

Tuesday, 7th December, 1948

Volume VII

4-11-1948

to

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**CONSTITUENT ASSEMBLY
DEBATES
OFFICIAL REPORT**

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CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 7th 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.

DRAFT CONSTITUTION—(Contd.)

Article 15—Contd.

Mr. Vice-President (Dr. H. C. Mookherjee) : We can now resume general discussion on article 15.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, May I request you to allow this matter to stand over for a little while?

Mr. Vice-President : Is that the wish of the House?

Honourable Members : Yes.

Article 20

Mr. Vice-President : Then we can go to the next article, that is article 20.

The motion before the House is:

“That article 20 form part of the Constitution.”

I have got a series of amendments which I shall read over. Amendment No. 613 is disallowed as it has the effect of a negative vote. Nos. 614 and 616 are almost identical; No. 614 may be moved.

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

“That in the beginning of article 20, the words ‘Subject to public order, morality and health,’ be inserted.”

Sir, it was just an omission. Honourable Members will see that these words also govern article 19; as a matter of fact they should also have governed article 20 because it is not the purpose to give absolute rights in these matters relating to religion. The State may reserve to itself the right to regulate all these institutions and their affairs whenever public order, morality or health require it.

Mr. Vice-President : I can put amendment No. 616 to the vote if it is to be pressed. Has any Member anything to say on the matter?

(Amendment No. 616 was not moved.)

Mr. Vice-President : There is, I understand, an amendment to amendment No. 614 in List No. VI. Is that amendment to amendment being moved?

Mr. Naziruddin Ahmad (West Bengal : Muslim): Yes, Sir, I move:

“That for amendment No. 614 of the List of Amendments, the following be substituted namely:—

That article 20 be numbered as clause (1) of that article and the following new clause be added at the end, namely:—

‘(2) Nothing in clause (1) of this article shall affect the operation of any existing law or prevent the State from making any law for ensuring public order, public morality and public health.’ ”

[Mr. Naziruddin Ahmad]

Sir, the amendment moved by Dr. Ambedkar just now is also to the same effect. I should think that instead of the expression "subject to public order, morality and health" this expression would be better. The expression "ensuring public order etc.," is perhaps better than "subject to public order etc." This type of draftsmanship has been adopted in other places in the Constitution.

(Amendment Nos. 15 and 16 in List I and Nos. 615 and 617 were not moved.)

Shri Lokanath Misra (Orissa : General) : Sir, I move:

"That in clause (a) of article 20, after the word 'maintain' the words 'manage and administer' be inserted."

One who has a right to establish and maintain an institution for religious and charitable purposes ought also to have the right, unless such institutions offend against public order and morality or any established law, to manage and administer the same. Otherwise, there will be difficulty.

Syed Abdur Rouf (Assam : Muslim) : Sir, I beg to move:

"That in clause (a) of article 20, for the words 'religious and charitable purposes', the words 'religious, charitable and educational purposes' be substituted."

We are dealing here with a subject which empowers religious denominations to have the right to establish and maintain institutions for religious and charitable purposes only. Religious education is as important as religion itself. Without religious education the charitable purposes or religious purposes would lose all meaning. Therefore, I hope my amendment would be accepted by the House.

(Amendment Nos. 17 of list 1, 620 and 622 were not moved.)

Mr. Naziruddin Ahmad : Sir, I beg to move:

"That in clause (c) of article 20, for the words 'and immovable property' the words 'immovable and incorporeal property' be substituted."

Clause (c) provides for acquisition of movable and immovable property. It does not mention incorporeal property. Copyright is incorporeal property. It is neither movable nor immovable. The amendment would perhaps fill in a lacuna.

(Amendment Nos. 623 to 625 were not moved.)

Mr. Vice-President : Article 20 is for general discussion.

Shri Jaspal Roy Kapoor : (United Provinces : General) : Mr. Vice-President, Sir, while I accord my support to article 20, I must confess that I do not feel happy over the phraseology of it or the scope of it. I very much wish that in clause (a) thereof, the words 'and charitable', were deleted. The article then should have read:

"Every religious denomination or any section thereof shall have the right: (a) establish and maintain institutions for religious purposes." Sir having conceded the right of free profession of religion and propagation of religion, surely, it is a necessary corollary that the right to establish and maintain religious institutions should be also conceded. But to concede it as a fundamental right that any religious denomination or section thereof can maintain a charitable institution exclusively for its own benefit and deny its benefit to any other section of society is certainly repugnant to the idea of fraternity and common nationality.

Let us clearly understand what the implications, the mischievous implications I should say, of this article are. It means that I, as a member of the Hindu religious community or even as a member of a section of that community called Khattris, have the right, derive the right under this article 20, to establish say *piao* or place where water is served to all. Under this article. I will have it as a fundamental right to establish a *piao* and serve therein water only to the Khattris or to other caste Hindus and not to other sections of the Hindu community, much less to Muslims or Christians. This means that there can be a Christian, hospital where only Christians may be admitted and a non-Christian, however badly he might need medical service and even if he were lying at the door of the Christian hospital dying there, may be refused admission in the Christian hospital. It means that the upper class Hindus shall have it as a fundamental right to establish a *piao*, refusing at the same time water to members of the Scheduled castes. It means, Sir, that the Muslims in a Muslim 'sabil' may impose restrictions for the service of water to non-Muslims. I have been always told that serving free water to all without distinction of caste or creed is a very religious act according to Islamic law. I wonder if my Muslim friends want that they should be conceded this as a fundamental right. I wonder if my depressed or Scheduled caste friends would like that the upper caste Hindus should have this as a fundamental right that they can establish a *piao* where members of the Scheduled castes shall be denied water. I am sure neither my Muslim friends nor my Scheduled caste friends want to concede this as fundamental right.

One of my Christian friends, Sir, for whom I have very great respect, and I may also say, very great affection—he may not be knowing it—told me the other day that a particular section of the Christians would like to have a hospital of their own where at the time of their death or at their last moments they may get the service of Christian priests. Sir, it is not my intention that they should not have this privilege and facility. They can have this privilege and facility not only in their own hospitals but in every hospital in the country. The question is not whether they should have this facility in their own hospital or in other hospitals; but it is whether it should be open to a Christian hospital to say that no non-Christians shall be allowed entry therein. I am not a Christian; but I have very great respect for the Christian religion, and I make bold to say that such an act on the part of any Christian management would certainly be a non-Christian act. Why then, Sir, should such a right be conceded as a fundamental right ?

Our society already stands disunited today. There are so many castes and creeds and communities in it. We have been tolerating these communal institutions and we may have to tolerate them for sometime more. The deletion of the words 'and charitable', let there be no mistake about it, will not take away the existing right or the existing concession. This is not a right. This is rather a concession to the weakness of the society. So, let this concession continue until society as a whole voluntarily realises that this is something which is against the interests of the country as a whole, something which is against the unity of the Nation and something which is against the idea of fraternity and brotherhood. Until Society voluntarily realises it, let the concession remain. But the question is, must this right or concession hereafter be recognised by a statutory law, and not only *recognised* as a right, but be granted also the sanctity, the glory and the dignity of fundamental right?

I would appeal to the honourable Members to realise the grave implications of the existence of the words 'and charitable'. I will quote an instance from my own place which may perhaps bring home to honourable Members the

[Shri Jaspat Roy Kapoor]

gravity of the situation that might arise after we have passed the present article in its present form. In my place, a number of years ago, an upper class Hindu established a *piao* in a particular locality and service of water therein to the Scheduled castes was prohibited. This led to great resentment amongst us, particularly amongst Congressmen. They approached the orthodox section of the Hindu community and entreated them to remove this restriction. The orthodox people refused to agree. Ultimately, as a result thereof, there was a communal riot. Thereafter, partly by our appeal and partly by pressure, we could make them withdraw those restrictions. But, Sir, if the Constituent Assembly includes in the list of Fundamental Rights this very restriction or right of exclusion as a fundamental right, these orthodox people will fling this sacred book of our Constitution at our face and say : “How foolishly you are talking after giving us the right to impose such restrictions in respect of our *piao*”.

The highest body in the land, the sovereign constitution making body of the land having conceded it as a fundamental right, what business have you now to tell us that we are in the wrong and that we should throw open our *piaos* to all sections of the Hindu community? Therefore, Sir, I would respectfully appeal to this House to agree to delete these words.

I am told, Sir, that the retention of these words is in the interests of the minority communities. I fail to see how it is in the interests of any minority community. I fail to see how it is in the interests of even the majority community. The minority communities, it will be readily conceded, are not so rich as the majority community. Probably all the minorities put together are not so rich as the majority communities. So the majority community, if it so wishes, can establish charitable institutions in much larger numbers than the minority communities and if such majority charitable institutions restrict their use, their benefit, to the members of the majority community, surely it is the minority communities who will suffer and not the majority community, though the majority may have this thing as a black spot on their face; but that is another thing. I would, therefore, appeal to the members of the minority communities here to agree to the deletion of these words. If they agree to the deletion of these words, I am sure the House will unanimously agree to delete these words and improve this article. If they do not agree to this, we must accept this article as it stands as we must not do anything which is not agreeable and acceptable to them. With these words, Sir, I support article 20, not of course with any great pleasure but with some regret and disappointment, making a last minute appeal to the House to agree to the deletion of these words. If need be, Sir, I would appeal to my honourable Friend, Dr. Ambedkar, to postpone the final disposal of this clause and consult members of the minority communities whose champion he undoubtedly is whether they are agreeable to the deletion of these words and then amend the article accordingly.

One more point, Sir, one more reason for suggesting the deletion of these words, though this may not be of any great strength. Sir, at the last moment I am urging this poor argument because it does sometimes happen that when strong arguments fail, weak and poor arguments prevail. The heading of this sub-chapter is “Rights Relating to Religion” and surely, Sir, these words “and charitable” do not properly fit in in this chapter at all. If for no other reason, at least on the grounds of technicality, I would appeal to my honourable Friend, Dr. Ambedkar, to agree to the deletion of these words. With these words. Sir, I support article 20.

Mr. Tajamul Husain (Bihar : Muslim) : Mr. Vice-President, Sir, I had no intention of speaking on this article but I find that my honourable Friends who

have just spoken have been appealing to the minorities. I want to tell the House, Sir, that there is no minority in this country. I do not consider myself a minority. In a secular State, there is no such thing as minority. I have got the same rights, status and obligations as anybody else. I wish those who consider themselves as the majority community would forget that there is any minority today in this country. (An honourable member: *Hear; hear.*) Now, Sir, with regard to article 20, as far as I understood, my honourable Friend the last Speaker wants clause (a) to be *deleted*. I will just read clause (a) of article 20:—

“Every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes.”

Now, Sir, this article gives the right to everybody—it does not matter to what religion he belongs or what religion he professes—to have his own private religious institutions if he so wants. If a person has got money and at the time of his death he wants to make a will and dedicate his property to some charitable purpose or religious purpose of a private nature, I do not think, Sir, that people should object to it. After all, as I have said already, religion is a private matter between the individual and his Creator, and if I, Sir, wish that my property should be utilised for a particular purpose after my death, I see no reason why the State should interfere with it. It is not a matter of public interest. After all it is a private individual who wishes that his religion should be observed in a particular manner.

Kazi Syed Karimuddin (C. P. and Berar: Muslim): What does the honourable Member have in his mind, a private or public institution?

Mr. Tajamul Husain :

“Every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes—”

These are the exact words in the article. I want these words to remain where they are. I do not want these words to be deleted.

The Honourable Dr. B. R. Ambedkar : I have nothing to say.

Mr. Vice-President : I will now put the amendments, one by one, to vote.

The question is:

“That in the beginning of article 20, the words “Subject to public order, morality and health,” be inserted.”

The amendment was adopted.

