report on the subject of Fundamental Rights submitted by the Advisory Committee appointed by the resolution of the Assembly of the 24th January, 1947.”

The Hon'ble Pandit Hirday Nath Kunzru (United Provinces: General) Mr. President, the Report before us purports to deal with only those fundamental rights that are enforceable by the courts, but a close study of it shows that it refers to matters which cannot be included under the head “Fundamental Rights”, and that it deals with those fundamental rights which are not justiciable. To give an instance, Sir, If a matter which does not fall under the category of fundamental rights, I shall refer to clause 10 which makes “trade, commerce and intercourse among the units by and between the citizens” absolutely free.

Sri L. Krishnaswami Bharathi (Madras: General): On a point of order, Sir, I should like to know whether Pandit Hirday Nath Kunzru is opposing the motion or supporting it. He objects to a particular clause, but this is not the time for it. I should like to know whether he is supporting the motion, for consideration or opposing it.

Mr. President: If you just allow the Hon'ble Member to complete his speech, you will be able to know whether he is supporting the motion or opposing it.

The Hon'ble Pandit Hirday Nath Kunzru: This is the stage at which according to the rules followed by the Legislatures, general observations can be made, and I hope I am strictly in order in dealing with the Report generally. It is not necessary for me to say whether I agree to the main provisions of the Report, or whether I want it to be rejected as a whole. All that I can be fairly called upon to do at this stage is to state my point of view and to ask the House to be careful in dealing with some important matters which are included in this Report.

Sir, to illustrate my first point, I refer to clause 10 of the Report which deals with what may roughly be called freedom of inter-State commerce. It may be a very desirable thing in itself, probably every one here will want that trade between the different Units of the Indian Union should be absolutely free, but I doubt whether a clause like this can be included among fundamental rights. Clause 10 deals with a matter which impinges directly on the rights of the Provinces. You may deal with it when you come to settle the powers of the Union and the Provinces; but I submit that you cannot take so important a matter outside the purview of the Committee that will consider the Union and the Provincial Constitutions by calling the freedom of inter-state commerce a fundamental right.

Again, Sir, it is stated in one of the provisos to this clause 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 subjected by them. Now, I should like this to be clearly explained. If there is to be absolute freedom of commerce and trade between the different units, how can any unit be allowed to tax the goods of.....

Mr. F. R. Anthony (Bengal: General): On a point of order, Sir. Can all of us make our respective comments on the provisions of the Fundamental Rights at this stage?

The Hon'ble Pandit Hirday Nath Kunzru: Sir, Mr. Anthony is a Member of the Central Assembly and he knows very well that in making general observations, say, on a Bill, one can refer to a few clauses to illustrate one's point of view. I am astonished that he should get up and object to my observations, which are of a general character, though he may think that they refer to matters of detail. I am sure that on many occasions he has exercised in the Central Assembly the right which I am exercising here now.

Sir, there are other examples of this kind that I could give; but I do not think that I need do so in order to illustrate what I have in mind. Now, I will give an illustration or two to show where matters which can hardly be called justiciable have been included in the Report. Clause 8 deals with certain familiar fundamental rights; the freedom of speech, the right to assemble peaceably and without arms and the right to form associations. But they have all been made subject to certain safeguards, which, generally speaking, have been considered necessary in every country. But it is well known, Sir, that these safeguards practically make the rights that I have just mentioned non-justiciable. You may confer general rights on the citizens of India, but if they are to be surrounded with the restrictions mentioned here,—and I submit that they will have to be surrounded with some such restrictions—then the right will in practice cease to be justiciable. They will be no more than directive principles of a policy, and there seems to me to be no advantage in considering such matters at this stage when,

[The Hon'ble Pandit Hirday Nath Kunzru]

according to Mr. Patel, we should be considering only those rights that are, strictly speaking, enforceable by the courts.

I shall give another instance, Sir, in order to make my point of view still clear. I refer, Sir, to clause 8, sub-clause (e), which deals with the right of every citizen to reside and settle in any part of the Union, to acquire property and to follow any occupation, trade, business or profession. This is subject to the condition that "provision may be made by law to impose such reasonable restrictions as may be necessary in the public interest including the protection of minority groups and tribes." Now, Sir, it is very desirable, in general, that there should be freedom of movement; but I do not think that we can accept without qualification the right of the people of one province to settle in another province. The Government of the province concerned must be given the power... (*Cries of* "We cannot hear, the microphone is not working"), Sir, I can make myself heard without the aid of the microphone. I was dealing with clause 8, sub-clause (e). This clause states that every citizen has the right to reside and settle in any part of the Union. My submission is that while freedom of movement in the Union is desirable and essential, the right to reside and settle in any part of the Union cannot be called non-controversial.

Mr. President: The microphone is now working.

The Hon'ble Pandit Hirday Nath Kunzru: Thank you, Sir, but I think I can make myself heard without it. The province, I was saying, must have the right to decide, in view of its resources what the size of its population at any time should be. No Provincial Government can fairly be asked to allow an unlimited influx of immigrants from another province in pursuance of the principle enunciated here. Let us take the case of Assam, to understand this fully. Will anybody force the Government of Assam at the present time to allow an unlimited number of people from any of the neighbouring provinces to enter Assam and settle down there? That Government is faced with an extraordinary difficult problem and clause 8(e) shows a strange disregard of the existing state of things there. I think, Sir, that this right can be conferred only under certain conditions which will have to be clearly defined.

Dr. B. R. Ambedkar (Bengal: General) : I do not wish to interrupt the speaker; but in dealing with clause 8(e), he is rather giving a wrong impression of the whole clause.

Dr. B. Pattabhi Sitaramayya (Madras: General): Instead of giving illustrations to make his points clear, he is going into a discussion of the merits.

The Hon'ble Pandit Hirday Nath Kunzru: As a parliamentarian, Sir, you understand what I am doing. As regards Dr. Ambedkar's objection, I may say—and I am sure you will bear me out,—I read out the entire clause including the proviso.

Mr. President: I would request the Member to confine himself to the point which he wants to illustrate and not go into the merits of the proposal.

The Hon'ble Pandit Hirday Nath Kunzru: I have given only two illustrations so far and this is only the third illustration that I am giving in order to explain clearly to the House what I have in mind. I am not discussing each and every clause. Sir, I have already read out the proviso to clause 8(e) but in order to satisfy Dr. Ambedkar, I shall read it out again:

"Provision may be made by law to impose such reasonable restrictions as may be necessary in the public interest including the protection of minority groups and tribes."

Probably Dr. Ambedkar's contention is that this phraseology is such as to enable a province to decide whether it would allow people coming from outside to reside and settle down within its jurisdiction. If so, a special interpretation will have to be placed on these words. Again, if the proviso is so wide as Dr. Ambedkar contends it is, then the right conferred by clause 8(e) virtually ceases to be a justiciable right.

Sir, I think I have said enough in order to indicate my point of view. I need not therefore labour the point further, but, before I sit down, I may say again that there seems to be no particular advantage in considering many provisions of this Report at the present time. They can be considered along with the other fundamental rights which have yet to be dealt with by the Fundamental Rights Sub-committee. But if the House wants to proceed with the consideration of this Report, it will have to take special care to see that only those matters are included in it which are really justiciable.

Mr. Promatha Ranjan Thakur (Bengal: General): Sir, this is a list of fundamental rights which are only justiciable. I do not understand why economic fundamental rights should not be included in these justiciable rights. Economic rights are essential while framing a country's constitution and they must also be made justiciable. I do not understand why mines, key industries and basic industries should not be nationalised. Moreover, this list of fundamental rights should have been considered in the light of reports of the Minorities Sub-committee. The Minorities Sub-committee sat only for two days and they could not go into details as regards safeguards required for minority communities. You know that Minority Sub-committee's Report is very much connected with the list of fundamental rights.

Another point to which I wish to refer is in relation to clause 6—regarding 'untouchability' where it is said that—

"Untouchability in any form is abolished and the imposition of any disability on that account shall be an offence."

I do not understand how you can abolish untouchability without abolishing the very caste system. Untouchability is nothing but the symptom of the disease, namely, the caste system. It exists as a matter of caste system. I do not understand how this, in its present form, can be allowed to stand in the list of fundamental rights. I think the House should consider this point seriously. Unless we can do away with the caste system altogether there is no use tinkering with the problem of untouchability superficially. I have nothing more to say. I hope the House will consider my suggestion seriously.

Mr. President: I take it that the Hon'ble Member does not wish to move his amendment.

Mr. Promatha Ranjan Thakur: I do not move my amendment.

Mr. Somnath Lahiri (Bengal: General): I agree with what Pandit Kunzru suggested because it is rather difficult to make a fine distinction between what are justiciable rights and what are not. For instance, when we make a provision that people should have the right to work, that is, unemployment should not be allowed to exist in our country, it would be a social right. If you make it an inalienable provision of our fundamental rights, naturally it will have to be justiciable. Similarly, take the question of nationalisation of land. If we want to say that land belongs to the people and to no body else, that would be a social and fundamental right no doubt. But, nevertheless, it will also be a justiciable right, if that is to

[Mr. Somnath Lahiri]

be given effect to. Therefore, it is rather arbitrary to make any fine distinction between what are justiciable rights and what are social and economic rights. Therefore, we would be in a better position to consider the whole thing if the full Report was forthcoming so that we might know what is in it. Otherwise, there is the danger that when we might put certain things as essential, we would be told that social and economic rights will come up not now but later on. Therefore, I support Pandit Kunzru's suggestion for taking all these things together. I do not see any great hurry for getting these few fundamental rights passed just now. I was surprised to read this Report submitted by the Committee. Before this Report was submitted by the Committee, I got a circular from the Congress Party section of the Constituent Assembly enumerating certain rights. Many good points were contained in them. Afterwards, when we received this Report, we find that many of the good points which were mentioned in that circular have been omitted. Let me put it a little more strongly. I feel that many of these fundamental rights have been framed from the point of view of a police constable and many such provisions have been incorporated. Why? Because you will find that very minimum rights have been conceded and those too very grudgingly and these so-called rights are almost invariably followed by a proviso. Almost every article is followed by a proviso which takes away the right almost completely, because everywhere it is stated that in case of grave emergency these rights will be taken away. Now, Sir, what constitutes a 'grave emergency' God alone knows. It will depend on the executive obtaining at a particular period of government. So, naturally anything that the party in power or the executive may not like would be considered a grave emergency and the very meagre fundamental rights which are conceded in this resolution will be whittled down. Therefore, it is necessary for us to see the whole thing together and see what people are going to get. I should like to mention one or two things as examples. What should be our conception of fundamental rights? Apart from the knowledge that we can gather from the experience of other countries, there is also the knowledge born out of our own experience, that is, there are certain rights which we have been denied in the past by an alien and autocratic government. We have come up against those difficulties. We want to incorporate every one of those rights which our people want to get. One vital thing which our people have been suffering from in the past has been the curtailment of the liberty of the press by means of securities and by other methods. The press has been crushed completely. This is a thing against which every patriotic Indian is up in arms, including every Congressman, and, therefore, in his heart of hearts every Indian feels that in a free India in order that people may feel freedom and act up to it, there should not be such drastic curtailment of liberties of the press. But what do we find? There is not even a mention of the liberty of the press in this whole list of fundamental rights submitted by the Committee, except a solitary mention made at one place that there will be liberty of expression. Sir, this is something which goes against our experience and must be protected.

Similarly, there is another thing that we have found all along that a Government which does not depend on the people and which rules the country by autocracy and by means of force, detains people without trial, without having to go through a judicial process. This is a thing against which Indians have been entertaining the bitterest feelings and they have been agitating against this from the Congress and every other platform. But in the fundamental rights that have been cooked up by this Committee we do not find this right. That is why I am constrained to say that these are fundamental rights from a police constable's point of view and not

from the point of view of a free and fighting nation. Here whatever right is given is taken away by a proviso. Does Sardar Patel want even more powers than the British Government—an alien Government, an autocratic Government which is against the people—needs to protect itself? Certainly not. Sardar Patel has the support of the overwhelming masses of the people and, therefore, he can do with much less powers to rule the country than an autocratic government would require. But here we find that none of the existing provisions of the powers of the executive has been done away with; rather in some respects those powers are sought to be increased. And if some of the amendments are passed—specially that of Shri Rajagopalachariar—it will in certain cases be even worse than the conditions obtaining at present. I will give one example. Here according to Sardar Patel a seditious speech is a punishable crime. If I say at any time in the future, or the Socialist Party says, that the Government in power is despicable, Sardar Patel, if he is in power at that time, will be able to put the Socialist Party people and myself in jail, though, as far as I know, even in England a speech, however seditious it may be, is never considered a crime unless an overt act is done. These are the fundamental bases of the fundamental rights of a free country, but here a seditious speech also is going to be an offence; and Shri Rajagopalachariar wants to go further. Sardar Patel would punish us if we make a speech, but Rajaji would punish us even before we have made the speech. He wants to prevent the making of the speech itself if in his great wisdom he thinks that the fellow is going to make a seditious speech.

