CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 1*st December* 1948

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

DRAFT CONSTITUTION—(*Contd.*)

Article 12—*(Contd.)*

Shri H. V. Kamath (C. P. & Berar : General): Sir, before we proceed with the business of the day, may I request you to be so good as to see that my learned friend, Shri Alladi Krishnaswami Ayyar, who is frequently called upon to give us the benefit of his sage counsel is allotted a seat somewhere in the centre of the hall, neither too much to the right nor to the left so that he may be heard and appreciated in the House?

Mr. Vice-President (Dr. H. C. Mookherjee): We shall try to meet the wishes of the House.

We finished our discussion on Article 12 and Dr. Ambedkar gave his reply. I am sorry I cannot accommodate those Members who want to reopen it. I shall now put the different amendments to the vote one after the other.

Mr. Vice-President : The question is:

"That in clause (1) of article 12, after the word 'title' the words 'not being a military or academic distinction' be inserted."

The motion was adopted.

Mr. Vice-President : The question is:

"That in clause (1) of article 12, after the words 'be conferred' the words 'or recognised' be inserted".

The motion was negatived.

Mr. Vice-President : The question is:

"That in clause (1) of article 12, after the word 'State' the words 'and the State shall in no way recognize any title conferred by the British Government on any citizen of India prior to August 15, 1947' be inserted."

The motion was negatived.

Mr. Vice-President : The question is:

"That in clause (1) of article 12, after the word 'conferred' the words 'or recognised' be inserted."

The motion was negatived.

Mr. Vice-President : The question is:

"That for clause (2) of article 12, the following clause be substituted. '(2) No title conferred by any foreign State on any citizen of India shall be recognised by any State.' "

The motion was negatived.

Mr. Vice-President : The question is:

"That article 12, as amended, stand part of the Constitution."

The motion was adopted.

Article 12, as amended, was added to the Constitution.

Article 13

Mr. Vice-President : We shall now take up article 13 for consideration.

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

"That for article 13, the following be substituted:

'13. Subject to public order or morality the citizens are guaranteed—

(a) freedom of speech and expression;

(b) freedom of the press;

(c) freedom to form association or unions;

(d) freedom to assemble peaceably and without arms;

(e) secrecy of postal, telegraphic and telephonic communications.

13-A. All citizens of the Republic shall enjoy freedom of movement throughout the whole of the Republic. Every citizen shall have the right to sojourn and settle in any place he pleases. Restrictions may, however, be imposed by or under a Federal Law for the protection of aboriginal tribes and backward classes and the preservation of public safety and peace.' "

Sir, article 13, as at present worded, appears to have been clumsily drafted. It makes one significant omission and that is about the freedom of the press. I think, Sir, it will be argued that the freedom is implicit in clause (a), that is, in the freedom of speech and expression. But, Sir, I submit that the present is the age of the Press and the Press is getting more and more powerful today. It seems desirable and proper, therefore, that the freedom of the Press should be mentioned separately and explicitly.

Now, Sir, this article 13 guarantees freedom of speech and expression, freedom to assemble peaceably and without arms, to form association and unions, to move freely throughout the territory of India, to sojourn and settle in any territory, to acquire and hold and dispose of property, and to practise any profession or trade or business. While the article guarantees all these freedoms, the guarantee is not to affect the operation of any existing law or prevent the State from making any law in the general interests of the public. Indeed, Sir, the guarantee of freedom of speech and expression which has been given in this article, is actually not to affect the operation of any existing law of prevent the State from making any law relating to libel, slander, defamation, sedition and other matters which offend the decency or morality of the State or undermine the authority or foundation of the State. It is therefore clear, Sir, that the rights guaranteed in article 13 are cancelled by that very section and placed at the mercy or the high-handedness of the legislature. These guarantees are also cancelled, Sir, when it is stated that, to safeguard against the offences relating to decency and morality and the undermining of the authority or foundation of the State, the existing law shall operate. This is provided for in very wide terms. So, while certain kinds of freedom have been allowed on the one hand, on the other hand, they have been taken away by the same article as I have just mentioned. To safeguard against "undermining the authority or foundation of the State" is a tall order and makes the fundamental right with regard to freedom of speech and expression virtually ineffectual. It is therefore clear that under the Draft Constitution we will not have any greater freedom of the press than we enjoyed under the cursed foreign regime and citizens will have no means of getting a sedition law invalidated, however flagrantly such a law may violate their civil rights.

Then, Sir, the expression 'in the interests of general public' is also very wide and will enable the legislative and the executive authority to act in their own way. Very rightly, Sir, Shri S. K. Vaze of the Servants of India Society while criticising this article has pointed out that if the mala fides of Government are not proved—and they certainly cannot be proved—then the Supreme Court will have no alternative but to uphold the restrictive legislation. The Draft Constitution further empowers the President, Sir, to issue

proclamations of emergency whenever he thinks that the security of India is in danger or is threatened by an apprehension of war or domestic violence. The President under such circumstances has the power to suspend civil liberty.

