

Monday, 29th November, 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

CONSTITUENT ASSEMBLY OF INDIA

President :

THE HONOURABLE DR. RAJENDRA PRASAD

Vice-President :

DR. H.C. MOOKHERJEE

Constitutional Adviser :

SIR B.N. RAU, C.I.E.

Secretary :

SHRI H.V. IENGAR, C.I.E., I.C.S.

Joint Secretary :

SHRI S.N. MUKERJEE

Deputy Secretary :

SHRI JUGAL KISHORE KHANNA

Under Secretary :

SHRI K.V. PADMANABHAN

Marshal :

SUBEDAR MAJOR HARBANS RAI JAIDKA

CONTENTS

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

	Pages		Pages
Thursday, 4th November 1948		Thursday, 18th November 1948—	
Presentation of Credentials and signing the Register	1	Taking the Pledge and Signing the Register	453
Taking of the Pledge	1	Draft Constitution—(contd.)	453—472
Homage to the Father of the Nation	1	[Articles 3 and 4 considered]	
Condolence on the deaths of Quaid-E-Azam Mohammad Ali Jinnah, Shri D.P. Khaitan and Shri D.S. Gurung	1	Friday, 19th November 1948—	
Amendments to Constituent Assembly Rules 5-A and 5-B ..	2—12	Draft Constitution—(contd.)	473—500
Amendment to the Annexure to the Schedule	12—15	[Articles 28 to 30-A considered]	
Addition of New Rule 38V	15—17	Monday, 22nd November 1948—	
Programme of Business	17—31	Draft Constitution—(contd.)	501—527
Motion <i>re</i> Draft Constitution	31—47	[Articles 30-A, 31 and 31-A considered]	
Appendices—		Tuesday, 23rd November 1948—	
Appendix “A”	48—52	Draft Constitution—(contd.)	529—554
Appendix “B”	53—100	[Articles 32, 33, 34, 34-A, 35, 36, 37 and 38 considered]	
Appendix “C”	101—142	Wednesday, 24th November 1948—	
Appendix “D”	143—207	Condolence on the death of Shri Kanya Lal Manana	555
Friday, 5th November 1948—		Draft Constitution—(contd.)	555—584
Taking the Pledge and Signing the Register	209	[Articles 38, Government of India Act, 1935 (Amendment Bill) and articles 38-A and 39 considered]	
Motion <i>re</i> Draft Constitution—(contd.)	209—253	Thursday, 25th November 1948—	
Saturday, 6th November 1948—		Draft Constitution—(contd.)	585—612
Motion <i>re</i> Draft Constitution—(contd.)	255—283	[Articles 39-A, 40, 40-A, and 8 considered]	
Taking the Pledge and Signing the Register	284	Friday, 26th November 1948—	
Motion <i>re</i> Draft Constitution (contd.)	284—294	Statement <i>re</i> Eire Act	613—615
Monday, 8th November 1948—		Addition of Sub-Rule to Rule 38	615—640
Taking the Pledge and Signing the Register	295	Draft Constitution—(contd.)	640—642
Motion <i>re</i> Draft Constitution—(contd.)	295—343	[Article 8 considered]	
Tuesday, 9th November 1948—		Monday, 29th November 1948—	
Draft Constitution—(contd.)	345—395	Taking the Pledge and Signing the Register	643
Monday, 15th November 1948—		Statement <i>re</i> Future Programme	643
Taking the Pledge and Signing the Register	397	Draft Constitution—(contd.)	643
Draft Constitution—(contd.)	397—424	[Article 8 considered]	
[Article 1 considered]		Taking the Pledge and Signing the Register	644
Wednesday, 17th November 1948—		Statement <i>re</i> Time of Meetings	644
Taking the Pledge and Signing the Register	425	Draft Constitution—(contd.)	644—670
Draft Constitution—(contd.)	425—452	[Articles 8, 8-A, 9, 10, 11, 11-A, and 11-B considered]	
[Article 1 postponed, articles 2 and 3 considered]			

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 29th November 1948

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

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the Pledge and signed the Register:

Shri Balwant Singh Mehta (United State of Rajasthan).

STATEMENT REGARDING FUTURE PROGRAMME

Mr. Vice-President (Dr. H. C. Mookherjee): Before we start discussion of article 8, which has not yet been put to the vote, I beg for leave to inform the House that at one time it was decided, of course informally, that we should meet tomorrow from 3 P.M. to 8 P.M., then a large number of Members represented to me that it would be inconvenient for various reasons. Therefore from tomorrow we shall meet at 9-30 A.M. and carry on till 1-30 P.M. That would give us four hours of work daily.

The second thing which I have to tell the House is that we shall meet up to the 13th of December and then break up, and reassemble on the 27th December. The exact time will be notified hereafter.

Article 8—(contd.)

Mr. Vice-President : Does any honourable Member wish to speak on article 8? If not, I should like to put it to vote.

Pandit Hirday Nath Kunzru (United Provinces : General): Sir, there is no quorum. I do not want to hold up the proceedings but in a House like this we cannot do anything at all consistently with the rules.

(The bells were rung.)

(There being no quorum.)

Mr. Vice-President : The House stands adjourned for a quarter of an hour.

The Assembly then adjourned till Twenty-five minutes past Ten of the Clock.

The Assembly reassembled at Twenty-five Minutes Past Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

Mr. Vice-President (Dr. H. C. Mookherjee): I understand there is another Member who has to sign the roll and take the pledge.

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

Lt. Col. Dalel Singh (United State of Rajasthan).

STATEMENT *re* TIME OF MEETINGS

Mr. Vice-President : For the benefit of those Members who did not attend the House in time, I have to announce here again that from tomorrow we shall assemble at 9-30 A.M. and continue up to 1-30 P. M. and that we shall hold the last meeting of the current session on the 13th and reassemble on the 27th December. Our last day will be the 13th December and we shall reassemble on the 27th December; the exact time will be announced hereafter.

May I in all humility suggest that it is improper on the part of Members to be unpunctual in attending the House? We have lost 20 minutes in this way today and I do not know how we shall be able to explain it to the public (*Hear, hear*).

Article 8—(contd.)

Mr. Vice-President : Shall we resume discussion of article 8? Is there any honourable Member who wishes to speak on it?

The Honourable Dr. B. R. Ambedkar (Bombay : General): Mr. Vice-President, the amendment of Mr. Naziruddin Ahmad, I think, creates some difficulty which it is necessary to clear up. His amendment was intended to remove what he called an absurdity of the position which is created by the Draft as it stands. His argument, if I have understood it correctly, means this, that in the definition of law we have included custom, and having included custom, we also speak of the State not having the power to make any law. According to him, it means that the State would have the power to make custom, because according to our definition, law includes custom. I should have thought that that construction was not possible, for the simple reason that sub-clause (3) of article 8 applies to the whole of the article 8, and does not merely apply to sub-clause (2) of article 8. That being so, the only proper construction that one can put or it is possible to put would be to read the word 'Law' distributively, so that so far as article 8, sub-clause (1) was concerned, Law would include custom, while so far as sub-clause (2) was concerned, 'Law' would not include custom. That would be, in my judgment, the proper reading, and if it was read that way, the absurdity to which my Friend referred would not arise.

But I can quite understand that a person who is not properly instructed in the rules of interpretation of Statute may put the construction which my Friend Mr. Naziruddin Ahmad is seeking to put, and therefore to avoid this difficulty, with your permission, I would suggest that in the amendment which I have moved to sub-clause (3) of article 8, I may be permitted to add the following words after the words "In this article". The words which I would like to add would be—

"Unless the context otherwise requires"

so that the article would read this way—

‘In this article, unless the context otherwise requires—

- (a) The expression ‘law’ includes any Ordinance, order, bye-law, rule, regulation, notification, custom, or usage having the force of law in the territory of India or any part thereof;
- (b) the expression.....’ ”

I need not read the whole thing.

So, if the context in article 8(1) requires the term law to be used so as to include custom, that construction would be possible. If in sub-clause (2) of article 8, it is not necessary in the context to read the word law to include custom, it would not be possible to read the word ‘law’ to include custom. I think that would remove the difficulty which my Friend has pointed out in his amendment.

Mr. Vice-President : I shall put the amendments, one by one, to vote. I am referring to the numbering of the amendments in the old list.

I put amendment No. 252, standing in the name of Mr. Mahboob Ali Baig to vote. The question is:

“That the proviso to clause (2) of article 8 be deleted.”

The amendment was adopted.

Mr. Vice-President : Then I put amendment No. 259, standing in the name of Shri Lokanath Misra. The question is:

“That after clause (2) of article 8, the following new clause be inserted and the existing clause (3) be renumbered as clause (4) :—

‘(3) The Union or the State shall not undertake any legislation, or pass any law discriminatory to some community or communities or applicable to some particular community or communities and no other.’ ”

The amendment was negatived.

Mr. Vice-President : Then I put amendment No. 260, as amended by Dr. Ambedkar. The question is:

“That for clause (3) of article 8, the following be substituted:—

- (3) In this article, unless the context otherwise requires,
 - (a) The expression ‘law’ includes any Ordinance, order, bye-law, rule, regulation, notification, custom, or usage having the force of law in the territory of India or any part thereof;
 - (b) the expression ‘laws in force’ includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repeated, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.’ ”

The amendment was adopted.

Mr. Vice-President : The question is:

“That in clause (3) of article (8) for the words ‘custom or usage’ the words ‘custom, usage or anything’ be substituted.”

The amendment was negatived.

Mr. Vice-President : The question is.

“That in clause (3) of article (8) for the words ‘custom or usage having the force of law in the territory of India or any part thereof’ be deleted.”

The amendment was negatived.

An Honourable Member : May I know whether you are referring to the old or new list of amendments?

Mr. Vice-President : I was referring to the old list for the purpose of convenience. Henceforward we shall go according to the numbering in the new list, which was, I understand, distributed to honourable Members last evening.