Dr. B. Pattabhi Sitaramayya: Sir, we cannot anticipate amendments.

Mr. Somnath Lahiri: I will not discuss any more of the amendments.

We thus find that the feeling among Congressmen in general, as evidenced by this circular of the Constituent Assembly section of the Congress Party, is for extended fundamental and civic rights which will enable the country to function in a free manner and for political oppositions to grow. What is the necessity of fundamental rights in a bourgeois national democracy which you are trying to have? There one of the fundamental objects is that a political opposition must have full freedom to express its views, to draw its own conclusions and to say anything it likes. If I am in the opposition or if some one else is in the opposition it is certainly his business to say that the existing Government is despicable; otherwise he would not be in the opposition. Why should my right to say that be curtailed and at the same time we should assume that political opposition will grow and democracy will develop? It cannot; it will have to depend on the sweet will and the tender mercies of the party in power or the executive in power. That is not the basis of democracy.

Sir, I would request the Committee to consider the amendments very liberally and try their best to accommodate the amendments so that we can have really good and democratic fundamental rights which will give our people a real feeling of freedom and from which our country will go on gathering strength. Otherwise, if we lay down fundamental rights and then insert provisions in every clause for taking away those rights, we will simply make ourselves a laughing stock before the whole democratic world.

Mr. R. K. Sidhwa (C.P. and Berar: General): Sir, I will deal with Mr. Lahiri's statement first. He has misinformed the House by stating that the Committee has absolutely ignored the economic rights and the fundamental rights in various aspects. Sardar Patel in moving his motion made it clear that this is only a preliminary report or rather an interim report; the motion regarding economic and political rights is not here and will be taken up hereafter. Mr. Lahiri must know that we are not unmindful about this matter. We are much more keen on these economic and political

[Mr. R.K. Sidhwa]

rights of the citizens than he imagines; and therefore to say that those rights should have been presented to us now in this document and that failing that we would be making a laughing-stock of ourselves to the world is not fair to this House.

Now, coming to Dr. Kunzru, I was really very sorry to find him stating that some of the clauses in this statement do not come within the purview of fundamental rights or justiciable rights. If any one has studied the various constitutions of other countries he will find that there are chapters and chapters and clauses and clauses dealing with economic, commercial and trading rights of the people. And for Dr. Kunzru to state that this is not a fundamental right or a justiciable right is not fair to this House. I will quote a few paragraphs from some constitutions to show that commerce and trade and economics are considered justiciable fundamental rights. In Germany, Part 2 of Art. 138 says :

“Property and other rights of unions in respect of a property devoted for public purposes, social and commercial, are guaranteed.”

“Then in Art. 151 it says :

“Freedom of trade and industry is guaranteed in accordance with the provisions of the laws of the Reich.”

A number of these may be quoted but I will content myself with just a few Art. 156 says :

“The Reich may by legislation in case of present necessity and in the economic interest of the community oblige economic undertakings and associations to combine in a self-governing basis for the purpose of ensuring the co-operation of all productive factors of the nation, associating employers and employees in the management and regulating the production, manufacture, distribution, consumption, prices and the import and export of commodities upon principles determined by the economic interests of the community.”

Then further take South Africa. Section 136 says:

“There shall be free trade throughout the Union, but until Parliament otherwise provides the duties of customs and of excise leviable under the laws existing in any of the colonies at the establishment of the Union shall remain in force.”

Clause 10 and clause 8, to which Dr. Kunzru has made reference, refer to trade within the Units and the Union, and I see no reason why such a clause should not stand for the protection of the various trades that would move about from Unit to Unit and from Unit to Union. As regards clause 8(e) it says :

“The right of every citizen to reside and settle in any part of the Union, to acquire property and to follow any occupation, trade, business or profession.”

It is considered a justiciable and fundamental right. If a right to reside and settle is not a justiciable or fundamental right, I do not know what else it could be. Under the circumstances I do feel that the objections of Dr. Kunzru are untenable and I agree with Mr. Lahiri that in some respects this Report is certainly not complete, and we have to give elaborate personal and political rights. It is not that we have ignored that part. There are various amendments on the order paper; I have moved some of them and other Hon'ble Members have also done so. They will be considered by this House. I might also state that the Committee had suggested that the secrecy of correspondence should be guaranteed and that there should be no kind of interception of correspondence, telegrams and telephones, but the main Committee has deleted it. Therefore, it is unfair to say that the Fundamental Rights Committee did not consider this question. We have now moved amendments to that effect, and it is for the House to consider those amendments. Mr. Lahiri should not have made all those general remarks; he should have confined himself to the amendments which have been moved. Therefore, I contend, Sir, that these fundamental rights are

justiciable, and I do feel that the objection of Dr. Kunzru is not justifiable and that Mr. Lahiri, in his anxiety to move more amendments to protect the rights of every citizen, made an uncalled for remark that we will be making this country a laughing-stock of the world. This is too much indeed.

Prof. N. G. Ranga (Madras: General): I wish to congratulate this Committee on having produced this very valuable document and presented it to this House.

I think it is not worthy of any member of this House to describe this as a sort of cooked-up document from a responsible Committee like this. But I am not surprised that this remark, unworthy as it is, has fallen from the lips of one of our members, considering the political history of the member as well as the antecedents of his party.

Mr. President: Please do not make any personal remarks.

Prof. N. G. Ranga: I have said enough about it.

We are told that this document is prepared from the view point of a policeman. I do not know where the policeman comes in except by way of our attempt to keep him out of the exercise of our fundamental rights. That is exactly the main object with which this charter of Fundamental Rights has been prepared. We have had such a bitter experience of policemen in this country that the authors of this document have had to formulate these clauses in such a way as to have the least possible interference of policemen. If there are any provisions, they are intended to see that those people who believe in liberalism at one end and communism at the other will not be enabled to take advantage of these rights to pave the way for totalitarianism. It happened like that in several States of Europe between the two wars. They took advantage of the fundamental rights there to the extent that they came to power and paved the way for Nazism on the one hand and for communism on the other. We want to safeguard ourselves against such a menace. We have had this experience before us and it is the duty of any responsible body like this to make provision for such provisos as will enable a democratic parliament in this country to prevent any mischief-monger—organized or unorganized—from demoralizing our own democratic State to such an extent as to pave the way and effectively achieve a totalitarian State in this country.

A reference has been made to the absence of any reference in this particular document to freedom of the press. But if a little care had been exercised, it would have been found that this has been provided for in the very first clause—sub-clause 8(a):

“The right of every citizen to freedom of speech and expression.” Expression’ includes freedom of the press.

Now come to the other point—where is the provision for the functioning of the opposition party in these fundamental rights, we are asked ? To draw your attention to a very small thing I need only say that the Congress Party itself is such a democratic body as to make it possible for people like Rajaji to give notice of one set of amendments and people like so many of us to give notice of other amendments which may be diametrically opposite to them, and yet we are able to digest these, consider them all and come to an agreeable decision, a decision which will be democratic and which may come to be acceptable to all parties in the House. We have to make it possible for various political parties to function in our country; we all agree on that. It does not come to us as a sort of a new thought from abroad or from other country, but what I wish to remind this House as well as the member concerned is this : in that country which is upheld as a sort of an ideal to us all,

[Prof. N.G. Ranga]

where is there any scope for the opposition party ? Is there any scope for the opposition party at all ? Indeed in Soviet Russia, people are not allowed to organize themselves into free trade unions. Here in in this country we are already enjoying these rights and we are epitomizing them in this great document. Look at it from every point of view and you will find that this document proposes to give to our masses in this country more democratic, more liberal, more comprehensive, and more fundamental rights than are being enjoyed in any other country, not even excluding Soviet Russia.

There is another point raised by my Hon'ble friend, Dr. Kunzru, namely that several of these things are not justiciable. I am not a lawyer, and, therefore, I do not wish to go into the technical side of it. All that I say is to express my extreme satisfaction with regard to clause 22(1) and 22(2) wherein the right is given to the ordinary citizen to move the Supreme Court by appropriate proceedings for the enforcement of any of the rights guaranteed by this part. This is a very important privilege that is being conferred on our citizens. The only additional privilege that I wanted to be conferred upon them is that—as I said on an earlier occasion—those citizens who are so poor as not to be able to move the Supreme Court, should be enabled under proper safeguards, of course at the cost of the State, to move the Supreme Court in regard to the exercise of any of these fundamental rights. With all these provisos Dr. Kunzru told us that the very essence of these fundamental rights is being lost and Mr. Lahiri has agreed with him. It is rather amusing how Liberalism and Communism can come together and coincide with each other. We have our experience of the way in which the Public Safety Ordinances were enforced in this country. We know that those Ordinances were very arbitrary; they conferred terrible powers, unquestionable powers upon the executive. Are we to be told now that in the same way we should not have any of these provisos at all but that simply power should be conferred upon the Government and that any order made under this particular clause or that particular clause cannot be questioned in a court of law ? That is how it is. We were detained and the orders that were passed to detain us could not be questioned at all in any court of law. But in spite of that there were noble judges. Hon'ble judges of the Calcutta High Court and also of the Central Provinces, who had the courage of their conviction, who were able to look in between the words of those very same ordinances as well as the Public Safety Act and were able to save many people from the gallows by setting aside the judgments of the so-called Special Courts. Similarly, it must be possible and it would be possible, when this document becomes a part of our own Constitutional Law. This document has been so carefully drafted as not to give arbitrary powers but to give just as much power as can possibly be digested in the organisational or institutional exercise of his rights by the ordinary citizen in this country, either organisedly or individually—as much power as possible to those people to see that these individuals, these organisations or institutions are given every possible safeguard or protection. Therefore, these provisos are not going to make these rights nugatory at all. These provisos are intended to prevent our democracy being demoralised or degraded into a dictatorship. These rights are intended to protect our citizens, our law-abiding citizens who believe in democracy from those who believe in dictatorship but only pretend to work for the cause of democracy in order to establish their own dictatorship.

Dr. B. Pattabhi Sitaramayya: Sir, I now move for closure being applied to the discussion.

Mr. President : I think we have had sufficient discussion on the motion. The question is:

“That the question be now put.”

The motion was adopted.

The Hon'ble Sardar Vallabhbhai Patel: Sir, when I moved my motion for the consideration of this Report I did not anticipate any long debate on this question. I thought that there would be plenty of opportunities for scrutinising the clauses, omitting some clauses, if necessary, that may be considered objectionable or improving any if need be. Now that the debate has taken place I want to place before the House certain aspects of the proceedings of the Committee which will give the House an idea that this is neither a haphazard Report nor a report cooked or uncooked. It is carefully considered Report. There were two schools of thought in the Committee and there was a large number of very eminent lawyers who could scrutinise every word of every sentence, even commas and semi-colons, from a very critical point of view. These two schools viewed the matter from two different angles. One school considered it advisable to include as many rights as possible in this Report—rights which could straightaway be enforceable in a court of law, rights in regard to which a citizen may without difficulty go straightaway to a court of law and get his rights enforced. The other school of thought considered it advisable to restrict fundamental rights to a few very essential things that may be considered fundamental. Between the two schools there was considerable amount of discussion and finally a mean was drawn which was considered to be a very good mean. It must not be understood, because this Report is called an Interim Report, that the second Report will be much bigger, or that many more important things will come under the subsequent report. It cannot, in the nature of things, be that the principal report which comes before the House would be containing less important things. Very essential things have been included in this Report. But there is another report which has to be considered and that is the report on fundamental rights which are non-justiciable. There may be other points that may strike this House or may be suggested from outside which may have to be considered and the Committee may take them into account. But I may inform the House that this Report has gone through three Committees. Of course the third school of thought was absent in the Committee. That school would require that under the fundamental rights which were provided for a free India there should be no police, there should be no jail, there should be no restrictions on the press, the baton, the lathi or the bullet. Every body should be free in a free India to do what he likes. That school was absent in the Committee. But the two schools of thought that considered this Report studied not the fundamental rights of one country alone but of almost every country in the World. They studied all the Constitutions of the world and they came to the conclusion that in this Report we should include as far as possible rights which may be considered to be reasonable. On that there may be difference of opinion in this House and this House is entitled to consider every clause from a critical point of view and to suggest alterations, modifications or omissions but what I have moved in this House, now is, that this Report may be taken into consideration. Therefore, I thought that any elaborate speech was not necessary and hence I suggested that whatever has to be considered, or whatever suggestions have to be made, may be made at the time when clauses are considered. As I told the House there are about 150 amendments, though the time given was about ten hours or so. The House contains members who are very studious, very critical and very well-informed and therefore it is to the credit of the House that we have got as much as 150 amendments in such a short space of time. I think if we proceed at this rate we will debate

[The Hon'ble Sardar Vallabhbhai Patel]

perhaps for a much longer period than we expect. So, I suggest that the Report be taken into consideration, and if that is accepted, we may take clause by clause.