Mr. Vice-President : The question is:

“That article 20 be numbered as clause (1) of that article and the following new clause be added at the end, namely:—

‘(2) Nothing in clause (1) of this article shall affect the operation of any existing law or prevent the State from making any law for ensuring public order, public morality and public health.’ ”

The amendment was negatived.

Mr. Vice-President : The question is:

“That in clause (a) of article 20, after the word “maintain” the words ‘manage and administer’ be inserted.”

The amendment was negatived.

Mr. Vice-President : The question is:

“That in clause (a) of article 20, for the words ‘religious and charitable purposes’ the words ‘religious, charitable and educational purposes’ be substituted.”

The amendment was negatived.

Mr. Vice-President : The question is:

“That in clause (c) of article 20, for the words ‘and immovable property’ the words ‘immovable and incorporeal property’ be substituted.”

The amendment was negatived.

Mr. Vice-President : The question is:

That article 20, as amended, be adopted.

The motion was adopted.

Article 20, as amended, was added to the Constitution.

New Article 20-A

Mr. Vice-President : Now we come to amendment No. 626 by Mr. Mahboob Ali Baig. I disallow this because two similar amendments have been rejected by this House. These two amendments are No. 612 and No. 440. We now pass on to article 21.

Article 21

Mr. Vice-President : We shall consider the amendments one by one.

Amendment No. 627 is out of order as it has the effect of a negative vote.

(Amendment Nos. 628, 629, 630, 634, and 631 were not moved.)

Amendment No. 632. The first part of this amendment standing in the name of Syed Abdur Rouf is disallowed as being nothing but a verbal amendment. So far as the second part is concerned, I can allow it to be moved.

Syed Abdur Rouf : Sir, I beg to move:

“That in article 21, after the word ‘which’ the words ‘wholly or partly’ be inserted.”

If my amendment is accepted, Sir, the article will read like this: “No person may be compelled to pay any taxes, the proceeds of which wholly or partly are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.” If my amendment is not accepted, a person may be compelled to pay taxes, the proceeds of which will partly be appropriated for religious purposes. This is certainly not desirable, and I think that unless my amendment is accepted, the very intention of this article will be frustrated. Therefore, Sir, I hope that my amendment will be accepted by the House.

Mr. Naziruddin Ahmad : Mr. Vice-President, Sir, I beg to move:

“That in article 21, for the words ‘the proceeds of which are’ the words ‘on any income which is’ be substituted.”

Sir, the purpose of the previous amendment will be served by my amendment and they must be considered together. The article says “No person may be compelled to pay any taxes the proceeds of which etc.” If my amendment is accepted, it would read like this: “No person may be compelled to pay any taxes on any income etc.” Sir, taxes are paid not on the proceeds, but on the income. Proceeds rather imply the gross receipts. Taxes do not apply to proceeds, but really to income. In fact, there is the further limitation of this ‘proceeds’ which are specifically appropriated for payment of the expenses

for the promotion or maintenance of any particular religious or charitable denomination. My point is that you do not appropriate the *gross proceeds* of any undertaking or any property to any religious or charitable denomination. The reason is that what you appropriate for religion or religious denomination is the income, that is, the gross receipts *minus* collection expenses and other things. I submit, Sir, that the word 'income' is the more appropriate word, and if this is accepted, the difficulty pointed by Mr. Syed Abdur Rouf, while moving his amendment No. 632, will also be met. In fact, he and I felt that there is some difficulty in the context and the amendments are directed towards the same purpose.

(Amendment Nos. 635 and 636 were not moved.)

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

Shri Guptanath Singh (Bihar : General): *[Mr. Vice-President, I am surprised at the fact that today we are going to perpetuate by article 21 the innumerable atrocities that have been perpetrated in India in the name of religion. It states that the property, which a person holds in the name of religious institution, would be exempted from all taxation. I hold that the property in India which stands in the name of some religion or some religious institutions such as temples, mosques and churches, is extremely detrimental to the interests of the country. That property is of no use to the Society. I would like that in our Secular State such type of folly be ended once for all in our country. The State is above all gods. It is the God of gods. I would say that a State being the representative of the people, is God himself. Therefore it should certainly have the right of taxation every type of property. Therefore, the property held in the name of religion and by religious institutions should certainly be taxed. I fear that if this article is not deleted from the Constitution, the majority of capitalists and Zamindars will try to donate their property for the advancement of religion and posing as the champions of religion would continue to perpetrate high handedness in the name of religion. Our State will become bankrupt as a consequence of the drying up of the source of taxation. I, therefore, pray that we should not make this constitution in such a way as to benefit only the Mullas, the Pandits and the Christian priests. I do not think I have any thing more to add what I have already said in this connection.]

Shri M. Ananthasayanam Ayyangar (Madras : General): Sir, I oppose both the amendments. The article says that no tax shall be imposed the proceeds of which will be specifically ear-marked for supporting any religious denomination. Syed Abdur Rouf's amendment desires that we should use the words "wholly or partly". I believe the whole includes the part, and therefore, that amendment is unnecessary. The other amendment moved by Mr. Naziruddin Ahmad (amendment No. 633) absolutely is inconsistent with the object of the article. The article says that unlike in the past where particular kings imposed a kind of tax to give importance to the religion which they professed, the article is intended to see that no such tax is imposed in any name or form, the proceeds of which will be ear-marked for encouraging any particular denomination or sect.

Mr. Naziruddin Ahmad, on the other hand, wants by his amendment to exempt the income of all temples and religious endowments. This has no bearing at all to the matter on hand. What article 21 requires is that no tax shall be imposed by the State the proceeds of which are to be appropriated for the maintenance of any particular religious denomination. I request that

*[] Translation of Hindustani speech.

[Shri M. Ananthasayanam Ayyangar]

the article may be allowed to stand as it is. In the past we have had various Kings belonging to various denominations levying taxes in various shapes and forms. The Muhammadan Kings recovered a particular kind of tax for supporting Mosques. The Christians did not do so in this country. The ancient Hindu Kings collected a cess called the Tiruppani cess for supporting a particular temple or temples in my part of the country. In a secular State where the State is expected to view all denominations in the same light, and not give encouragement to any one particular denomination at the expense of others, this provision is absolutely necessary. This is part and parcel of the Charter of liberty and religious freedom to see that no particular denomination is given any advantage over another denomination. This article is very important and it safeguards the interests of all minorities and religious pursuits. I therefore, appeal to the members who have moved these amendments not to press them and to accept the article as it stands.

The Honourable Dr. B. R. Ambedkar : I do not accept amendment No. 632 or amendment No. 633.

Shri H. J. Khandekar : (C. P. and Berar : General) : Sir, I want to speak.

Mr. Vice-President : I am afraid it is too late. I shall now put the amendments to the vote.

The question is:

“That in article 21, after the word ‘which’ the words ‘wholly or partly’ be inserted.”

The amendment was negatived.

Mr. Vice-President : The question is:

“That in article 21, for the words ‘the proceeds of which are’ the words ‘on any income which is’ be substituted.”

The amendment was negatived.

Mr. Vice-President : The question is:

“That article 21 stand part of the Constitution.”

The motion was adopted.

Article 21 was added to the Constitution.

Article 22

Mr. Vice-President : The motion before the House is:

“That article 22 form part of the Constitution.”

‘The first amendment is No. 637. It is out of order as it has the effect of a negative vote. Amendment No. 638, first part, is disallowed as it has the effect of a negative vote. Amendment No. 638, second part may be moved.’

(Amendment Nos. 638 and 639 were not moved.)

Amendment No. 640. You can move only one alternative.

Mr. Mohamed Ismail Sahib (Madras : Muslim) : I shall move the first alternative, Sir.

Sir, I beg to move :

“That for article 22, the following be substituted :

‘22. No person attending an educational institution maintained, aided or recognised by the State shall be required to take part in any religious instruction in such institution without the consent of such person if he or she is a major or without the consent of the respective parent or guardian if he or she is a minor.’ ”

Sir, article 22 in the Draft Constitution as it stands puts a taboo on all religious instruction being given in State-aided schools or State educational institutions. It is not necessary for a secular State to ban religious education

in State institutions. Sir, it will not be in contravention of the neutrality or the secular nature of the State to impart religious instruction. It will be going against the spirit of the Secular State if the State compels the students or pupils to study a religion to which they do not belong. But, if the pupils or their parents want that religious instruction should be given in the institutions in their own religion, then, it is not going against the secular nature of the State and the State will not be violating the neutrality which it has avowedly taken in the matter of religion. My amendment purports to make a leeway in case religious instruction is required to be given in the schools; it puts the matter in a negative form. It does not say that religious instruction must be imparted at all costs in educational institutions; it only says, no compulsion shall be put upon anybody to study in any school, a religion, to which he or she does not belong. Therefore, my amendment is quite harmless and it does not go in any way against the spirit of the Constitution.

Sir, the necessity of imparting religious instruction has been recognised in many countries which are non-religious in nature. They have made religious instruction even compulsory, that is, compulsory with regard to those people who want such instruction to be given to the children in the religion to which they belong. They have not thought it fit to ban religion altogether from their Secular State. Therefore, I hold that we shall not be doing anything in violation of the secular nature of our State if we do not ban religious instruction altogether. As my amendment proposes, we shall leave the matter to the future, to the Parliament. According to my amendment, we are not saying anything now positively about religious instructions: we are only saying, no body shall be compelled to have religious instructions in a religion to which he does not belong. Whether to give religious instructions or not may be left to Parliament. According to my amendment, that is my proposal, Sir.

Prof. Shibban Lal Saksena (United Provinces : General) : Mr. Vice-President, Sir, the amendment which stands in my name is further sought to be amended by me in amendment No.19 of List I. I will therefore formally move the amendment as it is. The amendment which I had originally given is this—

“That for article 22, the following be substituted:—

‘22. The State shall not compel anyone to have religious instruction in a religion not his own in schools against his wishes, but the State shall endeavour to develop religious tolerance and morality among its citizens by providing suitable courses in various religions in schools.’ ”

To this, Sir, I have given notice of an amendment No. 19 in List I which says—

“That clauses (1) and (3) of article 22 be deleted.”

I find that deletion of clause (1) is not accepted by Dr. Ambedkar but I would like to say what I really want to say on this.

Mr. Vice-President : What about amendment No. 20?

Prof. Shibban Lal Saksena : I am not moving it. This gives freedom to impart religious instructions in certain educational institutions outside its working hours. Now, Sir, what is really intended is this, that no minority community shall be compelled to have religious instruction in a religion not his own. That is the real purpose. But although I fully appreciate the purpose, I find that this clause is worded in too general terms and it will preclude the majority community from even imparting any religious instruction to their children because of the minorities. While minorities should not be compelled to have religious instructions against their wishes, they should be provided facilities for having their religious education if the number of their children is sufficient. It should not be forbidden to provide religious education by

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the State. Now, after partition of this country, about 30 to 33 crores will be the majority community and if these people want that their children should have education in their religion, they will not be able to have it if this article is passed. This is not fair. What I want is that they should be enabled to have instruction in their religion provided the same facilities they are prepared to afford to children of other denominations, if the number is sufficiently large. This is the second alternative of Mr. Mohd. Ismail's amendment but he has moved the first alternative. The second was a good one. This clause as it stands will really preclude the majority from giving religious education to their children. For example the District Board in Gorakhpur will not be able to teach Gita to children in the schools. I think this should not be so. These big scriptures of the world are really meant to develop the morality and tolerance and they should be taught and I do not wish that anything in the Fundamental Rights should forbid this. I discussed this with Dr. Ambedkar and I have said that clauses (1) and (3) should be deleted, so that this would prevent anybody from forcing any instructions against their wishes, but it would not have precluded the State from imparting instruction in religion to the children of various denominations if the number was sufficient. Clause (3) is absolutely useless. It only says—

“Nothing in this article shall prevent any community or denomination from providing religious instruction for pupils of that community or denomination in an educational institution outside its working hours.”

