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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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THE CONSTITUENT ASSEMBLY OF INDIA

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Marshal:

SUBEDAR MAJOR HARBANS LAL JAIDKA.

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CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 15*th September* 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

New Article 112-B.

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

"That after article 112 A, the following new article be inserted:—

Jurisdiction and powers of His Majesty in Council under existing law in certain cases to be exercisable by the Supreme Court.

112-B. Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to matters other than those referred to in the foregoing provisions of this Chapter in relation to which jurisdiction and powers were exercisable by His Majesty in Council immediately before the commencement of this Constitution under any existing law'."

Sir, the position is this that according to the ruling of the Privy Council there is a distinction between civil matters and matters relating to Income-tax and, for instance, acquisition proceedings. It has been held that the proceedings relating to income-tax and to acquisition of property do not lie within the purview of what are called 'civil proceedings.' And it might therefore be held that unless a special provision was made the powers of the Supreme Court were confined to civil proceedings. In order to remove that doubt this article 112 B. is now proposed to be introduced so as to give the Supreme Court full powers over all proceedings, including civil proceedings and other proceedings which are not of a civil nature. That is the reason why this article is sought to be introduced.

Pandit Thakur Das Bhargava (East Punjab: General) : Sir, I beg to move:

"That in amendment No. 17 above, in the proposed new article 112 B, the words 'or practice' be added at the end."

My only purpose in moving the amendment is that I am not sure if the words "under any existing law" will cover the entire scope of the jurisdiction which the Privy Council has been enjoying for such a long time. We have now got a Bill which is going to be introduced in a day or two—I think it is coming for discussion on the 17th—in which an attempt has been made to confer such jurisdiction on the Federal Court as has been enjoyed by the Privy Council. Paragraph 2 of the Bill says :

"As from the appointed day, the jurisdiction of His Majesty in Council to entertain, and save as hereinafter provided to dispose of, appeals and petitions from, or in respect of, any judgment, decree or order of any court or tribunal (other than the Federal Court) within the territory of India, including appeals and petitions in respect of criminal matters, whether such jurisdiction is exercisable by virtue of His Majesty's prerogative or otherwise, shall cease."

My submission is that it is doubtful in what manner and in what matters the Privy Council has been exercising jurisdiction. If there were no pre-existing

[Pandit Thakur Das Bhargava]

law, but the Privy Council was exercising jurisdiction only as a matter of practice, those jurisdictions must be taken away from the Privy Council and conferred on the Federal Court. Much of the Constitution of England is by way of conventions, so that we have to see that the jurisdiction of our Federal Court may be foolproof and is no less expensive than that of the Privy Council.

Prof. Shibban Lal Saksena (United Provinces : General): Sir, I beg to move :

"That in amendment No. 17 above, the proposed new article 112 B be numbered as clause (1) and the following clause be added:—

'(2) The Supreme Court shall also have jurisdiction to hear appeals against sentences of death passed by Courts-martial'."

Sir, in article 112 of the Constitution, the Supreme Court has been given very wide powers. It has been said that the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree or final order in any case or matter, passed or made by any court or tribunal in the territory of India in cases where the provisions of article 110 or article 111 of this Constitution do not apply. So, there is inherent power in the Supreme Court. I want to make this specific as this question is important.

I have had occasions to discuss this matter with many persons who are connected with decisions of the courts-martial. One thing that has struck me is that in the hearing of the courts-martial, the Judge Advocate who is the Judge is also the prosecuting counsel. When a military officer is prosecuted for breach of army discipline, the case goes to the Judge Advocate who is both the Court and also the person to give directions as if he were the prosecution Counsel in that case, with the result that he prepares the prosecution case and at the same time sits in judgment on the accused. Naturally, he cannot be expected to be so fair and impartial as laws of jurisprudence would expect him to be. The man who is the prosecutor should not be the Judge. I know of many cases where the ends of justice have not been met for this reason.

Recently the British Government appointed a Commission to enquire into the procedures of Courts-Martial. That Commission recommended that the Judge Advocate should have nothing to do with the prosecution. Hence my amendment that the Supreme Court shall also have jurisdiction to bear appeals against sentence of death passed by Courts-martial.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, the amendment which stands in my name is of a verbal nature and, therefore, I shall leave it to the Drafting Committee to consider. I, however, with your permission, desire to take part in the general discussion.

This article 112 B seeks to be very intricate and circumspect in its approach. It is the inevitable result of piecemeal introduction of articles on the subject. I submit that the way in which the present articles have been worded would make it absolutely difficult to realise what they mean, Article 112 B tries to give jurisdiction to the Supreme Court over subjects on which "His Majesty in Council" had powers. We are thus linking the rights and powers of the Supreme Court in matters of appeal to the undefined powers of His Majesty in Council. I think instead of proceeding in a roundabout manner like this, the more satisfactory

course would have been to say that Income-tax and Acquisition proceedings are subjects on which there would be a right of appeal before the Supreme Court.

Sir, I would like to draw the attention of the House to article 111-A which gives absolute jurisdiction with regard to criminal cases where there is a final judgment, or order or sentence of a criminal Court, provided of course there is a substantial question of law and there is special leave. Then in article 112 it is said that the Supreme Court may give special leave to appeal from any judgment, decree or final order in any cause or matter passed or made by any Court or tribunal in the territory of India. These, I think, ought to be enough so as not to require any further clarification by means of article 111B.

Then again in article 112-A we have already provided that the Supreme Court has the powers to review any judgment pronounced or order passed in any case. So in these circumstances, the real utility of article 112-B is not very clear. If there are some loopholes in the articles already passed the better course would be to clarify the matter by specific enactments.

With regard to the British Constitution the greatest difficulty is that it is in a fluid condition. Nobody knows what the powers of the King are and nobody can define them with precision. They are determined by the Courts or by the Parliament when they arise. The proposal of linking the powers of the Supreme Court with the powers of His Majesty would be open to two objections, namely, the linking up of the Supreme Court with something which is vague and undefinable and secondly to inevitably perpetuate the designation of "His Majesty" in the Constitution of Free India.

Shri Brajeshwar Prasad (Bihar : General) : Mr. President, Sir, I rise to support Prof. Saksena. I feel that military courts are not likely to have proper regard for the sanctity of human life. I am against capital sentence. The traditions of non-violence are so strong in this country that it is not advisable to vest final powers into the hands of military tribunals in cases of death sentence. We cannot abolish capital punishment here. All judiciaries, even the Supreme Court are responsive to public opinion. I have no reason to think that our Supreme Court here will have no regard for public opinion and for the traditions of this country.

Mr. President : Dr. Ambedkar, would you like to say anything?

The Honourable Dr. B. R. Ambedkar : Sir, with regard to the amendment of my Friend, Pandit Thakur Das Bhargava, I do not think that that amendment is necessary if he is really enlarging the jurisdiction of the Court. The word "practice" is generally taken to cover matters of procedure, and article 112-B which I have proposed does not deal with procedure but deals with substantive matter of jurisdiction. Therefore his amendment "or practice" is unnecesary.

With regard to the amendment of my Friend Prof. Shibban Lal Saksena, there are two points to which I would like to reply. The first is this, that it there is to be an appeal to the Supreme Court in matters of sentence of death passed by Courts-martial, then such a provision could be easily made by the Indian Army Act giving the accused person the right to appeal, and it has been provided, if I may draw my friend's attention to clause (1) of article 114, that the Supreme Court shall have such further jurisdiction and power with respect to any matters in the Union List. it reads :

"114(1). The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer."

[The Honourable Dr. B.R. Ambedkar]

If Parliament thinks that such a power should be vested in the Supreme Court, there is no impediment in the way of Parliament making an appropriate provision in the Army Act conferring such a power on them.

Again, I should like to draw attention to article 112 which deals with matters of special need. Under that it would be open to the Supreme Court to entertain an appeal against a Court-martial because therein the words used are—

"any cause or matter made by any court or tribunal",

and therefore, the wording being so large, no Court or tribunal could escape from the special jurisdiction of the Supreme Court provided under article 112. Therefore, my submission is that his amendment is also quite unnecessary.

With regard to the amendment of my friend Mr. Naziruddin Ahmad to omit the words "existing law".....

Mr. Naziruddin Ahmad : I have not moved that.

Mr. President : He has not moved it, he has left it to the Drafting Committee.

The Honourable Dr. B. R. Ambedkar : If he has left it to the Drafting Committee I am very glad, Sir. We shall certainly pay the best attention that his point deserves.

Mr. President : Then I will put the amendments.

Prof. Shibban Lal Saksena : In view of the assurances given, I would like to withdraw my amendment.

Pandit Thakur Das Bhargava : I too am withdrawing my amendment, Sir.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President : The question is:

"That proposed article 112-B stand part of the Constitution."

The motion was adopted.

Article 112 B was added to the Constitution.

New Article 15-A

Mr. President : Then we go back to New Article 15-A.

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

"That after article 15, the following article be inserted:—

'15-A. (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult a legal practitioner of his choice.

Protection against certain arrests and detentions.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in this article shall apply—

(a) to any person who for the time being is an enemy alien, or

(b) to any person who is arrested under any law providing for preventive detention;

Provided that nothing in sub-clause (b) of clause (3) of this article shall permit the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are or have been or are qualified to be appointed as judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention, or

(b) such person is detained in accordance with the provisions of any law made by Parliament under clause (4) of this article.

(4) Parliament may by law prescribe the circumstances under which and the class or classes of cases in which a person who is arrested under any law providing for preventive detention may be detained for a period longer than three months and also the maximum period for which any such person may be so detained'."

Sir, the House will recall that when at a previous session of this Assembly we were discussing article 15, there was a great deal of controversy on the issue as to whether the words should be "except according to procedure established by law", or whether the words "due process" should be there in place of the words which now find a place in article 15. It was ultimately accepted that instead of the words "due process", the words should be "according to procedure established by law". I know that a large part of the House including myself were greatly dissatisfied with the wording of article 15. It will also be recalled that there is no part of our Draft Constitution which has been so violently criticised by the public outside as article 15 because all that article 15 does is this, it only prevents the executive from making an arrest. All that is necessary is to have a law and the law need not be subject to any conditions or limitations. In other words, it was felt that while this matter was being included in the Chapter dealing with Fundamental Rights, we were giving a carte blanche to Parliament to make and provide for the arrest of any person under any circumstances as Parliament may think fit. We are therefore now, by introducing article 15-A, making, if I may say so, compensation for what was done then in passing article 15. In other words, we are providing for the substance of the law of "due process" by the introduction of article 15-A.

Article 15-A. merely lifts from the provisions of the Criminal Procedure Code two of the most fundamental principles which every civilised country follows as principles of international justice. It is quite true that these two provisions contained in clause (1) and clause (2) are already to be found in the Criminal Procedure Code and therefore probably it might be said that we are really not making any very fundamental change. But we are, as I contend, making a fundamental change because what we are doing by the introduction of article 15-A. is to put a limitation upon the authority both of Parliament as well as of the Provincial Legislature not to abrogate these two provisions, because they are now introduced in our Constitution itself.

It is quite true that the enthusiasts for personal liberty are probably not content with the provisions of clauses (1) and (2). They probably want something more by way of further safeguards against the inroads of the executive and the legislature upon the personal liberty of the citizen. I personally think that while I sympathise with them that probably this article might have been expanded to include some further safeguards. I am quite satisfied that the provisions contained are sufficient against illegal or arbitrary arrests.

As Members will see, the provisions contained in clauses (1) and (2) of article 15A. are made subject to certain limitations which are set out in clause (3) which says that the provisions contained in clauses (1) and (2) of article 15-A will not apply to any person who for the time being is an enemy alien. I do not think that there could be any further objection to the reservation made in clause (3) (a) in respect of an enemy alien.

[The Honourable Dr. B. R. Ambedkar]

With regard to sub-clause (b) of clause (3) I think it has to be recognised that in the present circumstances of the country, it may be necessary for the executive to detain a person who is tampering either with public order as mentioned in the Concurrent List or with the Defence Services of the country. In such a case I do not think that the exigency of the liberty of the individual should be placed above the interests of the State. It is on that basis that sub-clause (b) has been included within the provisions of clause (3).

There again, those who believe in the absolute personal liberty of the individual will recognise that this power of preventive detention has been helped in by two limitations: one is that the Government shall have power to detain a person in custody under the provisions of clause (3) only for three months. If they want to detain him beyond three months they must be in possession of a report made by an advisory board which will examine the papers submitted by the executive and will probably also give an opportunity to the accused to represent his case and come to the conclusion that the detention is justifiable. It is only under that that the executive will be able to detain him for more than three months Secondly, detention may be extended beyond three months if Parliament makes a general law laying down in what class of cases the detention may exceed three months and state the period of such detention.

I think, on the whole, those who are fighting for the protection of individual freedom ought to congratulate themselves that it has been found possible to introduce this clause which, although it may not satisfy those who hold absolute views in this matter, certainly saves a great deal which had been lost by the non-introduction of the words 'due process of law.' Sir, I commend this article to the House.

Pandit Thakur Das Bhargava : Sir, if you permit me I shall simply read out the numbers of my amendments and they may be treated as moved in the House. This will save time.

Mr. President : Yes, as the amendments are lengthy ones they may be treated as read out in the House.

Pandit Thakur Das Bhargva: Sir, I request that all my amendments may be taken as moved.

"That after article 15 the following new article be added :—

'15-A. No procedure within the meaning of the proceeding section shall be deemed to be established by law if it is inconsistent with any of the following principles :—

(i) Every arrested person if he has not been released earlier shall be produced before a Magistrate within 24 hours of his arrest excluding the reasonable period of journey from the place of arrest to the Court of the Magistrate and informed of the nature of the accusation for his arrest and detained further only by the authority of the Magistrate for reasons recorded.

(ii) Every person shall have the right of access to Courts to being defended by counsel in all proceedings and trials before courts.

(iii) No person shall be subjected to unnecessary restraints or to unreasonable search of person or property.

(iv) Every accused person is entitled to a speedy and public trial unless special law or public interests demand a trial *in camera*.

(v) Every person shall have the right of cross examining the witness produced against him and producing his defence.

(vi) Every convicted person shall have the right of at least one appeal against his conviction'."

'15-B. No procedure within the meaning of Sec. 15 shall be deemed to be established by law in case of preventive detention if it is inconsistent with any of the following principles :—

(i) No person shall be detained without trial for a period longer than it is necessary.

(ii) Every case of detention in case it exceeds the period of fifteen days shall be placed within a month of the date of arrest before an independent tribunal presided over by a judge of the High Court or a person possessed of qualification for High Court Judgeship armed with powers of summary inquiries including examinations of the person detained and of passing orders of further detention conditional or absolute release and other incidental and necessary orders.

(iii) No such detention shall continue unless it has been confirmed within a period of two months from the date of arrest by an order of further detention from such tribunal in which case quarterly reviews of such detentions by independent tribunal armed with powers of passing of orders of release conditional or otherwise and other necessary and incidental orders shall be made.

(iv) Such detention shall in the total not exceed the period of one year from the date of arrest.

