Thursday, 9th December, 1948

Volume VII

4-11-1948
to
8-1-1949

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

Reprinted by Lok Sabha Secretariat, New Delhi
SIXTH REPRINT 2014

Printed by JAINCO ART INDIA, New Delhi

CONTENTS

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

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 9th 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.*)

New Article 23-A

Mr. Vice-President (Dr. H. C. Mookherjee): Our work for today starts with the consideration of amendment No. 716. It stands in the name of Professor K. T. Shah.

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

"That under the heading "Right to Property" the following new article be added:

'23-A. All forms of natural wealth, such as land, forests, mines and minerals, waters of rivers, lakes or seas surrounding the coasts of the Union shall belong to the people of India. No private property shall be allowed in any of these forms of the country's wealth; nor shall they be owned, worked, managed or developed, except by public enterprise exclusively.' "

Shri B. Das (Orissa : General): On a point of order, Sir, how can 23-A about nationalisation of property be moved when we have not dealt with article 24 which deals with the right of property. I would respectfully suggest that, if you allow Professor Shah to move article 23-A, it may be moved after we have dealt with article 24.

Prof. K. T. Shah : I would point out, Sir,....

(Shri B. Das rose to speak.)

Mr. Vice-President : I want to hear what Professor Shah has to say.

Prof. K. T. Shah : There is a misapprehension on the part of Mr. Das. This does not talk of nationalising all existing private property. I am only enunciating a principle which may in legal parlance be called the right of eminent domain of the State. Therefore it is merely an assertion that natural wealth belongs to the people, to the State. That does not mean that that which is already in private possession is to be nationalised. Nor does it exclude the possibility of lands, forests, etc. being held, as delegated owners, by the present holders or subsequent holders under the eminent domain of the State. I see no difficulty in this.

Shri B. Das: My view is that article 24 deals with right to property, whether it belongs to a private citizen or to the State. This amendment can only be discussed when we discuss article 24 and Professor Shah can move his amendment afterwards.

Shri R. K. Sidhwa (C. P. & Berar : General): Mr. Vice-President, I think that what my honourable Friend Mr. Das said is quite correct. We are discussing article 23—cultural and educational rights—and if this article is passed....

Mr. Vice-President : The honourable Member need not repeat what Mr. Das has already said.

Shri R. K. Sidhwa : I am only emphasising it, Sir, to draw your attention.

Syed Muhammad Saadulla (Assam : Muslim): Mr. Vice-President, Sir, may I draw your attention to the motion itself as I read it at page 75 of the notice of amendments? Prof. Shah's amendment runs as follows: "That under the heading 'Right to Property', the following new article be added" and "Right to Property" is the heading of article 24 and not of 23.

Mr. Vice-President : I rule that Prof. Shah be allowed to move this amendment under 24-A. So far as amendment Nos. 717 and 718 are concerned, they are already covered by the earlier decisions of this House relating to Directive Principles.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Those rights which are not justiciable are covered but those in connection with fundamental rights have not been covered at all. At that time an understanding was reached that this will be considered along with the Fundamental Rights.

Mr. Vice-President : Is it your contention that these both should go under the Directive Principles and also here? That is not possible. I rule it out of order.

Article 24

Shri T. T. Krishnamachari (Madras : General) : It is the desire of many Honourable Members of this House that this article should not be taken up now, but taken up later, because we are really considering various amendments to it so as to arrive at a compromise and Dr. Ambedkar will bear me out in regard to this fact.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Yes, Sir, I request that article No. 24 be kept back.

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

Honourable Members : Yes.

Mr. Z. H. Lari (United Provinces : Muslim) : Then what about article 15, Sir?

Mr. Vice-President : The consideration of that article has been postponed for the time being.

(To Mr. Kamath) You want to say something about the amendment dealing with Military training in article 24?

Shri H. V. Kamath (C. P. & Berar: General): There are those amendments which do not relate to "Right to Property", and which have been given notice of as new article to be inserted after article 24. What about these?

Mr. Vice-President : They will be taken up after article 24.

Article 25

Kazi Syed Karimuddin (C. P. and Berar : Muslim) : Mr. Vice-President, Sir, article 25 lays down in clause 4 "The rights guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution." Now I move my amendment :

"That the consideration of article 25 be postponed till the consideration of Part XI of this Draft Constitution."

In article 280, it is laid down "Where a Proclamation of Emergency is in operation, the President may by order declare that the rights guaranteed by article 25 of this Constitution shall remain suspended for such period not extending beyond a period of six months after the proclamation has ceased to be in operation as may be specified in such order."

If article 25 is passed today, then we are accepting the provisions of article 280 because clause (4) of article 25 says that "the rights guaranteed by this article shall not be suspended except otherwise provided for by this Constitution." We have very serious objections to the passing of article 280. The emergency Provisions contained in articles 275 to 280 are of an extraordinary nature and some of them militate against the fundamental principles of federalism and do not find any parallel in any world constitutions and there are several amendments to be moved to articles 275 to 280. So by acceptance of this article, we will be accepting the provisions of articles 275 to 280. Moreover, this article says "as otherwise provided for by this Constitution." This article cannot be considered at all unless the provisions in articles 275 to

280 are taken into consideration. Therefore, my submission is that before articles 275 to 280 are passed, we are incompetent to consider the provisions of article 25.

The Honourable Dr. B. R. Ambedkar : Sir, I do not think that because this article is subject to the provisions of the other articles to which my honourable Friend, Mr. Karimuddin has referred, it is not possible for us to consider this article now, because, as will be seen, supposing we do make certain changes in article 285 or others relating to that matter, we could easily make consequential changes in article 25. Therefore, it will not be a bar. Therefore, it is perfectly possible for us to consider article 25 at this stage without any prejudice to any consequential change being introduced therein. Supposing some changes were made in the articles that follow.....

Kazi Syed Karimuddin : Then why not postpone this?

The Honourable Dr. B. R. Ambedkar : No.

Mr. Vice-President : I am going to put this amendment to vote, because if it is carried, then the consideration of all the amendments will be postponed.

Mr. Vice-President : The question is:

"That the consideration of this clause be postponed till the consideration of Part XI of this Draft Constitution."

The motion was negatived.

Mr. Vice-President : Amendment No. 782 is disallowed. Amendment No. 783, standing in the name of Mr. Naziruddin Ahmad.

The Honourable Shri K. Santhanam (Madras : General) : On a point of order, Sir, this amendment suffers from vagueness. There is no particular meaning.

Mr. Vice-President : Let us hear what Mr. Naziruddin Ahmad has to say.

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

"That for clause (1) of article 25, the following clause be substituted, namely:

'(1) Every person shall have the right by appropriate proceedings to enforce the rights conferred by this Part.' "

Sir, it is suggested by Mr. Santhanam that the amendment is vague. I submit that it is not vague.

The Honourable Shri K. Santhanam: Appropriate proceedings,—judicial, administrative or executive?

Mr. Naziruddin Ahmad : Proceedings in a Court.

The Honourable Shri K. Santhanam: Where is the Court?

Shri M. Ananthasayanam Ayyangar (Madras : General) : Neither the procedure nor the forum is indicated in the amendment.

Mr. Naziruddin Ahmad : Perhaps there is some mis-print; I do not know. If there is no mis-print, it is certainly open to the comment that it is vague.

The only point that I had in mind was that the right to move the Supreme Court by appropriate proceedings is guaranteed. I wanted to allow the people to move other Courts also. If there is a fundamental right granted here, and if any poor man is forced to move the Supreme Court....

The Honourable Dr. B. R. Ambedkar : See sub-clause (3).

Mr. Naziruddin Ahmad : That sub-clause empowers some other specified Courts to deal with this subject; but I wanted to make it more general, that the fundamental rights should be capable of being enforced by a motion in any Court. In fact, all Courts should be open to the people. If there is a fundamental right which is violated, and if the man whose right is violated is a poor man, it would be wrong to drive him to the Supreme Court or some other Court duly empowered in this behalf, which will be some superior Court. I want to see that all Courts have the power to decide fundamental rights or breaches of fundamental rights and this should be given to all Courts civil or

[Mr. Naziruddin Ahmad]

criminal. If a difficult point of constitutional right is raised in any civil or criminal Court in a small case, then, that Court should be enabled to decide it immediately. Instead of that, this clause (1) would force the party to move the Supreme Court or some other selected Court duly empowered in this behalf.

I admit fully that the drafting of this amendment is certainly open to the comment that it is a little vague; but I am suggesting the principle. If the principle is acceptable, then, the amendment may be changed accordingly. This point is at the back of my mind; perhaps in a hurry, I made a mistake; it should be, "by appropriate proceedings *in any Court*". In fact, the actual wording of the amendment is not very important.

Mr. Vice-President : There is an amendment to this amendment. No. 43 standing in the name of Mr. V. S. Sarwate.

Shri V. S. Sarwate (United State of Gwalior-Indore-Malwa Madhya Bharat): Sir, I shall move the amendment after Dr. Ambedkar has moved his.

Mr. Vice-President : Yours is an amendment to amendment No. 783.

Shri V. S. Sarwate: And also, alternatively to amendment No. 794.

Mr. Vice-President : You want to move it when we come to amendment No. 794. Is that your wish?

Shri V. S. Sarwate : Yes, Sir.

(Amendment No. 784 was not moved.)

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

"That in clause (1) of article 25, for the words 'Supreme Court', the words 'Supreme Court or any other Court empowered under clause (3) to exercise the powers of the Supreme Court' be substituted."

Sir, we have in clause (3) already attempted to provide the authority to Courts other than the Supreme Court to exercise those rights. This is consequential upon clause (3).

(Amendment No. 786 was not moved.)

Mr. Vice-President : Amendments Nos. 787, 788 and 793 are of similar import and will be considered together. Amendment No. 788 seems to be the most comprehensive.

(Amendment No. 788 was not moved.)

Mr. Vice-President : Then, we can take up amendment No. 787 standing in the name of Mr. Kamath.