The question is:

“That article 8, as amended, stand part of the Constitution.”

The motion was adopted.

Article 8, as amended, was added to the Constitution.

Article 8-A

Pandit Balkrishna Sharma (United Provinces : General): There are some other amendments to article 8 in the form of inserting a new article 8-A.

Mr. Vice-President : Those are new articles which will be taken up presently.

Amendments Nos. 266 to 269 and 272 relate to language and script, which should stand over as that has been the decision of the House. I shall take up Amendment No. 270 standing in the name of Prof. K. T. Shah.

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

“That after article 8, the following new article be added :—

‘8-A. Unless the context otherwise requires, the Rights of Citizens herein defined in this Part of the Constitution shall be deemed to be the obligation of the State as representing the community collectively : and the obligations of the citizens shall be deemed to be the Rights of the State representing the community collectively.’ ”

Sir, I do not wish to waste the time of the House. May I point out that this amendment is in substance the same as was rejected by the House when it was considering the Directives. I think the old number was 848. In substance it amounts to the same thing. I can make out a case to show that it is slightly different, both in numbering and perhaps in intention, but as I have no desire to waste the time of the House, I would beg leave to withdraw this amendment, as it seeks to make rights and obligations of the State and citizen conversely obligations and rights.

Mr. Vice-President : Has the honourable Member the permission of the House to withdraw his amendment?

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

Prof. K. T. Shah : Sir, if I may speak against myself, it seems to me, Amendment No. 271 on the List is somewhat out of order, because it is a mere recommendation to the Draftsman to insert a clause, rather than a specific amendment, or a clause itself. I do not wish to move it.

Mr. Vice-President : The next amendment is No. 273 in the new list in the name of Mr. L. N. Misra.

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

“That after article 8, the following new article 8-A be inserted :—

‘RIGHT OF SUFFRAGE AND ELECTION

8-A. (1) Every citizen who is not less than 21 years of age and is not otherwise disqualified under this Constitution or any law made by the Union Parliament or by the Legislature of his State on any ground, *e.g.*, non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at such elections.

(2) The elections shall be on the basis of adult suffrage as described in the next preceding sub-clause but they may be indirect, *i.e.*, the Poura and Grama Panchayats or a group of villages, a township or a part of it having a particular number of voters or being an autonomous unit of local self-government shall be required to elect primary members, who in their turn, shall elect members to the Union Parliament and to the State Assembly.

(3) The Primary Members shall have the right to recall the member they elected to the Parliament or the Assembly of the State.

(4) A voter shall have the right to election and the cost of election shall be met by the State.

(5) Every candidate will be elected by the People and even if there is no rival, no candidate shall be elected unless he gets at least 1/3 of the total votes.’ ”

Sir, in moving this new article I have in mind the elections that are to come on the basis of adult suffrage. As a worker in the villages and as a man knowing his own people I beg to submit that this new article I propose will give real prestige and meaning to adult suffrage and democracy. I would submit that although I am not yet a man who would carry weight in the House, in the name of democracy, democracy of the intelligent will, we must frame our election rules for adult suffrage in such a manner that we will not reduce democracy to ridicule or adult suffrage to a sham. The first paragraph and the first sentence of the 2nd paragraph of this new article I propose are just reproduction of articles 67(6) and 149(2). Therefore I need not say much about this.

Paragraph (2) is very important and we have almost decided that the next elections or the future elections shall be on the basis of adult suffrage. It means that every citizen who is not otherwise disqualified under the statute and is 21 years of age or more shall be entitled to be a voter, and will elect members to the Union Parliament or the State Assemblies. This is a great aspiration, but we know our people. They are simple, they are good. But they are not as clever or as intelligent as the diplomats or the members that will be coming to represent them in the many Houses. While granting adult suffrage we must save it and shape it by making such an arrangement that every adult who is entitled to be a voter will be in a position to choose his representative intelligently and correctly. Not only that; having chosen his representative intelligently and correctly, he will be in a position every moment to assess what his representative does in the many Houses, either at the Centre or in the States. You will see from the Draft Constitution that for every 750,000 persons we will have one representative in the Union Parliament. I beg to submit that that is too big a number, and unless we do not mean what we say, it will be difficult for one member to educate those 750,000 people, to do them any good, to serve them, to know their mind, and having known their mind to come to the House and represent their grievances and do whatever is possible for them. I therefore submit that adult suffrage should be indirect—indirect in the sense that having decided the constituencies which, let us say, will be a region consisting of about 750,000 voters, we will divide that constituency into local self-governing units and these units will be required to elect their primary members. Suppose we have 750,000 people. Granting that every village or self-governing unit has about 1,000 voters, we will have about 750 units. Suppose every unit has a panchayat whose number might be three or five, we will have 750×5 , that is, about 3,750 primary members. And those 3,750 primary members will be required to elect their representative either to the Union Parliament or to the State Assembly. If that happens it will be quite good because those 750,000 people will be electing their primary members to a strength of 3,750, and those 3,750 members will use their discretion and they will know the man they will be selecting as their representative. That will be a healthy and real process of election. If that is not going to be done, we all know what happens and therefore will happen in elections. We may raise a dust; we may make a hue and cry; raise slogans and mesmerise. In a day or two in course of one month in five years we will be lecturing, speaking and raising the emotions of people and asking them for party devotion. The result will be that only for a month in five years people will be in terrifying touch with the political busy-bodies. We would be giving them hopes and those hopes will dash down and evaporate as soon as the elections are over. That will not be a desirable real thing. If we really mean that adult suffrage will be educating the people and elections will be an instructive process, we can have no other way of achieving our object than by dividing the constituencies into local self-governing units—manageable units. Those units will be in close touch with the representatives and the representatives will be in touch with the units, and there will result a real process of instruction, advice and guidance. I beg to submit that it has been a great shame that democracy works in the name of the people, but the

[Shri Lokanath Misra]

people are nowhere in the picture. For men are little and their capacity cannot transcend their limited experience or grow except by continuous building upon their historic and traditional past. They can control great affairs only by acting together in the country and controlling small affairs and finding through experience men whom they can entrust with larger decisions. This is how they can talk rationally for themselves. Democracy can work only if each state is made up of a host of little democracies and rests, not on isolated individuals however great, but on groups small enough to express the spirit of neighbourhood and personal acquaintance. I hope I need not speak much about that. This great House, this learned House, this responsible House knows and can picture the state of things that will happen when there will be adult suffrage. It is a vast thing without yet any plan or arrangement. By that we may get some party strength, but we cannot educate the people and give them the strength and the authority that they really possess or ought to possess.

Coming to (3)—primary members shall have the right to recall the member they elected to the Parliament or the Assembly of the State—this is a very real fundamental right. We know that when we are returned to the Assemblies we come there as representing the masses for five years. But what we care for is the party caucus—the high command—and if it is pleased we are all right. We do not care for the people. I therefore submit that if we are to be real members representing the people, our first concern should be the people. They must be our masters. If we serve them well we are there; if we do not we must go out. But that does not happen now. Therefore it is essential that if people have a right to elect members they must have the right to recall them if things go wrong. The right to recall is a fundamental right in democracy. Unless we have that we cannot have proper democracy. I therefore submit to you that if we are going to give the people a right to elect their representatives who will rule in their name, we must at the same time give them the right to recall the representative if things go wrong. In fact what happens here is, we do not care for the people; there is somebody high up and he selects people. He says so and so must be elected and it is done. Therefore the selected person's primary business is to look up and not down. It is a bad state of democracy and I say we must stop it.

Then regarding (4),—a voter shall have the right to election and the cost of election shall be met by the State—I say so, because to come to the Assembly is not a profession or a profiteering business. If that is the concern of the State and if a person who comes to the Assembly comes to serve the people, it is necessary that the State must see that his election expenses are borne by the State. Otherwise some landlords and some capitalists will build up a party to set up candidates and those candidates will be returned. Let us say here is a poor man, a good worker, an honest man; but he has neither the money nor the party backing. The result is he cannot stand for election. If he stands he comes to ridicule. If you say that the election is as much in the interest of the State as the President or the Ministers or the bureaucracy, you must say that in the same manner as they are brought to being, legislative members should also come to the Assembly, the State bearing their election expenditure in a regulated and therefore in the least expensive and most organized manner. This may be laughable, but this is just and fair and unless we make such a provision no sincere, honest and real worker can be returned at least for the next fifteen or twenty years. If we do not do so now, we invite only revolution. And revolution will make everything topsy-turvy. It will have to be done, then by the fire of the people instead of our intelligent understanding, if we close it now. Therefore the cost of the elections must legitimately and in fairness to the cause be borne by the State because election as such is a State affair and is not a private

concern. It need not stagger us now. We must not allow members to come calculating profit and loss, calculating how much money they will be making in five years and therefore how much they may beg, borrow or steal for this parliamentary investment.

Mr. Vice-President : Mr. Misra, I must now ask you to stop because you have had two instalments.

Shri Lokanath Misra : All right, Sir.

Shri Algu Rai Shastri (United Provinces: General): *[Mr. President, I rise to oppose the amendment moved by my Friend. My first reason for doing so is that it has no relation to the question raised here. Matters relating to elections have been dealt with in the Draft Constitution at other places where it has been stated as to how the legislature shall be formed, who shall be the members of the legislatures; what shall be their rights; what shall be the procedure of their elections. Amendments of this nature may be moved in the article dealing with such things. This amendment is totally irrelevant to Fundamental Rights of the Draft Constitution. This is my first reason. Moreover, my Friend proposes therein that the State should incur the expenses of election for all the candidates seeking election. He says that seeking election to any Legislative is not a business proposition for any candidate. Consequently it is very necessary that the State should bear the election expenses. My worthy Friend has forgotten the fact that if the State begins to practice this generosity every one whose name may appear on the electoral roll and who may be eligible for election will seek election—if not for any other reason, at least for the fun of it. No state in the world can hope to remain financially solvent if it adopts the practice of bearing the election expenses of the candidates. As there would be no financial risk involved in seeking election, for the State would be bearing them all, and as every one would have the freedom to seek election, I am afraid that every one would try his luck especially when he would not be losing anything in particular by being defeated at the polls. It is very improper to move an amendment that contains such a proposal or to support it enthusiastically on the ground that it is very important and ensures democracy and smooth functioning of the Government. This amendment should be rejected outright and should never be accepted.]