Now, Sir, to suspend civil liberties is tantamount to a declaration of martial law. Even in the United States, civil liberties are never suspended. What is suspended there, in cases of invasion or rebellion, is only the *habeas corpus* writ. Though individual freedom is secured in this article, it is at the same time restricted by the will of the legislature and the executive which has powers to issue ordinances between the sessions of the legislature almost freely, unrestricted by any constitutional provision. Fundamental rights, therefore, ought to be placed absolutely outside the jurisdiction, not only of the legislature but also of the executive. The Honourable Dr. Ambedkar, Sir, while justifying the limitations on civil liberties, has maintained that what the Drafting Committee has done is that, instead of formulating civil liberties in absolute terms and depending on the aid of the Supreme Court to invent the doctrine or theory of police powers, they have permitted the State to limit civil liberties directly. Now, if we carefully study the Law of Police Powers in the United States, it will be clearly seen that the limitations embodied in the Draft Constitution are far wider than those provided in the United States. Under the Draft Constitution the Law of Sedition, the Official Secrets Act and many other laws of a repressive character will remain intact just as they are. If full civil liberties subject to Police Powers, are to be allowed to the people of this country, all laws of a repressive character including the Law of Sedition will have either to go or to be altered radically and part of the Official Secrets Act will also have to go. I therefore submit that this article should be radically altered and substituted by the addenda I have suggested. I hope, Sir, the House will seriously consider this proposal of mine. If whatever fundamental rights we get from this Draft Constitution are tempered here and there and if full civil liberties are not allowed to the people, then I submit, Sir, that the boon of fundamental rights is still beyond our reach and the making of this Constitution will prove to be of little value to this country.

Mr. Vice-President : Do I understand that amendment No. 441 will not be moved? I shall not allow any discussion but I shall put it to vote. Do I understand that the mover does not intend to move this amendment?

(Amendment 441 was not moved.)

(Amendments No. 413 and No. 414 were not moved.)

Mr. Vice-President : Amendments Nos. 415 and 418. They are the same. I will allow amendment No. 415 to be moved. It stands in the names of Pandit Lakshmi Kanta Maitra and others, including Mr. Kamath.

Shri Mihir Lal Chattopadhyay (West Bengal: General): Sir, I beg to move:

"That in clause (1) of article 13, the words 'Subject to the other provisions of this article' be deleted."

Various provisos have been mentioned in this Section in clauses (2), (3), (4), (5) and (6). Therefore the words "subject to the other provisions of this article" are unnecessary.

Mr. Naziruddin Ahmad (West Bengal : Muslim): I submit that this is a drafting amendment.

Mr. Vice-President : Proceed, Mr. Chattopadhyay.

Shri Mihir Lal Chattopadhyay : Moreover, this section deals with Fundamental Rights and there should be positive enumeration of these rights and privileges at the beginning and it should not begin with provisos. Each proviso should in the natural course come afterwards. I therefore move this amendment.

(Amendment No. 419 was not moved.)

Mr. Vice-President : Then we come to amendment No. 416 standing in the name of Prof. K.T. Shah.

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

"That in clause (1) of article 13, for the words, 'the other provisions of this article' the words 'this constitution and the laws thereunder or in accord therewith at any time in force' be substituted, and after the words 'all citizens shall have' the words 'and are guaranteed' be added."

The article, as amended, would read:

"Subject to this Constitution and the laws thereunder or in accord therewith at any time in force, all citizens shall have and are guaranteed the right" etc.

Sir, my purpose in bringing forward this amendment is to point out that, if all the freedoms enumerated in this article are to be in accordance with only the provisions of this article, or are to be guaranteed subject to the provisions of this article only, then they would amount more to a negation of freedom than the promise or assurance of freedom, because in everyone of these clauses the exceptions are much more emphasised than the positive provision. In fact, what is given by one right hand seems to be taken away by three or four or five left hands; and therefore the article is rendered nagatory in my opinion.

I am sure that was not the intention or meaning of the draftsmen who put in the other articles also. I suggest therefore that instead of making it subject to the provisions of this article, we should make it subject to the provisions of this Constitution. That is to say, in this Constitution this article will remain. Therefore if you want to insist upon these exceptions, the exceptions will also remain. But the spirit of the Constitution, the ideal under which this Constitution is based, will also come in, which I humbly submit, would not be the case, if you emphasise only this article. If you say merely subject to the provisions of this article, then you very clearly emphasise and make it necessary to read only this article by itself, which is more restrictive than necessary. I am aware it might be said that, under the rules of interpretation, the whole Constitution will have to be read together and not only one clause of it. If so, I ask where is the harm in then saying, as you have said in many other articles, "subject to the provisions of this Constitution" and "subject also to the laws in force at any time and the laws thereunder"? Those laws which have not been abrogated or abolished under this article or any other article will be enforced. Those new laws which you make in accordance with this article will also be enforced, so that all the safeguards that you wish to introduce, and which you may wish to maintain against any abuse of the freedoms guaranteed or granted by this Constitution, will be available.