Shri H. V. Kamath : Mr. Vice-President, I move amendment No. 787 of the List of amendments as amended by amendment No. 64 in List 4 (III week). I move:

"That for clause (2) of article 25, the following be substituted:

'(2) The Supreme Court shall have power to issue such directions or orders or writs as it may consider necessary or appropriate for the enforcement of any of the rights conferred by this part.' "

At the outset let me make it clear that I am a mere layman and not a professional lawyer or a legal or constitutional expert like my Friend Dr. Ambedkar; but I know a bit of law though not very much of it, and I will have my say on the basis of the little knowledge of law which I possess. This clause of article 25 relates to the power of the Supreme Court to issue orders for the enforcement of any of the Fundamental Rights mentioned in part III. I think that so far as the Supreme Court is concerned, it is not necessary to lay down what particular writ it should issue. After all, Sir, it may be that with the growth of legal and constitutional precedents, other writs than these mentioned here in this article may be evolved, and whenever a particular case comes up before the Supreme Court, it may be that the Court will take all the aspects of the case into consideration and issue such a writ—might be one of these, or a new writ may be evolved. I think this particular clause

of the article is a very regrettable instance to my mind of what is called in legislation—'Legislation by reference'. When we are dealing with the Supreme Court consisting of eminent judges and jurists, it is not wise for us nor desirable to lay down what particular writs the Supreme Court should issue in a particular case. Therefore, all things considered, I feel that so far as the Constitution is concerned, we should just say this much that the Supreme Court should issue such orders or directions or writs as the Court may consider necessary or appropriate in any particular case. I therefore move, Sir, that for clause (2) of this article the following be substituted:

"The Supreme Court shall have power to issue such directions or orders or writs as it may consider necessary or appropriate for the enforcement of any of the rights conferred by this part."

I hope that Dr. Ambedkar will tell us why he thinks it necessary to specify the particular writs here and not just leave it to the Supreme Court to decide what particular writs or orders or directions it should issue in any particular case. I hope he will not merely stand on prestige or some such consideration but will give satisfactory and valid reasons why we should insist on mentioning these particular writs in this clause of the article.

(Amendment No. 788 was not moved.)

Mr. Vice-President : Nos. 789 and 790 are similar and I allow 790 to be moved.

(Amendment Nos. 789 and 790 was not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, I understand that Mr. M. A. Baig is not in the House. Will you permit me to move 789. I am going to accept this amendment. It shall have to be moved formally.

Mr. Naziruddin Ahmad : I desire to move it if that is acceptable to the House.

Mr. Vice-President : Does the House permit Mr. Naziruddin Ahmad to move this?

Honourable Members : Yes.

Mr. Naziruddin Ahmad : Sir, I move:

"That in clause (2) of article 25, for the words 'in the nature of the writs of' the words 'or writs, including writs in the nature of' be substituted."

Sir, this is a red letter day in my life in this House, that this is a single amendment which is going to be accepted. This amendment is a foster-child of mine and that is why perhaps the honourable Member is going to accept it. It requires no explanation.

Shri H. V. Kamath : On a point of order. Is my Friend right in saying it is going to be accepted when it is only moved.

Mr. Naziruddin Ahmad : I heard a rumour that it is going to be accepted.

Mr. Vice-President : Nos. 791 and 792 are disallowed as verbal amendments.

(Amendment No. 793 was not moved.)

Mr. Vice-President : Nos. 794, 795 and 799 are similar and are to be considered together. 794 is allowed to be moved.

The Honourable Dr. B. R. Ambedkar : With your permission I will just make one or two corrections to some words which crept into the drafting by mistake. Sir, with those corrections, my amendment will read as follows:

"That for the existing sub-clause (3) of article 25, the following clause be substituted:

'Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2) of this article, Parliament may by law empower any other Court to exercise within the local limits of its jurisdiction all or any of the powers excercisable by the Supreme Court under clause (2) of this article.' "

The reason for inserting these clauses (1) and (2) is because clauses (1) and (2) refer to the Supreme Court.

Mr. Vice-President : There are two amendments to this amendment. One is No. 44 and the other is 45 of List I (III week) and Mr. Sarwate's amendment No. 43. Mr. Sarwate.

Shri V. S. Sarwate : Sir, the amendment which I move stands thus:

"That at the end of amendment No. 794 of the list of amendment, the following be added:

'*Explanation.*—The Supreme Court, in deciding matters arising out of this article, shall have the power to go into questions of fact.' "

Sir, the scheme which we have adopted in this Chapter regarding Fundamental Rights consists, first, that the rights themselves are enumerated in broad terms and then by clauses which follow, the Legislature has been given power to put restrictions on the rights in certain matters specified in those clauses. Lest the legislature should exceed its powers, or makes legislation in excess of the requirements of the case, a safeguard is provided by the present article. Now, it is possible to argue that the court can only see whether the legislature has passed an Act in respect of that matter, without going into the details, or it may be argued that the court has no power to go into the details, and to determine the issues whether a particular case required or necessitated or justified the passing of that particular legislation. It is necessary to provide for such a contingency, because by article 13, the legislature has been given power to make 'any law'. The terms are wider than if it had been expressed in the way that the legislature has power to penalise such and such matters. The expression used is 'any law' which is wider than if it had been only power to penalise. Therefore it is necessary in each case for the court to see whether the particular legislation meets exactly the requirements of the case, whether it does not exceed the requirements of the case. Getting panicky a legislature may pass a legislation where it may not be necessary to have any such legislation. Therefore I have added this explanation. The very wording of the explanation shows that it does not add anything to or substract anything from the original clause, but it only explains something. It may be argued that this is may be a certain doubt expressed in this respect, and so to remove and to avoid such doubts being raised, and to make it more specific and more outside the pale of any doubt, I have tried to add this explanation. I commend it to the House and to the Mover, for acceptance.

Mr. Vice-President : Then amendment No. 44 and amendment No. 45 in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, I do not want to move No. 45 because it is open to some objection. I shall move only No. 44.

Sir, I beg to move:

"That in amendment No. 794 of the list of Amendments, in the proposed clause (3) of article 25, the words 'without prejudice to the powers conferred on the Supreme Court by clause (2) of this article' be deleted."

Sir, the original article tries to confer powers on *any other Courts*, powers which may be exercised by the Supreme Court, under clause (1). As we have already stated in this clause, Parliament may by law empower any other Court. The words "any other court" indicates that this is a supplementary power to be given to other courts, without any prejudice to the powers of the Supreme Court. The powers of the Supreme Court are defined very precisely as absolutely supreme over all other Courts. So the words "without prejudice to the powers of the Supreme Court" would be unnecessary. In fact, there is no possibility of any doubt that the Supreme Court has over-riding powers. In these circumstances, the words seem to me to be unnecessary. Therefore, they should be deleted. In fact, the powers of the Supreme Court are very specific in this respect. The very name—Supreme Court—indicates that it is supreme in all matters. If we keep the words, we would suggest that the rights of the Supreme Court are not supreme, it really indicates some doubt

that the Supreme Court is not perhaps supreme in legal matters. That is the reason for asking for the deletion of these words.

(Amendment Nos. 795 and 799 were not moved.)

Mr. Vice-President : Amendment No. 796 is disallowed on the ground that it is only a formal amendment.

(Amendment Nos. 797, 798, 800 were not moved.)

Amendment No. 801 standing in the joint names of Shri Kamath and Mr. Tajamul Husain.

Shri H. V. Kamath : I shall make way for Mr. Tajamul Husain.

Mr. Tajamul Husain (Bihar : Muslim): Mr. Vice-President, Sir, I beg to move:

"That clause (4) of article 25 be deleted."

Sir, under article 9, the State shall not discriminate against any citizen on the grounds of religion, caste, etc. That means that a citizen is allowed to enter any shop, restaurant, hotel etc. He is allowed to use wells, tanks, roads and other things. Under article 13, the citizen is allowed to practise his profession, and carry on his trade in any way he likes. Under article 25, a citizen can move the Supreme Court for the enforcement of his rights mentioned above, and the Supreme Court can issue order in the nature of *Habeas Corpus* or *Mandamus* etc. But Sir, clause (4). of article 25 speaks of the suspension of the rights of citizens which I have just now mentioned. Article 280 says that where a proclamation of emergency is in operation the President can suspend the fundamental rights guaranteed to the citizens. This, I submit, should not be allowed. If such a right is allowed to the President, under the Constitution, then the right of equality as mentioned in article 9 will cease to exist for the time being. And citizens will not be allowed to use wells, tanks, roads, etc. Freedom of speech will have to be suspended; right to practise one's profession will also go; protection of life as guaranteed under article 15 will go; freedom of conscience will go; the right to move the Supreme Court will go. I think it is very dangerous to give all these powers to the President. After all what are we? We are only the representatives of the people—we are the people. When we have framed the Constitution we will dissolve ourselves and another set of people will come. They will also be the representatives of the people. They will be the same as ourselves—there can be no difference between us. Have we got the right to bind down those people? Can we say to them 'Thou shalt not do this; thou shalt do this'? It is a free country. If the people want to have revolution, let them have revolution. What right have we to prevent that? Therefore I say that no power should be given to any person, however big—to the President of the Republic or to anybody else—to suspend any Fundamental Rights guaranteed under this Constitution. With these words I commend my amendment to the House.

Kazi Syed Karimuddin : Mr. Vice-President, Sir, I move:

"That in clause (4) of article 25, for the words "as otherwise provided for by this Constitution" the words "in case of rebellion or invasion and when State of Emergency is proclaimed under Part XI of this Constitution" be substituted."

Sir, I cannot agree to the amendment moved by Mr. Tajamul Husain saying that the whole of clause (4) should be deleted. There are occasions in the country when actually there is an invasion and rebellion inside and no President will be so foolish as to restrict activities which have no concern with the invasion or rebellion like discrimination between man and man and even untouchability. Therefore in order to maintain peace and tran- quility in the country, it would be necessary to suspend some of the provisions under articles 13 and 25, but to say that every clause and sub-clause under articles 13 and 25 will be suspended as soon as there is invasion or war is, I think unimaginable. My amendment lays down that the rights guaranteed by this article shall

[Kazi Syed Karimuddin]

be suspended only when there is invasion because the provisions in articles 275 to 280 lay down that even if there is an immediate danger of war articles 13 and 25 will be suspended not only for the period of the emergency but six months even beyond that period of emergency. It has been laid down under article 280 that 'where a Proclamation of Emergency is in operation, the President may by order declare that the rights guaranteed by article 25 of this Constitution shall remain suspended for such period not exceeding beyond a period of six months after the proclamation has ceased to be in operation as may be specified in such order.' I was pleading very earnestly that the provisions of article 25 should be passed over and considered after the passing of the provisions under articles 275 to 280. Now we are taking into our hands the question of suspending the provisions of articles 13 and 25 when we do not know the picture that would emerge under the provisions of articles 275 to 280. Now the rights are to be suspended in consideration of provisions that are yet to be made and which have not been accepted by the House. I thought that Dr. Ambedkar would oppose this proposal. But I bow to the decision of the House. Now the position before us is that we are going to accept clause (4), if at all it is accepted, for considerations and provisions which are not yet passed, and the House may reject them. In reply to that it has been stated that necessary changes will be made. Well, I have made the necessary change and it is before the House to accept or reject. And it is this, namely, that in case of rebellion or invasion and when a State of Emergency is proclaimed under Part XI of the Constitution—that is, articles 275 to 280—these rights can be suspended. My submission is that unless there is a declaration of a State of Emergency and unless there is actual invasion or rebellion inside, the rights granted under articles 13 and 25 should not be suspended. For example, suppose a party in a province which is hostile to the party in power at the Centre comes into power in the province. And suppose there is a quarrel between the Provincial Government and the Central Government and the party disobeys some of the orders issued from the Centre. Immediately the President, thinking that there is domestic violence inside the province, can suspend that part of the Constitution according to the emergency law. The result would be that every right of the individual citizen under article 13 will be suspended. Therefore, the two conditions which I have laid down in my amendment are that in cases of invasion and rebellion these rights should be suspended. I do not say that these rights should never be suspended, although in England and America there is no such provision for suspending such rights. But our country is passing through a transition and through a crisis; and if these rights are not suspended during such times there will be great turmoil in the country. I therefore plead that the amendment which I have moved should be accepted.