The Honourable Dr. B. R. Ambedkar : I cannot accept this amendment.

Mr. Vice-President : The question is:

“That after article 8, the following new article 8-A be inserted :—

‘RIGHT OF SUFFRAGE AND ELECTION

8-A. (1) Every citizen who is not less than 21 years of age and is not otherwise disqualified under this Constitution or any law made by the Union Parliament or by the Legislature of his State on any ground, *e.g.*, non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at such elections.

(2) The elections shall be on the basis of adult suffrage as described in the next preceding sub-clause but they may be indirect, *i.e.*, the Poura and Grama Panchayats or a group of villages, a township or a part of it having a particular number of voters or being an autonomous unit of local self-government shall be required to elect primary members, who in their turn, shall elect members to the Union Parliament and to the State Assembly.

(3) The Primary Members shall have the right to recall the member they elected to the Parliament or the Assembly of the State.

(4) A voter shall have the right to election and the cost of election shall be met by the State.

(5) Every candidate must be elected by the People and even if there is no rival, no candidate shall be elected unless he gets at least 1/3 of the total votes.”

The motion was negatived.

* [] Translation of Hindustani speech.

Article 9

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

that article 9 form part of the Constitution.

Shri C. Subramaniam (Madras : General) : Sir, I move:

“That the second para. of clause (1) of Article 9 be numbered as new clause (1a), and the words ‘In particular’ in the new clause so formed, be deleted.”

The reason for the amendment is this: article 9 as it stands is a little bit misleading. 9(1) says: “The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or any of them”. Then it says: “In particular, no citizen shall, on grounds only of religion, race, caste, sex or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainments, or.....”.

It would look as if, after a general clause saying that the State shall not discriminate, we give instances wherein the State shall not discriminate by using the words ‘In particular’. As a matter of fact it is not so. After the words ‘In particular’ that clause refers to access to shops, etc. That is not a case where the State has the power to discriminate. Therefore it should read as a separate clause. That is why I have suggested that the words ‘In particular’ should be removed and it should form a separate clause as 9(1a) thus: “No citizen shall, on grounds only of religion, race, caste, sex or any of them be subject to any disability,.....”.

Mr. Vice-President : The Member who has given notice of amendment No. 276 may now move the second part of it, viz., to insert the words “discrimination” and “and public worship” after the words ‘liability’ and ‘public resort’ respectively.

(The amendment was not moved.)

Mr. Vice-President : The next two, (277 and 278) are verbal amendments and are therefore disallowed. The words “class or community” are, in my opinion, not necessary. These are implied in the word ‘religion’.

Amendment No. 282 standing in the name of Shri Prabhu Dayal Himatsingka is a comprehensive amendment and may now be moved.

As the Member is absent, Syed Abdur Rouf may move amendment No. 280.

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

“That in Article 9, after the word ‘sex’ wherever it occurs, the words ‘place of birth’ be inserted.”

The intention of this article is to prohibit discrimination against citizens. We have prohibited discrimination on grounds of ‘religion, race, caste or sex’. But I am afraid, Sir, the evil elements who might attempt to make discrimination against citizens will do so not on the ground of religion, race, caste or sex. To attempt to make discrimination on grounds of religion will be too frontal an attack for anybody to dare. As for caste, the same argument applies. As for “sex”, I do not think that in the middle of the twentieth century there will be anybody attempting to make any discrimination on that ground. What was possible in bygone days is not possible now. Now, let us examine whether the word “race” can save the situation. Race has got a very comprehensive meaning

and applies in cases like the Aryan race, the Dravidian race, the Mongolian race, etc. If anybody wants to make any discrimination on the ground that a particular gentleman belongs to a particular province, the word "race" cannot stand in his way. In my opinion attempts may be made to make discrimination against citizens on ground of place of birth and that under the guise of local patriotism. To guard against this possibility, I have brought in this amendment and I hope that it will be accepted.

Mr. Vice-President : I will not allow amendment No. 279 to be moved but it will be put to the vote. We next come to amendment No. 281. I regard this amendment as merely verbal and therefore over-rule it. Then we come to amendments Nos. 283 and 285. Amendment No. 283 may be moved. Professor K. T. Shah.

Prof. K. T. Shah : It is more or less the same as the one moved recently and I do not wish to waste the time of the House by further remarks.

(Amendments Nos. 284, 285, the latter part of 288, and No. 291 were not moved.)

Mr. Vice-President : Then we come to amendment No. 286, first part. This is merely a verbal amendment and therefore it is disallowed. I need hardly point out that the word "creed" is unnecessary in view of the more comprehensive word "religion". Then we come to amendment No. 286, second part. Amendments Nos. 293 to 301, 304, 305, 306 and 308, are all amendments of similar import and therefore are to be considered together. It seems to me that amendment No. 293 standing in the name of Professor K. T. Shah is the most comprehensive.

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

"That in clause (1) of article 9, for sub-clauses (a) and (b) the following be substituted :—

'any place of public use or resort, maintained wholly or partly out of the revenues of the State, or in any way aided, recognised, encouraged or protected by the State, or place dedicated to the use of general public like schools, colleges, libraries, temples, hospitals, hotels and restaurants, places of public entertainment, recreation or amusement, like theaters and cinema-houses or concert-halls; public parks, gardens or museums; roads, wells, tanks or canals; bridges, posts and telegraphs, railways, tramways and bus services; and the like.' "

Sir, in seeking to move this amendment, I am not merely trying to give a list of places of public use or resort, or those dedicated to public service, from which in the past discrimination has been made and individuals of particular communities or classes have been excluded for no other reason except their caste or birth. In a Constitution founded upon the democratic equality of all citizens, I think it would be absurd, it would be wholly out of place, to allow any such discrimination being made. All places, therefore, which are either wholly or partly maintained out of public funds, or in any way encouraged, supported or protected by the State, should be accessible, I suggest, in equal measure to all citizens irrespective of caste, sex, birth, etc.

Clearly this is the intention of the article, and I am only seeking to expand and express it more clearly than has been done in the wording of the article as it stands. It is the more so as, in later articles, there seems to have been some exceptions introduced which might permit denominational, sectarian, or communal institutions not only to flourish; but to flourish at the cost of the public. I think it would be a very vicious principle if we tolerate this kind of exclusiveness which would be a blot on real democracy. If you mean definitely and clearly that there shall not be any sectarian or denominational exclusiveness; if you mean definitely and clearly that places of such utility as schools, or hospitals or asylums shall not be reserved for any reason for the members of a given sect or community, then I think it is not too much to demand that these should be made open and accessible to all citizens of this country. And because we have

[Prof. K. T. Shah]

had in the past very distressing experience of, let us say, wells not being allowed to be used by members of a particular class, or canals not being allowed to be used except on certain occasions or under certain conditions, and still more so, schools, hospitals and other places of this kind which are of very urgent public necessity, I think it would be not acting up to the ideals of this Constitution if there is not perfect and real equality amongst the citizens of this country.

The excuse is often made that a given institution is maintained, or at least initially founded, by some donations of a munificent member of a given community, and that in his original deed of trust setting up the institution and providing the funds, he makes it a condition that only members of a given community or members of a given caste or sub-caste are to be admitted to the benefit of such an institution. I think it is a lack of civic sense, and evidently against the idea of equality of citizenship, that such institutions were maintained exclusively or predominantly for certain communities.

In the past, when the Government of the country was in the hands of an alien race, and that race itself was deliberately making exclusion against the children of the soil a common feature of this policy for holding this country by maintaining clubs, hospitals, schools and other such places for their own compatriots so to say, there could be some understanding why their example might be followed also by those, at any rate, who imitated them in most respects. But now that principle,—the cause of all exclusiveness, is no more in this country, now that we are directly recognising and founding our constitution on the equality of all citizens, I submit that to introduce or permit exclusiveness in any way, whether directly stated or through a provision like this included in the Constitution, will make for a tendency of exclusiveness which should be reprobated by us, and should be therefore disallowed.

Our Constitution should make it expressly clear that all citizens being equal, their public institutions, and places of public resort, etc., which I have mentioned in my amendment, should be quite open, and must be open, to all those who are citizens of the country. There may be, it is possible, some claim that any particular class or community bears the cost of maintenance, if not wholly, at least in part, on its own shoulders. I have tried to make the amendment so far comprehensive that, even where an institution of this kind, or a place of public resort of this kind, is founded exclusively and maintained entirely by the donation of any particular individual, if it receives any public recognition, protection, safeguard, or encouragement of any kind, from a public authority, it would come within the scope of this article and as such would be made accessible to all equally.

I do not think that in any such provision, there would be any injustice to any vested interests, not only because from its very start such a vested interest would be regarded as objectionable in my eyes. It would be open to such munificent founders without losing so to say their cheap and easy method of securing immortality for themselves, to widen the terms of that trust, if the trust deed stands in the way, and make it possible for all to enjoy the benefits or advantages of such an institution equally.

We have had in every city in India, such exclusive institutions devoted to a sect. Recently we had a distressing spectacle of a public hospital in Bombay, not being accessible to any other community than that of the founder, which raised a considerable agitation in certain quarters. The refusal of the use of that hospital was openly defended on the ground that the foundation was a particular class foundation expressly so stated, and as such not available for use to members of other communities.

I think examples like this can be quoted without number from the experience of any place of considerable population in this country. But the fact that such examples do occur, and that such experience is within the memory and recollection of almost every member of this House, is in itself the strongest argument for us to accept this amendment of mine, and make it impossible hereafter to authorize any person or any community or class to say that given institution, whether schools, temples, hospitals, theatres, restaurants or what not shall be exclusively reserved for their benefit, if in the slightest degree it receives financial help or assistance or encouragement or safeguard from the State. I hope the amendment will commend itself to the House and the principle of it will be incorporated in the Constitution.

