Monday, 6th December, 1948

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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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Volume VII—4th November 1948 to 8th January 1949

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 6th December 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the Pledge and signed the Register:—

Shri K. Chengalaraya Reddy (Mysore).

DRAFT CONSTITUTION—(*Contd.*)

Article 19—*(Contd.)*

Mr. Vice-President (Dr. H. C. Mookherjee) : We shall now resume discussion on article 19.

Shri Lokanath Misra (Orissa: General) : Sir, it has been repeated to our ears that ours is a secular State. I accepted this secularism in the sense that our State shall remain unconcerned with religion, and I thought that the secular State of partitioned India was the maximum of generosity of a Hindu dominated territory for its non-Hindu population. I did not of course know what exactly this secularism meant and how far the State intends to cover the life and manners of our people. To my mind life cannot be compartmentalised and yet I reconciled myself to the new cry.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): Sir, are manuscripts allowed to be read in this House?

Mr. Vice-President : Ordinarily I do not allow manuscripts to be read, but if a Member feels that he cannot otherwise do full justice to the subject on hand, I allow him to read from his manuscript.

The Honourable Pandit Jawaharlal Nehru: May I know what is the subject?

Mr. Vice-President : Mr. Lokanath Misra is moving an amendment to article 19. I ask the indulgence of the House because Mr. Lokanath Misra represents a particular point of view which I hold should be given expression to in this House.

Shri Lokanath Misra: Gradually it seems to me that our 'secular State' is a slippery phrase, a device to by-pass the ancient culture of the land.

The absurdity of this position is now manifest in articles 19 to 22 of the Draft Constitution. Do we really believe that religion can be divorced from life, or is it our belief that in the midst of many religions we cannot decide which one to accept? If religion is beyond the ken of our State, let us clearly say so and delete all reference to rights relating to religion. If we find it necessary, let us be brave enough and say what it should be.

Shri S. Nagappa (Madras : General) : The honourable Member is reading so fast that we are not able to follow him.

Mr. Vice-President : Order, order.

Shri Lokanath Misra : But this unjust generosity of tabooing religion and yet making propagation of religion a fundamental right is some what uncanny and dangerous. Justice demands that the ancient faith and culture of the land should be given a fair deal, if not restored to its legitimate place after a thousand years of suppression.

[Shri Lokanath Misra]

We have no quarrel with Christ or Mohammad or what they saw and said. We have all respect for them. To my mind, Vedic culture excludes nothing. Every philosophy and culture has its place but now (the cry of religion is a dangerous cry.) It denominates, it divides and encamps people to warring ways. In the present context what can this word 'propagation' in article 19 mean? It can only mean paving the way for the complete annihilation of Hindu culture, the Hindu way of life and manners. Islam has declared its hostility to Hindu thought. Christianity has worked out the policy of peaceful penetration by the back-door on the outskirts of our social life. This is because Hinduism did not accept barricades for its protection. Hinduism is just an integrated vision and a philosophy of life and cosmos, expressed in organised society to live that philosophy in peace and amity. But Hindu generosity has been misused and politics has overrun Hindu culture. Today religion in India serves no higher purpose than collecting ignorance, poverty and ambition under a banner that flies for fanaticism. The aim is political, for in the modern world all is power-politics and the inner man is lost in the dust. Let everybody live as he thinks best but let him not try to swell his number to demand the spoils of political warfare. Let us not raise the question of communal minorities anymore. It is a device to swallow the majority in the long run. This is intolerable and unjust.

Indeed in no constitution of the world right to propagate religion is a fundamental right and justiciable. The Irish Free State Constitution recognises the special position of the faith professed by the great majority of the citizens. We in India are shy of such recognition. U.S.S.R. gives freedom of religious worship and freedom of anti-religious propaganda. Our Constitution gives the right even to propagate religion but does not give the right to any anti-religious propaganda.

If people should propagate their religion, let them do so. Only I crave, let not the Constitution put it as a fundamental right and encourage it. Fundamental rights are in alienable and once they are admitted, it will create bad blood. I therefore say, let us say nothing about rights relating to religion. Religion will take care of itself. Drop the word 'propagate' in article 19 at least. Civilisation is going headlong to the melting pot. Let us beware and try to survive.

Mr. Vice-President : There are two amendments in my list, *i.e.*, 592 and 593. They are of similar import and may be considered together. Of these two, amendment No. 593 standing in the name of Mr. Kamath is more comprehensive and I allow it to be moved.

Shri H. V. Kamath (C. P. & Berar : General): Mr. Vice-President, Sir, I move:—

That after clause (1) of article 19, the following new sub-clause be added:—

"(2) The State shall not establish, endow, or patronize any particular religion. Nothing shall however prevent the State from imparting spiritual training or instruction to the citizens of the Union."

The amendment consists of two parts, the first relating to the disestablishment or the separation of what you may call in Western parlance the Church from the State, and the second relates to the deeper import of religion, namely, the eternal values of the spirit.

As regards the first part of the amendment, I need only observe that the history of Europe and of England during the middle ages, the bloody history of those ages bears witness to the pernicious effects that flowed from the union of Church and State. It is true enough that in India during the reign of Asoka, when the State identified itself with a particular religion, that is, Buddhism, there was no 'civil' strife, but you will have to remember that at that time in India, there was only one other religion and that was Hinduism. Personally,

I believe that because Asoka adopted Buddhism as the State religion, there developed some sort of internecine feud between the Hindus and Buddhists, which ultimately led to the overthrow and the banishment of Buddhism from India. Therefore, it is clear to my mind that If a State identifies itself with any particular religion, there will be rift within the State. After all, the State represents all the people, who live within its territories, and, therefore, it cannot afford to identify itself with the religion of any particular section of the population. But, Sir, let me not be misunderstood. When I say that a State should not identify itself with any particular religion, I do not mean to say that a State should be anti-religious or irreligious. We have certainly declared that India would be a secular State. But to my mind a secular state is neither a Godless State nor an irreligious nor an anti-religious State.

Now, Sir, coming to the real meaning of this word 'religion', I assert that 'Dharma' in the most comprehensive sense should be interpreted to mean the true values of religion or of the spirit. 'Dharma', which we have adopted in the crest or the seal of our Constituent Assembly and which you will find on the printed proceedings of our debates: धर्मचक्रप्रवर्तनाय ("Dharma Chakra pravartanaya")—that spirit, Sir, to my mind, should be inculcated in the citizens of the Indian Union. If honourable Members will care to go just outside this Assembly hall and look at the dome above, they will see a sloka in Sanskrit:

न सा सभा यत्र न सन्ति वृद्धा,
वृद्धा न ते ये न वदन्ति धर्मम्।

Na sa sabha yatra na santi vriddha,
Vriddha na te ye na vadanti dharmam."

That 'Dharma', Sir, must be our religion. 'Dharma' of which the poet has said.

येनैदं धार्यते जगत्

Yenedam dharyate jagat (that by which this world is supported.)

That, Sir, which is embodied which is incorporated in the great sutras, the Mahavakyas of our religions, in Sanskrit, in Hinduism, the Mahavakya 'Aham Brahma Asmi', then 'Anal Haq' in Sufism and 'I and my Father are one'—in the Christian religion—these doctrines, Sir, if they are inculcated and practised today, will lead to the cessation of strife in the world. It is these which India has got to take up and teach, not merely to her own citizens, but to the world. It is the only way out for the spiritual malaise, in which the world is caught today, because the House will agree, I am sure, with what has been said by the Maha Yogi, Sri Aurobindo, in one of his famous books, where he says:

"The master idea that has governed the life, the culture, social ideals of the Indian people has been the seeking of man for his true, spiritual self and the use of life as a frame and means for that discovery and for man's ascent from the ignorant natural into the spiritual existence."

I am happy, Sir, to see in this Assembly today our learned scholar and philosopher, Prof. Radhakrishnan. He has been telling the world during the last two or three years that the malaise, the sickness of this world is at bottom spiritual and therefore, our duty, our mission, India's mission comes into play.

If we have to make this disunited Nations—so called United, but really disunited nations—really United, if we have got to convert this Insecurity Council into a real Security Council, we have to go back to the values of the spirit, we have to go back to God in spirit and truth, and India has stood for these eternal values of the spirit from time immemorial.

Coming to the second part of the amendment, which reads: "Nothing shall however prevent the State from imparting spiritual training or instruction to the citizens of the Union", I attach great importance to the same. India has stood through the ages for a certain system of spiritual discipline,

[Shri H. V. Kamath]

spiritual instruction, which has been known throughout the world by the name of "Yoga"; and Sri Aurobindo, the Maha Yogi, has said again and again, that the greatest need today is a transformation of consciousness, the upliftment of humanity to a higher level through the discipline of Yoga.

May I, Sir, by your leave, read what a Western writer, Arthur Koestler has written in one of his recent books called "Yogi or commissar"? "Yogi" stands for spirituality and "commissar" stands for materialism. In that book the writer observes: "Will mankind find a doctor or a dictator? Will he be yogi or commissar? The yogi does in order to be; the commissar, the capitalist, does in order to have; Western democracy needs more yogis"; that is the conclusion reached by this Western author.

Here, Sir, I would like to draw the attention of the House to the value and the importance that all our teachers, from time immemorial, from the Rishis and the Seers of the Upanishads down to Mahatma Gandhi and Netaji Subhas Chandra Bose have attached to spiritual training and spiritual instruction. Netaji Subhas Chandra Bose went to the length of prescribing spiritual training and spiritual instruction to the soldiers of the Azad Hind Fouj. In the curriculum, in the syllabus of the Azad Hind Fouj, this item of spiritual instruction was included. When I say, Sir, that the State shall not establish or endow or patronise any particular religion, I mean the formal religions of the world; I do not mean religion in the widest and in the deepest sense, and that meaning of religion as the highest value of the spirit, I have sought to incorporate in the second part of the amendment. That is, the State shall do all in its power to impart spiritual training and spiritual instruction to the citizens of the Union.

In the end, I would only say this. We are living in a war-torn, war-weary world, where the values of the spirit are at a low ebb, or at a discount. Nemesis has overtaken the world which has lost its spiritual value, and unless this world returns to the Spirit, to God in spirit and in truth, it is doomed. Sir, I commend my amendment to the acceptance of the House.

Mr. Vice-President : Amendment Nos. 594 and 595 are identical. I can allow amendment No. 595 to be moved.

(Amendments Nos. 595 and 594 were not moved.)

Mr. Vice-President : Amendment No. 596, Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, I beg to move:

"That in clause (2) of article 19, for the word "preclude" the word "prevent" be substituted."

This is only for the purpose of keeping symmetry in the language that we have used in the other articles.

Mr. Vice-President : There are a number of amendments to this amendment. The first is amendment No. 11 of list I, standing in the name of Pandit Thakur Dass Bhargava.

(Amendments Nos. 11 and 12 in list I were not moved.)

Amendment No. 13 standing in the name of Mr. Naziruddin Ahmad is disallowed. For the words "the State" he wants the words "any State" to be substituted.

(Amendments Nos. 597, 598, 599 and 600 were not moved.)

Amendment No. 601, Prof. K. T. Shah.

Prof. K. T. Shah (Bihar: General): Mr. Vice-President, Sir, I beg to move:

"That in sub-clause (a) of clause (2) of article 19, for the words "regulating or restricting any economic, financial, political or other secular activity" the words "regulating,

restricting or prohibiting any economic, financial, political or other secular activity' be substituted."

The clause as amended would read:

"Nothing in this article shall affect the operation of any existing law or preclude the State from making any law—

(a) regulating, restricting or prohibiting any economic, financial, political or other secular activity which may be associated with religious practice....."

These are the words that I have ventured to add, and I think they are necessary. If the State has to have its supreme authority asserted as against, or in relation to, any Religion, which, merely in the name of religion, carries on practices of a secular kind whether it is financial, economic or political, it is necessary that those words be added and form part of the article.