Mr. Vice-President : Amendment No. 803 is a verbal amendment and is disallowed.

(Amendment No. 804 was not moved.)

Mr. Naziruddin Ahmad : I shall move amendment No. 805.

Shri M. Ananthasayanam Ayyangar : It is also a verbal amendment.

Mr. Naziruddin Ahmad : Sir, I move:

"That in clause (4) of article 25, for the word 'guaranteed', the word 'conferred' be substituted."

As Mr. Ananthasayanam Ayyangar has suggested that it is a verbal amendment, I shall at once explain the reason why I have moved it. I confess that it is very nearly a verbal amendment. But the only reason why I have moved it is because I have the authority of amendment No. 811 to the same effect standing in the name of Dr. Ambedkar himself. In fact he has tried to change the word "guaranteed" by the word "conferred". My amendment is exactly the same as amendment No. 811. If No. 811 is acceptable

to the House, No. 805 should also be equally acceptable. May I submit that amendment No. 791 standing in my name is not a mere verbal amendment? It changes the sense altogether, and may I be permitted to move it in a one minute speech?

Mr. Vice-President : No.

Mr. Naziruddin Ahmad : It changes the meaning. I ask you to consider it. I will be willing to bow to your considered decision.

Mr. Vice-President : In that case you will not move it.

(Amendment No. 806 was not moved.)

As amendment No. 806 has not been moved, an amendment to it by Pandit Bhargava (No. 46 in the list) falls through.

(Amendment No. 807 was not moved.)

The article is now open for general discussion.

Shrimati G. Durgabai (Madras : General): Mr. Vice-President, Sir, I have great pleasure in supporting this article. While doing so, I wish to place a few points before the House for its consideration.

Sir, the right to move the Supreme Court by appropriate proceedings for the enforcement of a person's rights is a very very valuable right that is guaranteed under this Constitution. In my view this is a right which is fundamental to all the fundamental rights guaranteed under this Constitution. The main principle of this article is to secure an effective remedy to the fundamental rights guaranteed under this Constitution. As we are all aware, a right without an expeditious and effective remedy serves no purpose at all, nor is it worth the paper on which it is written. Therefore, as I have already stated, this article secures that kind of advantage that it will ensure the effective enforcement of the fundamental rights guaranteed to a person.

Sir, then, all of us are aware, and the Drafting Committee is quite alive to the fact, that in recent times in England the procedure under ancient writs has been considerably modified and a simple remedy by a petition has been substituted for writs in a recent enactment in England. Perhaps that is the reason why the Drafting Committee has put in this article directions or orders in the nature of writs of *habeas corpus* etc.

Another point is that the right that is vested in the Supreme Court in no way affects the right of the High Courts in any part of India to issue similar writs or to enable Parliament to make laws empowering any other Courts to exercise the same power within the local limits of its jurisdiction. The question might arise in this connection as to what happens if the High Court refuses to issue a writ, and whether in the absence of a specific provision to that effect, an application for the issue of a writ is barred to the Supreme Court. To that my answer is, "No", because I consider that in these matters there is no question of *res judicata*. A person can move any number of courts and before any judge an application for the issue of this writ, though the Supreme Court naturally takes into consideration the order passed either by the High Court or any other Court in granting or refusing to issue this writ. Therefore, the application is not barred.

There are some other points also to be mentioned in this connection, but I feel these are the two main questions that might arise in this connection. One is whether the right that is vested in the Supreme Court bars the right of the other High Courts to issue similar writs; that question, I think, I have answered. The other question is whether in the case of concurrent jurisdiction, that is if the High Court refuses to issue this writ, whether an application is barred to the Supreme Court. That also I have answered by stating that any number of times a person can go to any number of Courts and move this application.

[Shrimati G. Durgabai]

Sir, with these few words I have great pleasure in supporting this article. I commend it to acceptance of the House.

Rev. Jerome D'Souza (Madras : General): Mr. Vice-President, I too should like to join my distinguished colleague, Shrimati Durgabai, in expressing gratification at the passing of this very important article which may justly be considered to be of the gravest character, and of the most far-reaching importance. I am sure, Sir, that Members of this House will recall to their minds that today is exactly the second anniversary of the opening of this great Assembly, and surely it is not without some significance that, nearing the end of our discussion on the Fundamental rights, this coping-stone of the structure of those rights should be placed today.

I should like to draw the attention of the House, Sir, to the implications of this article, implications which possibly are not obvious at the first reading. This House, and through this House the Legislatures that have to rule this country in future, by a laudable and significant act of self-denial or self-abnegation, places under the power of a Supreme Judicature the enforcement of certain laws and certain principles, and remove them from the purview and the control of the Parliaments which will be elected in future years. They wish to put these rights beyond the possibility of attack or change which may be brought about by the passions and vicissitudes of party politics, by placing them under the jurisdiction of judges appointed in the manner provided for later on in this Constitution. Sir, it is because we all believe,—and that is the implication of this chapter of fundamental Rights,—that man has certain rights that are inalienable, that cannot be questioned by any humanly constituted legislative authority, that these Fundamental Rights are framed in this manner and a sanction and a protection given to them by this provision for appeal to the Supreme Court.

As I said, Sir, the implication of this is that an individual must be protected even against the collective action of people who may not fully appreciate his needs, his rights, his claims. And the sacredness of the individual personality, the claims of his conscience, are, I venture to say, based upon a philosophy, an outlook on life which are essentially spiritual. Sir, if all our people and their outlook were entirely materialistic, if right and wrong were to be judged by a majority vote, then there is no significance in fundamental rights and the placing of them under the protection of the High Court. It is because we believe that the fullest and the most integral definition of democracy includes and is based upon this sacredness of the individual, of his personality and the claims of his conscience, that we have framed these rights.

I say, Sir, further that in the last analysis we have to make an appeal to a moral law and through the moral law to a Supreme Being, if the highest and the fullest authority is to be given and the most stable sanction to be secured for these fundamental rights. Sir, Mahatma Gandhi, in one of his unforgettable phrases, referring to the desire to have a secular Constitution and to avoid the name of the Supreme Being in it, cried out, "You may keep out the Name, but you will not keep out the Thing from that Constitution". And, Sir, I believe that these fundamental rights and their implications are really tant amount to a confession that beyond human agencies and human legislatures there is a Power which has to be submitted to, and there are rights which have to be respected.

Sir, we have introduced in these Fundamental Rights certain provisions—necessary perhaps in present conditions—that in Government institutions instruction in different religions may not be given, in order that the calm atmosphere of our institutions may not be disturbed by controversies. But I hope and pray that those provisos, prudent though they are, may not exclude the teaching of ethical principles based upon truths acceptable to all, upon the existence

of a Supreme Being and the rights of the individual conscience formed under His guidance. I am sure that religious controversies could be avoided on the basis of those universally accepted truths. It is certain that our national culture and civilization are based upon and permeated by this belief and this conviction; otherwise there would be no meaning in these fundamental rights. A speaker who preceded me asked: "Why is it that provision has been made to change this Constitution? Why should not these sacred rights be placed beyond the possibility of abrogation?" I would answer him: "If the convictions and the faith of our people go away, there is no use in trying to protect these rights by sanctions. The rights and the sanctions would be illusory. But if faith remains, no one will want to touch them."

By this article we give to our Supreme Judicature a power, a status and a dignity which will call from them the highest qualities of integrity and uprightness. The full meaning of this article should be borne in mind when we come to that Part of the Constitution beginning with article 103, when we shall have to scrutinise the steps by which an upright and absolutely fair judiciary will be established in this land. When we consider that Part, let us recall these Rights and make sure that all these various provisions will be enforced in a just and fearless manner.

I now pass on to the next consideration and I beg the indulgence of the House to permit me to say a few words about the manner in which the Minority rights and Fundamental Rights are in extricably mingled together in this Part of the Constitution. Sir, I believe this is a right and necessary mingling. After all, what the minorities ask is that the right of the individual may be safeguarded in an inescapable manner. If that is done, "minority rights" as such would not and need not exist. It is because in a democratic system of Government where a majority vote may do injustice to a minority, that certain specific references to the minorities have to be made. But ultimately, in the last analysis, if the individual's right to his religious convictions, to his cultural preferences, to the rights which accrue to him as a man endowed with free will and reason and charged with the obligation of personal salvation, if these are safeguarded, "minority rights" as such need not find expression. That is why, mingled with these general rights, references are made to minorities. I should like to say on behalf of my own community which I have the honour to represent here—I am sure I am also voicing the feelings of many others—that if these rights are really safeguarded in the manner in which they are sought to be safeguarded in this Constitution, if the Fundamental Rights including as they do minority rights, are assured in an absolutely indubitable manner, no kind of political safeguards will be necessary for us and we shall not demand them, as long as, I say, this part of the Constitution is enforced without any kind of "encroachment" or misinterpretation.

Sir, the desire of our country and of our leaders is to work for the political homogeneity of this vast country. Unfortunately that political homogeneity was threatened, and to some extent destroyed by the need to give political safeguards to minorities. But remember those safeguards were asked for or were deemed necessary for the sake of religious and cultural and individual rights and not merely for the sake of political privileges or any emoluments which might come from them. And, as long as these, cultural and personal rights are safeguarded, we do not need any other political safeguard. Therefore, Sir, I hope and beg that we may ever remember that in the measure that these fundamental rights, protected in the last analysis by the Supreme Court, are enforced and carried out integrally and honourably, to the last implications of them, the desire for political safeguards and to that degree of political separatism and partial autonomy which it implies will not arise in this country. We will do nothing to raise that slogan once again. As far as the small Christian community is uncerned

[Rev. Jerome D'Souza]

we have gone a great way in giving up those political safeguards and we are prepared to go further and give up the reservations which have been made in certain provinces. And if we do so, it is because we know that in the spirit in which these fundamental rights have been guaranteed, there is for us an assurance of safety and a confidence which does not need to be propped up or further affirmed by political safeguards and privileges.