Mr. President: The question is:

“That the Constituent Assembly do proceed to take into consideration the interim report on the subject of Fundamental Rights submitted by the Advisory Committee appointed by the resolution of the Assembly of the 24th January, 1947.”

The motion was adopted.

CLAUSE 1—DEFINITIONS

Mr. President: We now proceed to consider the Report clause by clause. Clause 1.

The Hon'ble Sardar Vallabhbhai Patel: Clause 1 is a clause which gives the definition:

“Unless the context otherwise requires—

- (i) ‘The State’ includes the legislatures and the governments of the Union and Units and all local or other authorities within the territories of the Union.
- (ii) ‘The Union’ means the Union of India.
- (iii) ‘The law of the Union’ includes any law made by the Union legislature and any existing Indian law as in force within the Union or any part thereof.”

I do not think that this clause requires any speech in support of it. Therefore I formally move this clause for the consideration of the House.

Mr. President: I have got notice of several amendments to clause 1. Mr. Kamath.

Mr. K. M. Munshi (Bombay: General): I have given notice of certain verbal amendments to this clause. I could do this only this morning, and if you will be pleased to give me leave.....

Some Hon'ble Members: Louder, please.

Mr. K. M. Munshi: I have submitted to the Office certain verbal amendments to clause 1, which I have already presented to you, and I beg leave under our rules to move these amendments. They are not amendments of substance; they merely make some verbal changes. If you will be pleased to give me leave I may also move them.

Mr. President: I am afraid I have not seen those amendments. But if they are only verbal amendments, I suppose the House will have no objection to their being moved. But I should like to say that I would not allow substantial amendments to be taken up without due notice. (To Mr. Munshi), I shall take up your amendments a little later, unless they can be covered by Mr. Kamath's or any other amendment.

The Hon'ble Sardar Vallabhbhai Patel: Are there any amendments to this clause ?

Mr. President: I have got notice from two Hon'ble Members.

Mr. K. M. Munshi: Before Mr. Kamath moves his amendment, may I say that mine is a verbal amendment to clause 1(i). If that is permitted to be moved, it will remove any doubt that there may be.

Mr. President: You can move yours. (To Mr. Munshi).

Mr. K. M. Munshi: I beg to move that in clause 1, sub-clause (i), insert the words “for the purpose of this Annexure” between the words “State”; and “includes”. The reason of this amendment is very clear. In order to have one convenient phrase only for the purpose of this annexure we have

to use the word "State". The word "State" has been used here only for the purpose of verbal convenience and only for the purpose of this Chapter. If it be left as it is, it might lead perhaps to an impression that this is the definition of "State" in the Constitution Act. Therefore, I submit that the words "for the purpose of this Annexure", that is, for the purpose of the preliminary report in this Annexure, be inserted as I have moved above.

An Hon'ble Member: Then how will the clause read?

Mr. President: Clause 1, sub-clause (i) will read thus:

"The State' for the purpose of this Annexure includes the legislatures and the governments of the Union, etc., etc."

(To Mr. Munshi). In other places the word "Part" is used, and the word can be used in place of "annexure".

Mr. K. M. Munshi: I will accept that.

Mr. President: Sub-clause (i) will read as follows:

"The State' in this Part includes the legislatures and the governments of the Union, etc., etc."

The Hon'ble Sardar Vallabhbhai Patel: I accept this amendment.

Sri L. Krishnaswami Bharthi: I submit that amendment of Mr. Munshi may appropriately be prefixed to the first sentence itself to cover all the three definitions of that clause. We can say—

"Unless the context otherwise requires, and for the purpose of this Part—"

and then give the definitions as in the clause.

Mr. President: Instead of putting in the words "for the purpose of this Part" after the word "State", let those words come in the beginning. Then it will read as follows:

"In this Part, unless the context otherwise requires—

(i) 'The State' includes the legislatures and the governments of the Union and the Units and all local or other authorities within the territories of the Union....."

and so on.

Mr. K. M. Munshi: I have no objection, Sir. "Union" must mean the Union of India wherever it is.

Sri K. Santhanam (Madras: General): The amendment is to the definition of "The State" and not to any other definition.

Mr. President: Mr. Munshi's amendment as recast by me has been accepted by the Mover. Does the House accept the amendment?

The amendment was adopted.

Mr. K. M. Munshi: I have an amendment to clause 1, sub-clause (iii), that is purely verbal. Sub-clause (iii) says:

"The law of the Union' includes any law made by the Union legislature and any existing Indian law as in force within the Union or any part thereof".

I want to delete the word "as" in the phrase "as in force".

The Hon'ble Sardar Vallabhbhai Patel: I accept this amendment.

Mr. K. M. Munshi: It was felt by many that if the word 'as' is put in, it would mean something as may be in force. Otherwise the word 'as' should be deleted.

Mr. Promatha Ranjan Thakur : Sir, the words "The law of the Union" include any law made by the Union. Sometimes the Union executive may pass orders which have got the force of law. I think the orders made by the Union executive must also be included in this clause.

Mr. President: Did you move an amendment?

Mr. Promatha Ranjan Thakur: No, it is not an amendment.

Mr. President: Mr. Munshi's amendment wants the word 'as' to be omitted and the mover has accepted this amendment. Can I take it that the House accepts this amendment?

The amendment was adopted.

Mr. President: Mr. Kamath will please move his amendment.

Mr. H. V. Kamath (C.P. and Berar: General): Mr. President, since I sent in my amendment I have learnt that the terms whose definitions have been incorporated in this clause have been arranged in alphabetical order and I am further told that in the matter of definitions the alphabetical order should and does take precedence over any other order. In these circumstances, I do not desire to move my amendment and beg leave of the House to withdraw the same.

Mr. President: Dr. Syama Prasad Mookherjee may move his amendment.

Dr. Syama Prasad Mookherjee (Bengal: General): Sir, in view of Mr. Munshi's amendment, it is not necessary for me to move my amendment.

Mr. President: Mr. Chaudhury may move his amendment.

Srijut Rohini Kumar Chaudhury (Assam: General): Sir, I beg to move that in clause 1, the following new definitions be inserted:—

“(iv) ‘School’ means any educational institution.”;

In these clauses dealing with the fundamental rights, we find the word ‘school’ and also the words ‘educational institutions’ being used at different places, leading one to think that some distinction is intended. I would like it to be clearly stated that by school we mean any educational institution. I am referring to clause 18, sub-clause (2) where it is stated—

“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.”

Here the words used are “State educational institutions”. In sub-clause(3)(a) it is laid down—

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

Here we have the words “educational institutions”. And in sub-clause(3)(b) the word ‘schools’ is used—

“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 is likely to lead to confusion and my amendment is intended to avoid this confusion.

We have to safeguard our rights in the schools also. Some like you, Sir, are extremely good at their studies and knock off all the prizes. But others there are who have other kind of memories of their school days. They remember standing on the bench, standing on the floor, kneeling down on the floor, kneeling under the bench, and all that. We do not want any such things to happen again, because the clauses here are not clear. They should apply equally to schools and to all educational institutions. Therefore, I suggest it may be put down that schools mean any educational institutions.

Mr. K.M. Munshi: In clause 18 (3) (b) the word “schools” has not been used to narrow down the scope of the clause but to discriminate them from other educational institutions. This question, I think can best

be dealt with when we come to clause 18. Actually sub-clause (3) (b) was intended to apply only in regard to the system of primary education.

Mr. President : Shall I put the amendment to vote now ? The amendment is—one part of it—

That in clause 1, the following new definitions be inserted:—

‘School’ means any educational institution.

The amendment was negatived.

Srijut Rohini Kumar Chaudhury: The second part of my amendment is, for defining untouchability, it may be clearly stated that.

“‘Untouchability’ means any act committed in exercise of discrimination on, grounds of religion, caste or lawful vocation of life mentioned in clause 4.”

Sir, in the fundamental rights, it has been laid down that untouchability in any form should be an offence punishable by law. That being so it is necessary that the offence should be properly defined. As it stands, the word ‘untouchability’ is very vague. It should be defined in the manner in which I have put it, or in some other better form which may be decided upon by the House.

Dr. S. C. Banerjee (Bengal: General): Mr. President, the word ‘untouchability’ actually requires clarification. We have been accustomed to this word for the last 25 years, still there is a lot of confusion as to what it connotes. Sometimes it means merely taking a glass of water and sometimes it has been used in the sense of admission of ‘Harijans’ into temples, sometimes it meant inter-caste dinner, sometimes inter-caste marriage. Mahatma Gandhi who is the main exponent of ‘untouchability’, has used it in various ways and on different occasions with different meanings. So when we are going to use the word ‘untouchability’, we should be very clear in our mind as to what we really mean by it. What is the real implication of this word? I think we should make no distinction between untouchability and caste distinction, because as Mr. Thakur has said, untouchability is merely a symptom, the root cause is caste distinction and unless and until the root cause, that is caste distinction is removed, untouchability in some form or other is bound to exist and when we are going to have an independent India, we should expect everyone to be enjoying equal social conditions. It is incumbent on us that we should be very clear as to make it explicit that in the future independent India, there should be no distinction between man and man in the social field. In other words, caste distinction must be abolished. Of course there is difficulty as to whether we can make it justiciable or not. I have thought over it for a long time. I do really believe that in place of untouchability, some other word, such as, ‘caste distinction’ should be used or the word ‘untouchability’ should be clearly defined so as to leave no doubt in the mind of any one as to what we really mean by it.

Mr. K. M. Munshi: Sir, I oppose this amendment. The definition is so worded that if it is accepted. it will make any discrimination even on the ground of place of birth or caste or even sex untouchability. What does the definition say ?

“‘Untouchability’ means any act committed in exercise of discrimination on grounds of religion, caste or lawful vocation of life mentioned in clause 4.”

Now, Sir, clause 4 does not deal with untouchability at all. It deals with discrimination regarding services and various other things. It may mean discrimination even between touchables and touchables, between people of one province and another. The word ‘untouchability’ is mentioned in clause 6. The word ‘untouchability’ is put purposely within inverted commas in order to indicate that the Union legislature when it defines ‘untouchability’ will be able to deal with it in the sense in which it is normally understood.

[Mr. K. M. Munshi]

The present amendment will be extending the scope of the definition of untouchability. Sir, I oppose the amendment.

Mr. Dharendra Nath Datta (Bengal: General): Sir, it seems to me that whether the definition suggested by Mr. Rohini Kumar Chaudhury is accepted or not, it is necessary that there should be some definition put in. Here it is said that 'untouchability' in any form is an offence. A magistrate or a judge dealing with offences shall have to look to the definition. One magistrate will consider a particular thing to be untouchability, while another magistrate may hold a different thing to be untouchability, with the result there will be no uniformity on the part of the magistracy in dealing with offences. It will be very difficult for the judge to decide cases. Moreover, untouchability means different things in different areas. In Bengal, untouchability means one thing, while in other provinces, it means an entirely different thing. So, unless a definition is put in, it would be impossible for the judiciary to deal with offences coming under untouchability. Whether you accept the amendment of Mr. Rohini Kumar Chaudhury or not, some definition must be there. This question may be left to the Drafting Committee to find out some suitable definition of the word 'untouchability'. I strongly feel that unless there is a definition, it cannot be dealt with as an offence. We all feel that untouchability should be made an offence and it should be done away with. I also feel with my friend Mr. Thakur that the root cause of untouchability, namely, the caste system, in Hindu society should be abolished altogether. Unless the caste system is abolished, untouchability will persist in some form or other. It has been said times without number by our leaders that unless Hindu society is drastically reformed by abolishing the caste system, it is bound to perish. Caste system should be abolished. So, if we are to deal with 'untouchability' as an offence, there should be some definition and I hope it would be left to the Drafting Committee to frame suitable definition so that it will be placed before the House for discussion. With these words, I support the amendment.

Mr. President: I should like to draw the attention of the House to clause 24 which says :

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

I take it that the Union legislature will define the word 'untouchability' so that the courts might prescribe proper punishment.

Srijut Rohini Kumar Chaudhury: I beg leave to withdraw the amendment.

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

Mr. President: I do not propose to put to vote of the House clause by clause. We will discuss each clause and the House will come to certain decisions. These decisions will be reviewed when the whole Constitution is ready. Suitable alterations will be made in the light of what precedes and what follows, so that there might be no discrepancy between one part and another. Therefore, the House need not be very meticulous about words now.

The Hon'ble Sardar Vallabhbhai Patel: There shall be no duplication of debates and it shall not be open to reopen the whole thing. There shall be only reconciliation between various clauses, in the matter of phraseology.

Mr. President: I do not suggest any duplication or any second discussion clause by clause. When in the whole draft comes back we shall see how each clause fits and that there is no discrepancy. Subject to that I think the House can take clause by clause into consideration.