I am not content with merely "regulating or restricting" them; I should like the State also to have the power positively and absolutely "to prohibit" any such practice. Such practices in my opinion, only degrade the very name of religion. Nothing has caused more the popular disfavour of some of the most well-known and most widely spread religions in the world than the association of those religions with secular activities, and with excesses that are connected with those activities. Material possession, worldly wealth and worldly grandeur are things which have been the doom of many an established Church. Many a well-known Religion, which has ceased to follow the original spirit or the precepts of its Founders, has, nevertheless, carried on, in the popular eye, business, trade, and political activity of a most reprehensible character. The State in India, if it claims to be secular, if it claims to have an open mind, should have, in my opinion, a right not merely to regulate and restrict such practices but also absolutely to prohibit them.

I do not wish to hurt anybody's feelings by citing specific examples of religious heads, or those claiming to be acting in the name of religion, carrying on a number of worldly activities of a most undersirable kind. They not only minister to the benefit or aggrandisement of the particular sect or class to which they belong, but, more often than not, they relate to the particular individual who for the moment claims to be the head or representative of that religion. The association of private property, the possession of material wealth, and the possibility of developing that wealth by trading, by speculation, by economic activity, which many of those carry on in the name of religion, or in virtue of their being heads of religion, are productive of evils of which perhaps the innocent Members of this House have no conception.

The facts are well-known, however, to those who have at all discerned in this matter not only that the heads of religions in the name of their religion claim exemption from income-tax out of the receipts of their own domain, but also right of any further gains that they may make by open or illic it trading, speculation, investments, or what not. I suggest that it is absolutely necessary and but right and proper, in the interests of the State, and more so in the interests of the general policy and principles on which the State is founded in India, that power be reserved in this Constitution absolutely to prohibit any such non-religious, non-spiritual activity, that in the name of religion, may be carried on, to the grave prejudice of the country as a whole, and even to the same religion of which they claim to be heads.

I have no desire as observed already, to cite illustrations. I know in advance the fate of my amendment, and, therefore, it is unnecessary for me to make the House wiser than it is by citing examples, and incurring for me the further displeasure of particular classes affected thereby.

Mr. Vice-President : Professor Shah—I cannot allow you to indulge in these remarks—I mean referring to the fate of your amendments and casting reflections on particular groups.

Prof. K. T. Shah: I was only trying to say that I know the fate of my amendments in advance; but I would not make it worse by citing examples, which might affect particular classes, and might incur for me their displeasure. If I have said anything improper I am sorry and I would apologize for it.

Mr. Vice-President : I did not say "improper". But it is bound to affect the calmness of the House and I would implore you.

Prof. K. T. Shah: Sir, I would obey all your commands and even if you put them in the name of request, I would treat them as commands. But with the experience that I have had of my amendments—however good they are I was entitled to say this. If you think otherwise, I will submit to your ruling and take my seat.

(Amendments Nos. 602 and 603 were not moved.)

Mr. Vice-President : Nos. 604, 605, 607 and 608 are similar. I allow 604 and 607 to be moved.

Mr. Vice-President : No. 607—Prof. K. T. Shah.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move—

"That in sub-clause (b) of clause (2) of article 19, after the words "or throwing open Hindu" the words "Jain, Buddhist, or Christian" be added."

The clause as I suggest would read—

".....for social welfare and reform or for throwing open Hindu, Jain, Buddhist or Christian religious institutions of a public character to any class or section of Hindus."

Sir, I do not see why this right or obligation should be restricted only to Hindu Religious institutions to be thrown open to public. I think the intention of this clause would be served if it is more generalised, and made accessible or made applicable to all the leading religions of this country, whose religious institutions are more or less cognate, and who therefore may not see any violation of their religious freedom, or their religious exclusiveness, by having this clause about throwing open their places of worship to the public.

I think, Sir, that the freedom of religion being guaranteed by this Constitution, and promised as one of the Fundamental Rights, the possibility of all religious institutions being accessible and open for all communities is a very healthy sign, and would promote harmony and brotherhood amongst the peoples following various forms of beliefs in this country, and therefore I think, Sir, that this amendment at any rate should find acceptance from those who have sponsored this clause.

(Amendments Nos. 606 and 608 were not moved.)

Shrimati G. Durgabai (Madras : General): Mr. President, Sir, I beg to move the following amendment:—

"That in sub-clause (b) of clause (2) of article 19 for the words "any class or section" the words "all classes and sections" be substituted."

Sir, if my amendment is accepted, the clause would read thus:—

"That nothing in this article shall affect the operation of any existing law or preclude the State from making any law for social welfare and reform or for throwing open Hindu religious institutions of a public character to all classes and sections of Hindus."

Sir, the object of my amendment is to enlarge the scope of the clause as it stands. The clause as it stands, reads thus—

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

Sir, in my view the clause as it stands is restricted in its scope, and the object of my amendment is to secure the benefit in a wider way and to make it applicable to all classes and sections.

Sir, though we are not able to make a sweeping reform or a more comprehensive reform in this direction, I feel that no distinction of any kind should be made between one class of Hindus and another.

Now, with regard to the Hindu religious institutions of a public character, we are all aware that there are various classes of these institutions, such as temples, religious maths, and educational institutions or Pathasalas conducted by these institutions, or attached to these institutions. So far as temples are concerned, I am sure that all of us are aware that almost all of the provinces, including some States, have already passed law throwing open temples to all classes or sections of Hindus. But I am equally sure that some distinction does still exist in regard to the other forms of religious institutions, such as Pathasalas, educational institutions and others managed or conducted by these religious institutions. As I have already explained, my object is to enlarge the scope of this clause, and to include within it all classes and sections of Hindus. If my amendment is accepted, then that object will be fulfilled. As I have already explained, there should not be any distinction between one class and another class of Hindus.

I think these few words will suffice to explain the object of my amendment. I commend my amendment to the House for its acceptance. Sir, I move.

Mr. Vice-President : Amendment No. 610 is disallowed because it has already been covered by something allied, under the Directive Principles.

(Amendment No. 611 was not moved.)

No. 612, standing in the joint names of Mr. Mohammed Ismail Sahib and Mr. Pocker Sahib.

The Honourable Shri K. Santhanam (Madras : General): Sir, on a point of order. This particular amendment No. 612 is not relevant to this article 19. The amendment refers to personal law, but here we are dealing only with freedom of religion. The matter touched by the amendment has already been raised in a previous article, and also in the Directive Principles.

Mohamed Ismail Sahib (Madras : Muslim): Sir, I beg to submit that my amendment is quite in order under this article, because this article speaks of the religious rights of the citizens, and personal law is based upon religion. I have made it quite clear on a previous occasion that personal law is part of the religion of the people who are observing that personal law. I only want to make it clear that this article shall not preclude people from observing their personal law. I am putting it in a negative form, because here, the article says—

"Nothing in this article shall affect the operation of any existing law or preclude the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;"

This practice of personal law may, by a stretch of imagination, be brought under the secular activities associated with religion. Therefore, I propose to make it clear that so far as personal law is concerned, this article shall not affect the observance thereof by the people concerned. That is my point.

The Honourable Shri K. Santhanam: Sir, we have adopted a directive asking the State to endeavour to evolve a uniform civil code, and this particular amendment is a direct negation of that directive. On that ground also, I think, this is altogether inappropriate in this connection.

Mr. Vice-President : Would you like to say anything on this matter, Dr. Ambedkar? I should value your advice about this amendment being in order or not, on account of the reasons put forward by Mr. Santhanam.

The Honourable Dr. B. R. Ambedkar: I was discussing another amendment with Mr. Ranga here and so.....

The Honourable Shri K. Santhanam: Amendment No. 612 about personal law is sought to be moved.

The Honourable Dr. B. R. Ambedkar: This point was disposed of already, when we discussed the Directive Principles, and also when we discussed another amendment the other day.

Mr. Mohamed Ismail Sahib: On a previous occasion I put it in the positive form and here I put it in the negative form. So far as the Directive Principles are concerned, they speak of the attempts which the Government have to make in evolving a uniform civil code. Suppose they have exempted personal law, that does not mean that there can be no uniform civil code in the country. Whatever that may be, here I say under this article, in the matter of religion, people are given certain rights and this question of personal law shall not be brought in. That is what I say. The question of personal law shall not be affected when this article comes into operation. That is my point.

Mr. Vice-President : I do not know whether I am technically correct or not; but in view of the peculiar circumstances in which our Muslim brethren are placed, I am allowing Mr. Mohamed Ismail Sahib to say what he has to say and to place his views before the House.

Mr. Mohamed Ismail Sahib: Thank you very much, Sir, forgiving me another opportunity to put my views before the House on this very important matter. I beg to move:

"That after clause (2) of article 19, the following new clause be added:

'(3) Nothing in clause (2) of this article shall affect the right of any citizen to follow the personal law of the group or the community to which he belongs or professes to belong.' "

Sir, this provision which I am suggesting would only recognise the age long right of the people to follow their own personal law, within the limits of their families and communities. This does not affect in any way the members of other communities. This does not encroach upon the rights of the members of other communities to follow their own personal law. It does not mean any sacrifice at all on the part of the members of any other community. Sir, here what we are concerned with is only the practice of the members of certain families coming under one community. It is a family practice and in such cases as succession, inheritance and disposal of properties by way of wakf and will, the personal law operates. It is only with such matters that we are concerned under personal law. In other matters, such as evidence, transfer of property, contracts and in innumerable other questions of this sort, the civil code will operate and will apply to every citizen of the land, to whatever community he may belong. Therefore, this will not in any way detract from the desirable amount of uniformity which the State may try to bring about, in the matter of the civil law.

This practice of following personal law has been there amongst the people for ages. What I want under this amendment is that that practice should not be disturbed now and I want only the continuance of a practice that has been going on among the people of ages past. On a previous occasion Dr. Ambedkar spoke about certain enactments concerning Muslim personal law, enactments relating to Wakf, Shariat law and Muslim marriage law. Here there was no question of the abrogation of the Muslim personal law at all. There was no revision at all and in all those cases what was done was that the Muslim personal law was elucidated and it was made clear that these laws shall apply to the Muslims. They did not modify them at all. Therefore those enactments and legislations cannot be cited now as matters of precedents for us to do anything contravening the personal law of the people. Under this amendment what I want the House to accept is that when we

speak of the State doing anything with reference to the secular aspect of religion, the question of the personal law shall not be brought in and it shall not be affected.

Sir, by way of general remarks I want to say a few words on this article. My friend Mr. Tajamul Husain brought forward certain amendments, Nos. 572 and 588. To tell you the truth, Sir, I did not know at that time nor do I know now whether he was serious at all when he made those proposals and what were the points which he urged in favour of his proposals I could not understand. I did not take him, and I make bold to say that the House also did not take him, seriously and therefore I do not want to waste the time of the House in replying to him.

The question of professing, practising and propagating one's faith is a right which the human being had from the very beginning of time and that has been recognised as an inalienable right of every human being, not only in this land but the whole world over and I think that nothing should be done to affect that right of man as a human being. That part of the article as it stands is properly worded and it should stand as it is. That is my view.

Another honourable Member spoke about the troubles that had arisen as a result of the propagation of religion. I would say that the troubles were not the result of the propagation of religion or the professing or practising of religion. They arose as a result of the misunderstanding of religion. My point of view, and I say that that is the correct point of view, is that if only people understand their respective religions aright and if they practise them aright in the proper manner there would be no trouble whatever; and because there was some trouble due to some cause it does not stand to reason that the fundamental right of a human being to practise and propagate his religion should be abrogated in any way.

Mr. Vice-President : The clause is now open for discussion.

Pandit Lakshmi Kanta Maitra (West Bengal : General): Sir, I feel myself called upon to put in a few words to explain the general implications of this article so as to remove some of the misconceptions that have arisen in the minds of some of my honourable Friends over it.