But I want that clause (1) also should be deleted because in that case it will be possible for the State to impart instruction in religion, in Gita, in Sermon on the Mount etc., to the children in the schools but not force this instruction on anybody against his wishes. So I want that only clause (2) should remain and it should be permissible to the State to give instruction in religion to children according to their desire and choice and if their guardians permit. This is what I wish but if it is not acceptable. I am not insisting on the deletion of the first part. But clause (3) should be deleted. But I would request Dr. Ambedkar to see that the clause does not forbid the institutions in the State from giving religious instruction. This clause is too wide and should be redrafted to include this.

Mr. Vice-President : Amendment Nos. 642 and 647 are of similar import and should be considered together. No. 642 may be moved.

(Amendment No. 642 was not moved.)

Amendment No. 647—Prof. K. T. Shah.

Prof. K. T. Shah (Bihar : General): Sir, I beg to move—

“That in clause (1) of article 22, after the words “in any educational institution wholly” the words “or partly” be added.”

Sir, the clause as amended would be thus—

“No religious instruction shall be provided by the State in any educational institution wholly or partly maintained out of State funds;”.

Sir, with all the goodwill in the world I cannot understand the reason for this particular wording that the authors of the original clause have adopted. Their stressing the word ‘wholly’ is, in my eyes, very intriguing. If they had not said ‘wholly’ and simply stated ‘maintained out of public funds’ one could have understood. But if they say that ‘religious instruction is to be provided in any institution completely, or wholly maintained out of State funds’, then I begin to question what could conceivably be the intention of the Draftsmen in putting forward these particular words. Is it the intention of the Draftsmen,

that if every single pie of expenditure in connection with a given institution is met exclusively out of State funds, then, and then only, should religious instruction be prohibited there?

An Honourable Member : Yes.

Prof. K. T. Shah : If that is your intention, as somebody I hear says, then I am afraid it is impossible to agree; and I venture to submit that the principle enunciated by the opening words would be strangely belied by that wording. If, for instance, there are in the educational institution some scholarships which come from private endowments, so that the total bill is met as to 99 per cent out of State funds, and as to 1 per cent out of these endowments, then it could be said that it is not wholly maintained by the State; and, on the strength of that 1 per cent of endowments or grant or donation, you will have to open the door to the provision of religious instruction. By such religious instruction is, of course, generally meant Denominational Instruction, in a public institution.

Surely that could not have been and that should not be allowed to be the meaning and interpretation of a Section like this. All institutions, or most of them, subject to the exception that is added by way of proviso—to which I will come later in another amendment—all institutions or most of them are maintained wholly or partly out of public revenues, whether they are in the form of the entire bill footed by the State, or in the shape of some grants, or in the shape of fees, etc. received from the public by regular charge: and, as such, no public institutions, as I understand it, would be free from an incursion of any particular Religious instruction of a denomination—and even, may I say of a controversial character.

If you permit one, you will make it impossible to refuse admission to another. That means that in a public institution, any number or any section of people who are being educated there, if only one donor can be found for each to endow a particular scholarship, or to provide for some particular item of expenditure, let us say, library grant, or some item of laboratory equipment, or some small donation for general purposes, and couple it with the condition that Religious Instruction shall be provided therein for that particular sect to which the donor belongs, then I am afraid, your educational institutions will be converted into a menagerie of faiths. There will be unexpected conflicts and controversies; and the very evil which you are out to stop by the opening words, which seem to me to enshrine a sound principle, would be all the more encouraged and supported so to say, by public countenance.

That is a state of things, which I, for one, thought must have been farthest from the intention of the draftsmen. But it seems to me, from the voice I heard a minute ago, that it is not quite as far from the intentions of the draftsmen, as in my innocence I had assumed, and it appears there is some sort of ulterior motive or *arriere pensee* which has guided the draftsmen in introducing the present wording.

Speaking for myself, if not for any considerable section of the House, I would like entirely to dissociate the State in India from any such interpretation as this. If you desire to exclude, as I think is but right, Religious instruction from public institutions maintained from common funds, whether they be the entire expenditure of such institution, or whether they be a part only by way of a grant or by way of fees, or scholarships, or endowments of any kind met by the State out of public revenues, then it would be absurd,—I think it would be inconsistent with the basic principle of this constitution to permit Religious instruction on the excuse that part of the expenditure is met by other than State funds.

The term “state funds” itself is very suspicious in my eyes. What exactly is meant by State funds? The draft, as I have complained more than once, is peculiarly defective in that there is a woeful lack of any definitions, so that

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words can be used in any sense that the occasion may require, or the vagaries of the interpreter might suggest. In the absence of any definition, specially in this connection, one is entitled to put whatever interpretation seems to one to be reasonable, to *have been probably intended by the draftsmen*. And in the light of that assumption, I feel that this clause needs amendment by the addition of the words "*wholly or partly* maintained from public revenues or State funds."

I would not object to the words "state funds" as such so much as I would object to the omission of the word "partly", which I think, must be inserted if this basic principle, if our governing ideal, is to be fully carried out, namely, that no Religious Instruction, which is inevitably of a Denominational character, should be imparted in any public educational institution maintained wholly or partly out of public funds.

I think, Sir, that the intrinsic commonsense, the intrinsic honesty and clearness of this amendment, are so great that no objection would be raised to it, and I trust I would not be disappointed in that respect.

Mr. Vice-President : Amendment No. 643, standing in the name of Sardar Hukam Singh.

Sardar Hukam Singh (East Punjab : Sikh): Sir, I beg to move—

"That in clause (1) of article 22, after the words "shall be provided" the words "or permitted" be inserted."

Sir, I am conscious that the definition of the words "the State" as given in article 7 is very comprehensive and it includes all authorities whether of the Centre or of the States, and it does include local bodies as well. Even then, I feel that the object would not be fulfilled, if we do not add these words "or permitted" as I have proposed. We are going to build a secular State. The Object of this article, so far as I have understood it, is to prohibit all religious instructions in those institutions which are maintained by the State. If the article were to stand as it is, then it would mean that the State would not provide or I might say, any authority would not provide any religious instruction in such institutions. I presume the object is not economic; we are not safeguarding against the State spending funds on imparting religious instructions, but we are providing, rather, against imparting religious education in these institutions. And in that case, our object cannot be served unless we definitely prohibit that in these institutions. Even if no provision is made for the imparting of such religious education, it should also not be permitted. I may say that the staff might take it into its head though the State has not made any provision, the imparting of such instruction, and might start imparting such religious instructions; or a particular teacher, say, might begin in his class the imparting of such instructions. Then, so far as the article stands, it would not be offended against by the action of the teacher or the staff. That object can only be achieved if we definitely ban the imparting of such instructions, when we are making the State a secular one. Therefore, I move that after the words "shall be provided", the words "or permitted" should be added, so that there would be no chance for such religious instruction being imparted in any case, institutions that are to be controlled and subsidised by the State.

Mr. Vice-President : Amendment No. 644, standing in the name of Sardar Bhopinder Singh Man.

Sardar Bhopinder Singh Man (East Punjab : Sikh): Mr. Vice-President, Sir, I beg to move:

"That in clause (1) of article 22, the word "educational" be omitted;"

and allow the sub-clause to run as follows:—

"No religious instruction shall be provided by the State in any institution wholly maintained out of State funds."

and thus keep up the strict neutrality of the State so far as religious matters are concerned, and to maintain the secular character of the State. Sir, I, as a member of the minority community, wholeheartedly welcome it and I believe that the State should function along that principle laid down in this article, and that in all spheres of State activity, the members of the minority community shall be left no cause of apprehension or fear and that it will happen very soon. However, Sir, I wonder why this article is permitted to remain so incomplete, because only educational institutions are mentioned here. Probably educational institutions were mentioned because in the popular opinion, they are the only places where religious instructions are given. But I may point out that there are other places or institutions which are completely and wholly maintained by State funds and which in modern times can be used as a vehicle for religious or communal propaganda very effectively. To mention one such vehicle, there is the radio. We all know how effectively it can be used as a platform for religious propaganda day after day. I want that this article should conform to its own logical conclusion and that it should be made complete, and that religious or communal propaganda should be prohibited in all state-owned institutions. Otherwise, to me it looks useless that you should prohibit communal or religious propaganda in one institution but allow it to go full blast in other spheres of activity. For example, take the Army itself; religious and communal propaganda can very easily be imparted there. I want that religious instruction should expressly be prohibited not only in educational institutions but in all institutions which are maintained by the State.

Mr. Vice-President : Amendment No. 645 standing in the name of Dr. Ambedkar.

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

“That in clause (1) of article 22, the words “by the State” be omitted.”

The object of this amendment is to remove a possibility of doubt that might arise. If the words “by the State” remain in the draft as it now stands, it might be construed that this article permits institutions other than the State to give religious instruction. The underlying principle of this article is that no institution which is maintained wholly out of State funds shall be used for the purpose of religious instruction irrespective of the question whether the religious instruction is given by the State or by any other body.

Mr. Tajamul Husain : Mr. Vice-President, Sir, I move:

“That in clause (1) of article 22, the words “by the State” and the words “wholly maintained out of State funds” be deleted.”

Clause (1) of this article reads thus:—

“No religious instruction shall be provided by the State in any educational institution wholly maintained out of State funds.”

This means that religious instruction can be provided in any educational institution which is partly maintained out of State funds or which are not maintained out of State funds at all. The result would be that all private and aided schools and colleges and *pathshalas* and *maktabs* will impart religious instruction to boys and girls. I submit that this should not be allowed in a secular State. Much has been said on this subject by the previous speaker and I do not wish to go into detail, but the only thing I would like to say is, what is the use of calling India a secular State if you allow religious instruction to be imparted to young boys and girls? By this article you do not prevent if parents want to give religious instruction to their children—they are at liberty to do so at home, and nobody will object to it. In fact, every parent gives his child education well before he goes to school; generally what

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happens in this country is that all religious instruction is given to a boy before he attends the school; and that should be done, it is the duty of the parents to educate their children according to their own ways. But I object to a public institution, whether maintained by Government or partly maintained by Government, imparting religious instruction.

With these words, I commend my amendment to the House.

Mr. Vice-President : Amendment No. 648 is disallowed as being verbal.

(Amendment Nos. 649, 650 and 652 were not moved.)

Amendment No. 651 is disallowed as being verbal.

There is amendment No. 653 standing in the name of Prof. K. T. Shah.

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

“That at the end of the proviso to clause (1) of article 22, the following be inserted:

‘and the income from which trust or endowment is sufficient to defray the entire expenditure of such institution.’ ”

The proviso as amended would read—

“Provided that nothing in this clause shall apply to an educational institution which is administered by the State but has been established under an endowment or trust which requires that religious instruction shall be imparted in such institution *and the income from which trust or endowment is sufficient to defray the entire expenditure of such institution.*”

I would refer in this connection also to some of the arguments that I advanced previously, namely, that it could and should not be the intention or meaning of this proviso, that anybody who endows, say, a Chair, a Library, a Laboratory, or some department in a College or School, should be able to say that Religious Instruction should be provided in his behalf or of his type, even though his Trust or Endowment is not enough to meet the entire expenditure of that institution.

It would be a simple proposition, as I understand this proviso to the clause as it stands, for anybody to make a Trust or Endowment, sufficient, let us say, to meet part of the cost, e.g., building and furniture; then divest himself of the care and responsibility of managing that institution, hand it over to the State, earn cheap immortality and the title of being a munificent donor, and then ask the State to carry on the institution and also to provide Religious instruction therein, negating the principle on which the clause to which this is a proviso was founded.

The idea, as I have understood this clause, would be defeated and the clause turned into a grotesqueness I think, if such should be the result. Perhaps, it was not intended to be so twisted out of the intention. My amendment, therefore only seeks to make it clear and explicit.