There are, I know, Sir, certain other safeguards still maintained in this Constitution, such as economic safeguards for backward communities and so forth. I believe that a transitory measure of this kind is necessary; it is wise and prudent to reassure many sections of our people in this way. But, Sir, I submit that the full and logical implications of what we are doing now is that a time should come when even the economic and other assistance to be given should not be based upon the claims of classes as a whole, but should be based upon the claims of the individual. I am sure, Sir, a time will come when all those who claim and need special assistance, will get it, without reservations and safeguards on the basis of communities; when our legislatures and the leaders of the country will be able to think out individual tests, in which the communal or social background may certainly be taken into account, but which will give that assistance or that concession to all individuals, without limiting it to particular castes or classes. It is only on this ground and on this understanding that class differences, in so far as they are dangerous politically and lead to political separatism, will be eliminated. If, on the other hand, cultural, religious and other rights of this nature are safeguarded, I do not see why the variety and the diversity of this country should not be a source of strength and glory rather than a source of political weakness such as they threatened to be in recent years. We earnestly trust that the spirit in which these rights will be enucleated, interpreted and enforced in future years by our Judges, the spirit in which the majority community will give effect to them, will allay all fears and encourage the minorities in the path which they have deliberately chosen now, of giving up political safeguards. Thus alone in the near future—I do not wait for a distant future—in the near future, will the political homogeneity of these three hundred and thirty million people be an accomplished fact, and the members of all communities standing shoulder to shoulder in their civic equality, but maintaining their right to their own faith, their convictions and their ideals, and drawing their individual strength from those beliefs and from those convictions will work together for the prosperity and greatness of our motherland. *(Applause)*.

Shri M. Ananthasayanam Ayyangar : Mr. Vice-President, Sir, the Supreme Court according to me is the Supreme guardian of the citizen's rights in any democracy. I would even go further and say that it is the soul of democracy. The executive which comes into being for the time being is apt to abuse its powers, and therefore the Supreme Court must be there, strong and un-trammelled by the day to day passions which may bring a set of people into power and throw them out also in a very short time. In less than three or four years during which a parliament is in being, many governments may come and go, and if the fundamental rights of the individual are left to the tender mercies of the Government of the day, they cannot be called fundamental rights at all. On the other hand, the judges appointed to the Supreme Court can be depended upon to be the guardians of the rights and privileges of the citizens, the majority and the minority alike. So far as the fundamental rights are concerned, my humble view is that there is no difference between the rights and privileges of individual citizens, whether they belong to the majority community or to the minority community. Both must be allowed to exercise freedom of religion, freedom of conscience, must be allowed to exercise their language and use the script which naturally belongs to them. These and other rights must be carefully watched and for this purpose the Supreme Court has been vested with the supreme ultimate jurisdiction.

So far as the rights of the minorities are concerned, some other provision has also been made in this Constitution in article 299, under which a special officer or officers are to be appointed to watch their interests and to report to the President of the Union, as also to the Governor, on how far the minority rights that have been enumerated in this and the other parts of the Constitution are being observed, and it is the duty of the President or the Governor to lay this report before the legislature. But this in itself will not do unless the Supreme Court is watchful and is allowed to pull up any executive government if it goes astray.

Sir, I agree with my predecessors who have spoken that this is the most important article in the whole constitution as it is the guardian of the people's rights. So far as I know, in recent years some provincial legislatures have passed laws abrogating the writ of *habeas corpus*. Such latitude with people's rights ought not to be allowed in any event.

Then as regards clause (4), my friend suggested that this clause ought to be removed. I do not agree with him, though I agree that the wording here is a little broad and is likely to be abused. I am sure that that amount of latitude ought to be given to the government of the day. If any emergency is proclaimed, I am sure that the rights guaranteed by this article will be suspended only for the period of the emergency but not for another six months after the emergency is over, though it is open to the President to allow the same state of affairs to continue for a period of six months after the emergency is over. It is equally open to the President to say that this clause will be abrogated only during the period of the emergency and not for a further period of six months after the expiry of the emergency.

Shri H. V. Kamath : On a point of clarification, Sir, may I invite my friend's attention to clause (4) of this article as well as article 280 and request him to read them together. Article 280 says that:

> "The President may be order declare that the rights guaranteed by article 25 of this Constitution shall remain suspended for such period not extending beyond a period of six months after the proclamation has ceased to be in operation as may be specified in such order."

Is not clause (4) liable to be misconstrued, when it is read with article 280? Does article 280 cover all the fundamental rights? Does it mean, Sir, that even such rights as rights of anti-untouchability, religious and cultural rights will also be suspended?

The Honourable Dr. B. R. Ambedkar : I will deal with this.

Shri M. Ananthasayanam Ayyangar : Article 280 does not mean that the President will have to suspend these rights. He is not bound to suspend them or suspend all of them. It is not obligatory on the President to suspend the rights enumerated in this part. Therefore article 280 need not create any apprehension. Moreover, the person who is clothed with this power is the President of the Union, who ranks along with the Supreme Court judges. The President is not incharge of the administration. It is his ministers who are incharge of the administration. He only intervenes when necessary. Under these circumstances I am sure that the rights that have been enumerated in this part are safe in the hands of the Supreme Court and also in the hands of the President. Therefore, so far as the amendments that have been tabled by my friend Mr. Naziruddin Ahmad are concerned, I do not agree with him. Nor is it necessary to include under clause (1) other courts also. Provision has been made in sub-clause (3) for clothing other courts with powers similar to the powers that have been conferred upon the Supreme Court. Clause (4) guarantees not only the rights that have been guaranteed in clause (1) but also those guaranteed in clause (3). My friend, Mr. Naziruddin Ahmad, wants to incorporate what is contained in clause (4) in clause (1). The wording as it stands seems to be enough, and his amendment is not necessary. It is also not definite. It is rather clumsy. Under these circumstances, I am

[Shri M. Ananthasayanam Ayyangar]

opposing the amendments moved by Mr. Naziruddin Ahmad and also the amendment relating to the deletion of clause (4). The article as it stands may be accepted.

B. Pocker Sahib Bahadur (Madras : Muslim): Mr. Vice-President, Sir, I wish to speak a few words on this article. As was observed by Mr. Ananthasayanam Ayyangar, I would say that this is the most important article of the whole Constitution and we have to take care to see that the rights conferred by this article are not watered down or in any way modified by other articles or even by the other clauses of this very article. Now, Sir, recent experience after we gained independence has taught us that we have to be much more careful in safeguarding the individual liberties and the rights of the citizens now than when we were ruled by the foreigners. I must say that the recent behaviour of certain provincial governments has taught us that it is very necessary to take careful measures to see that they are not allowed to behave in the manner they have behaved. I am referring to the way in which the sacred rights and liberties of the person were being dealt with by certain provincial governments under the cloak of the powers that they are said to possess. Very often, Sir, it has become the fashion with these Provincial Governments to say: "Well, some state of emergency has arisen and therefore, in the public interest, we shall utilise the powers conferred by the Public Safety Act and we shall have to curtail the liberties of so many people and put them in jail". And this is done without those people knowing on what grounds they are arrested, what is the sin that they have committed against the State or against the peace of the country, in order to deserve the curtailment of their liberty in this irresponsible fashion; and they are kept in that state of mind for weeks and months, without even being told what the ground is on which they are arrested and detained, even though the Government is bound to furnish them with the reasons for their arrest and detention, under the provisions of the Act under which the Government proposed to arrest them.

Now, Sir, if we look at the irresponsible way in which things were done very recently, it is very necessary that we must have very strong safeguards against the misuse and abuse of the powers which may be conferred on these Governments. I would say, Sir, that one principle which we have to bear in mind and we should always keep in view in framing this Constitution is that ministries may come and ministries may go, but the judicial administration must go on unaffected by the vicissitudes in the lives of these ministries and the changes in the Government. It is more to preserve their own power, I mean, the power of the particular party or the clique in power that these measures are resorted to than for any public purpose. Such a state of affairs should never be allowed to be tolerated. I shall refer to one instance, Sir.

In Madras the legislature was in session and all of a sudden, one evening, a notification was issued that the legislature was prorogued. For what reason it was done, nobody knew, and the next morning an ordinance was issued. To what effect? Apart from so many other things, there was the Public Safety Act and under that Act many people were arrested and detained in jail, without even being told what they are arrested for and why they are detained. Well, they were forced to resort to such remedies as were available under the existing law and applications were pending in the High Court for issue of writs of *Habeas Corpus* and the High Court issued in deserving cases writs of *Habeas Corpus*. The moment a person was released by the order of the High Court, that very moment he was re-arrested and put in jail again. And not satisfied with all these apparently, the Government felt annoyed by the independent way in which the High Court was exercising the legal powers conferred on it under Section 491 of the Criminal Procedure Code. What happened was that one evening the Legislature was prorogued and the next morning an ordinance was issued, even taking away the power of the High

Court to issue writs under section 491 of the Criminal Procedure Code. Now, Sir, is there any *bona fides* in this? Can any reasonable man say that this could be done with any *bona fides*? This is the most scandalous way in which the powers conferred on the Government were being exercised. Under the cover of the powers conferred on them, they have acted in the most irresponsible way. Therefore, it is that I say, Sir, that the powers of courts should not be made to depend upon the will and pleasure of the Government and they should under no circumstances be allowed to interfere with the powers that vest in courts of law. If the very guarantee of personal liberty on which democratic form of Government is based and the powers vested in courts of law to enforce such rights independently are allowed to be interfered with, no one is safe. Of course, it is not a question of majority community; it is not a question of minority community but the powers that be at the time clap in jail such of the individuals or groups of people, whom they do not like and whom they do not want to be at liberty, perhaps for the fear that they may undermine the power which they are enjoying. It is one thing to make safeguards on occasions when there is general disturbance of the peace of the country, but it is quite another thing to give full powers to the Governments to do anything they like under the guise of these 'emergency powers' and empower them to take away powers vested in Courts of Law to protect the personal liberty of citizens.

Now, Sir, I would only like to point out this, that this is certainly one of the very important rights which has been conferred under this Constitution, but I am afraid, Sir, that clause (4) takes away with one hand what is given by the other, and therefore, I would heartily support the amendment that has been moved for the deletion of this clause. There is no necessity for that clause at all. Of course, as regards the powers to be exercised in case of emergency, there is provision under section 280 and even that would require modification and we shall have to deal with it when we reach that article, but by the provisions of this clause whatever powers are given by the previous clauses are interfered with and I would strongly support the amendment for the deletion of this clause. There is no necessity for it and as has been already pointed out by one of the honourable Members this will lead to a conflict with article 280 and there will be complications arising out of it. With these few words, I support the amendment for the deletion of this clause.