This article 19 of the Draft Constitution confers on all persons the right to profess, practise and propagate any religion they like but this right has been circumscribed by certain conditions which the State would be free to impose in the interests of public morality, public order and public health and also in so far as the right conferred here does not conflict in any way with the other provisions elaborated under this part of the Constitution. Some of my Friends argued that this right ought not to be permitted in this Draft Constitution for the simple reason that we have declared time and again that this is going to be a secular State and as such practice of religion should not be permitted as a fundamental right. It has been further argued that by conferring the additional right to propagate a particular faith or religion the door is opened for all manner of troubles and conflicts which would eventually paralyse the normal life of the State. I would say at once that this conception of a secular State is wholly wrong. By secular State, as I understand it, is meant that the State is not going to make any discrimination whatsoever on the ground of religion or community against any person professing any particular form of religious faith. This means in essence that no particular religion in the State will receive any State patronage whatsoever. The State is not going to establish, patronise or endow any particular religion to the exclusion of or in preference to others and that no citizen in the State will have any preferential treatment or will be discriminated against simply on the ground that he professed a particular form of religion. In other words in the affairs of the State the professing of any particular religion will not be taken into consideration at all. This I consider to be the essence of a

[Shri Lakshmi Kanta Maitra]

secular State. At the same time we must be very careful to see that this land of ours we do not deny to anybody the right not only to profess or practise but also to propagate any particular religion. Mr. Vice-President, this glorious land of ours is nothing if it does not stand for lofty religious and spiritual concepts and ideals. India would not be occupying any place of honour on this globe if she had not reached that spiritual height which she did in her glorious past. Therefore I feel that the Constitution has rightly provided for this not only as a right but also as a fundamental right. In the exercise of this fundamental right every community inhabiting this State professing any religion will have equal right and equal facilities to do whatever it likes in accordance with its religion provided it does not clash with the conditions laid down here.

The great Swami Vivekananda used to say that India is respected and revered all over the world because of her rich spiritual heritage. The western world, strong with all the strength of a materialistic civilisation, rich with the acquisitions of science, having a dominating position in the world, is poor today because of its utter lack of spiritual treasure. And here does India step in. India has to import this rich spiritual treasure, this message of hers to the west. If we are to do that, if we are to educate the world, if we are to remove the doubts and misconceptions and the colossal ignorance that prevails in the world about India's culture and heritage, this right must be inherent,—the right to profess and propagate her religious faith must be conceded.

I have listened to some of the speeches that have been made in connection with this article. It has been objected to and it has been said that the right to propagate should be taken away. One honourable Member suggested that if we conceded the right, the bloody upheaval which this country has witnessed of late would again recur with full vehemence in the near future. I do not at all share that pessimism of my honourable Friend. Apparently my honourable Friend has not given special consideration to the conditions that are imposed in this article. The power that this article imposes upon the State to intervene on certain occasions completely demolishes all chances of that kind of cataclysm which we have seen.

It has also been said, and I am very sorry that an observation was made by an honourable Member of considerable eminence and standing, that the Christian community in its proselytising zeal has sometimes transgressed its limits and has done acts which can never be justified. An instance of Bombay was cited in defence of his position.

Mr. Vice-President : I am afraid you are making a mistake there. No particular instance, so far as I remember, was cited.

Pandit Lakshmi Kanta Maitra: Anyway I believe that was at the back of his mind. I am sorry if I have not got at it correctly. I want to say that a good deal of injustice will be done to the great Christian community in India if we go away with that impression. The Indian Christian community happens to be the most in offensive community in the whole of India. That is my personal opinion and I have never known anybody contesting that proposition. This Indian Christian community, so far as I am aware, spend to the tune of nearly Rs. 2 crores every year for educational uplift, medical relief and for sanitation, public health and the rest of it. Look at the numerous educational institutions, dispensaries and hospitals they have been running so effectively and efficiently, catering to all classes and communities. If this vast amount of Rs. 2 crores were utilised by this Christian community for purposes of seeking converts, then the Indian Christian community which comprises only 70 millions would have gone up to.....

Mr. Vice-President : You are mistaken there: it is only 7 millions.

Pandit Lakshmi Kanta Maitra: I beg your pardon. From 7 millions it would have gone to 70 millions. But the point, Mr. Vice-President, is not in the figures. The point of my whole contention is that the Christian community in India has not done that proselytising work with that amount of zeal and frenzy with which some of our friends have associated it. I am anxious to remove that mis-conception. Sir, I feel that every single community in India should be given this right to propagate its own religion. Even in a secular state I believe there is necessity for religion. We are passing through an era of absolute irreligion. Why is there so much vice or corruption in every stratum of society. Because we have forgotten the sense of values of things which our forefathers had inculcated. We do not at all care in these days, for all these glorious traditions of ours with the result that everybody now acts in his own way, and justice, fairness, good sense and honesty have all gone to the wilderness. If we are to restore our sense of values which we have held dear, it is of the utmost importance that we should be able to propagate what we honestly feel and believe in. Propagation does not necessarily mean seeking converts by force of arms, by the sword, or by coercion. But why should obstacles stand in the way if by exposition, illustration and persuasion you could convey your own religious faith to others? I do not see any harm in it. And I do feel that this would be the very essence of our fundamental right the right to profess and practise any particular religion. Therefore this right should not be taken away, in my opinion. If in this country the different religious faiths would go on expounding their religious tenets and doctrines, then probably a good deal of misconception prevailing in the minds of people about different religions would be removed, and probably a stage would be reached when by mutual understanding we could avoid in future all manner of conflicts that arise in the name of religion. From that point of view I am convinced that the word 'propagate' should be there and should not be deleted.

In this connection I think I may remind the House that the whole matter was discussed in the Advisory Council and it was passed there. As such I do not see any reason why we should now go back on that. Sir, the clause as it is has my whole-hearted support, and I feel that with the amendments moved by my honourable Friend Dr. Ambedkar and Shrimati Durgabai this clause should stand as part of the Constitution.

Shri L. Krishnaswami Bharathi (Madras : General): Mr. Vice-President, after the eloquent and elaborate speech of my respected Friend Pandit Maitra I thought it was quite unnecessary on my part to participate in the discussion. I fully agree with him that the word 'propagate' ought to be there. After all, it should not be understood that it is only for any sectarian religion. It is generally understood that the word 'propagate' is intended only for the Christian community. But I think it is absolutely necessary, in the present context of circumstances, that we must educate our people on religious tenets and doctrines. So far as my experience goes, the Christian community have not transgressed their limits of legitimate propagation of religious view, and on the whole they have done very well indeed. It is for other communities to emulate them and propagate their own religions as well. This word is generally understood as if it referred to only one particular religion, namely, Christianity alone. As we read this clause, it is a right given to all sectional religions; and it is well known that after all, all religions have one objective and if it is properly understood by the masses, they will come to know that all religions are one and the same. It is all God, though under different names. Therefore this word ought to be there. This right ought to there. The different communities may well carry on propaganda or propagate their religion and what it stands for. It is not to be understood that when one

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propagate his religion he should cry down other religions. It is not the spirit of any religion to cry down another religion. Therefore this is absolutely necessary and essential.

Again, it is not at all inconsistent with the secular nature of the State. After all, the State does not interfere with it. Religion will be there. It is a personal affair and the State as such does not side with one religion or another. It tolerates all religions. Its citizens have their own religion and its communities have their own religions. And I have no doubt, whatever, seeing from past history, that there will not be any quarrel on this account. It was only yesterday His Excellency the Governor-General Sri Rajaji spoke on this matter. It is very necessary that we should show tolerance. That is the spirit of all religions. To say that some religious people should not do propaganda or propagate their views is to show intolerance on our part.

Let me also, in this connection, remind the House that the matter was thoroughly discussed at all stages in the Minorities Committee, and they came to the conclusion that this great Christian community which is willing and ready to assimilate itself with the general community, which does not want reservation or other special privileges should be allowed to propagate its religion along with other religious communities in India.

Sir, on this occasion I may also mention that you, Mr. Vice-President, are willing to give up reservation of seats in the Assembly and the local Legislatures of Madras and Bombay, and have been good enough to give notice of an amendment to delete the clause giving reservation to the Christian community. That is the way in which this community, which has been thoroughly nationalist in its outlook, has been moving. Therefore, in good grace, the majority community should allow this privilege for the minority communities and have it for themselves as well. I think I can speak on this point with a certain amount of assurance that the majority community is perfectly willing to allow this right. I am therefore strongly in favour of the retention of the word 'propagate' in this clause.

The Honourable Shri K. Santhanam: Mr. Vice-President, Sir, I stand here to support this article. This article has to be read with article 13, article 13 has already assured freedom of speech and expression and the right to form association or unions. The above rights include the right of religious speech and expression and the right to form religious association or unions. Therefore, article 19 is really not so much an article on religious freedom, but an article on, what I may call religious toleration. It is not so much the words "All persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion" that are important. What are important are the governing words with which the article begins, *viz.*, "Subject to public order, morality and health".

Hitherto it was thought in this country that anything in the name of religion must have the right to unrestricted practice and propagation. But we are now in the new Constitution restricting the right only to that right which is consistent with public order, morality and health. The full implications of this qualification are not easy to discover. Naturally, they will grow with the growing social and moral conscience of the people. For instance, I do not know if for a considerable period of time the people of India will think that purdah is consistent with the health of the people. Similarly, there are many institutions of Hindu religion which the future conscience of the Hindu community will consider as in consistent with morality.

Sir, some discussion has taken place on the word 'propagate'. After all, propagation is merely freedom of expression. I would like to point out that the word 'convert' is not there. Mass conversion was a part of the activities of the Christian Missionaries in this country and great objection has been taken

by the people to that. Those who drafted this Constitution have taken care to see that no unlimited right of conversion has been given. People have freedom of conscience and, if any man is converted voluntarily owing to freedom of conscience, then well and good. No restrictions can be placed against it. But if any attempt is made by one religious community or another to have mass conversions through undue influence either by money or by pressure or by other means, the State has every right to regulate such activity. Therefore I submit to you that this article, as it is, is not so much an article ensuring freedom, but toleration—toleration for all, irrespective of the religious practice or profession. And this toleration is subject to public order, morality and health.

Therefore this article has been very carefully drafted and the exceptions and qualifications are as important as the right it confers. Therefore I think the article as it stands is entitled to our wholehearted support.

Shri Rohini Kumar Chaudhari (Assam : General): Sir, I am grateful to you for giving me this opportunity for making a few observations on this very important article. It struck me as very peculiar that, although as many as four articles have dealt with religion, there is no mention of God any where in the whole Chapter. At first I considered it extremely strange, but after going through the matter more carefully, I found every justification for it. From the way in which the world is progressing, there is very little doubt that a time will come when we may be in a position to dispense with God altogether. That has happened in other more advanced countries and therefore I believe, in order to make room for such a state of things, the word "God" has been purposely avoided in dealing with religion itself.

It reminds me of a story, Sir, which I had heard in my student life. There was a great scientist who presented to the king something like a globe in which the whole solar system, the sun, moon and everything, was shown. Then the king who had some faith in God asked the scientist, "Where have you placed God?". The scientist said, "I have done without him". That is exactly the position today. We are framing a Constitution where we speak of religion but there is no mention of God anywhere in the whole chapter. Sir, my honourable Friend Mr. Kamath introduced 'God' in his speech but at the same time he spoke about spiritual matters. The term "Spiritual training" is somewhat ambiguous. The word "spirit" is defined in the Chambers Dictionary as a 'ghost'. There are people in this world who do not fear God but they fear ghosts all the same because ghosts bring troubles while God does not. The term 'spiritual training' is very difficult for me to follow. What did my honourable Friend, Mr. Kamath, mean by spiritual training? What is the spiritual training to which he is referring? Is it training to believe in ghosts or to avoid them or is it the training to have more recourse to spirit to keep up your spirits in the evening. What actually he meant by spiritual training is very difficult to follow. Does he mean the teaching of the great books like the Bible, the Koran and the Gita in all institutions and that the State should be in a position to endow any institution which is dealing only with the teaching of the Koran, or the Bible or the Gita? I do not think that that is the aim. That point ought to be made clear.