Even so, I am, for my part, not entirely satisfied that any excuse should be left to provide Religious Instruction of a particular character in any public institution managed by the State, and of which only a part, or even the whole of the expenditure is coming from the grant, Trust fund or endowment that a donor has made.

This will be the negation, I repeat, of the basic principle on which this clause is based. The omission of the words “by the State”, under an amendment just moved by the Chairman of the Drafting Committee would, if adopted—and I suppose it *will* be adopted—make the position still more complicated, unless it be that by a consequential amendment the authorities themselves would see that the words “by the State” here are also omitted.

I do not know that they would be omitted here. I am just suggesting a possibility or conveying a hint which may reconcile, to some extent, the main clause with the proviso.

Whether or not these words are deleted from the main clause, and whether or not these words are retained in this proviso, the objection I am urging will apply all the same. I hold that it should not be open to anybody to make a trust for an educational institution in the first instance and then hand over its management to the State and demand that in that institution, simply on the ground that the founder has been providing the capital or recurring cost of that institution, there shall be religious instruction of the type favoured by him or professed by him.

I still believe that it could not be really the intention of the authors of this clause; and this proviso which would permit any such irregularity or exception should be made explicit in the way I am trying by this amendment to do. I trust that commonsense, if not legal sense, will assert itself; and the substance, if not the actual form, of my amendment will be accepted.

(Amendment Nos. 654, 655 and 657 were not moved.)

Mr. Vice-President: Amendment No. 656 is disallowed as being verbal.

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

“That in clause (2) of article 22, the words ‘recognised by the State or’ be deleted.”

I move this amendment with a view to obtaining some clarification on certain dark corners of these two articles—articles 22 and 23. I hope that my learned Friend Dr. Ambedkar will not, in his reply, merely toe the line of least resistance and say “I oppose this amendment”, but will be good enough to give some reasons why he opposes or rejects my amendment, and I hope he will try his best to throw some light on the obscure corners of this article. If we scan the various clauses of this article carefully and turn a sidelong glance at the next articles too, we will find that there are some inconsistencies or at least an inconsistency. Clause (1) of article 22 imposes an absolute ban on religious instruction in institutions which are wholly maintained out of State funds. The proviso, however, excludes such institutions as are administered by the State which have been established under an endowment or trust—that is, under the proviso those institutions which have been established under an endowment or trust and which require, under the conditions of the trust, that religious instruction must be provided in those institutions, about those, when the State administers them, there will not be any objection to religious instruction. Clause (2) lays down that no person attending an institution recognised by the State or receiving aid out of State funds shall be required to take part in religious instruction. That means, it would not be compulsory. I am afraid I will have to turn to clause 23, sub-clause (3) (a) where it is said that all minorities, whether based on religion, community or language, shall have the right to establish and administer educational institutions of their choice. Now, is it intended that the institutions referred to in the subsequent clause which minorities may establish and conduct and administer according to their own choice, is it intended that in these institutions the minorities would not be allowed to provide religious instruction? There may be institutions established by minorities which insist on students’ attendance at religious classes in those institutions and which are otherwise unobjectionable. There is no point about State aid, but I cannot certainly understand why the State should refuse recognition to those institutions established by minorities where they insist on compulsory attendance at religious classes. Such interference by the State I feel is unjustified and unnecessary. Besides, this conflicts with the next article to a certain extent. If minorities have the right to establish and administer

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educational institutions of their own choice, is it contended by the Honourable Dr. Ambedkar that the State will say: 'You can have institutions, but you should not have religious instructions in them if you want our recognition'. Really it beats me how you can reconcile these two points of view in articles 22 and 23. The minority, as I have already said, may establish such a school for its own pupils and make religious instruction compulsory in that school. If you do not recognise that institution, then certainly that school will not prosper and it will fail to attract pupils. Moreover, we have guaranteed certain rights to the minorities and, it may be in a Christian school, they may teach the pupils the Bible and in a Muslim school the Koran. If the minorities, Christians and Muslims, can administer those institutions according to their choice and manner, does the House mean to suggest that the State shall not recognize such institutions? Sir, to my mind, if you pursue such a course, the promises we have made to the minorities in our country, the promises we have made to the ear we shall have broken to the heart. Therefore I do not see any point why, in institutions that are maintained and conducted and administered by the minorities for pupils of their own community the State should refuse to grant recognition, in case religious instruction is compulsory. When once you have allowed them to establish schools according to their choice, it is inconsistent that you should refuse recognition to them on that ground. I hope something will be done to rectify this inconsistency.

Shri Jaspat Roy Kapoor : Sir, I beg to move:

"That clause (3) of article 22 be omitted."

My reasons are four. Firstly, this clause is in conflict with clause (1) of article 22 which reads: "No religious instruction shall be provided in any educational institution wholly maintained out of State funds." I am of course reading clause (1) as it will stand after the amendment moved by Dr. Ambedkar is incorporated. So that, while clause (1) lays down that no religious instruction shall be imparted in any institution which is maintained wholly by the State, clause (3) lays down that such religious instruction can be imparted out of working hours. Obviously, therefore, these two are in conflict with each other. If clause (1) is to remain, clause (3) must go. Clause (3) cannot stand in the face of clause (1).

My second reason is that the retention of clause (3) is likely to lead to conflict between the different religious denominations, because different religious denominations may claim the right to impart religious instruction to their pupils in any institution at the same time and in the same premises. That will certainly lead to a good deal of conflict. The convenient time for imparting religious instruction, after working hours, is very limited and several religious denominations may like to impart religious instruction to their pupils in the same premises and at the same convenient hour. This will place the head of the educational institution concerned in a very embarrassing position. He may be in a dilemma as to whom he should grant permission and to whom not. If a particular denomination is refused permission it might make a very serious grievance of it and, even may, in order to exercise the fundamental right granted to that community, seek forcible entry into that institution. This is likely to lead to communal and religious riots. The retention of this clause being full of mischievous potentialities, it must be deleted.

My third reason is that the management of a denominational institution may not like that religious instruction in a different religion from its own should be imparted there. A Muslim school which may perhaps be run within the precincts of a mosque would surely not like religious instruction to Hindus being imparted there in Vedic Dharm. So also, an educational institution run by Arya Samajists would surely not like religious instruction in Koran

being imparted in the premises of that institution. For this reason also this clause must go.

My fourth reason is that it is absolutely unnecessary in view of clause (2). Clause (2) already provides that religious instruction can be imparted by the management of an educational institution provided of course the students agree to it or if they are minors their guardians agree to it. Such instruction can be provided not only during working hours, but even outside working hours. So it is unnecessary in view of clause (2). For these reasons I submit that clause (3) should be deleted.

Mr. Mohamed Ismail Sahib : Mr. Vice-President, I beg to move:

“That in clause (3) of article 22, for the words ‘providing’, the words ‘being permitted to provide’ be substituted and, after the words ‘educational institution’, the words ‘in, or’ be inserted.”

Clause (3) of article 22 refers mainly to institutions envisaged in clause (1) thereof. Therefore I think that instead of the word ‘providing’, the words “being permitted to provide” will be more appropriate. I say this because, the institutions being State institutions, permission ought to be sought for and given for making any provision for imparting religious instruction in the schools. A religious denomination or community cannot go straightaway and say: “We are providing religious instruction in such and such schools”. That is not possible. Therefore to make it more intelligible and reasonable, I want the substitution of the word “providing” by the words “being permitted to provide”.

Then, Sir, I want the insertion of the words “in, or” after the words “educational institution” with these words the clause will read as follows:—

“Nothing in this article shall prevent any community or denomination from being permitted to provide religious instruction for pupils of that community or denomination in an educational institution in or outside its working hours.”

I want that permission should be given to a community for providing religious instruction in as well as outside working hours. It is only with the permission of the authorities of the institution that such provision will be made. Therefore, if the authorities find it practicable to include religious instruction inside the working hours, there is no harm. Such provision is really to be made in the interests of the pupils as a whole. As I said, this clause 23, has a bearing on clause (1) which deals with State institutions. Now, Sir, what is the objection to State institutions banning religious instruction altogether and for all time? The situation is this: Now, almost all the primary schools will become State institutions shortly and if no religious instruction is to be given in State schools, the position will be that up to fourteen or fifteen years of age boys and girls shall have no opportunity of getting religious instruction. To say that religious instruction should be given in their own homes or outside school hours is an impracticable proposition. Educational experts will readily agree that giving religious instruction outside school hours will be a burden which should not be placed on pupils of tender age. Moreover, we know what sort of instruction can be given outside school hours. Therefore, Sir, this important matter of religious instruction ought not to be treated in this step motherly fashion. People talk of trouble arising on account of religion. As I have been saying more than once, it is not really religion that is the source of trouble. It is the misunderstanding of religion that is the source of trouble. The point is that pupils must be made to understand what religion really is and for that purpose you must not leave them to learn their religion here and there in the nooks and corners of a village or a city. If religious instruction is to be in the interests of the pupils as well as the State, it should be given in public educational institutions where the followers of every religion will do their best to present their religion in the best light. This can

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be done, Sir, only if religious instruction is allowed to be given in the public State-owned institutions, where people will compete with each other to show the best of their religions to the world and thereby undesirable rivalries, competitions, bickerings and heart burnings will really be eliminated. Sir, the second world war has turned people back to religion. Many European writers say that because people went away from religion, discarded religion, because they did not allow religion to be imparted to their children in their tender age, this calamity happened. Therefore, many political writers themselves are now stressing the need for religious instruction in State schools; moreover, we find that several constitutions in European countries have provided for the compulsory imparting of religious instruction in their respective countries. Therefore, I say not only that it is not harmful but I say that it is necessary, that it is very essential that every pupil must be taught his or her own religion in their proper age and that can be done only when they are in the primary schools. Therefore, when all these primary schools are going to be State schools, the State should not ban religious instruction altogether. As I said in a previous amendment, this must be left to the Parliament. There may be practical difficulties with regard to certain communities but these difficulties must be left to the Parliament to be dealt with according to circumstances. Because there may be difficulties for some people, certain other communities should not be deprived of their right of imparting religious instruction to their children. I once again want to stress the fact that it is in the interest of the State to give a grounding to children in religion. What is wanted for the stability of society as well as the State is moral grounding, moral background, and the only way to give this moral background is through religion. The world has so far failed in its experiences to find another substitute for religion. Even the hardboiled politicians are now turning their faces towards religion. When the whole world is returning to religion, we are here discarding religion, we belonging to people who think that religion is an inalienable part of our lives. If we want to avoid all the distressing experiences that the West has experienced, we should allow religious instruction to be imparted to pupils in the primary schools. If this is done, everything will be well and there will be happiness for all. That is why I say that permission should be given at least to the religious communities to arrange for religious instruction in or outside school hours as the case may be according to circumstances. That may be left to the future legislature.

(Amendment No. 663 was not moved.)

Mr. Vice-President : Amendment No. 664. Professor K. T. Shah.

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

“That in clause (3) of article 22, for the words ‘outside its working hours’ the following be substituted:

‘maintained by that community from its own funds provided that no educational institutions, nor any education or training imparted therein shall be recognised unless it provides instruction or training in courses laid down for public instruction in the regular system of education for the country and complies in all other respects with methods, standards, equipment and other requirements of the national system of education.’ ”

Sir, the whole group of clauses lays down a principle of “no religious instruction in public educational institutions” and then seeks, as it seems to be the case, throughout this Chapter to find holes and crevices by which it can creep in like a thief in the dark, and undo the very basis and foundation of the structure we are seeking to erect.

I am free to confess that, apart from the variety of exceptions, exemptions or limitation, all sought to be imposed by this article upon its basic principle,—there is the difficulty of ambiguity of expression, the lack of clarity or insufficiency

in the terms used, which makes it very difficult to devise an amendment, which might be effective in substance as well as in form, and bring out the idea more clearly and expressly than the draftsman seems to have done.