Prof. Shibban Lal Saksena (United Provinces : General) : Mr. Vice-President, Sir, now we have come to this last part of this Chapter and this article 25 gives the right to every citizen in the country to see that all the liberties guaranteed in this chapter are made available to him. He can go to the Supreme Court and demand that these laws be enforced. Sir, this is the crowning section of the whole chapter. Without it, all the articles which we have passed will have no meaning. As my honourable Friend, Mr. Ayyangar, has said, this is the most important section in the Constitution. This is, in fact, what makes all the fundamental rights become real. Everybody can have his remedies if any wrong is done to him, under this article.

I think, Sir, the article as it has been worded is very proper, and the demand for the deletion of clause (4) is not a proper one, at the present stage of our national development; though as a matter of principle, it may be said to be correct. In America and England there are no provisions under which the fundamental rights can be suspended. In fact, in England we have no such rights; they are unwritten rights. Still, in the present stage of our development, when the State is in fact being built up. I think this provision for the suspension of the rights in an emergency, as provided in the Constitution, is necessary. There will be an occasion for us to examine those articles under which these articles can be suspended and we will see whether those provisions are reasonable. But to say that even in an emergency, in a rebellion or on other such occasions, there should be no power to the State to suspend

[Prof. Shibban Lal Saksena]

this Part of the Constitution, will, I think, be going too far, especially at this time of our national development. I think very soon when our State becomes stable, we shall be able to drop clause (4).

Clause (3) empowers the Parliament to make laws to empower the local courts to decide this question. I think this is also taking away to some extent the rights conferred here. Sir, the Supreme Court is the final authority. I have in fact a very high respect for the Supreme Court. I want that the Supreme Court should be a sort of a body almost independent of the Parliament. It should not be interfered with by the Parliament as in America. I therefore, think that this clause (3) which says that the Parliament will have power to make laws empowering any other court to decide this thing should not have been here. If Parliament does not want that the full import of the rights should be granted, they may empower any court to deal with this subject. I hope that in the first ten or fifteen years during which we experiment with this Constitution, we shall realise whether any Parliament is so determined as to make these rights null and void.

Sir, clause (2) gives the famous rights which are given all over the world, writs of *habeas corpus* and others. I think everybody will agree that this is very important and very good. Therefore, I think the article as it is, can be accepted, though, I think in later years if clause (3) is against the fundamental principles, it may be dropped. When our State becomes stable, clause (4) may also be dropped. That I think would be the proper form of this article after some time, when our democracy has become stable.

Sir, when we consider this article as the operative part of this chapter, we may review what we have done. In fact, this is a Chapter on Fundamental Rights. We have guaranteed against discrimination of all sorts; we have guaranteed that untouchability shall be abolished, which will be the most historic act done by the Assembly so far; we have granted the Charter of Liberty in article 13. I hope we will also pass article 15 wherein personal liberty and equality before law shall be guaranteed. Then, we have provided safeguards to minorities, both religious and cultural. The right to property has yet to be finally adopted. I think all these rights are the most important rights, the most valued rights of any citizen. I also want to say to my friends who yesterday thought that they were not sufficient to guarantee the rights of minorities, that the ultimate right of the minority is the good will of the majority. I personally feel that the majority has gone to the farthest extent in this matter. I may also point out one thing. The Fundamental Rights Committee was appointed before the partition took place. In fact, these rights were written in this form before the partition had taken place. The minorities' rights were laid down on the basis that there will be no partition. Yet, we have not changed them. I am not letting out a secret when I say that our great leader Sardar Patel told us, "kindly do not interfere with these rights, religious and cultural, because they form part of an agreement arrived at before the partition." If anybody says that these rights are not enough, I think it is the height of ungratefulness. I think we have guaranteed rights which our people will, probably, tell us in the future that we bartered away these rights. We have now declared that no religious education shall be given in the schools. Thirty crores of our people are Hindus; yet they shall not have the right to be taught even the universal religious book, the Gita, in the schools. Why have we done that? Because, at that time, before the partition, it was thought that in view of the fact that there are various religions, let it not be done. Now, when only three crores out of thirty-three are the minority, still, the majority is denying itself the opportunity of teaching the children the religious precepts of its community. Yet, we have not changed these rights, because our leader has told us not to interfere with them. I think the way in which the majority has tried to accommodate the minority will be taken note of and it shall not be right for anybody to come forward and loudly

accuse the majority that it has not provided sufficient safeguards. I think the real guarantee of the minority is the good will of the majority. I hope that with these fundamental rights, we will be able to produce in this country a State which shall be a State based and inspired by the ideals of the great leader, the father of the Nation, so that we can have in our country a really secular State; a State based on the ideals of Mahatma Gandhi.

With these words, Sir, I support this article.

Prof. N. G. Ranga (Madras : General): Mr. Vice-President, Sir, I am unable to understand the line of argument advanced by those friends who want clause (4) to be deleted, and who do not want to vest in the President of the Republic the power to suspend these fundamental rights under article 280 in case of emergencies. Sir, it has been said by more than one speaker that this article is the greatest guarantee for individual liberty in our country and that the Supreme Court is being set up as the biggest champion of the liberties of our people. But, has it been considered by these friends that just as individuals and groups have their rights, the society as a whole has certain rights *vis-a-vis* individuals and groups which are bent upon destroying that society, subverting the social order and dissecting the social organisation through violent means? Is it not a fact, Sir, that in the recent decades of this century there have been such attempts made by organized groups and minorities in different countries to subvert the social order and destroy the social life of the majority of the people themselves? What is the guarantee then for the continuance of the social order and social rights of the majority of the peoples in the different countries if an organized violent effort is made by a tiny minority? No effort has been made in this Constitution and in this Chapter to safeguard such a society. It may be said that there is a safeguard for the State; but is it not a fact that in Germany and Italy, a group of people organized for violence were able to get at the State and then subvert the whole of the society and destroy the fundamental rights of the majority of the people themselves? Is it not also a fact that in Soviet Russia even today an organized minority is in the saddle and is incharge of the State and is able to deny the fundamental rights not only to the whole of the majority of the people there, but also the fundamental rights of these individuals, as are being detailed here? Therefore, Sir, it is as well for us all to keep in mind this extreme need that society as a whole should safeguard itself against the possibility of organized minorities based upon violence, intent upon the use of violence, trying to use that violence. My Friend Mr. Pocker has tried to create a sort of bogey out of what had happened in Madras. Similar things could easily have happened in other provinces also. Can we deny, Sir, or can anyone else deny the fact that there were people at that time in Madras Presidency who made it their business to use all possible violent means in order to subvert our own society in the South, in order to go to the aid of a gang of people who had made themselves the enemies of the society as a whole in India and of the State, the Indian State as well as the Provincial States? Sir, what is it that the Madras Government could have done except what it had actually done—just catch hold of those people, restrain their liberties for a temporary period in order to prevent them from going to the rescue or from abetting the violent means and methods adopted by the Razakar movement in a particular part of our country? It cannot be denied by these friends that many of these friends whose liberty had to be restrained for a time had been, directly or indirectly, in league with those people who had their contacts with the Razakar movement; and under those circumstances how could it be possible for any society to safeguard itself except by telling these friends that they should hold themselves in check and if they could not do so voluntarily it would be the charge of the Society, of the State, to restrain the liberties of these people for a time?

[Prof. N. G. Ranga]

Secondly, Sir, let us not forget that there is a world-wide conflict today between two great ideologies. There is totalitarianism on the one side, and on the other side, there is democracy. In this conflict we have to decide what we are going to do. These Fundamental rights can come to be exercised only by that society and those individuals who have a due respect for law, who have a due respect for fundamental rights of other people along with themselves and who therefore are prepared to behave themselves with a due sense of responsibility and restraint. Wherever such conditions do not obtain and wherever there are groups and parties who organize and make it their business to destroy the State and try to capture the State, certainly it would not be possible for any State or Society to respect these fundamental rights. That is the first pre-requisite for the exercise of these fundamental rights. Sir, it is a well-known fact that these concepts of fundamental rights have emerged out of the terrible sufferings that people have had to go through during the last two centuries in different countries all over the world. These are all sacred rights, rights that are sanctified by the very experiences of people in different countries. It is all true but why are these rights being conceded and how are they being claimed? Because the personality of the individual is found to be inviolable. The individual is found to be just as violable as society. An individual's right to liberty has got to be safeguarded at all costs, in every possible manner by the society as well as the State. If the life of that society itself is endangered, then.

Maulana Hasrat Mohani (United Provinces : Muslim): What about the right to strike?

Mr. Vice-President : Maulana Saheb, please do not interrupt.

Prof. N. G. Ranga: Mahatma Gandhi himself has already answered it in regard to strikes. It is possible for anyone to be allowed to go on strike or groups of people to go on strike provided they keep themselves non-violent. The moment they over-step the bounds of non-violence and begin to exercise violence against others who do not believe in that line of action re-strikes,—whether you call them strikes or lock-outs, they have got to be banned and the people who indulge in these lock-outs have got to be dealt with in the only way by which society can possibly do so in order to safeguard itself. Sir, let us remember that individuals can exist not in vacuum but in a society. Therefore, the first condition precedent for any individual for the exercise of fundamental rights is the existence of society the fundamentals of which, the soundness of which is its own organization. Therefore, those individuals who do not believe in social life, who are anti-social, who are intend upon disrupting and destroying society necessarily cannot be expected to claim and enjoy these fundamental rights. This is a very fair condition that every individual has got to satisfy.

Another thing is, it is not the Supreme Court which is going to ensure the exercise of this fundamental right to individuals or groups as much as an individual's and group's own capacity to stand up to its own fundamental rights and make the necessary sacrifice. It can do so in one of two ways. One is that of the Western World, that is, resorting to violence. The other is that of Mahatma Gandhi—resorting to *Satyagraha*. Now, a *Satyagrahi* cannot at one and the same time be both non-violent and violent in his expression, in his activities, in his incitement of others, in the various other methods that he adopts in order to subvert the society. A *Satyagrahi* has necessarily to be a peculiar individual, an individual distinguished from other individuals by the degree to which he can restrain himself and also ask his own followers to restrain themselves and pursue a non-violent line of action both in word, thought and action. Now such a *Satyagrahi* can always safeguard his own fundamental rights. In view of the fact that everyone cannot be a *Satyagrahi* and ordinary people also have got to be safeguarded, these

fundamental rights are being enshrined in this particular chapter. Therefore those who wish to enjoy this fundamental right, to safeguard their enjoyment, have got to discharge particularly their duty towards society as a whole. There may be groups and there are groups in this country, there may be individuals and there are plenty of them in this country, who do not believe in their duties towards society, but who only wish to exploit to the uttermost possible extent these fundamental rights. We know, Sir, of certain pamphleteers; we know of certain organizations; also we know of certain other communal champions who wish to exploit these liberties. What is it that Society has got to do? If they are only of negligible importance, then it is open to the ordinary rule of law to restrain them. But if on the other hand they become sufficiently powerful and vociferous they have got to be dealt with by the State as such and if they attain a province-wide or a nation-wide importance, it will be the duty of the President of the Republic to invoke article 280 and declare an emergency and suspend the operation of these fundamental rights and deal with these gentlemen as they deserve to be.