(v) Such detained person shall not be subjected to hard labour or unnecessary restrictions otherwise than for willful disobedience of lawful orders and violation of jail rules.' "

"That in amendment No. 1 above, for clause (1) and (2) of the proposed new article 15A, the following be substituted:-—

'15-A. No procedure shall be deemed to be established by law within the meaning of article 15 if the law prescribing the procedure for criminal proceedings and trials of accused persons contravenes any of the following established principles and rights—

(a) the right of production of the person under custody before Magistrate within 24 hours of his arrest (excluding the reasonable period of journey from the place of arrest to the court of Magistrate) and further detention only with the authority of the magistrate for reasons recorded;

(b) the right of consultation after arrest and before trial and the right of being defended by the Counsel of his choice;

(c) the right of full opportunity for cross- examination of witnesses produced against the accused and production of his defence;

(d) the right of at least one appeal in case of conviction'."

"That in amendment No. 3 above, after clause (d) of the proposed new article 15-A, the following clauses be added :—

'(e) right to freedom from torture and unnecessary restraints and from unreasonable search of person and property;

(f) right to a speedy and public trial unless special law and public interest demand a trial *in camera*'."

"That in amendment No. 1 above, in clause (1) of the proposed new article 15-A, for the words 'a legal practitioner of his choice' the words 'and be defended by a legal practitioner of his choice in all criminal proceedings and trials' be substituted."

"That in amendment No. 1 above, in the proposed new article 15-A. for clause (2), following be substituted :—

'(2) Every arrested person if he has not been released earlier shall be produced before a Magistrate. within 24 hours of his arrest excluding the reasonable period of journey from the place of arrest to the court of the Magistrate and detained further only by the authority of the Magistrate for reasons, recorded'."

Or, alternatively

"That in amendment No. 1 above, at the end of clause (2) of the proposed new article 15 A, the following be added :—

'and for reasons recorded'."

[Pandit Thakur Das Bhargava]

"That in amendment No. 1 above, after clause (2) of the proposed new article 15 A, the following clauses be added :

'(2a) Every person accused of any offence or against whom criminal proceedings are being taken shall have the full opportunity of cross-examining the witnesses produced against him and producing his defence.

(2 b) Every person sentenced to imprisonment shall have the right of at least one appeal against his conviction'."

"That in amendment No. 1 above, for clauses (3) and (4) of the proposed new article 15 A, the following be substituted :—

'15 B. No procedure shall be deemed to be established by law within the meaning of article 15 if the law prescribing the prevention or detention contravenes any of the following principles,—

(1) Such detention without trial shall only be allowable for alleged participation in dangerous or subversive activities affecting the public peace, security of the State and relation between different classes and communities inhabiting India or membership of any Organisation declared unlawful by the State.

(2) Such detention shall not be longer than two months unless an independent tribunal consisting of two or more persons being High Court judges or possessing qualifications for High Court judgeships and armed with powers of enquiry including examination of the detainee recommend continuance of detention within the said period of two months.

(3) Such detention shall not exceed the total period of one year.

(4) Such detention shall be free from unnecessary restrictions and hard labour otherwise than for wilful disobedience of lawful orders and violation of jail rules :

Provided that the Parliament shall never be precluded from prescribing other reason and circumstances which may necessitate such detention and the conditions of such detention'."

"That in amendment No. 1 above. in the proviso to clause (3) of the proposed new article 15 A, for the word 'three' the word 'two' be substituted."

"That in amendment No. 1 above, in sub-clause (a) of the proviso to clause (3) of the proposed new article 15 A, after the word 'Board' the words 'with powers of inquiry including examination of persons detained' be inserted."

"That in amendment No. 1 above, at the end of sub-clause (b) of the proviso to clause (3) of the proposed new article 15 A, the following be added :—

'but in no case more than six months' *or* 'but in no case more than a year'."

"That in amendment No. 1 above, in clause (4) of the proposed new article 15 A, after the word 'circumstances' the words 'and the conditions' be inserted."

"That in amendment No. 1 above, in clause (4) of the proposed new article 15 A, for the words 'three months' the words 'one month' or 'two months' be substituted."

The House has just heard the speech of the honourable Mover of the main motion. I need not recall to the memory of the House the heated controversy which raged about a year and a quarter ago round the words 'due process of law'. Now a substantive part, of the 'due process' has practically been given up after 70 per cent being secured in article 13. We should think that in the circumstances of our country, this provision of 'due process' is certainly necessary cent per cent. It is the only right process in this country. Our country is not trained to the restraints and discipline which mark out a country in which democracy has worked for a long time. Our country is full of autocratic ideas. The domination by a foreign power of this country for hundreds of years has so demoralised our character that a man in the street....

The Honourable Dr. B. R. Ambedkar : Sir, may I say a word? I am prepared to accept one of the amendments of my honourable Friend which says that the accused shall have the right to be defended. I can add these words in the last line of clause (1) of article 15 A. It will run thus : be denied the right to consult or to be defended by lawyers of his, choice'. I think that will carry out my honourable Friend's intention.

Pandit Thakur Das Bhargava : In trials as well as in criminal proceedings?

The Honourable Dr. B. R. Ambedkar : 'Defended' means that. Could we not curtail the debate now?

Pandit Thakur Das Bhargava : We have already passed an article, No. 24 about Compensations. Is it the idea that no compensation need be given at all ? If you make acceptance of amendments a price for my not speaking further, I should be paid full compensation.

So far as the question of compensation is concerned, we wanted that the words 'due process of law' should be there. I am glad that Dr. Ambedkar, who has been very cautious in this matter, has today confessed that he is of the same view as many other lawyers in this House. But our misfortunate was that the greatest obstacle to this 'due process' came from the greatest jurist in this House and it is most unfortunate to this country that we have not been able to pass this 'due process' clause. In the long history of the struggle for liberty which the Congress had to wage with the foreign government, the High Courts and the Supreme Court many a time held that the laws passed by the bureaucracy were not valid. Now, this power is being taken away from our Indian courts in the name of liberty. My submission is that the first casualty in this Constitution is justice. After all what is a fundamental right? A fundamental right is a limitation of the powers of the executive and the legislature. Whatever fundamental rights we have given in this Constitution, lately an attempt has been made to take them away. Article 15 is the crown of our failures because by virtue of article 15 we have given the Executive and the legislature power to do as they like with the people of this country, so far as procedure is concerned. I cannot describe the state of mind in which I felt myself when I could not succeed in getting this House to agree to the due process clause.

Now, Sir, Dr. Ambedkar says that he has given a compensation for that clause. He has given us these two clauses (1) and (2). I congratulate him so far as these two clauses are concerned, although I shall have occasion to quarrel with him over one of these clauses. All the same, I congratulate him on the efforts he has made in salvaging something out of the lost cause. All the same, I do not know, Sir, which department of the Government of India or which Minister has got the cheek to oppose the whole nation when it wants to get into its own.

Now, Dr. Ambedkar says that he is agreeable to accept my amendment that the accused will have the right of being defended by a lawyer of his choice. I make bold to say that in no country, in no civilised country is that right not given. This too has been very niggardly given by Dr. Ambedkar. This Dr. Ambedkar says, is a sort of compensation to the original due process clause. I submit with great pain that this is in my opinion no concession at all. These two provisions mentioned by him are so elementary that I may say without any sort of hesitation that these two clauses are of such a nature that no civilised country, no civilised legislature, can have the heart to say that even these should not be recognised.

Now, in regard to the two matters of arrest and detention, these two clauses are sought to be introduced; but what happens after a person is arrested or detained? His troubles begin then. When be is detained or arrested and he is in the clutches of the police, he is alone in the world, and the forces of the police, the forces of the Crown and all other forces combine against him and he is helpless. We have made absolutely no provision to save him from the tyrannies of the police and the courts. After all, what is the magistracy?

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When we come to the other articles which are coming before the House, 209, etc., we will realise that the whole panorama of Swaraj is being taken away from us bit by bit. All the powers of the magistracy will remain in this country as before. They are not going to make any change so far as the question of the separation of the judiciary from the executive is concerned. Knowing well what kind of magistracy we have, we should at least provide some sort of check by the way of procedure at least. If you do not allow the courts, even the highest courts in this land to pronounce if any law is valid and just, you must at least have some compensatory thing. In regard to these principles, only two are sought to be put in. Now, after arrest and detention, there is absolutely no sort of right which is sought to be given.

Sir, if you will kindly examine these two clauses (1) and (2), you will be pleased to see that not only no further riot is sought to be given, but also that the take away from the existing rights. In regard to 15 A. (1), I submit it reads thus :—

"No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult a legal practitioner of his choice."

The law at present is that no person is to be kept in detention for a single minute longer than is necessary or reasonable. This section does not even give this right that the executive will be compelled to produce a person arrested before a court as soon as possible. If an officer detains a person longer than is necessary, he cannot be called upon to explain now. Fundamental Rights mean that these rights cannot be taken away by the legislature or the executive. Left to myself, I would rather be without any fundamental right, unless there is a modicum of right which ensures the liberty of the citizen. Sir, the present practice under 61 of the Criminal Procedure Code is as soon as a person is arrested, he must be produced before a court within twenty-four hours, excluding the time taken for the journey from the place of arrest to the nearest magistrate's court.

Apart from this, Sir, when he is brought before the Court under section 61 within twenty-four hours, then at that time the powers of the courts also are restricted under the present law, and I think they have been rightly restricted. We know that the magistracy, especially the special class magistrates, is police ridden, because the Superintendent of Police has only to write a letter in secret against the magistrate and the magistrate will be no more. Therefore the ordinary magistrates have not the guts to do anything against the wishes of the police. and therefore they allow detention as a matter of course. This is the present practice and therefore the law enacted a provision in section 167 of the Criminal Procedure Code. With your permission, I would just read that provision.

The provision in the Criminal Procedure Code is as follows :—

"Whenever any person is arrested and detained in custody and it appears that the investigation..... cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well founded, the officer in charge of the Police-station or the Police Officer making the investigation if he is not below the rank of Sub-inspector shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case and shall at the same time forward the accused..... to such Magistrate."

Now, this provision and the other provision say that an accused must be kept with the authority of a Magistrate;-and third-class and second class Magistrates, unless they are specially empowered, have not the right to authorise detention of a person, because in 1923 we passed a law whereby a proviso was added to this effect :—

"Provided that no Magistrate of the third class and no Magistrate of the second not specially empowered in this behalf (by the Provincial Government) shall authorise detention in the custody of the Police."

Even this right is taken away. There is an amendment by a friend of mine to this clause which says that only first-class Magistrates should be enabled to have, this power and to authorise detention. I do not agree with him, because unless and until the second-class and third-class magistrates are also specially empowered, it would be difficult to work it in practice, but at the same time, I do not see any reason why this provision passed in 1923 should be taken away by this clause.

Then again, Sir, a very important and salutary check has been placed on the authority of the Magistrate by virtue of provision 167 (3) which says : "A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing," and I beg Dr. Ambedkar to kindly give me his car for half a minute. I beg to submit that only four words "and for reasons recorded" be added. When a person is brought before a Magistrate, this is exactly the time when his fate is going to be sealed or to be bettered. At that time, according to the practice followed in the Punjab and elsewhere, when an accused is presented before the Magistrate, when the remand is sought to be given, the Magistrate is bound to record his reasons and this is a very great check upon the power of the Magistrate. I have got some specific amendments to this effect. I want that in the first proviso in the proposed new article 15-A as moved by Dr. Ambedkar the words "and for reasons recorded" to be added and I beg of Dr. Ambedkar to kindly consider the full effect of these words.

I claim that unless these words are there, you will be taking away a very important right of the accused. If you put these words, then it would mean this that as soon as a man comes, as soon as the papers are presented to the Magistrate, it is the duty of the Magistrate to see how long the remand is to be given, for how long this man is to be put in the dangeon and give full reasons and these reasons could be scrutinized by the superior Courts and the accused could get that order revised. This order is revisable; it is a judicial order; it is not an executive order and therefore, reasons must be given. If reasons are given then, of course, we may say that the order is justified. If you provide the reasons to be given, then the Magistrate will be called upon to explain; he will have to hear the lawyer and then pass an order whether a man is to be detained for ten or five days and for what reasons he has to detain him. If you do not condition his order with the words "and for reasons recorded", the probability is that the Magistrate will mechanically make the order of remand.

I do not want to read from the rulings which give effect to it and why this is a very salutary law. I leave it to the House because I submit this is one of the most important amendments that I seek to make in this law. If these words are there, I submit Sir, the liberty of the accused will to a very great extent be secured and at the same time the present provision 15 A. (1) will not be necessary, because as soon as a person is brought within a period of twenty-four hours his counsel is there; then in that case when the Magistrate goes into the reasons as why he should allow further remand at that time, the reasons are gone into and

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the accused is automatically informed and the accused can ask the Magistrate why he is granting a remand and why he is being put in custody. He has a right to an explanation from the Magistrate why he is detained, and thus the provisions of 15 A. (1) will be in effect fulfilled. If you put these words "and for reasons recorded" in clause, (2) then it would follow that 15 A. (I) will be unnecessary.

In practice what happens ? The police is all powerful, they misinform the persons, ill-treat him and his relations and give them wrong reasons of detention. You have got nothing to prevent this being done unless it lie by this clause. If a person has misinformed, the accused there is no record of it. You have got no check over the Police and have, no guarantee that these provisions will be, given effect to. Therefore the only check that you can place upon the police and on a Magistrate is, at the time when the man comes for remand and when he comes, you could certainly insist that the reasons must be recorded so that the Magistrate when he records the reasons and when he considers them he may also explain to the accused or to his counsel why he is being detained or for what further period he is to be detained. I only suggest that these words must be added to clause (2) if you really mean that a person may be secured in his rights. I do not think I am asking for more than what is absolutely due to the accused.

In regard to my other amendments, I am glad that one amendment has been accepted by Dr. Ambedkar regarding counsel and I will not take up your time by referring to this aspect of the case. The other amendments which follow also relate to such rights as have been already conceded by the Criminal Procedure Code and the only apprehension is that a panicky legislature or an autocratic Government may not take away those rights from the people and begin to tyrannise over them. Let us be quite clear in our minds about this aspect of the matter. The whole of India, though governed by the Centre, is at the same time governed by the Provincial Governments and States where the autocracy of the old days is still in vogue and it is high time that when the new legislatures come into being, we should see that the legislatures do not misuse the powers in respect of which they have not got any experience whatsoever. It is in the blood of every executive officer and much more so in India to have as much powers as possible. Does this House not remember that in 1947 we passed such a law as against which one of the present Ministers of the Crown stood up and said "It is a black law" ? Do we not remember that we in a panic passed in this House laws authorizing the Police to shoot over the public without any warning? Do we not know that we in this House passed some laws whereby if a person wrote an article, not because it was inflammatory, but tended to do something which was quite vague in respect of worsening the relations between different Communities, not only his other publications, but the press in which they were published, could be confiscated without an appeal to any Court.'

I know that these powers were not used because we have got Sardar Patel at the helm of affairs, because we have got our own Government who do not want to use these powers. Suppose, Sir. in a new State which is being formed these powers are given to the Ruler of that State, who in his wisdom begins to exercise those rights, what would happen to the rights of the individual. We are making a Constitution which will save the liberty of the people. My humble submission is that that article 15 as it stands with these two safeguards also is a blot upon the Constitution. We have not been able to secure the rights which we wanted to secure. I know I am using strong words. But, my feelings are extremely strong and I cannot conceal them from this House. I want them to

share these feelings with me. As a matter of fact, I say this is the only time when you can impose some restrictions on the legislature. We must bring all the pressure on Dr. Ambedkar, and tell him that these are the minimum rights which we want to secure to the people at large. I would have rather liked that Dr. Ambedkar, instead of resisting the attempts of these people, should have, resigned from his post as a protest against the pressure which is being brought upon him by the powers so that these fundamental rights may not be put in.