I mention one instance of ambiguity in terms, which, unfortunately, occurs also in the amendment which I am proposing, though there is, I think, no ambiguity in the term used in my amendment containing the expression 'State funds'. The term fund, as I have understood it, means in common parlance, and I venture to submit, even in legal technical terminology, not revenue or recurring income. That term means something static, something accumulated and existing, something that is what the lawyers would call 'corpus', even if they understand the Latin term in the Latin sense, 'Revenue' is something different.

Now take the clause about Institutions maintained from State funds. I for one find it very difficult to understand what 'funds' are meant here as intended by the draftsman for the maintenance of institutions. I am, of course, not anxious to read Bhagvat before buffaloes. But I must say that in trying to understand the meaning of this article, I feel it necessary to at least expose my own difficulties and handicaps in understanding precisely the terminology used, and seek clarification from those who have the handling, the making, and drafting of this Constitution in their hands.

I make no secret of the fact that I am against public educational institutions being used for providing Religious Instruction in this country, or any country, but in this country particularly, because of the variety of sects and denominations. They are, of course, called each a religion; but they very often forget the basic truth of all religions, and exalt each its own particular brand or variety of it, as any advertizer in the market lauds his own wares. But even assuming that that is permissible, outside office hours so to say, outside the normal school hours, care must at least be taken that that is not done at the expense of the normal education, and all the requirements of that education and training, in the shape of building, staff, equipment, standards, methods etc.

Now, it is by no means clear, at least in this clause (3), as it stands, that even if instruction is permitted or suffered to be provided outside the normal hours, whether that may be done at the expense of the ordinary curriculum. That will have to be, I take it, enforced in every school, whether maintained by public funds, or not. I insist, therefore, in this Amendment, that whoever wishes to provide such instruction, whatever community desires to provide such instruction, may do so, if you so agree, by its own funds. But they must be sufficient to meet the full cost; and in the full sense of the term, it must be after the school hours, in such a manner that there is no prejudice whatsoever of the ordinary curriculum prescribed standards of attainment, methods of instruction, equipment, etc.

This, in my opinion, is liable very seriously to be sacrificed and endangered if you do not introduce some such safeguard as I am seeking to make by my amendment. Our only weapon is that, if any community so desires to insist upon the pre-eminence if not exclusive importance being given to religious instruction, and is prepared to spend monies thereafter, let it do so. But the State should certainly not recognise any education given in such an institution, and in training equipment provided by that institution, unless it conforms to the public standards, and public requirements of such education and training being given up to a prescribed degree.

I have some experience of educational institutions trying to ignore, in one respect or another, one or all of these requirements. Those who have had experience of inspecting these institutions and reporting upon them to the appropriate authorities will realize what I mean when I say that the greatest

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difficulty lies in keeping these institutions up to a given mark, and to see from time to time that these standards are maintained.

In countries where a common standard prevails, this difficulty also exists. But in countries where there are conflicting ideals, namely secular education, material considerations in professional training and technical training, and at the same time there is, so to say, the demand of specialized religious instruction, I am afraid one or the other of these may suffer in order that the former or the latter may succeed. I feel it is imperative to require that not only shall all the funds for the provision of such instruction be supplied by the community which desired to provide it, but in addition, on pain of its education being not recognized, on pain of its degrees, diplomas and certificates not being accepted as sufficient qualification for its alumini when they seek any post or office, they shall see to it that the standards, equipment, buildings, staff and other requirements of the national system of education, and its code of regulations are fully complied with. If that is done, then probably the great evil which I find in the provision of religious instruction in a country like this would be mitigated, if not eliminated altogether.

(Amendment No. 665 was not moved.)

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

Shrimati Renuka Ray (West Bengal : General): Mr. Vice-President, Sir, while supporting this article, there are one or two points on which I should like some elucidation. Prof. K. T. Shah has brought forward a point which really needs to be cleared up. Part (1) of this article says: "No religious instruction shall be provided in any educational institution wholly maintained out of state funds". There is likelihood of this being misinterpreted in the future, so as to nullify its very object. As he has pointed out even if a small donation is paid to a public school, it can be held that such a school is not wholly maintained out of State funds, and therefore denominational religious instruction may be given. I hope that when Dr. Ambedkar speaks, he will clear up this point because it is a very important one. If such interpretation can be given then it is necessary to have safeguards against it.

In this country we have seen the exploitation, and the prostitution of what we call religion and we have seen to our bitter cost what is done in the name of denominational religion. It has not only led to the dis-memberment and division of our country, but it has also led to the worst horrors that could be perpetrated in the name of religion. Now, when we are building for the future, we must build in such a manner that we are able to do so untrammelled by the legacy of the past. The only real way in which this could be done is to see that the next generations are educated in such a manner that they are not actuated by motives that divide and disintegrate man from man, but that the religion of humanity is much greater to them than religious dissensions on a denominational religious basis. If that is to be so, we must be very careful, now that we are building up the Constitution for the future, that there shall not be in the fundamental rights any kind of confusion as to the kind of instruction that is to be given at least in those institutions that are maintained out of public funds. If we use this word "wholly", there is likely to be this confusion that has been already pointed out and I would like to hear from Dr. Ambedkar if it is possible for him either to accept this amendment or at least to assure the House that no such interpretation will be possible in the future.

I would again urge that he should accept in particular the amendment for the deletion of clause (3) which has been moved by Mr. Jaspat Ray Kapoor, because as he has pointed out there is no doubt that if this clause remains, there is likelihood that in a certain area where there may be a small number

of schools or only one school, a fight between the various denominations as to which particular type of religious instruction should be given out of school hours may ensue. Therefore, it is much better that clause (3) be deleted from this article.

I am sure that all those in this House and the country outside will agree with me that above all things, it is necessary that the instruction that is given to the citizens of the future shall be such that the idea of a Secular State in which all citizens are equal comes into being, and the provision for this adopted in our Constitution becomes a living reality. This can only be done if education which is the very basis on which we build our Society is so imparted to the young that they do not learn to realise the distinctions which separate man and man, but rather to learn that the underlying unity of humanity is more fundamental and the basis of religion to which they must adhere.

Shri V. I. Muniswami Pillai : (Madras : General): Mr. Vice-President, Sir, when we are on the very important work of evolving a secular State for this country, I feel that the second clause in article 22 is a very important one and I welcome it.

Sir, it will be in the knowledge of this sovereign body that certain institutions in the past, due to the aid that was given by the former Government, under the garb of imparting education to the masses, have taken a different stand. This has led to masses of the unfortunate communities embracing a religion that was not their own. This article makes it clear that any educational institution receiving aid from the State should not indulge in matters of religious education. This mostly helps those unfortunate communities that have fallen a prey in this respect.

Sir, further it goes to say that in the case of a minor, unless the parent has given his consent, he should not be given religious instruction or required to attend any religious worship. I feel, Sir, it is not always possible for the parents to give this consent and the institutions that are working in the rural areas and outskirts of towns will not get the genuine consent of the parents in this respect. This important duty of seeing whether the consent given is genuine and true, falls upon the local authorities who will have to verify and create agencies so that the students or pupils that are attending any institutions of certain denominations are not converted to other religions. This is my emphatic plea and I am hopeful that the local Governments will take care about what is said about consent. I entirely welcome the provisions of this article 22 of the Constitution.

Shri V. S. Sarwate : [United States of Gwalior-Indore-Malwa (Madhya Bharat)]: Mr. Vice-President, Sir, I rise to support this article as it stands except clause (3). As I see it, I think articles 20, 21 and 22 are to be read together. Certain propositions evolve out of them. The first is that the State is secular and it shall not impart any religious education in schools maintained by itself. Further, clause (1) of article 22 lays down that the States shall not give any religious instruction in such schools as are entirely maintained out of State funds and these shall not be allowed to give religious education. This is the first proposition. But, it does not follow that the State either bans religion or despises it. Its attitude is perfectly neutral. Article 20 allows any religious denomination to have its own schools. As I read article 21, I understand it to mean that if any particular community wants to tax itself for the purpose of imparting religious education, the Government would help it by undertaking to collect such a tax. What is done by article 21 is this: that the State will not force anybody to pay such a tax. But, it may collect and pay over to such communities, if the communities agree to pay a particular tax for the purpose of imparting religious education. As I see from the word 'wholly' I do think that if the State wants to partially aid any school which

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is imparting religious instructions, it is enabled to do so and I think it is right. If any community does maintain a school and imparts particular religious education and it deserves help from the State, the State should be in a position to give such aid. Therefore, the word 'wholly' is necessary and I oppose the other amendment which has been moved inserting the words 'or partly'. One need not be obsessed by what happened in the past. I know and I have read in schools and colleges where certain religious education was imparted. I am grateful for the teachings which I received there but there were certain objectionable features. In one educational institution there was a religious instruction imparted in the first hour and if we did not attend in that hour, we were marked absent for the rest of the periods. In another college where I learnt, it was necessary that we attended a religious worship and if we did not attend it, we were subjected to certain fines. These were objectionable features and these are to be removed. They are removed by clause (2). Nobody is required to attend such religious worship or to attend such classes where religious education is given. But it does not prohibit the State from giving aid to such institutions; what is only meant is nobody against his will will be required or forced and compelled to receive such education or attend such religious worship, and I think this is a very salutary provision and also the permission which is given to the State to aid such institutions is also necessary. Otherwise I believe certain very good institutions in the country would suffer.

Kazi Syed Karimuddin : Mr. President, Sir, in my opinion the provisions of article 22 except clause (3) are very salutary and I really do not understand how these provisions have been opposed by Mr. Ismail from Madras. In the state of things as they stand today, in my opinion, it is much better for the minorities to avoid religious controversies, conflicts and religious dogmas to be taught in the schools and we have seen in the past, as several speakers the other day have said, that in Missionary schools people were persuaded to have conversion from one faith to the other because of the undue influence or monetary gains. Now in a secular State, where religion will be a personal matter, my submission is that in educational institutions wholly managed or wholly aided by the Government or State, religious education should not be provided. It is said, Sir, that unless religious education is given in the schools financed by the State it would not be possible for the minorities to be educated in their religion. My submission is that if the communities want that their children should be educated or should be given religious education, then it will be their duty to educate their children in *Pathshalas* or schools. The amendment moved by Professor Shah in my opinion cannot be acceptable at the present stage. His amendment is that no religious instruction should be provided by the State in any educational institution wholly or partly maintained out of public funds. Today as things stand in India there is Aligarh University, there is Banaras University and there are several colleges run by the Christian Missionaries which are aided by the Government. If his amendment is accepted today there will be hundreds and thousands of institutions which will be closed down immediately. Let us proceed very cautiously. For that the provision in clause (2) is very salutary. In aided schools or institutions in which there will be no compulsion on the students to take a particular religious education. I think the opposite point of view can be partially met by clause (2). It has also been stated that the word 'educational' should be removed from clause (1) and it is stated that Radios may be used to propagate and teach a particular religion. This is a State which has been declared to be secular and if a secular State decides to propagate a particular religion through radios, it will not be worth the name that it is a secular State. In my opinion it is

more a question of administrative policy and the word 'educational' need not be taken away from clause (1).

Sir, it has been stated that religious education should be given at home. I also oppose this. In aided schools run by communities religious education can be given and the amendment of Mr. Tajamul Husain cannot be accepted that religious education should be given at home. I contemplate a position that if parents are atheists—for instance Mr. Tajamul Husain by another amendment demands that the people should have no name and they should not have any particular dress—in that case, there will be no religious education in their houses; and if people are only to be known by numbers and not by names, then it will be very difficult for them to be educated or instructed in religious theology. Therefore my submission is that article 22 as it stands is not to the disadvantage or detriment of the minorities.

