

has allotted one hour for discussion. As to when exactly it will be taken up, it will be announced later.

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CITIZENSHIP BILL—*contd.*

**Mr. Deputy-Speaker:** The House will now proceed with the further discussion of the motion for consideration of the Bill to provide for the acquisition and termination of Indian citizenship as reported by the Joint Committee.

**Shri H. N. Mukerjee:** (Calcutta North-East): Last time, I was trying to explain the reasons why, along with some of my colleagues, I was constrained to append a minute of dissent. I was particularly intrigued by the continuing references in our law, our Citizenship law, to the position of the Commonwealth and of India *vis a vis* that association. I want specifically to find out from the Government as to why we go on having in our Citizenship law certain rather ambiguous expressions which suggest that we are perhaps entering into a kind of relationship with the British Empire countries, which may not redound to the interests of our people and to the dignity of our Republic. We thought that we had ceased to be a dependency of the British Empire when the Indian Independence Act was passed in 1947 by the British Parliament. Whatever suggestion of subjection or limitation was still there in our status must have been abjured entirely by India declaring herself a Republic in the Constitution. What worries me, however, is that in the Citizenship law we have retained clause 11 which is absolutely redundant. It has no meaning as Shri Gadgil pointed out at an earlier stage of the proceedings. The recognition of the status of Commonwealth citizenship in India could only have been put in there as a sop to British Commonwealth ideas. I do not understand why in our repealing clause, clause 19, we refer to the British Nationality and Status of Aliens Acts, 1914 to 1943 and repeal them. I do not know why we go out of our way to repeal these British

Acts. Besides, the British Nationality Act of 1948, which we specifically omit to repeal, itself repealed these British Acts from 1914 to 1943. It can only be understood on the supposition—not a mere supposition, but it is, I think, a statement of fact—that we do recognise that certain British laws operate in India. These British laws are certainly not a part of the statute of our own country, but they are permitted to operate in this country. Reference has been made to the Prime Ministers' Conference held in April 1949 wherein India declared herself a Republic and a formula was evolved by which Republican India could also be a member of the British Commonwealth. I am prepared to agree that that declaration was extralegal and after the adoption of our Constitution, it has no legal significance whatever. But I do not see why this kind of thing happens in our Citizenship law. I read along with this what happened earlier when the India (Consequential Provisions) Act of 1949 was passed by the British Parliament. We went out of our way to print in our Gazette of India Extraordinary dated 16th January, 1950 this India (Consequential Provisions) Act of 1949 and we published also in our Gazette the British Nationality Act of 1948. This British Nationality Act of 1948 has been specifically omitted as far as the repeal clause is concerned. I suggest that all these matters have to be looked into very carefully. I know that in practice, if we choose to do so, we can be absolutely independent of whatever law the British Parliament might have passed. But, if in our law we incorporate the kind of clause to which I have tried to draw the attention of the House, then, surely, it suggests that something perhaps is wrong in the State of Denmark. I am very sorry that the Home Minister has not condescended to find some time from his confabulations in regard to the States Reorganisation schemes. I know and I highly appreciate the qualities of my friend the Deputy Minister. But I feel that the Home Minister should have been present on this occasion

when this Bill is being discussed in this House unless, of course, he is unavoidably detained by physical reasons of some sort or other.

**The Deputy Minister of Home Affairs (Shri Datar):** Yes.

**Shri H. N. Mukerjee:** But, I do feel that since the Home Minister is perhaps more likely to know inside information in regard to what happened at the time of transfer of power he owed it to the House to be present at the time of the discussion of this Bill.

Last time, I also referred to my grouse that even though the Joint Committee has improved upon the provisions of the original formulation of the Bill in regard to refugees from Pakistan, I would have very much preferred it if these refugees from Pakistan could be citizens by descent under clause 4 and were not compelled to register their claims under clause 5.

I explained how there are certain refugees who did not apply for relief or rehabilitation, who therefore did not go through all the red-tapish courses in regard to registration, and it is only right that they should have the opportunity of becoming full citizens of this country; it is only right that they should have that kind of emotional exhilaration which comes of the realisation that they are *ipso facto* accepted as citizens of this country on account of descent.

I referred also to our complaint that deprivation of citizenship in regard to registered citizens except for refugees is now left entirely to executive discretion and there is only a very remote association of the judiciary in an advisory capacity. I wish that this provision is changed by the House in the course of this discussion.

In clause 10, sub-clause (2) I also wish to suggest that though an improvement has been made by the Joint Committee by substituting the

"Constitution of India" for the "Government of India" I feel it would be very much better if instead of the word "Constitution", "the Republic" is substituted. Or, "India" as suggested by Shri Kamath might very well do. I say this because the Constitution established by law, I concede, certainly embodies the majesty of the people, but all the same there seems to be an idea that the Constitution is something which is, like the laws of the Medes and the Persians, absolutely immutable. In a dynamic society, in a changing society, even the Constitution has to change, and there are certain emergent situations where the people have to arrogate to themselves the right to change the Constitution. Therefore, I feel that if the words "the Republic of India" or simply "India" are placed instead of "the Constitution" that would be emphasising the inherent right of the people to change, to develop the Constitution if that is what the dynamic necessities of life demand. "The Republic" appears to me to be a very powerful and emotionally acceptable expression of the majesty of the people, and I wish that this small change is accepted by Government. It was perhaps inadvertence which made the Government first formulate loyalty to the Government established by law in India to be demanded of everybody who had to register himself as a citizen. This was a very wrong identification between the Government and the State, and some attempt has been made to improve the situation by putting in the words "the Constitution", but I feel that if we put in the word "Republic" or "India", it would be very much better.

Similarly, we find in the second Schedule that citizens who are registered have to take an oath of allegiance where they are required to take a pledge to observe the laws of India. Now, as I have said in my Minute of Dissent, laws certainly are meant to be observed, but there are occasions in the history of a people when certain laws have perhaps to be resisted, and remembering that we are only

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going to have such people as citizens who would, I take it, be on the whole desirable people, acceptable people, the right kind of people, we should give them every opportunity to be faithful to the spirit of the citizenship of India and not to pledge themselves to obey all the laws of India which might happen to be on the statute-book at a particular time. There is no obligation to observe every single law at any particular point of time. If my friends on the Treasury Benches swear by the name of Mahatma Gandhi, surely part of the legacy of Mahatma Gandhi is that it is the very nature of governments, it is the very nature of the people in power sometimes to formulate laws, sometimes to push through the legislature laws which may have to be resisted—resisted in a particular fashion which Mahatma Gandhi tried to explain to his people and to follow by his own example. So, that right of resisting laws which happen to be on the statute-book but which do not coincide really and truly with the fundamental interests and desires of the people, that right must be given even to those who are registered as our citizens. If they are faithful to India, if they are loyal to the Republic, if they observe all that is necessary as far as the conduct of the citizens of India is concerned, then surely we should not ask them to give a pledge in regard to the laws of India.

I wish also there were in clause 4 a provision which would enable Indian women marrying foreigners to transmit Indian nationality to their offspring. We have been told that there would be a multiplicity of citizenships and it would cause a mass of complications. I feel in this Bill we have been pretty lavish in the offer of citizenship to different categories of people, and if only we add the very few Indian women who happen to marry foreigners, then surely the number of those who would be additionally entitled to citizenship would not be at all large, and therefore the complication would by no means be the kind of complication which it has

been argued it might be. And therefore I feel that this kind of change might very well be accepted by Government.

I wish also to tell the House that my feeling is—and I am sure a section of the House also feels that way—that the Bill should have comprised a separate section on the status of aliens, but we are given to understand that certain steps are in contemplation in regard to this by Government, and I hope that there would be some effort to define the status of aliens.

I have covered most of the points on which I feel that the report of the Joint Committee requires revision by the House. I shall only remind the House that we are performing now an obligation which was imposed on us by the Constitution in regard to the formulation of our law of citizenship and therefore I feel that we should try to make our law of citizenship as adequate, as fair and as much in conformity with the interests of our people and the dignity of our Republic as we can make it, and that is why I have emphasized perhaps at a certain length those clauses which deal with our Commonwealth relationship. I wish that Government comes forward with an explanation as to how certain ambiguities, certain perversities, to my mind, have crept into this legislation—because I feel that in regard to the Commonwealth we ought to make this very clear that it is only on the basis of like-mindedness that we can continue our association with any body of States, and if this Commonwealth continues to behave in the way that it does, then I do not see how our association with the Commonwealth can go on.

I wish also to say in conclusion that in regard to the First Schedule we agree entirely with the Home Minister when he spoke here at an earlier stage of the proceedings that we wish to give all the world the impression that we are by no means Chauvinists, that we want as wide an association of States as possible, that we want to throw open the ambit of our citizenship to Commonwealth countries be-

cause we believe in the idea of an ultimate world citizenship. If that is so, I do not see why Government cannot agree to the amplification of the First Schedule. We might mention the Commonwealth countries, but in that mention perhaps we ought to delete mention of countries like South Africa or of Australia which, my hon. friend Shri Kamath pointed out, is particularly democratic in its attitude towards coloured peoples. We might omit reference to these two countries, but we might add other countries, a country like Nepal, a country like Burma. In regard to Burma we have been given literature—I do not know how far it is exact—in regard to the difficulties of Indian citizens in Burma. At the same time, however, in Burma the position is such that one man is a Burmese citizen and a Minister of the Burmese Government and his brother is the Ambassador of India to Burma. If that is so, our relationship with that country is so obviously close that we can make it very much closer, and if we mention Burma in the First Schedule that would be a gesture to Burma, and that would be an opportunity for us to put our relationship with Burma on a very much better level and to remove those difficulties which, reportedly, Indian citizens in Burma are experiencing. We might also try and add on the basis of neighbourliness or on the basis of adherence to common principles in international life certain other countries which are now adhering to that principle, and on that foundation we can really make our citizenship law something which the whole world will look upon as model legislation of its kind. But, as it stands, however, it is vitiated by the shadow of the Commonwealth connection which, I for one, am not prepared to stomach in spite of the speeches made by the Home Minister, and I wish that Government in its answer comes forward with an explanation as to how certain very dubious clauses have got into the formulation of this Bill. I therefore wish that very careful thought is given by this House to consideration of this measure and then we can

formulate a citizenship law of which we shall be proud.

**Shri Barman** (North Bengal—Reserved—Sch. Castes): At the outset, I wish to convey my thanks to the hon. Deputy Minister of Home Affairs and the Joint Committee for having made a change in clause 10, as was desired by the House at the time the motion for reference to Joint Committee was under discussion.

I have tabled an amendment to clause 5 which deals with citizenship by registration. I hope the hon. Minister will consider it sympathetically. I may not be able to place my case when the clauses are taken up, but I hope the hon. Minister will devote his careful attention to the submission that I am making now. It has been advocated by Shri H. N. Mukerjee just now and also by Shri N. C. Chatterjee yesterday that the refugees or displaced persons from Eastern Pakistan should be given the right of citizenship by descent. The hon. Deputy Minister while he opened the general discussion yesterday said that in the Constitution itself there is no provision under which conferment of such rights is contemplated. And he referred to article 6 according to which a displaced person from Eastern Pakistan had to put in a domicile of at least six months before he could apply for registration, and further that application for registration should have been before Government before the introduction of the Constitution. I quite agree with the hon. Minister. But then there is some difference between the position of the displaced persons then and the position of the displaced persons now. Formerly, the position of the displaced persons was **such** that they could at any moment cross the border and come over to India, and after staying here for a month or more, they could again go back to Pakistan if they liked. But that position has now been fundamentally altered by the imposition of certain restrictions both by India as well as by Pakistan. At present, no one can come over from Pakistan to India without having a migration certificate,

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if he wants to leave that country for good and wants to settle in India. So, the former position no longer obtains now.

Even in the Constitution a domicile of only six months has been prescribed for the displaced persons before they could apply for registration. So, I have tabled an amendment for the consideration of Government, that instead of one year as provided for in clause 5, the period should be reduced to six months, so that a displaced person who has lived here for six months would be entitled to apply for registration as a citizen. I would like to impress on Government once again that those persons who are coming over to India are coming with migration certificates, which means nothing else than this, namely that they have abjured their former citizenship, and they have come over to India for good. Now, to make these persons, who have once and for all renounced their right of citizenship not really on account of their choice, wait for a year till they could acquire the citizenship of any country whatsoever in the world would be a tyranny and injustice to them. So, I do not think there will be any valid objection on the part of Government to confer citizenship rights on such Stateless persons after they have put in a residence or domicile in India for at least six months. I hope the House as well as Government would consider this matter seriously and accept the amendment that I have tabled in this regard. I do not think there is any Member in this House who is not sympathetic towards the cause of the displaced persons who are leaving their hearth and home and coming over to India. If Government consents—I do not think there is any reason for not consenting to the suggestion I have made—I am sure that consent will prevail upon the House, and the House will also endorse the views of Government and agree to reduce the period from one year to six months.

I have tabled another small amend-

ment, namely amendment No. 70, to clause 18. Pandit Thakur Das Bhargava's name also has been bracketed with mine, and I therefore hope that he also concurs with my suggestion. Sub-clause (4) of clause 18 reads:

“All rules made under this section shall, as soon as may be after they are made, be laid for not less than fourteen days before both Houses of Parliament and shall be subject to such modifications as Parliament may make during the session in which they are so laid.”

The implication of this provision is that if during that session, Parliament does not make any modifications, then the rules that are placed before it will become final. I do not think that this is right, for due to several reasons the session may terminate abruptly. So, it is just possible that before the amendment suggested by somebody may be considered the session may come to an end. These things are not at all impossible. In such a case, the wording of the sub-clause at present would mean that if during the same session, Parliament has not made any modifications, then the rules as laid before it would become absolute, and Government can proceed with the working of those rules.

Further, it is also possible that after the rules have been approved with or without modifications by Parliament in the same session, later experience may require some modification in the rules. But according to the present provision, Parliament will not have any right to make modifications of that kind. I therefore feel that this provision limiting unduly the power of Parliament is not only unnecessary but uncalled for. Of course, it might not be the intention of Government to limit the power of Parliament, but that is the implication of the present provision. I would therefore suggest that this restrictive clause should be omitted.

Lastly, I would like to place one other view before Government, and

that is that the First Schedule should be amended a little. I also endorse the view expressed by other hon. Members that the name of South Africa could be deleted from that Schedule. I do not know whether there will be any difficulties if we delete that. Of course, Government will be the best judge on the matter. I find in the Schedule the phrase 'The following Commonwealth countries'. That means that there are some other Commonwealth countries which are not mentioned here. If those other Commonwealth countries could be omitted from the list, then what is the harm if we omit South Africa? My reasons for suggesting like that are as follows.

I do not know what are the advantages that flow from Commonwealth citizenship in fact. There might be many things in theory, but I do not know what are the practical advantages of Commonwealth citizenship, apart from citizenship proper. I hope the Government will explain the difference in the advantages that flow from Commonwealth citizenship as well as ordinary citizenship. If there be anything in the nature of Commonwealth citizenship that is advantageous for us at present in Commonwealth countries, then my next question is whether those advantages, those facilities, those privileges and rights are availed of by Indian citizens or citizens of Indian origin in South Africa at present. If those rights or privileges do not obtain there at present, then it is meaningless, or rather hypocritical on our part, to treat South Africa on the same level as other Commonwealth countries. I had one occasion to be present in a Commonwealth Conference and in that Conference the representative of South Africa blatantly and bluntly said before our face that the policy of South Africa, both of the Government of the time as well as of the Opposition, was one, and that policy was the paramouncy of the white race and also trusteeship by the white over the coloured people as well as people of Indian origin and

others, that is, non-white. If that be the policy declared by South Africa openly in a conference which is termed as a Commonwealth Conference,— I do not know whether that attitude has been changed by South Africa later on.....

**Shri Kamath** (Hoshangabad): Did any other delegate protest against that?

**Shri Barman**: Every member of the delegation protested, specially our leader, the hon. Speaker of the House.

**Shri Kamath**: That is very good.

**Shri Barman**: What I submit is that if that policy, that attitude of South Africa remains the same, as it was, then it will be shameful on our part to say that South Africa is one of the Commonwealth countries with which we want to maintain Commonwealth citizenship relations. If, of course, for practical reasons, it will be necessary for us, that is for Government to consider, but on general grounds, on grounds of prestige, I think South Africa may be omitted for the present.

**Dr. Lanka Sundaram** (Visakhapatnam): Should be.

**Shri Barman**: If South Africa revises its attitude; there might be no harm and no difficulty in adding it to the list at any future time. I have suggested three amendments in regard to the First Schedule and they are for Government to consider.

**Shri Raghavachari** (Penukonda): I am not rising as any expert or a man with complete comprehension of the things about citizenship, but I am only concerned with one or two aspects which alone I shall place before the House.

As the House knows, this matter has been under consideration at the stage of the motion for reference to Select Committee when many Members participated and adduced all arguments. In the Joint Committee, there have been prolonged discus-

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sions, and again we have as much of it now. Therefore, repeating the same thing and taking the time of the House is, I feel, not justified. I would only suggest one or two points which I feel must be particularly considered by the House.

First, I shall refer to the risks that are involved in vesting in the executive absolute power of deprivation of a man's citizenship. I am more concerned with that portion. That is covered by clause 10(5). I have also listened to the arguments of the Deputy Minister in connection with this. His argument is that there has been some kind of association of a judicial officer at the time of the inquiry presided over by him; also in sub-clause (6) it is said that ordinarily, the Government will be guided by the report of that committee of inquiry, and if in spite of that, the Government make some kind of an order contrary to the recommendations, Government have a responsibility to this House, and it can always be turned down or upset—these are the arguments that have been advanced.

**Dr. Lanka Sundaram:** Is there any automatic bringing forward before the House? That is not there.

**Shri Raghavachari:** Of course. I just wish to examine that argument in its detail, and then submit my own fears. First and foremost, the contention now urged by other friends is that it must be presided over by a Judge of the Supreme Court, that is a Judge who is a member of the highest tribunal and actually in office. But what is proposed here is "a chairman, being a person who has for at least ten years held a judicial office". May I very respectfully ask, what is the meaning of this 'judicial office'? It may be a District Magistrate, it may be a Third Class Magistrate, it may be a subordinate Judge, it may be anybody who has held a judicial office.

**Shri Kamath:** District Judge.

**Shri Raghavachari:** I am not saying anything against this whole body of judicial officers. Many of them are very honourable people. But the only thing that you have said is 'held a judicial office'. He might later on have become the worst bureaucrat. He might have held sometime this office. Therefore, that somebody who has held that office and who will preside over it will not really create any confidence in the people. We all know that the right of citizenship is a very valuable right and people have fought and fought, and many have sacrificed their lives for independence because being a citizen of an independent country is a valuable right. You take such a valuable right away. Deprivation of it is easy on any judicial officer's recommendation. Therefore, to my mind, this argument that some judicial officer is associated is not at all satisfactory. I would, therefore, submit very respectfully that the requirement that is urged by Members, that he must be a Judge of the Supreme Court—and I would prefer a Judge of the Supreme Court in office and not even one who has retired—must be satisfied. There is always this trouble. Now, we want experienced people. We are having ex-judicial officers presiding over many committees, commissions and all that. I am not saying anything against them. But human nature oftentimes being what it is, there will be an inclination to be helpful to the Government which might be seeking their services.

**Shri B. S. Murthy (Eluru):** Serving themselves, but not the public.

**Shri Raghavachari:** Therefore, I say a man actually in office, would be the best.

The next thing is that the report will ordinarily be accepted by the Government. I dare say it will be.....

**Shri Kamath:** To be guided by' is not 'accepted'.

**Shri Raghavachari:** Being guided is accepting; otherwise, it is not guiding. They should ordinarily be guided by that. Suppose it is not 'guided'. I wish to examine the remedy. A very 'safe' safeguard is suggested and that is—you can turn out the Government—'turn down the Government' was the expression used. We know that constitutionally it is so, but really it is not so. Today you are in such a huge majority. Suppose on another occasion, you are in such a huge majority that all the Opposition Members may be deprived of their citizenship rights. We may turn you out, no doubt, but before we can do so, we are turned out.

**Pandit K. C. Sharma** (Meerut Distt.—South): You cannot be turned out. You are a citizen by birth. You cannot be deprived of citizenship.

**Shri Raghavachari:** This right that we may turn out the Government or turn down the Government is not a very real safeguard available. As a responsible citizen of this country, I expect a Government should always be guided by a recommendation of a committee. I perfectly agree. But when you say that you shall ordinarily be guided by the report of such a committee, you should also create confidence in the minds of the people that it is a Judge of experience who does preside over it and that you will be guided by the report of such a committee—I would even say instead of 'guided', 'accepted'. Under extraordinary circumstances, by all means retain the power as now provided in the clause.

One of the arguments perhaps is why burden the Supreme Court with all this kind of business. That means this. Do you expect that the Government will go on proposing to deprive the citizenship of almost every individual and therefore the number of cases in which these Judges will have to busy will be so numerous that their ordinary duties are disturbed? I do not accept it. It will be very rare and in very few cases. I have carefully considered all the arguments

for and against and I think it is best that the Government accepts these small amendments which really make for the greater dignity of the Government, for greater confidence in the administration and which will also allay even the imaginary fears—as the Government might say—or the possible risk of any individual losing his right. I do not wish to repeat any more arguments about it.

My friend Shri Kamath wanted Jammu and Kashmir to be specifically mentioned and I heard the Deputy Minister saying that if it is not excluded it is included. (*Interruption*). To that extent, the difficulty or apprehension is removed and, therefore, it extends to that portion also.

**Shri Kamath:** His interpretation.

**Shri Raghavachari:** It is not interpretation. India includes everything; that is the definition that we all know. The expression, 'It extends to the whole of India' is not to be found in this enactment though the word 'India' is used later on in several places. So, we find that it extends to the whole of India. I take the interpretation of the Deputy Minister as it is reasonable and accept that it is included and it is not likely to be argued that it has been excluded.

There is another point, about the definition of the word 'person'. There has been some long note that is added by way of dissent to the existing definition of the word 'person' as excluding corporations. I do not wish again to repeat the arguments which are in cold print here. But, I also feel, in the light of the Supreme Court decision and the observations in more than one case, the necessity and the requirement for corporations also to be in a position to hold, exercise and have rights over properties and for that it is necessary that at least in a restricted way the rights of citizenship, particularly with regard to these fundamental rights, may be mentioned in respect of corporations also.



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Shri Nathwani, I think, has suggested a definition and a clause also to be added. To my mind it looks all right, though an individual and a corporation may not always be in all respects equal. There will be some differences. But, still, it is in the interests of all such corporations which are composed of Indian citizens only that this right is admitted.

Only one word about the rules. I am glad that the principle of laying down these rules before the House and the right of the House to amend or modify them has been accepted as a matter of principle. Though on some other occasions other Ministers were still hesitating to accept amendments of this kind on the ground that the Cabinet as a whole has not decided upon the policy, I am glad that in an important matter like this it has been conceded. I only wish to express what I feel—a little difficulty in the matter. You have only provided that the rules shall be placed before both Houses for not less than 14 days and any amendments should be made during the session in which they are so laid. It may so happen that there are not 14 days in the session in which they are so laid; there may be 13 days in that session and 1 day in the next session. But you have to dispose of them in the same session. I am only feeling the possibility of inconvenience. You may do it on the second or third day. I think it is unnecessary to do that except in cases of emergency. But there is some difficulty.....

**Pandit Thakur Das Bhargava** (Gurgaon): It may be laid on the last day or one or two days before the end of the session.

**Shri Raghavachari**: That is the point. Then how can it be disposed of in the same session? That is why I think it would be better to have the words 'the same session' omitted. It may be in that session or the next session. I have put the matter as it appeared to me and I think the matter

may be amended suitably so that we may not have any unreasonable fears in our minds.

**Pandit Thakur Das Bhargava**: So far as this Bill is concerned, I am very glad that some of the objectionable features of this Bill have been remedied by the Joint Committee. For instance, many of us pointed out at the time the Bill was referred to the Joint Committee that so far as refugees are concerned, there was discrimination against them, when they were made citizens, and others who were born citizens of this country. I am glad one of the objectionable features has been removed and I am thankful to the Ministry as well as the Joint Committee that they have taken away this provision which would have not only smacked of discrimination but which would have been felt very badly by the refugees. All the same I must submit even now there are certain provisions which are such as the refugees will not be thankful for to the Government.