We have agreed that due process of law shall not be there. But I do not agree that even these small rights should not be put in. I submit for your consideration what these rights are. One of these rights is that every person accused of any offence shall have the right of cross-examining the witnesses produced against him and producing his defence. This is a very elementary right. If you do not allow this, why speak of a trial ? Do we not know every day that this right is being denied to the accused ? In the *mofussil*, the courts do not wait for the counsel and cases are conducted in places where witnesses do not reach. Me people are being deprived of their right of defence. So far as cross examination is concerned, we know even under section 256, the provisions are abused and attempts are made not to allow cross examination. Where is the guarantee that in the future the legislature will not assume, that the executive will not force the legislature to assume the power that any accused may be condemned even in his absence ? I know of the legislatures where attempts were made to see that in the absence of the accused, the hole trial is gone through. Do we not know the Rowlatt Act which said, no *vakil*, no *daleel,* no appeal ?

Mr. President : The Honourable Member has made reference to this House several times. I do not know which House he means.

Dr. P. S. Deshmukh (C. P. & Berar: General) : In its legislative garb.

Pandit Thakur Das Bhargava: This House has got two forms, one legislative and the other constitutional. We pass laws in the other House and here we only pass this Constitution. I am referring to the other House. You are the President of that House also though we have got a Speaker too. My humble submission is, we take full responsibility for what we have done. These laws have not been misused. My humble submission is, where is the guarantee that any other Government which is not manned at the Centre by people like the present Cabinet, or any other provincial Government will not exercise these powers ? We do not think this Government would do it. But, there are other Governments. Take the case of Rajasthan. They have just emerged from autocracy; we do not know to what extent they will go when they are confronted with an emergency. With regard to emergency.....

Mr. President : I was thinking of reference to this House when you mentioned the Rowlatt Act.

Pandit Thakur Das Bhargava : The Rowlatt Act was passed in 1918, XIV of 1918, I know. My submission is, where is the guarantee that this House or the provincial legislatures will not enact a law like that Act ? This should be made foolproof so that the courts would sit in judgment and pronounce that these Acts are not valid. When it is a case of giving compensation, let us be fair and let that compensation be adequate and fair and just. It is neither, it is not even justiciable.

I shall come to another clause. No person shall be subject to unnecessary restraints or to unreasonable search of person or property. This clause has a history of its own. I do not want to go into the history of general search, etc.,

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as they happened in England. But, I want to refer to what happened in this very House. On 3rd December, Kazi Syed Karimuddin brought an amendment in this House in your absence. It was to this effect : it appears on page 794 of the proceedings dated 3rd December 1948.

> "That in article 14, the following be added as clause (4):—
>
> '(4) The right of the people to be secure in their Persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized'."

When we were debating this, at the end, Dr. Ambedkar who is imbued with the notions of a criminal lawyer, I do not know whether he has practised or not, said, (it appears on page 796) : "I am however prepared to accept amendment No. 512 moved by Mr. Karimuddin. I think it is a useful provision and may find a place in our Constitution. There is nothing novel in it because the whole of the clause as suggested by him is to be found in the Criminal Procedure Code so that it might be said in a sense that this is already the Law of the land. It is perfectly possible that the legislatures of the future may abrogate the provisions specified in his amendment, but they are so important so far as personal liberty is concerned that it is very desirable to place these provisions beyond the reach of the legislature and I am therefore prepared to accept his amendment." The amendment was accepted. The Vice President said twice that the amendment was accepted. But then, the question was raised and ultimately this was negatived.

I am submitting this to prove that as a matter of fact, this Drafting Committee which we have appointed, which should have carried out the will of this House, has failed to do so. It has succumbed to extraneous influences from other authorities. I think that so far as this House is concerned, the Drafting Committee should have carried out the behest of this House. Dr. Ambedkar should have been allowed to have his own way. Dr. Ambedkar agrees that this is a useful provision. Yet, now, he is not prepared to accept my humble amendment to this very effect. What is the position? The position is, that the will of the Members of this House is not being implemented by this Drafting Committee. I do not want to read from the speeches of Dr. Ambedkar and Mr. Munshi who also was of this view. He gave very good reasons : I have taken my cue from those gentlemen: they are not my arguments; they are arguments proceeding from those gentlemen. I am very sorry that these gentlemen have had to succumb to pressure from other places. My humble submission is that so far as this amendment is concerned this is one which has been accepted by this House and I beg of Dr. Ambedkar to rise to the occasion and accept at least this amendment. He would have known fully well, if he had practised as a criminal lawyer in the mofussil, that as a matter of fact, when houses are searched, it is not the search which we object to, but property is sometimes planted and then searches are made in the presence of witnesses who are procured by the police. The House must remember that at least in 50 per cent. of the criminal cases brought before the courts the accused are either discharged or acquitted. The House can see what amount of corruption, what amount of embarrasment and harassment is being caused to the public, on account of this corrupt and incompetent police.

I know when we say this we are, condemning ourselves I do not take any pride in saying that the police is so bad. But we have just started reforming them after 200 years of slavery and it may take some time to change. If we continue to have the Cabinet which we have got now for some years more, I think things will improve. But, we must take stock of things as they are. We cannot be complacent that everything is being done rightly. May I humbly submit, Sir, I do not want to paint a gruesome picture, in the present circumstances of the country. But there is no doubt there is great corruption, there is great tyranny and there are no civil liberties in this country. Our ministers at the helm of affairs are not fully aware of the situation. May I tell you, Sir, what happened in Delhi to the refugees ? Without any law, police robbed the people of their goods, and broke up their stalls. There was no law; When asked under what law this was being done, the reply was that this was done under executive orders of the Cabinet. Now, my humble submission is that unless there is a reign of law in this country wherein no situation like the one in which we find ourselves will arise, the liberty that we have won is not worth the paper on which it is written.

What is the fifth right I claim ? I claim if there is a conviction, if a person is sent to imprisonment, at least you provide him with one appeal. Now it was after great fight and after you yourself took some interest in the affair that we were able to put in a clause relating to Federal Court that in cases of persons who are for the first time sentenced by the High Courts to death, in those cases an appeal was allowed; but even then if the High Court in its wisdom wants to sentence the accused to transportation for life, even though this is the first conviction, there is no appeal. My submission is that in every civilised country the judgment of one man is not given the power whereby he can put a person in imprisonment of transportation. I therefore want a very simple provision that every person when he is convicted or sentenced to imprisonment must have one right of appeal. Is it extravagant that at least when the liberties of the people are taken away, they will have at least one appeal.

Similarly when you go to the other question about speedy trial, what are the functions of Government ? Justice delayed is justice denied and I need not emphasize it. I am not one of those who want abstract rights—I am not one of those who are opposed to social control in the interest of the community but I do want that personal liberty may be secured to the individual in a full measure. My submission is that we must have the ordinary rights which have been enjoyed by every civilized country.

I now come to the second part of the provision and that is relating to preventive detention. There was a time when detention without trial was regarded as a very heinous offence by itself when every person said that no person should be detained without being tried. Now fortunately or unfortunately the time has come and in every civilised country we have a law about preventive detention. I do not want that my country must not have the safeguard; on the contrary I have always stood for having a law about preventive detention and I am glad that we are going to have clause (4). At the same time I want that the preventive detention may be regulated by law. I want that at least the barest demands of justice be secured to a person who is a detainee. After all every accused person before trial is presumed to be innocent, and similarly a detainee who is not even tried is presumed to be innocent. Therefore no unnecessary restriction may be put upon him and be may not be put to hard labour unless for wilful disobedience to lawful order or infraction of jail rules. Therefore I suggest that so far as these persons are concerned, they may not be put to unnecessary hardship or restrictions.

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Now I am not satisfied that three months period is the right period which has been prescribed by Dr. Ambedkar. In ordinary cases we give fifteen days to Police for preparing the case. In cases of this nature when a case is prepared for this impartial tribunal, then according to me one month is quite sufficient. Taking the exigencies of the time I submit that before two months are over an order should be obtained from an impartial tribunal and not from a board. I want to use those words which a year and a half ago Dr. Ambedkar himself used, I am reading from the proposed draft of Dr. Ambedkar which he presented before the committee appointed to consider the question of Due Process. At that time the draft had these words :—

> "Nothing in article 15, 15A, 15B and 15C shall apply to persons taken in custody under any law providing for preventive detention of persons who are believed to be engaged in dangerous or subversive activities. Provided however no such person shall be kept for a longer period than three months without the authority of an impartial tribunal."

you call it Board and I call it Impartial Tribunal. If you call it an 'Impartial Tribunals', unconciously it gives the persons concerned an idea that it is an impartial tribunal. I want that this Board must be armed with the powers of examining the detainee. I regard it as one of the most salutary and one of the most elementary principles of justice.

We passed the other day an article that if a civil servant—if he was going to be reduced in rank or removed or dismissed, he must be given an opportunity of showing cause. Now this man whose liberty is taken away will not have such liberty of showing cause. Dr. Bakshi Tek Chand just showed me one of the laws of the Government of Madras which says that in a situation like this the Madras Legislature has in its wisdom sought to impose a restriction on the powers of the Executive that they must give the detainee the grounds for which he is detained and ask him his explanation of the same. When Dr. Ambedkar moved it he said probably this power may be given to that Board. My submission is I do not want to stand on formalities. I want in our Constitution we must place it that every person who has been detained shall be given an opportunity before a tribunal to explain his conduct and evidence against him and know the sources and the subject-matter of evidence against him. He may be able to explain his conduct. I beg that this clause should be considered from this point of view. I want that this Board may be given the power of summary enquiry and examination of the detainee.

Now with regard to the ultimate period my humble submission is that in India the anticipation of life is said to be only 23 years and one year is certainly not a very short period because after that if the police is not able to secure evidence within that year and place before the Court, then I would imagine the evidence on which he is sought to be retained is not worth the paper on which it is written. Therefore this period may be taken to be one year.

I want these three amendments in this clause and I would be satisfied. My difficulty is if we pass these clauses as they appear in the amendment then we cannot touch this period of 3 months. This will become absolute and we cannot say in the coming law under clause (4) that the three months may be reduced to two months. In fairness the Executive has to account for every minute of the detention of such persons. It is in the laws of every country that no police officer is authorised to keep a person detained for a moment longer than is absolutely necessary and three months even is an unconscionably long period. I would like to reduce it further, but I would not go further than two months. Therefore, so far as these provisions are, concerned, they should at least be reframed in such a way that these amendments are incorporated and these rights are secured to the citizens of this country.

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

"That in amendment No. 1 of List I (Eighth Week) for clause (1) of the proposed new article 15 A, following be substituted :—

'(1) Every person arresting another in due course of law shall, at the time of the arrest or as soon as practicable thereafter, inform that person the reasons or grounds for such arrest, nor shall he be denied the right to consult a legal practitioner of his own choice.' "

I also move :

"That in amendment No. 1 of List I (Eighth Week), sub-clause (b) of clause (3) of the proposed new article 15 A be deleted."

I also move :

"That in amendment No. 1 of List I (Eighth Week), sub-clause (b) of clause (3) of the proposed new article 15 A be deleted."

Shri Mahavir Tyagi (United Provinces: General) : Then, with what will the Member connect the word "nor" occurring there ?

Mr. Naziruddin Ahmad : It is not bad English, it is just good idiom. If it does not sound well to the musical ears of Mr. Tyagi, we may leave it to the Drafting Committee to cure it. Now, Sir, I do not wish to go over the general ground so ably and elaborately covered by my honourable Friend, Pandit Thakur Das Bhargava. He speaks with unique authority and experience and he speaks with the fervour of a real patriot and he has had ample experience as a criminal lawyer, of the vagaries of the police. And he is now not a practising lawyer and therefore he looks on these questions with considerable amount of knowledge and detachment which ought to be respected in the House.

I shall confine myself to the three amendments which I have just moved. There is a difference between the original article moved and my amendment, to clause (1). In the original clause the words are that when a man is arrested, he should be informed, as soon as may be, of the grounds of such arrest. This leaves it entirely to the discretion of the man arresting another whether or not to give the arrested person the reasons or ground, of his arrest, at once. It leaves him entirely free to give the reasons or not. He may give the reason later on, or rather invent a reason for the arrest, later on. My amendment says that the grounds and the reasons for his arrest shall be given at the time of the arrest, or as soon as practicable, thereafter. The point is that there should be no needless delay. If quickness in giving of the information is impracticable, then alone he may delay it momentarily. Even then, be must give the information as soon as possible. I shall give the House an example. It may be that a man who is to be arrested gets scent of it and runs, and the police officer chases him. In that circumstance, it would be impracticable on the part of the arresting officer just before the arrest, to give the arrested man the reasons for the arrest. He must first of all, secure his body and must give the reason at the time, or as soon thereafter as practicable. All that I mean is that there should be no difficulty in giving the man arrested the reason for his arrest or the grounds for his arrest. The usual grounds for such arrests are that there is a credible or reasonable information against him that he has committed or is concerned with a cognizable crime or that from his demeanour or other circumstances, the officer arresting him has reasonable suspicion that he is connected with a cognizable crime or he is about to commit such a crime. These are the general nature of the circumstances in which an arrest is effected. Other circumstances are there is a warrant or summons against him or there is an order,

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by an appropriate authority for his arrest. These are circumstances which it is easy for the police officer to explain, though not immediately before the arrest or at the time of making the arrest, at least immediately after that.

The need for such a provision is this. Although there are similar provisions in the Criminal Procedure Code, we must insert fool-proof provisions in the Constitution so as to make it impossible for a Legislature to change those salutary provisions. Therefore it is very necessary that the Constitution should be particularly careful about limiting the authority of the police in effecting arrests. There is nothing lost, but much gained by telling the accused immediately after the arrest or at the time of arrest the reasons for his arrest.

With regard to the other amendment, I seek to delete sub-clause (b) of clause (3) and of course the proviso to clause (3) which is connected therewith. Sub-clause (b) is to this effect—that nothing in this article shall apply to any person who is arrested under any law providing for preventive detention. Sir, I fail to see the necessity for this. If a man is to be detained, as a preventive measure, there is nothing lost, there would be no danger, nothing inconvenient in just letting the man know that he is being arrested for preventive purposes under the orders of a Magistrate or the orders of a superior officer or that there are such and such reasons against him. In fact, it is very necessary that a man arrested should be given the reasons for his arrest. And the obvious necessity for this is that unless the police officer is bound to give him the information at once, he may make indiscriminate arrests as is often done. If he can arrest a person without any justifiable reason, he will then be free to invent some reasons later on.

With regard to proviso to clause (3), there are a large number of elaborate provisions and I submit that they are going into too much details of administration. As, to what should be done for a man who is under preventive detention should be left to the Legislature. If we go too much into details, the result of that would be that cases which we do not provide for would be rather doubtful. In these circumstances, I submit that these amendments which I have proposed should be attended to and if thought proper, their substance may be incorporated in the article.

Shrimati Purnima Banerji (United Provinces : General) : Sir, I move:

"That in amendment No. 1 of List I (Eighth Week), in clause (1) of the proposed new article 15 A, after the words 'as soon as may be' the words 'being not later than fifteen days' be inserted."

I further move:

"That in amendment No. 1 of List I (Eighth Week), in sub-clause (a) of the proviso to clause (3) of the proposed new article 15 A, after the words 'a High Court has' the words 'after hearing the person detained' be inserted."