(Amendments No. 38 of List I, Nos. 294, 295, 296, 297, 298, 300, 301, 304, 305, 306, 308, and 287 were not moved.)

Mr. Vice-President : Amendment No. 288 standing in the name of Mr. Naziruddin Ahmad consists of three separate amendments. The first amendment is merely verbal and is therefore disallowed. The second and third are the same as amendments Nos. 278 and 284. I am therefore not allowing these also.

(Amendments Nos. 292 and 302 were not moved.)

Shri Guptanath Singh (Bihar: General): Sir, I have not come here to compete with my honourable Friends who table and move irrelevant and useless amendments, but I have come here to make.....

Shri H. V. Kamath (C. P. and Berar : General): Mr. Vice-President, is the honourable Member in order in making such a statement in this House?

Mr. Vice-President : I think you had better go on with your speech.

Shri Guptanath Singh : I have come, Sir, to move this little amendment to make the article comprehensive. So, Sir, with your permission, I beg to move:

“That in sub-clause (b) of the second paragraph of clause (1) of article 9, after the words ‘wells, tanks,’ the words ‘bathing ghats’ be inserted.”

I have deleted the word: ‘kunds’ from the original amendment and I only want that “bathing ghats” should be included here:

(Amendment No. 307 was not moved.)

Mr. Vice-President : Amendment Numbers 309 and 322 are the same. Amendment No. 322 is more comprehensive. I shall allow that amendment to be moved at the proper time.

Then, Amendment Nos. 310, 312, 320 and 321 are of similar import. Of these I think Amendment No. 310 is the most comprehensive one.

(Amendment Nos. 310, 312, 320 and 321 were not moved.)

Mr. Vice-President : So, these amendments go. Then, we take up Amendment No. 311.

(Amendment No. 311 was not moved.)

Mr. Vice-President : Amendment No. 313 is disallowed as being verbal. Amendment No. 314. Dr. Ambedkar.

Shri H. V. Kamath : Mr. Vice-President, Sir, may I ask whether this is merely a verbal or at best a formal amendment liable to be disallowed? It merely seeks to substitute the words ‘State funds’ in place of the words ‘the revenues of the State’.

Mr. Vice-President : I shall keep that in mind. Dr. Ambedkar, will you please deal with that point also?

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

[The Honourable Dr. B. R. Ambedkar]

“That in sub-clause (b) of the second paragraph of clause (1) of article 9, for the words ‘the revenues of the State’ the words ‘State funds’ be substituted.”

The reason why the Drafting Committee felt that the words “the revenues of the State” should be replaced by the words “State funds” is a very simple thing. In the administrative parlance which has been in vogue in India for a considerably long time, we are accustomed to speak of revenues of a Provincial Government or revenues of the Central Government. When we come to speak of local boards or district boards, we generally use the phrase local funds and not revenues. That is the terminology which has been in operation throughout India in all the provinces. Now, the honourable members of the House will remember that we are using the word ‘State’ in this Part to include not only the Central Government and the Provincial Governments and Indian States, but also local authorities, such as district local boards or taluka local boards or the Port Trust authorities. So far as they are concerned, the proper word is ‘Fund’. It is therefore desirable, in view of the fact that we are making these Fundamental Rights obligatory not merely upon the Central Government and the Provincial Governments, but also upon the district local boards and taluka local boards, to use a wider phraseology which would be applicable not only to the Central Government, but also to the local boards which are included in the definition of the word ‘State’. I hope that my honourable Friend Mr. Kamath will now understand that the amendment which I have moved is not merely verbal, but has some substance in it.

Sir, I move.

Mr. Vice-President : There is an amendment to Amendment No. 314. That is Amendment No. 40 in List I standing in the name of Pandit Thakur Das Bhargava. He is not here. Therefore, I need not discuss the relevancy or otherwise of this particular amendment. The next one is Amendment No. 41 in List I, in the name of Shri Phool Singh. He is also absent. We now pass on to Amendment No. 315 standing in the name of Mr. Mohd. Tahir and Saiyid Jafar Imam.

Mr. Mohd. Tahir (Bihar : Muslim): Sir, with your permission, I want to bring to your notice that I had one Amendment No. 286. We have not decided anything about that amendment. Of course, the first part has been disallowed; the second part still remains.

Mr. Vice-President : I said that that will be put to the vote. Now, I cannot allow you to speak on that. If I make an exception in your favour, everybody else would claim the same right.

But, I think I have to make one point clear. This does not preclude the honourable Member from speaking on his Amendment No. 286 if he gets a chance to speak while participating in the general discussion.

Mr. Mohd. Tahir : Sir, I beg to move :

“That in sub-clause (b) of clause (1) of article 9, for the words ‘State or dedicated to the use of the general public’ the words ‘State or any local authority or dedicated to the use of the general public and any contravention of this provision shall be an offence punishable in accordance with law’ be substituted.”

Sir, in moving this amendment I submit that so far as the first part of my amendment is concerned, *viz.*, the addition of ‘local authority,’ I do not press because the definition which has been given of ‘State’ includes local authority as well and therefore I do not press it. But so far as the penal clause is concerned, I will submit a few words and I will press it. Sir, in fact this article in our Constitution gives us a lesson that we should realise the equality of human beings as such and therefore it is necessary that some penal clause should be added in

this article. For your information I may bring it to your notice and to the notice of the House as well that in certain parts of our country as we know there are roads through which the people of scheduled castes and other low castes are not allowed to walk. In certain parts of our country we have found that if a scheduled caste man goes to draw water from the well, he immediately meets with his death. These are the sentiments which are working in the minds of certain sections of our country and therefore if we are really sincere that we are going to give relief to those who have been disregarded so long, then I submit that this penal clause must be added in this article. In view of this I hope that the whole House will agree, if at all they are sincere to give this relief to the general people, to add this penal clause and accept my amendment as such. With these few words, I move.

Mr. Vice-President : Amendments Nos. 316 to 319 not moved. No. 323 Prof. K. T. Shah.

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

“That at the end of clause (2) of article 9, the following be added:—

‘or for Scheduled Castes or backward tribes, for their advantage, safeguard or betterment’.”

The clause, as it is, stands thus:—

“Nothing in this article shall prevent the State from making any special provision for women and children.”

Sir, it must be distinguished from the preceding article. I read it, at any rate, that this is a provision for discrimination in favour of women and children, to which I have added the Scheduled Castes or backward tribes. This discrimination is in favour of particular classes of our society which, owing to an unfortunate legacy of the past, suffer from disabilities or handicaps. Those, I think, may require special treatment; and if they do require it, they should be permitted special facilities for some time so that real equality of citizens be established.

The rage for equality which has led to provide equal citizenship and equal rights for women has sometimes found exception in regard to special provisions that, in the long range, in the interest of the country or of the race, exclude women from certain dangerous occupations, certain types of work. That, I take it, is not intended in any way to diminish their civic equality or status as citizens. It is only intended to safeguard, protect or lead to their betterment in general; so that the long-range interests of the country may not suffer.

In regard to the scheduled castes and backward tribes, it is an open secret that they have been neglected in the past; and their rights and claims to enjoy and have the capacity to enjoy as equal citizens happens to be denied to them because of their backwardness. I seek therefore by this motion to include them also within the scope of this sub-clause (2), so that any special discrimination in favour of them may not be regarded as violating the basic principles of equality for all classes of citizens in the country. They need and must be given, for some time to come at any rate, special treatment in regard to education, in regard to opportunity for employment, and in many other cases where their present inequality, their present backwardness is only a hindrance to the rapid development of the country.

Any section of the community which is backward must necessarily impede the progress of the rest; and it is only in the interest of the community itself, therefore, that it is but right and proper we should provide facilities so that they may be brought up-to-date so to say and the uniform progress of all be forwarded.

I have, of course, not included in my amendment the length of years, the term of years for which some such special treatment may be given. That may

[Shri K. T. Shah]

be determined by the circumstances of the day. I only want to draw your attention to the fact that there are classes of our citizens who may need through no fault of theirs, some special treatment if equality is not to be equality of name only or on paper only, but equality of fact. I trust this will commend itself to the House and the amendment will be accepted.

Mr. Vice-President : Now the article is open for general discussion. I call upon Mr. Raj Bahadur of Matsya Union to speak.

Shri Raj Bahadur (United State of Matsya): Mr. Vice-President, Sir, as you announced to-day in this House that amendments Nos. 280, 282 and 279 would be taken up for discussion, I studied them again and a new meaning, which did not occur to me previously, disclosed itself to me. In amendment No. 280 which was moved by my Friend Syed Abdur Rouf, the words used are "place of birth", whereas in the amendment that was to be moved by Mr. Prabhu Dayal, the word 'descent' also occurs. It is unfortunate that that amendment of Mr. Prabhu Dayal has not been moved. Even so, when we study the article we observe that whereas discrimination is sought to be eliminated on other grounds, nothing has been said about the discrimination on the basis of descent, on the basis of privileges enjoyed by some on account of their dynastic or family status. I, therefore, suggested an amendment to amendment No. 280, to the effect that the words "place of" be deleted, from the words sought to be inserted in the article by the amendment No. 280. It is clear that the words "place of" occurring before the word "birth" have restricted and limited the meaning of the whole Amendment to the "place of residence" only. Therefore, if the words "place of" are deleted, we may achieve a double objective. Firstly that the word 'birth' when it occurs in the context of the whole article would imply not only residence, but also "descent", and as such the purpose which was contemplated by the mover of the amendment 282 shall be satisfied.

Mr. Vice-President : I said this would be a general discussion but you are putting forward your amendments; I can hardly allow that. You can speak upon the whole clause and incidentally refer to your amendment. Kindly excuse me if I ask you to carry out my wish and speak on the article generally.