Why then should we draw attention and emphasize only this article, which is more full. I repeat, of exceptions and delimitations of freedom than of freedom itself? The freedoms are curtly enumerated in 5, 6 or 7 items in one sub-clause of the article. The exceptions are all separately mentioned in separate sub-clauses. And their scope is so widened that I do not know what cannot be included as exception to these freedoms rather than the rule. In fact, the freedoms guaranteed or assured by this article become so elusive that one would find it necessary to have a microscope to discover where these freedoms are, whenever it suits the State or the authorities running it to deny them. I would, therefore, repeat that you should bring in the provisions of the whole Constitution, including its preamble, and including all other articles and chapters where the spirit of the Constitution should be more easily and fully gathered than merely in this article, which, in my judgment, runs coun-

ter to the spirit of the Constitution. Somebody described yesterday the Constitution as a paradise for lawyers. All written Constitutions, and even un-written ones, do admit themselves to legal chicanery of a very interesting type. Constitutions of Federal States are generally more so. But whether or not it was deliberately intended to be so, this particular Draft seems to be a very fertile ground for legal ingenuity to exercise. And that will, of course, be at the expense of the Community. Whether the State wins or loses, the public, the country in any case, will lose to one small section, that of the legal practitioners.

I also suggest that it would not be enough to enumerate these freedoms, and say the citizen shall have them. I would like to add the words also that by this Constitution these freedoms are guaranteed. That is to say, any exception which is made, unless justified by the spirit of the Constitution, the Constitution as a whole and every part of it included, would be a violation of the freedoms guaranteed hereby.

For instance, sub-clause (5) uses such a wide expression as to make anything come within the scope of the exception, and suffice to deny the practical operation of the freedoms that by one big clause you are supposed to guarantee. I, therefore, think that it is necessary to make the substitution I have suggested in this article, that the words "this Constitution and the laws thereunder or in accord therewith at any time in force" may be substituted for the words "the other provisions of this article" and after the words "all citizens shall have" the words "and are guaranteed" be added. I hope the amendment will prove acceptable to the House.

Mr. Vice-President : Amendment Nos. 417 and 418 are of similar import. I can allow No. 417 to be moved. This amendment stands in the name of Mr. Lari.

An Honourable Member : He is not in the House.

Mr. Vice-President : Then amendment No. 418 which stands in the name of Shri Mukut Behari Lal Bhargava.

The amendment was not moved.

Mr. Vice-President : Amendment Nos. 420, 421 and 424 are of similar import and I suggest that the House should consider them together. I suggest that amendment No. 421 be moved. This stands in the name of Prof. K. T. Shah.

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

"That in sub-clause (a) of clause (1) of article 13, after the word 'expression'; the words 'of thought and worship; of press and publication;' be added."

so that the article as amended would read:

"Subject to the other provisions of this article, all citizens shall have the right—

(a) to freedom of speech and expression; of thought and worship; of press and publication;"

In submitting this amendment, I must confess to a feeling of amazement at the omission whether it is by oversight or deliberate. I do not know of these very essential and important items in what are known as Civil Liberties. The clause contents itself merely with the freedom of speech and of expression. I do not know what type of freedom of speech the draftsman had in mind when he adds to it the freedom of expression separately. I thought that speech and expression would run more or less parallel together. Perhaps

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"expression" may be a wider term, including also expression by pictorial or other similar artistic devices which do not consist merely in words or in speech.

Allowing that that is the interpretation, or that is the justification for adding this word "expression", I still do not see why freedom of worship should have been excluded. I am not particularly a very worshipful man myself. Certainly I do not indulge in any overt acts of worship or adoration. But I think a vast majority of people feel the need and indulge in acts of worship, which may often be curtailed or be refused or in other words be denied unless the Constitution makes it expressly clear that those also will be included. All battles of religion have been fought—and it must be very well known to the draftsman that they are going on even now—in connection with the right of free worship. The United States itself owes its very origin to the denial of freedom of worship in their original home to the Fathers of the present Union some 300 odd years ago. That is why in most modern constitutions, the freedom of worship finds a very clear mention. I certainly feel therefore that this omission is very surprising, to say the least. Unless the Drafting Committee is in a position to explain rationally, is in a position to explain effectively why this is omitted, I for one would feel that our Constitution is lacking and will remain lacking in a most essential item of Civil Liberties if this item is omitted.

The same or even a more forceful logic applies to the other "freedom of the press, and freedom of publication." The freedom of the press, as is very well known, is one of the items round which the greatest, the bitterest of constitutional struggles have been waged in all constitutions and in all countries where liberal constitutions prevail. They have been attained at considerable sacrifice and suffering. They have now been achieved and enshrined in those countries. Where there is no written constitution, they are in the well established conventions or judicial decisions. In those which have written constitutions, they have been expressly included as the freedom of the press.