I further move:

"That in amendment No. 1 of List I (Eighth Week), in sub-clause (a) of the proviso to clause (3) of the proposed new article 15 A, after the words 'such detention' the words 'but so that the person shall in no event be detained for more than six months' be added."

I also move :

"That in amendment No. 1 of List I (Eighth Week), the following proviso be added to clause (4) of the proposed new article 15 A :—

'Provided that if the earning member of a family is so detained his direct dependents shall be paid maintenance allowance.' "

Sir, the article with which we are dealing at the present moment is a very serious one as it takes away some of the liberties granted by article 15 as fundamental rights and provides for arrests of persons and even detention of persons without trial I am sure I am voicing the views of most of my colleagues here that any form of detention of persons without trial is obnoxious to the whole idea of democracy and to our whole way of thinking. Granting that we visualize a situation in which it may become necessary and occasions may arise, when powers of detention may have to be used and exercised by a particular Government : Clause (1) says that if a person has been arrested he shall soon after that be told the reason of his arrest and clause (2) says that after twenty-four hours be shall be placed before a Magistrate. We are not quite sure as to what is the length of time which will be considered suitable for a person to be told why he is arrested. And if he is placed before a Magistrate, does it presume and presuppose that before he is placed before a magistrate his charges will be given to him ? Having our own experiences in our own short political lives and careers of what it is to be detained and on what laws one is detained, we feel that in this clause a period should be specified; that is, if a person is arrested and is placed before a magistrate he should be given the charges for which he has been arrested within fifteen days at the most if his presentation in twenty-four hours before a magistrate does not involve such charge being framed within twenty-four hours.

Further it has been said that any detenu who has been put into jail shall be detained for three months till an Advisory Board decides whether he should be detained for a longer period. We feel that the detenu should be permitted to appear before this Advisory Board in person and state his case in full. We know the process how the person is detained. If a person is considered undesirable, the local Magistrates or the local authorities leave it to their subordinates to handle the situation and even to decide upon the situation, Then it happens that people in these situations have no manner or measure of relief because they are simply detained and not allowed to appear before any court and not told for the time being why they are being detained. Therefore we do feel that after being detained a detenu should have the right to appear before the Advisory Board in person before he is condemned or his detention is upheld. No facts regarding the detenu should ordinarily be withheld from the Advisory Board.

Thirdly, I have moved another amendment by which I say that if the Advisory Board should consider that such a person should be detained in no case should that period exceed six months. I am sure that within that period if sufficient evidence is found against the accused the proper course would be that he should be placed before a proper court or he should be released. Continuous detention from month to month without a person getting a chance of appearing, or considering himself, sufficiently defended, before a properly constituted Board is highly arbitrary.

Fourthly, whereas in our Constitution many provisions have been made as to how much salary one should draw, what allowance members of the House shall get, what shall be each one's position and status, if a person is detained in prison and if he is an earning member of the family I do earnestly plead that he should be given a maintenance allowance. It should not be left to the arbitrary will of any one to deprive anybody of his liberty and then later on to decide, by leaving it to their sweet will, as to how his dependents shall live and maintain themselves.

With these words I commend my amendments to the House.

Dr. P. S. Deshmukh : Sir, there is more than one amendment standing in my name. I need not move amendment No. 103, but I would like to move Nos. 107 and 110.

I move:

"That in amendment No. 1 of List I (Eighth Week), for clause (2) of the proposed new article 15 A, the following be substituted :—

'(2) Every person who is arrested shall be produced before the nearest magistrate within twenty-four hours and no such person shall be detained in custody longer than twenty-four hours without the authority of a magistrate.' "

I further move :

"That in amendment No. 1 of List I (Eighth Week), clause (3) of the proposed new article 15 A, be deleted."

Sir, I would like to offer some observations of a general nature on this article. I do not share the vehemence which has actuated my honourable Friend, Pandit Thakur Das Bhargava, although the grounds that he has stated in the House really incline one to take extreme views. As has been remarked by the Honourable, Dr. Ambedkar himself, he had really anticipated the argument that there is nothing new in this article and that most of these provisions were really covered by those which are in existence in the Criminal Procedure Code. His point was to a certain extent elaborated by my honourable Friend, Pandit Thakur Das Bhargava, and it was pointed out that if this article was passed in the shape in which it has been placed before this House the situation would be worse than it is at present and there would be no improvement.

In addition to the sections which have been referred to by my Friend, Pandit Thakur Das Bhargava from the Criminal Procedure Code I would like to refer to section 81 also. He has referred to section 61 where it has been laid down that :

> "No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable. and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court."

So, the period of the detention; not to exceed beyond twenty-four hours, is already provided for in the Criminal Procedure Code. In addition to that we have got section 81, which is as follows:—

> "The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person."

In addition to these there is section 167 to which a reference has already been made by my friend and that lays down the procedure when the investigation cannot be completed in twenty-four hours and a maximum period of fifteen days is allowed there. In addition to all these we have got the rights of the nature of *habeas corpus* which have been provided in sections 460 and 461.

So, on comparing the provisions that exist in this Code of Criminal Procedure passed as early as 1898 with the provisions which we are seeking to make now, I was struck that a person like the Honourable Dr. Ambedkar could find anything new in it and these provisions which existed had been respected till we came into power more scrupulously than they have been of recent days. They were quite sufficient to protect the liberties of the people of this country I do not think. it can be said that there were very many cases in which these provisions in the Criminal Procedure Code were disrespected or violated. But the reason why we feel, the necessity of something being stated in the Constitution itself is, a reflection of the present day events, of what is happening,

and the administration of law and justice in the Provinces, and probably through the Ordinances that we have promulgated and the legislations that we have passed in the Centre also.

So, the apprehension that the liberty of persons living in India will not be safe is not really based on the inadequacy of provisions existing in the Criminal Procedure Code. It arises from the fact that the provisions, which we had respected far more before, are not being respected today. I admit the fact that at the present moment we are not respecting the provisions which exist because there are many people who feel that the liberties or the rights given by the Code of Criminal Procedure or the penal laws of India are not such as can be enjoyed by people after freedom. I am quoting no less a person than Mr. K. M. Munshi who categorically stated in the Legislative Assembly that this Code of Criminal Procedure is out of date because people have got into the habit of committing offences and this Code which gives more liberties cannot be worked and is leading to many difficulties so far as the administration is concerned.

If that is the point of view, if that is the attitude, then article 15 A cannot be much of a remedy. The present situation is certainly most obnoxious. We know of instances in every Province where people's liberties are taken away. I will give a most poignant instance which should make every Member of the House sit up, and think. Two M.L.As. who were in Congress for eighteen years, who were elected on the Congress ticket, were detained by an order of the Bombay Government which is a Congress Government. One of them was released after a period of eleven months without being told at any time what the charges against him were, without there being any trial, without conviction; when his health was about to break down the Government was pleased to release him. The second M.L.A. is still in jail; he has not been tried, he has never been told what the allegation against him is, what offence he has committed; and to add insult to injury he has been told that because he has not attended the Legislative Assembly for a certain minimum period at laid down by the law, he ceases to be an M.L.A. of that Province. A person has been prevented from attending the Assembly because of an act of the Government and that has been made as a ground for ousting him from the membership of the Legislative Assembly. That I think is the height of disrespect for law. If that is the respect for law that we have, if that is the sort of administration that is going on in the Provinces and we are not to look into it or question their propriety, I do not think any provision in the Fundamental Rights would be of any use to us.

If you want to prevent this sort of thing happening, you will have to go, much farther than you are prepared to go in this article. This article can be no remedy; it is a mere repetition of what exists in the Code of Criminal Procedure and if you are not prepared to respect that Code I am sure there will not be much respect given to this provision either. As was pointed out by my Friend, Pandit Thakur Das Bhargava you are going to put an obstacle in the way of Parliament in enlarging the rights of the individuals; by the inclusion of sub-clause (3) you are going to lay down a procedure for all cases of preventive detention. If tomorrow the Legislature of a State or even the Parliament wishes to deal with the preventive detenus in a more liberal manner, they will be prevented from doing so by the fact that there is a provision in the Constitution which is of a fundamental nature and which cannot be altered by the Parliament. Therefore , this provision is absolutely useless. It does not protect the individual in any way to any greater extent than does the Code of Criminal Procedure. if

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you think that the Code of Criminal Procedure ought to be respected by the Provinces or by any individual who goes against it, there shall be some provision by which this evil can be prevented. But this is not the way in which it can be done. That is my humble opinion.

At any rate, if this article must be there, I have given so far as clause (2), is concerned my shorter draft of it. Of course, it is only in the nature of a drafting amendment, but I would like to support my Friend Mr. Naziruddin Ahmad and commend the omission of at least sub-paragraph (b) of clause (3) of this article, that is to say, the provision which will fetter the discretion of the future Parliament so far as laying down the procedure for the release of the preventive detenus is concerned. This provision would be curtailing the rights of the individual and not enlarging them and I for one agree that there is much to be done so far as this abuse of law is concerned. My Friend Pandit Thakur Das Bhargava admitted that this autocracy is in our blood and it is showing signs everywhere. There have been shooting cases, there have been *lathi* charges and there has been no attempt whatsoever to investigate into the causes to look into the grievances of the people. The rule of unlawfulness, the want of the rule of law, is so rampant in the whole of India that it is likely to recoil upon the heads of all of us one of these days. The people are getting tired, and if you feel that this Government is not popular there are very many reasons for that, but unfortunately nobody is paying any attention to it.

If this is the way in which we want to pay attention to these facts—then I would beg of my Honourable Friend Dr. Ambedkar to provide a remedy which will be a real remedy and not something which will be merely taking away what exists. In fact, if there is not going to be any stringent provision, I would be more content to leave the thing as it is, under article 15. It would be much better not to have this article 15 A at all than have it in this particular shape.

I appeal to you, Sir, that the situation is grave; our respect for law is certainly decreasing. We are ruling our people in a manner much less generous than the aliens did; if these rights that were conferred by the alien rulers upon the people of India as early as 1898, which continued though with very many violations throughout this period of fifty years, are not at all respected, if you want to respect them, if you want to safeguard the freedom of the people and their liberty, there should be a more radical provision in the Constitution than what has been proposed.

Shri H. V. Kamath (C.P. & Berar : General): Mr. President, it was refreshing to hear Dr. Amedkar make a confession of faith. He expressed his dissatisfaction with article 15 as adopted by this Assembly and said that he was trying through this new article 15 A to undo the harm that might accrue from the operation of article 15 as it stands. He commended this new article to the House in accordance with the age-old maxim :—

सर्वनाशे समापन्ने अर्धत्यजति पंडित:

"Sarvanashe samapanne
Ardham tyajati panditah".

I wish, Sir, we, could accept this new article in this spirit, but I feel, not being a *pandit* myself in name or otherwise, that we are giving up more than half. If it was really half, *ardham tyajati*, I would not have minded it, but in an attempt to, salvage what has been lost we are giving up much more than half.

That is why I have tabled my amendments whose purpose is to salvage as much as possible and undo the harm that has been done by the adoption of article 15. If the House would refer to article 15, as adopted, my honourable colleagues-will see that the reference there is to procedure established by law. Once having adopted this article in this form, I see no reason why the law according to which a person could be deprived of his life and liberty could not have been safely left to the future Parliament. Why by introducing the new article 15 A do we seek to fetter the future Parliament of our country ? It is due, I fear, to a lack of faith in our future Parliament. I would not say that the House, but the Drafting Committee, is afraid that the future Parliament may not act wisely. I am sorry if the Drafting Committee is motivated by such a fear. This whole article detailing the law and the procedure under which a person can be deprived of his liberty could have been safely left to the future Parliament to lay down and to provide for. This has been an unnecessary intrusion into our Constitution and it would have been quite adequate for our purpose to mention in article 15 that life and liberty will be sacrosanct, except under procedure established by law, and that law could have been left for Parliament to provide and regulate.

Coming, Sir., to my amendments, I shall move them one by one. First, I shall take amendment No. 104, List III, Eighth Week. I move:

"That in amendment No. 1 of List I (Eighth Week), in clause (1) of the proposed new article 15 A, after the word 'magistrate' Occurring at the end, the words 'who shall afford days following his arrest' be substituted."

It is a well known fact, that the police or other authorities or persons arresting or detaining people are not always actuated by the justest and the fairest of motives. As one who has spent a few years in the administrative field—in the administration of a district—I am well aware myself how the police arrest people for reasons wholly unconnected with security or order and sometimes merely with a view to paying off old scores or wreaking private vengeance. In order to obviate or at least mitigate the evils or the harm that might accrue from unjust arrest of people by the police or other authorities I wish to provide through this amendment specifically that the person arrested shall be informed of the grounds of his arrest within seven days following his arrest. The words used in this article moved by Dr. Ambedkar are "as soon as may be". I would be happy if the person is informed of the grounds even at the, time of his arrest.

The Honourable Dr. B. R. Ambedkar : That is the intention. You are worsening the position by your amendment.

Shri H. V. Kamath : Why not then make it specific? I would welcome the substitution of the words "as soon as may be" by the word "immediately". My Friend, Shrimati Purnima Banerjee, has also moved an amendment to the same article, where she wishes to substitute the words "as soon as may be" by " not less than fifteen days". I think fifteen days is far too long a period. I think twenty-four hours would be the best. In any case if there is any hitch in informing the arrestee of the grounds of his arrest, I think in no case should it exceed more than a week.

Coming, Sir, to the next amendment (No. 108), I beg to move:

"That in amendment No. 1 of List I (Eighth Week), after clause (2) of the proposed article 15 A, after the word 'magistrate' occurring at the end, the words "who shall afford such person an opportunity of being heard' be added."

The Honourable Dr. B. R. Ambedkar : I must tell my honourable Friend Mr. Kamath that he is worsening the position. Our intention is that the words "as soon as possible" really mean immediately after arrest if not before

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arrest. Clause (2) says that every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest. No magistrate can exercise his authority in permitting longer detention unless he knows the charges on which a man has been detained.

Shri H. V. Kamath : I know a little of the Criminal Procedure. I have known of cases where magistrates have remanded persons for fifteen days at a stretch without the police filing a chalan or charge sheet before him. I know of magistrates who have remanded persons without caring to go into the *prima facie* merits of the case. Another thing that Dr. Ambedkar said was that the words "as soon as may be" really means "immediately".

The Honourable Dr. B. R. Ambedkar : It means in any case within twenty four hours.

Shri H. V. Kamath : May I invite his attention to certain articles where the words "as soon as may be" have been used without any specific connotation. Take for instance article 280 which relates to the Emergency Powers of the President.

The Honourable Dr. B. R. Ambedkar : The interpretation of the meaning of the words "as soon as may be" must differ with the context.

Shri H. V. Kamath : I do not know whether Dr. Ambedkar will be always in India to interpret and argue with doubting lawyers and doubting judges as to the meaning of the words and phrases used in this Constitution. I am sorry Dr. Ambedkar will not be immortal to guide our judges and lawyers in this country. As the Constitution is being framed not for Dr. Ambedkar's life time, but for generations to come, I think we must, be specific in what we say.

The Honourable Dr. B. R. Ambedkar : You are selling your immortality very cheap.

Shri H. V. Kamath : If Dr. Ambedkar admits that in using the phrase as however that Dr. Ambedkar presumes he will be immortal.

The Honourable Dr. B. R. Ambedkar : You might admit you have made a mistake in tabling this amendment.