Shri Raj Bahadur : Yes, Sir. What occurs to me is this. We have seen it in the past and even at present, in the matter of distribution of offices and appointments in the State or in the matter of rights and privileges enjoyed on the basis of property etc., that there has been some discrimination on account of "descent"; on account of dynasty or family status as also on account of factors of an allied nature. It is my humble submission that when we are here to forge our constitution, we should eliminate all sorts of distinctions arising on the basis not only of religion, caste, sex etc. but also on the basis of family and descent. While I agree that the purpose and the idea that is covered by amendment No. 280 is necessary, I would also suggest that something must be put in this article which may obviate all possibilities of, and eliminate all chances of discrimination, favouritism, or nepotism, on the basis of birth or descent. It is common experience, rather it is a kind of grievance with most of us that in the distribution of offices and appointments of the State and also in the services, some discrimination is observed on the basis of birth and descent. We see it in the recruitment to the Air Force, and to some extent in the Army or elsewhere in the services of the Government. It is a grievance with us that people who are better placed and who happen to be born with a silver spoon in their mouth get better chances than those born in mud huts or cottages in the villages. All must, however, have equal chances.

There is to be a provision in the Constitution to the effect that there shall be Raj Pramukhs and not Governors, in the States and the States' Union and in this we observe there would be discrimination again on the basis of birth or descent, on the basis of one's being a prince or a member of a royal family or not. That sort of discrimination also should be eliminated. In fact all such discrimination should be eliminated.

Shri S. Nagappa (Madras : General): Mr. Vice-President. Sir, this clause as a whole gives independence, especially to the class for which this amendment is intended. I think you are aware that as a result of the hard labour and struggle under the leadership of Mahatma Gandhi, the country has become free politically. But this particular section of the population is doubly free, in that it is not only politically free, but it is also socially free. I hope the Honourable Pandit Jawaharlal Nehru who is the true successor of Mahatma Gandhi will see to it that we in this section of the population are made economically free too and are elevated. Freedom means political, social and economic freedom. Two aspects of freedom have been covered by this particular amendment, thanks to the efforts of Gandhiji who has brought about such a social revolution.

I would have been much more pleased, if this clause which intends to give social rights to this particular community had been more expansive and explanatory. Take for instance, the question of access to shops. Shops means places where you can purchase things by paying money. But there are places where you can purchase service. I would like to know if these places are also included in the word 'shop'. When I go to a barber's shop or a shaving saloon, I do not buy anything concrete, but I purchase labour. So also laundries. There I purchase the services of a washerman. I would like to know from the honourable the Mover if the word 'shop' includes all these kinds of places like laundries and saloons.

I come to clause (b) where reference is made to places of public resort maintained wholly or partly out of the revenues of the State. But what about other places which are not maintained either partly or wholly out of the revenues of the State? I would request that these words "maintained wholly or partly out of the revenues of the State" to be deleted. That would be better. Any way, I would like to get some explanation from the mover of this clause as to what places are covered by this clause. I am glad of the social revolution brought about by Mahatma Gandhiji, within such a short period of years, from 1932 to 1948—only 16 years. Within this short period age-long disabilities and sufferings have been removed. I am confident that it will not take much time, especially with a statutory provision of this sort to carry the reform further. I hope that the Prime Ministers in the provinces would take note of this particular provision and see that before the Act is adopted, even the remaining disabilities vanish away, without waiting for the adaptation of this Act.

The third aspect of freedom remains, that is, economic freedom, and I hope that our Prime Minister will look to the economic elevation of the downtrodden classes. I support the clause whole-heartedly, and in doing so, request the mover to explain whether the word shop includes places of the kind I have referred to, and also whether places of public resort include places like burial or cremation grounds. These are not maintained out of public revenues or by public bodies, they being generally maintained by religious bodies. I would like to know whether there is to be a separate burial or cremation ground for these unfortunate sons of the soil, or whether all aspects are covered by this clause. I have raised this point so that these points may go down in the record of the proceedings of the House and be useful, if some lawyer were to misinterpret the meaning of the clause in some court of law. Most of our courts are courts of law and not justice. One

[Shri S. Nagappa]

should be more correct in framing the clause. I would like to know whether the honourable the Mover has considered this aspect of the matter. If he can include these words now I shall be pleased: otherwise if he can come forward and explain whether these disabilities are covered I shall be satisfied. At least it will be on record of the proceedings of this House, so that lawyers who attempt to misrepresent.....

Shri K. Hanumanthaiya (Mysore State): Sir, I take objection to the honourable Member's remarks about lawyers that they are used to "misrepresenting".

Mr. Vice-President : I would ask Mr. Nagappa not to try to answer the honourable Member.

Shri S. Nagappa : I am not abusing lawyers. I am only saying what they are doing.....

Shri K. Hanumanthaiya : That is worse.

Mr. Vice-President : Mr. Nagappa is not carrying out my request.

Shri S. Nagappa : Besides wells and tanks there are other places where one can draw water. I would like to have a full explanatory answer from the honourable Member.

Sardar Bhopinder Singh Man (East Punjab : Sikh): *[Mr. Vice-President, I feel that the Fundamental Rights, which are being conceded, will be incomplete if places of worship are not included in the list. It is often seen in life in India that the doors of many temples and other places of worship, meant for the public use, are not kept open for all sections of people by their custodians or Pujaris. This is a dark aspect; its prevalence has reduced these centres of love and fellow-feeling into breeding grounds for communalism and mutual hatred. This begets ill-will and hatred against one another. The greatest achievement of the Father of the Nation was to have the gates of temples opened for the untouchables. Today, we have yet to fulfil those expectations. An argument may be advanced that people, who are not aware of the ways to be followed and of the reverence to be shown there, cannot be allowed entry into temples or the places of worship. But my answer to that would be that if any such person wants to visit a temple, due precaution should be taken about him. But there is no reason for the discrimination, that one person may be allowed entry while another is stopped from doing so. I say this gap should be filled up, and this stigma should be removed from the face of India. These barriers of religion, which divide people of India from one another, should be uprooted forever. Therefore, I wish that this lacuna should be removed by accepting the amendment of Prof. K. T. Shah or amendments Nos. 296 and 297.]

Mr. Mohd. Tahir: Sir, this article says:

"The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or any of them.

In particular, no citizen shall, on grounds only of religion, race, caste, sex or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment."

In this connection I have my amendment in which I have suggested that after the word 'hotels' the words "*Dharamsalas, Musafirghanas*" be added. Sir we find that these two institutions are regularly run throughout our country by private funds. If a traveller who is in need of accommodation happens, fortunately or unfortunately, to be a scheduled caste or any other caste man who is not liked by the management of the *Dharamsala* he is not allowed to halt in the *Dharamsala*. And so is the case in respect to *Musafirghanas* also. Therefore I submit that these words "*Dharamsalas, Musafirghanas*" should be added

*[] Translation of Hindustani Speech.

Prof. Shibban Lal Saksena (United Provinces : General): Sir, this article should not have been put in this form. I would have wished that only the first three lines of this clause remained in the Draft and the rest were omitted. "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or any of them", should be enough; by adding the sub-clauses we are really subtracting from the generality of the first clause. I personally also think that after we have provided for the abolition of untouchability under article 11, this particular sub-clause providing for the elimination of disabilities in regard to tanks, wells and roads is unnecessary. So far as such disabilities arise from untouchability, nobody will henceforward be able to practise them. Under article 11 no one can discriminate against any person on the ground of untouchability, as it has been made an offence punishable by law. I personally feel that the clause about the use of wells, tanks, roads, etc., does not seem to be worthy of finding a place in our constitution; for such disabilities as exist are merely transitory and will vanish with time. But if it becomes permanently incorporated in the constitution people in other parts of the world will despise us for the existence of such discrimination in the past. Article 11 is in fairly wide terms, so that every discriminatory action which is supposed to be due to untouchability will be forbidden. I therefore think that these sub-clauses are unnecessary and all these amendments would not have been moved if we had confined the article to the first three lines only. I may also point out the revolutionary character of this article. I know that there are hundreds of Hindu shops where food is served to Hindus only. Food is a matter where Hindus have got special habits and they generally will not allow anybody to enter the place where they eat food. I hope that the Hindu society will realise that they have now to change those habits and that anybody who is not a Hindu will be able to enter these shops or hotels where so far food is served to Hindus only. I think this is a very serious thing because henceforth it will be a fundamental right of every citizen to enter any Hindu Hotel. Anybody can now claim entry to any place where food is sold. I therefore think that we must prepare the ground to give effect to this change which is of a far-reaching character. Otherwise, there will be clashes everyday. I wish this clause (a) were kept as a Directive Principle of State Policy and were not made a fundamental right. That would have given the necessary time to Hindu Society to adjust itself to the needs of the situation. This portion of the article is particularly unnecessary in view of article 11 which provides for the banning of untouchability.

Shri R. K. Sidhwa (C.P. & Berar : General): Mr. Vice-President, Sir, I consider this sub-clause—sub-clause (b) of article 9—an important clause, I see that under this clause "places of public resort" cover places of amusements and the like and therefore there is no necessity to mention all the places like theatres and cinemas. Personally I feel that gardens and all these things are covered by this word "resort". It has been suggested that the words "places of worship" should also be included here. So long as this country has many religions I do not think it advisable to insert these words in this clause. It can be done only when we attain one religion in this country.