Speaking from memory, I am open to correction, although I think it would not be necessary, even the United Nations Charter gives good prominence and special mention of freedom of the press. Why our draftsmen have omitted that, I find beyond me even to imagine. I dare say they must have very good reasons why the freedom of the press has not found specific mention in their draft. But, unless and until they give the reasons and explain why it has been omitted, I feel that an amendment of the kind I am proposing is very necessary.

The Press may be liable to abuse; I feel there may have been instances where the press has gone, at least in the mind of the established authority, beyond its legitimate limits. But any curtailment of the liberty of the press is, as one of the present Ministers, who was then a former non-official member, called, a "black Act," in the last but one session of the legislature when there was an attempt to curtail the liberty of the press under certain circumstances. This endeared him at least so much to me that in spite of many differences with him. I felt he had doneyeoman service, though singly opposing even at the third reading of the Bill.

With the presence of such men in this House, I am amazed that in this Constitution a very glaring omission has taken place in the draft by leaving out the freedom of the press. I cannot imagine, why these draftsmen, so experienced and so seasoned, should have felt it desirable to leave out the freedom of the press, and leave it to the charity of the administrators of the Constitution when occasion arose to include it by convention or implication, and not by express provision. Freedom of the press, I repeat, is apt to be mis-

understood, or, at any rate, apt to be regarded as licence which you may want to curtail. There are many ways by which laws can be passed or laws can be administered whereby you can regard the liberty as verging upon licence and as such to be curtailed. To omit it altogether, I repeat, and I repeat with all the earnestness that I can command, would be a great blemish which you may maintain by the force of the majority, but which you will never succeed in telling the world is a progressive liberal constitution, if you insist on my amendment being rejected.

Mr. Vice-President : Amendment No. 420. Is it pressed?

(Mr. Naziruddin Ahmad rose in his seat to speak.)

You need not come. I only want to know whether you intend to press this, in which case, I shall put it to the vote.

Mr. Naziruddin Ahmad : Sir, I wish to speak on this.

Mr. Vice-President : You can speak in the course of the general discussion, provided, of course, you get a chance.

You have given me the power to rule out; take your seat, please; it will be put to the vote.

Mr. Naziruddin Ahmad : Without any debate, Sir?

Mr. Vice-President : Amendment No. 422.

(Shri Lakshminarayan Sahu came to the rostrum.)

You are not allowed to speak. Do you want to press it?

Shri Lakshminarayan Sahu (Orissa : General): Yes, Sir.

(Amendment No. 424 was not moved.)

Mr. Vice-President : Amendment No. 423 is disallowed.

(Amendment No. 425 was not moved.)

Mr. Vice-President : Amendment No. 426.

Giani Gurmukh Singh Musafir (East Punjab : Sikh): *[I do not wish to move my amendment, as it is covered by clause (1) of the Explanation to article 19.]

Mr. Vice-President: I cannot follow what he is saying.

An Honourable Member : He is not moving the amendment.

(Amendment No. 427 was not moved.)

Mr. Vice-President : Amendments numbers 428, 429, 430 and 432 are of similar import and are therefore to be considered together. Amendment No. 428 may be moved.

Mr. Naziruddin Ahmad : Sir, am I to move all the amendments and speak, on all of them?

Mr. Vice-President : On amendment No. 428 only.

Mr. Naziruddin Ahmad : Will all the others be put to the vote?

Mr. Vice-President : Of course.

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

"That at the end of sub-clause (c) of clause (1) of article 13, the words 'for any lawful purpose' be inserted."

The Honourable Shri K. Santhanam (Madras : General): Sir, on a point of order, sub-clause (4) covers exactly this position in greater detail.

Mr. Naziruddin Ahmad : I had carefully thought about this objection, Sir, and I was just going to mention the difficulty of that view. That is the only reason why I have come here to move the amendment.

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* [ ] Translation of Hindustani Speech.

Mr. Vice-President : Proceed.

Mr. Naziruddin Ahmad : Sir, all that I wish to convey by means of this amendment is that the people's freedom of speech, freedom of forming associations or unions, and moving freely throughout the territory and residing in any place, should be subject to the condition that they do it for a lawful purpose.

So far as Mr. Santhanam is concerned, he does not quarrel with the principle. His contention is that these conditions are sufficiently expressed in the clauses (2),(3), (4), (5) and (6). I shall draw the attention of the House and particularly of Mr. Santhanam to sub-clause (b) of clause (1) of article 13. It gives the right to assemble 'peaceably and without arms'. The words 'peaceably and without arms' should be objectionable from the point of view of Mr. Santhanam because it may be argued that the words are unnecessary and the condition is sufficiently provided for in clause (3). I submit that the amendments which stand in my name are merely an application of this method of draftsmanship to the other sub-clauses. I submit if we have them in the sub-clauses (b), they should also be in (a), (c), (d), (e), (f) and (g). If we introduce the words "for any lawful purpose" there, they will be beyond the scope of any legislature to interfere. But if we are satisfied with clauses (2), (3), (4), (5) and (6), they can be interferred with the Legislature. So there is this difference that with the inclusion of the words in the sub-clauses as I suggest, they would be part of the Fundamental Right. That is, if any one speaks, he should do so for a lawful purpose; if the forms associations and unions, he should do it in a lawful manner, i.e., he should not join or form into a conspiracy or other forbidden things of the sort. Then if he wants to move throughout the territory of India, I think this should be also limited by the condition that it should be for a lawful purpose. No male person should enter a female compartment in railway carriage or enter into lady's dressing room: and then somebody might say "I shall reside in this Assembly Hall"; there must be limiting conditions. My point is if you insert them in sub-clauses (a), (c), (d), (e), (f) and (g), as you have already inserted specifically in sub-clause (b)—if you insert them in these sub-clauses, then they will be part of the Fundamental Right and clauses (2), (3), (4), (5) and (6) will not give any power to the legislatures to abrogate them. This is the reason which induced me to move this amendment. Sir, this point of view should be carefully considered.