Shri H. V. Kamath : If Dr. Ambedkar admits that in using the phrase "as soon as may be" he has erred, I would not say more. He is standing on false prestige and showing obstinacy not worthy of him.

Coming to my amendment No. 108 I am glad to find that Shrimati Purnima Banerjee has also one on the same lines. Both these are to the effect that the advisory board shall decide every case after giving an opportunity to the arrestee or the detainee of being heard and that no case shall be decided by the advisory board without hearing the person concerned. In the article as moved by Dr. Ambedkar there is no satisfaction (in this point. I want that we should specifically provide that the advisory board shall hear a person or his lawyer before it recommends detention for a period longer than three months. The advisory board is liable to err and summarily dispose of cases especially where there are many of them awaiting disposal. We must clearly lay down in this Constitution that every person arrested or detained shall have an opportunity of being heard before his detention is extended under this article.

Sir, I now move amendment No. 109;

"That in amendment No. 1 of List I (Eight Week), after clause (2) of the proposed new article 15-A, the following new clause be added :—

"(2a) No detained person shall be subjected to physical or mental ill-treatment'."

I think Dr. Ambedkar is not quite aware of the frequent cases of physical or mental ill-treatment to which detenus were subjected during the British regime, especially during the dark days of 1942 and immediately thereafter. In one or two prisons where I myself was detained, I personally knew of cases, where detenus in C class were beaten mercilessly and also subjected to all sorts of third-degree methods of torture. There were cases where detenus were given no cloths to wear and were made to shiver in severe cold in a state of nudity. There were other cases where the cells of detenus were flooded and the detenus had to pass hours on the, damp floor which was not merely unhealthy, but definitely in some cases induced pneumonia and other diseases which proved fatal. Sir, after all, a man is detained on suspicion only. It is but fair that our Constitution should lay down specifically that no detenu will be subjected to physical and mental ill-treatment. The latest Constitution of Western Germany—the Bonn Constitution—though it is not the last word in constitution-making, has adopted, despite the prevalent chaotic conditions fraught with danger to the State, a clause on these very lines that no detenu shall be subjected to physical and mental ill-treatment. In the Preamble to our Constitution we have paraded the ideals of justice, liberty, equality and fraternity and have proclaimed that our Sovereign Democratic Republic will secure these to all its citizens. The Chapters close to the Preamble, Chapters III, IV etc., seem to bear the impress of the Preamble, but as we wander further and further from the Preamble and especially when we come to the end of the Constitution one gets the impression that we have forgotten the Preamble. It seems to have slipped from our memory altogether and it looks as if, in very many cases, justice is being delayed, if not denied, and liberty is being suppressed. It is a very unfortunate state of affairs that, after having proclaimed so many fundamental rights in our Constitution, we should proceed to abrogate them and in some cases even nullify them.

My next amendment is No. 113.

Mr. President : Amendment Nos. 113 and 114 have been covered by the amendment moved by Shrimati Purnima Banerjee.

Shri H. V. Kamath : My next amendment is No. 116. This amendment goes to the root of the, matter and in my opinion it is a vital proposition. It runs as follows:

"That in amendment No, 1 of List I (Eighth Week), after clause (4) of the proposed new article 15 A, the following new clause be added :—

'(5) Notwithstanding anything contained in this article, the powers conferred on the Supreme Court and the High Courts under article 25 and article 202 of this Constitution as respects the detention of persons under this article shall not be suspended or abrogated or extinguished'."

Sir, before I speak on this motion I would ask for clarification as regards the content of the motion moved by Dr. Ambedkar. I know that the amendment as moved by me is not couched in happy language. It can be put in better language by lawyers if they accept the principle embodied in this amendment. First, in regard to clause (4) of article 15 A. as moved by Dr. Ambedkar which invests Parliament with power to make laws regarding preventive detention. I would like to know whether with regard to the persons detained under the

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law of preventive detention, the jurisdiction of the High Courts and the Supreme Court, especially with regard to their right to issue a writ of *habeas corpus* will be ousted. If it is not ousted under this article, there is no need for amendment 116. If Dr. Ambedkar would make it categorically clear that the power and jurisdiction of the High Courts and the Supreme Court in regard to these detenues, and the right of the latter to move the High Courts and the Supreme Court, for a writ of habeas corpus, it these are not abrogated by this article 15 A, then I would not press my amendment. Otherwise, I would do so. The article is silent on this point. Therefore it is that I have moved this amendment before the House.

We Sir, have already adopted article 280 seeking to vest in the President extraordinary powers in the event of an emergency. According to that article, in an emergency the right of the individual to move the High Courts and the Supreme Court for the enforcement of the rights guaranteed under Part III—Fundamental Rights and the powers of the courts in this regard will be suspended. I hope this is the only article in our Constitution which seeks to abrogate or extinguish the fundamental rights conferred by this Constitution,—the rights of the individual as well as the powers of the Supreme Court and the High Courts in this regard.

Dr. Ambedkar in his speech referred to the enthusiastic champions of absolute liberty. I shall make it quite clear that I am not an advocate of *absolute* liberty.

Mr. President : He did not talk of absolute liberty today.

Shri H. V. Kamath : He did, Sir, if I remember aright. (The Honourable Dr. Ambedkar nodded in the affirmative). He referred to absolute personal liberty. I am not a champion or advocate of absolute personal liberty. No man can have absolute personal liberty if he wants to live within the social framework. If a man leaves the world and becomes an absolute *sanyasi*, not in the customary sense of the term but in the truest sense, the case is different. If any man has to live in society, his personal liberty must be restrained. Liberty without restraint will become licence. The eternal problem of governments all over the world has been how to reconcile the liberty of the individual in society with the safety and security of the State, and thinkers have widely differed on this point. Some have tried to exalt the State above the individual making it a leviathan making it a veritable supreme power, which can crush the individual without any compunction. There have been other thinkers who have sought to lay down the dictum that the State is for the individual, and not the individual for the State. We will have to strike a balance between these two : the individual for the State and the State for the individual. We should bear in mind that the State has been formed, has been brought into being by individuals acting together, acting in unison, and we must provide that the State will not unjustly, unfairly override the claims of the individual to Justice and liberty. That is what we hear, the founding fathers of our free State, have got to provide in our Constitution. If we seek to take away or abrogate or extinguish the liberal of the individual without due course, without having in mind really the security of the State, but having in mind only the lust for power of a coterie, or a few men in power, then that provision to my mind stands self condemned.

The question is whether under the article as moved by Dr. Ambedkar we have provided for those cases where persons might be arrested and detained for long periods without even a show of justice. Clause (4) of this article lays

down that Parliament will prescribe the circumstances under which and the class or classes of casts in which a person who is arrested under any law providing for preventive detention may be detained for a period longer than three months and also the maximum period for which any such person may be so detained. Supposing Parliament takes it into its head to lay down that the period of preventive detention may last a man's life-time, what stands in the way of the Parliament doing so ? But as a safeguard there, must be the courts of justice to go into every case and decide as to whether every person detained under that law has been justly detained, has been fairly detained and has been detained for longer than is absolutely necessary. That is why I want to vest the High Courts and the Supreme Court with this power to examine and decide the cases of persons detained under clause (4) of this article which provides for preventive detention. If, as I said, the powers and the jurisdiction of the High Courts and the Supreme Court have not been ousted by this article, then my amendment falls. Otherwise, there is a lacuna in this article and we shall greatly endanger the liberty of the individual if we do not provide any sort of safeguard against unjust detention which has been so often done in the past by the British Government. I do not mean to say that we will do so in future, but we know that the British detained persons without just cause, often on mere suspicion, or just because some officer wanted to take revenge on somebody.

Before I close, I would only say that it looks to me as though we are framing a short-term Constitution, we are drafting a Constitution which will last perhaps just as long as some of us hope to be in power and we do not have a long-term plan or vision. Has anybody considered how some other persons, possibly totally opposed to our ideals, to our conceptions of democracy, coming into power, might use this very Constitution against us, and suppress our rights and liberties ? This Constitution which we are framing here may act as a Boomerang, may recoil upon us and it would be then too late for us to rue the day when we made such provisions in the Constitution. I hope, Sir, and I pray to God that we shall be guided by wisdom and vision, not merely wisdom but the vision for a long-term constitution and we will see to it that the Constitution that we are framing will not last merely for a few years but will last at least our life-time, if not for a few generations. If unfortunately this outlook is not there, the old Biblical saying will come true—"Where there is no vision, the people perish."

Shri H. V. Pataskar (Bombay: General) : Mr. President, Sir, there has been considerable discussion with respect to the way in which we have already passed article 15 and with respect to the fact that we failed then to make provision for due process of law and all that discussion has gone on for a long time. I have no desire to enter into all that discussion, to reopen it and take the time of the House because the Honourable Dr. Ambedkar the Chairman of the Drafting Committee has himself stated that in view of the article 15 as it has been passed, he has thought it necessary to bring forward this article 15 A as a sort of compensation: I start from that point and do not want to go behind that. Then, Sir, I have tabled some three or four amendments which are on the basis that I do not want to refer to that controversy which was carried on for a large number of hours in this House, but I want to see if I can contribute anything to the improvement of the draft as it stands in certain technical matters and only one matter which I regard as a matter of principle.

My first amendment is No. 105 : it reads as follows:—

"That in amendment No. 1 of List I (Eighth Week), in clause (1) of the Proposed new article 15 A for the words 'as soon as may be' the words 'within twenty-four hours' be substituted."

[Shri H. V. Pataskar]

So far as the intention is concerned, I would just claim for five minutes the attention of Dr. Ambedkar; he and I agree. He himself said while interrupting Mr. Kamath that the meaning of the words "as soon as may be" is that it must be done immediately. I agree entirely with the object in view, and say that the words "as soon as may be" should be replaced by the words "within twenty four hours". Dr, Ambedkar says in clause (2) as follows : "Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours", and the magistrate is to authorise his detention further. In paragraph 1 we have mentioned that the grounds should be communicated to the person "as soon as may be". It may happen in a particular case like this—and I would like to stress this point : Supposing the Police arrest a man, they take that man under clause (2) to the magistrate within twenty-four hours and there at that time they do not communicate any reasons to this man because under paragraph (2) what is required of them is to produce the person before the magistrate within a period of twenty-four hours. The only thing that paragraph (2) is concerned with is for a different purpose, it is for the purpose of enabling the Police Officer to get from the magistrate an authority to detain him for more than 24 hours and it has nothing to do with the question of informing that mail of the grounds on which he has to be detained. I would like to make that distinction. Paragraph 1 refers to a matter which refers directly to the person who is detained, namely that he has to be informed of the reasons on which he is to be detained and paragraph (2) only refers to the matter that he must be produced before a magistrate within 24 hours. In a given case it may be argued that a person was produced before a magistrate within 24 hours and the magistrate authorized that he may be detained for a further period of a month or fortnight or whatever it may be, but a man may still not be informed of the reasons for a longer period than 24 hours. So far as the principle is concerned, I entirely agree with him and the object is the same. I would like to draw his attention to paragraph (2) which is intended to enable the Police Officer to get from the magistrate the authority to detain an arrested person for a longer period and paragraph (1) relates to supplying of grounds to the Person who is detained. These are two different things. Suppose A is arrested, he is detained and within 24 hours he is taken before a magistrate and we know it would not be very difficult for any police officer to get from the magistrate an extension for a further period and the accused may not be informed, as required by para (1). Therefore I would suggest to Dr. Ambedkar—Our objects are the same and we want that all these provisions in clauses (1) and (2) are based on the Code of Criminal Procedure provisions as they exist and there is no desire to go back on them—and I would appeal that this loop-hole be closed.

Therefore, I say instead of the words "as soon as may be" the words "Within twenty-four hours" be substituted. I hope I have been able to convince the Honourable Dr. Ambedkar that clauses (1) and (2) are entirely for different purposes and in respect of different persons. The idea between "as soon as may be" and "within twenty-four hours" is the same, and Dr. Ambedkar goes further than myself and he says that the man must be immediately informed. If that be, so I would appeal to him to accept my amendment No. 105.

As regards amendment No. 106 that also is an amendment which tries to carry out what is there already in the Code of Criminal Procedure. Along with several other arguments which were raised by Pandit Thakur Das Bhargava, he has already referred to this aspect of it. Under the Code of Criminal Procedure section 61 authorises a Police Officer to detain a person for 24 hours and then there

is another section 167, and in that there is a proviso which says :

'Provided that no Magistrate of the third class and no Magistrate of the second class not specially empowered in this behalf by the (Provincial Government) shall authorize detention in the custody of the Police."

As the law stands now, the power has been given to extend the period of detention only to magistrates of the first class or to such third class and second class magistrates who are specially empowered in this behalf. Now, my amendment is that in amendment No. 1 of List I (Eighth Week), in clause (2) of the proposed new article 15 A, after the word "magistrate,", wherever it occurs, the words "of the First Class" be inserted. The reasons are clear. Probably on this point also, there may be no difference in principle. If under the Criminal Procedure Code, this power is to be exercised only by a Magistrate of the First Class and by magistrates of the Second Class and Third Class where they are specially empowered, I believe that in the Constitution, when we are making a provision of the nature which Dr. Ambedkar proposes to make, then, it is necessary that such a power should be confined only to Magistrates of the First Class, for reasons which I think it is not necessary for me to go into, knowing as he does the lower magistracy, its composition, ideas of justice and ideas of jurisprudence and all that. Probably Section 167 of the Criminal Procedure Code had to be amended because it was felt unsafe to leave this power in the hands of Second and Third Class magistrates unless they were specially empowered in this behalf. I would appeal therefore that this is a very salutary thing that when we are making a provision, this power should be given only to Magistrates of the First Class.

While I was discussing this matter with a colleague of mine, he suggested that the difficulty is that Second Class and Third Class magistrates may be available at short distances and First Class magistrates may not be available easily. To this, Sir, I would appeal that we may exclude the time taken for producing the person before the magistrate. When we are guarding the liberty of a subject, it is better, even if a man is detained for a few days more, rather than taking him before a Third or Second Class magistrate, he should be taken before a First Class magistrate, who is expected at any rate not to be influenced so much by mere police reports or the report of an executive officer. It is from that point of view that I have given notice of this amendment No. 106 which stands in my name. I hope this amendment also will be acceptable to the Honourable Dr. Ambedkar.

Then, there is another amendment, No. 111 :

"That in amendment No. 1 of List I (Eighth Week), in sub-clause (b) of the operative part of clause (3) of the proposed new article 15 A, after the word 'law' the words 'of the Union' be inserted."

Sir, this is not a formal amendment and naturally, I would like to press my views on this matter. Clause (2) of this new proposed article 15-A says : "Every person who is arrested and detained in custody shall be produced before the nearest magistrate etc., etc." Clause (1) says that he should be informed of the grounds for such arrest. Clause (3) is in the nature of a proviso, or an exception being made (to the provision already made) in clause (1) and (2). Clause (3) says : "Nothing in this article shall apply (a) to any person who for the time being is an enemy alien." There can be no point of difference so far as that provision is concerned. With respect to the next provision, the clause says: "to any person who is arrested under any law providing for preventive detention." My point is that so far as these laws for preventive detention are concerned, there must be uniformity in the new Union to come into existence. At the present moment, we have got public safety measures passed by different provinces. There is one law in Bengal; there is another law in Madras and there is a third law in Bombay. They

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differ in their wording, in their content and they differ in the manner in which they take away the jurisdiction of the High Courts. There have been various interpretations and naturally, therefore, there is a sort of a confusion. We have already listened to some honourable Members who have pointed out some of the defects in the existing public security measures Acts in the different provinces. I need not dilate upon that point.