Shri H. V. Kamath : Does my honourable Friend, Prof. Ranga, propose to deal with even vociferous minorities?

Prof. N. G. Ranga: Yes, but only those people who are vociferous in abusing others, without any sense of responsibility, without any restraint and without any sense of morality; and we know that we have had plenty of such people who were the cause of lot of disturbances, and.....

Mr. Vice-President : The answer you have already given is sufficient.

Prof. N. G. Ranga: Thank you, Sir.

Then, Sir, it is true the majority also can go mad, and therefore the people have to be protected from their tyranny. The majority can go mad in an organized and in an unorganized fashion. If they go mad in an unorganized fashion, without any leadership from the State, or society or anybody, then it is the duty of the State to come into the arena and deal with those people as best as it might, even at the peril of its own existence. A State which is not prepared to restrain its own unorganized or disorganized majorities, who believe in inflicting private punishment upon various people, whether they are organised or not, such a State does not deserve to exist. But on the other hand, if the majority is organized and it begins to function through the State itself, then who is to guarantee and uphold these fundamental rights? It may be said that the Supreme Court would be expected to do so. It is also quite possible that when an organized majority is functioning through the State and begins to misbehave in this fashion, the Supreme Court might be set at naught as it happened in Nazi Germany and Fascist Italy. Then what is the guarantee for these individuals or groups? There is a book by Prof. Laski called "Liberty in the modern State" in which...

Shri Krishna Chandra Sharma (United Provinces : General) : But what is the point? What is the relevancy of all that you say now to the point under discussion?

Prof. N. G. Ranga: There he makes it perfectly clear that.

Mr. Vice-President : Mr. Sharma wants to know to what extent what you say is relevant to the article under discussion.

Shri H. V. Kamath : Sir, it is for you to decide.

Mr. Vice-President : But I want to hear Prof. Ranga I think there is some connection however slight.

Prof. N. G. Ranga: The Supreme Court expected to issue writs, mandamus, and various other things. If there were an organised party which refuses to respect these writs issued by the Supreme Court, what is the guarantee then for these fundamental rights? That is the relevancy. My answer is, it is the

[Prof. N. G. Ranga]

duty of every group to offer Satyagraha, provided that Satyagraha is carried out, and is offered in the Gandhian fashion, in a non-violent manner, and in a self-sacrificing fashion; these are the conditions under which Satyagraha can be offered. That is the instrument that Mahatma Gandhi has fashioned for the country and.

Shri H. V. Kamath : Sir, is the right to offer Satyagraha a fundamental right?

Prof. N. G. Ranga : Sir, I can only say that it is basic to all your fundamental rights. But Satyagraha need not be enshrined in any constitution. It can be enshrined only in the capacity of the people to offer sacrifice, and to offer themselves also as sacrifice. This conception of fundamental rights has come into existence in the world only because there were so many people in the history of the world who were prepared to offer themselves to martyrdom in order to establish these rights, in order to get this conception accepted by the whole of the civilized world and by the whole of the democratic world as fundamental rights.

Lastly, Sir, I wish to sound a note of warning. Let us remember that we can exercise these rights only within the orbit or within the ambit of democracy, and whenever there is serious danger to the very concept of democracy, to the exercise of democratic functions, to the institutions of democracy, it must be the duty of the State as well as that of the President of our Republic to set aside these fundamental rights in order to safeguard our people. Our friends, of course, who claim to belong to some sort of minority are nervous about it. But let me warn them in this way. It may be that their religion countenances totalitarianism, may be their cult countenances totalitarianism, but there can be no place for totalitarianism in this country, and if ever any group or individual were to try to establish totalitarianism in this country, especially to establish a totalitarian State, then it will be the sacred duty of the Supreme Court as well as that of the President of the Republic of this country to see that this Constitution is maintained at all costs, and these fundamental rights are not allowed to be exercised by those people or groups in such a way as to jeopardise our society.

Mr. Vice-President: Shri Rohini Kumar Chaudhari. You will please be brief.

Shri Rohini Kumar Chaudhari (Assam : General): Mr. Vice-President, Sir, this is the first time that I have brought these books to my table, and the House need not be apprehensive because I have brought them here, that I will be unnecessarily long or irrelevant. I would only like to tell you, sir, once again that I am rather short of hearing, so far as bell-rings are concerned, though I can hear all right where whispering accusations are made.

Mr. Vice-President : I wish I had known this before, I would have thought twice before calling you to the mike !

Shri Rohini Kumar Chaudhari : Sir, I welcome this article because the enunciation of these fundamental rights would be meaningless if this article were not here to enable us to get our justice from the Supreme Court. I can quite understand the coyness of my friend Mr. Naziruddin Ahmad while he was moving his amendment. After all the man who is always fond of finding out small faults of drafting has been caught napping, and it has been found, and he has himself admitted it, that the whole of his amendment is not explicit. But I would submit that what he intended to convey has been conveyed by the article itself. Every person will have the right to move the Supreme Court whenever he finds that a fundamental right has been infringed. Supposing we want to say that the Queensway is open to traffic, one need not say that every person shall have the right to go through

Queensway. Similarly, the article as it stands here is quite explicit and does not require the amendment tabled by Mr. Naziruddin Ahmad.

I also welcome the provision which has been made herein that in some cases the Supreme Court may delegate its powers to some other courts. That will be a blessing to distant places like Assam and Coorg, because people from such places will find it extremely difficult to come and seek relief in the Supreme Court which is bound to be located somewhere in the United Provinces or Delhi. But at the same time I would like to mention here that such power of delegation should be exercised very sparingly because after all the personnel of the Supreme Court would no doubt be more qualified than the personnel of a High Court. Therefore to shut out the possibility or the chance of any particular province from coming to the Supreme Court and of making the High Court to exercise the Supreme Court jurisdiction would be somewhat anomalous.

I now come to the fourth clause of article 25. I wish I had spoken before my honourable Friend Mr. Ananthasayanam Ayyangar had spoken because he would have been able to explain some of the difficulties which I feel about this clause. Furthermore, I as well as most members of the House look upon our honourable Friend Mr. Ananthasayanam Ayyangar as something akin to Guru Dronacharya of old who can, notwithstanding his personal feelings and opinions, give a proper interpretation of the provision as taken by the framers of this draft. [Subject to correction I consider that clause (4) should have been omitted or there should be a substantial modification of this clause. The Fundamental rights are in the very nature of them rights which should never be taken away from the people. According to this clause these Rights can be taken away in a state of emergency.] Article 280 says that in a state of emergency the President can keep the whole of article 25 suspended. Let us see what will be the result of this suspension—what will be the evil effect and what may be the possible good effect of this suspension. The evil effect of this suspension would be that in a state of emergency you can ignore article 11 which deals with untouchability. That is to say we conceive a set of circumstances which would entitle the State or any person to infringe against article 11 and go without any punishment. Any State, or any temple or any authority can infringe article 11 in a state of emergency. Does this House support such a view? Will the House under any circumstances agree to a suspension of the Constitution in so far as article 25 is concerned, and allow people who infringe against it to go with impunity?

Let us take again article 17 where traffic in human beings has been prohibited. Does the House agree that a suspension of the Constitution should take effect so that the people can indulge in traffic in human beings with impunity? I say that such a state of things may actually take place. Remember the last war when actually traffic in human beings was carried on for the exigencies of the war. What is after all the Women's Volunteer Service? What was W.A. C.? Everybody knows for what purpose the Women's Volunteer and Auxiliary Corps were organized and what functions they carried on. Traffic in human beings was actually carried on there, and it was carried on during the war in different cities where women were actually engaged for dancing and other purposes in order to keep up the morale of the troops. Do you, by agreeing to a suspension of article 25, countenance the possibility of traffic in human beings of this kind in a state of emergency which is spoken of during the war? I therefore wish that this last clause—clause (4)—of this article should either be deleted or amended in such a manner that it is not possible to suspend the entire article at any time but it can be suspended under certain most unavoidable circumstances. But, as a matter of fact I cannot envisage any circumstance which would make it necessary for you to suspend this article in any respect. During a state of emergency

[Shri Rohini Kumar Chaudhari]

what you may want to suspend is article 13 where freedom of speech, freedom of association and all these things have been mentioned. It may be necessary during a period of emergency or when war is actually going on, to restrict the freedom of speech and the freedom of movement and other rights which are mentioned in that article. But that article also contains in every phase of it provisos which empower the State to restrict those rights. So far as that article, provisions which are most essential during a state of emergency, is concerned you have already got limitations and restrictions mentioned in the article itself. For that purpose the suspension of article 25 is not necessary. Therefore in my humble opinion, and subject to corrections and explanations which might be given by my honourable Friend Dr. Ambedkar or by any other member in this House, I would submit that it would be better from every point of view to do away with this clause (4) altogether or to amend it in a suitable manner.

Pandit Lakshmi Kanta Maitra (West Bengal : General): Do you suggest that article 280 should also be deleted?

Shri Rohini Kumar Chaudhari : I was referring to article 280 in my speech.

Mr. Vice-President : You are not called upon to answer that.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, of the amendments that have been moved to this article I can only accept amendment No. 789 which stood in the name of Mr. Baig but which was actually moved by Mr. Naziruddin Ahmad. I accept it because it certainly improves the language of the draft. With regard to the other amendments I shall first of all take up the amendment (No. 801) moved by Mr. Tajamul Husain and the amendment (No. 802) moved by Mr. Karimuddin. Both of them are of an analogous character. The object of the amendment moved by Mr. Tajamul Husain is to delete altogether sub-clause (4) of this article and Mr. Karimuddin's amendment is to limit the language of sub-clause (4) by the introduction of the words 'in case of rebellion or invasion'.

Now, Sir, with regard to the argument that clause (4) should be deleted, I am afraid, if I may say so without any offence, that it is a very extravagant demand, a very tall order. There can be no doubt that while there are certain fundamental rights which the State must guarantee to the individual in order that the individual may have some security and freedom to develop his own personality, it is equally clear that in certain cases where, for instance, the State's very life is in jeopardy, those rights must be subject to a certain amount of limitation. Normal, peaceful times are quite different from times of emergency. In times of emergency the life of the State itself is in jeopardy and if the State is not able to protect itself in times of emergency, the individual himself will be found to have lost his very existence. Consequently, the superior right of the State to protect itself in times of emergency, so that it may survive that emergency and live to discharge its functions in order that the individual under the aegis of the State may develop, must be guaranteed as safely as the right of an individual. I know of no Constitution which gave fundamental rights but which gives them in such a manner as to deprive the State in times of emergency to protect itself by curtailing the rights of the individual. You take any Constitution you like, where fundamental rights are guaranteed; you will also find that provision is made for the State to suspend these in times of emergency. So far, therefore, as the amendment to delete clause (4) is concerned, it is a matter of principle and I am afraid I cannot agree with the Mover of that amendment and I must oppose it.