Another point is the propagation of religion. I have no objection to the propagation of any religion. If anyone thinks that his religion is something ennobling and that it is his duty to ask others to follow that religion, he is welcome to do so. But what I would object to is that there is no provision in this Constitution to prevent the so-called propagandist of his religion from throwing mud at some other religion. For instance, Sir, in the past were member how missionaries went round the country and described Sri Krishna in the most abominable terms. They would bring up particular activities of Sri Krishna and say, "Look here, this is your Lord Krishna and this is his conduct". We also remember with great pain how they used to decry the worship

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of the idols and call them names. Sir, in the new Constitution we must make it perfectly clear that no such thing will be tolerated. It is not necessary in the course of propagating any particular religion to throw mud at other religions, to decry them and bring out their unsatisfactory features according to the particular supporters of a particular religion. There should be a provision in the law, in the Constitution itself that such conduct will be met with exemplary punishment. With these words, Sir, I support the amendment subject to such verbal alterations as have been suggested by Shrimati Durgabai and the Honourable Dr. Ambedkar.

Shri T. T. Krishnamachari (Madras : General): Mr. Vice-President, Sir, I am here to support the motion before the House, *viz.*, to approve of article 19. Many speakers before me have emphasised the various provisions of this particular article and the background in regard to the framing of this article. What I would like to stress in this: Sir, we are not concerned here with compromises arrived at between the various communities. We are not really concerned with whether some advantage might be derived from the wording of this article later on by certain communities in regard to the furtherance of their own religious beliefs and practices, but I think emphasis should be laid on the fact that a new government and the new Constitution have to take things as they are, and unless the *status quo* has something which offends all ideas of decency, all ideas of equity and all ideas of justice, its continuance has to be provided for in the Constitution so that people who are coming under the regime of a new government may feel that the change is not a change for the worse. In achieving that particular object, I think this article has gone a long way.

Sir, objection has been taken to the inclusion of the word "propagate" along with the words "profess and practise" in the matter of religion. Sir, it does not mean that this right to propagate one's religion is given to any particular community or to people who follow any particular religion. It is perfectly open to the Hindus and the Arya Samajists to carry on their Suddhi propaganda as it is open to the Christians, the Muslims, the Jains and the Buddhists and to every other religionist, so long as he does it subject to public order, morality and the other conditions that have to be observed in any civilised government. So, it is not a question of taking away anybody's rights. It is a question of conferring these rights on all the citizens and seeing that these rights are exercised in a manner which will not upset the economy of the country, which will not create disorder and which will not create undue conflict in the minds of the people. That, I feel, is the point that has to be stressed in regard to this particular article. Sir, I know as a person who has studied for about fourteen years in Christian institutions that no attempt had been made to convert me from my own faith and to practise Christianity. I am very well aware of the influences that Christianity has brought to bear upon our own ideals and our own outlook, and I am not prepared to say here that they should be prevented from propagating their religion. I would ask the House to look at the facts so far as the history of this type of conversion is concerned. It depends upon the way in which certain religionists and certain communities treat their less fortunate brethren. The fact that many people in this country have embraced Christianity is due partly to the status that it gave to them. Why should we forget that particular fact? An untouchable who became a Christian became an equal in every matter along with the high-caste Hindu, and if we remove the need to obtain that particular advantage that he might probably get—it is undoubtedly a very important advantage, apart from the fact that he has faith in the religion itself—well, the incentive for anybody to become a Christian will not probably exist. I have no doubt, Sir, we have come to a stage when it does not matter to what religion a man belongs, it does not matter to what sub-sect or community in a particular religion a man belongs, he will be equal

in the eyes of law and in society and in regard to the exercise of all rights that are given to those who are more fortunately placed. So I feel that any undue influence that might be brought to bear on people to change their religion or any other extraneous consideration for discarding their own faith in any particular religion and accepting another faith will no longer exist; and in the circumstances, I think it is only fair that we should take the *status quo* as it is in regard to religion and put it into our Fundamental Rights, giving the same right to every religionist, as I said before, to propagate his religion and to convert people, if he felt that it is a thing that he has to do and that is a thing for which he has been born and that is his duty towards his God and his community.

Subject to the overriding considerations of the maintenance of the integrity of the State and the well-being of the people,—these conditions are satisfied by this article—I feel that if the followers of any religion want to subtract from the concessions given herein in any way, they are not only doing injustice to the possibility of integration of all communities into one nation in the future but also doing injustice to their own religion and to their own community. Sir, I support the article as it is.

Shri K. M. Munshi (Bombay : General): Mr. Vice-President, Sir, I have only a few submissions to make to the House. As regards amendment No. 607, moved by my honourable Friend, Prof. K. T. Shah, I entirely agree with him that the word 'Hindu' used in this section should be widely defined. As a matter of fact, the Hindu Bill which is now before this House in its legislative capacity has defined 'Hindu' so as to include the various sub-sections, but it will be more appropriate to have this definition in the interpretation clause than in this.

I have only a few words to say with regard to the objections taken to the word "propagate". Many honourable Members have spoken before me placing the point of view that they need not be afraid of the word "propagate" in this particular article. When we object to this word, we think in terms of the old regime. In the old regime, the Christian missionaries, particularly those who were British were at an advantage. But since 1938, I know, in my part of Bombay, the influence which was derived from their political influence and power has disappeared. If I may mention a fact within my knowledge in 1937 when the first Congress Ministry came into power in Bombay, the Christian missionaries who till then had great influence with the Collectors of the Districts and through their influence acquired converts, lost it and since then whatever conversions take place in that part of the country are only the result or persuasion and not because of material advantages offered to them. In the present set up that we are now creating under this Constitution, there is a secular State. There is no particular advantage to a member of one community over another; nor is there any political advantage by increasing one's fold. In those circumstances, the word 'propagate' cannot possibly have dangerous implications, which some of the Members think that it has.

Moreover, I was a party from the very beginning to the compromise with the minorities, which ultimately led to many of these clauses being inserted in the Constitution and I know it was on this word that the Indian Christian community laid the greatest emphasis, not because they wanted to convert people aggressively, but because the word "propagate" was a fundamental part of their tenet. Even If the word was not there, I am sure, under the freedom of speech which the Constitution guarantees it will be open to any religious community to persuade other people to join their faith. So long as religion is religion, conversion by free exercise of the conscience has to be recognised. The word 'propagate' in this clause is nothing very much out of the way as some people think, not is it fraught with dangerous consequences.

Speaking frankly, whatever its results we ought to respect the compromise. The Minorities Committee the year before the last performed a great achievement by having a unanimous vote on almost every provision of its report.

[Shri K. M. Munshi]

This unanimity created an atmosphere of harmony and confidence in the majority community. Therefore, the word 'propagate' should be maintained in this article in order that the compromise so laudably achieved by the Minority Committee should not be disturbed. That is all that I want to submit.

Mr. Vice-President : I have on my list here 15 amendments, most of which have been moved before the House. I should think that they give the views on this particular article from different angles. We had about seven or eight speakers giving utterance to their views. I think that the article has been sufficiently debated. I call upon Dr. Ambedkar to reply.

The Honourable Dr. Ambedkar: Mr. Vice-President, Sir, I have nothing to add to the various speakers who have spoken in support of this article. What I have to say is that the only amendment I am prepared to accept is amendment No. 609.

Shri H. V. Kamath: May I ask whether it will be enough if Dr. Ambedkar says: "I oppose; I have nothing to say." I should think that in fairness to the House, he should reply to the points raised in the amendments and during the debate.

Mr. Vice-President : I am afraid we cannot compel Dr. Ambedkar to give reasons for rejecting the various amendments.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. Vice-President, may I say that amendment No. 609 which has been accepted by the Honourable Dr. Ambedkar is a mere verbal amendment?

Mr. Vice-President : It will be recorded in the proceedings. We shall now consider the amendments one by one.

The question is:

"That in clause (1) of article 19, for the words 'practice and propagate religion' the words 'and practise religion privately' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (1) of article 19, for the words 'practise and propagate' the words 'and practise' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (1) of article 19, for the words 'are equally entitled to freedom of conscience and the right', the words 'shall have the right' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (1) of article 19, the words 'freedom of conscience and' be omitted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That Explanation to clause (1) of article 19 be deleted and the following be inserted in that place:—

"No person shall have any visible sign or mark or name, and no person shall wear any dress whereby his religion may be recognised."

The amendment was negatived.

Mr. Vice-President : The question is:

"That the following proviso be added to clause (1) of article 19:—

"Provided that no propaganda in favour of any one religion which is calculated to result in change of faith by the individuals affected, shall be allowed in any school or college or other educational institution, in any hospital asylum or in any other place or institution where persons of a tender age, or of unsound mind or body are liable to be exposed to undue influence from their teachers, nurses or physicians, keepers or guardians or any other person

set in authority above them, and which is maintained wholly or partially from public revenues, or is in any way aided or protected by the Government of the Union, or of any State or public authority therein."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in the Explanation to clause (1) of article 19, for the word 'progession' the word 'practice' be substituted."

The Honourable Shri Ghanshyam Singh Gupta : (C. P. & Berar : General): Sir, I wish to withdraw the amendment.

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

Mr. Vice-President : The question is:

"That at the end of Explanation to clause (1) of article 19, the words 'and for the matter of that any other religion' be inserted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That after clause (1) of article 19, the following new sub-clause be added:—

"(2) The State shall not establish, endow or patronize any particular religion. Nothing shall however prevent the State from imparting spiritual training or instruction to the citizens of the Union."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in article 19, the following be inserted as clause (1a):—

"(1a) The Indian Republic shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (2) of article 19, for the word "preclude" the word "prevent" be substituted."

The amendment was adopted.

Mr. Vice-President : The question is:

"That in sub-clause (a) of clause (2) of article 19, for the words "regulating or restricting any economic, financial, political or other secular activity" the words "regulating, restricting or prohibiting any economic, financial, political or other secular activity" be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in sub-clause (b) of clause (2) of article 19, after the words 'or throwing open to Hindu' the words 'Jain, Buddhist or Christian' be added."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in sub-clause (b) of clause (2) of article 19 for the words "any class or section" the words 'all classes and sections' be substituted."

Have you accepted it, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar : Yes, Sir.

Mr. Vice-President : The amendment has been accepted by Dr. Ambedkar.

The amendment was adopted.

Mr. Vice-President : The question is:

"That after clause 2, of article 19, the following new clause be added:—

'(3) Nothing in clause (2) of this article shall affect the right of any citizen to follow the personal law of the group or the community to which he belongs or professes to belong'."

The amendment was negatived.

Mr. Vice-President : I shall now put article 19, as amended by amendment numbers 596 and 609 to vote. The question is:

"That article 19, as amended, form part of the Consitution."

The motion was adopted.

Article 19, as amended, was added to the Constitution.

Article 14—*(Contd.)*

Mr. Vice-President : We shall go back to Article 14. So far as I remember —I am sorry I have mislaid my notes—in article 14 there were a number of amendments which were put to the vote one after the other, and that only two amendments were being considered, when, for reasons already known to the House, we postponed their consideration. One was amendment No. 512 moved by Kazi Syed Karimuddin, and the other was a suggestion—am I right in saying that it was a suggestion made by Mr. T. T. Krishnamachari? Mr. T. T. Krishnamachari, will you please enlighten me? Was it a suggestion or was it a short notice amendment?

Shri T. T. Krishnamachari: It was a short notice amendment.

Mr. Vice-President : It was a short notice amendment admitted by me. These two only remained to be put to the vote.

Mr. Naziruddin Ahmad : With regard to amendment No. 512 I have a point of order, Mr. Vice-President.

You will be pleased to remember, Sir, that amendment No. 512 was moved in the House. It was accepted by Dr. Ambedkar and then it was put to the vote. The shouts according to your estimate were in favour of its acceptance. Then some trouble a rose and then shouts were again called. The shouts according to your estimate were again in favour of the amendment. What is very important in this connection, Sir, is that you declared the amendment to be carried.