But, my point as a lawyer is that there must be uniformity in this legislation and it is the Union Government and the Union Parliament that alone should pass this legislation. I am told that it would be too late in the day now, when we have put in the Concurrent List certain matters. Unfortunately, I was not here at that time to express my views. Even that difficulty does not exist to my mind because in the Concurrent List I am told there is made a provision for legislation with respect to public safety and with respect to the safety of the State it has been left exclusively in the hands of the Parliament at the Centre. Even if it is in the Concurrent List, there is nothing wrong in providing here in the Constitution that so far as laws regarding preventive detention are concerned, where the question of the liberty of the individual is concerned, it is better that this exception should be made in clause (3) in respect of laws passed by the Union only. If a provincial Government has passed any law, that law must be in conformity with the provisions that we are making in article 15 A and it must be within the limits which are now being presented so far as such legislation regarding arrest and detention of persons is concerned.

Therefore, I think, it is just and proper, it is in the interests of the administration of the country, it is in the interests of the reputation of our people as a whole that we have one uniform law so far as this question of restricting the liberty of a person is concerned. It is no good of having different provincial laws; ultimately, they react upon the whole country upon the reputation even of the Central Government whether the law are passed by this provincial Government or that. Therefore, I say this is an amendment of substance which I would like the honourable Members of the Drafting Committee to seriously consider. It is not my object to go back or blame this side or that. I know, if due process of law has not been accepted, it is not the fault of Dr. Ambedkar is it was hinted by some other speaker; it is the fault of all of us. I deplore, more than any one else that we have not done the right thing. Still, I say it is no good blaming them or charging them with this and that. The defect is that there is scant regard given in this House whenever measures of such importance come forward for reasons which, I would not like to go into.

Therefore, I would appeal to the Drafting Committee that it is better in the interests of the Central Government, it is better in the interests of the nation that we have one uniform law throughout the land with respect to this unwholesome and unpopular matter of detaining people with out trial. I learn on good reliable authority that even foreign countries we are being blamed for the way in which some of these provisions are being carried out. Is it not desirable therefore that we have one uniform legislation ? We have got our freedom newly. People have not learn to behave democratically and there are so many actions which are beyond control and resort has to be had to detention without trial. I would submit, let us not be warped by what is happening in the present, let us be guided by the wholesome principles which should prevail and if at all this thing is to be done, that should be done by the Central Parliament which may take a more dispassionate view rather than by the provincial Governments.

Another drawback is that whenever power is given to any State or province to pass such a legislation, naturally, the human tendency is to go along the easiest line. If we anticipate some trouble somewhere for the ordinary process of law, which is believed to be cumbersome, the tendency is to curtail the liberty of the subject and to pass legislation which would prevent it. As a matter of fact, I find that that process, that method has not succeeded. On the contrary, it is bringing many of us into unpopularity. Because, as soon as a man is detained without trial under the Public Safety measures, he is exasperated, and his supporters get a handle. Therefore, I think it is best that if such measures are necessary, they should be uniform and they should be passed by the Central authority where representatives of all the States meet and where they can take a more dispassionate view rather than in the Provincial Governments. Therefore, Sir, I commend this amendment.

There is only one little point. Probably this was also intended by the Drafting Committee; as is apparent from what they have mentioned in para (4). Otherwise, it would not have been there. In paragraph (4) they say :

"Parliament may by law prescribe the circumstances under which and the class or classes of cases in which a person who is arrested, under any law providing for preventive detention may—be detained for a period longer than three months..... etc."

What is contemplated in clause (4) is—

"Parliament may by law prescribe the circumstances under which and the class or classes of cases in which a person who is arrested under any law providing for preventive detention may be detained for a period longer than three months and also the maximum period for which any such person may be so detained."

My amendment is that the exceptions should only apply to a person who is arrested under any law of the Union providing for preventive detention. I hope this amendment also will be, acceptable to the Drafting Committee.

My next amendment is No. 112.

"That in amendment No. 1 of List I (Eighth Week) in sub-clause (a) of the proviso to clause (3) of the proposed new article 15 A, the words 'or are qualified to be appointed as' be deleted."

Now clause (3) in its latter portion makes provision for an Advisory Board because it is thought that when we are trying to detain persons without trial their cases should be considered by some independent authority, so that there will be some sanction for the executive action by which the liberty of the individual has been taken away. We have been told of instances where people have to be detained for long periods. Therefore it has been wisely decided that this should be left at least after three months not to the discretion of the executive, but the matter should be brought before a Board. Therefore this is a wholesome provision. My amendment is that I do not want the words—'or are qualified to be appointed as.' The fundamental idea underlying the Constitution of this Board is that the matter should go before a judicial tribunal or before any authority which is capable of judiciously thinking, which has got either the experience or is at present concerned with administration of justice. But to make the provision 'or are qualified to be appointed as' is dangerous. I can understand that this Board should consist of some High Court Judges at present working; I can understand if it should consist of some persons who have been High Court Judges and who therefore can take a judicious view of the question when it is brought before them.

Shri T. T. Krishnamachari (Madras: General): Will the honourable Member prevent a person like himself being appointed a member of the Advisory Board ?

Shri H. V. Pataskar : Yes, once you expand the scope of persons that can be appointed, it is dangerous. I expect the people will be appointed by the Executive and it will give a loophole in their hands—not that it is fair that I should charge that the present Executive would be unfair—but the question remains that if a loophole is kept whereby somebody who might in future be in charge of Government might take advantage of it and cram the Board with persons who are not fit enough for the purpose. Because a man is a graduate in law according to the provisions at present he can be appointed as High Court Judge and therefore he can be appointed to this Board. If we leave this loophole it may be abused. We can get people who are either Judges or who had worked as Judges. Of course there may be some eminent persons who are not on the Bench or who have not been on the Bench. If this loophole is kept it will enable an unscruplous executive to nominate persons who may be their own men. We have so many High Courts Judges and I am sure that a person who has acted in that position is likely to be more independent and fair than somebody who is unconnected. I need not dilate on this. There may be even better persons outside the High Courts but it is desirable, that it should consist of persons who have worked as Judges. It is from that point of view that I have moved amendment No. 112.

To sum up, I would appeal that I have desisted as far as possible from reopening that old controversy about due process of law. I am happy that Dr. Ambedkar and the Drafting Committee have thought fit to make amends or as described by him, to compensate regarding what has been lost in the present article 15 A. I have no quarrel with the Drafting Committee but the objective with which they have brought forward this amendment should be carried out in a more satisfactory manner in order that whatever we have lost by 15 may to some extent be gained by 15 A in a manner to allay the fears of those who unfortunately have at the present moment to suffer on account of several other measures which are there.

I therefore commend that so far as 105 and 106 are concerned, there is absolutely no difference between me and the Drafting Committee regarding the objective. Regarding 105 there is no difference. Regarding 106 it is consistent with the present provision of the Criminal Procedure Code and I do not think there is any desire to go behind those provisions in the Cr. P.C. Looking to 106, I think it should be confined only to first class magistrates. It will be unsafe to rely upon the authority given to second class magistrates. We have not abolished honorary Magistrates. On the contrary I find there is a desire to perpetuate them for reasons into which I need not go while discussing this matter. Therefore it is better to follow the principle which has been followed in the present Cr. P.C. and leave this matter only in the hands of First Class Magistrates so that there may be some security No. 111 says there must be uniformity in legislation in respect of such matters. In spite of the fact that this is in the Concurrent List there is nothing to prevent us from saying that exception shall apply only in cases of persons arrested and detained under any law passed by the Union. I hope my reasons will appeal to the Drafting Committee.

No. 112 is meant only for ensuring a sort of a feeling in the public that what we are doing is that we are trying to do our best consistent with the present circumstances which requires such action to be taken, to do our utmost to see that justice is done and no injustice is done and we are giving fair opportunities to those who have or are to be unfortunately detained.

I therefore commend my amendments to the acceptance of the Drafting Committee and the House.

Shri R. K. Sidhwa (C. P. & Berar: General): Mr. President, I move:

"That in amendment No. 1 of List I (Eighth Week), at the end of clause (3) of the proposed new article 15 A, the following new proviso be added :

'Provided that in the case of any such person so recommended for detention as stated in sub-clause (a) of clause (3), the total period of his detention shall not extend beyond nine months provided the Advisory Board has in its possession direct and ample evidence that such person is a source of continuous danger to the State and the society'."

While going through this article I wanted to know whether it gives any kind of concession or facilities to the detenus or it stiffens the present provisions of the laws provided in the Criminal Procedure Code or the Indian Penal Code.

I think, Sir, that this article now proposed does not give any kind of concession or facility to the detenus. I do feel that while the present laws are not stiffened, there is nothing in this article which should find a place in the Constitution. In a matter like this, the laws must be flexible so that according to the times, the laws may be framed according to the conditions prevailing in the country. We have, under the existing conditions to consider the state of affairs, namely peace and tranquility and law and order, and from that point of view we cannot bind down the Constitution with rigid laws which may not be really desirable during the time when the peace of the country is in danger. Sir, I find that clauses (1) and (2) are reproductions of the Criminal Procedure Code, as has been stated by many honourable Members here. Clause (3) provides for the Advisory Board. Such advisory board already exists and it may exist in the future also. In the past the detenus were asked to give explanations, if they have any, and the Advisory Board, comprising of High Court Judges used to give their opinions to the respective governments. There is nothing new in this article even as far as the provision of the Advisory Board is concerned.

And clause (4) says that despite what is stated therein, Parliament may make laws and the period of three months' detention may be increased. My amendment says that when an Advisory Board is appointed, it should be seen that the aggregate, continuous detention of a detenu is not more than nine months. If it exceeds this period, then there should be definite evidence before the Advisory Board that the person detained is a danger to society, that he is a pest to society and that he is out to destroy our freedom. I am certainly agreeable to making any kind of law for dealing with a person who is out to destroy our well-deserved freedom by violent methods. He should have, from my point of view, no quarter or no kind of protection. I am quite clear about that point. At the same time, I must say that persons detained on suspicion should be given the fullest protection, and from that point of view, I do not find in this article any provision for that purpose. On the contrary, I find, from all sources his hands have been tied down. We know, Sir, during the British regime, detenus were put into prisons and the then legislature made law, that the maximum period should not be more than on year, which subsequently was enhanced to two years. In this article no maximum period is laid-down and a person can be detained for an indefinite period. The Advisory Board may say that the detention should be continued. Today what happens is this. The detenu is asked whether he has to say anything against his detention. That is all. And on a statement by the accused, with C.I.D. report the judges give their opinion. My own feeling is that whatever the charges may be, whatever the evidence may be against the detenu, they should be supplied to him

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so that he may make a statement as to whether the charges are correct or not. Then it is for the judges to go into the matter. But it is not proper to give *exparte* decisions by the judges on a mere statement from the C.I.D. and the detenu. He will certainly ask you, "For what purpose do you detain me? Please let me know the charge under which you detain me. You ask me for an explanation. I say, I am not guilty of anything, and so please release me." And the judges, on the other hand, say "There are good reasons for detaining you and so you must be detained for an indefinite period. That is not fair. I do not find any improvement made in this article. I do realise the conditions existing at present in the country, and for that purpose there should be some specific mention. But the whole thing should not be left to the discretion of the judges. I feel that the charges for detention should be made public. The Advisory Board should say that such and such person has been detained because he is a danger to society and he is out to destroy the freedom of the country. By this method the confidence of the people will be gained. They will come to know that such and such a person deserves to be detained for an indefinite period. It may be that for certain purposes and in certain cases you may have to keep certain information secret. But in the case of detention of such persons, you must make the grounds public. Otherwise the people will begin to have many doubts and suspicions as to why such and such person is detained.

Sir, from that point of view, my amendment makes the position clear and says that a man should not be detained for more than nine months, and if the detention is to be continued, then there should be explicit evidence against him, that he is a dangerous and violent person, that he is a danger to society; this should be made public. It should be known to the public, that that is the opinion of the judges, and they have got ample evidence to that effect. If such an amendment is made, then it can be said that this article is justified. Article 15 gives liberty. It says that a person shall have liberty to do anything, subject to the laws of the land. That is quite sufficient. He has not absolute liberty, but there are many laws of the land and he would be subjected to them. It is not that I state that every person should have absolute freedom. His liberty must be restricted, according to the law of the land. But at the same time, when a person is detained, I find article 15 A. gives no concession or facility to him. On the contrary, I must say, my feeling is it ties down his hands You tie him down under the Constitution by laying down all sorts of laws.

Therefore, there is no justification, in my opinion for providing article 15 A in the Constitution. Parliament is there and Parliament makes the law and Parliament will see what are the conditions in the country and what is the state of affairs from time to time and make laws. But why do you put down such a clause in the Constitution ? It may become harmful to the State if you provide such an article in the Constitution. You may require something very deterrent. But why do you want to put it in the Constitution ? Why not leave it to Parliament. The person detained may be quite innocent. After all, the machinery of the State is composed of officials and we know the mind of the officials. Officials, after all, are officials. They have a particular line to follow and from that point of view it is very likely that even under a democratic government, most of the laws would be abused. Therefore, under the existing circumstances, a detenu, if he is detained on mere suspicion, should be properly protected. That is my point. I have no sympathy, as I have said, and I repeat it, for the man is out to destroy our freedom. He must have

no quarter. I again repeat that, and from that point of view, and for that purpose if you want to add to the article any stringent law, I am with the Drafting Committee; but not for other purposes. We know that even today for peaceful demonstrations and for such other matters persons have been detained by officials, and then subsequently the Ministers have realised that it is not a wise course and they have been released. As I said, no improvement has been made in this article. After all, when you make a provision, when you provide an article, some concession or some liberty is given to the person, and for that purpose articles are provided.

Mr. President : You are repeating yourself.

Shri R. K. Sidhva: Therefore, Sir, my object in bringing this amendment is what I have already state. I commend my amendment for the acceptance of the House.

Dr. Bakhshi Tek Chand (East Punjab: General) : Sir.....

Mr. President : There is one amendment which Dr. Bakhshi Tek Chand is going to move I do not know if Members have got copies of it, but I hope he will read it out.

Dr. Bakhshi Tek Chand : Sir, I move.

"That in the proviso to clause (3) of article 15 A, the following new clause be added:—

'(aa) As soon as may be after the arrest of the Person, the grounds on which he has been arrested shall be communicated to him, and he shall be informed that he may submit such explanation as he desires to make which shall be placed before the Advisory Board referred to in sub-clause (a)'."

Sir, it is a very modest amendment and I hope in article 15 A, attenuated as it has been, Dr. Ambedkar will accept and incorporate it in the article. The amendment goes no further than what is provided in the Safety Acts that have been enacted by some of the Provincial Legislatures. For instance clause (3) of the Madras Maintenance of Public Order Act (1 of 1947) lays down :

"When an order in respect of any person is made by the Provincial Government under sub-section (1) of section 2. etc., the Provincial Government shall communicate to the person affected by the order. So far as such communication can be made without disclosing the facts which they consider would be against the public interest to disclose, the grounds on which the order has been made against him and such other particulars as are in their opinion sufficient to enable him to make, if he wishes, a representation against the order. And such person may, within such time as may be specified by the Provincial Government make a representation in writing to them against the order, and it shall be the duty of the Provincial Government to inform such Person of his right of making such representation and to afford him opportunity of doing so.