(Amendments No. 431 and Nos. 433 to 437 were not moved.)

Mr. Vice-President : No. 438 and first part of 443. Mr. Kamath.

Shri H. V. Kamath : Mr. Vice-President, I move:

"That after sub-clause (g) of clause (1) of article 13 the following new sub-clause be added:

I move this amendment, as amended by my own amendment No. 79 in List No. II, which runs thus:

"That for amendment No. 438 of the List of Amendments, the following be substituted:

'That after sub-clause (g) of clause (1) of article 13, the following new sub-clause be added:—

(h) to keep and bear arms;

and the following new clause be added after clause (6):

(7) Nothing in sub-clause (h) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing, in the interests of public order, peace and tranquility, restrictions on the exercise of the right conferred by the said sub-clause.' "

Sir, I feel a little pardonable pride in moving this amendment before the House today. Considering as I do that it puts an end or brings to an end one phase of our ignominous past, the past of more than a hundred years, and

in view of the importance of this matter involved in the amendment, may I appeal to you, Sir, to give me a little latitude in the matter of time, because I want to put the case in its entirety before the House? And may I also make a personal request to Dr. Ambedkar or whoever it may be that will reply on behalf of the Drafting Committee, to pay close attention to what is going on in the House? Yesterday we found at the fag end of the day Dr. Ambedkar—perhaps he was a bit fagged out and tired—I felt that he had not followed the debate on titles.

Mr. Vice-President : I will not allow you to make any reference to what happened yesterday.

Shri H. V. Kamath : Before I come to the amendment itself may I say a word as to an important omission which has been made before article 13? I find from the Report of the Fundamental Rights Sub-Committee over which the Honourable Sardar Patel presided, the rights from 13 up to 18 have been titled or designed as the Rights of Freedom. This sub-title 'Rights of Freedom' has been omitted from the draft as presented to the Assembly now. In this report which I am reading—Report of the Committee—First Series from December 1946 to July 1947—the sub-title is 'Rights of Freedom' just before we come to article 13.

Then, Sir, I come to the amendment itself. It is common knowledge to all of us who have lived and worked in India during the last thirty years or more that this has been a universal demand emanating from all sections of the population, firstly as a protest against the degrading and humiliating Army Act passed by the British Government in the last century, and secondly, Sir, as a guarantee of the right of self-defence. This demand has been embodied in various Congress Resolutions during the last two decades. The most important Resolution and most historic, the most momentous was the Resolution on Fundamental Rights passed at Karachi. I read, Sir, from that Resolution the relevant extracts:

"This Congress is of opinion that to enable the masses to appreciate what Swaraj as conceived by the Congress will mean to them, it is desirable to state the position of the Congress in a manner easily understood by them. In order to end the exploitation of the masses, political freedom must include real economic freedom of the starving millions. The Congress, therefore, declare that any constitution.

Mark these words—any constitution.

* * * which may be agreed to on its behalf, should provide or enable the Swaraj Government to provide for the following....."

and various fundamental rights are enumerated, among them being this one—

"Every citizen has the right to keep and bear arms in accordance with Regulations and reservations made in that behalf."

I find, Sir, from this list of Fundamental Rights, adopted at the Karachi session of the Congress, almost all of them have been incorporated in this Draft Constitution, except this one, and this is a very serious omission.

I might also make an observation about this amendment, that I am in a very good company, because amendment No. 433 which is similar to my amendment has been tabled by the general Secretaries of the Congress—Shri Shankar Rao Deo and Acharya Jugal Kishore.

Mr. Vice-President : Do you suggest that it is the work of the Congress only? I thought it is the co-operative work of all the parties.

Shri H. V. Kamath : But, Sir, all will agree that the dominant party in this House is the Congress Party, and if this party is not going to stand by its past professions, if it is going to prove false to its past, and not implement its resolution of the past, what has that party come to? If the fundamental idea of this resolution passed at Karachi is to be given the go by, I ask this House, shall we not fall in the estimation of the people of the country? Sir, this demand has not been a mere demand. I very well remember that in Nagpur

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in 1923 or 1924 there was a Satyagraha movement against the Arms Act and this Satyagraha movement attracted Satyagrahis from all over-India. That went on for six months, and the Congress put its seal of approval on this Satyagraha movement against the Arms Act. Today we may say that conditions have changed and we do not want this sort of thing to be incorporated in our fundamental rights. But, Sir, I will come to that argument a little later.