Mr. Vice-President : Did I declare the amendment to be carried?

Mr. Naziruddin Ahmad: Yes, Sir. I remember.

Mr. Vice-President : Do the records show that?

Mr. Naziruddin Ahmad : The shorthand notes may be referred to. My recollection is it was declared carried (*Interruption*).

Mr. Vice-President : Kindly, in order to preserve the diginity of the House, do not interrupt Mr. Naziruddin Ahmad only because he is putting forward a point of view which may not be agreeable to a certain section of the House.

(To Mr. Naziruddin Ahmed) Kindly confine your remarks to the business on hand.

Mr. Naziruddin Ahmad: Sir, I do not wish to obstruct the majority in dealing with this amendment in any way they please. I simply suggest that if it is carried, it cannot be put again. It is against the Rules. But I have a way out, which I shall suggest and which will be constitutional. There is a rule, in our Rules, that with the consent of twenty five per cent of the Members of the House, any resolution that has been carried may be re-opened. I suggest, Sir, that if I am right that it was declared to be carried, then, it should be re-opened in the regular constitutional manner.

Mr. Vice-President : The official records of the deliberations read this way:

"Just before the voting was called, however, Shri Mahavir Tyagi made a suggestion, which was later supported by the Prime Minister, that the voting on this particular amendment be postponed as there appeared to be some confusion as to the full implications of this provision. The House agreed to the suggestion and voting on this amendment and on the article as a whole was accordingly postponed."

That shows that your whole objection falls to the ground.

(Mr. Naziruddin Ahmad rose to speak.)

Please do not argue.

I want to make certain other things clear to the House. I want to make clear the point of view from which I regard this. As I have said already, the House is the ultimate authority in this as in all matters. The House has laid down certain Rules for the conduct of the business. These Rules have been laid down mainly because the aim of the House is that the work should proceed smoothly. The smooth working of the House I regard as the really essential thing, and much more important than sticking to the Rules which the House has made and which the House can un-make at any time. When there was this confusion, to use the language of Mr. Naziruddin Ahmad, I made a reference to the House and the House agreed that the matter should be reconsidered. The House is fully competent to do so and if the House is still of that view, then the matter will be considered here and now.

Maulana Hasrat Mohani : (United Provinces : Muslim): May I know, Sir, whether the House has reconsidered or whether it is a mandate from the Congress Party who has issued a whip that it should be opposed? Do you decide to allow the House to reconsider or is it only a mandate from the Congress Party? I have got a copy of that whip in my hand, that this must be opposed.

Shri Mahavir Tyagi : (United Provinces : General): Sir, I protest against the language used and the honourable Member's referring to the whip of the Congress Party.

Mr. Vice-President : You have done your duty as a Congress man; now I shall do my duty as the presiding officer here.

Maulana Hasrat Mohani : Sir, I stick to what I have said.

Mr. Vice-President : I am sorry.....

Shri Mahavir Tyagi : Will you please ask him to give back the whip, which the honourable Member has no right to handle?

Mr. Vice-President : You are always the stormy petrel. While I am trying to bring peace and good humour you are interfering. I will not allow you to do so again.

As I was saying, I am very sorry that an old and experienced public man like Maulana Hasrat Mohani should have permitted himself to make references to things which are no concern of this House. As I have said more than once, though I belong to a particular political party, so long as I am in the Chair, I recognise no party at all. It is in that spirit that proceedings of this House are being conducted. I regret very much that anything should have been said challenging the way in which the proceedings have been conducted or are going to be conducted.

I ask the permission of the House once again as to whether I can re-open the matter.

Honourable Members: Yes.

Mr. Vice-President : Thank you. I am going to put amendment No. 512 to the vote.

The Honourable Shri Ghanshyam Singh Gupta: Sir, there is no question of re-opening. You had not finally said that the amendment was carried or was not carried. I want to impress upon the House that the Chair had not declared that it was either carried or it was not carried and therefore there is no question of re-opening at all. The matter is absolutely in the discretion of the Chair now. The Rules are quite clear. A vote is taken. Once it is challenged, the division bell rings. After the division bell

[The Honourable Shri Ghanshyam Singh Gupta]

rings, the Chair again puts it to the vote and then sends Ayes and Noes to the lobbies. The Teller counts the votes and after that, it is declared that a certain motion is lost or is carried. This was not done at all. In fact, it was in the process of declaration by the Chair that the motion is or is not carried that the Chair was pleased to say that this thing stands over. Anybody who says that the Chair finally declared that that motion was carried or lost is wrong.

Mr. Vice-President: It merely shows the depth of my ignorance. I used the word which should not have been used. I used the word 'reopen'. I am glad that the matter has been set right. I only wish that I had sufficient—what shall I say—ability to act in the way in which the Honourable Mr. Gupta has done. I now put amendment No. 512 to vote.

The question is:

'That in article 14, the following be added as clause (4):—

"(4) The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probables cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.' "

The amendment was negatived.

Mr. Vice-President : We come to Mr. Krishnamachari's amendment which was accepted by Dr. Ambedkar.

Shri H. V. Kamath: Is it necessary to say that Dr. Ambedkar has accepted or rejected every time?

Mr. Vice-President : Sometimes it is necessary. Not always. I now put the amendment to vote.

The question is:

"That in clause 2 of article 14 after the word 'shall be' the words 'prosecuted and' be inserted."

The amendment was adopted.

Mr. Vice-President : Now the question is:

"That article 14, as amended, stand part of the Constitution."

The motion was adopted.

Article 14, as amended was added to the Constitution.

Article 15

Mr. Vice-President : Now the motion before the House is: that article 15 form part of the Constitution.

We shall go over the amendments one after another. 515 is ruled out of order. Nos. 516, 517, 518 and 532 are similar and of these I can allow 516 to be moved as also 517 both standing in the name of Shri Brajeshwar Prasad.

Shri Brajeshwar Prasad: (Bihar : General): Sir, I am not moving 516 and 517.

(Amendments Nos. 518, 532, 519 and 520 were not moved.)

Mr. Vice-President : No. 521 is blocked. Then 522, 523, 524, 525, 528 and 530 are similar. I can allow 523 to be moved.

Kazi Syed Karimuddin (C.P. & Berar: Muslim): Mr. Vice-President, Sir, if the proposed amendment by the Drafting Committee is accepted and the article is allowed to stand as it is:—

"No person shall be deprived of his life or personal liberty except according to procedure established by law.....".

then in my opinion, it will open a sad chapter in the history of constitutional law. Sir, the Advisory Committee on Fundamental Rights appointed by the Constituent Assembly had suggested that no person shall be deprived of his life or liberty without due process of law; and I really do not understand how the

words "personal" and "according to procedure established by law" have been brought into article 15 by the Drafting Committee.

Shri Lakshmi Kanta Maitra: Sir, is the honourable Member moving his amendment or not?

Mr. Vice-President : In order to meet the requirements of technicalities, please move your amendment first.

Kazi Syed Karimuddin: Sir, I beg to move—

"That in article 15, for the words "No person shall be deprived of his life or personal liberty except according to procedure established by law" the words "No person shall be deprived of his life or liberty without due process of law" be substituted."

Continuing my arguments Sir, if the words "according to procedure established by law" are enacted, there will be very great injustice to the law courts in the country, because as soon as a procedure according to law is complied with by a court, there will be an end to the duties of the court and if the court is satisfied that the procedure has been complied with, then the judges cannot interfere with any law which might have been capricious, unjust or iniquitous. The clause, as it stands, can do great mischief in a country which is the storm centre of political parties and where discipline is unknown. Sir, let us guarantee to individuals inalienable rights in such a way that the political parties that come into power cannot extend their jurisdiction in curtailing and invading the Fundamental Rights laid down in this Constitution.

Sir, there is an instance in the American Constitutional law in a case reported, Chambers *Vs.* Florida where an act was challenged in a court of law on the ground that the law was not sound and that it was capricious and unjust. Therefore, my submission is that if the words "according to procedure established by law" are kept then it will not be open to the courts to look into the injustice of a law or into a capricious provision in a law. As soon as the procedure is complied with, there will be an end to everything and the judges will be only spectators. Therefore, my submission is, first, that the words, "except according to procedure established by law" be deleted, and then that the words "without due process of law" be inserted.

Sir, actually I had sent two amendments, one about the word "personal" before the words 'liberty', and the other about substitution of the words "without due process of law" for the words "except according to procedure established by law". But somehow or other, these two amendments have been consolidated, and I am required to move one amendment. Even if my amendment about "personal liberty" is not accepted by the Drafting Committee or Dr. Ambedkar, I do not mind; but the second portion of my amendment should be accepted.

(Amendment No. 524 was not moved.)

Mr. Vice-President : Amendment No. 525. Mr. Naziruddin Ahmad. Do you want to press it?

Mr. Naziruddin Ahmad : Sir, there is a printing mistake which I want to point out.

Mr. Vice-President : All right. Then we come to No. 528 standing in the names of Shri Upendranath Barman, Shri Damodar Swarup Seth and Shri S. V. Krishnamurthy Rao.

Kazi Syed Karimuddin : Sir, I have to raise a point of order here. I said in my speech that I have tabled two separate amendments, one regarding the word 'personal' and the other regarding 'due process of law'. Both these amendments have been consolidated by mistake of the Secretariat. So I have had to move the second part of my amendment. But then, according to the list supplied to us, No. 528 has been bracketted with No. 523—that is my

[Kazi Syed Karimuddin]

amendment. I have moved mine, and so No. 528 cannot be moved now, but only put to vote, according to the practice followed in this House.

Mr. Vice-President : All right. We need not move No. 528.

Shri S. V. Krishnamurthy Rao (Mysore): But there is a difference, in that in No. 528 there is no reference to the word 'personal', whereas No. 523 refers to deletion of this word.

Mr. Vice-President : But they are of similar importance and I have already given my decision. We shall put No. 528 to vote.

Then No. 530 in the name of Mr. Z. H. Lari. Do you want it to be put to the vote?

Mr. Z. H. Lari: (United Provinces: Muslim): Yes, Sir.

Mr. Vice-President : Then in my list come No. 524, second part, No. 526 and No. 527. These are almost the same. No. 526 may be moved.

Mahboob Ali Baig Sahib Bahadur (Madras : General): Sir, I beg to move:

"That in article 15 for the words "except according to procedure established by law" the words, "save in accordance with law" be substituted."

In the note given by the Drafting Committee, it is stated that they made two changes from the proposition or article passed by this Assembly in the month of August, April or May of 1947. The first is the insertion of the word 'personal' before liberty, and the reason given is that unless this word 'personal' finds a place there, the clause may be construed very widely so as to include even the freedoms already dealt with in article 13.

That is the reason given for the addition of the word 'personal'. As regards why the original words "without due process of law" were omitted and the present words "except according to procedure established by law" are inserted, the reason is stated to be that the expression is more definite and such a provision finds place in article 31 of the Japanese Constitution of 1946. I will try to confine myself to the second change.

It is no doubt true that in the Japanese Constitution article 31 reads like this but if the other articles that find place in the Japanese Constitution (*viz.*, articles 32, 34 and 35) had also been incorporated in this Draft Constitution that would have been a complete safe guarding of the personal liberty of the citizen. This Draft Constitution has conveniently omitted those provisions.

Article 32 of the Japanese Constitution provides that "no person shall be denied the right of access to the court." According to the present expression it may be argued that the legislature might pass a law that a person will have no right to go to a court of law to establish his innocence. But according to the Japanese Constitution article 32 clearly says that "no person shall be denied the right of access to the court". Is there such a corresponding provision in this Draft Constitution? That is the question. It does not find any place at all.

Article 34 of the Japanese Constitution provides that "no person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel, nor shall be detained without adequate cause and upon demand of any such person such cause should be immediately shown in open court in his presence and in the presence of his counsel." Such a clear right has not been given in these draft provisions.