Now, Sir I will go into details My Friend Mr. Tajamul Husain drew a very lurid picture by referring to various articles which are included in the Chapter dealing with Fundamental Rights. He said, here is a right to take water, there is a right to enter a shop, there is freedom to go to a bathing

ghat. Now, if clause (4) came into operation, he suggested that all these elementary human rights which the Fundamental part guarantees—of permitting a man to go to a well to drink water, to walk on the road, to go to a cinema or a theatre, without any let or hindrance—will also disappear. I cannot understand from where my friend Mr. Tajamul Husain got this idea. If he had referred to article 279 which relates to the power of the President to issue a proclamation of emergency, he would have found that clause (4) which permits suspension of these rights refers only to article 13 and to no other article. The only rights that would be suspended under the proclamation issued by the President under emergency are contained in article 13; all other articles and the rights guaranteed thereunder would remain intact, none of them would be affected. Consequently, the argument which he presented to the House is entirely outside the provisions contained in article 279.

Shri H. V. Kamath : What about article 280?

The Honourable Dr. B. R. Ambedkar : All that it does is to suspend the remedies. I thought I would deal with that when I was dealing with the general question as to the nature of these remedies, and therefore I did not touch upon it here.

Taking up the point of Mr. Karimuddin, what he tries to do is to limit clause (4) to cases of rebellion or invasion. I thought that if he had carefully read article 275, there was really no practical difference between the provisions contained in article 275 and the amendment which he has proposed. The power to issue a proclamation of emergency vested in the President by article 275 is confined only to cases when there is war or domestic violence.

Kazi Syed Karimuddin : Even if war is only threatened?

The Honourable Dr. B. R. Ambedkar: Certainly. An emergency does not merely arise when war has taken place—the situation may very well be regarded as emergency when war is threatened. Consequently, if the wording of article 275 was compared with the amendment of Mr. Karimuddin, he will find that practically there is no difference in what article 275 permits the President to do and what he would be entitled to if the amendment of Mr. Karimuddin was accepted. I therefore submit, Sir, that there is no necessity for amendments Nos. 801 and 802. So far as I am concerned, No. 801 is entirely against the principle which I have enunciated.

I will take up the amendments of my friend Mr. Kamath, No. 787 read with No. 34 in List III, and the amendment of my friend Mr. Sarwate, No. 783 as amended by No. 43. My friend Mr. Kamath suggested that it was not necessary to particularize, if I understood him correctly, the various writs as the article at present does and that the matter should be left quite open for the Supreme Court to evolve such remedies as it may think proper in the circumstances of the case. I do not think Mr. Kamath has read this article very carefully. If he had read the article carefully, he would have observed that what has been done in the draft is to give general power as well as to propose particular remedies. The language of the article is very clear:

"The right to move the Supreme Court by appropriate proceeding for the enforcement of the rights conferred by this Part is guaranteed.

The Supreme Court shall have power to issue directions or orders in the nature of the writs of....."

These are quite general and wide terms.

Shri H. V. Kamath : On a point of explanation, Sir. With the accepted amendment of my friend Mr. Baig, the clause will read thus:

"The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*,...."

The Honourable Dr. B. R. Ambedkar : Yes, the words "directions and orders" are there.

Shri H. V. Kamath : And "writs".

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

While the powers of the Supreme Court to issue orders and directions are there, the draft Constitution has thought it desirable to mention these particular writs. Now, the necessity for mentioning and making reference to these particular writs is quite obvious. These writs have been in existence in Great Britain for a number of years. Their nature and the remedies that they provided are known to every lawyer and consequently we thought that as it is impossible even for a man who has a most fertile imagination to invent something new, it was hardly possible to improve upon the writs which have been in existence for probably thousands of years and which have given complete satisfaction to every Englishman with regard to the protection of his freedom. We therefore thought that a situation such as the one which existed in the English jurisprudence which contained these writs and which, if I may say so, have been found to be knave-proof and fool-proof, ought to be mentioned by their name in the Constitution without prejudice to the right of the Supreme Court to do justice in some other way if it felt it was desirable to do so. I, therefore, say that Mr. Kamath need have no ground of complaint on that account.

My friend Mr. Sarwate said that while exercising the powers given under this article, the Court should have the freedom to enter into the facts of the case. I have no doubt about it that Mr. Sarwate has misunderstood the scope and nature of these writs. I therefore, think, that I need make no apology for explaining the nature of these writs. Anyone who knows anything about the English law will realise and understand that the writs which are referred to in the article fall into two categories. They are called in one sense "prerogative writs", in the other case they are called "writs in action". A writ of *mandamus*, a writ of prohibition, a writ of *certiorari*, can be used or applied for both; it can be used as a prerogative writ or it may be applied for by a litigant in the course of a suit or proceedings. The importance of these writs which are given by this article lies in the fact that they are prerogative writs; they can be sought for by an aggrieved party without bringing any proceedings or suit. Ordinarily you must first file a suit before you can get any kind of order from the Court, whether the order is of the nature of *mandamus*, prohibition or *certiorari* or anything of the kind. But here, so far as this article is concerned, without filing any proceedings you can straightaway go to the Court and apply for the writ. The object of the writ is really to grant what I may call interim relief. For instance, if a man is arrested, without filing a suit or a proceeding against the officer who arrests him, he can file a petition to the Court for setting him at liberty. It is not necessary for him to first file a suit or a proceeding against the officer. In a proceeding of this kind where the application is for a prerogative writ, all that the Court can do is to ascertain whether the arrest is in accordance with law. The Court at that stage will not enter into the question whether the law under which a person is arrested is a good law or a bad law, whether it conflicts with any of the provisions of the Constitution or whether it does not conflict. All that the Court can inquire in a *habeas corpus* proceedings is whether the arrest is lawful and will not enter into the question—at least that is the practice of the Court—of the merits of the law. When a person is actually arrested and his trial has commenced, it is in the course of those proceedings that the court would be entitled to go into the facts and to come to a decision whether a particular law under which a person is arrested is a good law or a bad law. Then the court will go into the question whether it conflicts with the provisions of the Constitution. Consequently, the

amendment moved by my friend Shri V. S. Sarwate, if I may say so, is quite out of place. It is not here that such a provision could be made. If he refers to article 115, he will find that a provision for similar writs has been made there. But those are writs which could be issued inconnection with questions of fact and law. They would certainly be investigated by the Courts.

Now, Sir, I am very glad that the majority of those who spoke on this article have realised the importance and the significance of this article. If I was asked to name any particular article in this Constitution as the most important—an article without which this Constitution would be a nullity—I could not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it and I am glad that the House has realised its importance.

There is however one thing which I find that the Members who spoke on this have not sufficiently realised. It is to this fact that I would advert before I take my seat. These writs to which reference is made in this article are in a sense not new. *Habeas corpus* exists in our Criminal Procedure Code. The writ of *Mandamus* finds a place in our law of Specific Relief and certain other writs which are referred to here are also mentioned in our various laws. But there is this difference between the situation as it exists with regard to these writs and the situation as will now arise after the passing of this Constitution. The writs which exist now in our various laws are at the mercy of the legislature. Our Criminal Procedure Code which contains a provision with regard to *habeas corpus* can be amended by the existing legislature. Our Specific Relief Act also can be amended and the writ of *habeas corpus* and the right of *mandamus* can be taken away without any difficulty whatsoever by a legislature which happens to have a majority and that majority happens to be a single-minded majority. Hereafter it would not be possible for any legislature to take away the writs which are mentioned in this article. It is not that the Supreme Court is left to be invested with the power to issue these writs by a law to be made by the legislature at its sweet will. The Constitution has invested the Supreme Court with these rights and these writs could not be taken away unless and until the Constitution itself is amended by means left open to the Legislature. This in my judgment is one of the greatest safeguards that can be provided for the safety and security of the individual. We need not therefore have much apprehension that the freedoms which this Constitution has provided will be taken away by any legislature merely because it happens to have a majority.

Sir, there is one other observation which I would like to make. In the course of the debates that have taken place in this House both on the Directive Principles and on the fundamental Rights. I have listened to speeches made by many members complaining that we have not enunciated a certain right or a certain policy in our Fundamental Rights or in our Directive Principles. References have been made to the Constitution of Russia and to the Constitutions of other countries where such declarations, as members have sought to introduce by means of amendments, have found a place. Sir, I think I might say without meaning any offence to anybody who has made himself responsible for these amendments that. I prefer the British method of dealing with rights, The British method is a peculiar method, a very real and a very sound method. British jurisprudence insists that there can be no right unless the Constitution provides a remedy for it. It is the remedy that makes a right real. If there is no remedy, there is no right of all, and I am therefore not prepared to burden the Constitution with a number of pious declarations which may sound as glittering generalities but for which the Constitution makes no provision by way of a remedy. It is much better to be limited in the scope of our rights and to make them real by enunciating remedies than to have a lot of pious wishes embodied in the Constitution. I am very glad that this House has seen that

[The Honourable Dr. B. R. Ambedkar]

the remedies that we have provided constitute a fundamental part of this Constitution. Sir, with these words I commend this article to the House.

Shri H. V. Kamath : On a point of clarification, Sir, as we are dealing with justiciable fundamental rights and the guaranteeing of these by the Supreme Court and in view of the fact that article 280 has also been invoked, will it not be more desirable to say that "the rights guaranteed by this article shall not be suspended wholly or in part".... or any similar set of words which the legal luminaries may choose?

The Honourable Dr. B. R. Ambedkar : "Shall not be suspended" covers both. It is unnecessary to specify it.

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

The question is:

"That for clause (1) of article 25, the following clause be substituted, namely:

'(1) Every person shall have the right by appropriate proceedings to enforce the rights conferred by this Part.' "

The amendment was adopted.

Mr. Vice-President : The question is:

"That in clause (1) of article 25, for the words 'Supreme Court' the words "Supreme Court or any other Court empowered under clause (3) to exercise the powers of the Supreme Court" be substituted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 787 standing in the name of Mr. Kamath.

Shri H. V. Kamath : In view of the remarks made by Dr. Ambedkar on this matter, I do not wish to press it.

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

Mr. Vice-President : Then we come to amendment No. 789 standing in the name of Mr. Mahboob Ali Baig, but moved by Mr. Naziruddin Ahmad.

The question is:

"That in clause (2) of article 25, for the words 'in the nature of the writs of the words 'or writs, including writs in the nature of' be substituted."

The amendment was adopted.