But there is one point to which I would like to draw the attention of the mover of the article. The words used here are "the use of wells, tanks, roads and places of public resort..." Ordinarily what we mean by "public" is every person or collection of persons of all communities, irrespective of caste or creed. But while I was referring to the Indian Penal Code I found the word "public" is defined in a restricted manner. Section 12 of the Indian Penal Code says that the word "public" includes any class of the public or any community..." The description "any class of the public" means that a Sanatani will be a "class of the community". The definition of the word 'public' is in such a restricted

[Shri R. K. Sidhwa]

manner that if a well is to be dug by a Sanatani in a village he will not allow the use of that well to the reformist or the Scheduled Caste. I do not know whether the attention of the honourable Mover has been drawn to this. I am only giving an illustration about one community. The Hindu will not allow the Muslim to draw water from that well, or *vice versa*. It may be said that this relates to the offences caused under the Indian Penal Code. But the Indian Penal Code relates to so many other offences. I do not know whether there is another Act where the word "public" is defined collectively irrespective of any caste or community. I had tabled an amendment also and I do wish that this should not be left in any ambiguity because this is the fundamental, the basis, on which we are protecting the rights of every citizen. For any breach of the fundamental right anybody can go to a court. Why should we leave it ambiguous and allow the public to go to the Supreme Court for getting the meaning of the word "public" defined? Why should we not make it very clear here and say that "public" means everyone irrespective of caste or creed, particularly when you have a restricted definition in the Penal Code? I therefore submit, with due respect to the knowledge of the legal luminaries that this matter should be made clear. To me, to every layman the meaning of the word 'public' is clear; but we find the meaning different in the law books. This matter therefore requires explanation to avoid any kind of complication in the future.

(One or two honourable Members rose to speak.)

Mr. Vice-President : You must forgive me if I am unable to meet the wishes of honourable Members. I want the full co-operation of the House and I ask it specially just now. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, dealing with the amendments which have been moved, I accept Amendment No. 280 moved by Mr. Rouf.

Shri Syamanandan Sahaya (Bihar : General): Will the honourable Member give his views also about amendments which have not been moved?

The Honourable Dr. B. R. Ambedkar : I am very sorry I cannot give opinions regarding amendments which have not been moved.

Shri Syamanandan Sahaya : It was no fault of the member concerned.

The Honourable Dr. B. R. Ambedkar : I cannot help it. I accept the amendment of Mr. Rouf adding the words "place of birth", I also accept the amendment (No. 37 in List I) by Mr. Subramaniam to amendment No. 276 dropping the words "In particular" in clause (1) of article 9.

With regard to amendment No. 303 moved by Mr. Guptanath Singh, I am prepared to accept his amendment provided he is prepared to drop the word "kunds" from his amendment.

Shri Guptanath Singh : I have already done that, Sir.

The Honourable Dr. B. R. Ambedkar : Then, among the many amendments which I am sorry I cannot accept, I think it is necessary for me to say something about two of them. One is amendment No. 315 moved by Mr. Tahir which requires that any contravention of the provisions contained in article 9 should be made a crime punishable by law. My Friend Mr. Tahir who moved this amendment referred particularly to the position of the untouchables and he said that in regard to these acts which prevent the untouchables from sharing equally the privileges enjoyed by the general public, we will not be successful in

achieving our purpose unless these acts, preventing them from using places of public resort, were made offences. There is no doubt that there is no difference of opinion between him and other Members of this House in this matter because all of us desire that this unfortunate class should be entitled to the same privileges as members of the other communities without any let or hindrance from anybody. But he will see that that purpose is carried out entirely by the provisions contained in article 11 which specifically deals with untouchability: instead of leaving it to Parliament or to the State to make it a crime, the article itself declares that any such interference with their rights shall be treated as an offence punishable by law. If his view is that there should be a provision in the Constitution dealing generally with acts which interfere with the provisions contained in article 9, I would like to draw his attention to article 27 in the Constitution which places an obligation on Parliament to make laws declaring such interferences to be offences punishable by law. The reason why such power is given to Parliament is because it is felt that any offence which deals with the Fundamental rights should be uniform throughout the territory of India, which would not be the case if this power was left to the different States and Provinces to regulate as they like. My submission therefore is that, so far as this point is concerned, the Constitution contains ample provision and nothing more is really necessary.

With regard to amendment No. 323 moved by Professor K.T. Shah, the object of which is to add "Scheduled Castes" and "Scheduled Tribes" along with women and children, I am afraid it may have just the opposite effect.

The object which all of us have in mind is that the Scheduled Castes and Scheduled Tribes should not be segregated from the general public.

For instance, none of us, I think, would like that a separate school should be established for the Scheduled Castes when there is a general school in the village open to the children of the entire community. If these words are added, it will probably give a handle for a State to say, "Well, we are making special provision for the Scheduled Castes". To my mind they can safely say so by taking shelter under the Article if it is amended in the manner the Professor wants it. I therefore think that it is not a desirable amendment. Then I come to my Friend Mr. Nagappa. He has asked me to explain some of the words which have been used in this article. His first question was whether "shop" included laundry and shaving saloon. Well, so far as I am concerned, I have not the least doubt that the word 'shop' does include laundry and shaving place. To define the word 'shop' in the most generic term one can think of is to state that 'shop' is a place where the owner is prepared to offer his service to anybody who is prepared to go there seeking his service. A laundryman therefore would be a man sitting in his shop offering to serve the public in a particular respect, namely, wash the dirty cloths of a customer. Similarly, the owner of a shaving saloon would be sitting there offering his service for any person who enters his saloon.

The Honourable Shri B. G. Kher (Bombay : General): Does it include the offices of a doctor and a lawyer?

The Honourable Dr. B. R. Ambedkar: Certainly it will include anybody who offers his services. I am using it in a generic sense.

I should like to point out therefore that the word 'shop' used here is not used in the limited sense of permitting entry. It is used in the larger sense of requiring the services if the terms of service are agreed to.

The second question put to me was whether 'place of public resort' includes burial grounds. I should have thought that very few people would be interested in the burial ground, because nobody would care to know what happens to him after he is dead. But, as my Friend Mr. Nagappa is interested in the point

[The Honourable Dr. B. R. Ambedkar]

should say that I have no doubt that a place of public resort would include a burial ground subject to the fact that such a burial ground is maintained wholly or partly out of public funds. Where there are no burial grounds maintained by a municipality, local board or taluk board or Provincial Government or village panchayat, nobody of course has any right, because there is no public place about which anybody can make a claim for entry. But if there is a burial ground maintained by the State out of State funds, then obviously every person would have every right to have his body buried or cremated therein.

Then my Friend asked me whether ponds are included in tanks. The answer is categorically in the affirmative. A tank is a larger thing which must include a pond.

The other question that he asked me was whether rivers, streams, canals and water sources would be open to the untouchables. Wells, rivers, streams and canals no doubt would not come under Article 9; but they would certainly be covered by the provisions of Article 11 which make any interference with the rights of an untouchable for equal treatment with the members of the other communities an offence. Therefore my answer to my Friend Mr. Nagappa is that he need have no fears with regard to the use of rivers, streams, canals, etc., because it is perfectly possible for the Parliament to make any law under Article 11 to remove any such disability if found.

Shri S. Nagappa: What about the courses of water?

The Honourable Dr. B. R. Ambedkar: I cannot add anything to the article at this stage. But I have no doubt that any action necessary with regard to rivers and canals could be legitimately and adequately taken under article 11.

Shri R. K. Sidhwa: What about the interpretation of the word 'public'?

The Honourable Dr. B. R. Ambedkar: My Friend Mr. Sidhwa read out some definition from the Indian Penal Code of the word 'public' and said that the word 'public' there was used in a very limited sense as belonging to a class. I should like to draw his attention to the fact that the word 'public' is used here in a special sense. A place is a place of public resort provided it is maintained wholly or partly out of State funds. It has nothing to do with the definition given in the Indian Penal Code.

Shri Mahavir Tyagi (United Provinces: General): May I know what is to happen to the amendments which have been declared by you as verbal amendments? Among them I fear there are some which really aim at making a substantial change in the meaning of the clause or article concerned.

Mr. Vice-President : In that matter I am the sole judge. You have given me discretionary power and I propose to exercise that power in my own way.

Shri Mahavir Tyagi: I want information. I do not dispute your judgment or your right. I only want to know whether the sense of the House will be accommodated in regard to the amendments ruled out or whether such amendments will be considered by the Drafting Committee or some other body? My suggestion is that you will be doing well the House if you will kindly appoint a small sub-committee which will go into these verbal amendments and find out whether some of them at least aim at effecting a change in the meaning of the clause concerned. I do not dispute what you said. They are out of order because you have ruled them as such. But even commas and full stops have some value. My only request is that.....

Mr. Vice-President : May I suggest a better way which might appeal to you, a way which is better than the appointment of a sub-committee? Those who

think that their amendments are of some substance may approach the Drafting Committee directly themselves. If they do so I am sure due consideration will be shown to them.

Shri Mahavir Tyagi: Now I am satisfied, Sir.

Mr. Mohd. Tahir: As the Honourable Dr. Ambedkar has answered my points to my satisfaction with regard to amendment No. 315, I ask for leave to withdraw it.

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

Mr. Vice-President : Now I will put the rest of the amendments to the vote of the House. Dr. Ambedkar has accepted the first one.

The question is:

“That for amendment No. 276 in the List of Amendments, the following be substituted:—

‘That the second para of clause (1) of article 9 be numbered as new clause (1a), and the words ‘In particular’ in the new clause so formed, be deleted.’ ”

The motion was adopted.

Mr. Vice-President : The next amendment is 279. The question is:

“That in article 9, after the word ‘race’ the word ‘birth’ be inserted.”

The amendment was negatived.

Mr. Vice-President : The next one is No. 280 which, I understand, Dr. Ambedkar has accepted. The question is:

“That in article 9, after the word ‘sex’ wherever it occurs, the words ‘place of birth’ be inserted.”

The amendment was adopted.

Mr. Vice-President : Then we come to the second part of amendment No. 286. The question is:

“That in sub-clause (a) of clause (1) of article 9, after the words ‘restaurants, hotels’ the words ‘Dharamsalas, Musafirghanas’ be inserted.”

The amendment was adopted.