Further, article 35 provides that the right of all persons to be secured in their homes and against entry, searches, etc. shall not be impaired, except upon warrant issued only for probable cause and so on. If for the sake of clarity and definiteness you have imported into this Draft Constitution article 31 of the Japanese Constitution you should in fairness have incorporated the

other articles of the Japanese Constitution, which are relevant and which were enacted for safeguarding the personal liberty of the honest citizen. May I ask the Drafting Committee through its Chairman whether it is clear from this constitution that a man who has been arrested and detained has got the right to resort to a court and prove his innocence? It may be said that the expression "except according to procedure established by law" covers the point but the expression means "procedure established by law" of the legislature and it will competent for the legislature to lay down a provision that in the matter of detention of persons whether for political or other reasons, the jurisdiction of the courts is ousted. We know the decisions of the High Courts of India, especially of Madras and some other High Courts, where it has been laid down by these courts that it is open to the legislature to say that the courts shall not interfere with the action taken by the Government in the case of certain citizens whom they consider to be committing an offence or about to commit an offence or are likely to commit an offence. It is not open to the court to go into the merits or demerits of the grounds on which a person has been detained. The only extent to which the courts can go is to find out whether there is *bona fides* or *mala fides* for the action of the Government, and the burden is laid upon the person to prove that there is *mala fides* on the part of the Government in having issued a warrant of detention or arrest. Therefore the words "except according to procedure laid down by law" would mean, and according to me it does mean, that the future legislature might pass a law by which the right of a citizen to be tried by a court to establish his innocence could be taken away. I do not by this mean to convey that under certain circumstances it may not be necessary for Government to prevent a person from committing an offence and to take the precaution of arresting him and thus prevent him from committing an offence. But I submit that there must be the right of the citizen to go to a court to prove that the ground on which he has been arrested is wrong and he is innocent. That is the elementary right of the citizen as against the executive which might be clothed with power by a party legislature which might pass a law saying that the executive is empowered to take away the liberty of a person under certain circumstances and he will have no right to go to court and prove his innocence. If the framers of the Draft Constitution are able to tell us that these words "except according to procedure established by law" do not deprive a person of his right to go before the court and establish his innocence and he is not prevented from such a course, then it will be another matter. But we must understand that the words "without due process of law" have been held in England and other countries to convey the meaning that every citizen has got the right, when an action has been taken against him depriving him of his personal liberty, to go before the court and say that he is innocent. That right is given under the expression "without due process of law" or "save in accordance with law". In England the law of the land does not deprive a man of this fundamental and elementary right. All laws that may be made are subject to the relevant principle that no man shall be convicted and no man shall be deprived of his liberty without a chance being given to him to prove that he is innocent. Therefore it must be a law, as I have submitted, which will hear him before it condemns a man.

The only reason which has been advanced in the footnote is that this is more definite and that it finds a place in the Japanese Constitution. As I have already stated, let us not sacrifice the liberty of the subject to prove his innocence, by resorting to the provisions of the Japanese Act and not complete that right of the citizen to be tried—that liberty—by omitting the other provisions of the Japanese Act. I shall be satisfied if all the provisions of the Japanese Constitution find a place here, because the other provisions

[Mahboob Ali Baig Sahib Bahadur]

clearly state that no person can be deprived of his liberty without his being given the chance to go to court and all assistance given to him. I therefore object to the words "except according to procedure established by law." If by any other method which may be said to be definite provision they can ensure that the citizen cannot be condemned without being heard by a court, I shall be satisfied. That is my reason for moving this amendment.

Mr. Vice-President : Amendment Nos. 529 and 531 are disallowed as verbal amendments.

(Amendment No. 533 was not moved.)

We can now proceed with the general discussion on article 15.

Pandit Thakur Dass Bhargava (East Punjab : General): Sir, I sent an amendment No. 525, which I wanted to amend by amendment No. 9 on List No. 1 (Third week). This and amendment No. 528 are the same. The amendment which has been moved by Mr. Karimuddin differs from these in so far as that the word "personal" before the word "liberty" does not appear in his amendment. I am opposed to the amendment of Mr. Karimuddin. The section as it is, with this amendment namely the substitution of the words "without due process of law" for the words "except according to procedure established by law" is the one which I wish to support.

In this connection the first question that arises is what is the meaning of the word 'law'? According to the general connotation of the word, so widely accepted and the connotation which has been given to this word by Austin, law means an Act enacted by the legislatures whereas I submit that when Dicey used his words "law of the land" he meant law in another meaning.

Similarly, when the Japanese Constitution and other Constitutions used this word in the broad sense they meant to convey by the word 'law' universal principles of justice etc.

According to the present section procedure is held sacrosanct whereas the word 'law' really connotes both procedural law as well as substantive law. I have used the word 'law' in the general sense. Though these words "without due process of law" which are sought to be substituted for the words in the section have not been defined anywhere, their meanings and implications should be understood fully. By using these words "without due process of law" we want that the courts may be authorised to go into the question of the substantive law as well as procedural law. When an enactment is enacted, according to the amendment now proposed to be passed by this House, the courts will have the right to go into the question whether a particular law enacted by Parliament is just or not, whether it is good or not, whether as a matter of fact it protects the liberties of the people or not. If the Supreme Court comes to the conclusion that it is unconstitutional, that the law is unreasonable or unjust, then in that case the courts will hold the law to be such and that law will not have any further effect.

As regards procedure also, if any legislature takes it into its head to divest itself of the ordinary rights of having a good procedural law in this country, to that extent the court will be entitled to say whether the procedure is just or not. This is within the meaning of the word 'law' as it is used in this amendment and as it is generally used. The word 'law' has also not been defined in this Constitution. For the purpose of article 8 the word 'law' has been defined. Otherwise it has not been defined. I would therefore submit that if the words as used in the section remained, namely 'procedure established by law', we will have to find out what is the meaning of the word 'law'. These words would remain vague and it will result in misconceptions and misconstructions. Therefore, unless and until we understand the meaning

of "due process of law" we will not be doing justice to the amendment proposed. I therefore want to suggest that the words "due process of law" without being defined convey to us a sense as used in the American law as opposed to other laws. What will be the effect of this change? To illustrate this I would refer the House to Act XIV of 1908 called the Black Law under which thousands, if not hundreds of thousands of Congressmen were sent to jail. According to Act XIV of 1908 the Government took to themselves the powers of declaring any organisation illegal by the mere fact that they passed a notification to that effect. This Act, when passed, was condemned by the whole of India. But the Government of the day enacted it in the teeth of full opposition. When the non-co-operation movement began it was civil disobedience of this law with which the Congress fought its battle. The Courts could not hold that the notification of the Government was wrong. The courts were not competent to hold that any organisation or association of persons was legal though its objects were legal. The objects of the Congress were peaceful. They wanted to attain self-government but by peaceful and legitimate means. All the same, since the Government had notified, the courts were helpless. This legislation demonstrates the need of the powers of "due process."

Similarly I will give another illustration, and that is Section 26 of the Defence of India Act. We know that the Federal Court held this Section to be illegal and a new Ordinance had to be issued. Unless and until therefore you invest the court with such power and make this Section 15 really justifiable there is no guarantee that we will enjoy the freedoms that the Constitution wants to confer upon us.

The House has already accepted the word "reasonable" in article 13. At least 70 per cent. of the Acts which can evolve personal liberty have now come under the jurisdiction of the courts, and the courts are competent to pronounce an opinion on such laws, whether they are reasonable or not. The House is now estopped from adopting another principle. In regard to personal property and life the question is much more important. So far as the question of life and personal liberty are concerned they must be also under the category of subjects which are within the jurisdiction of the courts.

Therefore it is quite necessary that the House should accept this amendment. There are two ways, as suggested by the previous speakers: either you must put all the sections as in the Japanese Constitution, and we should pass many of the amendments tabled by Messrs. Lari and Karimuddin one of which you were pleased to declare carried in the first instance and which was later declared lost. They seek to introduce into the Constitution principles which the legislature will in future be unable to contravene. All those amendments regarding Fundamental Rights will be carried *ipso facto* if this one amendment of "due process" is accepted. Another thing which will be achieved by the acceptance of this one amendment is a recognition in this Constitution of the real genius of the people. In the old days we have heard of seven or eight *Rishis*, all very pious and intelligent people, holding real power in the land. To them, well versed in the Shastras, the ministers and the ancient kings went for advice. Those *Rishis* controlled the whole field of administration. This old ideal will practically be achieved if the full bench of the Supreme Court Judges well versed in law and procedure and possessing concentrated wisdom had the final say in regard to peoples' rights.

Mr. Vice-President : The honourable Member's time is up.

Pandit Thakur Dass Bhargava: I have to say many things more, Sir. I know the argument against this amendment is that these words due process of law' are not certain or clear. But may I know what is the exact

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meaning of the word 'morality' put in this Constitution.

Mr. Vice-President : I ask the indulgence of the honourable Member. I intimated to him twice that he has exhausted his time. I have half a dozen notes from people competent to speak on this point. I am quite certain that it is not the wish of the honourable Member to curtail the time which I can allow them.

Pandit Thakur Dass Bhargava: I do not want to curtail the time of the others.

Mr. Vice-President: Then you may have two minutes more.

Pandit Thakur Dass Bhargava: Thank you, Sir.

Shri Upendranath Barman: (West Bengal : General): May I say a few words at this stage, Sir?

Mr. Vice-President : I am sorry I cannot oblige the honourable Member.

Pandit Thakur Dass Bhargava: As I was saying, Sir, many other words used in this Constitution have an uncertain meaning. The words 'decency' and 'morality' have not got a definite meaning.

Then, Sir, it is said that this will tend to weaken the administration by the uncertainties which will be imported if this amendment is carried. But, Sir, our liberties will be certain through the particular law which may be reviewed by the court may become uncertain. The administration will not be weakened thereby. I grant that it may probably be that the administration will not have its way. But we want to have a Government which will respect the liberties of the citizens of India. As a matter of fact, if this amendment is carried, it will constitute the bed-rock of our liberties. This will be a *Magna Carta* along with article 13 with the word 'reasonable' in it. This is only victory for the judiciary over the autocracy of the legislature. In fact we want two bulwarks for our liberties. One is the Legislature and the other is the judiciary. But even if the legislature is carried away by party spirit and is sometimes panicky the judiciary will save us from the tyranny of the legislature and the executive.

In a democracy, the courts are the ultimate refuge of the citizens for the vindication of their rights and liberties. I want the judiciary to be exalted to its right position of palladium of justice and the people to be secure in their rights and liberties under its protecting wings.

I commend my amendment and beg the House to pass it.

Shri Chimanlal Chakkubhai Shah [United States of Kathiawar (Saurashtra)]: Mr. Vice-President, Sir, the right conferred by article 15 is the most fundamental of the Fundamental Rights in this Chapter, because it is the right which relates to life and personal liberty without which all other rights will be meaningless. Therefore, it is necessary that in defining this right, we must make it clear and explicit as to what it is that we want to confer and not put in restrictions upon the exercise of that right which make it useless or nugatory. I therefore support the amendment which says that the words 'without due process of law' should be substituted for the words 'except in accordance with the procedure established by law.' Sir, the words 'without due process of law' have been taken from the American Constitution and they have come to acquire a particular connotation. That connotation is that in reviewing legislation, the court will have the power to see not only that the procedure is followed, namely, that the warrant is in accordance with law or that the signature and the seal are there, but it has also the power to see that the substantive provisions of law are fair and just and not unreasonable or oppressive or capricious or arbitrary. That means that the judiciary

is given power to review legislation. In America that kind of power which has been given to the judiciary undoubtedly led to an amount of conservative outlook on the part of the judiciary and to uncertainty in legislation. But our article is in two respects entirely different from the article in the American Constitution. In the American Constitution, the words are used in connection with life, liberty and property. In this article we have omitted the word 'property', because on account of the use of this word in the American Constitution, there has been a good deal of litigation and uncertainty. There has been practically no litigation and no uncertainty as regards the interpretation of the words "due process of law" as applied to 'life' and 'liberty'.