In the first place, I very humbly beg to point out that the provisions relating to refugees relate to lakhs of people. In my estimate, at least about more than 20 lakhs and less than 30 lakhs of people will be affected by the provisions. Now, to accept that these 30 lakhs of people shall go to courts or to the authorities to make regular applications, giving affidavits required by the rules, put stamps and undergo all the trouble is to expect too much. I know that many of those who could be benefited by the provisions of section 6 did not take advantage of these provisions on account of these difficulties. I, therefore, suggested at the time the Bill was referred to the Joint Committee that we should arrange matters in such a way that so far as these refugees are concerned, they should be entitled to become citizens in the same manner as other citizens are here in India. It means that at least—if not more—something like 3 crores of rupees shall have to be spent by these refugees whom the Government is helping. Government have

spent about Rs. 250 crores over these refugees and yet they are in such a condition that they are unable even to incur an expenditure of Rs. 10 per head for this purpose. The result will be that as many of them are so ignorant and illiterate and do not know these rules that they will not be able to take advantage of the citizenship of this country although they happen to be as good citizens as any born in India. I would, therefore, submit with all the emphasis at my command that this House should come to the rescue of these refugees. The House can very easily come to the rescue of these refugees. When we enacted article 6 of the Constitution, so far as those persons who came from West Pakistan were concerned, we made a rule that up till the 19th July of 1948 if any refugees had come into India, they would be regarded as Indian citizens just as those who were born here.

**Dr. Lanka Sundaram:** Automatically.

**Pandit Thakur Das Bhargava:** Automatically they became the citizens of this country provided that after their migration they remained in India. In regard to those who came to India after the 19th July 1948, we enacted certain provisions which are of the nature of these very provisions before us, but at the same time I may inform the House that before the 19th July 1948, if not more, about 90 per cent. of the refugees had already come into India and out of the remaining 10 per cent, I understand that many of them have not yet applied and not got themselves registered. In regard to the refugees from East Bengal, my humble submission is that a similar provision should have been made by the Joint Committee applicable to them. We could say that those persons who have come from East Bengal before the 1st January, 1955 should *ipso facto* be regarded to have become the citizens of India without any registration, etc. The word "migration" is used in the Constitution to mean that they came to India with the pur-

pose of remaining in India and becoming citizens of India and those who were permitted to migrate to Pakistan would forfeit the nationality of this country and we made a provision in this regard in article 7 of the Constitution that they no longer would remain citizens of this country till they satisfied all the conditions stipulated there, got certificates of resettlement, etc., and also got themselves registered. I very humbly beg to suggest to the House that we can make a similar rule and say that those who have come from East Bengal before the 1st January, 1955 should *ipso facto* be regarded to have become the citizens of India without any registration, etc. In regard to the rest, we can say that such of them who are given permits for permanent return or resettlement or are entitled to the benefits of rehabilitation from our Government may be regarded as citizens of India. In that case they will require a certificate of permanent return or resettlement or certificate of getting rehabilitation benefit. These can be given by some officer appointed by our Government and it is very easy to do so. They have not to apply at all. Instead of asking lakhs of persons to apply, go to the court and have recourse to irksome and dilatory procedure, we can have a very clear rule here to the effect that those who have come from East Bengal for the purpose of becoming nationals of this country are allowed to become citizens of this country. We should not put obstacles in their way. As a matter of fact, you have got a very soft corner for those who, according to you, are of Indian origin. These persons of Indian origin have lost their citizenship of undivided India because you agreed to the partition of India. Those Hindus living in East Bengal are the potential citizens of this country. I know that our Government is unable to stem the tide of those who are coming from there into India. We have tried our best but we have failed and failed signally in this matter. Our foreign policy has failed in this matter and let us fully realise it. Those persons will be pushed out, if not today, to-

[Pandit Thakur Das Bhargava]

tomorrow or the day after. Pakistan is determined to see that not a single Hindu remains a national of Pakistan, and by stages it is giving the push. We have not been able to stem the tide of those who are coming out of Pakistan to India. If such persons want to come into this country, you should not put any obstacles because they are quite helpless and this helplessness has come to them because of you. Therefore, it is fair that those persons who have already come with the object of becoming the nationals of this country should not be put to hardships and no obstacles be placed in their way to become nationals of this country or full citizens of this country. Those who want to remain in Pakistan and be the nationals of Pakistan may remain so and we are not encouraging them to come here, but at the same time I do not see any justification for putting obstacles in the way of those who want to return to India; in fact, they should be allowed to become citizens of India with as little delay and difficulty as possible. They are likely to come here and they shall come and the best way for the solution of this problem is this. When we give them permit for permanent return or resettlement in this country and give them rehabilitation benefit, our officer makes all these enquiries before allowing them to come and at that time we can make them citizens of India. I very humbly beg the House and the Ministry not to enact these provisions made by the Joint Committee as regards registration, etc., so far as those people are concerned. At the time when the Bill was sent to the Joint Committee I submitted that I did not want that these refugees should be asked to register themselves. Registration is only for those who are not the real citizens of India, nor are rooted in the land of India, nor have a domicile in this country, nor wanting to return to any other country.

**Shri Kamath:** I rise on a point of order. In spite of the Prime Minister's reported circular to all my Con-

gress colleagues to be present in the House, I am sorry to say that there is no quorum again.

**Mr. Deputy-Speaker:** When do we close.....

**Pandit Thakur Das Bhargava:** Even if the bell is rung, it will be 1 o'clock by the time the bell rings. It is almost 1 o'clock now. The ringing of the bell will take two to three minutes.

**Mr. Deputy-Speaker:** Let the bell be rung.

**Shri B. S. Murthy:** What has the letter written by the Prime Minister to the Members of the Congress Party to do with the point of order here?

**Shri Kamath:** Has the Prime Minister's letter no value?

**Mr. Deputy-Speaker:** It may have value, but the point of order may not have much value. Fortunately, the hon. Member, Shri Kamath, was not present yesterday, in the latter half of the day. He came only after the business was over. I was looking to this side to see whether Shri Kamath was there to raise this question.

**An Hon. Member:** No official Bills were being discussed and so Shri Kamath was not here.

**Shri Kamath:** If nobody raised a point of order, that was not my fault. It was open to any one to raise a point of order then.

**Mr. Deputy-Speaker:** Hon. Members ought to be here; it is not yet 1 o'clock. They may go for lunch after 1 o'clock. Whatever happens here is proclaimed to the world at large, to the country, to the constituencies from which all Members come. In order to make up quorum, have responsible Members who have spent much money and undergone trouble for representing 7½ lakhs of the population, if not more, to be invited to be present in this House? I am really sorry for this spectacle. If it continues like this, the only alternative for me will be that one day I will adjourn the House for want of quorum.

**Shri B. S. Murthy:** *Sine die?*

**Shri Sinhasan Singh** (Gorakhpur Distt.—South): So long as the Central Hall remains the place for supply of tea and coffee, the problem of quorum will remain. So some other arrangements should be made for . . . . . 1 P.M.

**Mr. Deputy-Speaker:** The Central Hall cannot be abolished. It is rather strange that hon. Members who are all above 21 or 24 years, who are all elderly gentlemen, should say that there is a temptation here because there are cinema halls and therefore abolish all cinemas otherwise we will go and sit there. Now, let us proceed.

**Pandit Thakur Das Bhargava:** Sir, Shri Kamath did well in drawing your attention to the letter of the hon. Prime Minister and we are all thankful to him. But, may I submit that very many times I have found that Members of other parties are not here and it is the duty of everyone of us irrespective of parties to be present here, attend to the business of the House and hear what others have to say?

**Shri Kamath:** Sir, you yourself ruled yesterday that it is not for the Opposition to keep the quorum. That was the ruling you gave. You said it is for the ruling party to maintain the quorum.

**Pandit Thakur Das Bhargava:** What is the ruling party? We meet here as equals, as Members of Parliament.

**Mr. Deputy-Speaker:** I did not say that the ruling party was itself bound to maintain the quorum. Whoever wants to get through business must maintain the quorum. It is obligatory on every hon. Member who has taken the oath of allegiance to stand by the Constitution, who has pledged and has given an undertaking to his constituents that he will go and in the name of God and everybody serve his country properly, to be present here and not merely to go on raising objections which he is not observing himself. On many occasions I have found that hon. Members who raise such objections are themselves not

present in the House. Hon. Members must come 10 minutes in advance of eleven o'clock and rise only 10 minutes after five o'clock or the time at which the House adjourns which-ever is later. That is what we are all expected to do. I am not a teacher here to mark them absent or present. I am appealing to hon. Members again and again that even if they do not have an opportunity to speak, at any rate, they will be educated enormously in certain subjects with which they are not prepared. When others go on speaking they have got a right not only to speak but they have a duty to hear and also to maintain a quorum. It will be wrong for me to go on expatiating the whole thing. Let not an hon. Member think that it is the duty of others to maintain the quorum and not himself. Let him look to the back seats also.

**Shri M.S. Gurupadaswamy** (Mysore):  
*rose —*

**Mr. Deputy-Speaker:** Is it another point of order? Let us proceed with our work. Every hon. Member must observe that it is his duty to be here and maintain the quorum.

**Shri Shree Narayan Das** (Darbhanga Central): Sir, the Members who get an opportunity to speak immediately after delivering their speeches they go out. At least they should be present here after they have spoken.

**Mr. Deputy-Speaker:** I do not know I would only urge upon hon. Members to kindly come and tell me how to maintain quorum in the House or how to prevent hon. Members from going away soon after they have finished their speeches. Now, let us proceed—  
Pandit Thakur Das Bhargava.

**Pandit Thakur Das Bhargava:** Sir, I was submitting . . . . .

**Mr. Deputy-Speaker:** He must finish before the quorum is lost.

**An Hon. Member:** Now, no quorum is required, it is 1.05.

**Pandit Thakur Das Bhargava:** If this is your order, I will finish by 2:30 p.m. because till then there is no need for a quorum.

[Pandit Thakur Das Bhargava]

I was submitting that, as a matter of fact, we should arrange matters in such a way that there is no difference whatsoever between those who are born citizens of the country and those people who were citizens of undivided India but on account of partition became citizens of Pakistan and are coming here. Now, I find, first of all every such refugee or every such person shall be fined Rs. 10. I submit that he ought not to be fined. Secondly, I find that though the Ministry and the Select Committee have very kindly agreed to take away some of the obnoxious provisions yet there are other provisions which make a distinction between the rights of those who are citizens by birth or descent and those who are citizens by registration. As I submitted last time when the Bill was referred to the Joint Committee, these refugees should be made citizens of the country equal to those who are citizens by birth. They should not be registered at all. There is no occasion for registering them. Article 11 of the Constitution has given us full powers to enact any measure modifying the provisions of the Constitution in this respect. The words in article 11 are:

"Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship."

I, therefore, suggest that 1st January, 1955 may be regarded as the date. If any person migrated before that time then clearly he may be made a citizen automatically and become entitled to all rights as a born citizen. In regard to those persons who are yet to come, I can understand, of the time of entry they may be given permits for resettlement, benefits of rehabilitation etc. By virtue of those permits they may become citizens of this country and they may not be asked to have resort to registration etc. They should not be forced to take the oath of allegiance like citi-

zens by birth. They and their ancestors have lived in this country for thousands of years and with every breath oath Pulsates in their blood. Then, I submit that such provisions as relate to persons who are registered will not apply to them—for instance, deprivation as a result of convictions etc. We have got in clause 10 a provision that if any such person who is registered is convicted for an offence for more than two years then he ceases to be a citizen and he loses his citizenship. I do not want that this should apply to the refugees.

Another suggestion I made at the time the Bill was referred to the Joint Committee was that we should arrange our matters in this country in such a way that our security is not jeopardized; that such situations do not arise in the country as arose at a time when a large number of persons from Pakistan from Mymensingh and other districts entered Assam and we had to make a Bill here for the expulsion of those persons. My humble submission is that if you make it a right in so far as citizens of any country in the world or citizens of Commonwealth countries are concerned, it may happen that a large number of people may try to enter Assam or any other part of the country and we may be helpless to refuse registration or it may not be possible to control the influx. I beg to submit that the first rule of law in a matter of this kind, in a matter of the question of making citizenship, is that our country remains safe and the economy of this country is not in any manner jeopardized. I remember, at the time when we passed this Bill about expulsion, a large number of people had come and to this day the provision of that Act has not been utilised and it has not been given effect to. What would happen in a situation like this? I, therefore, want to arm the Government with the power to refuse registration at their discretion. Though there is a clause here under which the Government can refuse, registration it is not so specific. I want to see that specific power is

given to the Government to see that at their discretion they may refuse any person the right of registration etc., whether he belongs to a Commonwealth country or to any other country. Then again I do not see any reason for having the provision which is mentioned in clause 5 (b) which reads thus:

"persons of Indian origin who are ordinarily resident in any country or place outside undivided India."

My humble submission is this. This law of nationality or this law of citizenship is peculiar in one sense that we all belong to this broad world but still every nation has got its own territory. Without territory no nation can exist and, therefore, those who are rooted to the soil, who have got domiciled in that land, who propose to live and die and have their being in that land, they only are the nationals of that country. Those people who have gone away, those people who live outside, they may be technically called nationals of the country if they are nationals by virtue of a fiction contained in section 5 or section 6, but virtually those persons are the nationals who live in the country, who add to the wealth of the country, who enjoy the benefits of that wealth and who are, as a matter of fact, as the phrase goes, rooted in this land. In regard to such as unrooted the country there is already a rule under article 8 of the Constitution. In article 8 of the Constitution there is a provision for them. I fail to see why there should be another provision like clause 5(b) in this Bill for those persons.

Then again, as I submitted on the previous occasion, I do not understand why the mere ground of birth alone should give a right of citizenship of this country. Any foreign couple may come here and give birth to a child. Why should that child become a citizen of this place?

**Shri Kamath:** Couple cannot give birth.

**Pandit Thakur Das Bhargava:** My friend is entirely wrong. But I am not taken away by this diversion which of course is made in a light mood. But, at the same time, my friend is quite wrong. He does not know that really it is a couple which gives birth. A woman by herself or a man by himself cannot give birth to a child. I leave it there.

**Mr. Deputy-Speaker:** Is it necessary to record all these processes in a regular register—how children are born, etc?

**Pandit Thakur Das Bhargava:** I just referred in the same light mood in which interruption was made.

**Mr. Deputy-Speaker:** It is wrong? What is the meaning of such interruptions? We forget that this is a serious business, that we are transacting here. A humorous remark may be allowed, but going into the question as to the author of the child and so on, are all matters which have to be avoided in future.

**Pandit Thakur Das Bhargava:** In clause 3 of this Bill, we are saying:

"Except as provided in subsection (2) of this section, every person born in India on or after the 26th January, 1950, shall be a citizen of India by birth".

My humble submission is that in the Constitution we had a different rule, a very good one and a very justifiable one. It is article 5. There, you will kindly see the words:

"At the commencement of this Constitution, every person who has his domicile in the territory of India and—

(a) who was born in the territory of India;" etc.

The first and foremost and the most important point is that the person must have his domicile in India, and so, unless he has that domicile in India, a person has no right to become a citizen of this country. Therefore, I say that only those per-

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sons who have got such *Animus Revertendi*, who live in this country, who would die in this country and add to the wealth of this country and are rooted in this country can be the citizens of this country. So, I would like to say that in clause 3, the principle which we have adopted under article 5 of the Constitution must be accepted and not birth only, as the basis of citizenship. Domicile plus birth should both be applied for the right of citizenship to every person who is born in India. Not only that. My humble submission is that if a person is out of India for a large number of years without *Animus Revertendi* according to me, the law of domicile must apply to him. If such a person is there, he has no right to be a citizen of India.

In regard to the question of descent also, I feel that we have gone too far. In article 6 of the Constitution, we have said that those persons whose parents or grand-parents were born in India will also be regarded as of Indian origin. Since we have made this provision, I only want to say that in the British Nationality Act, the distinction has been made clear. It only refers to the father alone, and not to parents or the grand-parents. According to me, the first ground for citizenship is that the person must have a domicile here or at least *Animus Revertendi* from the other place where he is resident. Both these two things are missing, and so, without either of these things, a person has no right to be a national of India.

**Shri Kamath:** What is that latin phrase?

**Pandit Thakur Das Bhargava:** *Animus Revertendi*, that is, the person has got the ultimate intention of coming back.

From clause 11 onwards, we are dealing with Commonwealth citizenship, etc. It is not reciprocity but the actual rule for registration which should determine the matter. According to me,—and I know that—no citizen of India can go today, even

after seven years, to Pakistan and live there as a citizen, as our Pakistan brethren, if they come here, can live here in this country. Therefore, I am anxious to see that, if in any country the conditions of existence, the conditions of life, the facilities and restrictions are of such a nature—not by virtue of any rule or law but on account of the actual conditions obtaining—that a citizen from here cannot go there and become a citizen of that country, then the citizens of such countries should not be allowed to become citizens of this country. This will apply to South Africa, to Ceylon also and it applies to some other places also. I am not satisfied with the rule that by virtue of a certain law which is obtaining in some countries, our citizens can go and become citizens of those countries, at least in theory. I would rather like that equitable conditions of law and order, facilities and convenience without any prejudice of any kind in any person's mind, should prevail in that country, whose citizens can become citizens of this country. If these conditions are prevalent in that country, then that is reciprocity.

**Shri Datar:** The hon. Member will kindly see the proviso under clause 5 (1), under which “the Central Government shall have due regard to the conditions subject to which”, etc., they may “become citizens of that country by registration”. The conditions are already there; it is not rules.

**Pandit Thakur Das Bhargava:** I have read this rule, and I have given amendments to this rule because I am not satisfied with what you have got here. I would beg of you kindly to go through my amendments and if you like them and if there is some thing more in them than what is contained in this rule, you should accept them. I am not satisfied if the rule is there. To say that you have got the rule does not justify the position. The conditions of living and the conditions in which a person becomes a citizen of that country should justify the conditions of reciprocity. Suppose

a Sikh or a Hindu from here goes to Lahore. He cannot live there for any length of time, whereas a gentleman from Pakistan can live here in India with peace and honour. This is the difference. Your rule does not think of those conditions.

There are some other matters which have been debated in this House and I want to say a few words about them. One question that has agitated the minds of some of my friends is that the judiciary should be able to adjudicate the question of deprivation of citizenship. Some of my friends have suggested that we must have a Judge of the Supreme Court to decide this question. Some others say that this rule must be made justiciable. Then again, there have been some suggestions about the oath also and that those persons who are registered citizens should not take this oath, namely, "I will faithfully observe the laws of India and fulfil my duties as a citizen of India". My humble submission is that in these two matters, as a matter of fact, these criticisms are misconceived. In my humble opinion, the executive of this country is charged with the duty of seeing that those foreigners who come here and who are registered or have become naturalised, must remain true to this country. The executive which has got the final power of registration or allowing naturalisation should, I should say, theoretically and justly, be given the powers of depriving such persons of their nationality, if those persons do not behave well. After all, as I submitted, this territory belongs to those who are the nationals of this country. If others are allowed to come here, it is by virtue of a rule which imposes upon all human beings the obligation to observe all the rules and laws of this country of which we are citizens. Is it then the courts which are to be given the power to enforce this rule? In my opinion, it is the function of the executive and so far as conditions in this country are concerned, so far as security, etc., are concerned, the executive should have the final word.

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What is wrong about this, when the authority which grants this permission can refuse it without any reason? We are accepting in one of the provisions that they can refuse it without assigning any reason.

**Shri Kamath:** It is sought to be amended.

**Pandit Thakur Das Bhargava:** There is no amendment so far as I have seen. Even if there is an amendment, that amendment may not be taken as accepted. We would all oppose it. I submit that so far as the question of registration or naturalisation is concerned, it rests with the executive and the other thing also must rest with the executive. I am sorry that Shri Raghavachari has really misread this Clause. If he kindly reads clause 10, he will find that it does not apply to the nationals who are born here. Therefore, I submit that so far as refugees are concerned, they cannot be deprived of their nationality under clause 10. He was saying that Members of this House will be deprived of their nationality.

**Shri Kamath:** It was half in jest.

**Pandit Thakur Das Bhargava:** At the same time, if refugees are allowed to become citizens of this country by registration, then clause 10 (2) (d) will apply to them. It says:

"(d) that citizen has, within five years after registration or naturalisation, been sentenced in any country to imprisonment for a term of not less than two years;"

Supposing a man who was born in this country is sentenced to imprisonment of, say, 5 years or even transportation for life, can he be deprived of his right of being a citizen of India? Why should a person who has earned his citizenship under clause 5 or clause 6, be deprived of it if he is imprisoned for more than two years? There is absolutely no reason for this kind of discrimination. When the other discrimination has been removed, this discrimination should also be removed. May I tell the hon. Deputy Minister



[Pandit Thakur Das Bhargava] that this discrimination of the right, so far as the refugees are concerned, should not remain as it is here?

Objection has been taken to the fact that the judicial authority should be a Judge of the Supreme Court. I submit that a matter of this executive nature relating to the security or maintenance of the economy of a country should not be referred to the Supreme Court. A committee presided over by an officer with the experience provided here and two other gentlemen should be enough. We are not dealing with nationals of this country; we are dealing with nationals of other countries. In the Constitution we have given rights of equality before the law, rights of property, etc., to all the citizens of the world. We have not made any discrimination. If we make any discrimination, we know that the other countries will do the same against us. They will retaliate against us. I do not want that our government should behave in such a manner that without any reason a person should be deprived of his nationality. The District Judge should be given the power to decide this matter. The District Judge is the Sessions Judge; he can sentence a man to death, only the order is to be confirmed by the High Court. Even in this case, the order will have to be confirmed by the Central Government. Even our election petitions go to the District Judges and they decide them. I submit that we should have more faith in our judiciary and in our District Judges. What is the difficulty in giving this power to the District Judges—only lack of faith in our judiciary. I can understand this provision if there is a similar provision in other countries. In other countries, do you find that only Supreme Court Judges decide this matter?

**Shri Kamath:** What about your fighting speech on article 14 of the Constitution?

**Pandit Thakur Das Bhargava:** I do not remember my speeches; my friend may remember. But, may I read out article 14 to my hon. friend?

**Mr. Deputy-Speaker:** Does it refer to citizenship at all?

**Pandit Thakur Das Bhargava:** No, Sir. It refers to equality before law.

**Mr. Deputy-Speaker:** The hon. Member has got a knack of diverting the speech. Unless there is something of citizenship involved, in that, he need not refer to it.

**Pandit Thakur Das Bhargava:** I take your advice, Sir, but I should not be interrupted like this. If he intervenes he shall get a suitable reply from me also. Article 14 of the Constitution says:

“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

I heard Mr. Mukerjee say that we should be ashamed of ourselves if we enact a provision like this, because article 14 and the other articles giving fundamental rights apply to every person in the whole world. There is no discrimination at all. Therefore, in a matter of this kind where the security of India is involved, the executive should have the final word and they should be given the full right to see that the national of any other country may be deprived of his citizenship in proper circumstances. So far as nationals of this country are concerned, I do not want even the Government to be given the right of depriving any national of this country born here of his citizenship. He is a citizen by birth and not by naturalisation or registration; he has got as much right as any other person. Therefore, I submit that the Bill must be amended by this House in this particular respect which I have indicated. The House must look at it from the point of view of those who are rooted in this land and who have as much rights as any other person.

I submit that the provisions of this Bill must be changed in regard to the refugees, registration and certain other matters which I have pointed out. Thank you.

**Shri B. D. Pande** (Almora Distt.—North East): I am a supporter of this Bill, but I have to give some information and also receive some information from the hon. Deputy Minister. I live in the border district of the Himalayas and during the winter months the Lamas and Khampas come to my country, mostly for begging. They come and live here for six or seven months. We have not known what nationality they belong to and by whom they are governed. If they die here without any relation, their property goes to the police, because it is very difficult to transmit their property to their land beyond the Himalayas. Then there is the question of mountaineering. This has become a very great menace to the country. Whatever it may be, I want to say that so many persons go about here without passports.

Only recently, in my part of the border, near Taklakot, two Europeans, probably of U.K. domicile, were arrested. Who governs them? There is no passport. Why were they allowed without passports? It is on this point that I want to seek information. Of course the Home Minister Pandit G. B. Pant, who knows the conditions over there, is not here. I do not know whether Shri Datar knows the affairs of that part of the country. They come here. They have to be watched. In these days of trouble, they have to be watched: whether they are spies or whether they create any mischief in any part of our country. Who will watch them? That is the problem. Of course, you have the auxiliary force stationed there. There should be the passport system on that line of the border. They should not be allowed to come without any restraint or check. This is what I want to say, and nothing more. I am a supporter of the Bill. Who will govern these persons, how will they be governed, will they be allowed to come in with passports or without passports, that is the problem for the Government to solve.