Mr. Vice-President : Amendment No. 293. The question is:

“That in clause (1) of article 9, for sub-clauses (a) and (b) the following be substituted:—

‘any place of public use or resort, maintained wholly or partly out of the revenues of the State, or in any way aided, recognised, encouraged or protected by the State, or place dedicated to the use of general public like schools, colleges, libraries, temples, hospitals, hotels and restaurants, places of public entertainment, recreation or amusement, like theaters and cinema-houses of concert-halls; public parks, gardens or museums; roads, wells, tanks or canals; bridges, posts and telegraphs, railways, tramways and bus services; and the like.’ ”

The amendment was negatived.

Mr. Vice-President : Then we come to amendment No. 296. The question is:

“That in sub-clause (a) of clause (1) of article 9, after the words ‘of Public entertainment’ the words ‘or places of worship’ be inserted.”

The amendment was negatived.

Mr. Vice-President : I do not remember what happened to 299. To be perfectly sure, I am going to put it to the vote. The question is:

“That in sub-clause (a) of clause (1) of article 9, the word ‘public’ be deleted.”

The amendment was negatived.

Mr. Vice-President : Then amendment No. 301 standing in the name of Mr. Tajamul Husain. The question is:

“That in sub-clause (a) of clause (1) of article 9, between the words ‘public’ and ‘restaurants’ the words ‘places of worship’ Dharamsalas, Musafirkhanas’ be inserted.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 303 as revised. I understand that Dr. Ambedkar has accepted it. The question is:

“That in sub-clause (b) of the second paragraph of clause (1) of article 9, after the word ‘wells, tanks’ the words ‘bathing ghats’ be inserted.”

The amendment was adopted.

Mr. Vice-President : Then amendment No. 305. The question is:

“That in sub-clause (b) of clause (1) of article 9, after the word ‘roads’ add a comma and also the words ‘hospitals, educational institutions’.”

The amendment was negatived.

Mr. Vice-President : Amendment No. 314. The question is:

“That in sub-clause (b) of the second paragraph of clause (1) of article 9, for the word ‘the revenues of the State’ the words ‘State funds’ be substituted.”

The amendment was adopted.

Mr. Vice-President : Then the last amendment standing in the name of Professor Shah. No. 323. The question is:

“That at the end of clause (2) of article 9, the following be added:—

‘or for Scheduled Castes or backward tribes, for their advantage, safeguard or betterment.’”

The amendment was negatived.

Mr. Vice-President : Now, I shall put the article as revised to the vote. The question is:

That article 9, as amended, form part of the Constitution.

The motion was adopted.

Article 9, as amended, was added to the Constitution.

Article 10

Mr. Vice-President : Shall we pass on to the next article, new article 9-A? The amendments here are in the form of Directive Principles. I disallow them. Then we go to article 10.

Shri T. T. Krishnamachari (Madras : General): I think the idea is to hold this over.

The Honourable Dr. B. R. Ambedkar : I request you to hold this article over.

Mr. Vice-President : Then we may go to the next article, 10-A.

(Amendment No. 369 was not moved.)

Article 11

Mr. Vice-President : We now come to article 11. The motion before the House is that article 11 form part of the Constitution. We shall now take up the amendments one by one. No. 370 is out of order. Amendments Nos. 371, 372, 373 and also 375 and 378 are of a similar character. I suggest that amendment No. 375 be moved.

(Amendments No. 375 and No. 371 were not moved.)

Mr. Vice-President : No. 372. Mr. Naziruddin Ahmad.

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

“That for article 11, the following article be substituted:—

‘11. No one shall on account of his religion or caste be treated or regarded as an ‘untouchable’; and its observance in any form may be made punishable by law.’ ”

I submit that the original article 11 is a little vague. The word “untouchability” has no legal meaning, although politically we are all well aware of it; but it may lead to a considerable amount of misunderstanding as in a legal expression. The word ‘untouchable’ can be applied to so many variety of things that we cannot leave it at that. It may be that a man suffering from an epidemic or contagious disease is an untouchable; then certain kinds of food are untouchable to Hindus and Muslims. According to certain ideas women of other families are untouchables. Then according to Pandit Thakurdas Bhargava, a wife below 15 would be untouchable to her loving husband on the ground that it would be ‘marital misbehaviour’. I beg to submit, Sir, that the word ‘untouchable’ is rather loose. That is why I have attempted to give it a better shape; that no one on account of his religion or caste be regarded as untouchable. Untouchability on the ground of religion or caste is what is prohibited.

Then, Sir, I have one more word to say in this connection and that is that in line 3 of this clause in the midst of the sentence, the word ‘Untouchability’ begins with a capital letter. This is a matter for the Drafting Committee.

(Amendments 373 and 378 were not moved.)

Mr. Vice-President : Amendments Nos. 374, 376, 377, 379,380 and 381. I regard as verbal amendments and they are disallowed. Amendment No. 372 alone is moved. The article is now open for general discussion. I call upon Mr. Muniswamy Pillai to speak.

Shri V. I. Muniswamy Pillai (Madras : General): Mr. Vice-President, it is a matter of great satisfaction that this Constitution has brought out a very important item and thereby untouchability is to be abolished in this great land of ours. Sir, though article 9 concedes many of the facilities that are required for the abolition of untouchability, the very clause about untouchability and its abolition goes a long way to show to the world that the unfortunate communities that are called ‘untouchables’ will find solace when this Constitution comes into effect. It is not that a certain section of the Indian community that will be benefited by this enactment, but a sixth of the population of the whole of India will welcome the introduction and the adoption of a section to root out the very practice of untouchability in this country. Sir, under the device of caste distinction a certain section of people have been brought under the rope of untouchability, who have been suffering for ages under the tyranny of the so-called caste Hindus and all those people who style themselves as landlords and zamindars, and were thus not allowed the ordinary rudimentary facilities required for a human being. The sting of untouchability went deep into the hearts of certain sections of the people and many of them had to leave their own faiths and seek protection under religions which were tolerant. I am sure, Sir, by the adoption of this clause many a Hindu who is a Harijan, who is a scheduled class man will feel that he has been elevated in society and he has now got a place in society. I am sure that the whole country will welcome the inclusion of article 11 in this Constitution.

Dr. Monomohon Das (West Bengal : General): Mr. Vice-President, Sir, this clause about untouchability is one of the most important of the fundamental

[Dr. Monomohon Das]

rights. This clause does not propose to give any special privileges and safeguards to some minority community, but it proposes to save one-sixth of the Indian population from perpetual subjugation and despair, from perpetual humiliation and disgrace. The custom of untouchability has not only thrown millions of the Indian population into the dark abyss of gloom and despair, shame and disgrace, but it has also eaten into the very vitality of our nation. I have not a jot of doubt, Sir, that this clause will be accepted by this House unanimously; not only the Indian National Congress is pledged to it, but for the sake of fairness and justice to the millions of untouchables of this land, for the sake of sustaining our goodwill and reputation beyond the boundaries of India, this clause which makes the practice of untouchability a punishable crime must find a place in the Constitution of free and independent India. I refuse to believe, Sir, that there is even a single soul in this august body who opposes the spirit and principle contained in this article. So, I think, Sir, that today the 29th November 1948 is a great and memorable day for us the untouchables. This day will go down in history as the day of deliverance, as the day of resurrection of the 5 crores of Indian people who live in the length and breadth of this country. Standing on the threshold of this new era, at least for us, the untouchables, I hear distinctly the words of Mahatma Gandhi, the father of our nation, words that came out from an agonized heart, full of love and full of sympathy for these down-trodden masses. Gandhiji said: "I do not want to be reborn, but if I am reborn, I wish that I should be born as a Harijan, as an untouchable, so that I may lead a continuous struggle, a life-long struggle against the oppressions and indignities that have been heaped upon these classes of people." The word Swaraj will be meaningless to us if one-fifth of India's population is kept under perpetual subjugation. Mahatma Gandhi is no more among us in the land of the living. Had he been alive today, no mortal on earth would be more pleased, more happy, more satisfied than him. Not only Mahatma Gandhi, but also the other great men and philosophers of this ancient land, Swami Vivekananda, Raja Ram Mohan Roy, Rabindranath Tagore and others who led a relentless struggle against this heinous custom, would also be very much pleased today to see that independent India, Free India has at last finally done away with this malignant sore on the body of Indian society. As a Hindu, I believe in the immortality of the soul. The souls of these great men, but for whose devotion and life-long service India would not have been what she is today, would be smiling upon us at this hour at our courage and boldness in doing away with this heinous custom of untouchability.

Last of all, I cannot resist the temptation of saying a few words about our great and eminent Law Minister and Chairman of the Drafting Committee, Dr. Ambedkar. It is an irony of fate that the man who was driven from one school to another, who was forced to take his lessons outside the class room, has been entrusted with this great job of framing the Constitution of free and independent India, and it is he who has finally dealt the death blow to this custom of untouchability, of which he was himself a victim in his younger days.

Sir, I thank you for giving me this opportunity to express my views on this matter.

Shri Santanu Kumar Das (Orissa : General): * [Mr. Vice-President, I am grateful to you, Sir, for giving me an opportunity to express my views on clause 11 of the Draft Constitution.

This clause is intended to abolish the social inequity, the social stigma and the social disabilities in our society. Every body desires that the practice of

* [] Translation of Hindustani speech.

untouchability should somehow be abolished but nobody appears to be very helpful in its abolition. When everybody desires that this practice should be abolished, I fail to see why so much time should be wasted in a long discussion over it. The fact is that we merely want to enact laws about it and expect the rural people to observe these laws. We must ourselves first observe the law for otherwise there would be no sense in asking others to act upon it. If we fail to observe it, it would be impossible to root out this evil. Provincial Governments enact laws for the welfare of the Harijans; they pass bills for the removal of untouchability, for the removal of disabilities and for permitting temple entry but you will be surprised, Sir, if I tell you that our members act as fifth columnists in the rural areas, for they tell the people there that these laws are not in force and thus they themselves act against the law. I would request the Members of the House to try their best to make the law effective so that this present social inequity in the country may be removed. Sir, I support the clause whole-heartedly.]