Secondly, Sir, in the word 'liberty' that we have used, we have added the word 'personal' and made it 'personal liberty' to make it clear that this article does not refer to any kind of liberty of contract or anything of that kind, but relates only to life and liberty of person. Therefore, it would be wrong to say that the words 'due process of law' are likely to lead to any uncertainty in legislation or unnecessary interference by the judiciary in reviewing legislation.

Sir, in all Federal Constitutions, the judiciary has undoubtedly the power which at times allows it to review legislation. This is inherent in all Federal Constitutions. In England, for example, the judiciary can never say that a law passed by Parliament is unconstitutional. All it can do is to interpret it. But in Federal Constitutions the judiciary has the power to say that a law is unconstitutional. In several articles of this Constitution, we have ourselves provided for this and given express powers to the judiciary to pronounce any law to be unconstitutional or beyond the powers of the legislature. I have no doubt in my mind that this is a very salutary check on the arbitrary exercise of any power by the executive.

Sir, at times it does happen that the executive requires extraordinary powers to deal with extraordinary situations and they can pass emergency laws. The legislature, which is generally controlled by the executive—because it is the majority that forms the executive—gives such powers to the executive in moments of emergency. Therefore, it is but proper that we should give the right to the judiciary to review legislation.

It may be said that the judiciary may, in times of crisis, not be able to appreciate fully the necessities which have required such kind of legislation. But I have no such apprehension. I have no doubt that the judiciary will take into account fully the necessities of a situation which have required the legislature to pass such a law. But it has happened at times that the law is so comprehensive that the individual is deprived of life and liberty without any opportunity of defence. What is the worst that can happen in an article like this if we put in the words 'without due process of law'? Some man may escape death or jail if the judiciary takes the view that the law is oppressive. Sir, is it not better that nine guilty men may escape than one innocent man suffers? That is the worst that can happen even if the judiciary takes a wrong view.

But, in these days, the executive is naturally anxious to have more and more powers and it gets them. And we have developed a kind of legislation which is called delegated legislation in which the powers are given to subordinate officers to issue warrants and the like. For example, under the Public Safety Measures Acts, if a Commissioner of Police is satisfied that a particular man is acting against the interests of the State or is dangerous to public security, he could detain the man without trial.

We know it to our cost that even the Commissioner of Police does not look into these matters personally as he is expected to do and signs or issues

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warrants on the reports of subordinate officials. It is better under such circumstances that there is some check upon the exercise of such powers if they are arbitrarily used. I therefore fully support the amendment which seeks to substitute the words "without due process of law" in place of the words which have been used in the Article. As Mr. Mahboob Ali Baig has rightly pointed out, these words are taken from the Japanese Constitution but the Drafting Committee has omitted the other provisions which give meaning to these words. Mr. Baig's amendment which seeks to substitute the words "save in accordance with law", I am afraid, will not serve his own purpose. If he has in mind that the full import of all the provisions of the Japanese Constitution read along with the one which the Drafting Committee has put in, should be brought out here, it is better that he accepts the words, "without due process of law", rather than the words "save in accordance with law" which are taken from the Irish Constitution and which probably have the same meaning as the words put in by the Drafting Committee. I therefore fully support amendment No. 528.

Shri Krishna Chandra Sharma (United Provinces: General): Mr. Vice-President, Sir, my amendment No. 523 sought the substitution of the words "without due process of law" for the words "except according to procedure established by law". This article guarantees the personal liberty and life of the citizen. In democratic life, liberty is guaranteed through law. Democracy means nothing except that instead of the rule by an individual, whether a king or a despot, or a multitude, we will have the rule of the law. Sir, the term "without due process of law" has a necessary limitation on the powers of the State, both executive and legislative. The doctrine implied by "without due process of law" has a long history in Anglo-American law. It does not lay down a specific rule of law but it implies a fundamental principle of justice. These words have nowhere been defined either in the English Constitution or in the American Constitution but we can find their meaning through reading the various antecedents of this expression. As a matter of fact, it can be traced back to the days of King John when the barons wrung their charter from him, *i.e.,* the *Magna Carta*. The expression "Per Legum Terrea" in the *Magna Carta* have come to mean "without due process of law". Chapter 39 of the Charter says:—

> "No free man shall be taken, or imprisoned, disseised, or outlawed, exiled, or in any way destroyed; nor shall we go upon him, nor send upon him, but by the lawful judgment of his peers or by the law of the land."

These words were used again in 1331, 1351 and 1355. Statute No. 28 during the reign of Edward III says:—

> "No man of what state or condition so ever he be, shall be put out of his lands or tenements, nor taken, nor imprisoned, nor indicated, nor put to death, without he be brought to answer by due process of law".

Sir, in the American Constitution, these words were first used in 1791:

> "Nor shall any person . . . . . be deprived of life, liberty or property, without due process of law".

What this phrase means is to guarantee a fair trial both in procedure as well as in substance. The procedure should be in accordance with law and should be appealable to the civilised conscience of the community. It also ensures a fair trial in substance, that is to say, that substantive law itself should be just and appealable to the civilised conscience of the community. Sir, various decisions of the American Supreme Court, when analysed, will stress the four fundamental principles that a fair trial must be given, second, the court or agency which takes jurisdiction in the case must be duly authorised by law to such prerogative, third that the defendant must be allowed an opportunity to present his side of the case and fourth that certain assistance

including counsel and the confronting of witnesses must be extended. These four fundamental points guarantee a fair trial in substance.

As to social progress, my Friend Pandit Bhargava has already spoken and I need not repeat the argument here; but for your enlightenment I would like to read a judgment which clarifies the position. The judgment runs (from Willoughby on the Constitution of the United States, p. 1692) :

"Thus, for example, in 1875, in Loan Association *v*. Topeka the Court said:

"It must be conceded that there are such rights in every free government beyond the control of the state,—a government which recognised no such rights, which held the lives, the liberty and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power is, after all, a despotism..... The theory of our governments, state or municipal, is opposed to the deposit of unlimited power anywhere. The executive, the legislative and the judicial branches of these governments are all of limited and defined powers. There are limitations on such power which grow out of the essential nature of all free governments—implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name. No court, for instance, would hesitate to declare void a statute which enacted that A and B who were husband and wife of each other should be so no longer, but that A should thereafter be the husband of C, and B the wife of D, or which should enact that the home stead now owned by A should henceforth be the property of B."

Sir, with these words I support the amendment.

Shri H. V. Pataskar (Bombay : General): Mr. Vice-President, I have come forward only to take a few minutes of the House for supporting the amendment No. 528 which wants to substitute "except according to procedure established by law" by the words "without due process of law". Already the legal aspect of this matter has been discussed at length in this House, but I want to place it before the House from another point of view. We are, Sir, at the present moment in a state which is going to be a democracy. Now, democracy implies party Government and party Government, in our country, is rather new and we have instances which lead us to think that the party machine at work is likely to prescribe procedures which are going to lead to the nullification of the provision which we have made in the Fundamental Rights, which are being given to the people. We know from experience that in certain provinces there are already legislations which have been enacted and which prescribe certain procedures for detention, which have come in for criticism by the public in a very vehement manner. I therefore, submit, Sir, that it is very essential from the point of view of the right of personal liberty, that the words "due process of law" should be particularly there. With these words, Sir, I support the amendment and would not like to repeat what has been said in favour of this amendment already.

Shri K. M. Munshi: Mr. Vice-President, Sir, I want to support amendment No. 528 which seeks to incorporate the words "without due process of law" in substitution of the words "except according to procedure established by law". In my humble opinion, if the clause stood as it is, it would have no meaning at all, because if the procedure prescribed by law were not followed by the courts, there would be the appeal court in every case, to set things right. This clause would only have meaning if the courts could examine not merely that the conviction has been according to law or according to proper procedure, but that the procedure as well as the substantive part of the law are such as would be proper and justified by the circumstances of the case. We want to set up a democracy; the House has said it over and over again; and the essence of democracy is that a balance must be struck between individual liberty on the one hand and social control on the other. We must not forget that the majority in a legislature is more anxious to

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establish social control than to serve individual liberty. Some scheme therefore must be devised to adjust the needs of individual liberty and the demands of social control. Eminent American constitutional lawyers are agreed on the point that no better scheme could have been evolved to strike a balance between the two. Of course, as the House knows, lawyers delight to disagree and there is a certain volume of opinion against it in America, but as pointed out by my honourable Friend, Mr. C. C. Shah, we have made drastic changes in the American clause. The American clause says that no person shall be deprived of his life, liberty or property without due process of law. That clause created great difficulties with regard to laws relating to property. That word has been omitted. The word 'liberty' was construed widely so as to cover liberty of contract and that word has been qualified. This clause is now restricted to liberty of the person, that is, nobody can be convicted, sent to jail or be sentenced to death without due process of law. That is the narrow meaning of this clause which is now sought to be incorporated by amendment No. 528.

Now, the question we have to consider, I submit, is only this. What are the implications of this 'due process'? 'Due process' is now confined to personal liberty. This clause would enable the courts to examine not only the procedural part, the jurisdiction of the court, the jurisdiction of the legislature, but also the substantive law. When a law has been passed which entitles Government to take away the personal liberty of an individual, the court will consider whether the law which has been passed is such as is required by the exigencies of the case, and, therefore, as I said, the balance will be struck between individual liberty and the social control. In the result, Governments will have to go to the court of law and justify why a particular measure infringing the personal liberty of the citizen has been imposed. As a matter of fact, the fear that in America the 'due process' clause has upset legislative measures, is not correct. I have not got the figures here, but I remember to have read it some where in over 90 per cent of the cases on the 'due process' clause which have gone to the American courts, action of the legislatures has been upheld. In such matters involving personal liberty Governments had to go before the court and justify the need for passing the legislation under which the person complaining was convicted. In a democracy it is necessary that there should be given an opportunity to the Governments to vindicate the measures that they take. Apart from anything else, it is a whole some thing that a Government is given an opportunity to justify its action in a court of law.

I know some honourable Members have got a feeling that in view of the emergent conditions in this country this clause may lead to disastrous consequences. With great respect I have not been able to agree with this view (*Interruption*). Take even our Public Safety Acts in the provinces. In view of the condition in the country they would certainly be upheld by the court of law and even if one out of several acts is not upheld, even then, I am sure, nothing is going to happen. Human ingenuity supported by the legislature and assisted by the able lawyers of each province will be sufficient to legislate in such a manner that law and order could be maintained.

Therefore, my submission is that this clause is necessary for this purpose and is not likely to be abused. We have, unfortunately, in this country legislatures with large majorities, facing very severe problems, and naturally, there is a tendency to pass legislation in a hurry which give sweeping powers to the executive and the police. Now, there will be no deterrent if these legislations are not examined by a court of law. For instance, I read the other day that there is going to be a legislation, or there is already a legislation, in one province in India which denies to the accused the assistance of lawyer. How is that going to be checked? In another province, I read that the certificate

or report of an executive authority—mind you it is not a Secretary of a Government, but a subordinate executive—is conclusive evidence of a fact. This creates tremendous difficulties for the accused and I think, as I have submitted, there must be some agency in a democracy which strikes a balance between individual liberty and social control.

Our emergency at the moment has perhaps led us to forget that if we do not give that scope to individual liberty, and give it the protection of the courts, we will create a tradition which will ultimately destroy even whatever little of personal liberty which exists in this country. I therefore submit, Sir, that this amendment should be accepted.

Shri Alladi Krishnaswami Ayyar (Madras : General): Mr. Vice-President, Sir, the debate on this article reveals that there seems to be a leaning on the part of a good number of members in this House in favour of the expression 'due process' being retained and not for substituting the expression 'procedure established by law', which is the expression suggested by the Drafting Committee in its last stage. I am using the words 'in its last stage' because my honourable Friend Mr. Munshi has taken the opposite view.

Sir, at least in justification of the change suggested by the Drafting Committee, I owe it to myself, to my colleagues and the respected Chairman of the Drafting Committee, to say a few words, because, up to the last moment, presumably, the House is open to conviction.