But I really object to clause (3). What has been given in clauses (1) and (2) has been taken away in clause (3). It says—

“Nothing in this article shall prevent any community or denomination from providing religious instruction for pupils of that community or denomination in an educational institution outside its working hours.”

But who would be responsible for imparting the religious education in such institutions? Any outside agencies who would be giving religious instructions to the boys may not be acceptable to the authorities and moreover much mischief will be done if this religious education is given in outside hours by people who are irresponsible and by people who will be recklessly teaching boys that may be to the detriment of the nation. Therefore I support article 22 as it stands with the deletion of clause (3).

Shri M. Ananthasayanam Ayyangar : Sir, I support the article as it stands without clause (3). Instead of Professor Saksena's amendment, I would urge that the House may accept amendment No. 661. Mr. Saksena's amendment originally as it stands is that both clauses (1) and (3) of this article may be omitted but when moving the amendment he gave up the portion relating to clause (1) and pressed his amendment in regard to clause (3). Instead of that amendment No. 661 relating exclusively to the deletion of clause (3) may kindly be accepted. Sir, in supporting this clause in this article, I am very much pained that religious instruction is not to be taught in any school in a country which is full of religion. Inside our schools, we may refuse to teach religion to the children. But outside the schools we cannot forget our denominations. Religion, according to me, is the basic foundation of any society; all morality, and all good principles have to be traced to religion. But situated as we are, it is unfortunate that we are not able to come to any arrangement regarding the teaching of religion to our children in our schools.

Sir, there are two sets of amendments moved regarding this article. One requires that various provisions for the teaching of religion in the schools must be made for all the children. Another set of amendments wants that the stringent provisions of today against the teaching of religion should be made even tighter, and that even in cases where educational institutions are not exclusively run by the State and where the State does not maintain the institution wholly, no religious instructions should be imparted, and that even in institutions which are partly aided by the State, or are recognised by the State, religion ought not to be taught. That is another set of amendments. I, Sir, feel that neither the one nor the other set is possible in the circumstances in which we are situated today. We are pledged to make the State a secular one. I do not, by the word 'secular', mean that we do not believe in any religion, and that we have nothing to do with it in our day-to-day life. It only means that the State or the Government cannot aid one religion or give

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preference to one religion as against another. Therefore it is obliged to be absolutely secular in character, not that it has lost faith in all religions. Not even members in charge of the Government have lost faith in religion. I am sure none of us is to that extent an iconoclast or non-believer. We all do believe in some religion or other, including those who have spoken and taken part in the deliberations about this article in the Constitution. But it is regrettable that we have not been able to evolve a universal religion, a religion where the religions practice need not cloud the issues. We all believe in the existence of one God, in prayer, in meditation and so on. We all believe in the ultimate surrender to Him and that by sacrifice and service alone we can hope to realise Godhead. These are common to all religions. The Bhagavat Gita lays down that by sacrifice and service we have to see Godhead in humanity, that service to humanity is the essence of God. I will not go into all the details; suffice it to say that I regret that in the circumstances in which we are, we are not able to teach religion to our children. If we introduce the teaching of one religion, even if there is only one boy belonging to another religion in that school, we have to make provision for the teaching of his religion also. And we know very well that even under one religion there are sects and subsects. There are Hindus of various sects. And then there is Jainism, Buddhism, Christianity, and there are the Muslims, the Parsis and so on. Therefore it is not possible, it is physically impossible for the State to make provisions for the teaching of all the religions. The only thing, under the circumstances that we can do is to avoid religious instructions in State-aided schools. If a small contribution is made by some agency and religious instruction is provided, it will all the same, be controlled by the local authority, and if the teaching is rabid, and if hatred is being taught in the school, certainly the grant can be withheld and other measures adopted to stop that kind of thing. It is not obligatory upon the State to give its grants irrespective of the way in which the educational institution is being run. So we need not think that religious instruction will be given in an institution where the major portion is contributed by the State and a small contribution—may be a farthing—is contributed by some other agency. We need not make it part and parcel of the Constitution here. I am sure no government would contribute 99 per cent and allow an educational institution to impart religious education because 1 per cent comes from some other source. Therefore, we need not accept either the one set of amendment or the other set, but confine ourselves to amendment No. 661 and amendment No. 645.

Mr. Vice-President : Much as I would like to accommodate other members, for whose opinions I have great respect, I find we have already had a number of speakers. Twelve amendments have to be put to vote. Nine amendments have been moved and I think six speakers have already spoken. I feel this article has been discussed sufficiently. I now call on Dr. Ambedkar to speak.

Pandit Lakshmi Kanta Maitra (West Bengal : General) : Sir, I want to get one or two points cleared. I am not going to make a speech. I want only to get one or two points explained.

Mr. Vice-President : I have already given my ruling. I cannot allow any further speeches, especially as you and I belong to the same Province.

Pandit Lakshmi Kanta Maitra : Belonging to the same province has nothing to do with this. I only wanted to have clarification on one point.

Mr. Vice-President : My decision is final, Panditji. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, out of the amendments that have been moved, I can persuade myself to accept only

amendment No. 661 moved by Mr. Kapoor to omit sub-clause (3) from the article, and I am sorry that I cannot accept the other amendments.

It is perhaps, desirable, in view of the multiplicity of views that have been expressed on the floor of the House to explain at some length as to what this article proposes to do. Taking the various amendments that have been moved, it is clear that there are three different points of view. There is one point of view which is represented by my friend Mr. Ismail who comes from Madras. In his opinion, there ought to be no bar for religious instruction being given. The only limitation which he advocates is that nobody should be compelled to attend them. If I have understood him correctly, that is the view he stands for. We have another view which is represented by my friend Mr. Man and Mr. Tajamul Husain. According to them, there ought to be no religious instruction at all, not even in institutions which are educational. Then there is the third point of view and it has been expressed by Prof. K. T. Shah, who says that not only no religious instruction should be permitted in institutions which are wholly maintained out of State funds, but no religious instruction should be permitted even in educational institutions which are partly maintained out of State funds.

Now, I take the liberty of saying that the draft as it stands, strikes the mean, which I hope will be acceptable to the House. There are three reasons, in my judgment, which militate against the acceptance of the view advocated by my friend Mr. Ismail, namely that there ought to be no ban on religious instructions, rather that religious instructions should be provided; and I shall state those reasons very briefly.

The first reason is this. We have accepted the proposition which is embodied in article 21, that public funds raised by taxes shall not be utilised for the benefit of any particular community. For instance, if we permitted any particular religious instruction, say, if a school established by a District or Local Board gives religious instruction, on the ground that the majority of the students studying in that school are Hindus, the effect would be that such action would militate against the provisions contained in article 21. The District Board would be making a levy on every person residing within the area of that District Board. It would have a general tax and if religious instruction given in the District or Local Board was confined to the children of the majority community, it would be an abuse of article 21, because the Muslim community children or the children of any other community who do not care to attend these religious instructions given in the schools would be none-the-less compelled by the action of the District Local Board to contribute to the District Local Board funds.

The second difficulty is much more real than the first, namely the multiplicity of religions we have in this country. For instance, take a city like Bombay which contains a heterogeneous population believing in different creeds. Suppose, for instance, there was a school in the City of Bombay maintained by the Municipality. Obviously, such a school would contain children of the Hindus believing in the Hindu religion, there will be pupils belonging to the Christian community, Zoroastrian community, or to the Jewish community. If one went further, and I think it would be desirable to go further than this, the Hindus again would be divided into several varieties; there would be the *Sanatani* Hindus, Vedic Hindus believing in the Vedic religion, there would be the Buddhists, there would be the Jains—even amongst Hindus there would be the Shivites, there would be the Vaishnavites, Is the educational institution to be required to treat all these children on a footing of equality and to provide religious instruction in all the denominations? It seems to me that to assign such a task to the State would be to ask it to do the impossible.

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The third thing which I would like to mention in this connection is that unfortunately the religions which prevail in this country are not merely non-social; so far as their mutual relations are concerned, they are anti-social, one religion claiming that its teachings constitute the only right path for salvation, that all other religions are wrong. The Muslims believe that anyone who does not believe in the dogma of Islam is a *fakir* not entitled to brotherly treatment with the Muslims. The Christians have a similar belief. In view of this, it seems to me that we should be considerably disturbing the peaceful atmosphere of an institution if these controversies with regard to the truthful character of any particular religion and the erroneous character of the other were brought into juxtaposition in the school itself. I therefore say that in laying down in article 22 (1) that in State institutions there shall be no religious instruction, we have in my judgment travelled the path of complete safety.

Now, with regard to the second clause I think it has not been sufficiently well-understood. We have tried to reconcile the claim of a community which has started educational institutions for the advancement of its own children either in education or in cultural matters, to permit to give religious instruction in such institutions, notwithstanding the fact that it receives certain aid from the State. The State, of course, is free to give aid, is free not to give aid; the only limitation we have placed is this, that the State shall not debar the institution from claiming aid under its grant-in-aid code merely on the ground that it is run and maintained by a community and not maintained by a public body. We have there provided also a further qualification, that while it is free to give religious instruction in the institution and the grant made by the State shall not be a bar to the giving of such instruction, it shall not give instruction to, or make it compulsory upon, the children belonging to other communities unless and until they obtain the consent of the parents of those children. That, I think, is a salutary provision. It performs two functions....

Shri H. V. Kamath : On a point of clarification, what about institutions and schools run by a community or a minority for its own pupils—not a school where all communities are mixed but a school run by the community for its own pupils?

The Honourable Dr. B. R. Ambedkar : If my Friend Mr. Kamath will read the other article he will see that once an institution, whether maintained by the community or not, gets a grant, the condition is that it shall keep the school open to all communities. That provision he has not read.

Therefore, by sub-clause (2) we are really achieving two purposes. One is that we are permitting a community which has established its institutions for the advancement of its religious or its cultural life, to give such instruction in the school. We have also provided that children of other communities who attend that school shall not be compelled to attend such religious instructions which undoubtedly and obviously must be the instruction in the religion of that particular community, unless the parents consent to it. As I say, we have achieved this double purpose and those who want religious instruction to be given are free to establish their institutions and claim aid from the State, give religious instruction, but shall not be in a position to force that religious instruction on other communities. It is therefore not proper to say that by this article we have altogether barred religious instruction. Religious instruction has been left free to be taught and given by each community according to its aims and objects subject to certain conditions. All that is bared is this, that the State in the institutions maintained by it wholly out of public funds, shall not be free to give religious instruction.

Pandit Lakshmi Kanta Maitra : May I put the honourable Member one question? There is, for instance, an educational institution wholly managed

by the Government, like the Sanskrit College, Calcutta. There the *Vedas* are taught, *Smrithis* are taught, the *Gita* is taught, the *Upanishads* are taught. Similarly in several parts of Bengal there are Sanskrit Institutions where instructions in these subjects are given. You provide in article 22(1) that no religious instruction can be given by an institution wholly maintained out of State funds. These are absolutely maintained by State funds. My point is, would it be interpreted that the teaching of *Vedas*, or *Smrithis*, or *Shastras* or *Upanishads* comes within the meaning of a religious instruction? In that case all these institutions will have to be closed down.

The Honourable Dr. B. R. Ambedkar : Well, I do not know exactly the character of the institutions to which my Friend Mr. Maitra has made reference and it is therefore quite difficult for me.

Pandit Lakshmi Kanta Maitra : Take for instance the teaching of *Gita*, *Upanishads* the *Vedas* and things like that in Government Sanskrit Colleges and schools.

The Honourable Dr. B. R. Ambedkar : My own view is this, that religious instruction is to be distinguished from research or study. Those are quite different things. Religious instruction means this. For instance, so far as the Islam religion is concerned, it means that you believe in one God, that you believe that *Pagambar* the Prophet is the last Prophet and so on, in other words, what we call "dogma". A dogma is quite different from study.