I can appreciate the force of the argument that this absolute right should not be conceded today. Perhaps there is a lurking fear in the minds of those in power that the right may be abused. For that reason I have given this proviso in conformity with and in line with the other provisos which have been embodied in this article. I am personally not very much in favour of these elaborate provisos. Here again, I would like to draw the attention of the Honourable Dr. Ambedkar to pages 21 and 29 of this Report of the Committees' First Series. On page 21, we have the Report of the Fundamental Rights Sub-Committee presided over by the Honourable Sardar Patel, and later on the same report was discussed in the Assembly and modifications were made in that, and the elaborate provisos which appeared in the original report of the Fundamental Rights Committee do not find a place in the resolution on the report which was adopted by the Constituent Assembly. This perhaps needs an explanation from Dr. Ambedkar.

Reverting to the subject matter of the amendment. I have already said that I do not want to make this right absolute. That is why I have tabled this proviso, imposing restrictions in the interests of public order, peace and tranquility. It may be said that saboteurs and other elements are abroad in the country and these may abuse this privilege and take advantage of this privilege conferred upon the ordinary citizen. But may I tell the House that saboteurs and other evil elements, villains and criminals have managed and will always manage to get arms, Arms Act or no Arms Act; and it is the law-abiding citizen who has always suffered in the bargain, and it is he who has to be protected against these elements. The history of the last twelve months has proved this to us most unmistakably, that those who suffer in these criminal riots and disturbances are not the violent elements or the saboteurs, but the law-abiding citizens, and these have to be protected.

Again, the argument may be put forward that we should incorporate only such rights about which there is fear that they might be denied to the citizen. But if we examine this argument a little closely, and also this article, in the light of this argument, we will find that rights like free movement throughout India; freedom to reside and settle in any part of India, and such other rights about which there is no doubt or fear that they will be denied, have been incorporated in this article. But this one right, to keep and bear arms has not found a place in this article. If this very diluted proposal of mine, if even this very abridged freedom to bear arms is not acceptable to the House, I am afraid it will create a most unfortunate impression on our countrymen that the Government does not trust the people, that the Government has no faith in the people, that the Government is afraid of the people. It is all right. Sir, for Ministers of Government to say, "We are here to protect you". But, with security guards outside their bungalows, it is very well for them to put forward this plea. But the ordinary citizen has no armed guard about him, no guards standing outside his house. If the Government wishes to convey the impression to the people that the Government has no faith in them, that it is afraid of them, if that is the attitude of the Government, then it is welcome to say so. It will prove to the people that you are not a popular government, that you are a government which has no faith in the people. If you are a popular government, this is the least that you can do today to put an end to this ignominy of the past one hundred years.

It may be argued also that the Congress and Mahatma Gandhi and our leaders have taught us to defend ourselves by Ahimsa, and not by Himsa, by non-violence and not by violence. But, Sir, may I, in all humility remind the House that Mahatma Gandhi used to say, "Resist, defend, non-violently, if possible, but violently, if necessary. What I hate is cowardice." And this doctrine, Sir, has been propagated recently by the Honourable Sardar Patel himself who has been going about the country asking the people never to run away, never to be cowards, but to resist violently if necessary, not to run away from the assassin, from the hooligan, from the criminal. Defend yourself by all means and at all costs. I find my honourable Friend Mr. Shankar Rao Deo laughing in his seat. He is welcome to smile or laugh but I may tell him that he laughs best who laughs last. He has tabled an amendment here. I do not know whether he is serious about it. In the end I will only say that if we of the Congress party who are in a majority desire to prove true to our past, if we have the desire in us to implement all the resolutions that we have adopted in the past, if we do not want to live with the lie in our soul, I appeal to the House to accept this amendment and put an end to one of the most disgraceful phases of our ignominious past of over a hundred years.

Mr. Vice-President : May I ask whether the first part of amendment No. 443 is going to be pressed?

Shri Shankarrao Deo (Bombay : General): No, Sir.

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I want to give my wholehearted support to the motion of my honourable Friend who has just moved his amendment.....

Mr. Vice-President : May I suggest that instead of starting the general discussion we postpone it till all the amendments have been moved. We shall try our best to give the Maulana Sahib an opportunity to speak. Will he kindly resume his seat? (Laughter)

Order, order. The Maulana Sahib is perfectly within his rights if he wants to speak. I am sorry, Maulana Sahib, to ask you to go back to your seat. It is regrettable to greet an old Member of this House in this fashion.

Mr. Mohamed Ismail Sahib (Madras : Muslim): Sir, I move:

"That after sub-clause (g) of clause (1) of article 13, the following new sub-clause be added:—

'(h) to follow the personal law of the group or community to which he belongs or professes to belong.

(i) to personal liberty and to be tried by a competent court of law in case such liberty is curtailed'."