Mr. Vice-President : Amendment No. 794 standing in the names of Dr. Ambedkar, Mr. Madhava Rau and Mr. Saadulla.

The question is:

"That for existing clause (3) of article 25, the following clause be substituted:

'(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2) of this article, Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2) of this article.'"

The amendment was adopted.

Mr. Vice-President : Amendment No. 43 of List 1 standing in the name of Mr. Sarwate.

Shri V. S. Sarwate : I do not wish to press it.

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

Mr. Vice-President : Amendment No. 44 of List 1.

The question is:

"That in amendment No. 794 of the List of Amendments, in the proposed clause (3) of article 25, the words 'Without prejudice to the powers conferred on the Supreme Court by clause (2) of this article' be deleted.' "

The amendment was negatived.

Mr. Vice-President : Amendment No. 801.

The question is:

"That clause (4) of article 25 be deleted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 802 standing in the name of Mr. Karimuddin. The question is:

"That in clause (4) of article 25, for the words 'as otherwise provided for by this Constitution' the words 'in case of rebellion or invasion and when State of Emergency is proclaimed under Part XI of this Constitution' be substituted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 805 by Mr. Naziruddin Ahmad. The question is:

"That in clause (4) of article 25, for the word 'guaranteed' the word 'conferred' be substituted."

The amendment was negatived.

Mr. Vice-President : I will now put to the vote article 25 as amended by amendments Nos. 789 and 794. The question is:

That article 25, as amended, stand part of the Constitution.

The motion was adopted.

Article 25, as amended, was added to the Constitution.

Article 25-A

Mr. Vice-President : We next come to article 25-A. Amendment No. 808 by Mr. Lari.

(The amendment was not moved.)

Article 26

Mr. Vice-President : We then come to article 26. The motion before the House is:

That article 26 form part of the Constitution.

Amendment No. 809 is of a negative character and therefore disallowed.

(Amendment No. 810 was not moved.)

Amendment Nos. 811 and 812 are of similar import. I should say they are almost identical. I allow 811 to be moved.

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

"That in article 26 for the words 'guaranteed in' the words 'conferred by' be substituted."

This part does not guarantee but only confers these rights. Therefore to bring the language in conformity, I propose this amendment.

Mr. Vice-President : There is an amendment to this amendment. No 48 of List I.

(The amendment was not moved.)

(Amendment No. 813 was not moved.)

I shall now put article 26 to vote.

Shri T. T. Krishnamachari: How can the article be put to the vote before the amendment is put to the vote?

Mr. Vice-President : The question is:

"That in article 26 for the words 'guaranteed in' the words 'conferred by' be substituted."

The amendment was adopted.

Mr. Vice-President : The question is that:

That article 26, as amended stand part of the Constitution.

The motion was adopted.

Article 26, as amended, was adopted to the Constitution.

Article 27

(Amendment Nos. 814, 815 & 816 were not moved.)

Mr. Vice-President : Amendment Nos. 817 and 818 are to be considered together. 817 may be moved; it stands in the name of Dr. Ambedkar.

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

"That for clause (a) of article 27 the following be substituted:

'(a) with respect to any of the matters which, under clause (2a) of article 10, article 16, clause (3) of article 25, and article 26 may be provided for by legislation by Parliament, and', "

The object of introducing this addition of clause (2a) of article 10 is because this is a new clause which was adopted by this House. It is, therefore, necessary to make a reference to it in this article.

Mr. Vice-President : There is an amendment to this amendment.

The Honourable Dr. B. R. Ambedkar : I have moved it as amended.

Mr. Vice-President: I see.

(Amendment No. 818 was not moved.)

Amendment No. 819 is a verbal amendment. Amendment No. 820 may be moved.

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

"That for the words 'to provide for such matters and for prescribing punishment for such acts' the words 'for prescribing punishment for the acts referred to in clause (b) of this article' be substituted."

Mr. Vice-President : Amendment No. 48 of List I standing in the name of Mr. Naziruddin Ahmad. Does he wish to move it?

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

"That in amendment Nos. 820 and 822 of the List of amendments, in article 27 and in the proviso to article 27, the words 'in this article', wherever they occur, and the words 'of this Constitution' in the Explanation be deleted."

Mr. Vice-President : It is very much like a verbal amendment.

Mr. Naziruddin Ahmad : Yes, Sir; because I was called, I had to obey the ruling of the Chair and that is why I came to the mike to move it, but this is verbal.

Mr. Vice-President : I am very grateful. I take it that you are not moving it.

Mr. Naziruddin Ahmad : No, Sir. I have already moved the amendment, but I do not wish to press it.

Mr. Vice-President : Amendments Nos. 822 and 823 are of similar import. No. 822 can be moved.

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

"That for the proviso and explanation to article 27, the following be substituted:

'Provided that any law in force immediately before the commencement of this Constitution in the territory of India or any part thereof with respect to any of the matters referred to in clause (a) of this article or providing for punishment for any act referred to in clause (b) of this article shall, subject to the terms thereof, continue in force therein, until altered or repealed or amended by Parliament.'

'Explanation.—In this article the expression 'law in force' has the same meaning as in article 307 of this Constitution.' "

(Amendment Nos. 50 of List No. 1, 65 of List No. IV and 823 were not moved.)

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

(At this stage Mr. Kamath rose to speak.)

Mr. Vice-President : I hope you will permit me to get the things through before we disperse, in which case, I shall adjourn the House at 1 o'clock.

Shri H. V. Kamath : I am equally anxious. Mr. Vice-President, I am here seeking only a little light from Dr. Ambedkar with regard to his amendment No. 820 moved by him. I fail to see clearly why the words in the article as it stands at present should be substituted by the words he proposes to. In case his amendment is accepted, it will mean that Parliament shall have power only for prescribing punishment for the acts referred to in clause (b). Then what about the Parliament's power to make laws with respect to any of the matters which under this power are required to be provided for by legislation in clause (a)? Does he intend by his amendment to take away the power which is sought to be conferred by clause (a) of this article? It is conceivable that there are certain matters about which there are not laws already in force. Therefore, if there be such matters with regard to which there is no law in force, does he intend by his amendment to take away the power sought to be conferred by clause (a) of this article, which is 'to make laws with respect to any of the matters which under this Part are required to be provided for by legislation by Parliament'? The amendment seeks to give power only for prescribing punishment and not for making laws with respect to the matters required to be provided for by legislation under this Part. I want to know exactly what the import of his amendment is and why this clause (a) is sought to be amended in this fashion.

The Honourable Dr. B. R. Ambedkar : I am sorry, Mr. Kamath has not been able to understand the scheme which is embodied in article 27. This article embodies three principles. The first principle is that wherever this Constitution prescribes that a law shall be made for giving effect to any fundamental right or where a law is to be made for making an action punishable, which interferes with Fundamental Rights, that right shall be exercised only by Parliament, notwithstanding the fact that having regard to the List which deals with the distribution of power, such law may fall within the purview of the State Legislature. The object of this is that Fundamental Rights, both as to their nature and as to the punishments involved in the infringement thereof, shall be uniform throughout India. Therefore, if that object is to be achieved, namely, that Fundamental Rights shall be uniform and the punishments involved in the breach of Fundamental Rights also shall be uniform, then, that power must be exercised only by the Parliament, so that there may be uniformity.

The second thing is this. If there are already Acts which provide punishments for breaches of Fundamental Rights, unless and until the Parliament makes another or a better provision, such laws will continue in operation. That is the whole scheme of the thing. I do not see why there should be any difficulty in understanding the provisions contained in article 27.

Shri H. V. Kamath : I am sorry, Sir, that Dr. Ambedkar has not been able to follow me clearly. *(Laughter)*

The Honourable Dr. B. R. Ambedkar : It is quite possible.

Mr. Vice-President : Mr. Kamath, it may be the other way.

Shri H. V. Kamath : Sir, he has answered a different point from the one which I raised. My point was different. Perhaps he was not listening to me carefully. He was talking to someone else. If you will permit me, Sir, I shall try to explain the point.

Mr. Vice-President : Yes; but do not address the House; you must address the Chair.

Shri H. V. Kamath : I am addressing you, Sir, as I always do. The difficulty that arises is this. In the article as it stands at present, clause (a) gives Parliament alone the power. I do not question this; I agree Parliament and Parliament alone should have the right. You say here Parliament shall

[Shri H. V. Kamath]

have power to make laws with regard to any of the matters. Further on, you say that Parliament shall, as soon as may be, after the commencement of this Constitution, make laws to provide etc., etc. Now, Dr. Ambedkar wants to substitute this latter part by amendment No. 820. You want to omit the words "provide for such matters" and retain only the proviso as regards punishment. What about making laws for such matters? Why do you delete that portion? Why do you retain only the part regarding punishment? That was my point, but Dr. Ambedkar has answered a different point.

The Honourable Dr. B. R. Ambedkar : The reason why for instance, I have introduced an amendment in clause (a) is because it is only in specific matters that Parliament has been given this penal authority and these articles are referred to in my amendment. My friend Mr. Kamath will see that clause (a) contains no reference to any of the articles which specifically give Parliament the power to make laws. It is to make that point clear that I thought it would be desirable to make a reference to clause (2a) of article 10, article 16, clause (3) of article 25 and article 26, because, these are the specific articles which are to be dealt with exclusively by Parliament.

Mr. Vice-President : I shall now put the amendments to vote. All of them stand in the name of Dr. Ambedkar.

Amendment No. 817 as amended by amendment No. 56 of List III.

The question is:

"That for clause (a) of article 27 the following clause be substituted:

'(a) with respect to any of the matters which under clause (2a) of article 10, article 16, clause (3) of article 25, and article 26, may be provided for by legislation by Parliament, and,' "

The amendment was adopted.

Mr. Vice-President : Amendment No. 820.

The question is:

"That for the words 'to provide for such matters and for prescribing punishment for such acts' the words 'for prescribing punishment for the acts referred to in clause (b) of this article' be substituted."

The amendment was adopted.

Mr. Vice-President : Amendment No. 822.

The question is:

"That for the proviso and explanation to article 27, the following be substituted:

'Provided that any law in force immediately before the commencement of this Constitution in the territory of India or any part thereof with respect to any of the matters referred to in clause (a) of this article or providing for punishment for any act referred to in clause (b) of this article, shall, subject to the terms thereof, continue in force therein, until altered or repealed or amended by Parliament.

'Explanation.—In this article the expression 'law in force' has the same meaning as in article 307 of this Constitution.' "

The amendment was adopted.

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

"That article 27, as amended, stand part of the Constitution."

The motion was adopted.

Article 27, as amended, was added to the Constitution.

Mr. Vice-President : The House stands adjourned till Ten of the Clock tomorrow.

The Assembly then adjourned till Ten of the Clock on Friday the 10th December 1948.