The expression 'due process' itself as interpreted by the English Judges connoted merely the due course of legal proceedings according to the rules and forms established for the protection of rights, and a fair trial in a court of justice according to the modes of proceeding applicable to the case. Possibly, if the expression has been understood according to its original content and according to the interpretation of English Judges, there might be no difficulty at all. The expression, however, as developed in the United States Supreme Court, has acquired a different meaning and import in a long course of American judicial decisions. Today, according to Professor Will is, the expression means, what the Supreme Court says what it means in any particular case. It is just possible, some ardent democrats may have a greater faith in the judiciary than in the conscious will expressed through the enactment of a popular legislature. Three gentlemen or five gentlemen, sitting as a court of law, and stating what exactly is due process according to them in any particular case, after listening to long discourses and arguments of briefed counsel on either side, may appeal to certain democrats more than the expressed wishes of the legislature or the action of an executive responsible to the legislature. In the development of the doctrine of 'due process', the United States Supreme Court has not adopted a consistent view at all and the decisions are conflicting. One decision very often reversed another decision. I would challenge any member of the Bar with a deep knowledge of the cases in the United States Supreme Court to say that there is anything like uniformity in regard to the interpretation of 'due process'. One has only to take the index in the Law Reports Annotated Edition for fifteen years and compare the decisions of one year with the decisions of another year and he will come to the conclusion that it has no definite import. It all depended upon the particular Judges that presided on the occasion. Justice Holmes took a view favourable to social control. There were other Judges of a Tory complexion who took a strong view in favour of individual liberty and private property. There is no sort of uniformity at all in the decisions of the United States Supreme Court.

Some of my honourable Friends have spoken as if it merely applied to cases of detention and imprisonment. The Minimum Wage Law or a Restraint on Employment have in some cases been regarded as an invasion of personal liberty and freedom, by the United States Supreme Court in its earlier decisions, the theory being that it is an essential part of personal liberty that every

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person in the world be she a woman, be he a child over fourteen years of age or be he a labourer, has the right to enter into any contract he or she liked and it is not the province of other people to interfere with that liberty. On that ground, in the earlier decisions of the Supreme Court it has been held that the Minimum Wage Laws are invalid as invading personal liberty. In recent times I quite realise, after the New Deal, the swing of the pendulum has been other way. Even there, there has not been any consistency or any uniformity. I hope that if this amendment is carried, in the interpretation of this clause our Supreme Court will not follow American precedence especially in the earlier stages but will mould the interpretation to suit the conditions of India and the progress and well-being of the country. This clause may serve as a great handicap for all social legislation, for the ultimate relationship between employer and labour, for the protection of children, and for the protection of women. It may prove fairly alright if only the Judges move with the times and bring to bear their wisdom on particular issues. But since the British days we have inherited a kind of faith in lawyers, legal arguments, legal consultations and in courts; I, for my part, having flourished in the law, have no quarrel with those people who believe in the lawyer. In the earlier stages of American history, lawyers ranged themselves on the side of great Trusts and Combines and in favour of Corporations who were in a position to fee them very well, sometimes in the name of personal liberty, sometimes in the name of protection of property. After all the word 'personal liberty' has not the same content and meaning as is imported into it by some of our friends who naturally feel very sensitive about people being detained without a proper trial. I equally feel it but that is not the meaning of personal liberty attributed by the American Courts in the context of 'due process'. I trust that the House will take into account the various aspects of this question, the future progress of India, the well-being and the security of the States, the necessity of maintaining a minimum of liberty, the need for co-ordinating social control and personal liberty, before coming to a decision. One thing also will have to be taken into account, *viz.,* that the security of the State is far from being so secure as we are imagining at present. Take for example the normal detention cases. I may tell you as a lawyer, I am against the man being detained without his being given an opportunity; but an opportunity is not necessarily given in a court of law, as a result of argument, as a result of evidence, as a result of examination or cross-examination. Today I know in Madras a Special Committee has been appointed consisting of a Judge of the High Court, the Advocate-General of Madras and another person to go into the cases of detention and to find out whether there are proper materials or not. Now all these cases might have to go to Courts of law and possibly it is a good thing for lawyers. Though I am getting old I do not despair of taking part in those contests even in the future.

The support which the amendment has received reveals the great faith which the Legislature and Constitution makers have in the Judiciary of the land. The Drafting Committee in suggesting "procedure" for "due process of law" was possibly guilty of being apprehensive of judicial vagaries in the moulding of law. The Drafting Committee has made the suggestion and it is ultimately for the House to come to the conclusion whether that is correct, taking into consideration the security of the State, the need for the liberty of the individual and the harmony between the two. I am still open to conviction and if other arguments are forthcoming I might be influenced to come to a different conclusion.

Mr. Z. H. Lari : Mr. Vice-President, the last speaker who has spoken on this article has drawn the attention of the House to dangers to the State which are likely to arise if the article as it stands is amended by the amendment No. 528 or 530. I have not got that experience which the learned

speaker has but with the little knowledge of the working of the Legislatures during the last ten years, I can say that it is necessary not only in the interest of individual liberty but in the interest of proper working of legislatures that such a clause as due process of law clause should find a place in the Constitution. It is open to that speaker at the fag end of his life as a lawyer to have a fling at the profession of law but I can say that assistance of lawyers is absolutely essential to secure justice.

Shri Alladi Krishnaswami Ayyar: On a point of order. I had no fling at the profession of law.

Mr. Z. H. Lari: I stand corrected.

I feel that two things are necessary. We all know that the State, these days, is all-powerful. Its coercive processes extend to the utmost limits but still there is a phase of life which must be above the processes of Executive Government, and that is individual liberty. In America no such word as 'personal' existed. There the word liberty alone existed and possibly in that state of things, it was possible to interpret it in such a way as to extend the scope of due process of law to other spheres of life but when the word 'personal liberty' has been definitely inserted in the clause, I doubt whether any Court which is conscious of the requirements of a State as well as conscious of the necessities of individual liberty, will be so uncharitable to the interest of the State as to interpret in a way to thwart the proper working of the State. My friend admitted that in the latter rulings in America itself there has been a recognition of the necessities of the State and the word has been interpreted in such a way as not to obstruct the proper working of the State. My submission would be that in this land our Supreme Court will recognise the limits of individual liberty as well as the necessities of the State and interpret it in such a way as to ensure individual liberty of a man.

Pandit Thakur Dass Bhargava: The Drafting Committee also said so in their note.

Mr. Z. H. Lari: My friend is right; and the only reason which was given by the Drafting Committee of which the honourable Speaker who preceded me was a member also, was that the words 'due process of law' is not specific and the word as was used in the Japanese Constitution is more specific. No doubt the words as they stand in the Japanese Constitution are specific because the procedure is indicated and definitely laid down there. What is the essence of the due process of law? I think they are two. First is, enquiry before you condemn a man. And then there is judgment after trial. If any procedure which is adopted by any legislature provides for the hearing of a person who is suspected or is accused, and then after a proper hearing, enables him to get the benefit of a judgment based on that enquiry, my submission is, that the requirements of the due process of law are complied with. And I would beg of the House to consider whether in any country, however emergent and however unstable its conditions, is it necessary or is it not necessary that every individual citizen should feel that he will be heard before he is condemned, and that he will be dealt within the light of the judgment based on the enquiries and not be subject to arbitrary detention? The House will also remember that lately there was the question of drafting human rights, and already such a draft has been prepared. And one of the clauses there in is that nobody should be subjected to arbitrary detention. Now, what is the way to prevent arbitrary detention? If you have the words in this clause, as they stand at present, namely, 'procedure established by law' it means that the legislature is all-powerful and what ever procedure is deemed proper under the circumstances will be binding upon the courts. But, Sir, there are certain procedures which are the inherent rights of man and they should not be infringed upon by any legislative Assembly. Men as well as

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assemblies, or any mass of people are subject to passing emotions, and you will realise that in the present state of things, particularly keeping in view the constitution that we are going to have, namely, a parliamentary government, the legislature is controlled by a Cabinet, which means by the executive. You have also the provisions about having ordinances which means that the cabinet—a body consisting of eight to ten persons—decide upon a particular course of action, issue as an ordinance, and, the legislature then has to approve of it, otherwise it would amount to a vote of censure. Therefore the legislature in the last analysis means only the cabinet or the executive and nothing but the executive. The question before us is whether you are going to give such powers to the Executive which can infringe even the elementary rights of a person, the elementary rights of personal liberty, or whether you should not put certain checks on the executive which can be done only if you accept the amendment which has been moved by a Congress member, *i.e.*, amendment No. 528. My amendment No. 530 is exactly similar.

My friend who spoke on the other side gave instances of legislation in the British period, of rights which were curtailed, and of innocent persons jailed. But I submit with all humility, that every legislature and every government is liable to do such things which the British Government did. You cannot excuse excess of law simply because those excesses are committed by a popularly elected legislature. That is why there are two domains, one is the domain of individual liberty, and the other domain is where the State comes in to regulate our life. What do you leave to the State? You leave to the State everything except personal liberty. As to stability of the State my submission would be that if there are classes or communities which are prone to violence, there are sufficient provisions in this Constitution to deal with them—they are in article 13. There, the State can come in and curtail the liberty of such persons, and even nullify their activities. What can an individual do? If there are parties which have got objectives which run counter to the stability of the State, you have already got enough provisions where-by the State can declare those bodies unlawful. But this particular clause deals with a very small sphere of action, namely, personal liberty. My submission is that our State is not so weak as to be subverted by the activities of a particular individual, and mark that, that individual will not have the liberty to do everything. He can be brought before a court. He can be judged in a court of law; no doubt, he will have the assistance of counsel and the Government will have the obligation to produce evidence against him. Does this amount to curtailing the powers of the State? Does this amount to subverting the State? Does it amount to annihilating the State? With all respect to the previous Speaker, I feel he took a very uncharitable view of the citizens of our State, and took a still more uncharitable view of the strength of the State which will emerge after the promulgation of the new Constitution. No doubt, we have to go by realities. We have to take into consideration stern facts. But I may remind the House of one thing. In America, this clause is accepted and is reproduced in the Japanese Constitution. You know the Americans have been responsible for framing the Japanese Constitution. A constitution for a fascist country, a country where individuals are prone to violence—they wanted to overthrow the peace of the world—when they were drafting a constitution for such a country, composed of such citizens, they laid down clauses 31, 32, 33 and 34 which say that nobody shall be denied access to courts, nobody shall be arrested unless causes are shown against him, and nobody shall be denied the privilege of the assistance of counsel. May I say that if the framers of this latest constitution, based on experience and knowing the nature of the people living in Japan, who are not a very peace

loving people as was demonstrated in the last war, have accepted these provisions, that means that these provisions have stood the test of time and have safeguarded the liberty of the individual and also guaranteed the integrity of the state. There are two things by which we have to go. One is experience of others. No doubt, every clause can be criticised in one way or other. But we have to be guided by experience. Here is the experience of other countries, and this has shown that the words 'due process of law' can exist without jeopardising the existence of the State. Secondly, we know that not only here, but throughout the world every assembly is likely to misuse its power. It is bound to happen. Power corrupts. We should profit by the experience of other countries and by what has been observed for centuries. Or should we go by the *ipse dixit* of X, Y, Z who says that there seems to be some germ of disruption in this clause? My submission is that it is only making a bogey out of nothing. We should not be led away by this bogey into accepting this clause. If this clause is accepted, then the whole Constitution becomes lifeless. The article, as it stands, is lifeless and it makes also the whole Constitution lifeless. Unless you accept this amendment, you would not earn the gratitude of future generations. Therefore, Sir, I pray that this motion which has been supported by several members should be accepted.

With these words, Sir, I support the amendment.

Mr. Vice-President : The House stands adjourned till 10 A.M. tomorrow.

The Constituent Assembly then adjourned till ten of the Clock on Tuesday, the 7th December, 1948.