Shri C. Subramaniam (Madras: General): On a point of order, Sir, the House has already passed an article in the Part on directive principles that there should be a uniform civil code. Here the Honourable Member wants to move that everybody should have the liberty to follow the personal law of the group or community to which he belongs or professes to belong. This is going contrary to the article which has already been passed. We have already decided that as far as possible personal law should come under a uniform civil code and this amendment is against the principle of that article.

As regards the other part of the amendment, it should be discussed when we take up article 15.

Mr. Vice-President : It is no point of order. Mr. Mohammed Ismail Sahib may continue his speech.

Mr. Mohamed Ismail Sahib : It is really true that I made a similar proposal when the directive principles were under discussion. I made it clear that this question of personal law ought really to come under the chapter Fundamental Rights and I also said that I shall, when the opportunity came, move this amendment at the proper time.

[Mr. Mohamed Ismail Sahib]

Personal law is part of the religion of a community or section of people which professes this law. Anything which interferes with personal law will be taken by that community and also by the general public, who will judge this question with some common sense, as a matter of interference with religion. Mr. Munshi while speaking on the subject previously said that this had nothing to do with religion and he asked what this had to do with religion. He as an illustrious and eminent lawyer ought to know that this question of personal law is entirely based upon religion. It is nothing if it is not religious. But if he says that a religion should not deal with such things, then that is another matter. It is a question of difference of opinion as to what a religion should do or should not. People differ and people holding different views on this matter must tolerate the other view. There are religions which omit altogether to deal with the question of personal law and there are other religions like Hinduism and Islam which deal with personal law. Therefore I say that people ought to be given liberty of following their personal law.

It was also stated by Dr. Ambedkar on the floor of this House that the question of following personal law was not immutable. There were, as a matter of fact, sections of Muslims who do not follow the personal law prescribed by Islam, but that is a different matter. It is not reasonable to say that simply because a section of people do not want to follow a certain law of a certain religion or a certain part of that religion that other people also should not follow the law and that sections of people should be compelled not to follow that part of the religion which certain other sections of the same community are not following.

That is not really reasonable, Sir, and it is really immutable to the people who follow this law and this religion, because people, as they understand it, have not got the right to change their religion as they please. There may be people who contravene their own religion, but that is a different matter and we cannot compel others also to contravene their religion. Here the question of personal law affects only the people who follow this law. There is no compulsion exercised thereby on the general community or the general public. This House will remember that on another question, which is really a religious question—I mean the question of cow-slaughter—an obligation has been placed upon other communities than the one which considers the prohibition of cow-slaughter as a religious matter. But then, Sir, respecting the views and feelings of our friends, the minority communities who have got the right and privilege of slaughtering and eating the flesh of cows have agreed to the proposal put before the House, though that is going beyond affecting one particular community alone. Here, Sir, observance of personal law is confined only to the particular communities which are following these personal laws. There is no question of compelling any other community at all.

Pandit Thakur Dass Bhargava (East Punjab: General): Is the honourable Member aware of the restrictions of cow-slaughter in Pakistan?

Mr. Vice-President : Will the honourable Member kindly address the Chair?

Mr. Mohamed Ismail Sahib: I cannot hear him properly. I do not know what my friend is trying to say.

Mr. Vice-President : Do not pay any attention to that. Will the Honourable Member continue?

Pandit Thakur Dass Bhargava: I was enquiring of the Honourable Gentleman if he knows that there is a restriction on cow-slaughter in Pakistan, in Afghanistan and in many Muhammadan countries. In India also the Muhammadan kings placed such a restriction.

Mr. Mohamed Ismail Sahib: They might have or not have made a provision of that sort. My point is that this is a question which affects a particular community, but because that community wanted to prevent that slaughter the other community, which need not prohibit that slaughter, has agreed to that proposal. But with regard to personal law, it concerns a particular community which is following a particular set of personal laws and there is no question of compelling other people to follow that law and it is the question of the freedom of the minority or the majority people to follow their own personal law. As a matter of fact, I know there are an innumerable number of Hindus who think that interference with the personal law is interference with their religion. I know, Sir, that they have submitted a monster petition to the authorities or to the people who can have any say in the matter. Therefore it is not only Muslims but also Hindus who think that this is a religious question and that it should not be interfered with. The personal law of one community does not affect the other communities. Therefore, Sir, what I urge is that the freedom of following the personal law ought to be given to each community and it will not interfere with the rights of any other community.

Again, Mr. Munshi stated that Muslim countries like Egypt or Turkey have not any provision of this sort. Sir, I want to remind him that Turkey is under a treaty obligation. Under that treaty it is guaranteed that the non-Muslim minorities are entitled to have questions of family law and personal status regulated in accordance with their usage. That is the obligation under which Turkey has been placed and that is obtaining in Turkey now.

Then again with regard to Egypt, no such question of personal law arose in that country. But what is to be noted is that whatever the minorities in that country wanted has been granted to them: in fact more than what they wanted has been granted. And if personal law had also been a matter in which they wanted certain privileges, that would also have been granted.