Srijut Rohini Kumar Chaudhury: Sir, on a point of information, I should like to know whether a separate Bill like the Bill of Rights will embody all these provisions and then will be presented to this House. In that case it will be unnecessary to discuss these amendments.

Mr. President: We are now discussing that very thing. As I said, we shall see at the end that all conflicts and discrepancies are removed; not that we shall discuss the whole thing over again.

Sri M. Ananthasayanam Ayyangar (Madras: General): Sir, you should put the question that clause 1, as amended, be passed.

Mr. President: I am not taking formal votes because it will not then be open to review later on. Therefore, I am taking up the consideration of the clauses one after another.

The Hon'ble Sardar Vallabhbhai Patel: Sir, unless it is accepted by the House there is no point in going through the whole Report. When the whole Report is gone through, if it is understood that the necessary adjustments will be made. But if you leave the whole thing open without taking votes there is no point in going through the Report.

Mr. N. V. Gadgil (Bombay: General): Does a vote mean that it is finally accepted and there is no further scope of any further suggestions even in the matter of principle ?

Sri K. Santhanam: Sir, some of the rules may be changed afterwards and you can ask the House to change anything. But let us accept the clauses.

Mr. President: It is always open to the House to review its own decisions and in that way every decision that we take today will be open to review. But I was suggesting that even without re-opening the whole thing we might remove all conflicts and discrepancies which may appear later on by making the necessary adjustments. In any case I will put clause 1 to vote.

The question is that clause 1, as amended, be passed.

The motion was adopted.

CLAUSE 2—APPLICATION OF LAWS

The Hon'ble Sardar Vallabhbhai Patel: Sir, I move that clause 2 be accepted. The clause runs thus :

“All existing laws, notifications, regulations, customs or usages in force within the territories of the Union inconsistent with the rights guaranteed under this part of the Constitution shall stand abrogated to the extent of such inconsistency, nor shall the Union or any unit make any law taking away or abridging any such right.”

If we make a fundamental right justiciable this is not a necessary corollary of it but in this connection I should like to draw the attention of the House to paragraph 7 of the Report which says :

“Clause 2 lays down that all existing laws, regulations, notifications, customs, or usage in force within the territories of the Union inconsistent with the fundamental rights shall stand abrogated to the extent of such inconsistency. While in the course of our discussions and proceedings we have kept in view the provisions of existing Statute law, we have not had sufficient time to examine in detail the effect of this clause on the mass of existing legislation. We recommend that such an examination be undertaken before this clause is finally inserted in the Constitution.”

Therefore, this clause is subject to examination of its effect on the existing laws and this should be done before the Constitution is finally drafted and the clause finally adopted.

Sir, I move.

Sri K. Santhanam: Sir, I gave notice of an amendment but I will move it in a somewhat modified form in terms of a suggestion made by Sardar Patel. I move that in clause 2 for the words “nor shall the Union or any

[Sri K. Santhanam]

unit make any law taking away or abridging any such right”, the following be substituted:

“Nor shall any such right be taken away or abridged except by an amendment of the Constitution.”

The only reason is that if the clause stands as it is then even by an amendment of the Constitution we shall not be able to change any of these rights if found unsatisfactory or inconvenient. In some constitutions they have provided that some parts of the Constitution may be changed by future constitutional amendments and other parts may not be changed. In order to avoid any such doubts I have moved this amendment and I hope it will be accepted.

The Hon'ble Sardar Vallabhbhai Patel: Sir, I accept the amendment.

Mr. Promatha Ranjan Thakur: Sir, the words are “nor shall the Union or unit etc.” “Union” has been defined in the first clause but not “unit”; That also should be defined.

Mr. President: The word “unit” does not occur in Mr. Santhanam's amendment and so the question does not arise.

The Hon'ble Rev. J. J. M. Nichols-Roy (Assam: General): Sir, we understand that there will be provincial constitutions and each province will frame its own constitution. If so, the amendment of any law relating to a province should be left to the provinces instead of to the Union. The power to amend the Provincial law must lie in an autonomous province. If it is true, as we understand now, that the Union will deal with certain subjects only like Defence, External Affairs and Communications, we do not want that any provincial power should be limited by any fundamental right or any of its powers to be taken by the Union of India. Therefore, it seems to me that this amendment will be dangerous. I suggest that we should deal with all the fundamental rights first and take up this clause 2 last. I want to see whether any provision in the fundamental rights, does not encroach on the powers of an autonomous province or State.

Mr. B. Das (Orissa: General): I am inclined to agree with the Hon'ble Rev. Nichols-Roy, and I cannot accept Mr. Santhanam's amendment. We cannot delegate that power to the Union Legislature or the Provincial Legislature. That means that the future Constituent Assembly be called upon to make such fundamental changes that are implied by the amendment of Mr. Santhanam. I would suggest to the House to see to whom we are delegating this power before we accept this amendment and leave the Provincial Legislature to do any thing it likes.

The Hon'ble Sardar Vallabhbhai Patel: The amendment suggested would make all the fundamental rights obligatory because it is absolutely essential that this clause should be passed if these rights are considered justiciable and fundamental. If these are not justiciable then they are not consistent. But if it is considered that those clauses which confer rights on citizens which could be enforced in law, then it is necessary that any act, custom, regulation or notification which takes away or abridges this right, must be abrogated. Otherwise, it is meaningless. Therefore, Sir, I oppose the postponement of the motion. I have of course accepted Mr. Santhanam's amendment.

Mr. President: The mover of the Resolution has accepted Mr. Santhanam's amendment. The question now is:

“That in clause 2 for the words ‘nor shall the Union or any unit make any law taking away or abridging any such right,’ the following be substituted:

‘nor shall any such right be taken away or abridged except by an amendment of the constitution’.”

The motion was adopted.

Mr. President: The question is—(I will now read the amended clause)—

“All existing laws, notifications, regulations, customs or usages in force within the territories of the Union inconsistent with the rights guaranteed under this part of the constitution shall stand abrogated to the extent of such inconsistency, nor shall any such right be taken away or abridged except by an amendment of the constitution.”

The Constitution will provide rules for its own amendment, and the Constitution will be amended in accordance with the rules which will be provided in the Constitution. This clause also, if necessary may be amended in the same way as any other clause in the Constitution.

The motion was adopted.

CLAUSE 3—CITIZENSHIP

The Hon’ble Sardar Vallabhbhai Patel: Now I will take up clause 3:

“Every person born in the Union or naturalised in the Union according to its laws and subject to the jurisdiction thereof shall be a citizen of the Union.”

To this should be added:

“Further provision governing Union citizenship may be made by the laws of the Union.”

That was originally passed by the Committee but in printing it was omitted by mistake. It will be moved by Mr. Munshi.

Mr. K. M. Munshi: These words were originally in the Report which was placed before the Advisory Committee, but it seems due to some oversight they did not find a place in the final Report. The idea is that the Union will not only have to make laws with regard to naturalisation but with regard to citizenship further provisions may also have to be made. So those words have to find a place in this particular clause; otherwise the whole idea will remain incomplete. I therefore move that the following words may be added at the end of this clause:

“Further provision governing Union citizenship may be made by the laws of the Union.”

Mr. Promatha Ranjan Thakur: The clause as it stands is rather vague. It reads—

“Every person born in the Union or naturalised in the Union according to its laws... ”

I do not understand how a person can be born according to law. There should be a comma after ‘Union’; you must not leave it vague.

Mr. B. Das: This clause is the only outstanding fundamental right a citizen can claim—political equality. ‘Every person born in the Union..’ will include any non-Indian—a German, or a Japanese who will enjoy the rights of Indian citizenship from the 14th to 21st year unless he declares that he is not an Indian. I would like a provision should be made that—

“a person born in the Union can declare for the nationality open to him by virtue of descent.”

It seems that the Fundamental Rights Committee has not bothered about this aspect of the question.

European born sons and daughters will seek occupation in State and private services and later they can turn as aliens. Lord Roberts was born in India and yet he was one of the greatest satraps to keep down Indians. Of course only one European, Pierre Loti, was born in India and he remained a friend of India throughout. I do agree with my leaders as far as they are thinking on the right lines, viz., that they will bring further provisions by legislation to define fundamental rights. It appears to me that the present draft of citizenship is very wrong as it concedes economic exploitation to aliens on some pretext. Nowhere have you defined nationality, as has been suggested by Mr. Sidhwa. We do see that the Fundamental

[Mr. B. Das]

Rights Committee had to race against time and that they had no time to take into consideration certain factors which they have ignored so far. I do hope that this House will look into that aspect of the matter and will not agree to exploitation of Indian citizens in any shape or manner, by aliens or alien-born I feel very unhappy over this lacuna of exploitation.

Mr. K. M. Munshi: Sir, on a point of personal explanation I was in error in stating that this clause was omitted by mistake. I looked into the Minutes and I find that it was dropped in the Advisory Committee. I was under a wrong impression.

Mr. President: The point that has been raised by Mr. Das deserves consideration and I want the mover to consider it. The wording of the clause as it stands is—

“every person born in the Union shall be a citizen of the Union.”

Mr. Das says that the wording is too wide and may include the child of any foreigner born in this country, as he would acquire the right of citizenship by the mere fact of his birth.

Mr. K. M. Munshi: May I point out that the wording is “subject to jurisdiction”—That is the doctrine of allegiance. Persons born of foreigners, consuls and diplomats, will not be included.

Mr. President : “Subject to jurisdiction” will not include allegiance. I am not quite sure about it but the lawyers in this House have to help us on that.

Mr. K. M. Munshi: “Subject to jurisdiction” has been defined by several authorities and it means persons born of persons who owe allegiance to the Union. If necessary, I will satisfy the Hon'ble Member who has put forward this point of view. The wording “subject to jurisdiction” has been taken from the American Constitution and has been expressly ‘construed’ to mean this.

Mr. President: Our Constitution should be self-contained as far as possible. We should not depend on the interpretation of clauses in other constitutions, as it may lead us to any amount of confusion.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar (Madras: General): Sir, this clause has been borrowed from the American Constitution. There are two ideas of citizenship. In the Continental countries citizenship is based upon race: it has nothing to do with the birth of a person in any particular place. In the Anglo-American system if a person is born in a particular place, he gets his citizenship. If you want to adopt a different system you may. Under the American system if a Hindu goes to America even today, he becomes an American citizen, though if it is a question of naturalisation there are difficulties in the way of such naturalisation. So the question of birth stands on a different footing from the question of naturalisation. If I may say so, with respect to my friend, Mr. Munshi, that phrase “subject to jurisdiction” is put in for a purpose different from what he stated. Supposing a consul is here and a child is born to him, the child will not get citizenship, because the consul or his child will not be subject to the jurisdiction of the Union. That is why “subject to jurisdiction” is used here, because a person born to a consul here is supposed to be born in his own country. So far as any ambassador or consul or any other person holding a similar status is concerned, the child will not get the citizenship. That is why the expression “subject to the jurisdiction” occurs in that clause. Therefore the main principle underlying this clause is that if a person is born here he must get the citizenship, even if he is a foreigner. That is the principle obtaining in England in America and in every other country in which Anglo American jurisprudence prevails.

So far as continental countries are concerned citizenship is based upon blood: it is based upon race: and therefore wherever that person may be if he is the son of a person of a race he has to get citizenship. That is the principle. No doubt difficulties have been expressed in regard to this principle of birth, when people leave their country and children are born to them. That is why provision is made in the British Nationalities Act in regard to birth of children to British citizens abroad and an appropriate provision may be made in the Union laws to cover such cases. The first part of the clause commits the Constitution to the fundamental principle that every person who is born in this Union is a citizen of the Union. The second part of it refers to naturalisation and then both of them are subject to the jurisdiction thereof. Other cases where children are born to nationals who go abroad from this country will have to be provided for by the Union law. That is the exact position. This is merely the principle obtaining in the Anglo-American law, viz., that if a person is born within the jurisdiction he shall get the citizenship. If you want to depart from it, it may land you in difficulties. You may borrow the whole of the continental system—either the German, French or the Italian system of nationality. But we thought that it would be much better to follow the Anglo-American system, a system with which we are acquainted.

Mr. President: I want to ask one question. Suppose a Jap by birth is travelling through this country and while travelling a child is born to him. What happens?

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: In spite of the language of the clause the American Supreme Court has held on this very clause that a casual visitor like that will not come within the language of the Constitution.

Sri M. Ananthasayanam Ayyangar: Why not?

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: My answer is that the Supreme Court of America construing this particular clause has held that. I think it is a reasonable exception which can be made. I have looked into this particular point yesterday thinking that this point would come up for consideration, because even a lady passenger in a railway train may give birth to a child, and an exception should be made to cover that class of person who is transiently present in this country to whom a child is born, that that person shall not have citizenship. But then what exactly is the meaning of 'transient presence'? That will have to be provided for and it will be very difficult. Under those circumstances there is no great hardship felt in America by adopting the rule that birth determines citizenship. Otherwise you must have a detailed provision as in the British Nationalities Act, where there are four special clauses to cover such cases. You must borrow all the clauses of the British Nationalities Act, which provides a more comprehensive definition than this. But we thought that on the whole it would be better to adopt the shorter form as in the American Constitution which can find a place in a chapter on Fundamental Rights.