**Shri B. K. Ray** (Cuttack): I am glad to voice my view that, after reading the Citizenship laws of various countries including the United States of America, United Kingdom and others, I pronounce that our Bill is as liberal as it can be. I have heard for the last two days various criticisms with regard to certain restrictive provisions which I consider to be essential, and which have been considered essential in the citizenship legislations in other countries which are proud of democratic institutions. But, these restrictions have been commented upon very seriously by certain hon. Members of this House. That is why I wish, initially, to go, not much in detail, but to a certain extent, into the history of the citizenship law in the U.S.A.

It will be admitted by all the Members of the House that citizenship is a subject on the law of which there is the greatest common measure of agreement amongst almost all the civilised countries. Besides, in order to impart universality and to avoid conflict of citizenship laws of different countries, there had been a convention at the Hague in the year 1930 in which they drafted certain articles and the Commonwealth countries—I do not know whether India is a party to it—have generally accepted it. One of the basic principles laid down there is that every country should see that its provisions do not make anybody stateless. Generally speaking, or I may go so far as to say, without exception, the modes of acquisition of citizenship are almost universal in all countries, namely birth, descent, registration, naturalisation and transfer of sovereignty of territories from one sovereign to another, which we call in this Bill as annexation of territory. In all these matters, broadly speaking, the principles are universal. When there is a provision for acquisition in the Bill, necessarily there should be a provision in the Act for termination and deprivation. In the matter of deprivation, in the matter of termination of citizenship rights, it has been

[Shri B. K. Ray]

claimed in this House by certain hon. Members that the right should be made freely justiciable, that the power of the State should be delimited and restricted as much as possible and there should be judicial brakes against the exercise of these powers. To this aspect of the criticism, I mainly address myself.

It must be admitted, as Pandit Thakur Das Bhargava has just now said, that the Republic is concerned with its safety and security, both internal and external. That heavy responsibility lies more upon the executive and upon this House than upon the judiciary. So far as the citizens are concerned, they are the source of strength of the State. Suppose, as amongst the citizens, there are political or social institutions which have subversive activities, do they not naturally undermine the strength of the State?

So far as the U.S.A. is concerned, their citizenship law had a chequered career. In their first convention where their Constitution was framed, there was absolutely nothing about citizenship except that the Congress was empowered to make the citizenship law as universal as possible. Until 1860 there was no citizenship law in the shape of a statute. During all this time, how was the citizenship right, its creation or determination, being governed? It was governed by the common law which the Americans claimed they were carrying from their home. According to that, birth was a mode of acquisition; descent also. It so happened that the Supreme Court in *Dredscott's* case held that the Negroes are not citizens and they should not be taken to be native born within the meaning of the common law which the people were carrying with them. That roused the conscience of the Congress and they started making laws for the purpose of citizenship and gradually abridged racial restrictions and ultimately at the end of 1952 they said that nobody should be denied citizenship rights, non-citizenship rights should be abridged,

because of race. But, with regard to the character, with regard to the status, with regard to the conditions, with regard to the safeguards in respect of naturalisation or registration, they are still very careful. Even though ineligibility because of race has been abolished, ineligibility because of opinion has become a more prominent feature of the U.S.A.'s naturalisation process. Necessarily, this feature also essentially affects the law of deprivation of citizenship.

By way of addressing the critics who insist upon judicial justiciability of the right and removal—removal of restrictions which empower the executive not to admit undesirable persons and to chalk out such persons, I should like to give a short history of U.S.A. Citizenship Law. First of all, in the (1916) Act of Nationality, the Congress of the U.S.A. excluded anybody who was a disbeliever in or opposed to organised Government or preached disbelief in Government. They thought that this doctrine will be quite sufficient to keep out persons who are believers in subversive activity. That was not found sufficient. They extended it by the Nationality Act of 1940 thereby excluding persons believing in or affiliated with groups working for the overthrow of the U.S.A. Government or killing its officials or the like; persons who give publicity to the doctrines mentioned above; persons who teach such doctrines, and persons who are members of such groups or associations as indulge in such acts. The intention was to exclude the Communist Party. B, saying this I should not be understood to have any animosity against the Communists either in this House or outside. Still, I am giving the history of a particular chapter in the U.S.A. Citizenship Laws in order to convince my learned colleagues as to how far it will be proper to entrust the matter, which involves State policy and solidarity and safety of the State, to the judiciary.

The object of the law, according to Congress, was to exclude the Communist Party. Then, it received a

different treatment in courts. They also had brought out an administrative publication called *Nationality Manual* in which they enlisted the Communist Party of the U.S.A. and the Socialist Workers' Party of America as organisations, members of which were to be excluded from the naturalisation or registration process. But the courts refused to hold the Communist Party to be a proscribed organisation, as it did not fall within the meaning of the Act.

Congress made another attempt to remove this difficulty in the Internal Security Act of 1950. Here again, in interpreting this Act, the courts threw the burden upon the Government to prove that the organisation was a Communist action organisation. Ultimately, this difficulty was attempted to be removed in the Immigration and Nationality Act of 1952 wherein it says that no person shall be naturalised who is a member of or is affiliated with the Communist Party of the U.S.A. As against this, something like article 14 of our Constitution was pleaded, namely that it was a discrimination between native-born citizens as opposed to those who were naturalised. There came a decision of the court which at least *sub silentio* confirmed the right of the Congress to treat native-born people differently from the naturalised citizens. Our Supreme Court has also laid down the principle that this equality clause under article 14 does not mean that every individual should be treated in the same manner and by the same law. It is open to the legislature to make different classes of people, to make different principles applicable to persons placed in different situations, and one particular person in a particular instance may constitute a class by himself. Therefore, there is no difficulty if we put some restrictions or if we are very strict in our law with regard to deprivation of the citizenship right in respect of persons who are undesirable. And the safeguard is there in the Bill namely that unless the Central Government is satisfied that it will be against the public interest or

that it will not be to the public good, the person can continue to be a citizen, and his citizenship should not be deprived. When all is said and done, there is that last safeguard and as the learned Deputy Minister has said, the Central Government is responsible to this House.

I am not a disbeliever in the judiciary. Rather, I am a strong believer in the judiciary, but with regard to matters of State policy, even in the United Kingdom, whose judiciary is held in high esteem all over the world, the Judges themselves have laid down certain propositions in which they say that the opinion of the Secretary of State is final in certain matters. It is held in England that so far as citizenship law is concerned, it is a national law, it is a municipal law, and even if it transgresses or is in breach of certain principles of international law, still the foreign country has to obey it, but not in such a manner as to compel His Majesty's Government to accept somebody as a citizen against their public policy. Therefore, the policy of the State is the final word, and with regard to that the only custodian is the Government which is responsible to the House. I submit that sufficient safeguard has been provided in our Bill, namely that a committee of enquiry presided over by a judicial officer having ten years' experience as a Judge may hold an enquiry and make a report, and also that the order of the prescribed authority is appealable to the Central Government. I think these two are quite sufficient to safeguard the valuable citizenship rights. To make it freely justiciable will be rather dangerous.

There is also another reason. There are certain matters, certain information papers, documents etc., which have to be kept confidential in the public interest and which cannot be produced in a public tribunal, which may contain the evidence for establishing the undesirability of the person to continue as a citizen of this country. If you make it justiciable, you will have to break through those

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confidential barriers and put everything before the court and thereby before the public and the world, causing extreme danger to the safety of the State. Therefore, in all countries, excepting a very few, such rights have not been made justiciable at large.

It has been said that the definition of "person" should include "companies" or "associations" incorporated or not or any corporate body. This again is a criticism with which I cannot agree. It has been stated on the floor of the House by a very eminent counsel and advocate that it is the opinion of the present Chief Justice of India in one of his judgments—then Mr. Justice Mukerjee—that companies are "citizens" entitled to fundamental rights enumerated in the Constitution of India. With great respect to him—I have read that decision—I say that that is not what the learned judge has said. What he has said comes to this, that the rights enumerated as fundamental rights and guaranteed under the Constitution are available to the company. That means a company can hold property and do this and that. He refrains from saying that they have been guaranteed to the companies. There lies a distinction between availability of rights and availability of guarantee. The rights are available. They were always available. They are still available, even if the companies are not citizens, but the guarantees are not available. The guarantees are only available to the citizens. At any rate, it is clear that within the Constitution the companies were never defined as citizens. So, how could the learned judge say that the guarantees were available to the companies? That is not the meaning at all.

Now, there is great difficulty in bringing them within the definition of a person, as Shri Datar has already pointed out. If we introduce them within the definition, I think we shall have to revise many other provisions of the Bill. As the hon. Minister has

pointed out, there will be great difficulty particularly with regard to defining termination or deprivation of citizenship rights in their case. Again, we shall have to make laws so as to deal with companies manned completely by Indian citizens, companies manned partly by Indian citizens and partly by foreign citizens and so on. There will be all these distinctions, and provisions will have to be made for all these cases.

If there is any fear or if anybody says that there is fear or apprehension that unless they are given citizenship rights they will not be entitled to hold properties, then I would say that he is completely wrong. I shall give you some simple examples. Suppose a deity, or a religious institution or a *mutt* is there, how can you give it citizenship rights? Can a deity be subjected to deprivation of citizenship? Can a deity be registered or naturalised? Yet, it can hold property like any citizen, and nobody can deprive a deity of its property without payment of compensation, even if it be that the Government have to acquire its property. So, in my opinion, the definition of 'person' is quite complete, and we cannot get in these organised corporate bodies into it.

I was a Member of the Joint Committee. I regret that I was late in attending it, or else I should have raised the question that I shall presently raise; I did not want to impede the progress of the Joint Committee by raising it later. With regard to acquisition by birth, the provision that is in the Bill is quite all right so far as it goes. We have said that every person born in this country, except children of diplomatic envoys and children of enemy aliens, will become a citizen of our country. But my point is that this provision is not complete. I have read very high authorities on this point. Suppose the Head of a State or a sovereign authority comes with his wife on a short visit to this country, and suppose while they are here, a child is born

to them; then, even though that person is not a diplomatic envoy or an enemy alien, yet his child cannot become the citizen of India. Now, what are the steps that have been taken by the other countries in this respect. In the U.S.A., in their fourteenth amendment to the Constitution, they have used the phrase 'born in the United States within its jurisdiction'. Similarly, in the United Kingdom, they have said 'born within the dominion of His Majesty and allegiance'. So, the word 'jurisdiction' in the U.S.A., and the word 'allegiance' in the United Kingdom save certain people who do not come within their jurisdiction from becoming their citizens. I should recommend this to the hon. Minister and I would request him to see whether some amendment could be made in regard to this matter. So far as these exceptions are concerned, they can only be stated as examples in the clause worded as 'born in India within its jurisdiction or allegiance'. I feel that the word 'jurisdiction' may be more appropriate. So, we may use the words 'born in India within its jurisdiction', and then give these two instances which are there by way of exceptions as illustrations, so that other cases that might arise may be considered accordingly.

Then, it has been urged that the form of oath which says that the person shall be bound to observe the laws of India is rather a restriction. I should say that it is rather less than what we should have. So far as citizenship right is concerned, it is not a right and privilege only; it also brings in certain duties. And what are the duties to be performed? The duties are amongst others to observe our laws. If somebody is not willing to observe our laws, then what does the word 'naturalisation' mean? The word 'naturalisation' should mean that he should be one of us in all respects, and particularly in respect of our loyalty to the State. He should perform the duties enjoined on him by the State, and so on.

In the United States of America, at one time it was a part of the oath that he shall not only bear true faith and allegiance to the Constitution but also bear arms for military purposes. Of course, that has been subsequently modified in a sense, for with regard to certain conscientious objectors, the court ruled their ineligibility saying that since they were not willing to take part in war, they could not without mental reservation adhere to the oath. Therefore, they have changed the form of the oath subsequently so as to include those people also, saying that though they may not bear arms, yet they will act under civilian directions in the army and will do all other kinds of acts in furtherance and progress of the war.

The last point that I want to address myself to is in regard to the deletion of South Africa from the list of Commonwealth countries. In the law, as I have said already, the greatest common measure of agreement is found. In all other countries, the maintenance of good neighbourly feelings has been the basis of legislation. We have got sufficient safeguard in this Bill in the reciprocity clause. If the people of our country are treated by the other sovereign States in a particular manner, we shall treat their people when they come here for registration or naturalisation in the same manner. I think that is quite a good safeguard. It will not be in keeping with the dignity of this House to be revengeful and to cut down the name of South Africa from the First Schedule.

**Shri Barman:** Does this interpretation apply to clause 11 also, namely that there should be mutual reciprocity?

**Shri B. K. Ray:** Yes.

One word more with regard to justiciability. In other countries, it is said that in the matter of registration and naturalisation the Secretary has the final voice. That is the law in the United Kingdom. The Secretary is not compelled to assign any reasons,

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nor is his order appealable. We cannot go further and consent to give it as much justiciability as possible.

**Mr. Deputy-Speaker:** What Shri Barman wants to know is this. In clause 11, the status of a Commonwealth citizen in India is different from that of an Indian citizen.

**Shri B. K. Ray:** So far as clause 11 is concerned, I think Shri Datar has given sufficient answer by saying that the status of Commonwealth citizenship has nothing to do with Indian citizenship.

**Shri Datar:** It cannot be equated with the other citizenship.

**Shri B. K. Ray:** He has already said that the two cannot be equated.

**Shri M. S. Gurupadaswamy:** Is it double citizenship then?

**Shri B. K. Ray:** No, that question does not arise at all. Still there is some power in the hands of the Central Government under clause 12. Clause 11 says:

"Every person who is a citizen of a Commonwealth country specified in the First Schedule shall, by virtue of that citizenship, have the status of a Commonwealth citizen in India".

Then clause 12 says what will be the rights of Commonwealth citizens in this country. It reads:

"The Central Government may by order notified in the Official Gazette, make provisions on a basis of reciprocity for the conferment of all or any of the rights of a citizen of India on the citizens of any country specified in the First Schedule."

Then, there is the definition of the citizenship law of the Commonwealth country.

**Shri Datar:** That is there in clause 2.

**Shri B. K. Ray:** So, if in the official Gazette, our Government does not notify the citizenship law of South Africa as the citizenship law of a Commonwealth country, then South Africa is excluded. So, sufficient guarantee is there in this regard.

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**Mr. Deputy-Speaker:** Is clause 11 governed by clause 12? Among citizens of foreign countries, there is a distinction made. One is about citizens of a member country of the Commonwealth—the Commonwealth countries are notified in the Schedule. The other relates to citizens of countries which are not in the Commonwealth. So far as citizens of non-Commonwealth countries are concerned, they can come in by naturalisation. So far as Commonwealth citizens are concerned, they have to get themselves registered. One becomes a citizen by registration and the other can become a citizen by naturalisation—of course, in the latter case, he has to give up the citizenship of his country. Now, in the case of clause 11, does that person have to undergo the process of registration himself or otherwise, independently of registration, has he got any rights here under the other clauses? Is it only for the purpose of differentiating him from a citizen of other foreign countries of the world, that clause 11 has been put in? Or is there any independent right attached to his status of Commonwealth citizenship in India, apart from the rights that have been conferred subject to the limitations imposed in the later clauses? That is the point.

**Shri B. K. Ray:** I will try to convince you, Mr. Deputy-Speaker, that in the provisions which are there already, we have enough safeguard without removing the name of the country of South Africa from the First Schedule.....

**Mr. Deputy-Speaker:** I am not on that point. All that I want to know is whether clause 11 confers on a Commonwealth citizen any rights apart from the rights that a citizen

of the Commonwealth can have under the other rules, or are they subject to those rights? If so, it is only a designation or a category. Otherwise, he has an independent status, apart from what is conferred in the earlier portion. Clause 5(1)(e) says:

“persons of full age and capacity who are citizens of a country specified in the First Schedule”.

They are all Commonwealth countries. In their case, citizenship is acquired by registration unless citizenship is granted by naturalisation which applies to other countries. There are particular restrictions and advantages. Now, unless any member of a Commonwealth country registers himself under clause 5(1)(e), does he have, independently of clause 5, by being a member of the Commonwealth and having the status of a Commonwealth citizen in India, any right of citizenship here?

**Shri Datar:** No.

**Shri S. S. More (Sholapur):** Clause 5 does not refer to Commonwealth citizens.

**Mr. Deputy-Speaker:** Yes. Clause 5(1)(e) says:

“persons of full age and capacity who are citizens of a country specified in the First Schedule”.

If they want to become citizens of India, they form a category of registered citizens. The world outside India is divided into categories—one, countries in the First Schedule, and the other, countries outside that Schedule. People of the First Schedule countries are entitled to certain privileges. They come by registration; others come by naturalisation. Naturalisation can be effected under the conditions prescribed in the Third Schedule.

**Shri S. S. More:** What is then the meaning of clause 12?

**Mr. Deputy-Speaker:** Does the hon. Member follow what exactly I am trying to say? **Shri Barman** raised

the question. There is no doubt that there is a difference in the category of citizenship which may be acquired. Citizenship can be acquired by registration by a citizen of the Commonwealth; in the other case, it can be acquired by a person who does not belong to the Commonwealth, who is not a born citizen of India—in this case, he can become a citizen by naturalisation.

**Shri B. K. Ray:** Exactly.

**Mr. Deputy-Speaker:** Under clause 5, a citizen of the Commonwealth can become a citizen of India by registration. Then there are clauses 11 and 12. Now, let us take the case of an Englishman. Does clause 11 confer any right upon such a person who does not register at all? An Englishman comes here. Under clause 5, he does not register. What rights has he in this country? Are his rights the same as the rights enjoyed by a foreigner from any other country? Or does he have more rights in this country under clause 11? Similar to clause 11, there is no other clause relating to any person in any country other than a country of the Commonwealth. There is no doubt a difference made. The Commonwealth citizen must register himself whereas the non-Commonwealth citizen comes by naturalisation. In addition to this difference, is there another difference sought to be made in favour of a Commonwealth citizen under clause 11? There is no similar provision for a citizen of a non-Commonwealth foreign country. If he does not choose to come by naturalisation, what is the position? Has a Commonwealth citizen any rights in this country otherwise than by registration? Has that person of the Commonwealth who does not come by registration any special privileges by being a citizen of the Commonwealth under clause 11?

**Shri Datar:** It is true, as you have correctly pointed out, that there are two categories recognised by this law. One is the category of ‘other foreigners’ who can become citizens only



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through the process of naturalisation. But we have also recognised another category, the category of Commonwealth citizens. Now, merely because it has been so recognised, either in the First Schedule or in the various provisions, it does not mean that they have certain other rights or privileges in India. What has been done in clause 11? The mere recognition of the fact that one who is a citizen of a Commonwealth country shall have the status of a Commonwealth citizen in India does not mean that he has the status of a citizen of India at all. Therefore, what I submit to you is this, that clause 11 does not take the case any further except to this extent that under clause 12 as also clause 5, read with the definition in clause 2, they can come in and get themselves registered. Also, on account of the fact that in certain Commonwealth countries there is discrimination exercised, certain restrictive provisions have been put in. Therefore, my clear answer to your question is that merely because he has the status of a Commonwealth citizen in India, he does not acquire *ipso facto* the status of a citizen of India. For that, he has to pass through a certain process. He acquires the status of a Commonwealth citizen.

**Shri Barman:** If he gets nothing else then why this?

**Shri Datar:** We have not passed any law by which we have given any particular status to the Commonwealth citizen. That is why I stated it was symbolical citizenship.

**Mr. Deputy-Speaker:** He wants to know why then this clause 11 is necessary.

**Shri Datar:** Clause 11 is necessary, as I stated yesterday, only as a circumstance showing symbolic existence of certain feelings of comradeship between Commonwealth citizens. Beyond that there is no value at all.

**Mr. Deputy-Speaker:** We shall put it the other way. Only for the purpose of differentiating one category

from the other, clause 11 is put in there.

**Shri Datar:** In a way it is true. It is only for the purpose of showing that we are going to treat them in a different way—on a different basis—that in one case it is enough if he registers and in the other he gets it in accordance with Schedule III.

**Shri Shree Narayan Das:** If any person from Commonwealth countries comes, you cannot refuse his application for registration.

**Shri Datar:** If he is eligible for registration, if there is the recognition of the nationality law of their country. That is a condition precedent.

**Shri Shree Narayan Das:** That will be there; but if it is observed, the application cannot be refused.

**Shri H. N. Mukerjee:** My feeling is that citizens of the countries mentioned in the First Schedule have a kind of midway position between an Indian citizen and a foreigner who can only become an Indian citizen by naturalisation and not otherwise. I say this because there was an Order made in 1950, on the 23rd of January, 1950, by the Governor-General under which article 367(3) of the Constitution was slightly amended and it was said—

“Subject to the provisions of any law made by Parliament, every country within the Commonwealth is hereby declared not to be a foreign State for the purposes of this Constitution.”

And, here, we have had umpteen answers to questions in the House where we wanted a list of foreigners in this country and members of the British Commonwealth were excluded from that list. Therefore, it seems to me that they are midway between Indian citizens and foreigners and they have therefore a certain differential advantage in that clauses 11 and 12 read together enable any Commonwealth citizen from any country in the British Empire to have the full rights of Indian citizenship, if, of course, reciprocity is there. That

is what Government says. I only wanted to clarify the position. There is certainly a differentiation between an ordinary foreigner and a Commonwealth citizen.

**Shri S. S. More rose.**—

**Mr. Deputy-Speaker:** No, no; I am not going to allow Mr. More. He never observes decorum and decency. When Shri Mukerjee is talking he gets up and starts speaking.

**Shri S. S. More:** I thought he had finished.

**Mr. Deputy-Speaker:** No; he has not finished.

**Shri S. S. More:** I was under the impression.....

**Mr. Deputy-Speaker:** There is no question of impression. He seems to have developed a knack for interfering when others are talking. I have been noticing it. What is the hurry? We are not in a hurry; let the other hon. Member sit down.

**Shri S. S. More:** You are unnecessarily hard on me.

**Mr. Deputy-Speaker:** I am really sorry. I cannot hear both the views here. I do not think hon. Members can hear all the Members who are speaking. I am not trying to make any unnecessary aspersion but I could not hear Hiren Mukerjee. He will have his say next. What is the impatience about? That is what I felt. Has Shri Mukerjee concluded?

**Shri H. N. Mukerjee:** I wanted to know the position and I gave you my reading of it.

**Shri Datar:** May I reply to his question? So far as the way in which he has described his concept, it is true that in a way the Commonwealth citizens are at a middling position. Under other Acts they are not recognised as foreigners and therefore they might get certain advantages. It is quite likely; I am not disputing that position at all. What I am placing before this House is that so far as the present Citizenship Bill is concerned,

it does not confer any special rights upon them at all except that they can come through the process of registration instead of through the naturalisation process.

**Mr. Deputy-Speaker:** The hon. Member may now conclude.

**Shri B. K. Ray:** I may add to what the hon. Deputy Minister has said in order to complete the answer to the criticism against the inclusion of South Africa in the First Schedule by saying that it is still in the hands of the Central Government not to treat South African citizens as Commonwealth citizens by using the power which is in their hands under clause 2 of the Bill, as it is the Central Government who only by notification can recognise their citizenship law as a Citizenship law of a Commonwealth country. Once their law is not recognised, a particular person who is a citizen in South Africa could not be called a citizen of a Commonwealth country here. So, that status under clause 11 can also be made unavailable to him.

With regard to registration, there is the proviso to 5(e) that the Central Government shall have regard to the conditions of treatment to our people in that country.