Mr. Vice-President: May I interpose for one minute? As Inspector of Colleges for the Calcutta University, I used to inspect the Sanskrit College, where as Pandit Maitra is aware, students have to study not only the University course but books outside it in Sanskrit literature and in fact Sanskrit sacred books, but this was never regarded as religious instruction; it was regarded as a course in culture.

Pandit Lakshmi Kanta Maitra : My point is, this. It is not a question of research. It is a mere instruction in religion or religious branches of study.

I ask whether lecturing on *Gita* and *Upanishads* would be considered as giving religious instruction? Expounding *Upanishads* is not a matter of research.

Mr. Vice-President : It is a question of teaching students and I know at least one instance where there was a Muslim student in the Sanskrit College.

Shri H. V. Kamath : On a point of clarification, does my friend Dr. Ambedkar contend that in schools run by a community exclusively for pupils of that community only, religious education should not be compulsory?

The Honourable Dr. B. R. Ambedkar : It is left to them. It is left to the community to make it compulsory or not. All that we do is to lay down that that community will not have the right to make it compulsory for children of communities which do not belong to the community which runs the school.

Prof. Shibban Lal Saksena : The way in which you have explained the word "religious instruction" should find a place in the Constitution.

The Honourable Dr. B. R. Ambedkar : I think the courts will decide when the matter comes up before them.

Mr. Naziruddin Ahmad : The honourable Member has proposed to accept the deletion of clause (3). It is an explanatory note. I would ask if its deletion will rule out the application of the principle contained therein even apart from the deletion.

The Honourable Dr. B. R. Ambedkar : Well, the view that I take is this, that clause (3) is really unnecessary. It relates to a school maintained by a community. After school hours, the community may be free to make use of it as it likes. There ought to be no provision at all in the Constitution.

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Now, Sir, there is one other point to which I would like to make reference and that is the point made by Prof. K. T. Shah that the proviso permits the State to continue to give religious instruction in institutions the trusteeship of which the State has accepted. I do not think really that there is much substance in the point raised by Prof. Shah. I think he will realise that there have been cases where institutions in the early part of the history of this country have been established with the object of giving religious instruction and for some reason they were unable to have people to manage them and they were taken over by the State as a trustee for them. Now, it is obvious that when you accept a trust you must fulfil that trust in all respects. If the State has already taken over these institutions and placed itself in the position of trustee, then obviously you cannot say to the Government that notwithstanding the fact that you were giving religious instruction in these institutions, hereafter you shall not give such instruction. I think that would be not only permitting the State but forcing it to commit a breach of trust. In order therefore to have the situation clear, we thought it was desirable and necessary to introduce the proviso, which to some extent undoubtedly is not in consonance with the original proposition contained in sub-clause (1) of article 20. I hope, Sir, the House will find that the article as it now stands is satisfactory and may be accepted.

Mr. Vice-President : I am now putting the amendments to vote one after another. First of all, I put the first alternative in amendment No. 640.

The question is:

“That for article 22, the following be substituted:—

‘22. No person attending an educational institution maintained, aided or recognised by the State shall be required to take part in any religious instruction in such institution without the consent of such person if he or she is a major or without the consent of the respective parent or guardian if he or she is a minor.’”

The amendment was negatived.

Mr. Vice-President : Next we come to No. 641 as amended by No. 19 of list No. 1. I shall first put No. 19 of list No. 1.

The question is:

“That for amendment No. 641 of the List of Amendments, the following be substituted:—

‘That clauses (1) and (3) of article 22 be deleted.’”

The amendment was negatived.

Mr. Vice-President : I shall now put amendment No. 641.

The question is:

“That for article 22, the following be substituted:—

‘22. The State shall not compel anyone to have religious instruction in a religion not his own in schools against his wishes, but the State shall endeavour to develop religious tolerance and morality among its citizens by providing suitable courses in various religions in schools.’”

The amendment was negatived.

Mr. Vice-President : The next one is amendment No. 647.

The question is:

“That in clause (1) of article 22, after the words ‘in any educational institution wholly’ the words ‘or partly’ be added.”

The amendment was negatived.

Mr. Vice-President : Now amendment No. 643.

The question is:

“That in clause (1) of article 22, after the words ‘shall be provided’ the words ‘or permitted’ be inserted.”

The amendment was negatived.

Mr. Vice-President : The next one is No. 644.

The question is:

“That in clause (1) of article 22, the word ‘educational’ be omitted.”

The amendment was negatived.

Mr. Vice-President : The next one is No. 645.

The question is:

“That in clause (1) of article 22, the words ‘by the State’ be omitted.”

The amendment was negatived.

Mr. Vice-President : The next one is the No. 646.

The question is:

“That in clause (1) of article 22, the words, ‘by the State’ and the words ‘wholly maintained out of State funds’ be deleted.”

The amendment was negatived.

Mr. Vice-President : The next one is No. 653.

The question is:

“That at the end of the proviso to clause (1) of article 22, the following be inserted :—

‘and the income from which trust or endowment is sufficient to defray the entire expenditure of such institution’.”

The amendment was negatived.

Mr. Vice-President : The next one is 658.

The question is:

“That in clause (2) of article 22, the words ‘recognised by the State or’ be deleted.”

The amendment was negatived.

Mr. Vice-President : The next one is No. 661. This has been accepted.

The question is:

“That clause (3) of article 22 be omitted.”

The amendment was adopted.

Mr. Vice-President : The next one is No. 662.

The question is:

“That in clause (3) of article 22, for the word ‘providing’ the words ‘being permitted to provide’ be substituted and after the words ‘educational institution’ the words ‘in, or’ be inserted.”

The amendment was negatived.

Mr. Vice-President : The last one is 664.

The question is:

“That in clause (3) of article 22, for the words ‘outside its working hours’, the following be substituted:—

‘maintained by that community from its own funds provided that no educational institutions, nor any education or training imparted, therein shall be recognised unless it provides instruction or training in courses laid down for public instruction in the regular system of education for the country and complies in all other respects with methods, standards, equipment and other requirements of the national system of education’.

The amendment was negatived.

Mr. Vice-President : The question is:

“That article 22, as amended, stand part of the Constitution.”

The motion was adopted.

Article 22, as amended, was added to the Constitution.

(Amendment No. 666 was not moved.)

Article 22A (New Article)

Prof. K. T. Shah : Sir, I beg to move:

“That after article 22, the following new article be inserted:—

‘22-A. All privileges, immunities or exemptions of heads of religious organisations shall be abolished’.

It may not be, perhaps, very commonly known that Heads of Religious organisations are in the enjoyment of certain extra-territorial or extra-civil privileges. They enjoy civic immunities, privileges or exemptions, which mark them out as a class apart, but which cause in many instances heavy losses to the public purse, and gravely prejudice public interest.

I do not of course object to the nominal or formal privilege enjoyed by them of titles, precedence, honorifics and the like. Some of these Heads of Religion are considered to be equal in rank to ruling princes. They are accordingly given a salute of eleven guns, at their own cost of course if fired; and are in a position to demand that that honour be paid to them. As I said just now, I do not object to that, because each time they ask for such a mark of respect, they would themselves pay for it. But there are immunities and exemptions which mark them out as apart from the rest of the citizens of the land; and as such offend the simple principle that all citizens of this country are amongst themselves equal, without any distinction of rank, or birth, or faith or sex.

This I consider to be objectionable in principle, because the inequality thereby created is of a character which has a direct and material bearing on the rights guaranteed by the constitution to the citizens. Religious Headship, if it is truly to be so regarded in the spirit in the essence, in which it was conceived, would make the holder of that position entirely apart from...

Shri Krishna Chandra Sharma (United Provinces : General) : To whom is the honourable Member proposing to give such rights? This is a Chapter on Fundamental Rights. This proposal has nothing to do with those rights.

Prof. K. T. Shah: That is for the Chair to say.

Mr. Vice-President : Professor Shah may go on.

Prof. K. T. Shah : Sir, I am stating that this is a violation of the Fundamental Rights granted. I am not asserting any new rights. I would mention one or two illustrations of such exemptions, which used to be allowed, and

which I think are still being allowed, such as for instance exemption from Income-Tax and Customs Duties on goods imported from abroad for the use of the religious heads. These exemptions from customs duties under the Sea Customs Act and the Income-tax Act are claimed by virtue of the traditional privileges conceded to them as a matter of courtesy in a class society. I am not able to tell what precisely is the loss that the State has to suffer from the grant of these privileges to the several Heads of the several communities, who have sufficient fondness for outside goods or foreign articles to be constantly importing them on a large scale. Though these are articles of luxury, and though the heads of religious sects have sufficient income, they escape customs duties, and they demand exemption from income-tax.

Mr. Vice-President : Order: There is too much noise inside the House.

Prof. K. T. Shah : In that regard also, Sir, I am not able to give the exact amount of loss that this country suffers from this source today. In view of the very high level of taxation now prevailing on incomes, such exempted incomes ought to bring in substantial sums. For many Heads of Religion, have usually incomes running into lakhs, even crores, and, as such, if the same rate of taxation were imposed on them as on others, if the same manner of tax collection was adopted with reference to them also; if the same rigid and exacting technique was followed in regard to tax collection from these people, I should imagine the public exchequer would benefit very substantially. Under the existing rate an income of a crore of Rupees will yield a tax of Rs. 92 $\frac{1}{2}$ lakhs; and if there are 10 heads of religions like the Aga Khan, they would keep away from the public Treasury 9.25 crores or more.

It is not perhaps so much the amount of money which is lost to the State by the existence of these privileges and immunities of the Heads of Religion which may attract your attention. It is the essentially mundane character, the essentially worldly nature of these privileges, and, may I say, the consequent degradation of religion by such means which only mean material objects and material prosperity that ought to be objected to. As such these privileges and immunities should be disallowed after or on the passing of this Constitution. I hope the point appeals to the House and will be accepted.

Mr. Vice-President : Amendment Nos. 668 and 669 relate to language and script and have therefore to be postponed for the present.

Shri Damodar Swarup Seth may now move his amendment No. 670.

Mr. Z. H. Lari (United Provinces : General): On a point of order, Sir. The article in respect of which an amendment was moved previously is quite different from the article which is sought to be inserted by the later amendment.

Mr. Vice-President : I thought it would save time if the amendments are moved one after another.

Mr. Z. H. Lari : But there cannot be a discussion on two Articles simultaneously. One article has to be disposed of before another is taken up for consideration.

Mr. Vice-President : Does the honourable Member want to discuss the thing now?

Mr. Z. H. Lari: Yes.

Mr. Vice-President : That can come later.

Mr. Z. H. Lari : But these two are different articles and the amendments are distinct ones.

Mr. Vice-President : When the honourable Member comes upto speak, he can say that he is discussing such and such article or amendment. Or, if he wants, I can ask Mr. Damodar Swarup to speak later.

Mr. Z. H. Lari : That would be the proper procedure.

Mr. Vice-President : That is right technically. But I would save the time of the House by proceeding in the manner I have done. I am indifferent whether you start this way or that way.

Shri R. K. Sidhva (C. P. and Berar : General): May I know whether it is your ruling or Mr. Lari's ruling?

Mr. Vice-President : I know that the honourable Member Mr. Lari will be quite willing to accept my ruling. But I want to please everybody. That is my weakness. Does Mr. Lari abide by my request?

Mr. Z. H. Lari : I bow to your decision, Sir.

Shri Damodar Swarup Seth (United Provinces : General): Sir, I beg to move:

“That the following new article be inserted after article 22:—

‘22-A. The use of religious institutions for political purposes and the existence of political organization on religious basis is forbidden.’”

The Draft Constitution very rightly and justly guarantees to all citizens...

The Honourable Dr. B. R. Ambedkar : Article 19 (2) (a) covers this.

Mr. Vice-President : I am told that article 19 (2) (a) covers your point.