Shrimati Dakshayani Velayudhan (Madras : General): Mr. Vice-President, Sir, we cannot expect a Constitution without a clause relating to untouchability because the Chairman of the Drafting Committee himself belongs to the untouchable community. I am not going into the details of the history and the work done by all the religious heads from time immemorial. You know that all the religious teachers were against the practice of untouchability. Coming to a later period, we found a champion in the person of Mahatma Gandhi and one of the items of the constructive programme that he placed before the country is the abolition of untouchability. While I was a student in the College, one of my class-mates approached me for subscribing to a fund for the abolition of untouchability. My reply was, 'you people are responsible for this and therefore it is for you to raise the money and it is not proper that you should ask me for money'. Even from my younger days, the very thought of untouchability was revolting to me. Even in public places like schools, untouchability was observed whenever there was a tea party or anything of that kind. What I did on those occasions was that I always non-cooperated with those functions. The change of heart that we find in the people today is only due to the work that has been done by Mahatma Gandhi and by him alone. We find that there is a vast change in the outlook and attitude of the people today towards the untouchables. Nowadays what we find is that the people who are called caste Hindus dislike the very idea of, or the very term, 'untouchability' and they do not like to be chastised for that, because, they have taken a vow that they are responsible for it and that they will see that it is abolished from this land of ours. Even though there is a large improvement on the part of the so-called caste Hindus, we cannot be satisfied with that. When this Constitution is put into practice, what we want is not to punish the people for acting against the law, but what is needed is that there should be proper propaganda done by both the Central and Provincial Governments. Then only there will be improvement that we want. If the Provincial and Central Governments had taken action previously I think there would have been no necessity for an article of this kind in this Constitution. Last year I brought a resolution before the Constituent Assembly for declaring that untouchability should be made unlawful. When I approached Panditji, he said that this is not a Congress Committee to move such a resolution, and that it will be taken up in course of time. My reply was that if a declaration was made in the Constituent Assembly, it will have a great effect. Even people in South Africa were chastising us because we were having this practice here. If a declaration is made by the Assembly here and now, it will have a great effect on the people and there will be no necessity for us to incorporate such a clause in the Constitution.

Mr. Vice-President : You have exceeded the time-limit. It is only because you are a lady I am allowing you.

Shrimati Dakshayani Velayudhan : The working of the Constitution will depend upon how the people will conduct themselves in the future, not on the actual execution of the law. So I hope that in course of time there will not be such a community known as Untouchables and that our delegates abroad will not have to hang their heads in shame if somebody raises such a question in an organisation of international nature.

Prof. K. T. Shah : Mr. Vice-President, Sir, lest I be misunderstood on the remarks that will follow, may I say at the very outset that I am not against the spirit of this article, or even its actual wording. I think, however, that the wording is open to some correction; and if the Honourable the Chairman of the Drafting Committee will consider what I am going to place before him just now, and before the House, I believe he might find room for some amendment himself of this article.

In the first place I would like to point out that the term 'untouchability' is nowhere defined. This Constitution lacks very much in a definition clause; and consequently we are at a great loss in understanding what is meant by a given clause and how it is going to be given effect to. You follow up the general proposition about abolishing untouchability, by saying that it will be *in any form* an offence and will be punished at law. Now I want to give the House some instances of recognised and permitted untouchability whereby particular communities or individuals are for a time placed under disability, which is actually untouchability. We all know that at certain periods women are regarded as untouchables. Is that supposed to be, will it be regarded as an offence under this article? I think if I am not mistaken, I am speaking from memory, but I believe I am right that in the Quran in a certain 'Sura', this is mentioned specifically and categorically. Will you make the practice of their religion by the followers of the Prophetan offence? Again there are many ceremonies in connection with funerals and obsequies which make those who have taken part in them untouchables for a while. I do not wish to inflict a lecture upon this House on anthropological or connected matters; but I would like it to be brought to the notice that the lack of any definition of the term 'untouchability' makes it open for busy bodies and lawyers to make capital out of a clause like this, which I am sure was not the intention of the Drafting Committee to make.

One more example I will give, Sir, which is of a hygienic, or rather sanitary, character, that seems to be completely overlooked by the draftsman. What about those diseases, and people who suffer from, which are communicable, and so necessarily to be excluded and made untouchable while they suffer? I remember, Sir, the case of a very well-known personage who was suffering from leprosy, and whom consequently a Public Carrier Company refused to carry from a particular place to another place. All the wheels of Government were moved to obtain a certificate that he may be carried in the plane without any harm to other passengers. I do not know whether it was his cheque-book or his munificence that helped him to get over that particular disability. But I am sure the example should be a warning to our Drafting Committee. Again, if a municipality, for instance, makes a temporary regulation about Quarantine, and makes it necessary that people suffering from communicable diseases or infectious or contagious diseases shall be segregated for a while until they are cured, and shall be regarded as untouchables, will it be an offence under this article? Surely it ought not to be possible for anybody to say that the action of that particular municipality is "unconstitutional" and so an offence at law. I trust the Chairman of the Drafting Committee will find that there is some sense in the suggestion I have put forward; and that he will not deal with it as a common opposition.

The Honourable Dr. B. R. Ambedkar : I cannot accept the amendment of Mr. Naziruddin Ahmad.

Mr. Vice-President : Dr. Ambedkar, do you wish to reply to Mr. Shah's suggestion?

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

Mr. Vice-President : I now put amendment No. 372 to vote.

The question is:

“That for article 11, the following article be substituted:—

‘11. No one shall on account of his religion or caste be treated or regarded as an ‘untouchable’; and its observance in any form may be made punishable by law.’ ”

The amendment was negatived.

Mr. Vice-President : I now put article No. 11.

The question is:

“That article 11 stand part of the Constitution.”

The motion was adopted.

Article 11 was added to the Constitution.

Honourable Members: “Mahatma Gandhi ki Jai”.

Articles 11-A and B

Mr. Vice-President : We have five minutes and I propose to utilize it. There are two new articles 11-A and B standing in the name of Mr. Lari. Amendment No. 382.

Mr. Z. H. Lari (United Provinces : Muslim) : Mr. Vice-President, I move:

“That after article 11 the following new article be inserted:—

‘11-A. Imprisonment for debt is abolished.

11-B. Capital punishment except for sedition involving use of violence is abolished.’ ”

Sir, the two clauses are distinct and consequently when considering and adopting them it is not necessary for the House to accept both simultaneously or to reject both. It is open to the House to accept one and not to accept the other or to accept both.

Mr. Vice-President : Why not move that separately.

Mr. Z. H. Lari : Then I move 11-B first. The House will remember that in the last session of the House, when sitting as the law making body, a Bill was before the House to amend Section 53 of the Indian Penal Code. That Bill went to the Standing Advisory Committee of the Ministry of Home Affairs that met on 20th March 1948. There they thought and decided that this matter of capital punishment should be considered by this body. That is why they deferred consideration of that Bill. Now I put it before the House in the form as desired by the Standing Committee.

So far as the question of abolition of capital punishment is concerned, it has been done so in various other countries. At least in thirty countries, including the Dominion of New Zealand, Russia, Holland, Belgium, Switzerland, capital punishment has been abolished. Only the other day this question came up before the House of Commons and the principle was accepted. No doubt, the House of Lords came in the way and the result was that the Bill before the House of Commons providing for the abolishing of capital punishment had to be rejected. But so far as the House of Commons is concerned, the principle of it has been accepted.

[Mr. Z. H. Lari]

Now, I will place only three considerations before this House. The first consideration is that human judgment is not infallible. Every judge, every tribunal is liable to err. But capital punishment is irrevocable. Once you decide a award the sentence, the result is that the man is gone. It may be that a mistake would have been committed by a tribunal. And I know of cases where subsequently it was found out that the man punished was not the real offender. But it was not within the power of any human being to get the mistake rectified. This is one consideration.

The second consideration is that human life is sacred and its sanctity is I think, accepted by all. A man's life can be taken away if there is no other way to prevent the loss of other human lives. But the question is whether capital punishment is necessary for the sake of preventing crimes which result in such loss of human lives. I venture to submit that at least thirty countries have come to the conclusion that they can do without it and they have been going on in this way for at least ten years, or twenty years, without any ostensible or appreciable increase in crimes. Therefore, the result of the experience gained by all these countries shows that you can govern the country without resorting to this punishment. That is the second consideration for this House.

The third consideration is that this is a punishment which is really shocking and brutal and does not correspond with the sentiments which prevail now in the present century. My submission would be that if we can do away with this capital punishment, it would be a good thing for the country and for the people. Many decades back, Dickens said that this punishment really encourages that section of the population which is determined on committing murders, to commit murders because that is accompanied by a sort of martyrdom. That concerns only that class of criminals who want to commit murders deliberately and with a purpose. To those who commit murders on an occasion which provides them with some sort of provocation, my submission would be that they can be better punished if life imprisonment is inflicted upon them because they will live for many more years and repent their actions and possibly reform themselves.

Lastly I would submit that the reformatory element in punishment is the most important one, and that should be the dominant consideration.

Keeping all these considerations in mind, namely, of fallibility of human judgment, sanctity of human life and the purpose of punishment, we should vote for abolishing capital punishment.

I have made one exception, *i.e.*, of a situation which involves danger to the State. Naturally, when the existence of the state is at stake, and many more lives might be lost, it may be said that we should not take any risks. I say the time will come when even that exception will disappear. But for the sake of incorporating an article in the Constitution, we may accept this exception, and it will be open to the Parliament of the land to go further in two or three years' time and abolish capital punishment completely.

With these words, Sir, I move.

Mr. Vice-President : Then, will you move 11-A tomorrow?

Mr. Z. H. Lari : No Sir, I will not move it.

Mr. Vice-President : The House stands adjourned till 9-30 A.M. tomorrow.

The Constituent Assembly then adjourned till Half-past Nine of the Clock on Tuesday, the 30th November 1948.