**Shri Frank Anthony** (Nominated—Anglo-Indians): **Mr. Deputy-Speaker,** I shall be very brief in my observations. First of all I want to thank the Deputy Minister who is here and the Home Minister and the Select Committee for having gone a long way to meet my request in the speech which I made before the Bill was remitted to the Joint Committee that there should be an amendment to clause 9 to enable members of my community because they were unaware of the implications of acquiring U. K. citizenship from not being penalised. I am grateful for the amendment that has made because under this amendment it would mean that those persons who may have registered as U.K. citizens between Independence and the 26th January, 1950 will not be deemed to have renounced their Indian citi-

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zenship. Sir, I feel, however, that the Deputy Minister may consider going a little further in this matter. I had requested that this concession should be made to cover the whole period between Independence and the date on which this Bill comes into operation. There were two main reasons for my request. I said that if we draw a line in between, it will mean making some kind of distinction between those who may have registered between 1947 and 1950 and those who may, for some reason, equally misguided, have registered between 1950 and the coming into operation of this Bill. Since the Citizenship Bill has been delayed and since there has been this vacuum, I feel that if this concession is to be made Government should consider making it for the whole period between independence and the coming into operation of this Bill.

There was another aspect which I had in view when I made this plea and that was that the application of clause 8 should be made uniformly. Clause 8 envisages a very salutary principle that no one should be allowed to renounce his Indian citizenship unless he first makes a declaration and has that declaration registered. I feel that if this intervening period is not accounted for, then from 1950 to the coming into operation of this Bill, for this period of 5 years between 1950 and 1955, this clause will not be attracted and the effect will be this. Persons may have *sub rosa* acquired either U. K. citizenship or the citizenship of some other country which our Government may not be aware of. They may still continue in government service and Government will continue to keep them in government service without knowing that they have *sub rosa* acquired the citizenship of another country. That is why I felt that the period should cover all the years between 1947 and 1955 so that it would also protect Government so that no Indian will be allowed to be heard to say, 'I renounced my citizenship by voluntarily acquiring the

citizenship of another country', because there is no obligation to make a declaration. If this section 9 is amended there will be an obligation for those who may have acquired foreign citizenship between 1950 and 1955 to make a declaration. And perhaps there are people in Government service today who are masquerading as Indian citizens, who were of course employed as Indian citizens, who between 1950 and 1955 have voluntarily acquired U. K. or other citizenship and who are continuing to get the benefits of Indian citizenship, who are working in positions of responsibility and who, in fact, have surrendered their Indian citizenship. What control has Government got over such people? That is why I say that for this reason also the period should be extended from 1950 to 1955. No one will be allowed surreptitiously to renounce his citizenship, but if people want advisedly and deliberately to do so, let them do so, and I hold no brief for those persons. That is why I say that every person who may have acquired citizenship during the period 1947 to 1955 should only be able to renounce his Indian citizenship by making a declaration and having it registered. I want the Government to apply this provision in order to protect their own interests. I gave another example when I spoke it last time. I know what is happening in many of foreign firms. A number of people who were originally Indian citizens have acquired foreign citizenship. These firms are obliged to submit returns to the Government of India showing the number of Indians and foreigners employed. What do they do? Perhaps they are misled by the employees or perhaps they do it themselves deliberately, and in order to inflate the number of Indian employees, they include people whom they know and we know to have surrendered their Indian citizenship. What check can there be on those people? For that reason, clause 9 should be amended, so that clause 8 will apply uniformly with regard to

renunciation of Indian citizenship. No one will be deemed to have renounced his citizenship unless he makes a declaration and registers it, and then the Government will know where they stand and the person also will know where he stands. There may be people today who have renounced their citizenship by *sub rosa* acquiring foreign citizenship, who are getting all the benefits in Government service and in these foreign firms, and the Government is none the wiser.

There is only one other clause in respect of which I feel some observations should be made and that is clause 10. A great deal has been said by Members from both sides of the House on this particular clause. This is the clause with regard to deprivation. My hon. friend, Pandit Thakur Das Bhargava, has said that in the interests of the security of the country, it is very necessary to have this deprivation clause vested under executive discretion. I agree partly with it, but I am in difficulties for several reasons. I do not know whether we are completely right in discriminating between citizen and citizen. I know that those who have become citizens by naturalisation or by registration are different from those who are citizens by birth, but when once they become citizens, are Government entitled to discriminate between them from the point of view of deprivation? After all, before a person is accepted as a citizen, Government has unqualified powers to say whether it should accept him or reject him. But once the person is accepted as a citizen, I feel that it is an unwarranted discrimination to be able to deprive a person of his citizenship purely by executive fiat. Very salutary amendments have been introduced and Government is to be congratulated. For instance, the appointment of the Enquiry Committee is there. But still I take a very serious view of the right of citizenship. What in effect happens is that when a person is deprived of his citizenship, it means that he is killed legally and I think it is far worse for a person to be killed

legally than to be killed physically. It is much more merciful to hang a person than deprive him of his citizenship in a wanton manner. Once a person has become a citizen of this country—if he is a citizen by birth, it is all right, but even if he becomes a citizen by naturalisation or by a process of registration, he is a citizen—and you have accepted him in your citizenship fold, should he then be exposed to be deprived of his citizenship by executive fiat? It means that you make him a Stateless person and what can be more terrible than the condition of a Stateless person?

**Shri B. D. Pande:** Only if he misbehaves, he will be deprived of his citizenship.

**Shri Frank Anthony:** That again is a fallacy. We have a whole string of reasons why a person can be deprived of his citizenship and I am not certain that many of those reasons cannot be abused by the executive. My friend, Pandit Thakur Das Bhargava, said that it is right and proper that when the security of the country is undermined, a person should be subjected to deprivation. I agree with him there entirely. But that is not the only reason why a person can be deprived of his citizenship. There is a large number of reasons; some of them are vague. For instance, take this particular reason—

“that citizen has shown himself by act or speech to be disloyal or disaffected towards the Constitution of India as by law established;”.

I can understand if it had stated “towards the country or the Republic of India.” Every day the Government is disloyal to the Constitution of India and we cannot keep pace with the number of amendments that they have been making to the Constitution of India. What do you mean by “disaffection or disloyalty to the Constitution of India”? These words have acquired no specific legal connotation. Every day we are being told that the Constitution is sacrosanct. What is sacrosanct about the Constitution of

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India? After you have implemented your States Reorganisation Commission Report, somebody may say, and a whole lot of people are still there who may say, that they are not prepared to accept that report and that they want their own States. There may be so many agitations and there may be a specific agitation to amend a particular provision in the Constitution and people will say "No, it is an ill-conceived provision, it is an immoral provision, it is a monstrous provision" and so on and so forth. Will that be construed as disloyalty and disaffection to the Constitution? I do not understand it. I say that it is the normal right of any one to seek changes in the Constitution. If the Government can make changes in the Constitution, why should not a citizen have the same right? If the reason is "security of the State", I would have said "Yes" and I would have fully agreed because "security of the State" is an expression which has acquired a certain specific connotation, a certain recognised legal connotation. But we are using phrases which can be interpreted in many ways and which may be interpreted by way of an abuse of executive authority. We have an Enquiry Committee and that is a step in the right direction. Without pointing at any individual, I may say that a Sessions Judge may be a better man than a Supreme Court Judge because it is all a question of personality and of individual worth. Those of us who are practising as lawyers know that even with your Advisory Committees or even with High Court Judges on them there is abuse of executive authority, and still people are preventively detained by the executive for *mala fide* reasons and the Advisory Committees have not been able to operate as a check on the abuse of executive authority. This Committee, by itself is no guarantee that the executive may not abuse its authority.

We have this expression "public

good"; it may mean many things. The expression "public interest" was something which had completely diluted the whole concept of security. Judges of the Supreme Court have said that by using the expression "public interest" instead of "security of the State", a coach and four had been driven through the original provisions in the Constitution. There are so many reasons why persons can be deprived of their citizenship and now it will still rest essentially or entirely in the discretion of the executive. I feel that this matter of deprivation of citizenship is a vital matter. It amounts to killing a person legally and I am of the view—it is an unqualified view—that to kill a person legally is to do him much greater injury than to kill him physically.

There has been a suggestion that this matter should be placed entirely at a justiciable level and that a person who has been deprived of his citizenship should have the right of appeal to the Supreme Court. I feel there is nothing wrong with that suggestion. One hon. speaker who preceded me, a distinguished jurist, said that it is not possible in these matters to remit the considerations which may have weighed with the Government for judicial scrutiny. There may be something to be said for that as the Government may have excellent reasons, reasons which cannot be disclosed for depriving a person of his citizenship rights. Here it is not a question of admitting a person to citizenship. I can understand, at the stage of admission the Government need not disclose reasons. But, here a person who has once been admitted as a citizen is being deprived of his citizenship and you are rendering him stateless; you are depriving him of the country. If the Supreme Court has said that its paramount function is to act as the guardian and the sentinel of the rights of the citizens of this country what would be illogical or irrational in saying that the deprivation of citizenship—which is the greatest of

all fundamental rights because from the fact of citizenship flows all other fundamental rights—should also be a matter over which the Supreme Court should stand as the sentinel. In article 32 we have charged the Supreme Court with the primary function of watching over the fundamental rights of the citizens of this country. Then what is there irrational in the plea that it should watch over the deprivation of citizenship also? That is the very basis of our fundamental rights. From citizenship flow all other fundamental rights. Why should not that also be remitted for final custody to the Supreme Court? There is nothing wrong in it. I say, if you look at it from an objective point of view there is nothing wrong because the ultimate consideration is that we are depriving a person of everything which makes his life worth living—his right of citizenship. If the Government is not prepared to go so far, because they say they will not be able, perhaps, to disclose everything for judicial scrutiny, then I would earnestly make the plea that this Committee should be presided over, I say, by a Judge of the Supreme Court. I am not impressed by the argument: "What are we going to do: are we going to make Judges of the Supreme Court chairman in every sort of committee?" This is not every sort of committee. I cannot conceive of any body which is more important than this. Depriving a person of his liberty is important enough. We are depriving him of his citizenship. That, I say, is something which we cannot compare with any other right. And, the cases are not going to be many. I cannot even think of the Government depriving 5 or even 6 people of their citizenship every year; I mean, these cases are going to be rare, very rare, because in the present conditions there cannot be many people who will acquire citizenship by naturalisation or registration. They will be a handful and from among them how many are likely to expose themselves to

deprivation? So, if the Government is not prepared to make this fully justiciable at least concede this request that has been made by a number of Members of this House that this Committee should be presided over by a Judge of the Supreme Court.

**Shri N. P. Nathwani (Sorath):** Mr. Deputy-Speaker, as I differed with a majority of the members of the Joint Committee I have appended a note of dissent on the question of the status of an association or a body of individuals.

As the Bill has emerged from the Joint Committee the definition of the word 'person' has been further narrowed down. In my humble opinion this definition goes too far. I think that it would create a situation which would result in injustice and hardship to Indian corporations. In so far as it seeks to exclude associations of persons though unincorporated and though all its members are Indian citizens, it is rather a dangerous innovation. In order to appreciate the effect of this definition we should bear in mind that under our Constitution certain rights are conferred upon persons and some of them are available only to Indian citizens. Yesterday my hon. friend Shri N. C. Chatterjee spoke at length on this aspect of the matter and explained how it would work harshly to exclude associations of persons from the advantages which are being made available under our Constitution to such bodies.

Before I come to the question of incorporated bodies I shall like to deal with the question of associations of persons which are not incorporated ones. Take for instance the case of partnership firms, the case of a joint Hindu family firm or the case of clubs and such other associations. Let us also assume that all the members of such bodies are Indian citizens. Now, these associations do not constitute in the eye of law a distinct entity. They are a collection of Indian citizens and under article 19 certain rights, namely, the

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right to carry on business, right to own or dispose of property etc. are conferred upon citizens and it cannot be, I submit, our intention to exclude such associations from the advantages which are available to them under this article.

Then, what is the position so far as the judicial interpretation is concerned? In various cases which came up before our High Courts and where all the members of a partnership firm were Indian citizens it was never seriously suggested that a firm is not a citizen under article 19. Let no one remain under any doubt about this position. The matter has been set at rest by the decision of the Supreme Court in the case which is known as the case of United Motors. It was a case from Bombay in connection with the Sales Tax Act. There were 7 petitioners who invoked the aid of article 19, sub-clause (1) and complained that their right to carry on business was violated by certain provisions of the Sales Tax Act. The question arose in the High Court, in the first instance, whether the petitioners were citizens within the meaning of article 19. In that case out of the 7 petitioners 6 petitioners were limited companies but the seventh petitioner was a firm of whom all the partners were Indian citizens. The High Court, therefore, said that as the right was available to every one of them the question of companies being citizens or otherwise does not arise. They considered that the fact that partnership consists of Indian citizens was enough to entitle them to come under article 19. The matter did come before the Supreme Court and in that case also the point was argued. Of course, in the reported decision there is no reference but I have learned from the counsel who appeared on both the sides that no one even suggested at that stage that a firm of which all partners are Indian citizens, was not a citizen for the purpose of article 19.

Now, by this definition, we are seeking to exclude them which, I

submit, is a very radical departure from the existing position. It is true that so far as incorporated bodies are concerned, there is a divergence of opinion amongst the High Courts. But the majority of the High Courts before whom such a question arose, have emphatically decided in clear and unequivocal terms that a corporation of which all the members were Indian citizens, was a citizen. They said that it could never have been the intention of our Constitution-framers to exclude them from the fundamental rights guaranteed under article 19(1)—(f) and (g). Very recently only, the Allahabad High Court has taken a different view. But—I am speaking subject to correction—in that case, no reference has been made to the decision taken by the Bombay High Court in which the Court took the view that a corporation is a citizen.

**Mr. Deputy-Speaker:** For what purpose?

**Shri Nathwani:** For the limited purpose of article 19(1)—(f) and (g). That was the only purpose, because the various courts which have held a corporation to be a citizen have followed the test laid down by the Supreme Court in the case of *Chiranjitlal v. the Union of India*. They said certain rights are conferred upon persons but those rights are not confined to natural persons. You have to see to the nature of the right and the language employed to find out whether such rights are available to corporations or not. Following this test or guidance, the various High Courts like Bombay, Calcutta and Madras, and even the High Court of Rajasthan, have taken the view that a corporation is a citizen.

**Mr. Deputy-Speaker:** For all purposes?

**Shri Nathwani:** Only for the limited purposes.

**Mr. Deputy-Speaker:** How does it arise, so far as the citizenship right is concerned? In this naturalisation

law, how does it arise? Nobody deprives the citizenship right.

**Shri B. K. Ray:** Because of the definition of "person", it arose.

**Shri Nathwani:** If my hon. friend would bear with me and not interrupt me, I shall proceed to say that I referred to the decision of the present Chief Justice Mukerjee in the case of *Chiranjitlal v. the Union of India*. There, he said that in order to find out whether the rights which are guaranteed under Chapter III of our Constitution are available to corporations or not, you have to see to the nature of the rights. For instance, the right to vote is conferred on citizens under our Constitution. The corporations, being a pure fiction of law, cannot exercise that right. For instance, the right to become a judge of the Supreme Court cannot be given to a corporation. Can it ever be appointed as a judge? That is why the court says, "Look to the nature of the right". If we scan all the articles under which certain rights are conferred upon the citizens the only article which survives is article 19 (1)—(f) and (g). These are the only rights which can be made available to legal entities like corporations. That is why I am submitting that when we are trying to lay down the law rather exhaustively, we should avail of this opportunity to include them and not to exclude them, because, I shall presently refer to the trend of opinion both in England and U.S.A. to show that the trend is in favour of including corporations within the definition of citizens.

**Mr. Deputy-Speaker:** Have they done so?

**Shri Nathwani:** Yes; I will presently cite the United States Constitution. I will cite Mr. Willis' who is a very eminent authority on the subject. In every question dealing with the constitutional aspects which come up before the Supreme Court, Willis' authority is referred to.

**Mr. Deputy-Speaker:** The hon. Member wanted only seven minutes.

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**Shri Nathwani:** If I had not been interrupted, I would have finished now.

**Mr. Deputy-Speaker:** My interruption should not be counted.

**Shri Nathwani:** I want to point out that in the eye of international law, a corporation has both residence and domicile. Yesterday, my friend Shri N. C. Chatterjee referred to an English decision to show that even the status or attribute of nationality can be conferred and is contributed by English law to a corporate body. That is the English position. Let any one who wants to dispute that, argue out to the contrary and we shall deal with it.

**Pandit D. N. Tiwary (Saran South):** For what purpose is it conferred?

**Shri Nathwani:** For nationality. England has not got a written Constitution. We have got a written Constitution where certain rights are sought to be conferred upon citizens. In U.S.A., I understand that corporations are not excluded in the definition of the word citizen. They have got a written Constitution, but there, the judiciary intervened and relaxed the rule and tried to put interpretations and extended the scope and made available various rights which were only available to citizens. In support of this, I want to read only a few lines from Willis to show what he has got to say on the subject.

**Mr. Deputy-Speaker:** Have they amended their nationality law?

**Shri Nathwani:** They have got dual citizenship in America and the learned author tries to point out that their original Constitution having been framed as far back as in the 18th century they could not have included corporations within the original Constitution. But then the power of reason prevailed over the reason for ritual and the Supreme Court intervened, expanded the scope and made certain rights available to the corporations. Here we are doing the



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very reverse of it. Even our High Courts and our Supreme Court made available those rights to associations, all of whose members were Indian citizens.

**Mr. Deputy-Speaker:** What is the advantage of introducing them in this Bill?

**Shri Nathwani:** We have now given a definition for the word 'person'. It excludes associations of persons. Therefore, it should not exclude firms and joint family firms.

**Mr. Deputy-Speaker:** This is not a General Clauses Act.

**Shri Nathwani:** But what is the effect?

**Mr. Deputy-Speaker:** What is the harm. The hon. Member has been arguing that the corporations have got only a right under article 19(1) (f) and (g) and, for a limited purpose they have been held to be citizens. Now, we are excluding them. The hon. Member said that for certain advantages other countries have included the corporations.

**Shri Nathwani:** Is it not a very valuable right to a citizen to carry on his business, to undertake and acquire property especially when the corporations, companies, etc., are increasing both in size and number, is it our intention that business activities of these companies should be restricted and that there should be no protection?

**Shri B. S. Murthy:** Yes, please.

**Shri Nathwani:** If you want to do it, you can do it.

**Mr. Deputy-Speaker:** What are the rights given by the Constitution? No law framed by us here—unless it is an amendment to the Constitution—can restrict the rights conferred by the Constitution. The courts have declared that for the purposes of article 19(1)—(f) and (g), a citizen can acquire and possess the right. What are the rights that are taken away by this law?

**Shri Nathwani:** That is what I am trying to explain. You want to carry on a certain business. If I have partnership with you, then it is a firm and the firm does not enjoy the same right, though both of us are Indian citizens.

**Mr. Deputy-Speaker:** But the articles (f) and (g) would continue still.

**Shri Nathwani:** That was the position up till now. Now, you are seeking to take away that right.

**Mr. Deputy-Speaker:** It is not a General Clauses Act.

**Shri Nathwani:** Supposing I join with others to carry on business, in partnership, and some restrictions are sought to be placed on the business activity of my firm, I go and file a petition for a declaration that the impugned legislation is invalid and violates my fundamental rights, then you say, "You collectively own a particular property and have the right to carry on the business, and so you are not a citizen". That is what my hon. friend Shri N. C. Chatterjee tried to explain yesterday. That is my grievance.

**Shri Shree Narayan Das:** If there is no doubt, that can be done by amending the Constitution and not this Act.

**Shri N. P. Nathwani:** Is there any doubt at all? Only if there is a doubt, we can think of other alternatives. I say you are doing something which is not warranted by the Constitution.

**Mr. Deputy-Speaker:** Will it be all right if we say, "except for purposes of article 19(f) and (g)"?

**Shri N. P. Nathwani:** I shall presently deal with the matter as to under what circumstances and in what cases you can confer citizenship rights on associations. But before that, I want to cite Mr. Willis to show that the present trend is to make available these rights of citizenship

to the corporations. I crave the indulgence of this House and I will not quote more than 10 or 15 lines.

**Mr. Deputy-Speaker:** The corporation is born here; why should it not be given citizenship by birth? There are four kinds of citizenship—by birth, by descent, by registration and by naturalisation.

**Shri N. P. Nathwani:** There are two opposite views here. If we are guided by article 5 of our Constitution, it refers to birth of a person and when a person is born, it implies a gender whether male, female or even neuter; but you cannot include legal entities like corporations. The other view is the view taken by the High Courts of Bombay, Rajasthan and Madras. They were guided by article 19 of the Constitution and they thought that it could not have been the intention to exclude corporations from the right to acquire property or carry on business. These are the two opposite views. In the case of the Bombay High Court, the learned Chief Justice lamented the serious omission in our law. But leaving that aside, to resume my argument, I was submitting that even the suggestion of Mr. Willis was that United States of America should make a corporation a citizen. At page 848 of his book on American Constitution, Will says:

"The young "Fathers" of the Constitution apparently never gave the matter of corporations a thought. This is one of the great omissions of the original document. Yet, by the Constitution which has been made by the Supreme Court, corporations today are protected in most respects as much as natural persons and in some respects more than natural persons."

The learned author goes on to say that shows:

"the extent to which the power of reason has prevailed over the power of ritual."

I am submitting this to those who are talking about birth, gender and rituals. The author goes on to state how the rights of citizen are made available to corporations there. He says:

"Corporations may have been given too much protection in some respects, to be referred to hereafter, but there are some respects, in which they have not been given enough protection and that protection as a citizen is one."

In his opinion, protection as a citizen should be given to the Corporations. He says further:

"All it would be necessary to do to accomplish this result would be for the Supreme Court to declare that corporations are citizens for this protection."

That is what the learned author says. According to me, we are reversing this process. The argument that has been given by the hon. Deputy Minister is this: He says that it would create anomalies and difficulties and that it would be difficult to find out how the alleged citizenship of a body is to be terminated. I say that if you lay down the conditions subject to which a corporate body or other association has to acquire citizenship, it is easy to decide as to when that status would terminate. For instance, take a partnership firm. If you confer upon them this status on the condition that all the partners or, say, three-fourths of the partners are Indian citizens, then when that condition is broken, certainly that association loses its character as a citizen. Therefore, I do not see any difficulty about this. If you say that all its members should be Indian citizens and it should be incorporated in India, where is the difficulty about termination of its status? As soon as any outsider becomes a member, that condition is broken and the company loses its character as a citizen I, therefore, submit that the matter should be given a serious thought and we should at least modify the definition of the word "person"

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so as to include those associations, whether incorporated or not, all of whose members are Indian citizens. Thank you, Sir, for giving me an opportunity to speak on this aspect of the Bill.

**Shri B. K. Das (Contai):** Sir, when the Bill was last considered, I pleaded that special provisions should be made for the migrants from Pakistan for acquiring citizenship. The matter was thoroughly discussed and Pandit Thakur Dasji and other friends also gave cogent reasons. Yesterday and today also some of my friends including Pandit Thakur Dasji have dealt with this matter thoroughly. As this matter concerns my part of the country also and the number of refugees who would be affected by the provisions of this Bill will be not less than 25 lakhs of people, I consider it necessary to go into further details of this matter. On the day of the commencement of the Constitution i.e. 26th January, 1950, the number of refugees in this country were those who came mostly from West Pakistan. At that time the number of refugees coming from East Bengal was only a few lakhs. Moreover, I think the number of those who came under the registration clause, article 6 of the Constitution, is also not large, because I do not know how many of the refugees took advantage of that clause, especially because they had to satisfy the six months' residence qualification in this country. So, lakhs of people are without any right of citizenship today in our country. The question that troubles us is how from the point of justice and from the point of practical consideration also, we can give to these people the Indian citizenship with honour without any disrespect or trouble to them.