Mr. President: It seems to be a very important question and we should thrash it out. What would happen to a man who is not simply passing through the country but stays in this country, say, for some years for trade purposes or some other purpose?

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: His son will become a citizen, but political rights are distinct from civic rights. There is no general rule of law that a citizen is entitled to political rights, because we know as a fact that according to the American law of citizenship the citizen is only entitled to civic rights. It does not stand in the way of the Constitution being so framed as not to concede political and other rights to the citizen. Citizenship by itself does not carry anything like minimum

[Diwan Bahadur Sir Alladi Krishnaswami Ayyar]

rights. Citizenship may confer certain rights in particular cases. If you think that those clauses should not be extended to all the citizens, it is for you to make a distinction. Citizenship right by itself normally under the American law from which it borrowed—does not connote any minimal rights. Though the Eighteenth Amendment is applicable to every State in U.S.A., the citizen does not possess political and other similar rights in various States in the Union. Certain rights we have extended to all people. So far the area of fundamental rights of citizens has been considerably reduced and no considerable difficulty can possibly arise in regard to citizenship in matters relating to religion, protection of property, protection of person, protection of organisation and some safeguards as to public order and all that. But the difficulty is likely to arise by importing the idea of political rights into citizenship. Otherwise, we must consider the question whether we have to borrow this principle at all or depart from it altogether. We have got that very thing in the British Nationality Act itself. Or we shall, have to have some concept of citizenship distinct from the British Nationality Act, distinct from the American law, borrowing from the German or Italian conception or we must have our own idea of what citizenship is. That is how the matter stands.

Mr. President : Personally, I do not like that we should follow the precedent of any other country. We should have our own citizenship and formulate what that citizenship connotes.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: While I greatly appreciate that, I cannot altogether forget the fact that citizenship will carry with it protection in the international field. In dealing with citizenship we have to remember we are fighting against discrimination and all that against South Africa and other States. It is for you to consider whether our conception of citizenship should be universal, or should be racial or should be secretarian. That is a question of politics on which I am not so competent as some other people here. But so far as this is concerned, I merely state the law as it is and the principles on which the Fundamental Rights Committee has proceeded.

Sri M. Ananthasayanam Ayyangar: Take the case of a Japanese who comes into this country and stays here for some time and a son is born to him. Does he lose the citizenship which he inherits from his mother in Japan or he does not do so and he continues to be a citizen of both countries.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: The problem of double nationality is one of the most difficult questions which international jurists have to face. All that we can provide for is a kind of citizenship. We cannot try to remove all the complications that will arise out of the problem either of Statelessness or double nationality. Owing to conflict between the continental and Anglo, Saxon systems differences might arise. You might provide for a particular person choosing his citizenship in cases where such conflict arises, but you cannot possibly provide in a chapter on fundamental rights all the complications that may arise on account of the problem of double citizenship, Statelessness and all those considerations.

Sri M. Ananthasayanam Ayyangar: In clause 4 it is said:

“The State shall make no discrimination against any citizen on grounds of religion, race, caste or sex.”

Therefore, that is an unqualified citizenship and thus a fundamental right. This can only be modified by a modification of the Constitution, not even by the law of a unit or of the Union Legislature. Therefore, you are not

making a discrimination between citizenship rights and political rights. Is it not desirable that we should not leave this definition in an indefinite form as it now stands in this paper?

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: The clause relating to discrimination in the context can only refer to civic right. It will be for the Provincial and the Union Constitution to give franchise in any form. You can make it subject, if necessary, to qualifications as to franchise both in the Provincial and the Union Constitutions. I may also say that in fact some members of the Committee were anxious to say that every right must be a human right. I hope I am not disclosing any secret when I say that Mr. Masani went to the length of saying that most of the rights should be extended to human beings who are in this country; that was the stand he took up. As a matter of fact, there is nothing novel in that. The first Ten Amendments of the American Constitution are not confined to citizens. Whatever may be the interpretation put upon them by the Supreme Court, the first Ten Amendments of the American Constitution are not confined to citizens. It extends to every human being generally. Of course, the word "discrimination" has been understood not to extend to Political right, and it is only confined to civic right ordinarily exercised by the citizen. We are not doing anything novel.

Shri R. V. Dhulekar (United Provinces: General): I submit there is no provision made for any child which has been born outside the Union of parents who are citizens of the Union. I should like to know whether that child will also obtain the right of citizenship or not?

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: That is why provision has been made that the law of the Union may provide for it.

One other suggestion I would like to make. When we draft the Union Constitution you may consider it. If you accept the view, that normally speaking we have to adopt the general principle in Anglo-Saxon or American jurisprudence subject to necessary modifications or modifications that may be introduced by the Law of the Constitution for the time being, especially in view of what has already fallen from you, we will consider the whole thing in juxtaposition with other provisions of the Constitution, and if it is likely to come into conflict, that may be considered. But one thing. Are we going to bring in race idea, namely, only those who are born of parents—you call them Indians or other people—are entitled to citizenship or are you going to subscribe to the principle that birth settles citizenship, though necessary exception will have to be engrafted for the purpose of providing for children of Indian nationals who are born abroad? I am not at all suggesting that you must rigorously follow the principle of what you call *lex soli*, that is, place of birth? The two principles are *lex soli* and *lex sanguinis*. *Lex soli* means the law of the place of birth and *lex sanguinis* means according to blood. These are the two different principles in the field of international law.

Mr. R. K. Sidhwa: When this question was considered in the main Advisory Committee, the clause read thus:

"Every person born in the Union or naturalised in the Union shall be a citizen of the Union."

I moved an amendment there that the citizenship clause being very vague should be made more clear as you have rightly pointed out. I put a definite period. I said, whoever is not naturalised for at least ten years in this country shall not be considered a citizen.

On this the following words were added:—

"According to the laws and subject to the jurisdiction thereof."

I was told that this would cover my point; although I was not satisfied as a commonsense man I felt—that this did not cover the view point I raised.

[Mr. R.K. Sidhwa]

I was, however, helpless before the views of the legal luminaries. It is, therefore, very necessary that we should have a clear definition of the word 'citizen', and it should be put down in the Constitution and not left to be dealt with when we are making laws hereafter. I suggest that it should be explicitly defined here, and that this clause be postponed and dealt with tomorrow.

Mr. Jagat Narain Lal (Bihar: General): Sir, I feel that the definition of citizenship given in the Constitution of the Irish Free State may be useful in this connection. The definition there is—

“Every person, without distinction of sex, domiciled in the area of the jurisdiction of the Irish Free State at the time of the coming into operation of this Constitution, who was born in Ireland or either of whose parents was born in Ireland or who has been ordinarily resident in the area of the jurisdiction of the Irish Free State for not less than seven years, is a citizen of the Irish Free State.”

I think, Sir, if some such time limit, as seven years for domicile is laid down, that will solve our difficulty.

Sri M. Ananthasayanam Ayyangar: Sir, I find that the words in this definition are taken, almost word for word, from the American Constitution. In the American Constitution it reads thus—

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are the citizens of the United States and of the State wherein they reside.”

But this definition of 1868, we are told, has been given various interpretations during the subsequent years. I would therefore request this matter to be left over for being dealt with tomorrow. It is one of the most important clauses. On the question of citizenship there have been lots of quarrels all over the world, in Jerusalem, for instance. This is a matter on which there is scope of difference of opinion. For example, if a Japanese child is born in this country, should it be allowed to become a citizen of this country or become a national of this country merely because of the fact that it was born here? Or can we lay it down that if a man lives in this land for a period of 10 or 15 years, he should get the right of being a citizen of this country? I do not think we should make any distinction between foreigners in the matter of citizenship in this country. I feel it is not contemplated in the fundamental rights, it is an innovation. These are matters which require deep thought. I would, therefore, suggest leaving this question over till tomorrow when we will sit together and find out how to modify the present definition.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: Sir, I would only invite the attention of the House to the definition of a British citizen and even this has given rise to difficulties and they have had to make special provision for married women. It is not an easy thing to produce a Nationality Act by tomorrow morning.

The definition says:—

(1) The following persons shall be deemed to be natural born British subjects, namely:—

- (a) Any person born within His Majesty's dominion and allegiance; and
- (b) Any person born out of His Majesty's dominions whose father was, at the time of that person's birth, a British subject, and who fulfills any of the following conditions, that is to say, if either,
 - (i) his father was born within His Majesty's allegiance; or
 - (ii) his father was a person to whom a certificate of naturalisation had been granted; or
 - (iii) his father had become a British subject by reason of any annexation of territory; or
 - (iv) his father was at the time of that person's birth in the service of the crown; or

- (v) his birth was registered at a British consulate within one year or in special circumstances, etc.
- (c) Any person born on board a British ship whether in foreign territorial waters or not.

Even this Act had caused difficulty in the case of married women. Therefore, if at least one thing is decided upon and if we generally accept the general principle, that will be better. My friend, Mr. Ananthasayanam Ayyangar is more hopeful than myself. I do not think it will be possible to come with a ready-made solution of this difficulty by tomorrow coming. For the time being, let us accept the general principle. The exact qualifications and modifications necessary may be considered later. We need not overnight manufacture a law of nationality before 11 o'clock tomorrow morning.

Mr. President: May I make one suggestion for the consideration of the mover? As it is a very important matter—and it is one to which I myself attach great importance—if an amendment like this could be accepted, it might remove most of our difficulties. You begin the sentence like this:

“Save as otherwise provided by the law of the Union, every person born in the Union or naturalised in the Union according to its laws and subject to the jurisdiction thereof shall be a citizen of the Union.”

Now, as the clause reads, apart from what the American precedent is, about which I do not know, it seems to me that it is so wide that every one born in this country will be a citizen of the Union, and the rights of a citizen are specifically given, in clause 9.

The Hon'ble Sardar Vallabhbhai Patel: There are two ideas about nationality in the modern world, one is broad-based nationally and the other is narrow nationality. Now, in South Africa we claim for Indians born there South African nationality. It is not right for us to take a narrow view.

Mr. President: We claim for Indians in South Africa the nationality of that country not merely by birth but by reason of settling there.

The Hon'ble Sardar Vallabhbhai Patel: Yes. This Constitution is for a period of ten years after which it will be subject to revision. We have added a proviso which covers all our difficulties. I suggest for your consideration how many foreign men and women come to India for giving birth to children to acquire Indian nationality. It is a curious idea that for that purpose you introduce racial phraseology in our Constitution. It is important to remember that the provision about citizenship will be scrutinised all over the world. They are watching what we are doing. We will be undergoing great risk if you postpone this matter and raise legal controversies. By commenting on every word in this, you will never come to an end. This is a simple problem. We must always have a few foreigners coming here. This will be accidental nationality—If by the accident of birth, some one comes and stays here, subject to the proviso which we have enacted, we can control double citizenship by our legislation. We can always control that.

The Hon'ble Sri C. Rajagopalachariar (Madras: General): We must remember that this clause is intended for the positive purpose of creating a unitary citizenship of India. We should not be obsessed by foreign accidental possibilities.

The Hon'ble Dr. Kailas Nath Katju (United Provinces: General): Mr. President, it is hardly necessary for me to add to the illuminating exposition of Sir Alladi Krishnaswami Ayyar. I suggest that in the definition as it stands we might add something on these lines. Under the present law every person who is born in British India today has Indian citizenship. If a person is born anywhere outside India, then he becomes an

[The Hon'ble Dr. Kailas Nath Katju]

Indian subject because he is the son of an Indian subject. That ought to be made quite beyond controversy. That should not be left to the proviso. Wherever the subject of the Indian Union goes to any part of the globe and if a child is born to him there, then that child becomes the subject of the Indian Union. I understand that to be the law. If that is not the law, then it ought to be the law of the Union. We are now sending a number of Ambassadors abroad in order to establish contacts with all foreign countries. It would be lamentable if Indian people who go there and if a child is born to them, then that child should not be treated as an Indian subject. This ought to be added to the definition. I do not wish to say anything about double nationality. The law is quite clear. It was very much stressed during the trials of the Indian National army personnel. It was then found that it sometimes happens that if a child of a non-British subject is born in India, then that child may have double nationality of the country where he is born and of the country of his parents. When he becomes a major, it is open to him to accept one nationality and renounce the other. Speaking for myself, whoever is born on Indian soil should be welcomed as a subject of the Indian Union. That is a plain and intelligible proposition. I think we should accept it.