(2) After the receipt of the representation referred to in sub-section (1) or in case no representation is received after the expiry of the time fixed therefore the Provincial Government shall Place before the Advisory Council constituted under sub-section (3) the grounds on which the order has been made and in case such order has been made by an authority or officer subordinate to them. The report made by him under sub-section (2) of section 2 and the representation if any, made by the person concerned, etc. etc."

I need not repeat the remaining sub-sections of that section. This is the provision in the Madras Act.

Similar Provisions were to be found in the Rules made under the Defence of India Act. Many honourable Members of this House, who had been proceed against in 1942 and in the following years under the Defence of India Rules, will remember that the substance of the grounds on which they were detained were communicated to them and they were asked to make representations, if they chose to do so.

[Dr. Bakhshi Tek Chand]

Similar provisions existed even under the notorious Rowlatt Act passed in 1919, as a protest against which our revered leader, Mahatma Gandhi, started the great movement which ultimately culminated in the liberation of the country from foreign yoke.

In England under the Regulations framed under the Defence of Realm Act, both in 1914 when the first World War broke out and the Defence of Realm Act was enacted, and later again in the Regulations which were in force in 1939 when a state of grave emergency was declared and arrests or detentions began to be made in that country, similar provision existed.

As I have already stated, in Madras Act 1 of 1947 called "the Madras Maintenance of Public Order Act", similar provision has been made. In similar Acts in other Provinces, for instance in Bombay, there is provision to the limited extent that the substance of the grounds on which a person is arrested and detained shall be communicated to him and he will be asked to submit, if he likes, an explanation. But there is no provision that his explanation will be laid before a tribunal or any other independent Board. The explanation is only for the consideration of the executive government which may, after considering it, either release him or confirm the previous order or order his detention for such longer period as it thinks proper. In the United Provinces also, while there is provision for an explanation of the person affected being taken, there is no provision for its being placed before an impartial tribunal. And in Bengal the latest Act is narrower still.

I submit this procedure is open to serious objection and it is necessary that Constitutional guarantees be provided, so that the legislatures of this country—provincial or central—are precluded from enacting legislation of this kind. We should see that our legislature do not go farther than what the British Indian Government did under the Rowlatt Act or the Defence of India Act in 1942 or what was done under the Defence of Realm Act in England. That, Sir, is the, sum and substance of the amendment which I have moved.

Dr. Ambedkar, in the amended article 15 A. as he has introduced today, has made provision in clause (3) of the article that "an Advisory Board consisting of persons who are or have been or are qualified to be appointed as judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention". Of what value will the opinion of this tribunal be, if the explanation of the person affected is not laid before it? It will be an *exparte* opinion expressed by the members of the tribunal upon such papers as may be placed before them by the executive government, which, in most cases will be based either upon police reports or reports of other officials or informers. The whole object of constituting a tribunal of three persons, who are High Court Judges or who have been High Court Judges or who are qualified to be High Court Judges, will be rendered nugatory if the explanation of the person affected is not taken and placed before it. And no explanation can be given by that person unless he is informed of the nature of the charges against him whether it was merely on suspicion or upon some solid ground that he had been arrested and was being detained. I submit that this is an elementary right which should be conceded Perhaps, this is an omission in Dr. Ambedkar's amended article, and if so, he will, I hope, supply it by accepting this amendment.

With your permission, Sir, I will now make a few general observations on article 15 A. as it has been introduced by Dr. Ambedkar today, and then I shall say a few words with regard to some of the amendments which have been

placed before the House by Pandit Thakur Das Bhargava and other Honourable Members. I feel—and I may be pardoned for saying categorically that I consider article 15-A as the most reactionary article that has been placed by the Drafting Committee before the House, and therefore I would ask the House to reject it altogether and not allow it to form a part of the Constitution. I will ask Dr. Ambedkar and I will ask Mr. Munshi and I will ask our great jurist Shri Alladi Krishnaswami Ayyar whose knowledge of constitutional law is perhaps second to none in this country, and who has contributed so much to the drafting of this Constitution, if there is any written Constitution in the word in which there is provision for detention of persons without trial in this manner in normal times. In the case of a grave emergency, as for example when the country is involved in war, there are provisions even for suspension of the fundamental rights. But apart from that, I have looked in vain in any Constitution for a provision for such detention without trial in peace times. It is not to be found even in the Japanese Constitution, which the Drafting Committee purports now to follow. That Constitution was prepared for Japan in 1946, it a time when that country having been defeated and lay prostrate under the heel of a dictator appointed by the conquering powers, the United States and the other Allied Nations.

I consider that this article, in the form in which it has now been framed instead of being a fundamental right of the citizen, is a charter to the Provincial legislature to go on enacting legislation under which persons can be arrested without trial and detained for such period as they think fit subject to a maximum period fixed by Parliament.

It does not give any fundamental right to the people. In fact it is a charter for denial of liberties, and I am surprised to find how the Members of the Drafting Committee including great lawyers, have subscribed to it. It is strange, indeed, how the Members of the Drafting Committee have drafted from the position which they bad originally taken to the submission of the present article 15-A. Sir, with your permission, I will place the history of this article before the House which will show how the Members of the Committee have come down from the high place at which they were at the beginning to the position to which they have ultimately come and which they want the House to adopt.

Our Law Minister, Dr. Ambedkar, a great lawyer, an eminent jurist, an erudite student of constitutional law as he is—what was the proposal that he submitted to the Drafting Committee before he had been appointed to the high office which he now occupies? In 1947, soon after the Constituent Assembly met first, members were asked to submit their suggestions for the draft Constitution. A number of suggestions came. Dr. Ambedkar at that time was a private Member of this House; he had not been installed on the *gaddi* which he is occupying now and which, if I may say so with respect, he is so worthily occupying. Early in 1947 he submitted this note, which be circulated in the form of a book styled, "*States and Minorities—What are their rights and how to secure them in the Constitution of Free India*", by B. R. Ambedkar. At page 9, article 2, are his suggestions headed, "Fundamental Rights of Citizens", this article reads as follows :

> "No State shall make or enforce any law or custom which shall abridge the privileges or immunities of citizens. Nor shall any State deprive any Person of life. liberty and Property *without due process of law,* nor deny to any person within its jurisdiction equal Protection of law."

This is the suggestion which Dr. Ambedkar submitted to the Advisory Committee of the Constituent Assembly early in March 1947. That was his opinion as a private Member.

[Dr. Bakhshi Tek Chand]

Then we come to the Second stage of the consideration of this matter by the Advisory Committee of the Constituent Assembly. As you know, the Advisory Committee on Fundamental Rights and Minorities was one of the earliest Committees appointed by the Constituent Assembly and Sardar Vallabhbhai Patel was its Chairman. The Committee consisted of a large number of Members including three of the most prominent Members of the Drafting Committee, namely Dr. Ambedkar, Mr. Munshi and Shri Alladi Krishnaswami Ayyar. This Committee submitted its report on the 23rd of April 1947 recommending the adoption of certain fundamental rights by the Constituent Assembly. In this report also this "due process of law" clause figured prominently. The report of this Committee came up for consideration before the House in April 1947, and we find from the Reports of the Committees, (First Series) issued by the Constituent Assembly office that at page 28 a List of what are called "justiciable fundamental rights." Article No. 9 at page 29 is as follows :

> "'No person shall be deprived of his life or liberty without *due process of law*, nor shall any person be denied equality before the law within the territory of the Union." This was the considered decision of this House and the Drafting Committee was directed to draft the Constitution on these lines."

Now, what did the Drafting Committee do? It met, considered the matter, and ultimately produced this Draft Constitution which was circulated to the Members in February 1948. There in article 15 instead of submitting a draft on the lines of the resolution of April 1947 which I have just now read, it suggested the following article :

> "No person shall be deprived of his life or personal liberty, except according to Procedure established by law. Nor shall any person be denied equality before the law or the equal protection of the laws within the territories of India."

So, instead of the words "due process of law" which, as I shall presently show, have acquired a certain fixed meaning both in England and in America, as a result of the struggle for liberty against the Executive which went on there for centuries, the Drafting Committee put in the words "according to procedure established by law." There is a footnote appended to it in the Draft Constitution. The footnote says :

> "The Committee is of opinion that the word "liberty' should be qualified by the insertion of the word "Personal" 'before it, or otherwise it might be construed very widely so' as to include even the freedoms already dealt with in article 13.
>
> The Committee has also substituted the expression 'except according to procedure established by law' for the words 'without due process of law' as the former is more specific (*c.f.* Art. of the Japanese Constitution, 1946). The corresponding provision in the Irish Constitution runs : 'No citizen shall be deprived of his personal liberty save In accordance with law.'

Now, Sir, the reason given for the substitution of the words "according to procedure established by law" for the words "due process of law" is that the former expression is more specific and precise and are taken from the Japanese

Constitution. Well, no doubt, they are more precise in a sense. But while copying them from the Japanese Constitution the Drafting Committee has omitted some other important provisions which are to be found in that Constitution.

If I may just digress for a minute here, what does the, expression "due process of law" mean? It was for the first time introduced in England in the, year 1353 in the reign of King Edward III when a statute was passed incorporating the substance of the great Magna Carta which King John had given to the people of England a century earlier.

Mr. President : I was not present during the discussion when article 15 was adopted, but I hope this whole question would have been discussed at great length and as a result of that discussion the article in the form in which it has found its place would have been passed.

Dr. Bakhshi Tek Chand : I won't take very long, Sir.

Mr. President : I am not objecting to your speaking. I Was only asking whether this question was not discussed at great length.

Dr. Bakhshi Tek Chand : Sir, it was discussed. But Dr. Ambedkar promised to place before the House an amended article, and he, on behalf of the Drafting Committee, has proposed the present article 15-A. As I was saying in the Magna Carta the words were "no person shall be arrested, etc.. except according to the law of the land". That was the expression originally used. Later, it was incorporated in the Statute of Edward III in the words, "no person shall, be arrested without due process of-law". Centuries later when the American Colonies bad separated from England and they framed their own Constitution, in the 14th Amendment to that Constitution they put in the words :

"Nor shall any State deprive any person of his liberty or property without due process of law, nor deny to any person within its jurisdiction equal protection of the law."

Many Judges of the Supreme Court have said that this clause has been the bulwark of the liberty of the people of the United States. It has been said that there is no other single clause in the Constitution which has done so much to preserve the liberty and the rights of the people as this particular clause apparently and it was from the American Constitution that Dr. Ambedkar had copied it in his original draft which he submitted to the Advisory Committee.

There are various decisions of the courts of America. But the best exposition of it is by a great American lawyer Webster as to the meaning of the expression "due process of law", who said that "due process of law means the law which *hears before it condemns*; a law which *proceeds upon enquiries* and a law which *renders judgment after trial*. These are the three essentials that you will not condemn a person before hearing him; you will not proceed against him without enquiry; you will not deliver judgment against him without trial.

Now there was great confusion in the American courts with regard to the interpretation of this phrase in regard to property. Some Judges took the extreme view. that it protected the right of private property to the fullest extent and condemned socialistic legislation as unconstitutional. I need not go into that because that question does not concern us today.

But I do not know of any case in which there has been any confusion or conflict with, regard to the application of this phrase to personal liberty. in the context, its meaning has always been precise and clear.

[Dr. Bakhshi Tek Chand]

Let us now examine the reasons given by the Drafting Committee for substituting for this classic expression the phrase taken from the Japanese Constitution which was framed by eminent American lawyers. It has one obvious advantage. It steers clear of the expression "due process of law" so as to avoid any conflict of judicial decisions. I shall with your permission read the concerned articles.

"Article XXXI. No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to *procedure established by law*."

This article 31 has been taken verbatim in our Draft Constitution. But in the Japanese Constitution there are other clauses, which embody the substance of the 'due process of law' clause and safeguard the rights of the subject, but which, unfortunately, find no place in our Draft Constitution. I shall read those articles:

"Article XXXIII. No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offence with which the Person is charged, unless he is apprehended while committing a crime.

Article XXXIV. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.

Article XXV. The right of all persons to be secure in their homes. papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued only for probable cause, and particularly describing the place to be searched and things to be seized, or except as provided by article XXXIII.

Each search or seizure shall be made upon separate warrant issued for the purpose by a competent judicial officer.

Article XXXVI. The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

Article XXXVII. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal.

He shall be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense.

At all times the accused shall have the assistance of competent counsel who shall, if the accused be unable to secure the same by his own efforts, be assigned to his use by the Government."

These are the additional provisions in the Japanese Constitution. They form one consistent, integrated whole, and incorporate the pith and substance of the phrase 'due process of law'. But what our Drafting Committee has done is to copy article XXXI only, and exclude from the Constitution of Free India anything corresponding to articles XXXII to XXXVII, which provide all the safeguards to ensure a fair trial, and to see that a person is not detained without being told as to what the cause of arrest is and without trial. Can it be said that this omission has been made for the sake of securing precision of expression only ?

When this clause came up for discussion before the House on 6th December 1948 an amendment was moved suggesting that the words "due process of law" be substituted for the words "according to procedure prescribed by law". The strongest supporter of this amendment at that time was our esteemed Friend Mr. Munshi. His speech on that occasion is to be found on page 851 to 853 of the proceedings of this House dated 6th December 1948, and I want to read portions from it.

Shri H. V. Kamath : Mr. President the honourable Member is awaiting your attention.

Mr. President : The honourable Member may proceed.

Dr. Bakhshi Tek Chand : I will read only a few sentences from that speech. Mr. Munshi said:

"I know some honourable Members have got a feeling that in view of the emergent conditions in this country this clause, may lead Lo disastrous consequences. With great respect I have not been able to agree with this view."

* * * *

"We have unfortunately in this country legislatures with large majorities facing very severe problems, and naturally, there is a tendency to Pass legislation in a hurry which give sweeping powers to the executive and the police. Now, there will be no deterrent if these legislations are not examined by a court of law. For instance I read the other day that there is going to be a legislation, or there is already a legislation, in one province in India which denies to the accused the assistance of lawyer. How is that going to be checked ? In another province I read that the certificate of report of an executive authority—mind you it is not a Secretary of a Government, but a subordinate executive—is conclusive evidence of a fact. This creates tremendous difficulties for the accused and I think, as I have submitted, there must be some agency in a democracy which strikes a balance between individual liberty and social control."

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

Now, this was the position of Mr. Munshi. Why has he changed now?, I will next refer to the speech which Dr. Ambedkar himself delivered in this House on the 13th December 1948. That speech is printed on pages 999 to, 1001. I will not read the whole of it, but only three or four sentences from page 1000—

"The question of "due process" raises, in my judgment. the question of the relationship between the legislature and the judiciary. In a federal constitution, it is always open to the judiciary to decide whether any particular law passed by the legislature is *ultra vires* or *intra vires* in reference to the powers of legislation which are granted by the Constitution to the particular legislature. If the law made by a particular legislature exceeds the, authority of the power given to it by the Constitution, such law would be *ultra vires* and invalid. That is the normal thing that happens in all federal constitutions."

Further he says—

"The "due process" clause, in my judgment, would give the judiciary the power to question the law made by the legislature on another ground. That ground would be whether that law is in keeping with certain fundamental principles relating to the rights of the individual. In other words, the judiciary would be endowed with the authority to question the law not merely on the ground whether it was in excess of the authority of the legislature, but also on the ground whether the law was good law, apart from the question of the powers of the legislature making the law. The law may be perfectly good and valid so far as the authority of the legislature is concerned. But it may not be a good law, that is to say, it violates certain fundamental principles; and the judiciary could have that additional power of declaring the law invalid."