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The provisions that are before us, that have undergone some changes in the hands of the Joint Committee are not adequate. Although we are happy

that under clause 10, these refugees, who will be admitted to citizenship by registration under article 6 (b) (ii) of clause 5(1) (a) of this Bill, are excluded from the deprivation clause, still the disadvantages under which the migrants from Pakistan will have to labour have not been remedied. Shri Barman, speaking earlier in the day, brought to the notice of the House one important point. Whereas the Constitution provides that only 6 months' residence would be necessary at the time of the registration, under clause 5(1) (a), one year's residence has been prescribed. We do not know why this period has been enlarged in this provision. We do not know why, at the time of the passing of the Constitution it was thought that for a refugee who came at that time, six months' residence was quite enough and why, at the present moment, one year's residence is considered necessary. Further, when a migrant has to undergo the process of registration, he will have to adduce evidence or proof of his being a person of Indian origin. It is true that some of them would be holding migration certificates; some of them would be holding border slips and some of them may have been registered as refugees by this time. There was a time of vacuum when neither migration certificates, nor border slips were there. Again, there are people who have just crossed the border and come into this country without holding any proof of their coming to this country. Today, these people will have to give proof of their being genuine migrants from Pakistan. At this stage, I want to draw the attention of the House to a definition that has been given to 'refugees' in West Bengal for the purpose of their availing themselves of the benefits of rehabilitation. According to that definition, if a migrant produced an affidavit, it is not considered enough for the purpose of his being admitted as a genuine refugee. He has to adduce further evidence in support of that affidavit. Documentary evidence would be better. If

not, certain other evidences are necessary. If such evidence becomes necessary also in the present case, I think it would be a great hardship on the refugees to prove that they are genuine refugees. They have also to give proof of their residence for one year before they make an application. Further, all the persons of full age, persons of 18 years of age, will have to take an oath of allegiance. To take this oath of allegiance or to produce an affidavit, they will have to appear before a magistrate. On the last occasion when the hon. Home Minister replied to the debate, he pointed out that it would not be very difficult or impracticable for the refugees to undergo this process of registration. I do not know how the refugees, many of them illiterate persons, living in remote places, would take advantage of this process of registration when they will have to take—(all the adult persons both male and female)—the oath of allegiance and produce evidence of their being genuine refugees on affidavit, if necessary. The immediate right that would accrue from citizenship is the right of being enlisted as voters. I understand that the qualifying date for the coming elections has been fixed as 1st March 1956. Those who have come to this country one year before that date, if they acquire citizenship, will be able to enlist themselves as voters. There are only two months before us. If we want to give the right of franchise to these migrants from Pakistan after admitting them into our citizenship, I do not know how it will be possible for giving this right to them. There is a chance that these refugees, who ought to be given the right of franchise, may be deprived of their franchise, and may not be able to acquire citizenship and the right of being enlisted as voters. If, as the hon. Deputy Minister pointed out yesterday, we consider these people as Indians—they were Indians and they will be Indians—why not exempt them from all these rigours and oaths of allegiance, and proof of their being of Indian origin and genuine migrants, etc.?

**The Minister of Defence Organisation (Shri Tyagi):** Oath of allegiance is not a rigour; it is a privilege.

**Shri B. K. Das:** They will have to appear before a magistrate. How can illiterate people, males and females, living in remote places throughout the country, go before a magistrate and take the oath of allegiance? It may be a privilege for an educated person who is more suitably situated; not for an illiterate person, living in a remote village.

**Shri Dhulekar (Jhansi Distt.—South):** No, no; they must do it.

**Shri B. K. Das:** They may have been excluded from this clause. If their case had been considered separately, all these processes would not have been necessary. That is the plea that so many of us have been making, that the case of these refugees should be treated separately and they must be taken out of clause 5, namely, the registration clause. They should have been put in a separate category and a process evolved for their acquiring citizenship. That has not been done. That is my complaint. However, I would request that if it is found impossible or unacceptable to the Government that they should be treated separately and if they cannot be taken out of the registration clause, at least under clause 18 of the Bill rules should be so framed that there may be the least difficulty for these people getting themselves registered as citizens of India.

**श्री श्री नारायण दास (दरभंगा मध्य) :**  
नागरिकता विधेयक के सम्बन्ध में विचार करते समय इस बात पर मेरा ध्यान जाता है कि आखिर नागरिकता का बंधन किस बात का बंधन है? नागरिकता किसी राज्य के साथ व्यक्ति विशेष का कानूनी सम्बन्ध है। इस सम्बन्ध से राज्य के प्रति उस व्यक्ति के कर्तव्य का भी ज्ञान होता है और उस राज्य की भी जवाब देही होती है कि अवस्था विशेष में उस नागरिक का क्या

[श्री श्रीनारायण दास]

संरक्षण करे। ऐसी बात, ऐसा सिद्धान्त अगर हम अपने सामने रखते हैं तो सब से पहली बात जो मैं सदन के सामने रखना चाहता हूँ वह यह है कि हमें नागरिकता को बिलकुल सस्ता और सरल नहीं बनाना चाहिए। किसी दूसरे देश के नागरिक को, चाहे वह कामनवेल्थ (राष्ट्रमंडल) का नागरिक हो, चाहे वह किसी दूसरे देश का नागरिक हो, ऐसा दरवाजा नहीं खुला छोड़ देना चाहिए कि जो चाहे हमारे देश में आकर इस देश की नागरिकता का अधिकार प्राप्त कर ले। अभी जैसा कि कल किसी माननीय सदस्य ने कहा था कि हमारे देश के नागरिक को जितने भी अधिकार हैं, हर नागरिक को बिना किसी भेदभाव के मिल जाता है। हर नागरिक को राष्ट्र-पति का पद प्राप्त करने का अधिकार होना चाहिये जो कि सर्वोच्च सरकारी पद होता है। वह सब से बड़ा पद है, उस पद पर पहुँचने का उसको हक होता है। ऐसी हालत में अगर हम अपने देश का दरवाजा हर एक आदमी के लिये खोल देंगे, चाहे वह कामन-वेल्थ के किसी देश का नागरिक हो और चाहे और किसी दूसरे देश का नागरिक हो, तो मैं समझता हूँ कि हम एक उचित और समझदारी का कार्य नहीं करेंगे और मैं उसे मुनासिब नहीं समझता। इसलिये नागरिकता का कानून बनाने के समय हमको इस बात का धूरा ध्यान रखना चाहिये।

[PANDIT THAKUR DAS BHARGAVA in the Chair]

और जैसा कि सभापति जी, आपने अभी पहले अपने भाषण में कहा था कि कोई भी विदेशी यहां हिन्दुस्तान में आकर बस जायें और किसी का जन्म यहां पर हो जायें तो वह हमारे देश का नागरिक हो जायेंगा, चाहे हमारे देश के प्रति उसकी भक्ति हो या न हो, हमारे देश के प्रति श्रद्धा हो या न हो। हमारे जो संविधान

के आदर्श हैं, उनको वह माने या न माने, लेकिन महज चूंकि उसका जन्म इस देश में हो गया और जब तक वह स्वयं स्वेच्छा से इस नागरिकता के अधिकार को छोड़ नहीं दे तब तक वह हमारे देश का नागरिक बना रहेगा। मैं समझता हूँ कि यह उचित और ठीक नहीं है और कोई ऐसा रास्ता निकालना चाहिये कि कम से कम एक बालिग व्यक्ति को जिसका कि जन्म भारत में हो और जिसके माता या पिता या दोनों यदि इस देश के नागरिक नहीं थे, तो उनको बालिग होने के बाद इस तरह की कोई घोषणा करनी चाहिये, कोई ऐसी शपथ लेनी चाहिये कि वह हमेशा हिन्दुस्तान के प्रति वफादार रहेंगे और देश के प्रति श्रद्धा और निष्ठा रखेंगे। जो यहां जन्म लेते हैं और जिनके माता पिता यहां के रहने वाले नागरिक हैं, जैसे कि हम लोग हुये हालांकि हम शपथ नहीं भी लेते हैं, तब भी यह माना जाता है कि हम संविधान के प्रति भक्ति भाव रखते हैं। इस लिये मैं चाहता हूँ कि कोई ऐसा रास्ता निकालना चाहिये कि कम से कम ऐसे व्यक्ति जिनका भारत में जन्म हुआ हो और जिनके माता या पिता या दोनों अगर हिन्दुस्तान के नागरिक नहीं थे, तो उनको बालिग होने के बाद कोई बाजाब्ता कानूनी शपथ लेनी चाहिये कि वे हमेशा हिन्दुस्तान के प्रति वफादार रहेंगे और देश के प्रति श्रद्धा रखेंगे और कोशिश करेंगे कि जिस तरह से और भारतीय नागरिक इस देश में रहते हैं उसी तरह वे भी यहां संविधान और देश के प्रति आदर और निष्ठा का भाव रख कर यहां पर रहेंगे, इस तरह का समावेश अगर विधान में होता तो ज्यादा अच्छा था।

दूसरी बात मैं यह कहना चाहता हूँ जैसा कि अभी बहुत से माननीय सदस्यों ने कहा कि हिन्दुस्तान का विभाजन देश की जनता की राय से नहीं हुआ, चाहे वह आज जो

पाकिस्तान है उस पाकिस्तान के रहने वाले हों, या जो आज हिन्दुस्तान है, उसके रहने वाले हों, दोनों जगहों की जनता की राय नहीं ली गई और उस वक्त पर सारे अवि-भक्त हिन्दुस्तान के नेताओं ने यही मुनासिब समझा कि देश का बंटवारा कर दिया जाय और एक हिन्दुस्तान और एक पाकिस्तान बना दिया जायें, तो वह विभाजन कर दिया गया। अब वह शलत निर्णय था या सही निर्णय था, इस समय मैं उसकी बहस में नहीं जाना चाहता और न ही उसके लिये मेरे पास समय है। अविभक्त हिन्दुस्तान के जितने नागरिक हैं उनको स्वेच्छा से जहाँ वह रहना चाहें, उनको रहने का अधिकार होना चाहिये। अगर कोई व्यक्ति पाकिस्तान में रहना चाहें तो पाकिस्तान में भी उनके लिये नागरिकता का दरवाजा खुला रहना चाहिये। कोई भी हिन्दुस्तान का आदमी अगर जाकर पाकिस्तान में बसना चाहे, तो बिना किसी हिचक के, उसको वह तमाम नागरिकता के अधिकार जो वहाँ के पाकिस्तानी नागरिकों को प्राप्त हैं, उनका अधिकारी हो और पाकिस्तान में उसको बसने की छूट होनी चाहिये और उसके लिये नागरिकता का दरवाजा खुला रखना चाहिये। साथ ही अब पाकिस्तान से जो लोग यहाँ आकर के रह गये हैं और किसी कारण से, वे समझते हैं कि उन का वहाँ रहना किसी भी दृष्टि से, आर्थिक दृष्टि से, सामाजिक दृष्टि से या शासन के दबाव अथवा अनुचित व्यवहार होने के कारण वे वहाँ पर नहीं रहना चाहते और वहाँ से ऊब कर हिन्दुस्तान में आना चाहते हैं तो उस समय तक जब तक कि वह यहाँ पर आते रहेंगे, तब तक के लिये मैं समझता हूँ कि उन के लिये नागरिकता का दरवाजा खुला रखना चाहिये। देश का विभाजन हमने कर लिया और उन की राय हम ने नहीं ली और यदि वह इस देश के नागरिक बनना चाहें और बसना चाहें और हिन्दुस्तान के प्रति वफादार हों तो

उन के लिये दरवाजा बन्द करना और हम को कामनवेल्य (राष्ट्रमंडल) के जो देश हैं, उन के नागरिकों के साथ ब्रैकेट करना और रखना, मैं समझता हूँ कि यह बहुत बड़ा अन्याय है और उसे दूर करना चाहिये।

सभापति महोदय, जैसा कि ।

और मैं भी यही समझता हूँ कि कोई इस<sup>1</sup> म इस तरह का प्राविजन (उपबन्ध) क चाहिये जिस से उन को बिना किसी हिच-किचाहट के अगर हिन्दुस्तान में वह रहना चाहते हैं, हिन्दुस्तान के प्रति वफादार हैं, वफादारी की शर्त नम्बर १ है, और अगर कोई पाकिस्तान का आदमी यहाँ आये और वह वफादार न हो तो उस का वफादारी की जांच हमें बहुत कायदे और ध्यान से करनी चाहिये और उस की वफादारी साबित होने पर ही उसे यहाँ बसाया जाय और नागरिकता के अधिकार प्रदान किये जायें। अगर वह कहे कि मैं हिन्दुस्तान में रहना चाहता हूँ और उस देश के प्रति भक्ति और श्रद्धा रखता हूँ, तो उस को बिना किसी हिचकिचाहट के यहाँ की नागरिकता दे देनी चाहिये और इसलिये इस विधेयक में जिस तरह के परिवर्तन करने की जरूरत हो वह परिवर्तन करना चाहिये।

एक माननीय सदस्य : जांच करने का क्या ढंग हो ?

श्री श्रीनारायण दास : एक बात मैं और कहूंगा कि थर्ड शेड्यूल में जो क्वालि-फिकेशंस फौर नेचुरलाइजेशन, नागरिकरण के गुणों का उल्लेख किया गया है। नेचुरलाइ-जेशन की ठीक हिन्दी मुझे नहीं मालम "नागरिककरण" मेरी समझ में हिन्दी में उपयुक्त शब्द इस समय आता हैं, नागरिक-करण के सम्बन्ध में जो शर्तें आप ने रखी हैं और जो शेड्यूल नम्बर ३ में दी हुई है, ठीक हैं, लेकिन उन में एक शर्त और १ रखनी चाहिये और कामनवेल्य कंट्रीज (राष्ट्र-

[श्री श्रीनारायण दास]

मंडल के देशों) के नागरिकों के रजिस्ट्रेशन के सवाल के लिये भी यह शर्त रहनी चाहिये कि अगर किसी देश में वर्णभेद बर्ता जाता है हिन्दुस्तान के नागरिकों के साथ, या हिन्दुस्तान के जो उद्भव व्यक्ति हैं उन के साथ अगर कोई वर्णभेद किया जाये, व्यवहार से या कानून से, तो उस देश के लोगों को चाहे वह कामनवेल्थ के रहने वाले भी क्यों न हों, इस देश में रजिस्ट्रेशन (पंजीबद्धता) के जरिये नागरिकता का अधिकार नहीं देना चाहिये, मैं स तरह की बात शेड्यूल (अनु-सूची) नंबर ३ में जोड़ना चाहूंगा और जहां पर कामनवेल्थ नागरिकों के लिये रजिस्ट्रेशन का जिक्र आया है, वहां पर भी एक शर्त रखना चाहिये कि अगर किसी कामनवेल्थ कंट्री में वर्णभेद रंग के नाम पर या जाति के नाम पर किया जाता है या कानून से और व्यवहार से इस तरह की पालिसी (नीति) बर्ती जाती है, तब उस देश विशेष के नागरिक को रजिस्ट्रेशन (पंजीबद्धता) का अधिकार भी नहीं देना चाहिये। इस तरह की शर्त अगर वहां पर जोड़ दी जाये और ऐसी व्यवस्था कर दी जाय तो मैं उस को ठीक और उचित क्रम समझूंगा . . . . .

श्री धूलकर : चाहे उस देश के मजलूम लोग ही यहां पर भाग कर आये हों ?

श्री श्रीनारायण दास : मजलूम अगर भाग कर यहां आते हैं तो उन के वास्ते रेफ्यूजीज (शरणार्थियों) का कानून मौजूद है, फारनर्स ऐक्ट (विदेशीजन अधिनियम) मौजूद है, उन तमाम कानूनों के अन्दर हम उन को शरण देंगे। सवाल तो यहाँ पर नागरिकता के अधिकार प्रदान करने का है और नागरिकता का अधिकार हम उन को जल्दी नहीं देंगे। नागरिकता का अधिकार तो उन को जैसे कि नेचुरलाइजेशन के शेड्यूल नम्बर ३ में दिया हुआ है, इस देश में ४, ५ या ७ वर्ष रह जाने के बाद वह

अधिकार मिल सकता है और उस के अन्दर वे आ जायेंगे।

विधेयक के क्लॉज ५ के अन्दर जो सब क्लॉज २ है उस में थ्रोथ आफ ऐली-जिएन्स (वफादारी की शपथ) के शब्द आये हैं। जहां तक मेरा खयाल है पहले विधेयक में यह दिया गया था कि व्यक्ति केवल गवर्नमेंट (सरकार) के प्रति वफादार हो, या वह गवर्नमेंट के प्रति किसी प्रकार का असन्तोष न फैलावे। उस को हटा कर कांस्टिट्यूशन आफ इंडिया एज बाई ला एस्टैब्लिशड (विधि द्वारा निर्मित भारत का विधान) कर दिया गया है। मैं इस से सहमत नहीं हूँ। जैसे कि माननीय सदस्य श्री ऐन्थनी ने कहा कि यद्यपि यह बात ठीक है कि हम लोगों ने संविधान के प्रति वफादारी की शपथ ली है, लेकिन इस का यह मतलब नहीं है कि हम उस संविधान में परिवर्तन नहीं चाहते हैं। इस देश के अन्दर सामाजिक, आर्थिक और राजनैतिक न्याय की स्थापना के लिये अगर कान्स्टिट्यूशन होती है तो उस को करना चाहिये और हम भी करेंगे। इसलिये हर नागरिक को यह अधिकार प्राप्त है कि वह संविधान के अन्दर परिवर्तन करने के लिये प्रचार करे, जनता के बीच जाये, परिवर्तनों के पक्ष में प्रचार करे, ताकि समय पर संविधान में संशोधन हो सके। इसलिये सब बखेड़े में न जा कर मैं यही कहना चाहता हूँ कि "जो राष्ट्र के प्रति वफादार हो", "राष्ट्र के प्रति भक्ति रखता हो" यह शब्द होने चाहिये न कि कान्स्टिट्यूशन (संविधान) या कान्स्टिट्यूशन आफ इंडिया एज बाई ला एस्टैब्लिशड" (विधि द्वारा निर्मित भारत का संविधान) भारत के प्रति वफादारी तथा भक्ति की जो ऐलीजिएन्स (निष्ठा) है वही पर्याप्त होनी चाहिये। जैसे कि ऐलीजिएन्स टू दि किंग (सम्राट के प्रति निष्ठा) होती है या एलिजिएन्स टू दि स्टेट (राज्य के प्रति निष्ठा) होती है। यह मेरी समझ में नहीं

आता कि जिस संविधान में रोज ब रोज परिवर्तन हो सकता है, जिस में परिवर्तन करना जनता आवश्यक समझती है, उस के प्रति भक्ति की शपथ लेना कहां तक ठीक है। जहां तक संसद का प्रश्न है हो सकता है कि इस प्रकार की संविधान के प्रति शपथ लेना ठीक हो, लेकिन एक नागरिक के लिये इस प्रकार की शपथ लेना मुनासिब नहीं होगा।

**श्री बी० एन० मिश्र** (बिलासपुर-दुर्ग-रायपुर) : अगर कोई भारत माता की जय बोले तो क्या उस की वफादारी मालूम हो जायेगी और उस को नागरिकता दे देनी चाहिये ?

**श्री श्रीनारायण दास** : स्टेट के प्रति भक्ति, कानून के प्रति भक्ति। जैसा माननीय सदस्य कहते हैं कि संविधान के प्रति शपथ लेने का मतलब है संविधान की रक्षा करना और उस के प्रति वफादार रहना, उसी प्रकार राज्य के प्रति शपथ लेने का मतलब होगा राष्ट्र के प्रति वफादार रहना और उस की रक्षा करना।

मैं वकील नहीं हूँ, लेकिन मेरे कई वकील मित्रों ने यहां बहस की कि (person) व्यक्ति की जो परिभाषा है उस के अन्दर कम्पनी (समवाय) या एसोसिएशन (संस्था) को भी लाना चाहिये। मैं ने संविधान को पढ़ा है, जब नथवानी साहब बहस में भाग ले रहे थे उस समय भी मैं ने उन से सवाल पूछे, लेकिन जहां तक फंडामेंटल राइट्स (मूल अधिकारों) का प्रश्न है, उस में जो अधिकार दिया गया है वह केवल नागरिकों को ही दिया गया है और नागरिकों की परिभाषा संविधान के अध्याय नं० २ की धारा नं० ५ में दी गई है। उस अध्याय के अन्दर जो परिभाषा दी गई है उसी के अनुसार मैं समझता हूँ हाई कोर्ट्स (उच्च न्यायालय) और सुप्रीम कोर्ट (उच्चतम न्यायालय) को अपने निर्णय दिये हैं। उन्होंने ने कहा है

कि इस परिभाषा के अन्दर जो नागरिकता की शपथ है वह बिल्कुल सीमित कर दी गई है, अर्थात् जिस का देश में जन्म इत्यादि हो, यह व्यक्ति विशेष के लिये, मनुष्य के लिये है न कि किसी संस्था या कम्पनी के लिये। अगर इस के सम्बन्ध में न्यायालयों में शक पैदा होता है तो उस के लिये जरूरी है कि जहां पर मूल अधिकार का अध्याय संविधान में है वहां सिटिजन (नागरिक) का अर्थ इस प्रकार से साफ कर दिया जाय कि सिटिजन के अर्थों में संस्था या कम्पनी भी आ सके। मैं समझता हूँ कि यह जो विधेयक पेश है उस में केवल मनुष्य के लिये है कि वह कैसे हमारे देश की नागरिकता को पा सकता है या किस तरह से हम उस को अपने देश की नागरिकता से वंचित कर सकते हैं। इसलिये इस विधेयक में संस्था या कम्पनी का जिक्र करना समीचीन न होगा।

इस विधेयक के अन्दर दिया गया है कि किसी हवाई जहाज में चाहे वह रजिस्टर्ड (पंजीबद्ध) हवाई जहाज हो या अनरजिस्टर्ड (पंजीरहित) यदि किसी महिला के बच्चा पैदा हो जाता है तो बच्चा उस देश का नागरिक होगा जहां समुद्री जहाज या हवाई जहाज रजिस्टर्ड हुआ रहेगा या जिस देश के वे जहाज होंगे। चूंकि हमारा देश और पाकिस्तान दोनों मिले हुए हैं और यहां की ट्रेनें वहां जाती हैं इसलिये इस सम्बन्ध में भी कुछ नियम होना चाहिये कि ट्रेनों (गाड़ियों) में पैदा हुए बच्चे की नागरिकता क्या होगी। मैं एक उदाहरण रखता हूँ। अगर हमारे देश की ट्रेन पाकिस्तान जाती है और किसी हिन्दुस्तानी महिला के पाकिस्तानी क्षेत्र में जा कर बच्चा पैदा होता है तो जो कानून हमारे यहां बनाया जा रहा है उस के अनुसार उस का बच्चा कहां का नागरिक होगा ? मैं समझता हूँ कि अगर वह हिन्दुस्तानी महिला है और उस का पति हिन्दुस्तान में रहता है तो भले ही



[श्री श्रीनारायण दास]

पाकिस्तानी क्षेत्र में बच्चे का जन्म हुआ हो, उस को भारत का जन्मा हुआ बच्चा समझना चाहिये परन्तु मौजूदा धारा के अनुसार वह भारत का जन्मजात नागरिक न हो कर बंशोद्भव (by descent) नागरिक होगा। ऐसा संशोधन होना चाहिये जिस से भारत के नागरिक की सन्तान का जन्म अग्रर ट्रेन के अन्दर पाकिस्तान में हो तो वह भारतीय नागरिक समझा जाये।

मैं इस बात की ओर भी ध्यान दिलाना चाहता हूँ कि हमारे संविधान में यह तो दिया गया है कि हमारे देश का नागरिक किसी दूसरे देश की कोई उपाधि नहीं ले सकता है, लेकिन जहाँ तक मेरा खयाल है किसी भी कानून में हम ने यह नहीं कहा कि यदि कोई व्यक्ति इस तरह से उपाधि ग्रहण कर ले तो उसे क्या दण्ड दिया जाय। मैं तो समझता हूँ कि इस प्रकार की दण्ड व्यवस्था हर नागरिक के लिये होनी चाहिये, पर यदि सब के लिये न हो तो कम से कम जो रजिस्टर्ड नागरिक हों या जो नेचुरलाइजेशन (देशीकरण) द्वारा हमारे देश के नागरिक हो गये हों, उन लोगों के लिये तो जरूर होना चाहिये कि यदि वह किसी दूसरे देश की उपाधि ले लें तो वह हमारे देश के नागरिक न रह सकें। देश की नागरिकता से वंचित करने की जो धारयाँ हैं उन के सहारे यदि कोई व्यक्ति नेचुरलाइजेशन द्वारा या रजिस्ट्रेशन (पंजीबद्धता) द्वारा भारत का नागरिक बन गया है और वह संविधान की धारा के खिलाफ किसी विदेश की उपाधि ग्रहण कर लेता है तो उसे या तो देश की नागरिकता से वंचित कर दिया जाये या उसे किसी प्रकार का दंड दिया जाये।

जो बाहर के रहने वाले हमारे देश में पंजीकरण अर्थात् रजिस्ट्रेशन के द्वारा नागरिक बन गये हैं वा जिन को देशीकरण (Natura-

lisation) द्वारा हमारे देश की नागरिकता मिल गई है उन के लिये किसी अवधि तक यहाँ रहना कानून द्वारा आवश्यक करार दे दिया जाय। यह नहीं होना चाहिये कि जितने भी समय के लिये चाहे वह हमारे देश में चले आयें और उतने दिनों के लिये नागरिकता के अधिकार ले लें। मैं समझता हूँ कि एक निश्चित अवधि होनी चाहिये कि वह इतने वर्ष तक यहाँ अवश्य रहें। साथ ही जैसा, सभापति जी, आप ने कहा, अग्रर हिन्दुस्तान का कोई नागरिक १५, २० वर्ष बाहर रहे और किसी समय यहाँ न आवे तो भी हमारे देश का नागरिक बना रहे, लेकिन उस का आना जाना यहाँ पर कुछ तो रहना चाहिये, इसलिये इस सम्बन्ध में भी कुछ समय निश्चित कर दिया जाय तो अच्छा होगा। मैं समझता हूँ कि माननीय मंत्री जो इस को स्वीकार कर लेंगे।

मुझे कई बातें कहनी थीं, लेकिन चूँकि अब समय नहीं है इसलिये अधिक नहीं कहूंगा। इन शब्दों के साथ जो विधेयक हमारे मंत्री महोदय ने रक्खा था और जिस में कि संयुक्त समिति द्वारा कुछ सुधार किया गया है उस का समर्थन करता हूँ और इस के लिये संयुक्त समिति के माननीय सदस्यों तथा मंत्री महोदय को धन्यवाद देते हुए यह उम्मीद करता हूँ कि जो मुझाव मैंने दिये हैं उन पर विचार किया जायेगा।

**Shri S. S. More:** I do concede that the Bill as it has emerged from the Joint Committee has undergone some appreciable improvement, particularly as regards clause 10(2)(b). Formerly, disaffection towards the Government of India was a ground for deprivation of citizenship, but now that has been replaced by disaffection towards the Constitution of India, But even this change does not appear to me to be a happy change.