Mr. H. V. Kamath: Article 19 (2) (a) regulates or restricts political or other secular activities associated with religion, while Seth Damodar Swarup's amendment forbids them altogether. Between a complete taboo and mere regulation there is a lot of difference.

Pandit Thakur Dass Bhargava (East Punjab : General): There was an amendment to article 19 (2) seeking to add ‘prohibiting’ and the amendment was not accepted by the House.

Mr. Vice-President : It practically means the same thing as Seth Damodar Swarup's amendment. I am afraid this thing has already been covered. I cannot allow it.

Amendment No. 671. This is about cow slaughter. Already covered.

Amendment No. 672 is about language and script. So it means that we have only one amendment No. 667, and the objection of Mr. Lari has been met automatically. Amendment No. 667 of Professor K. T. Shah is now for general discussion.

Shri Krishna Chandra Sharma : Mr. Vice-President, Sir, I do not see any meaning in Professor Shah's amendment with regard to the fundamental rights. The amendment runs thus :—

“All privileges, immunities or exemptions of heads of religious organisations shall be abolished.”

To say that such and such a man shall not have such and such a right is no right given. Therefore I fail to understand where the question of fundamental right arises in this proposal and how it can find a place in the chapter on fundamental rights. This proposal, I beg to submit, is out of place and as such should not find a place in this chapter of the Constitution.

Secondly, I beg to submit that Professor Shah seems to be very much afraid of religion. What is wrong with religion is not the religion itself but its wrong propagation or its propagation by inefficient or undesirable persons. Religion as such is the basis of all morality, all social and ethical values and all human

institutions. I do not find what is wrong with religion itself. There might be something wrong with religion if it is handled by wrong people, if it is propagated by incompetent people.

Shri Rohini Kumar Chaudhari (Assam : General): Sir, I oppose the motion which was moved by my honourable Friend Professor Shah. I do not understand why he should be so much against religious heads. My honourable Friend, I think, knows that there are provisions in the Civil Procedure Code whereby even ex-Ministers may be exempted from appearing in court for some months. In our part of the country there are Shatradhikars who are exempted generally speaking from appearing in any court. It would revolutionise the minds of their disciples if by any chance they are made to appear in any court and give evidence. When Professor Shah is not saying any word against the privileges which are now enjoyed by some privileged persons like high officials and Ministers of the State, why is he so anxious to curtail the privileges of heads of religious organisations in the Constitution itself, instead of allowing it to the discretion of the courts to extend the exemptions or privileges in some cases which are really necessary?

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, the amendment probably is quite laudable in its object but I do not know whether the amendment is necessary at all. In the first place, all these titles and so on which religious dignitaries have cannot be hereafter conferred by the State because we have already included in the fundamental rights that no title shall be conferred and obviously no such title can be conferred by the State. Secondly, as my honourable friend is aware perhaps, no suit can lie merely for the enforcement of a certain title which a man chooses to give himself. If a certain man calls himself a Sankaracharya and another person refuses to call him a Sankaracharya, no right of suit can lie. It has been made completely clear in Section 9 of the Civil Procedure Code that no suit can lie merely for the enforcement of what you might call a dignity. Of course if the dignity carries with it some emoluments or property of some sort, that is a different matter, but mere dignity cannot be a ground of action at all.

With regard to the amenities which perhaps some of them enjoy, it is certainly within the power of the executive and the legislature to withdraw them. It is quite true, as my honourable Friend Mr. Chaudhari said, that in some cases summons are sent by the magistrate. In other cases when the man concerned occupies a bigger position in life, instead of sending summons, he sends a letter. Some persons, when appearing in courts, are made to stand while some other persons are offered a chair. All these are matters of dignity which are entirely within the purview of the legislature and the government. If there was any anomaly or discrepancy or disparity shown between a citizen and a citizen, it is certainly open both to the legislature and the executive to remove those anomalies. I therefore think that the amendment is quite unnecessary.

Mr. Vice-President : The question is:

“That after article 22, the following new article be inserted :—

‘22-A. All privileges, immunities or exemption of heads of religious organisations shall be abolished.’”

The motion was negatived.

Article 23

Mr. Vice-President : We shall now proceed to the next article. The first amendment is No. 673 which is disallowed for the obvious reason that it practically amounts to a negative vote. Then we come to amendment No. 674.

Shri Lokanath Misra (Orissa: General): Sir, I beg to move:

“That for article 23, the following article be substituted :—

‘23. Without detriment to the spiritual heritage and the cultural unity of the country, which the State shall recognise, protect and nourish, any section of the citizens residing in the territory of India or any part thereof, claiming to have a distinct language, script and culture shall be free to conserve the same.’”

Sir, in moving this substitution for the existing article No. 23, I am speaking nothing new nor anything against what has been said in article 23. It is a fact and it has been rightly recognised in article 23 that we have different scripts, different languages and even different cultures in the territory of India and they have been recognised and, preserved and they must flourish, but I should say, as all roads lead to Rome and ought also to lead to Rome, all these cultures, all these languages and all these scripts must be taken as a means to a common end, which the State must recognise, nourish and protect. In fact, it has been our desire and it has been the very soul of the birth of our freedom and our resurgence that we must go towards unity in spite of all the diversity that has divided us. I, therefore, submit to the House that although we have many languages, many cultures, many scripts, many religions, it may not yet be impossible for us to find out if there is something common for India bequeathed even from the hoary past, which has been running on till today, vitalizing and inspiring us. Just as there is the ocean to which all the rivers go, to the cultural ocean, to the spiritual ocean that is India, that has been our heritage, all our rivers of culture, language and script, hopes and aspirations must go and from a mighty ocean ever full. Sir, this article 23 which is an article recognising diversity must find out a way for our unity and unless we have that unity, the State administration or the State rolling machine, just a rule of external law, cannot bring us to unity. Therefore for a real unity, for a homogeneous unity, and natural unity, we must evolve a certain philosophy, a certain culture, and a certain language which will contain and carry everything and still be more than everything and must at the same time be running from the ageless past to the eternal future. I therefore, submit, Sir, this amendment, which I am suggesting will find favour with the House and the House will realize that, without developing this unity which can be brought about only on a very high plane, on the plane where we are one, in spite of the appearance that we are many and in the plane of the heart, which is the home of the spirit and also in the sphere of culture, which we have all been nourishing, there cannot be a real unity and we will have no real contribution to the world civilization or the amity of man, his peace and prosperity. I therefore commend this amendment to the favourable consideration of this House.

Maulana Hasrat Mohani (United Provinces : Muslim): May I suggest that we keep this amendment for a decision afterwards or till such time as we decide what shall be the language which will be accepted as the universal language for the whole country and which is the script? May I suggest that this amendment shall stand over?

Mr. Vice-President : Maulana Sahib, I have not been able to make out what you wish to say. Do you mean amendment No. 674 or the whole article?

Maulana Hasrat Mohani : This amendment, Sir.

Mr. Vice-President : Mr. Lokanath Misra says “without detriment to the spiritual heritage and cultural unity of the country which the State shall recognise, etc.” Therefore, the question of language and script does not occur anywhere. It is quite possible to think of cultural unity, though the languages

used in different parts of India may be different. So I do not quite see your objection.

Shri Lokanath Misra : What I referred to are our hopes and aspirations, the future to which we will go in our pilgrimage. I do not say that we do something here and now.

Maulana Hasrat Mohani : I think that this amendment should stand over as you have decided in the case of many other amendments. We cannot possibly decide this, unless we decide which will be the language of the whole country and which will be the script. How can we say that now?

Mr. Vice-President : This amendment has nothing to do with the national language or the script. It is quite in order here.

(Amendment No. 675 was not moved.)

Mr. Z. H. Lari : Mr. Vice-President, Sir, I move:

“That for clause (1) of article 23, the following be substituted :—

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

This amendment which I have moved is not a new motion. It is really a motion to restore the original decision of this House taken in April 1947. You will remember, Sir, I was not then a Member, but I find from the reports of the Committee, First series, 1947, that the Committee on Fundamental Rights reported that this clause should run in the way in which I have put. At page 30 of that report, the clause runs thus:

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

This recommendation of the Committee on Fundamental Rights was approved by this August House in April 1947. But curiously enough, the Drafting Committee.....

Mr. Vice-President: Is it a sub-committee of the Fundamental Rights Committee?

Mr. Z. H. Lari: Yes; it was a sub-committee and it was approved by this House as well, but the Drafting Committee which was charged with the duty of framing the Draft Constitution on the basis of resolutions adopted by this House changed the phraseology and the present sub-clause stands thus now:

“Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script and culture of its own shall have the right to conserve the same.”

The reasons which have led me to move this amendment in order to restore it to its original condition can be briefly stated.

Sir, I believe it is accepted on all hands that cultural and educational rights have to be protected and this is the intention of article 23. There can be no gainsaying on that point. The clause as it originally stood and as it was approved by this House intended to lay down that no laws, no regulations shall be passed which would adversely affect a minority in maintaining and fostering their own culture and language. That is to say, no such laws shall be passed which would nullify a right which was being conceded to a linguistic minority. If the clause were to stand as I have put it and as the House originally approved, the result would be that there will be adequate remedy at the disposal of a minority, to see that the intentions of this House are carried into effect. But, if you look to the language used in the Draft Constitution, it comes to this only that the minority or a section of the citizens shall be entitled

to conserve its own language. What does it mean? What is its effect? It simply means this that a body of citizens shall be entitled to use their own language in their private intercourse. But the question is whether they will be entitled to use their own language in elementary education given at the state expense. No doubt, under another clause of this article, a minority can establish institutions of its own and by virtue of this clause (1), it will be open to that minority to impart, say, elementary education through its own mother tongue. But if the State were to establish institutions as it would do,—naturally there will be so many minorities which will not be in a position to start institutions of their own—, then the question arises, will it be possible for the minority to demand that, in those institutions which are being established by the State, in pursuance of any legislation, municipal or provincial, which makes free elementary education compulsory, elementary education be imparted through the medium of their own language?

An Honourable Member : Impossible.

Mr. Z. H. Lari : There is a voice which says it is impossible. If it is impossible and if the intention of the House is that even while receiving elementary education, it will not be necessary for the State to make adequate arrangements, then, my submission would be that the whole clause will be a paper transaction and nothing more. Anyway, at present I am drawing the attention of the House to its own decision and beg of them to consider whether there is any reason why their decision, arrived at after due consideration, should be set at nought. If the language were an improvement on the original clause, I would necessarily submit that improvement is permissible. But the question is, does the changed phraseology of this clause improve on the intention of the House, does it give effect to the intention of the House, or does it nullify the intention of the House? For the time being, I would request the Members to concentrate on this point. If it be the opinion of Dr. Ambedkar that really by the changed and different phraseology, the intentions, the import of that article are not changed and the same remains, then I have no objection. But my submission is this: the clause as it stands becomes innocuous: it is of no effect at all. It states a truism; it is not a fundamental right at all. Who can prevent any minority or any class of citizens from using their own culture and language to the extent that it is possible for them to do so irrespective of legislation or regulation that may be made by the State? The House will recognise that the field of education will be entirely covered by state institutions and unless the old clause is put in, I think there will be great difficulty. This is not the only place where such a clause was sought to be placed on the statute book. I may refer to article 113 of the German Constitution which runs like this:

“Sections of the population of the Reich speaking another language may not be restricted whether by way of legislation or administration in their free racial development. This applies specially to the use of their mother tongue in education as well as in the question of internal administration and the administration of justice.”

Therefore, it is not a new thing that this House has done, or the Committee on Fundamental Rights had proposed. Considering the import of this article, my submission would be that the original clause should be restored and this changed phraseology should not be accepted by this House.

With these words, Sir, I move.

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

The Assembly then adjourned till Ten of the Clock on Wednesday, the 8th December, 1948.