Mr. K. M. Munshi: As has been suggested by Dr. Katju, every child born of Indian parents should have the citizenship of the Union. Now as a matter of fact, the clause as originally sought to be inserted, has this provision that children would be citizens of India, if when they are born the parents are Indian citizens. But it was felt that if you once start introducing various elements and considerations in this clause, then we will be engaged in enacting a nationality law here and now. Therefore the amendment, which I moved, was inserted, *viz.*, that further provisions required for these different cases will be made by a law of the Union. After all we are not making a law of nationality. We are only enacting two indispensable conditions, namely, persons born in India and naturalised according to the law of the Union shall be citizens. The world is divided between the ideas of racial citizenship and democratic citizenship, and therefore, the words 'born in India' become necessary to indicate that we align ourselves with the democratic principle.

The Hon'ble Sardar Vallabhbhai Patel: As I have already explained all these different points of view can be easily provided for under the clause,—

“Further provision governing Union citizenship may be made by the law of the Union.”

All the difficulties suggested from various points of view can be covered in this. It is open to the Union to make any law governing citizenship, if it is necessary. After all how many people are going outside ? A few people. Supposing some children are born outside and if there is any such necessity, this proviso amply covers such difficulties. The difficulties on the opposite side also are covered. Therefore, our general preface or the general right of citizenship under these fundamental rights should be so broad-based that any one who reads our laws cannot take any other view than that we have taken an enlightened modern civilised view. The citizenship clause has been taken from the American model which is more or less consistent with the English. And therefore we should not disturb this and we need not be frightened about it because it is not going to create any difficulties in the intervening period of ten years. If we find any difficulties after our experience of the working of the Constitution for ten years one can easily change it. But I have no doubt that there is going to be no intricacy or difficulty.

It is a simple clause which will be fit and proper for the first Constitution of free India, and we need not have any suspicions.

The Hon'ble Sri C. Rajagopalachariar: Sir, I think it should be "further provisions". It must be plural and not singular.

Mr. President : Even after listening to the learned discourses that have been given to us by eminent lawyers, I confess that I am not yet convinced that the clause as it is, has been rightly put. But it is of course open to the House to accept it in this form.

Srijut Rohini Kumar Chaudhuri: Sir, I suggest that the consideration of this clause may be further postponed.

Mr. President: I am afraid that is not possible. The words—

"Further provisions governing Indian citizenship may be made by the law of the Union." would not improve matters, because "further" means in addition to and not in modification of. Therefore, that would not in any way take away from the amplitude of the clause as it is in the first part of it. But, as I have said, I do not like to influence the House beyond expressing my own opinion, and I leave it to you to give your vote.

Several Hon'ble Members: The clause may be held over.

The Hon'ble Sri C. Rajagopalachariar: Sir, will you permit me to say a word ? There is some misunderstanding.

Mr. President: I do not think it would be right at this stage to allow any member to speak on this clause. There is a suggestion which seems to come from many members that the consideration of this clause may be postponed.

The question is:

"That the consideration of this clause be postponed."

(Votes were taken by show of hands).

The motion was adopted.

Mr. President : I will particularly request lawyers and jurists who are members of this House to give their attention to this clause and to give us something which will be acceptable to all. If they too feel that the clause as it stands should be accepted, I have no doubt that the House will accept their opinion with the respect which is due to them.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar : Sir, we have a big Committee and it is an unworkable proposition for twenty people to discuss the question of citizenship. The whole point has been discussed and I suggest that a small Committee may be appointed to consider this clause.

Mr. K. M. Munshi: That will be better; they can meet and have a discussion because this is a purely technical discussion.

Mr. President: This is a purely legal matter and, therefore, I should like to leave it to the lawyers to give us a draft.

Mr. K. M. Munshi: Three Committees have discussed this question thread-bare and you can now nominate any persons you like and they can discuss it with you.

Mr. President. It is not as if I alone am not convinced about it but a great part of the House is doubtful about this. So there is no use discussing with me alone; even if I am convinced and if the House is not convinced that would not take matters very far.

Shri R. V. Dhulekar: Sir, I propose that a small Committee consisting of Sir B. L. Mitter, Dr. Katju and Mr. K. M. Munshi be appointed to go into this.

The Hon'ble Pandit Jawaharlal Nehru: I think it should be left to the President and the Chairman of the Committee.

Mr. President: If it is left to me I will ask the lawyers to go into it.

Dr. B. Pattabhi Sitaramayya: I suggest that in addition to three lawyers one man of common sense may also be added.

Mr. President: I do not exclude lawyers from the category of people with common sense.

CLAUSE 4—RIGHTS OF EQUALITY

The Hon'ble Sardar Vallabhbhai Patel: Sir, I beg to move clause 4 which runs as follows:

“4. (1) The State shall make no discrimination against any citizen on grounds of religion, race, caste or sex.

(2) There shall be no discrimination against any citizen on any ground of religion, race, caste or sex in regard to—

(a) access to trading establishments including public restaurants and hotels;

(b) the use of wells, tanks, roads and places of public resorts maintained wholly or partly out of public funds or dedicated to the use of the general public:

Provided that nothing contained in this clause shall prevent separate provision being made for women and children.

This is a non-discriminatory clause which is provided in almost all constitutions and adjustments have been made here to suit the special conditions of our country. There may be various points of view and in the Committee also there was a full discussion on this question and I am sure there will be discussion in this House also. A proviso has been made which was found to be necessary because even in a non-discriminatory clause it would be necessary in the present condition of our country to make special provision for women and children.

Some amendments have been given notice of to remove doubts. In clause (2) (a) the words “and places of public entertainment” were suggested in the course of discussion to be added; and in clause 2(b), the words “State funds” are sought to be substituted for “public funds”, Public funds may be by subscriptions or private arrangements; the clause is meant to apply to State funds. In clause (1) it is suggested that for “make no discrimination”; the words “not discriminate”; should be substituted. I shall accept these amendments when they are formally moved.

The Hon'ble Shri Purushottamdas Tandon (United Provinces: General): Is Sardar Patel himself putting forward these amendments ?

The Hon'ble Sardar Vallabhbhai Patel: I said that when these are formally moved I shall be prepared to accept them.

Shri Mahavir Tyagi (United Provinces: General): May I know one thing from the Hon'ble the mover ? May I know why he thought it necessary to repeat in sub-clause (2) what he has already said in sub-clause (1)—I mean the words—

“There shall be no discrimination against any citizen on any ground of religion, race, caste or sex.....”

The Hon'ble Sardar Vallabhbhai Patel: It is very simple. The first clause is about the State obligation; the second clause deals with many matters which have nothing to do with the State such as public restaurants—they are not run by States; and hotels—they are not run by State. It is an entirely different idea, and therefore, it is absolutely essential.

Shri Mahavir Tyagi: It does not satisfy me. The second clause pertains to hotels and restaurants. To say that restaurants and hotels shall do this or that and there shall be no discrimination against any

citizen on any ground of religion, race, caste or sex in regard to access to trading establishments including public restaurants and hotels, is including such establishments which are not included in the State. It is their outlook. But if we are also to enact for those which are not included in the State, then we should make it clear. Could we not put it in one clause that no discrimination shall be allowed against any citizen in regard to restaurants, hotels, well, tanks, roads, and so on? The clause as it stands does not mean this. Either the language should be slightly different, or perhaps I have not exactly followed the meaning of this clause.

Mr. R. K. Sidhva: The words 'Hotels and public restaurants' have been mentioned for special reasons and specific purposes. They are used by the public and even at present licence from the local bodies is necessary before they are allowed to function. It is very necessary that these public places of entertainment—hotels, and restaurants—should be specifically mentioned, so that the owners may not say that A shall be allowed and B shall not be allowed. These words have a definite and special meaning, and they are absolutely necessary. I, therefore strongly suggest that the words be retained as the Hon'ble Sardar Patel has moved.

Mr. K. M. Munshi: Mr. President, Sir. I move:

1. "That in clause 4 (1) the words 'not discriminate' may be substituted in place of 'make no discrimination'."

It is merely a matter of phraseology.

2. "That in clause 4, sub-clause (2) (a) the following words may be added: 'and places of public entertainment'."

A doubt was raised whether places of public entertainment could be treated as trading establishments. In order to make it clear that places of public entertainment are trading establishments, this amendment has been moved:

3. "That in clause 4, sub-clause (2) (b) substitute the words 'State funds' for public funds'."

"Public funds" might be construed differently; it may be even money raised by public subscription for specific purpose. This amendment will clear this doubt.

Mr. President: We have received notice of a number of other amendments to this clause.

Mr. P. S. Deshmukh (C. P. and Berar: General): May I say a word as a matter of general observation on this clause? In drafting such a long clause we are throwing a shadow of untouchability over the whole Constitution of India. In this particular clause, I submit to the House, if we merely say that—

"the State shall not permit any discrimination against any citizen on grounds only of religion, race, caste or sex."

It should be quite sufficient, and it will leave ample opportunity to the Union Government to make specific provisions with regard to hotels, restaurants, parks, theatres, etc. I think, therefore, that the whole of the second part should be omitted. We should not forget that we have to confine ourselves to the rights which are and must be fundamental. This is not the place to enumerate all the various rights a citizen should have. We are here concerned with only justiciable fundamental rights and it would be improper to burden the clauses with a detailed list of places which should be accessible to all. I, therefore, suggest, Sir, that it will serve our purpose if we merely substitute in the place of the whole clause the following—

"That the State shall not make nor permit any discrimination against any citizen, on mere grounds of religion, race, caste or sex."

Mr. Somnath Lahiri: Sir, I support the original motion but there should not be any discrimination on the ground of political creed. The whole idea of these clauses is that discrimination should not be exercised by the State or by other public bodies in respect of religion, caste etc. In the unnatural circumstances of today in India, religious, communal, caste and similar distinctions loom large. But when things have settled down political differences are sure to come to the forefront and there may be a tendency on the part of the State or public bodies to discriminate against members of political parties on the basis of difference in political creeds. In every country in the world you will find that measures are taken generally to obviate this kind of discrimination on the ground of political creed or party. Therefore I want to move:

“That in sub-clause (1) of clause 4, after the words ‘grounds of’, the words ‘political creed’ be inserted.”

Similarly, I beg to move:

“That in sub-clause 2 of clause 4, after the word ‘caste’ the word ‘creed’ be inserted.”

I support also Mr. Kamath’s amendment to the same sub-clauses of clause 4.

Mr. President: Have you moved both the amendments?

Mr. Somnath Lahiri: I have moved both the amendments, Sir.

Mr. H. V. Kamath: Sir, in moving this amendment I seek to draw a distinction between religion and creed. I think the word religion is not comprehensive enough to include in its scope creed as well. For instance, a person may not accept any religion in the conventional or formal sense of the term, yet he may have a creed. A man may say that he has no religion, yet he may say that he is a rationalist or a free-thinker and that I suppose is a creed which anybody can profess and still he may say that he does not belong to the Hindu, Muslim or Sikh religion, or for the matter of that to any other religion. Therefore, I think that the word creed should be inserted in this clause.

I do not subscribe to my friend Mr. Lahiri’s suggestion regarding political creed. I do recognise that times may arise when we may have to discriminate against persons who hold a creed which seeks to subvert the State by violence or similar objectionable methods. We may have to impose discrimination against such persons. But I submit that the word ‘creed’ has a different connotation from the words ‘political creed’.

As regards ‘colour’ perhaps it is included in the word ‘race’. Yet I have my own doubts on that point as well. Personally, I do not think that the word ‘race’ should find a place here, as that would mean that we recognise a multiplicity of races in India—a doctrine to which I do not subscribe. Yet if ethnologists who are present here think that there are many races in India and the word ‘race’ must be there, I will yield to them on that point. But I think in that case the word colour should find a place in this clause.

An Hon’ble Member: What do you mean by colour?

Mr. H. V. Kamath: ‘Colour’ means colour of your complexion. Two persons may belong to the same race but may have different colours physically. Therefore to make it comprehensive. I move:

“That in sub-clause (1) and (2) of clause 4, after the word ‘caste’ the words ‘colour, creed’ be inserted.”

Srijut Rohini Kumar Chaudhuri: Sir, I beg to move:

“That in sub-clause (2) of clause 4, after the word ‘sex’, the following words be inserted:

‘or of dress worn by any nationality.’”

It seems almost a laughing matter. But even today when we are on the threshold of independence there are hotels which do not welcome people dressed in Indian style. I know of an instance which recently occurred when four Indian gentlemen of my province were not allowed to live in a hotel because they wore Indian dress. I am not afraid that in future the same restriction will be observed by any hotel owners. Today of course unfortunately there are some European-owned or European-managed hotels which do not take in Indians in Indian dress or make it a condition that they must not come to their dining rooms in that dress. I am not afraid of the future, because I believe that when India is independent such restriction would disappear. But what I am afraid of is a reprisal or a revenge taken against such European-minded people and people in European dress may not be allowed to come into hotels. For that reason particularly I want that this amendment should be accepted by this House.