Under clause 5(2), one has to take an oath for the purpose of getting the citizenship right by registration. Similarly, a person who wants to acquire the right by naturalisation also has to take the oath of allegiance to the Constitution. Shri Frank Anthony has referred to this aspect already, and has pointed out that the Constitution is a changing document. It always undergoes mutations as the conditions in the country change. Sub-clause 2 (b) of clause 10 reads:

“that citizen has shown himself by act or speech to be disloyal or disaffected towards the Constitution of India as by law established;”

If the disloyalty or disaffection to the Constitution becomes evident, then Government would be perfectly justified under this provision in depriving that man of his citizenship.

My submission is that many of us are disaffected to the Constitution. We are already disaffected to the Constitution. We find that this Constitution which seems to be a federal Constitution is really in the nature of a unitary Constitution, and as such, the autonomous powers of the State are frequently sacrificed for certain central purposes. But my disaffection to the Constitution, my dissatisfaction regarding the Constitution, has nothing to do with my loyalty to the country, I mean the State. I am not talking of the country as a geographical unit, but I am talking of the State, the legally constituted State. A State is something which continues. State is something which does not undergo any mutation or change, and if I have got the seeds of patriotism in me, they will always be expanding and flowering, so that my loyalty goes on developing as the State goes on really becoming a Welfare State. But my regard for the Constitution, my satisfaction about the Constitution may not appear on the horizon. But it will unfortunately be a ground for depriving one of citizenship.

Now Shri Raghavachari made out the point when he spoke about clause 10 that keeping all this power in the hands of the State executive is something full of dangerous pregnancy. Theoretically, I would concede with many Members that the executive government ought to be the sole judge for the purpose of admitting foreigners to the citizenship of this country as well as the time or the grounds on which they might be deprived of that right. But theoretical concession is one thing and practical experience may be something different. Unfortunately, we are new to the democratic set-up. In England, one can trust the executive government much more freely and without any fear on his part because they have developed a democratic tradition. But take, for instance, a country which is new to the democratic set-up. Here in a country which has come out of feudalism, a country which has come out of some ancient customs and ancient autocracy, it frequently happens that men who are petty-minded, who are mean, somehow, unfortunately, climb into seats of power, and the moment they sit in the seats of power protected by those seats, they try to be vindictive, they do not like opposition, they do not like people who have backbone and can stand against them. As far as I am concerned or Shri Kamath is concerned, we do not run the risk of being deprived of our citizenship because we are citizens by birth, by origin. But take the case of a foreigner who has come to this country, naturalised and acquired citizenship, and has become perfectly qualified to be a candidate for Parliament. He comes to Parliament, he is elected to Parliament and somehow he remains in the Opposition Benches, I am not talking about the present executive government, but it is not difficult to visualise what some future government, in which some persons with petty mind happen to be the Ministers, will do. They have seen that a man who has become a citizen by naturalisation has crept into the seat of the opposition. They cannot

[Shri S. S. More]

unseat him because there is article 329 of the Constitution; he must be unseated by an election petition. There are no grounds on which an election petition can be launched or successfully fought. Then they will find out a way. Well, he has acquired citizenship by naturalisation or he has acquired citizenship by registration. The executive government have power under clause 10 to deprive that man of his citizenship. They will put that machine into operation, pull the necessary string. The result will be that the man will cease to be a citizen of the State. Under our Constitution, no person can be a Member of this House unless he is a citizen of this country. These things are not only the shadows or the creation of my imagination. No country is always fortunate in having men of tolerance, abundant tolerance, who can look to the Opposition with some respect.....

Shri Tyagi: As we have today.

Shri Kamath: Who are the 'we'?

Shri S. S. More: I request Shri Tyagi not to provoke me to make some unpalatable observations regarding himself.

Shri Kamath: Make them; he will stand it.

Shri Bhagwat Jha Azad (Purnea-cum-Santal Parganas): He will be bold enough to face it.

Shri Kamath: He can take it.

Shri S. S. More: Such a case is quite possible. Therefore, though I theoretically concede that this matter ought to rest with the executive government, in the light of my own experience, I have a different conviction, because, unfortunately, I have developed the habit of standing like a rock against those who sit in power and receiving some knocks, whether deserved or underserved.

Shri Kamath: Giving knocks also.

Shri S. S. More: I do say that being non-violent, I never retaliate.

My submission is that such a case is possible and the executive government will have to think out whether some protection ought not be given by way of some justiciable remedy, because the courts only will be able to give the same protection.

As regards Commonwealth, I find that the different provisions in this particular Bill are rather hazy and do not give us a clear conception of the rights and privileges of Commonwealth citizens. They will require some chiselling because reading clauses 11 and 12 along with clause 2, I am not yet in a position to understand what are the real implications. And in my excitement, I did something: I tried to intervene and received a knock. All the same, even that knock has not brought any more light to me. I feel that this Commonwealth citizenship has to be placed on a more precise foundation so that we should know where that citizenship stands and what are the rights, privileges or disadvantages or the points of differentiation in regard to a Commonwealth citizen.

I will again revert to the point I made when I spoke last when the Bill was referred to the Joint Committee. I feel that we should not stick to this idea of Commonwealth, which gives us a stinking smell due to our past relationship with the Britishers. Even according to Mr. Eden, the Prime Minister of England, whose statement was read out by Shri Kamath, the queen still happens to be the connecting link between the Commonwealth countries. We have sworn allegiance to the Constitution of India. The President is the sole head of our Government here and I am not prepared to recognise, even for a pot of gold, my allegiance to the Queen. I would say that I am loyal to the President, because he represents this country, and whatever may be the

advantages accruing as a Commonwealth country, particularly by being associated with the UK, I am not prepared to say that I accept that authority—whether of the Queen or anybody else. But I will again say, why not develop a Panch Shila citizenship?

**Shri A. M. Thomas (Ernakulam):** Is it anywhere known?

**Shri S. S. More:** My hon. friend Shri A. M. Thomas, has asked me a question. But why should we not be the first in the field? We have developed this habit of going tamely after someone else. Here I am reminded of Shakespeare's drama 'Henry the V' in which Henry the V says "We are makers of manners and not tame followers". So let us set an example which other Asian countries can follow. Why should not India be followed by Asian countries? I find under the benign and sobering influence of Panditji's foreign policy, the whole of Asia is looking to us for guidance. If we have to give effective guidance to the whole of Asia which is trying to stand on its legs, we should develop this Panch Shila citizenship. The recent enthusiastic reception given to the Soviet leaders was due to the fact that they have signed the Panch Shila declaration along with our Prime Minister, and the people of India warmly responded not because they were Russian leaders, not because they were great revolutionaries, but because they were linked up with us indissolubly for the maintenance of peace as declared in Panch Shila. Why not give citizenship to a country which is linked up with us on the doctrine of Panch Shila? Why not give citizenship to Russia which is wedded to Panch Shila along with China which is also wedded to Panch Shila? Why confer Commonwealth citizenship on Australians and Canadians and the people of United Kingdom who are not sympathetic towards us so far as our Goa claim is concerned? They are remaining silent conveniently and against our own interests. We are

conferring citizenship on these souls who do not look kindly towards us while we are denying equal rights to those who are more indissolubly and more honestly and faithfully linked up with us for the purposes of maintenance of peace.

I do not want to take more time. I feel this Bill should be amended in this direction. Let us introduce something. Now the Panch Shila countries are developing into a firm brotherhood. Let us recognise that brotherhood and try to exchange citizenship with such countries because such exchanges will not be at our cost.

I need not go to the minor clauses to which you have already referred. Some of the minor defects will have to be removed. But, I am prepared to resume my seat after saying that Shri Datar and particularly the Prime Minister may take these suggestions into consideration and, if not in this Bill, at least in some other amending measure they may come out with Panch Shila citizenship and that will really be a constitutional beginning of a relationship which will go on extending and serve as a sort of guide and beaconlight to all Asian countries.

**Shri Sadhan Gupta (Calcutta, South-East):** When I first saw this Bill before it was referred to the Joint Committee, I had a sense which was a kind of mixture of shame, exasperation and distress. Now, the Joint Committee has gone into that Bill. It has made certain changes, certain changes of a desirable character no doubt. But, as far as the fundamentals are concerned, it has made practically no alterations. When I speak of fundamentals, I mean the outlook of the Bill, firstly, regarding our displaced brothers from Pakistan and secondly regarding those who are called Commonwealth citizens.

The first impression one gets on reading the Bill is that it is a copy of the British Nationality Act, 1948.

[Shri Sadhan Gupta]

That is only a first impression. When we read deep into the Bill, we find that it is not a mere draftsman's lethargy, not a mere inability to think out a better draft and therefore a copying of the British Nationality Act but it is done with a deliberate purpose, with a purpose that is unpatriotic, with a purpose that is slavish and so, the ultimate impression one irresistibly gets of this Bill is that slavery is writ large in every important provision of the Bill. This kind of slavishness, this kind of unpatriotic behaviour is to be found when we compare the treatment meted out to displaced persons with the treatment that is meted out to those who are called Commonwealth citizens.

India was partitioned on a two nation theory basis. Every Congress leader, from top to bottom, assured the minorities who were to remain in Pakistan that India would welcome them if they suffered in view of the partition. By such promises they secured the agreement of the minorities to the partition. I can say that regarding the minorities of my part of the country, the minorities of undivided Bengal. Their consent was secured exclusively on those promises. Those minorities had played a very honourable part in winning the freedom of the country. Their concurrence to partition was secured on the basis of that particular promise. So, it is crystal clear that when we were partitioning the country on the basis of the two nation theory, our country could never repudiate the claims of those minorities who were left behind in Pakistan to an honourable reception in this country should they desire to come out here. There can be no doubt about it that this was our human duty in view of the lurch in which we were leaving them. But it was also our sacred moral duty in view of their contribution to the achievement of freedom of our country and it was almost a legal duty in view of our repeated pre-partition promises. What have we given them

instead? What have we given them in this Bill? We have given them registration. They are not to be *ipso facto* citizens; they are to be citizens only by registration. People who had come to contribute so much to the freedom struggle are to become citizens only by registration. What kind of registration, I will come to it later. They are not recognised as *ipso facto* citizens. To add insult to injury, we put them in a similar category with foreign government servants.

If you look at clause 5 of the Bill, you will find that they are placed in the same class with citizens of foreign State in government service in this country and they are given the right to register. This kind of treatment is bad enough from the point of view of sentiment or emotion, particularly when we remember their contribution to the freedom struggle and the sentiments with which they agreed to partition. What did the refugees think when they made the contribution to our freedom struggle? Did they expect to be citizens of Pakistan or did they expect to be citizens of an undivided India or the India which remained after it was compelled to divide? There can be no doubt about it. It is grossly unfair, it is indecent, I would say, under these circumstances, in view of their contributions, in view of their expectations, to put them in a category of citizens who are inferior to the citizens of India and who have to come in only by the process of registration. This difference and the emotional considerations that it involves are bad enough. But, what we find is that it is not a mere matter of sentiment; it is a deliberate intention to treat our displaced brothers from Pakistan as foreigners and as a sort of semi-helots and inferior citizens and to suspect their loyalty all the time.

In the first place, we give them the right of registration and this right is not a very great right. It is a grace. Clause 5 says that the Government "may register". Any person from

Pakistan who has been displaced from there cannot claim citizenship as of right. He is to get it only by the grace of the Government. He has to abide by the grace of the Government. Is it a fair treatment to be accorded to them? Unlike citizens by birth or descent, they have to take an oath of allegiance. You and I have not to take an oath of allegiance, but a refugee has to take an oath of allegiance, allegiance of loyalty. It implies that the loyalty of that person is less than yours or mine. Is it a fair treatment to be given to the refugees? I say nothing about the worries of taking the whole family to register and to swear the oath, perhaps over very long distances; I say nothing of the fees that they may have to pay. Apart from these considerations, which are vital for people like the refugees, who are bound to be poor, who are bound to be of very limited means, the fact that they should be treated on a different footing from the way you or I or any other born Indian is treated is an invidious distinction: that is a distinction which no patriotic Indian can tolerate.

In the third place, unlike the citizens by birth or descent, one body of displaced persons or rather one body of persons who are covered by article 5(c), namely, those who were settled in the territory of India for a long time though they or their parents or grand-parents were not born in the territory of India, stand the risk of being deprived of their citizenship, sometimes even in a body. For example, many persons from East Bengal had been residing in Calcutta for a long time although they were not born in Calcutta or in any part in the territory of India—their parents or even grand-parents might not have been born in such territory. In my case, for example, I was saved only by the accident of the fact that my mother happened to be born in Gaya in Bihar; otherwise I would have fallen in that category. In that case, the Government would have been free to deprive me of my citizenship because I would have come under

article 5(c). These are the things we mete out to the refugees. In the British Nationality Act, provisions similar to these are applied to naturalised citizens and that is understandable, because a naturalised citizen is a foreigner and there is scope for doubting his loyalty and some safeguard is necessary. But why should the same provisions be applied to the refugees? Has the Government courage enough to declare that it suspects the loyalty of the refugees as a whole or even of a substantial portion of them? I assert that every person displaced from Pakistan, who wants to come to India, is an Indian citizen by birth-right and that he or she is every inch a citizen of India as any of us here, any of the Minister, of the Central or State Governments or any Member of Parliament or anybody here. I assert and affirm that to require or even to suggest proof of loyalty on their part before accepting them as citizens is presumption and I challenge the Government to proclaim this policy openly.

Before leaving this part of the subject, I cannot but record my apprehension and emphatic protest against clause 10(2)(b) which, though amended by the Joint Committee, nevertheless is objectionable and I hope to deal with it at greater length when I speak on the amendments.

I have shown you the treatment meted out to the refugees but the enormity of this treatment and the unpatriotic and slavish outlook is underlined by the provisions regarding Commonwealth citizenship. Clause 12 enables the Central Government to confer all or any of the rights of citizenship on Commonwealth citizens. Refugees must prove their loyalty by swearing an oath of allegiance, but a Commonwealth citizen, a legal or notional subject of Britannic Majesty is under no such obligation to prove his allegiance. He is not required to take an oath of allegiance, and yet he can have the right of citizenship. The Government is so sure of his loyalty that it has not considered it necessary

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to make him renounce his other citizenship before taking up the citizenship of India. What is the justification for this? Reciprocity, it is said. The British Nationality Act provides for it, ergo, we too have provided for it. In the case of Britain Commonwealth citizens were former subjects and it flatters their imperial pride or vanity that they could still be taken in as citizens of their country. The British Nationality Act makes the position of Commonwealth citizens similar to that of British subjects. Even if you choose to call it their magnanimity, they run no risk from these citizens; they can at best be students or odd employees and all the damage that they can do is to increase the votes of an undesirable candidate to Parliament by a few thousands all over the country. In our case, it is only perpetuating the rights of a former master through the back-door. The Bill talks of reciprocity.....

**Mr. Chairman:** The persons who register themselves as members of the Commonwealth must also take the oath of allegiance.

**Shri Sadhan Gupta:** Under clause 12, there is no obligation for them to take the oath of allegiance.

**Mr. Chairman:** Under sub-clause (2) of clause 5, "no person being of full age shall be registered as a citizen of India under sub-section (1) until he has taken the oath of allegiance in the form specified in the Second Schedule". A man who is registered must take the oath.

**Shri Sadhan Gupta:** I am referring to clause 12 and not to clause 5. I have started by saying that under clause 12 the Government could confer rights of citizenship and no oath of allegiance is necessary there, and no renunciation of citizenship is even necessary. For Britain, not much damage can take place, but in our case, it is only to perpetuate the rights of a former master by the back-door. The Bill talks of reciprocity. The British con-

trol Rs. 600 crores worth of investments in our backward country and that too in vital sectors of our economy. It has near monopoly in such important industries as coal, oil and jute goods. Can the Government ensure that we too will command the same position in the British industries, that we too will enjoy near monopoly in the production of oil, coal or iron and steel in the Britain? Without this what on earth is the meaning of reciprocity? A cat and a mouse may agree that there will be full reciprocity for each other and that they liked to hunt in each other's dens. But does the Government think that the Indian people will accept that as reciprocity? Why this special treatment for the Commonwealth? We communists have always been for complete severance of all connection with the Commonwealth. In spite of all that the Prime

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Minister says about the advantages we have derived from it, we have demonstrated again and again that this association has by and large brought nothing but disgrace on us by compelling us to be accessories to predatory imperialist wars in Malaya and other places. Even so we can understand, though by no means we agree to or appreciate, the inability to leave the Commonwealth. But what we can neither understand nor appreciate nor be party to—is the attempt to perpetuate our Commonwealth association for all time to come through the medium of this. Why should we, irrespective of our relations with the countries of the Commonwealth be bound to treat them on a different footing from other foreigners. All this is not mere sentiment. As I said a little while ago the position of Britons and Indians *vis-a-vis* each other is radically different. It follows that Britain needs far less protection from ours than we may need from Britons. But, if they do they are much better placed than ourselves. A citizen of India enjoys cer-

tain fundamental rights which if exercised by persons who have allegiances elsewhere may place our country in great jeopardy. Our citizens enjoy the constitutional right to organise associations, to move freely throughout the territory of India, to reside and settle anywhere they please and to carry on any business or profession, to acquire, hold and dispose of property and so on. I understand that the same rights are enjoyed by Indians as a matter of reciprocity. There is, however, this important difference. Whereas the British Parliament can annul any such right in respect of such citizens our legislature cannot do so unless such annulment or restriction is interpreted to be reasonable. There is no authority to challenge any enactment of the British Parliament but any such enactment by our legislature may be declared *ultra vires* and may not affect these alien citizens. There is absolutely no ground moral or legal to treat this category of Commonwealth citizens on a different footing. If citizens of any country are thought desirable to be adopted as our citizens they should come in as naturalised citizens and the Government can advance no arguments except the arguments of slavery and national dishonour to justify the difference in treatment accorded to Commonwealth citizens. I defy the Government to show any benefit that we shall derive from this Commonwealth association as distinguished from associations with other countries. I do not, however deny the necessity of according different treatment to citizens of certain countries. We are naturally expected to develop friendly relations with our neighbours. Such countries, whether they belong to the Commonwealth or not may be given different treatment. It is particularly so in the case of countries where there is a substantial Indian population such as Burma, Malaya, Ceylon and others. We may extend it to other countries with which our relations become closer; for example, countries like Afghanistan, Nepal or China. But, we Communists declare that we shall

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never be party to a treatment which is nothing but a heritage of our erstwhile subjection and the erstwhile suzerainty and overlordship of her Britannic Majesty.

Now, Sir, this Bill, I think, for all these considerations, is unworthy of being passed without substantial amendments. The Joint Committee could have made many amendments. It could have seen to it that refugees from Pakistan are given the honourable treatment which they deserve in view of their signal contribution to the struggle for freedom. It could have ensured that the difference in treatment given as between foreign nations is not based on slavishness but entirely on considerations of friendly contact and mutual benefit in particular. It could have done away with the clause and the schedule which provide for difference of treatment on the basis of membership of the Commonwealth and it could have provided that Indian nationals of any foreign pocket in India could *ipso facto* be recognised as citizens when the foreign pockets merge with India. It could have also provided many other salutary changes and unless these changes are made this Bill will not be a patriotic Bill and will be a shame to our Parliament. So, I recommend suitable amendments to the Bill which I hope to move in the course of the second reading.

**Shri B. K. Das:** May I have one clarification from the previous speaker, Sir? He pointed out that under clause 12 if the Central Government confers any right on the Commonwealth citizens they will not come under clause 5(e); that is to say, those citizens will not have to take any oath of allegiance. Is it the intention?

**Mr. Chairman:** I had asked that question and the hon. Member has already given his views. There is no use asking him again.

**Shri Sadhan Gupta:** I will just say that clause 5 deals with registration whereas clause 12 does not. Under clause 12 citizenship right is confer-



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red irrespective of registration and clause 12 in fact contemplates the granting of rights of citizenship without having to register under clause 5. Therefore, there is no question of taking any oath of allegiance under clause 12.