These were the views of Dr. Ambedkar in December last. Why has her changed since? I shall not refer in detail to the speech of Shri Alladi Krishnaswami Ayyar in that debate. It was directed mainly in expounding the uncertainty of the meaning of the expression "due process of law", but he gave no substantial reasons why it should not be used in relation to 'personal liberty', as was sought to be done in the amendment.

Sir, that phrase is now sought to be substituted by the phraseology of Act XXXI of the Japanese Constitution, in article 15 of our Constitution, without the safeguards which that Constitution has incorporated in Act XXXII *et seq* to protect the rights of the individual. Why has not that been done ? In pursuance of the promise which Dr. Ambedkar gave at the time that he would

[Dr. Bakhshi Tek Chand]

again come up with the matter before the House, he has produced this article 15-A which, if I may say so with due deference to him, is nothing but a cloak for denying the liberty of the individual. It really comes to nothing. The first two clauses of the proposed article do not go, as Pandit Thakur Das Bhargava pointed out, as far as the Criminal Procedure Code does today. The article then provides for an Advisory Board or Tribunal which will, within three months, advise the local governments as to whether the grounds on which a person is arrested are sufficient for his further detention. But in the draft placed before the House today there is no provision that the person affected will be given an opportunity of being told what the grounds for his detention are. No doubt you have Judges of the High Court on this Board, but what can the Judges do unless they hear the other side? They will only pass judgment *ex parte*. Therefore I submit that this provision is very defective. It is no protection at all. It is only intended to make a show that some sort of protection is given. I submit with great respect that this is not the proper way of dealing with this question.

I will now make a few more remarks with regard to some of the amendments. I do not want to carry my speech today after tomorrow. If the article is to be retained at all, the three amendments which have been suggested by the previous speakers should be accepted. First of all is the alternative amendment moved by Pandit Thakur Das Bhargava which is printed at page 4 of List I, which says that at the end of clause (2) of the proposed new article the words "and for reasons to be recorded" be added. If a man is to be arrested and remanded to custody, the Magistrate must record his reasons in writing. I do not think there can be any objection to this being incorporated in the Constitution. Then there is the other amendment by Pandit Thakur Das Bhargava that indiscriminate arrests should not be permitted. If we are copying the Japanese Constitution, then let the provisions of article XXXV of that Constitution be also included. If the executive has to have this power of arrest and detention, then at least let the person affected have an opportunity of submitting his explanation. This is all that I have to submit on the amendment.

One word more, Sir. So far I have drawn your attention to the various Constitutions of the world, English, American and Japanese. I will now make a reference to the Charter of Human Rights which is now being considered by the United Nations Assembly. As honourable Members are aware, to the Committee dealing with this matter, our country had also sent a delegate.

Prof. N. G. Ranga (Madras: General) : Into how much of detail are we being taken in this matter?

Mr. President : He is now completing his argument.

Prof. N. G. Ranga : He said he would complete it twenty minutes ago.

Dr. Bakhshi Tek Chand: My honourable Friend Prof. Ranga who has just come from America, does not want to hear anything about the Charter of Human Rights. He is welcome to have that opinion, I shall read only two or three lines.

Shri Mahavir Tyagi : It is quite important.

Dr. Bakhshi Tek Chand :

Article 3 provides : 'Everyone has the right to life, liberty and security of Person.

Article 7. No one shall be subjected to arbitrary arrest or detention.

Article 8. In the determination of his rights and obligations and of any criminal charge against him everyone is entitled in full equality to a fair hearing by an independent and impartial tribunal.

Article 9. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any offence on account of any act or omission which did not constitute an offence, under national or international law at the time when it was committed."

I will read nothing more. This is the substance of Fundamental Human Rights for civilized nations. But in our Constitution are we going to incorporate provisions which lay down that persons can be arrested and detained without trial for three months, then there will be a sort of make-believe examination of the case by a tribunal which will give its opinion on *ex parte* examination of such papers as the executive might place before it and then the person concerned can be kept in further detention for any length of time ? In some provinces it was originally six months, then it was varied to one year and then again to three years in one province they can detain indefinitely. Are you going to incorporate such provisions in the first Constitution framed by Free India; so that when people compare this Constitution with those of other countries, they will say : "Here is a country which permits its legislatures to frame laws of this kind?" Will it. I submit, not be better to omit it altogether and leave it to the good sense of future Parliament or the good sense of the various Provincial legislatures to pass such laws as they like, and not to disfigure our Constitution with a provision like Act 15 A.

Shri Alladi Krishnaswami Ayyar (Madras:, General) : Mr. President, my honourable Friend Dr. Bakhshi Tek Chand has gone over the whole ground which has been travelled at length by this House when it came to a conclusion after a very full debate and after an adjournment of the House that the expression "due process" must disappear from the article for the reasons which were then considered by the House at length. I do not propose again to repeat what I have said on that occasion. I might mention that the main reason why "due process" has been omitted was that if that expression remained there, it will prevent the State from having any detention laws, any deportation laws and even any laws relating to labour regulations. Labour is essentially a problem relating to persons and I might mention in the United States Supreme Court, in the days when the Conservative regime dominated the U.S.A. politics, enactments restricting the hours of labour constituted a violation of the "due process of law". An American would be employed for five hours, ten hours or twenty hours and make a slave of himself and yet it was held to be interfering with due process of law if there was a restriction of the hours of labour until the United States Supreme Court put a different construction in a later decision.

After a consideration of all these points, with due regard to the whole history of the expression "due process" in the United States Supreme Court, this House deliberately came to the conclusion to drop that expression "due process" from our articles instead of leaving it to the Supreme Court judges to mould the Constitution or to read up all the decisions of the Supreme Court and adopt such decisions as appealed to them according to their conservative or radical instincts as the case may be. Therefore, I do not propose to go into that history, at this stage. I myself took some part on that occasion and it is enough for me to say it is entirely irrelevant for the purpose of the present discussion. At the same time on that occasion it was felt that there should be some guarantee for personal liberty; some essential rules of fairplay

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and justice should be adopted. It is because of some division of opinion and fighting over immaterial points that we were not able to insert any provisions in respect of those matters on that occasion.

The Honourable Dr. Ambedkar, who is as keen today on the problem of personal liberty as he has always been, has thought fit to bring forward this amendment and he thought that this article must find a place in the Constitution. My honourable Friend Dr. Bakhshi Tek Chand went so far as to say that he is ashamed, of being a party to the article 15 A being passed. What is wrong with this article? Let us analyse. The first two clauses of the article are based upon the corresponding provisions of the criminal procedure and they are made into constitutional guarantees. The difference between that finding a place in the Criminal Procedure Code and that finding a place in a constitutional statute is that where as the Criminal Procedure Code is liable to alteration by the State Legislature or by the Central Legislature, when once it finds a place in the Constitution it cannot be changed excepting in the manner provided for the change of the Constitution. Therefore certain very important provisions which go to the fundamental principles are taken into article 15 A. Therefore, I do not think any exception can be taken to, those two clauses. There are corresponding provisions in the Criminal Procedure Code and they are now transferred practically into a constitutional provision in order to prevent any change being made by any legislature in regard to those provisions because they were regarded as fundamental.

Then the next question is if you guarantee personal liberty in the Constitution either by the use of the words "due process" or "procedure" or any such thing the State will be hampered even with regard to detention and in regard to deportation. It is agreed on all hands that the security of the State is as important as the liberty of the individual. Having guaranteed personal liberty, having guaranteed that a person should not be detained or arrested for more than 24 hours, the problem necessarily had to be faced as to detention, because detention has become a necessary evil under the existing conditions of India. Even the most enthusiastic advocate of liberty says there are people in this land at the present day who are determined to undermine the Constitution and the State, and if we are to flourish and if liberty of person and property is to be secured, unless that particular evil is removed or the State is invested with sufficient power to guard against that evil there will be no guarantee even for that individual liberty of which we are all desirous. That is the object of the provision.

What do those provisions say ? You cannot detain for more than three months unless the matter is placed before some kind of tribunal. The tribunal is to consist of people who are qualified to be judges of the High Court. Are we to say that a retired judge is eligible, but not a distinguished member of the Bar who might not have a chance of becoming a Judge of the High Court is eligible for a place in that Court ? If there is sufficient public spirit, I have no doubt members of the Bar who might have retired from the Bar or who might not have occupied the position of judges are eligible to be members of such tribunals, and it cannot be said that a person simply because he has not occupied a position of a judge is not good enough to be a member of the tribunal or to take a dispassionate view of the situation. Therefore, normally speaking, the tribunal will consist of people who were judges or people who are fit to be judges, and people of high character. And after all, there are judges and judges, The one reason why we say that that it is better to have

judges is that they have security of tenure; they occupy a particular place in society and they are accustomed to deal with cases from a detached point of view and it is better to have these people as members of the tribunal.

You need not put an embargo on people who may take an impartial view of the question, who may be guided by principles of justice and fair play, from being members of this tribunal, because they never happened to be Judges. I believe there is a sufficient number of people in this country who are fit to be in the tribunal other than Judges or people who are retired Judges. Imagine a man like Sir Tej Bahadur Sapru being alive and he being ineligible to be a member of the tribunal. I would have welcomed him as a member of the tribunal. The other day, Mr. Venkatarama Sastri was a member of the Board. A leading member of the Bar, who has occupied the position of Advocate General, he was a member of a Board which was constituted in Madras. He sat along with Judges who are much junior to him and possibly who could have sat under him and learnt some bit of law when they were at the Bar. Under those circumstances, we need not introduce a cast-iron provision to the effect that the members shall be only judges. There is absolutely no reason to believe that the members would not give an opportunity to the person before being satisfied that there is a case for detention if it is more than three months. Therefore, at any particular time, a person can only be detained for three months.

Beyond that time, there must be the *imprimatur* of this special tribunal which will take into account all the circumstances of the case, examine all the materials placed before them and come to the conclusion whether there is a satisfactory ground or not. Normally, I have absolutely no doubt that they will give notice to the party in every case. To say that you must give notice, it might be to surrender the very principle. There are cases where it is not susceptible of exact proof, but there are materials from certain quarters which will carry conviction to any impartial mind. At the same time, these people who are concerned in subversive activities, sometimes take care to see that no sort of evidence is preserved. Therefore, it is to provide against these extreme cases this provision is made. On the other hand, if you say that in every case there shall be notice, there shall be a charge, there shall be a hearing, that there shall be examination and cross examination, there shall be counsel, then this Board may convert itself into a magistrate's court with all the paraphernalia of the magistrate's court, and it will defeat the very purpose of the article. This is the object of saying that you must have competent men with a fair sense of justice, trained in the law. It is such people that will be there in the Board. After all, it will be very difficult for a lawyer who has been a Judge to get rid of his legal mode of approach. That is the reason for having a tribunal.

Beyond that, Parliament will intervene. Otherwise, that procedure is to be followed. There might be cases when Parliament will have to consider whether detention for more than the period referred to is called for in the interests of the State. Parliament which is elected on universal adult suffrage will have to pass, a law. There are other guarantees in the Criminal Procedure Code (other than the Constitutional guarantees above referred to). The provisions of the Criminal Procedure Code are nowhere repealed or modified. The Constitutional guarantees constitute a minimum with which the legislature itself cannot interfere. The provisions in the criminal Procedure Code are liable to alteration by the legislature whereas this provision is not liable to alteration. Therefore, the question is which are the minimum rights that have got to be secured.

[Shri Alladi Krishnaswami Ayyar]

I do not think my honourable Friend. Mr. Tek Chand can show any Constitution which contains all these provisions. I am quite willing to throw out a challenge to him to show any well known Constitution, which contains all these detailed provisions. I venture to say there is none. There is no known Constitution which contains such detailed provisions, transferring all these provisions of the Criminal Procedure Code into their Constitution so that they may hamper the action of the legislature, the action of the courts, which will become the battle-ground for lawyers. Therefore, the Honourable Dr. Ambedkar has taken care to put in what may be considered to be the fundamental principles into article 15 A. The other guarantees are there, the guarantees under the Criminal Procedure Code. There is no intention of interfering with the provisions of the Criminal Procedure Code. Both these could be exercised side by side, the Criminal Procedure Code and the Constitutional guarantee. I thought of stating more; but I do not want to take more of the time of the House. It is better that the matter is finished as soon as possible. That is the reason why I refrain from taking more time of the House.

Shri H. V. Kamath : May I request, you, Sir, to be so good as to throw some light on the duration of this session ?

Mr. President : I have myself been considering that matter. There are certain matters which have to be held over for another session which will have to be held in October. The question is what we can dispose of now and what is to be held over for the October session. We have been considering the details and I think I shall be able to announce in the House tomorrow the details of the provisions which will have to be held over for the October session and those which we want to dispose of in this session. If we are able to get through our work quickly, we propose to finish this session by Saturday next. But, if by any chance, we are not able to do it, we may have to sit on the next day or the day following.,

An Honourable Member : The next day will be Sunday.

Mr. President : I do not know, if Members would sit on Sunday, I have no objection. or we may sit on Monday.

Shri K. M. Munshi (Bombay: General) : We may sit on Sunday, both morning and evening and finish it.

Pandit Lakshmi Kanta Maitra (West Bengal: General.) : The difficulty with some of us, orthodox Members is that we have got the Mahalaya ceremony which comes off on the 22nd.

Mr. President : It is not Monday.

Pandit Lakshmi Kanta Maitra : We have got to go back to our places; we may not be able to find transport later. If you can finish by Saturday, it will be helpful.

Mr. President : It is in the hands of Members. I shall try to get through the work as quickly as possible.

Shri Deshbandhu Gupta (Delhi) : Sir, when do we reassemble in October ?

Mr. President : As far as I can judge, this is not final, this is only provisional, we must begin about the 7th.

The Honourable Shri Satya Narayan Sinha (Bihar: General) : Not earlier than the 10th, Sir.

Mr. President : Then there will be no time. We have a time limit on the other side. Diwali comes off on the 21st. If we have to complete these articles which will be left over, we must have sufficient time before we rise for Diwali. Therefore, we have to begin the October session as early as possible. It all depends on the number of articles left over. Therefore, I said I would be able to say this with a little more definiteness tomorrow.

An Honourable Member : If everybody speaks on every article, it may take two months.

Mr. President : I cannot prevent that.

We have got several time limits. We must finish the third reading at the, latest by the 18th of November. For that purpose, we are thinking of beginning the session for the Third Reading on the 7th of November, so that we may get about ten days for the Third Reading. Between the beginning of the Third Reading and the ending of the Second Reading, the Drafting Committee would naturally require some time to put the things in order, as renumbering, of the paragraphs, correcting of errors, getting the, thing printed and placing the whole Constitution in the hands of the Members in time for their consideration on the 7th of November. Therefore, it is necessary to complete the Second Reading pretty well in advance of the beginning of the Third Reading. Therefore I am suggesting that if we start, say, about the 7th October, we would be able to complete the Second Reading by about the 18th or 19th October and then we give them a fortnight for completing their revision and for printing and distributing to Members, so that we might start the Third Reading on the 7th November. These are the various dead lines which we may not cross and therefore it is necessary to fit in the whole programme within this time.

The House will now stand adjourned till Nine to-morrow.

The Assembly then adjourned till Nine of the Clock on Friday, the 16th September 1949.