Mr. Dharendra Nath Datta: Sir, I do not want to move the amendment which stands in my name. (Amendment No. 12 on Supplementary List, dated 28th April 1947).

Sri D. Govinda Doss (Madras: General): (Spoke in Telugu). Sir, I move:

“That in sub-clause 2 (b) of clause 4, after the word ‘roads’ the words ‘Schools, temples or places of worship’ be inserted.”

Sri V. C. Kesava Rao (Madras: General): I move:

“That in sub-clause 2 (b) of clause 4, after the word ‘roads’ the words ‘Schools, hostels, temples or places of worship’ be inserted.”

I want to say that though some schools are thrown open to the Harijans in the villages, they are not allowed to sit along with the caste Hindu students. They are asked to sit on the floor or at a distance. I would like to say in this connection that education is the birth-right of every citizen. So a Harijan or an untouchable should be given the same right as every other citizen. As regards temples, I may submit that untouchables are made to worship God only from a distance and not before God. Even though the untouchables are saying that they are Hindus for the last so many centuries, they are being denied this right and they are made to worship God only from a distance and not within the temple itself. I think that untouchability is the sole cause for the non-admission of untouchables into temples. I request that these things may be taken into consideration.

Mr. President: There is another amendment in the name of Shri P. Kakkan. But that is covered by the amendments that have already been moved by Mr. Govinda Doss and Mr. Kesava Rao, and it is not necessary to move that amendment (that is, amendment No. 15).

Shri Ajit Prasad Jain (United Provinces: General): I beg to move:

“That in sub-clause (2) (b) of clause 4, after the word ‘roads’ the words ‘educational institution, hospital or dispensary’, be inserted; and after the word ‘resort’ the words ‘built or’ be inserted.”

The speaker who preceded me just now has spoken about educational institutions. It is not necessary for me to repeat those arguments. I have also included hospitals and dispensaries among the places in regard to which no discrimination should be made provided they receive aid from State funds. Educational institutions, dispensaries and hospitals are very necessary for the moral, mental and physical, development and

[Shri Ajit Prasad Jain]

my opinion is that any public institution which receives any assistance from State funds should be open to all persons irrespective of their religion, caste, race or sex. In this connection, I would like to refer to paragraph 18 (3) (b) which says:

“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.”

Now, the amendment which I have suggested would negative this provision, for I would make it compulsory that any educational institution, hospital or dispensary, if it receives any aid or assistance should be thrown open to all persons. Secondly, I want the words “built or” to be inserted after the word “resort”, for the States assistance may take the form of a lump sum or a periodical amount for the purpose of maintaining the thing. The present clause as it stands will not include institutions which receive any lump sum aid for construction and, therefore, my second suggestion is that the words “built or” be inserted after the word “resort” so that both the institutions which have been built or are maintained by the State funds may come within the mischief of this clause.

Mr. R. R. Diwakar (Bombay: General): I beg to move:

“That in sub-clause (2) (b) of clause 4 for the word ‘and’ a comma be substituted, and after the word ‘resort’, the following words be inserted:—

and schools, colleges and other institutions.”

I should like to bring to the notice of the House that this is a question of equal opportunity. Equal opportunity to all should be given in schools, colleges and other institutions which are State-aided, so that people may not be shut out from any institution on account of race, creed, religion, etc. There may be some apprehension that if this amendment is accepted certain schools which are denominational or run by certain sections or communities may be flooded, or entry may be demanded by all into such schools. But I may state that there is a sufficient safeguard in the phrase which says, “dedicated to the use of the general public”. Unless the institutions are run wholly or partly by State funds and are dedicated to the use of the general public, there is no such danger arising by the acceptance of this amendment. Therefore, I request the House to accept it.

I also move:

“That after the words ‘general public’ at the end of sub-clause (2) (b) of clause 4, the following be added:—

‘and (c) the use of all kinds of public conveyances’.”

I do not think it necessary for me to say anything about it.

Srijut Rohini Kumar Chaudhuri: I beg to move:

“That the following explanation be added at the end of clause 4:—

‘*Explanation* : A place of public resort includes a yard or house attached to any temple where musical and dramatic performances, cinema shows or other entertainments are held for entertainment of general public’.”

There are many temples which have got attached to them houses called Nat Mandirs. During festivals and on other occasions also dramatic performances and cinema shows are held there. The performances are sometimes given by people belonging to what you call the Harijans, but the Harijans themselves are not allowed to go. This is very galling to the people. Therefore, whenever any show or any dramatic performance takes place in any place attached to the temple, all members of the public must have access to it.

Mr. President: Have you a new clause to be added, or is it an amendment to clause 4?

Srijut Rohini Kumar Chaudhury: It has been misplaced, or wrongly placed. It should be under clause 6 as an amendment.

Mr. President: You can take it up with clause 6.

Now all the amendments of which notice was given have been moved. Therefore, the motion as well as the amendments are now open for discussion.

Mr. K. M. Munshi: Sir, regarding adding the words "schools, etc." to clause 4, I submit that this matter be left over till we come to clause 18. Otherwise the discussion on clause 4 will drift to other matters which are connected to this subject. If it becomes necessary as a result of discussion, to make some modification in clause 4, that may be made later. The discussion will be more cognate so far as education is concerned, if it is taken up with clause 18.

As regards the amendments relating to temples, they relate to untouchability and I submit that they should be taken up with clause 6. This particular clause—clause 4, relates only to rights of citizens with regard to places of public use.

I, therefore, submit that permission may be given to members to deal with these amendments under clause 18 and clause 6.

Mr. R. R. Diwakar: In view of the suggestion by Shri Munshi, I hold over my amendment regarding schools.

Sri M. Ananthasayanam Ayyangar: I would like to submit that there are sources of water supply other than wells, tanks, etc., such as channels, and I think these also should be covered by clause No. 4. Therefore, I think it necessary to add the words "and other sources of water supply" after the word "tank". Otherwise, there will be a lacuna.

Then again, there may be discrimination in giving medical relief, on grounds of religion, etc. That will be a dangerous thing. Therefore, Sir, if you do not think want of notice a serious objection against it, I would request you to permit me to add the words "and medical institutions" after the word "public resort". It will then read:—

"the use of wells, tanks, roads and places of public resort and medical institutions maintained wholly or partly out of public funds or dedicated to the use of the general public."

Mr. R. K. Sidhva: I want to have one point clarified, Sir. Suppose a well is constructed by a philanthropic person at a public place in a small village, but he has not dedicated it for public use, and allows everyone to use it, except a few persons in the village, he has used a public place but not dedicated for public use, what will happen? What will be the position then? As it is, this clause is not happily worded, and the House might like to have it worded in a better way.

Mr. President: I would request the mover to give his reply now.

The Hon'ble Sardar Vallabhbhai Patel: The first amendment is from Mr. Somnath Lahiri. He wants that there should be no discrimination on grounds of political creed. I do not know what discrimination he has in view. The non-discrimination clause is restricted to, or is provided for on grounds of religion, race, caste or sex. He wants 'political creed' also to be included. I think it is an absurd idea to provide for non-discrimination as regards a political creed. Political creed may be of any kind. There may be some political creeds highly objectionable. Some may not be deserving of discrimination, but may actually be deserving of suppression altogether. So, I think it does not fit in here. The other amendment relates to colour. I do not know what is the meaning of it. There are different kinds of colours among Indians themselves. Have we got to provide for all of them. Therefore, I do

[The Hon'ble Sardar Vallabhbhai Patel]

not think all these amendments are necessary at all. The amendment relating to schools and colleges can be provided for when we come to discuss a separate clause relating thereto.

I am glad that on the whole the House is of opinion that this clause is aptly drafted.

Now there is only amendment left of Srijut Rohini Kumar Chaudhury. I do not think this is really necessary. There is no bar against any particular kind of dress. In my present dress I go to the Viceroy's house as well as to the abode of the humblest peasant. There is now no discrimination on account of dress.

Srijut Rohini Kumar Chaudhury: In some hotels and restaurants there is ban against the entry of Indians dressed in Indian national costume.

The Hon'ble Sardar Vallabhbhai Patel: All the foreigners are going. You need not be obsessed on that account. Such things as dress cannot be put in the fundamental rights. If the world at large should read such provisions in our fundamental rights, then they would naturally conclude that we do not even know how to treat our nationals and how to treat our fellow beings. I may assure my friend that there is no discrimination now on account of dress. I do not think such things should be provided for in fundamental rights.

Srijut Rohini Kumar Chaudhury: What about the ban of entry of Indians in some hotels and restaurants because of their dress?

The Hon'ble Sardar Vallabhbhai Patel: The whole conception is born out of the idea of slavery. That idea of slavery has been haunting some of our people. Not even a shadow of it is left now.

Mr. President: Mr. Deshmukh has suggested that it would be sufficient if you put one clause as follows:

"The State shall not make or permit any discrimination merely on the ground of religion, etc:....."

The idea is if you put it like that, that would cover all cases and the second sub-clause will not be necessary. It would cover cases of private institutions as well as State institutions. We can have one comprehensive clause.

The Hon'ble Sardar Vallabhbhai Patel: If there is no formal amendment, I should prefer the present clause to stand as it is.

Mr. President: Now, I will put the amendments one by one. The first amendment of Mr. Munshi is:

"For the words, 'the State shall make no discrimination', the words 'the State shall not discriminate' be substituted."

The Hon'ble Sardar Vallabhbhai Patel: I accept the amendment.

Mr. President: The question is that above amendment be adopted.

The motion was adopted.

Mr. President: The second amendment is:

"In sub-clause (2) (a) of clause 4, after the word 'hotels', add the words 'and places of public entertainment'."

The Hon'ble Sardar Vallabhbhai Patel: I accept the amendment. The word 'and' before 'hotels' should be omitted and should be placed after 'hotels'.

Mr. President: The amendment:

"In sub-clause (2) (a) of clause 4, omit the word 'and' before hotels and add the words 'and places of public entertainment' after the word 'hotels'."

The motion was adopted.

Mr. President: The next amendment is in sub-clause (2) (b) of clause 4, for the words 'public funds' substitute the words 'State funds.'

The Hon'ble Sardar Vallabhbhai Patel: I accept the amendment.

Mr. President: The question is:

"In sub-clause (2) (b) of clause 4 for the words 'public funds' substitute the words 'State funds'."

The motion was adopted.

Mr. President: The question is:

"That in sub-clause (1) of clause 4 after the words, 'grounds of' the words 'political creed' be inserted.

The motion was negated.

Mr. President: The question is:

"That in sub-clause (2) of clause 4 after the word 'caste' the word 'creed' be inserted."

The motion was negated.

Mr. H. V. Kamath : Regarding my amendment No. 10, I desire to withdraw so far as it relates to the insertion of the word 'colour'. With great respect I am still not convinced that religion and creed are the same and so I press that portion of the amendment relating to the insertion of the word 'creed'.

Mr. President: A similar amendment in the name of Mr. Lahiri has just been put to the House and negated.

Mr. President: The question is:

"That in sub-clause (2) of clause 4, after the word 'sex' the following words be inserted: 'or of dress worn by any nationality'."

The motion was negated.

Mr. President: The question is:

"That in sub-clause 2 (b) of clause 4, after the word 'roads' the words 'schools, hostels, temples or places of worship' be inserted."

The motion was negated.

Mr. President: Amendment No. 14 covers the same ground and is therefore lost.

The question is:

"That in sub-clause (2) (b) of clause 4, after the word 'roads' the words educational institution, hospital or dispensary' be inserted."

The motion was negated.

Mr. President: The question is :

"That in sub-clause (2) (b) of clause 4, after the word 'resort' the words 'built or' be inserted."

The motion was negated.

(Mr. Diwakar's amendment about public conveyances was withdrawn.)

Mr. President: No. 19 is withdrawn. The question is:

That the following explanation be added at the end of clause 4:—

"Explanation: A place of public resort includes a yard or house attached to any temple where musical and dramatic performances, cinema shows or other entertainments are held for entertainment of general public."

The motion was negated.

Mr. President: The question is that clause 4, as amended, be passed.

The motion was adopted.

CLAUSE 6

The Hon'ble Sardar Vallabhbhai Patel: Sir, I request that clause 5 may be held over because it requires some further consideration and I may be allowed to move clause 6 which runs thus:

“6. ‘Untouchability’ in any form is abolished and the imposition of any disability on that account shall be an offence.”

There can be no difference of opinion on this question. This is now an accepted proposition all over and should be provided for in the fundamental rights, and any one who suffers a disability on this account should have the right to go to a court of law and have redress. I hope there will be no amendment on this.

Mr. H. V. Kamath: Sir, I move that in clause 6, after the word “Untouchability” the word “unapproachability” be inserted, and after the word “any” the words “and every” be inserted.

By this amendment I want to make the clause more comprehensive because in some parts of India the practice of unapproachability besides untouchability used to obtain some years ago, to my own knowledge, in some places like Malabar specially; I do not know what it is now. So I thought that if you include the word “unapproachability” it would make the clause more comprehensive. The other small amendment that I propose is purely verbal. It does not change the meaning but only emphasises the clause.