सरदार इकबाल सिंह (फाजिल्का-सिरसा) : यह तो मैं समझता हूँ कि ज्वॉयंट कमेटी (संयुक्त समिति) ने इस बिल (विधेयक) में काफी तब्दीलियाँ की हैं और उस के बाद पहले से बेहतर बिल बन गया है, लेकिन सब से पहले तो मैं इस बिल को इस नुकता नज़र से देखता हूँ कि हिन्दुस्तान के कोई ५० लाख के करीब आदमी दूसरे देशों में जा कर बसे हुए हैं और कोई हिन्दुस्तान की शहरियत का कानून, जब तक उन की बचत नहीं करता, उन को प्रोटेक्शन (सुरक्षा) नहीं देता जोकि दूसरे देशों की मुस्किल हालत में जैसे हुए हैं, वह हिन्दुस्तान की बेहतर सिटिजनशिप (नागरिकता) का कानून नहीं हो सकता। इसलिये कि यह ५० लाख के करीब हमारे आदमी दूसरी कामनवेलथ कंट्रीज़ (राष्ट्रमंडल के देशों) में और ऐसे देशों में भी हैं जोकि कामनवेलथ के अन्दर नहीं हैं जिन को हिन्दुस्तान के कानून के मुताबिक यहाँ की शहरियत के हक हासिल नहीं होंगे अगर वह इस बिल के क्लॉज (खण्ड) १०(२) के मुताबिक सात साल तक हिन्दुस्तान के बाहर रहें और हर साल अपनी रजिस्ट्री न करायें।

सब से पहले मैं उन देशों की बाबत कहना चाहता हूँ जिन देशों में आज हमारे कन्सुलेट (वाणिज्य दूतावास) नहीं हैं, जिन देशों में ऐसी सुविधायें नहीं हैं कि वह अपने आप को रजिस्टर करा सकें या जिन देशों में वह ऐसी मुस्किल हालत में बँठे हुए हैं कि शायद वह रजिस्टर न भी करा सकें इस कानून के मुताबिक हम उन की शहरियत को वापस ले लेते हैं। जब हिन्दुस्तान के अन्दर ही उन को अपने हक हासिल नहीं हैं

तो उन देशों में उन की क्या हालत होगी ? यह आप खुद जान सकते हैं। मिसाल के तौर पर मैं बेल्जियम कांगो का नाम लेता हूँ। वहाँ करीब ३० हजार हिन्दुस्तानी हैं, जहाँ तक मुझे इस बात की इत्तला है हमारा जो कन्सुलेट है वह बेल्जियम में तो है लेकिन बेल्जियम कांगो में नहीं है। क्या आप समझते हैं कि बेल्जियम कांगो की मुस्किल हालत में वह अपने को रजिस्टर करा सकेंगे ? इसलिये मैं चाहता हूँ कि यह धारा उन हिन्दुस्तानियों को जोकि दूसरे देशों में बसे हुए हैं ज्यादा नुकसान पहुंचने का कारण न बन जाये।

इस के बाद मैं दूसरे देश अंगोला का बिक्र करना चाहता हूँ। वहाँ पर करीब १२ हजार के हिन्दुस्तानी रहते हैं। आज वह मुल्क पुर्तगाल के कब्जे में है। जब तक उन से हमारे तालुकात अच्छे नहीं होते और गोआ का मसला हल नहीं होता शायद कोई भी आदमी वहाँ अपने को रजिस्टर नहीं करा सकेगा। इन देशों के लिये आप का कानून यह कहता है कि हर साल रजिस्टर कराने की ज़रूरत है और अगर कोई आदमी सात साल तक गैरहाजिर रहेगा तो उस से हिन्दुस्तान के शहरी के हकुक वापस ले लिये जायेंगे।

इस के अलावा कुछ और देश हैं जोकि कामनवेलथ में नहीं हैं जैसे डच गाइना है। वहाँ भी हिन्दुस्तानी लोग हैं और वहाँ पर भी उन का अपने को रजिस्टर कराना मुस्किल है।

इम के अलावा यहाँ के लोग इंडोनेशिया-में हैं, बर्मा में हैं। जहाँ पर आज कल हिन्दुस्तानी यह कोशिश कर रहे हैं कि उन का उन देशों की शहरियत के कानून के हकुक हासिल हो जायें, एक देश ने दिये भी हैं। लेकिन कुछ वापस ले रहे हैं। जैसे आप साऊथ (दक्षिण) अफ्रीका को देखिये। माऊथ वेस्ट

अफ्रीका में भी, यह मैनचेस्टेड टेरिटरी (अधि-दृष्टि राज्य क्षेत्र) है, वहाँ पर भी हिन्दुस्तानी गये हैं और वहाँ पर भी रजिस्ट्री कराने की सुविधा नहीं है। इसलिये मैं यह समझता हूँ कि यह जो क्लाइ (खण्ड) है इस क्लाइ से शायद उन भाइयों को ज्यादा नुकसान पहुँचेगा।

इस के साथ ही साथ मैं यह भी कहना चाहता हूँ कि जो ब्रिटिश टेरिटरीज (अंग्रेजी राज्य क्षेत्र) हैं उन के और अगर कोई आदमी को आप यह कहते हैं कि उस के बाप को हक मिल गया और वह शहरी हो गया तो उस के माइनर (अवयस्क बालक) को हिन्दुस्तान की शहरियत के हकूक आप नहीं देंगे, तो उस के जो हकूक हैं वह खत्म हो जायेंगे। मैं आप को यह बतलाना चाहता हूँ कि कनाडा के इम्मीग्रेशन एक्ट (आप्रवास अधिनियम) के मुताबिक अगर कोई हिन्दुस्तानी जब वह १८ साल का था जबकि उस का बाप कनाडा में गया था और वहाँ का शहरी हो गया था तो उस सूरत में अगर वह आज कनाडा में जायगा तो उस को शहरी हकूक नहीं मिल सकेंगे। इसलिये क्योंकि वह उस वक्त बालिग था और आप यह कहते हैं कि जो उस के लड़के होंगे, जो छोटे होंगे, बेशक वह छोटे भी थे और १८ साल के नहीं थे, लेकिन वह कनाडा नहीं गये और आज जब वह बालिग हो कर कनाडा जायेंगे तब भी उन को शहरियत के हकूक नहीं मिल सकेंगे। इसलिये जो माइनर के केसिस (अवयस्कों के मामले) होंगे, जो इस क्लाइ के मुताबिक माइनर होंगे उन के बाप को तो बेशक उन देशों के शहरियत के हकूक मिले हों लेकिन उन के बच्चों को शायद न मिल सकें, उन के लिये यह एक बहुत मुश्किल बात होगी। इसलिये मैं यह आशा करता हूँ कि इस क्लाइ में इस तरह से तबदीली को जाय कि अगर बाप को हकूक मिल गये हों और जब तक उस की औलाद को न मिलें तब तक के लिये उन से हिन्दुस्तान की

शहरियत के हकूक आप वापस न लें। अगर आप ने ऐसा किया तो उन के लिये यह एक बहुत मुश्किल चीज होगी। इस के साथ ही साथ मैं यह भी कहना चाहता हूँ कि कुछ कामनवेलथ टेरिटरीज (राष्ट्रमंडल क्षेत्र) हैं। हम यह समझते हैं कि वहाँ पर हिन्दुस्तानियों की आबादी तकरीबन ३० या ३२ लाख होगी। उन म से कुछ को तो वहाँ की शहरियत के हकूक हासिल है लेकिन बाकी को अभी तक वह हासिल नहीं हुए हैं और वह इन हकूक को पाने की कोशिश कर रहे हैं। कुछ सीलोन (श्रीलंका) जैसे देश हैं जहाँ पर हिन्दुस्तानियों को कुछ हकूक हासिल थे जोकि अब उन से वापिस लिये जा रहे हैं। आपको इस बात का ध्यान रखना चाहिये कि अगर ऐसे लोगों के हकूक वापस लिये जाते हैं और इधर आप भी उन के हकूक खत्म कर देते हैं तो मैं समझता हूँ कि यह उन के लिये एक बहुत मुश्किल चीज हो जायगा और इसलिये उन का भी आप को ध्यान रखना है। ये लोग ऐसे देशों में जा कर बस गये हैं जहाँ पर कि उन का कोई जोर नहीं है, उन की कोई आवाज नहीं है और जहाँ पर ऐसे लाज (बिधियाँ) बन रहे हैं जिन से कि आहिस्ता आहिस्ता उन से शहरियत के हकूक वापस ले लिये जायें और इन में से साऊथ अफ्रीका एक ऐसा मुल्क है, ऐसी दशा में आप हिन्दुस्तान की शहरियत के हकूक उन को दें, तो अच्छा होगा। अगर आप यह कहते हैं कि रिजिस्ट्रेशन (पंजीबद्धता) से यह हो सकेगा तो फिर अगर आदमी पर मुकदमा चल रहा हो साउथ अफ्रीका में या किसी और देश में तो इस कानून के मुताबिक वह इस देश का शहरी न रहे, तो फिर क्या सूरत होगी। ऐसी भी जगहें हो सकती हैं जहाँ पर आप के कांस्टेड (वाणिज्य दूता-वास) नहीं हैं और वह अपने आप को रजिस्टर भी न करवा सकता हो, तो इन हालात में उस के बारे में भी आप को सोचना पड़ेगा।

आप ने बिल में जो यू० के० (इंग्लैंड) के बारे में लिखा है उस में आपने यह भी

## [सरदार इकबाल सिंह]

लिखा है कि इस में तमाम कालोनीज (उपनिवेश) आ जाती हैं जो कि बरतानिया को सलतनत में शामिल है। इसमें तमाम ब्रिटिश कालोनीज तो आ जाती हैं लेकिन कुछ मेंडेटरी टैरिटरीज (अधिदिष्ट राज्य क्षेत्र) भी हैं जैसे टैगानोका है या ब्रिटिश सुमालीलैंड है जो कि ब्रिटेन के कानून के मुताबिक वह उसको कालोनीज नहीं है और मेंडेटरी टैरिटरीज हैं और जो यू० एन० ग्रो० (मंयुक्त राष्ट्र मंत्र) के कुछ फँवनों के नीचे ब्रिटेन को मौफा गई हैं और वह वहाँ पर हुकमगान है और जहाँ पर हमारे नुमाइंदे भी नहीं हैं वहाँ के शहरियों के बारे में आपको सोचना होगा। इन सब मेंडेटरी टैरिटरीज के हिन्दुस्तानी शहरियों को अगर आप कामनवैलथ शहरियत के हकूक नहीं दे सकते तबे कम से कम जो बरतानिया को मेंडेटरी टैरिटरीज हैं और उनमें जो हिन्दुस्तानी रहते हैं उनको कामनवैलथ (राष्ट्रमंडल) शहरियत के हकूक मिलने चाहियें। मिसाल के तौर पर कीनिया के रहने वाले हिन्दुस्तानी तो कामनवैलथ सिटिजन (राष्ट्रमंडल नागरिक) हो सकते हैं लेकिन टैगानोका जो कि एक कालोनी (उपनिवेश) नहीं है और जो ईस्ट (पूर्व) अफ्रीका को एक मेंडेटरी टैरिटरी है इस कानून के मुताबिक वहाँ के रहने वाले हिन्दुस्तानियों को पूरे हकूक शामिल नहीं हो सकते। इसलिये मैं प्रार्थना करता हूँ कि कामनवैलथ कंट्रोल के माध्य तमाम मेंडेटरी टैरिटरीज को भी जोड़ दिया जाय। अगर ऐसा नहीं हो सकता तो कम से कम उन मेंडेटरी टैरिटरीज को जरूर ही जोड़ दिया जाना चाहिये जहाँ पर कि बरतानिया हुकमगान है। ऐसा करने से टैगानोका में जहाँ तकरीबन ५०,००० हिन्दुस्तानी रहते हैं उनको फायदा पहुंचेगा।

अब जो रिफ्यूजीज हैं उनके बारे में मैं इतना कहना चाहता हूँ कि अब तक आप इस रजिस्ट्रेशन (पंजीबद्धता) को रखेंगे

उनको बहुत ज्यादा मुश्किलता का सामना करना पड़ेगा। यह जरूरी नहीं है कि हर एक आदमी अपने आपको रजिस्ट्र करवा ले क्योंकि कई किसम के हालात होते हैं जिन में कि वह अपने आप को रजिस्ट्र नहीं करवा पाता है। हिन्दुस्तान को तकसीम के बाद जो लोग पाकिस्तान में रह गये ह वे वहाँ पर ऐसे हालात में रह रहे हैं जिन में कि रहना उनके लिये मुश्किल नजर आता है और इस वास्ते मजबूर होकर जब वे इस देश को आते हैं तो आटोमैटिकली (स्वतः) उनको भारत का शहरी समझा जाना चाहिये। मैं समझता हूँ कि उनको भारत की शहरियत का हकूक मिलना ही चाहिये। आप जानते ही हैं कि जब लोग पाकिस्तान से पहले भारत आये तो उनमें से कई लोगों ने अपने क्लेम रजिस्ट्र नहीं करवाये बशक उनको ऐसा करने से आर्थिक फायदा होता था। इसलिये अब जो लोग आयेंगे वह भी हो सकता है अपन आप को रजिस्ट्र न करवायें। हमारा यह फर्ज है कि हम उनको भारत के शहरियों का दर्जा दें और यह चीज बाई रजिस्ट्रेशन नहीं होनी चाहिये बल्कि आटोमैटिक (स्वतः ही) होनी चाहिये। मैं मानता हूँ कि सिलैक्ट कमेटी (प्रवर समिति) ने इस में कुछ सुधार किया है लेकिन मैं चाहता हूँ कि यह कर दिया जाये कि पाकिस्तान से जो भी लोग भारत आयेंगे वे बगैर किसी किसम के रजिस्ट्रेशन के हिन्दुस्तान के शहरी हो जायेंगे बशतकि वे वहाँ पर परमानेंटली सैटल होने के लिये आयें। यह चीज आटोमैटिक होनी चाहिये न कि बाई रजिस्ट्रेशन (पंजीबद्धता) द्वारा।

मैं यह भी कहना चाहता हूँ कि आपने जो डेफिनशन (परिभाषयें) पेरेंट्स (जनक) और ग्रैंड पेरेंट्स (महाजनक) की दी हैं यह ठीक नहीं हैं। इसके लिये मैं ने एक एमेंडमेंट (संशोधन) भी दी है और मैं चाहता हूँ कि जो बाप और दादा

की बात आप ने रखी है इससे मुम्किन है मुश्किलता पैदा हों। मैं चाहता हूँ कि जो भी हिन्दुस्तानी हों उसकी श्रौलाद के लिये हिन्दुस्तान की शहरियत के हकूक हासिल होने चाहियें और जो डैफिनीशन आपने पेरेंट्स (जनक) और ग्रैंड पेरेंट्स (महाजनक) की दी है यह नहीं होनी चाहिये।

अब मैं एक बात उन हिन्दुस्तानी औरतों के बारे में कहना चाहता हूँ जो कि किसी दूसरे देश के शहरी से शादी करवा लेती हैं और उसके बाद वे अपने हिन्दुस्तानी शहरियत के हकूक से महरूम हो जाती हैं। यह चीज़ ठीक भी है। लेकिन ऐसा भी होता है कि अगर शादी कर लेने के बाद उसको तीन साल के अन्दर तलाक दे दिया जाता है तो उसको उस देश की शहरियत के हकूक हासिल नहीं हो सकते। इस वास्ते अगर उसको उस देश की शहरियत के हकूक हासिल नहीं होते हैं जिस में कि उसका खाविन्द रहता है और जहाँ का कि वह शहरी है तो उसको इस देश का सिटिजन बनने रहने का हकूक हासिल होना चाहिये। ऐसी मूरतों में उसको यह हकूक हासिल होना चाहिये कि दूसरे देश के कानून के मुताबिक वह उस देश की शहरी नहीं रहती है तो हिन्दुस्तान की शहरियत उसे आटोमैटिकली (स्वतः) मिल जानी चाहिये या बाई रजिस्ट्रेशन (पंजीबद्धता द्वारा) मिल जानी चाहिये।

इतना कहने के बाद मैं इतना ही अर्ज करना चाहता हूँ कि उन इलाकों के लिये जहाँ पर हमारे कांस्लेट नहीं हैं और जहाँ पर रजिस्टर करवाने की सहूलियतें नहीं हैं वहाँ के रहने वाले हिन्दुस्तानियों के लिये आप को क्लॉज (खण्ड) १०(२) (ई) में तबदीली करनी चाहिये ताकि, उनको हिन्दुस्तान की शहरियत मिल सके।

दूसरी बात यह है कि जो आप टैम्पोरेरी पासपोर्ट (अस्थायी पारपत्र) देते हैं

तो पांच साल के लिये देते हैं और फिर जब उस को दोबारा रिन्यू करते हैं तो भी पांच साल के लिये ही करते हैं। अब इस कानून के मुताबिक उस के लिये सात साल से ज्यादा किसी देश में रहना मुश्किल हो जायेगा क्योंकि अगर वह ऐसा करेगा तो उस की सिटिजनशिप खत्म हो जायेगी। जिस आदमी का पासपोर्ट आप दोबारा रिन्यू करते हैं उस के जरिये वह दस साल तक बाहर रह सकता है लेकिन सात साल के बाद आप उस के हकूक को खतम कर देंगे। सलिये मैं समझता हूँ कि जब आप दोबारा पांच साल के लिये पासपोर्ट की रिन्यू करते हैं तो इस सात साल की मियाद को बढ़ा कर दस या ग्यारह साल कर दें ताकि वह आदमी वापस हिन्दुस्तान आ सके और हिन्दुस्तान का शहरी रह सके।

मैं समझता हूँ कि आप इन चीजों को इस बिल में शामिल कर दें तो आप इस को और ज्यादा अच्छा बना सकते हैं।

**श्री सिंहासन सिंह :** यह विधेयक जिस रूप में भवन के सामने आया है उस का मैं अनुमोदन करता हूँ, लेकिन इस के सम्बन्ध में मैं चन्द शब्द कहना चाहता हूँ। जो दफायें (घाराएं) इसमें रखी गयी हैं उन को देख कर मेरे मन में कुछ सन्देह पैदा होता है आपने इस विधेयक के द्वारा चार प्रकार से शहरी हकूक (नागरिकता) देने की व्यवस्था की है। एक प्रकार तो वह है कि जिस में जो व्यक्ति भारत में पैदा होगा उस को नागरिकता का अधिकार दफा ३ के मुताबिक मिल जायेगा। ऐसे लोगों के बारे में तो कुछ कहना नहीं है। लेकिन दफा ५ में आप ने उन लोगों के लड़कों के बारे में कुछ फर्क कर दिया है जोकि उन नागरिकों के बच्चे होंगे जिन को आप ने दफा ३ के अन्दर नागरिकता का हकूक दिया है। आपने नागरिकता प्रदान करने के चार तरीके रखे हैं। एक तो जन्म से, दूसरा रजिस्ट्रेशन से, तीसरा नेचुरेलाइजेशन (देशीयकरण) के जरिये और चौथा उस हालत में जब कि

[श्री सिंहसन सिंह]

कोई नया भूभाग हमारे पास आवे। इन चारों प्रकारों में से एक जगह आपने प्रथम और द्वितीय प्रकार का समिश्रण किया है जो कि हमारी समझ में नहीं आता है। दफा ३ में दिया गया है :

Except as provided in sub-section (2) of this section, every person born in India on or after the 26th January, 1950, shall be a citizen of India by birth.

अर्थात् जो कोई आदमी २६ जनवरी या २६ जनवरी, १९५० के बाद भारत में जन्म लेगा वह यहाँ का नागरिक बन जायेगा। लेकिन दफा ५ में आप कह रहे हैं जो लोग रजिस्ट्रेशन के द्वारा नागरिकता प्राप्त कर चुके हैं उन के बच्चों के लिये दूसरा नियम है। आप दफा ५ के क्लॉज डी० में कहते हैं :

Minor children of persons who are citizens of India;

यह क्यों रखा गया है यह मेरी समझ में नहीं आता है। जब आप ने रजिस्ट्रेशन द्वारा किसी आदमी को अपने यहाँ की नागरिकता दे दी फिर उस के बच्चों के लिये यह नियम क्यों रखा है। मेरी समझ में नहीं आता कि जो भारतीय नागरिक हैं उन के नाबालिग (अवयस्क) लड़कों को रजिस्ट्रेशन कराने की नौबत आवे, जबकि आप ने धारा ३ में रखा है कि भारतीय नागरिकों के लड़के जन्म होते ही भारतीय नागरिक हो जायेंगे। यह जो दो तरह की चीजें इस विधेयक में रखी गई हैं वे मेरी समझ में नहीं आती। उन को होम मिनिस्टर (गृह मंत्री) साहब साफ करेंगे।

दूसरा श्रवण मुझे एक और है जिस को उपगृह मंत्री जी साफ करने की कृपा करें। आज हमारे देश में आर सारे दिग्-दिगन्त में यह आवाज उठी हुई है कि हम उपनिवेशवाद के विरुद्ध हैं और अपने देश

में या संसार के किसी भी भाग में उपनिवेशवाद का समर्थन नहीं करते। लेकिन जो आप ने सिड्यूल १ में यूनाइटेड किंगडम को डिफाइन (परिभाषा) किया है उस में आप ने उस की कालोनीज (उपनिवेशों) को भी रिकॉगनाइज (मान्यता दी) किया है। यानी यूनाइटेड किंगडम में जो उन के उपनिवेश हैं उन को हम कानूनी रूप से मानते हैं। तो इस से हमारी नीति में कुछ विरोधाभास सा मालूम होता है। एक तरफ तो हम सब तरह के उपनिवेशवाद का विरोध कर रहे हैं और दूसरी तरफ जब हम विधेयक बनाते हैं तो उस के किसी सम्बन्धित राष्ट्र के उपनिवेशों को मान्यता देते हैं। इन दोनों बातों में समन्वय कैसे होगा इस पर हमारे डिप्टी मिनिस्टर साहब प्रकाश डालने की कृपा करें।

अभी मेरे एक भाई ने कहा है कि जो हमारे भारतीय बाहर चले गये हैं अगर वे सात साल से अधिक समय तक बाहर रहते हैं तो वे इस विधेयक की धारा १० के सब-क्लॉज (उप-क्लॉज) २ ई के अनुसार यहाँ के शहरी नहीं रह जायेंगे। किन्तु शायद यह बात नहीं यह धारा केवल उन्हीं व्यक्तियों पर लागू है जोकि रजिस्ट्रेशन (पंजीबद्धता) द्वारा यहाँ के नागरिक बने हैं। या जो नेचुरलाइज (देशीकरण) हुए हैं या संविधान की दफा ५ सी० के अनुसार जिनको नागरिकता प्राप्त हुई है। यह दफा (धारा) १० में इस प्रकार दिया हुआ है :

"A citizen of India who is such by naturalisation or by virtue only of clause (c) of article 5 of the Constitution or by registration otherwise than under clause (b) (ii) of article 6 of the Constitution or clause (a) of sub-section (1) of section 5 of this Act, shall cease to be a citizen of India...."

यदि यह उन भारतीयों पर भी लागू होता है जोकि बाहर बसे हुए हैं और अगर

वह सात बरस के अन्दर अपना रजिस्ट्रेशन नहीं करवा पाते तो उन को नागरिकता जाती रहेगी। अगर ऐसा होगा तो अन्याय होगा। अगर यह नियम उन भारतीयों पर भी लागू होता हो जो जन्म से संविधान की धारा ३ के अनुसार इस देश के नागरिक माने जाते हैं तो यह न्याय नहीं होगा। अगर ऐसे लोगों पर इस कानून से कोई आघात पहुंचता हो तो होम मिनिस्टर साहब यह विचार करें कि ऐसा न होने पावे। हमारे कई लाख भाई बाहर पड़े हुए हैं। उन की नागरिकता किसी तरह से भी नहीं छीनी जानी चाहिये।

दूसरा एक और सन्देह मेरे मन में है। आप कामनवैलथ (राफ्टमंडल) के सब देशों को दफा १२ के अन्दर रेसीप्रसिटी का ब्याल रख कर नागरिकता का अधिकार देने को तैयार हैं, उन की मांग पर। इन देशों में कामनवैलथ के सारे देश आते हैं। सीलोन और पाकिस्तान भी कामनवैलथ के सदस्य हैं। लेकिन हम यह अधिकार उन देशों को देने के लिये तैयार नहीं हैं जिन से हमारे मित्रता के सम्बन्ध हैं जैसे नेपाल है, भूटान है, चीन है, थाइलैण्ड है, बर्मा है, इंडोनेशिया है। यह बात मेरी समझ में नहीं आती। इन देशों को हम वह मान्यता नहीं दे रहे हैं जोकि हम कामनवैलथ के देशों को दे रहे हैं। आज सीलोन का हमारे देश वासियों के साथ कैसा व्यवहार हो रहा है। वहां पर उन की नागरिकता छीनी जा रही है बिना किसी लिहाज के। अभी एक सवाल का जवाब देते हुए सरकार की तरफ से बतलाया गया कि कई लाख दरखास्तें नागरिकता के लिये सीलोन में हमारे देश वासियों ने दी थीं लेकिन उन में से केवल कुछ हजार या कुछ सौ ही मंजूर हुई हैं। और सब खारिज हो गईं। आज वहां पर हमारे लोग नागरिकता से इस तरह वंचित किये जा रहे हैं। ऐसे देशों को हम अपने

यहां नागरिकता प्राप्त करने की सुविधा देने को तैयार हैं, लेकिन जिन देशों से हमारे मित्रतापूर्ण सम्बन्ध हैं उन को हम यह सुविधा नहीं दे रहे हैं। नेपाल का और हमारा सम्बन्ध बहुत पुराना है। वहां से बराबर आना जाना लगा रहता है। अगर उस देश को हम यह सुविधा दें तो उस से बहुत ज्यादा सहूलियत हो सकती है बनिस्वत इस के कि हम यह सुविधा आस्ट्रेलिया, कनाडा या सीलोन को दें। इस विषयक में मित्र देशों को यह सुविधा नहीं दी गई है। इस प्रश्न पर भी विचार होना चाहिये।

दफा (धारा) ९ में यह दिया हुआ है :—

“Any citizen of India who by naturalisation, registration or otherwise voluntarily acquires, or has at any time between the 26th January, 1950 and the commencement of this Act voluntarily acquired the citizenship of another country shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India.”

आप ने उस के साथ जो एक प्राविजन (उपबन्ध) लगा दिया है, उस से कुछ गड़बड़ी पैदा हो जाती है। ऊपर का स्वरूप बगैर इस प्राविजन के ठीक था कि इस ऐक्ट के पास होने के बाद अगर कोई भारतवर्ष का नागरिक किसी दूसरे देश में जाकर वहां की नागरिकता प्राप्त कर ले, तो वह यहां की नागरिकता स्वतः खो बैठेगा। लेकिन प्राविजन में हम ने यह रख कर कि :—

“Provided that nothing in this sub-section shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires the citizenship of another country, until the Central Government otherwise directs.”