Sri S. Nagappa (Madras: General): Sir, I move that in clause 6, for the words “imposition of any disability”, the words “observance of any disability” be substituted. My reason is that imposition implies that one party that imposes it on another is guilty but I suggest that if the untouchability is observed by any person it must be an offence. Unless this amendment is made I do not think the provision made here is enough to punish a person. So I request the House to see that by accepting my amendment observance of untouchability is made a punishable offence.

Sri P. Kunhiraman (Madras: General): Sir, I move that in clause 6 after the word “offence” the following words be inserted:

“punishable by law.”

The original clause makes it an offence and implies that it will be punishable; I want to make it more explicit. It is just a verbal amendment and I commend it for acceptance. Moreover, if we only say that it is an offence it may be interpreted later on in the sense that it is not a legal offence. So it is necessary that it should be made explicit.

Mr. President : The motion and the amendments are now under discussion.

The Hon'ble Sardar Vallabhbhai Patel: The first amendment is by Mr. Kamath. He wants the addition of the word ‘unapproachability’. If untouchability is provided for in the fundamental rights as an offence, all necessary adjustments will be made in the law that may be passed by the Legislature. I do not think it is right or wise to provide for such necessary corollaries and, therefore, I do not accept this amendment.

The other amendment is by Mr. Nagappa who has suggested that for the words “imposition of any disability” the words “observance of any disability” may be *substituted*. I cannot understand his point. I can observe one man imposing a disability on another, and I will be guilty

I have observed it. I do not think such extreme things should be provided for. The removal of untouchability is the main idea, and if untouchability is made illegal or an offence, it is quite enough.

The next amendment was moved by Mr. Kunhiraman. He has suggested the insertion of 'punishable by law'. We have provided that imposition of untouchability shall be an offence. Perhaps his idea is that an offence could be excusable, or sometimes an offence may be rewarded. Offence is an offence; it is not necessary to provide that offence should be punishable by law. Sir, I do not accept this amendment either.

Then, it was proposed that for the words 'any form', the words 'all forms' be substituted. Untouchability in any form is a legal phraseology, and no more addition is necessary.

Mr. H. V. Kamath: In view of the explanation given by the Hon'ble Sardar Patel I beg leave of the House to withdraw the amendments moved by me.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That in clause 6, for the words 'imposition of any disability', the words 'observance of any disability' be substituted."

The motion was negatived.

Sri P. Kunhiraman: Sir, in the light of the observations made by the Mover of the Resolution I beg leave of the House to withdraw the amendment moved by me.

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

Mr. President: The question is that clause 6 be accepted.

The motion was adopted.

Mr. President: I have received a request from several Members that they should be permitted to give notice of amendments to the clauses which have not yet been considered, and their ground is that yesterday they received the Report rather late and they could not send in their amendments before 5 o'clock. We have already got a large number of amendments, and I do not know if the House would like to extend the time to receive more.

Shri Mahavir Tyagi: It does not matter because your disposal is so fast.

Mr. President: It is not my disposal, but it is done by the House.

If we get the amendments up to 5 o'clock then there is this difficulty. The amendments have to be tabulated, typed and cyclostyled, and there is very little time in the evening because of the Curfew Order. On previous occasions they had to work up to late at night. Now they find it difficult to work at night. If, the Members waive their right of getting copies of these amendments, I might accept their request.

Rai Bahadur Syamanandan Sahaya (Bihar: General): They may be amendments which were received in office after 5 o'clock yesterday....

Mr. President: Those which have already been received will be accepted and even today if notice of amendments is received up to 2 o'clock they will be taken in. But after that it will be very difficult. In any case, amendments to amendments can be handed in until the Session begins tomorrow morning.

As regards the time, we met at half past 8 o'clock today and we have carried on for 4 hours. But I am told that time is not convenient to some Members, and it is still more inconvenient to our office people, some

[Mr. President]

of whom live in distant parts of the city. They have to work from 8 o'clock in the morning to late in the evening. If the House agrees we might meet at 9 o'clock tomorrow morning.

Several Hon'ble Members: Yes, yes.

Mr. President: The House now stands adjourned.

The Assembly then adjourned till Nine of the Clock on Wednesday, the 30th April 1947.

APPENDIX

CONSTITUENT ASSEMBLY OF INDIA

No. CA/24/COM/47

Council House,
New Delhi, the 23rd April, 1947.

FROM

THE HON'BLE SARDAR VALLABHBHAI PATEL,
*Chairman, Advisory Committee on Minorities,
Fundamental Rights, etc.*

To

THE PRESIDENT,
Constituent Assembly of India.

SIR,

On behalf of the members of the Advisory Committee appointed by the Constituent Assembly of India on the 24th January, 1947, I have the honour to submit this interim report on fundamental rights. In coming to its conclusions, the Committee has taken into consideration not merely the report of the Sub-Committee on fundamental rights but also the comments thereon of the Minorities Sub-Committee.

2. The Fundamental Rights Sub-Committee recommended that the list of fundamental rights should be prepared in two parts, the first part consisting of rights enforceable by appropriate legal process and the second consisting of directive principles of social policy which, though not enforceable in Courts, are nevertheless to be regarded as fundamental in the governance of the country. On these latter, we propose to submit a subsequent report; at present, we have confined ourselves to an examination only of the justiciable fundamental rights.

3. We attach great importance to the constitution making these rights justiciable. The right of the citizen to be protected in certain matters is a special feature of the American Constitution and the more recent democratic constitutions. In the portion of the Constitution Act, dealing with the powers and jurisdiction of the Supreme Court, suitable and adequate provision will have to be made to define the scope of the remedies for the enforcement of these fundamental rights. These remedies have been indicated in general terms in clause 22 of the Annexure.

4. Clause 20 of the Statement of May 16, 1946, contemplates the possibility of distributing fundamental rights between the constitutions of the Union, the Groups, if any, and the Units. We are of the opinion that fundamental rights of the citizens of the Union would have no value if they differed from Group to Group or from Unit to Unit or are not uniformly enforceable. We recommend that the rights set out in the Annexure to

this report be incorporated in the Constitution so as to be binding upon all authorities, whether of the Union or the Units.

5. Clause 10 deals with the freedom, throughout the Union, of trade, commerce and intercourse between the citizens. In dealing with this clause, we have taken into account the fact that several Indian States depend upon internal customs for a considerable part of their revenue and it may not be easy for them to abolish such duties immediately on the coming into force of the Constitution Act. We, therefore, consider that it would be reasonable for the Union to enter into agreements with such States, in the light of their existing rights, with a view to giving them time, up to a maximum period to be prescribed by the Constitution, by which internal customs could be eliminated and complete free trade established within the Union.

6. We have made a special provision in regard to full faith and credit being given to the public Acts, records and judicial proceedings of the Union in every Unit and for the judgments and orders of one Unit being enforced in another Unit. We regard this provision as very important and appropriately falling within the scope of fundamental rights.

7. Clause 2 lays down that all existing laws, regulations, notifications, custom or usage in force within the territories of the Union inconsistent with the fundamental rights shall stand abrogated to the extent of such inconsistency. While in the course of our discussions and proceedings we have kept in view the provisions of existing Statute law, we have not had sufficient time to examine in detail the effect of this clause on the mass of existing legislation. We recommend that such an examination be undertaken before this clause is finally inserted in the Constitution.

8. The Fundamental Rights Sub-Committee was of the opinion that the right of the citizen to have redress against the State in a court of law shall not be fettered by undue restrictions. That Sub-Committee was not able, however, to draft a suitable formula as the matter requires more investigation than was possible in the time at its disposal. It was also suggested during our deliberations that certain additional fundamental rights should be inserted in the constitution. We have not had the time to consider these matters; we shall do so in due course and incorporate any recommendations we may have to make on them in our next report.

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

“Every citizen not below 21 years of age shall have the right to vote at any election to the legislature of the Union and of any Unit thereof, or, where the legislature is bicameral, to the lower chamber of the legislature, subject to such disqualifications on the ground of mental incapacity, corrupt practice or crime as may be imposed, and subject to such qualifications relating to residence within the appropriate constituency, as may be required, by or under the law.

(2) The law shall provide for free and secret voting and for periodical elections to the legislature.

(3) The superintendence, direction and control of all elections to the legislature, whether of the Union or of a Unit, including the appointment of Election Tribunals, shall be vested in an Election Commission for the

Union or the Unit, as the case may be, appointed, in all cases, in accordance with the law of the Union.”

While agreeing in principle with this clause, we recommend that instead of being included in the list of fundamental rights, it should find a place in some other part of the Constitution.

I have the honour to be,

Sir,

Your most obedient servant,
(Sd.) VALLABHBHAI PATEL,

Chairman,

*Advisory Committee on Minorities,
Fundamental Rights, etc.*

ANNEXURE

JUSTICIABLE FUNDAMENTAL RIGHTS

Definitions

1. Unless the context otherwise requires—

(i) “The State” includes the legislatures and the governments of the Union and the Units and all local or other authorities within the territories of the Union.

(ii) “The Union” means the Union of India.

(iii) “The law of the Union” includes any law made by the Union legislature and any existing Indian law as in force within the Union or any part thereof.

Application of Laws

2. All existing laws, notifications, regulations, customs or usages in force within the territories of the Union inconsistent with the rights guaranteed under this part of the Constitution shall stand abrogated to the extent of such inconsistency, nor shall the Union or any unit make any law taking away or abridging any such right.

Citizenship

3. Every person born in the Union or naturalised in the Union according to its laws and subject to the jurisdiction thereof shall be a citizen of the Union.

Rights of Equality

4. (1) The State shall make no discrimination against any citizen on grounds of religion, race, caste or sex.

(2) There shall be no discrimination against any citizen on any ground of religion, race, caste or sex in regard to—

(a) access to trading establishments including public restaurants and hotels,

(b) the use of wells, tanks, roads and places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public:

Provided that nothing contained in this clause shall prevent separate provision being made for women and children.

5. There shall be equality of opportunity for all citizens in matters of public employment and in the exercise of carrying on of any occupation, trade, business or profession.

Nothing here in contained shall prevent the State from making provision for reservations in favour of classes who, in the opinion of the State, are not adequately represented in the public services.

No citizen shall on grounds only of religion, race, caste, sex, descent, place of birth or any of them be ineligible for public office or be prohibited from acquiring, holding or disposing of property or exercising or carrying on any occupation, trade, business, or profession within the Union.

Nothing herein contained shall prevent a law being made prescribing that the incumbent of an office to manage, administer or superintend the affairs of a religious or denominational institution or the member of the Governing Body thereof shall be a member of that particular religion or denomination.

6. "Untouchability" in any form is abolished and the imposition of any disability on that account shall be an offence.

7. No heritable title shall be conferred by the Union.

No citizen of the Union and no person holding any office of profit or trust under the State shall, without the consent of the Union Government, accept any present, emoluments, office, or title of any kind from any foreign State.

Rights of freedom

8. There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency declared to be such by the Government of the Union or the Unit concerned whereby the security of the Union or the Unit, as the case may be, is threatened:—

(a) The right of every citizen to freedom of speech and expression:

□ Provision may be made by law to make the publication or utterance of seditious, obscene, blasphemous, slanderous, libellous or defamatory matter actionable or punishable.

(b) The right of the citizens to assemble peaceably and without arms:

Provision may be made by law to prevent or control meetings which are likely to cause a breach of the peace or are a danger or nuisance to the general public or to prevent or control meetings in the vicinity of any chamber of a Legislature.

(c) The right of citizens to form associations or unions:

□ Provision may be made by law to regulate and control in the public interest the exercise of the foregoing right provided that no such provision shall contain any political, religious or class discrimination.

(d) The right of every citizen to move freely throughout the Union.

(e) The right of every citizen to reside and settle in any part of the Union, to acquire property and to follow any occupation, trade business or profession:

□□□□□□□□ Provision may be made by law to impose such reasonable restrictions as may be necessary in the public interest including the protection of minority groups and tribes.

9. No person shall be deprived of his life, or liberty, without due process of law, nor shall any person be denied the equal treatment of the laws within the territories of the Union:

Provided that nothing herein contained shall detract from the powers of the Union Legislature in respect of foreigners.

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 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 or revenue by a Unit to one Unit over another.

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 hereby 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.

12. 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 clause shall prejudice any educational programme or activity involving compulsory labour.

Rights relating to religion

13. 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 Chapter.

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.

14. Every religious denomination shall have the right to manage its own affairs in matters 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.

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.

16. No person attending any school maintained or receiving aid out of public funds shall be compelled to take part 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.

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

Cultural and Educational Rights

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

(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 compulsorily 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.

Miscellaneous Rights

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

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

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

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

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

Rights to Constitutional Remedies

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

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

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

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

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