[श्री सिंहासन सिंह]

यह क्या बात हुई ? अगर लड़ाई के ज़माने में कोई आदमी हम को बिट्टे (देश-द्रोह) कर के किसी दूसरे देश की नागरिकता कबूल कर ले, तो उस की भारतीय नागरिकता उस वक्त तक नहीं छीनी जायगी जब तक कि सेंट्रल गवर्नमेंट उस पर विचार न कर ले और अपना फसला न दे दे । यह तो संभव हो सकता है कि वह देश का द्रोही लड़ाई के सख्त होने के बाद यहां सजा पाये और फिर यहां का नागरिक बन जाय, लेकिन एक ऐसा आदमी जोकि लड़ाई के ज़माने में अपने देश से द्रोह कर के दूसरे देश में जा कर बस जाय और वहां की नागरिकता प्राप्त कर ले, उस का भारतीय नागरिकता का विषय विचारणीय रहे, यह मेरी समझ में नहीं आता । उस का अपराध तो घोरतम है, और गम्भीर है, और मैं समझता हूं कि ऐसे देशद्रोही व्यक्तियों को नागरिकता की सुविधा मिले, यह अनुचित है और उन को यह अधिकार नहीं दिया जाना चाहिये और मैं आशा करता हूं कि सदन और सरकार इस विषय पर गम्भीरता से विचार करेगी और प्राविजो (परन्तुक) में आवश्यक तबदीली करेगी ।

कमेटी आफ इनक्वायरी (पुछताछ समिति) के बारे में हमारे दोस्तों की तरफ से काफी ऐतराज हुआ है । कमेटी आफ इनक्वायरी में एक जूडिशल अफसर (न्यायिक पदाधिकारी) और दो आदमी और नियुक्त होंगे जो किसी की नागरिकता को छीनने या न छीनने के बारे में अपनी राय सरकार को देंगे और उस राय के मुताबिक सरकार नागरिकता सम्बन्धी अधिकार लोगों से छीनेगी । अब यह जो कमेटी बन रही है, ब्रिटिश कानून में जो इस तरह की कमेटी के बारे में जो शब्दावली दी हुई है, विलकुल वही शब्द उस कमेटी के बारे में यहां भी रख दिये गये हैं, सिर्फ फ़र्क यह है कि यहां

की कमेटी में तीन आदमी होंगे । वहां पर कमेटी (समिति) सेक्रेटरी आफ स्टेट (राज्य सचिव) मुक़रर करेगा । इस में लिखा हुआ है कि एक उन में मे जूडिशल अफसर होगा, अब जूडिशल अफसर किस कैंटगरी (श्रेणी) का होगा यह इस में साफ नहीं दिया हुआ है । जूडिशल अफसर एक मंसिफ से ले कर हाईकोर्ट (उच्च न्यायालय) और सुप्रीम कोर्ट (उच्चतम न्यायालय) का जज तक हो सकता है । किस श्रेणी का जूडिशल अफसर हो यह साफ हो जाय ताकि लोगों को इतमीनान हो जाय कि हमारे नागरिकता सम्बन्धी प्रश्न पर विचार करने के लिये जो कमेटी बनी है, उस में कम से कम ऐसे व्यक्ति हैं जिन के कि ऊपर पूरा इतमीनान कर सकते हैं, उन की ठीक से सुनवाई होगी और वह गवर्नमेंट के या किसी अधिकारी के किसी तरह के प्रलोभन में अथवा दबाव में नहीं आयेंगे और इसीलिये मैं इस चीज को चाहता हूं कि साफ कर दी जाय । न तो जूडिशल अफसर (न्यायिक पदाधिकारी) की डेफ़ीनीशन (परिभाषा) में और न यहां पर यह कहा गया है जूडिशल अफसर की श्रेणी अगर हाईकोर्ट के जज की न हो तो कम से कम वह डिस्ट्रिक्ट जज (ज़िला न्यायाधीश) की श्रेणी का तो अवश्य हो, यह तो साफ डिफ़ाइन हो जाना चाहिये ताकि लोगों को इतमीनान हो जाय कि हमारे नागरिकता सम्बन्धी अधिकार को छीनने के बारे में विचार करने के लिये जो कमेटी बनी है, उस में कम से कम एक ऐसा व्यक्ति तो है जिस के कि ऊपर पूरा इतमीनान कर सकते हैं और जोकि पूरा इन्साफ उन के साथ करेगा और जोकि किसी भी सरकारी दबाव में नहीं आयेगा । इस तरह का विश्वास लोगों को दिलाना बहुत जरूरी है और मैं आशा करता हूं कि जूडिशल अफसर की डेफ़ीनीशन को साफ कर दिया जायगा और उस सम्बन्ध में मेरे सुझाव को स्वीकार कर लिया जायगा ।

दूसरी बात जो मैं कहना चाहता हूँ उस की ओर हमारे बहुत से भाइयों ने ध्यान दिलाया है और वह हमारे संविधान के प्रति वफादारी की शपथ लेने से ताल्लुक रखती है। उस सम्बन्ध में मेरा यह कहना है कि कांस्टीट्यूशन (संविधान) तो एक बदलने वाली चीज़ है और हम ने देखा कि सन् १९५० से जब से हमारा संविधान लागू हुआ है, तब से अब तक ५ बार हम अपने संविधान में तबदीली कर चुके हैं और ६ व ७वाँ संशोधन विधेयक इस समय हाउस के सामने पेश है जिस का मतलब यह हुआ कि औसतन संविधान में परिवर्तन की आवश्यकता करीब करीब हर साल आ जाया करती है। और कहा नहीं जा सकता कि अभी आगे बढ़ने पर और क्या क्या परिवर्तन करना आवश्यक महसूस होगा। संविधान तो परिवर्तनशील है और समय और परिस्थिति की आवश्यकता के अनुसार उस में संशोधन करना वांछनीय हो जाता है। जो वस्तु परिवर्तनशील है उस के प्रति शपथ ले कर के पुनः परिवर्तन का समर्थन करना खटकने की बात है किन्तु हम ऐसा परिस्थितिवश करते हैं। अतः भक्ति और निष्ठा की शपथ देश और राष्ट्र के लिये होनी चाहिये। सेकेंड शेड्यूल (द्वितीय अनुसूची) में जहाँ पर "थ्रू ऑफ एलिजिएंस" (निष्ठा की शपथ) का जिक्र आया है उस में यह शब्द दिये हुए हैं :—

I, A. B. .... do solemnly affirm (or swear) that I will bear true faith and allegiance to the Constitution of India as by law established, and that I will faithfully observe the laws of India and fulfil my duties as a citizen of India.

मैं चाहता हूँ कि "कांस्टीट्यूशन ऑफ इंडिया" (भारत का संविधान) इन शब्दों की जगह पर "स्टेट ऑफ इंडिया" (भारत राज्य) यह शब्द रखे जायें, क्योंकि यह हमेशा कायम रहने वाली चीज़ है। संविधान

तो बदल सकता है और वह हुकूमत की तबदीली के साथ भी अपना रूप बदल सकता है लेकिन देश और राष्ट्र तो हुकूमत और संविधान बदल जाने पर भी हमेशा कायम रहता है। संविधान तो समय की ज़रूरत को देखते हुए तबदील होता रहता है और उस की शपथ लेना एक बेमानी सी बात हो जाती है। एलिजिएंस की शपथ तो मुल्क और राष्ट्र के प्रति ली जानी चाहिये कि हम ईमानदारी से और देश के प्रति कृतज्ञता, निष्ठा और श्रद्धा का भाव रखते हुए रहेंगे और सदा उस के प्रति वफादार बने रहेंगे और हमारी वफादारी में कोई कमी नहीं आने वाली है। लेकिन संविधान के प्रति वफादारी की शपथ दिलाना जोकि परिवर्तनशील है और बदल सकता है और जोकि अगर दूसरा दल हुकूमत में आ जाय तो वह उस का रूप बदल सकता है और हमारी सोशलिस्ट पार्टी ने चुनाव के वक्त यह ऐलान भी किया था कि हम संविधान में अमुक अमुक तबदीलियां करेंगे

**Mr. Chairman:** Efforts for changing of Constitution or criticism is not disloyalty to the Constitution.

**श्री सिंहासन सिंह :** कांस्टीट्यूशन को बदलने के बारे में प्रचार करना डिसएफ़ेक्शन (अश्रद्धा) तो हो ही जाना है। अगर हम ने बाहर जा कर घोषणापत्र निकाला कि हम संविधान को बदलेंगे, तो इस ऐक्ट (अधिनियम) के मुताबिक तो वह हमारी कम से कम संविधान के बारे में डिसलाएल्टी हो गई।

**Mr. Chairman:** Disloyalty is different from legitimate criticism.

**श्री सिंहासन सिंह :** डिसएफ़ेक्शन (अश्रद्धा) तो हो ही गया उस से, वैसे डिसएफ़ेक्शन (अश्रद्धा) और डिसलाएल्टी (अभक्ति) में बहुत थोड़ा अन्तर है, माना कि वह डिसलाएल्टी की हद तक नहीं पहुँचा लेकिन डिसएफ़ेक्शन की श्रेणी तक तो पहुँच



[श्री सिंहासन सिंह]

ही गया। इस संविधान के प्रति हम उस की भावना को प्रेरित नहीं कर सकेंगे, हम उस को उन पर लागू नहीं कर सकते। हम एक जनसमूह में जा कर इस संविधान के औचित्य और अनौचित्य के ऊपर बातचीत करेंगे और अगर उस के अनौचित्य को हम न साबित कर दिया तो उस के मानी यह हुए कि उस की तरफ जनता का जो प्रेम है उस को हम न दूर कर दिया, मतलब यह कि हम न उस हद तक संविधान के प्रति जनता में डिसएफ्रैक्शन फैलाया और उस हालत में संविधान के प्रति हमारी एंतिजिएस (श्रद्धा) की शपथ गलत हो जाती है। इसलिये मेरा सरकार से अनुरोध है कि वह इस विषय पर विचार करे और इस ओर मैं समझता हूँ और भी बहुत से माननीय सदस्यों ने सरकार का ध्यान दिलाया है और सरकार को उस पर ध्यान देना चाहिये और जब आज हम परिवर्तन कर रहे हैं तो ऐसा मूलमूल और सही परिवर्तन करें जो सही तथा मुनासिब हो और हमेशा के लिये कायम रह सके। कोई भी दल आये, किसी की भी हुकूमत आये, यह साफ़ है कि हुकूमत तो बदल सकती है और तबदौली के साथ लोगों की वफ़ादारी भी बदल सकती है लेकिन देश और राष्ट्र तो बदलने वाली चीज़ नहीं है और हमेशा कायम रहेगा। भारत राष्ट्र के प्रति वफ़ादारी की शपथ लेने के माने होंगे कि वह वफ़ादारी हमेशा कायम रहेगी और बदलेगी नहीं और मैं समझता हूँ कि सरकार मेरे इस मुझाव पर गम्भीरतापूर्वक सोचेगी।

विधेयक के १४वें सैक्शन (घारा) के पार्ट (भाग २) में Disposal of application under sections 5 and 6 के बारे में ऐसा दिया हुआ है :

“the decision of the prescribed authority or the Central Government on any such application as aforesaid shall be final.”

अगर दफा ५ में किसी ने दरखास्त दी तो

The Central Government may in its discretion, grant or refuse an application under section 5 or section 6 and shall not be required to assign any reasons for such grant or refusal. वह कोई रीज़न (कारण) नहीं देगी और वह डिस्मिशन (निर्णय) उन का फ़ाइनल (अन्तिम) हो जाना है। फ़ाइनल डिस्मिशन हो जाने के बाद वह केवल एक अपील दफा १५ के अन्दर रिवीज़न (पुनरीक्षण) के लिये सेंट्रल गवर्नमेंट (केन्द्रीय सरकार) को दे सकता है और कहीं उस की अपील नहीं है, न कहीं कोर्ट (न्यायालय) में जा सकता है और न कहीं और किसी जगह जा सकता है। अब आप देखिये कि एक श्रादमी भारत का नागरिक है, दफा ५ के मुताबिक, एक वर्ष से वह यहाँ रह भी रहा है और वह प्रिमक्राइड एंथारिटी को रजिस्ट्रेशन के वास्ते दरखास्त देता है और वह बिना वजह बतलाये उस की प्रार्थना को खारिज कर देते हैं और सरकार में उस के खारिज होने की कोई वजह नहीं दिखाई गई और ऐसी हालत में कुछ चारा नहीं चलता और परिणाम यह होता है कि वह भारत का नागरिक नहीं माना जाता। मैं चाहता हूँ कि फ़ैसला करने वाली एंथारिटी (प्राधिकारी) को उस की अर्जी को खारिज करते वक्त वजह बतलाना चाहिये कि अमुक वजह से तुम भारत के नागरिक होने के योग्य नहीं हो या तुम्हें भारत की नागरिकता से खारिज किया जाता है। बिना वजह खारिज करना ज़रा दिल में खटकता है और मैं चाहता हूँ कि उस में यह जोड़ दिया जाय कि खारिज करने वाली एंथारिटी वजह भी बतलाये। इसलिये मेरा अनुरोध है कि सरकार उस पर विचार करे कि आज्ञा देने वाले अफ़सर को फ़ैसला देते वक्त और खारिज करते वक्त कारण ज़रूर देना चाहिये ताकि जब आप अपील करें तो हम आप से बता सकें कि यह जो रीज़न दिया है, वह सही रीज़न नहीं

है और बिना किसी रीज़न के "रिज़ेक्टेड" लिख देना उचित नहीं होगा। जैसाकि आज सीलोन की सरकार कर रही है और हम देख रहे हैं कि वहां की सरकार हजारों लाखों की तादाद में भारतीयों की नागरिककरण की दरखास्तों को बिना किसी वजह के खारिज कर रही है और हम सब उसके इस कृत्य पर आंसू बहाते हैं, अफ़सोस करते हैं और उस का निराकरण नहीं कर पाते। अगर वैसे ही हमारे यहां भी हॉने लगे और जिस बारे में हम दूसरों की बुराई करते हैं वही हम करने लगे तो हमारी आवाज़ बुलन्द नहीं हो सकती। इसलिये हम जो कुछ आज कहना चाहते हैं वह आवाज़ जनता की है, जनवाद की है। अगर हम हर एक आदमी को अपना समझें और फिर भी उस की दरखास्त को मंजूर न करें जिस में कि वह हमारी नागरिकता का अधिकार प्राप्त न कर सके, तो इस का क्या होगा, यह बात विचारणीय है।

इन शब्दों के साथ मैं इस विधेयक का समर्थन करता हूँ और उम्मीद करता हूँ कि गवर्नमेंट इस पर विचार करेगी क्योंकि हम लोगों का एम्पेन्डमेंट (संशोधन) देना और न देना तो बराबर होता है। यह तो गवर्नमेंट के ऊपर होता है कि वह उन को स्वीकार करे या न करे। हम लोग घंटों विभिन्न विषयों पर बोलते हैं लेकिन वह सब बेकार हो जाता है और सारे हम लोगों के एम्पेन्डमेंट बेकार हो जाते हैं क्योंकि गवर्नमेंट पर उन का कोई असर नहीं होता है उनको जो करना होता है वह तो पहले से ही निश्चित कर रखा जाता है। मैं ने यह सुझाव आप के सामने रखे हैं, उम्मीद है कि आप इन पर विचार करेंगे और विचार करने के बाद जो अच्छे संशोधन आप को लगे वह आप स्वीकार कर लेंगे। और जैसा कल भी मैं ने कहा था कि सरकार संशोधनों को स्वीकार करना भी सीखे, यदि इन संशोधनों को

स्वीकार कर लिया जाय तो हम को ज्यादा उस्ताह हो समर्थन करने का।

**Shri M. S. Gurupadaswamy:** Last time when I spoke on this Bill before it was referred to the Joint Committee I made certain observations regarding Commonwealth citizenship. I said the Commonwealth citizenship is not free from some canker. I said on account of the British Nationality Act even today we are treated as British subjects. The Home Minister then was pleased to say that so far as we are concerned, we do not regard ourselves as British subjects whatever might be the intention of the British Parliament or the British Government. But, even today after the discussion I find that the British Government has not taken steps to see that such reference is removed from their statute, and I am sorry the Home Minister only stopped at merely saying that we have nothing to do with that reference. I had expected that the matter would be taken up on a high official level with the British Government and such reference removed from the British statute. Unfortunately, it was not done. Even today it continues, and it will continue if we do not make any attempt, to take up the matter at the highest level.

Many Members have spoken many things about Commonwealth citizenship. I only aver that making special provisions about Commonwealth citizenship will be only encouraging feelings of suspicion and doubt in the minds of other countries—let alone others who are not associated with us, but those who are very much intimately connected with us. Especially we will be giving room for suspicion in our neighbouring countries. Even in the First Schedule you will see that Ireland is being mentioned separately. Ireland is not a Member of the Commonwealth and it has been mentioned separately. If the intention of the Minister is to treat this matter on the principle of reciprocity, I would ask him humbly: "why not you base the granting of citizenship rights on the

[Shri M. S. Gurupadaswamy]

dogma of reciprocity alone?" By giving Commonwealth citizenship status to Commonwealth countries, I feel you will be giving a go-by to the principle of reciprocity. If the principle of reciprocity is to govern the granting of citizenship rights, it is logical to expect of the Government to treat all the countries alike on the basis of this principle.

After all, in the Commonwealth we do not find equal treatment meted out to the various citizens. I think you find more discrimination there than you find in other countries. The racial discrimination and other forms of discrimination are more visible and in a more blatant form in Commonwealth countries than in others. I need not quote here particular instances. I may just refer to the case of South Africa which does not give our people fair treatment. So, in the so-called Commonwealth you find more discrimination, more prejudice and more intolerance than in any other part of the world. I do not know why the Minister is so anxious to be generous or catholic-minded and extend his goodwill even to those countries where there has been the worst discrimination taking place.

**Shri A. M. Thomas:** What do you say to the proviso to clause 5?

**Shri M. S. Gurupadaswamy:** I am only concerned to point out that there should be one principle. Either you apply the principle of reciprocity or give a go-by to that. If you apply the principle of reciprocity, then you apply it to all the countries without discrimination. But here, our citizenship law as it has been presented to the House discriminates between countries and countries. Countries which are far away from us are treated as intimate to us. Countries which are very near to us like Burma and Nepal and Indonesia are treated as though they are very far away from

us, and as though they are more foreign than the Commonwealth countries. This discrimination is notorious. So, I would appeal to the Minister to reconsider this particular point, and at the amendment stage I would beg of him to remove this anomaly.

Many Members spoke about the refugees who have come from Pakistan and their status. On this point I may submit that the refugees from Pakistan should not be treated separately from the rest of the citizens of India. Merely because the refugees have come after a particular date, that should not bar them from equal treatment. We know the circumstances under which the country was divided. So, an arbitrary date should not be fixed for granting of citizenship.

It is true that we are not at all depriving them of citizenship. But I feel that we are conferring only an inferior status on them. The hon. Minister may argue that citizenship by descent or by birth and citizenship by registration are the same as far as rights are concerned. If they are one and the same, then why should you not grant them the right of citizenship by birth or by descent? Why should you not treat them as belonging to one undivided India and treat them as natural born citizens?

But as my hon. friend on the Communist bench has pointed out, citizenship by registration would require them to sign an oath of allegiance. So, there is a big difference in the case of citizenship by registration. Supposing the oath of allegiance is questioned later on, he has to prove that he is loyal and faithful to the country, and he has to go through all the painful processes of law. Any time, a member of Government or any official may question his *bona fides*, if he is registered as a citizen. That would create bitterness and bad blood in the minds of those citizens. From the point of view of developing homogeneity and from the point of view

of developing unity of mind and heart between the citizens of India and those who have already come and who are coming from Pakistan, it would be better to abolish the distinction and apply one citizenship law to them. In other words, all those persons should be treated as citizens by descent.

My hon. friend Shri Kamath has already referred to the question of divestment of citizenship. He has sent also an amendment to the effect that a Supreme Court judge should be on the committee of inquiry. I whole-heartedly endorse the suggestion contained in his amendment. I also feel that in such a vital matter as citizenship, a judge of the Supreme Court who is well-versed in the legal and technical aspects of citizenship should be there in the committee.

I agree that citizenship is vitally connected with our public life. It is also vitally connected with our Security. I am also aware that it is the responsibility of the executive to see that the citizens remain loyal at times, and no one betrays the country. That, no doubt, is the responsibility of the executive. But that does not mean that you should not provide a safeguard for the citizens. If a citizen's *bona fides* are questioned, naturally he must have the satisfaction that his case has been heard dispassionately by a judge. So, there should be a proper remedy provided for the aggrieved citizen. I would suggest therefore that this amendment is very important, and it should be accepted by the Government and the House.

I now dwell upon the question of bodies corporate. Some hon. Members have said that bodies corporate should be treated as citizens. I cannot understand why bodies corporate should be treated as such. Bodies corporate are formed and run by citizens only, and therefore they will enjoy all the privileges of citizenship, though they are not citizens. After all, citizenship is an individual right. It is a right conferred on persons as individuals and

not as bodies corporate. So, it would be unnatural to confer citizenship rights on these bodies corporate which are only legal entities and not natural entities. They are not entities in human form. In no country will you find that these bodies corporate have been given citizenship rights. So, it would be unusual and extraordinary, if you confer these rights on them.

Lastly, I would suggest that Government should accept some of the amendments moved on the lines suggested by us on this side of the House. I wish that the provisions relating to the Commonwealth citizenship are drastically changed. Our citizenship should be open to all the countries, of course, under certain restrictions; and those restrictions should be applicable uniformly to all the countries. In this connection, I would request the hon. Minister to extend the facilities of Indian citizenship to our neighbouring countries like Burma and Nepal. This has been pointed out already by many hon. Members. It would be very necessary in the larger interests to have a Commonwealth citizenship of our own. We should not be a satellite or subordinate of other countries. Let us develop a true Commonwealth citizenship of our own, giving scope for neighbouring countries like Indonesia, Burma etc., so that we may have a fraternity of our own, and in the long run we may achieve Pan-Asian unity.

With these words, I would commend my suggestions to the House and the hon. Minister.

सरदार ए० एस० सहगल (बिलासपुर) :

ये विधेयक सिल्वेट कमेटी से हो कर आया है. इस के समर्थन में मैं कुछ कहने के लिये यहाँ खड़ा हुआ हूँ। मैं यह देखता हूँ कि नेशनैलिटी (राष्ट्रीयता) और सिटिजनशिप (नागरिकता) इन दोनों चीजों को यहाँ पर मिलाया जा रहा है। इस में यह कहना कि सिटिजन के राइट (नागरिकता अधिकार) और नेशनैलिटी के राइट (राष्ट्रीयता अधिकार) एक जैसे हैं भेरे खयाल

[सरदार ए० एस० सहगल]

में ठीक नहीं होगा इन दोनों को मिला देने से मैं समझता हूँ, हमारा काम नहीं चलेगा। यहां हमारे कुछ माननीय सदस्यों ने इन दोनों चीजों को मिला कर रखने की कोशिश की। इस चीज को, जो हम ने कांस्टीट्यूशन (संविधान) बनाई है, उस के मुताबिक यदि देखा जाय, तो पता लगेगा कि नेशनलिटी एक अलग बात है, वह अलग ही है और इस के साथ जो सिटिजन की परिभाषा है वही है जोकि पार्ट २ सिटिजन में दर्ज है।

अब हम देखते हैं कि जो यह विषयक है इस के बारे में एक माननीय सदस्य ने यह बताने की कोशिश की कि हमारे यहां पर जो ज्युडिशल डिमिजन (न्यायिक निर्णय)

है वह हमारे सामने है। मैं आप को बतलाऊं कि इस के साथ ही साथ यदि अलाहाबाद हाई कोर्ट के फैसले को आप देखें तो आप को पता लगेगा कि उन का खयाल दूसरा है और इस के साथ अगर आप सुप्रीम कोर्ट के फैसले को देखें तो उस फैसले में उन्होंने ने इंडायरेक्ली (अप्रत्यक्षतः) यह . . . . .

**Mr. Chairman:** I suppose the hon. Member will take more time. He may continue on the next day, that is, Monday.

*The Lok Sabha then adjourned till Eleven of the Clock on Monday, the 5th December, 1955.*

5-01 P.M.