Then there are other countries. Yugoslavia has agreed to give this privilege to the Muslims in following their family law and personal law.

Therefore, what I am asking for is not a matter which is peculiar to myself or to the minority community in this country. It is a thing, Sir, well understood in other parts of the world also.

Sir, I also move:

"That after clause (6) of article 13, the following new clauses be added:

'(7) Nothing in the clauses (2) to (6) of this article shall affect the right guaranteed under sub-clause (h) of clause (1) of this article'."

This is consequential. The personal law is presumed to be guaranteed by the previous amendment, that is the new sub-clause (h) to clause (1) of article 13, and this clause (7) seeks to preclude any interference with the question of personal law as a result of clauses (2) to (6).

Then coming to the new clause (i), it reads thus:

"to personal liberty and to be tried by a competent court of law in case such liberty is curtailed."

This has nothing to do with the minority or the majority. It concerns itself with the right of every citizen. Personal liberty is the core of the whole freedom. It is the basis upon which the freedom of the land must be built. But here, Sir, in this bulky Constitution this question of personal liberty is left almost as an orphan. Only one mention is made of personal liberty, *i.e.,* in article 15 and it is left there, it is left to be taken care of by "procedure established by law". I do not here enter into the controversy whether it should be "by due process of law", or "by procedure established by law". But what I want to say is that only a mention has been made in the Constitution with regard to personal liberty. But personal liberty is the most fundamental of

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the fundamental rights and it ought not to be dealt with in such a cursory manner, as it has been done in the Constitution.

I request your permission to read a quotation to illustrate how the Constitutions of other countries have dealt with this all-important question of personal liberty.

Much smaller countries than India have taken a more serious and, if I may say so, a sacred view of this question. The Polish Constitution says, among other things: 'If in any case the judicial order cannot be produced immediately'—(it is only on a judicial order that a man's liberty can be curtailed)—'it must be transmitted within 48 hours of the arrest stating the reasons for the arrest. Persons who have been arrested and to whom the reasons for the arrest have not been communicated within 48 hours, in writing over the signature of judicial authorities, shall be immediately restored to liberty.'

'The laws prescribe the means of compulsion which may be employed by the administrative authority to secure the carrying out of their order.'

Then again, the same Constitution says; "No law may deprive a citizen, who is the victim of injustice or wrong, of judicial means of redress."

Sir, another State, *viz.,* Yugoslavia, in regard to this matter goes even further. It has provided:

"A man after he is informed of the reasons for the arrest or detention has got the right....."

Shri C. Subramaniam : Questions of personal liberty come only under article 15. They are irrelevant under this article. It is article 15 that deals with personal liberty thus: "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 territory of India." Therefore what is the use of discussing the question of personal liberty under article 13?

Mr. Mohamed Ismail Sahib : I have already referred to this point. Of course it is mentioned there. But to say that because it is mentioned there it is necessary that the matter should be discussed only there is not correct. I am of the view that this subject is more appropriately brought under article 13 which speaks of the various freedoms of the citizen. Of these freedoms, this is the most important. Therefore there is nothing wrong in my saying that this all-important question must be brought under article 13. With that view I have tabled this amendment and I am speaking on this amendment.

Sir, my amendment, which I have moved with your permission, says that the citizen shall be guaranteed his personal liberty. As I was saying, the Constitution of Yugoslavia has provided: "No person may be placed under arrest for any crime or offence whatever save by order of a competent authority given in writing stating the charge. This order must be communicated to the person arrested at the time of arrest or within 24 hours of the arrest. An appeal against the order for arrest may be lodged in the Competent Court within three days. If no appeal has been lodged.—(this is important)—'within this period, the police authorities must as a matter of course communicate the order to the competent court within 24 hours following. The court shall be bound to confirm or annul the arrest within 2 days of the communications of the order and its decision shall be given effect forthwith. Public officials who infringe this provision shall be punished for illegal deprivation of liberty' ".

Sir, ours is a bulky Constitution. Our friends congratulated themselves in having produced the bulkiest Constitution in the world. And this Constitution from which I read out an extract just now contains only 12 articles. It is a much smaller Constitution than ours and yet in the matter of personal

liberty it has made such an elaborate provision as that I mentioned. This bulky Constitution of ours does not find more than a few words where this all important question of personal liberty is concerned.

Now, Sir, there are various Public Safety Acts enacted and enforced in the various provinces of the country. Here, personal liberty as it stands is almost a mockery of personal liberty. A man is being arrested at the will and pleasure of the executive. He is put in prison and he does not even know for what he has been imprisoned or for what charge he has been detained. Even where the law puts the obligation on the Government to reveal to him the reasons for which he has been detained, the executive takes its own time to do so. There are cases in which the persons concerned were not informed of the charge for weeks and months and when the charges were communicated, many of them were found to be of such a nature that they could not stand before a court of law for a minute. No right has been given to a detenu or a person arrested or detained to test the validity of the order before a court of law. This kind of administration of law was not known even under foreign rule, that is, under British rule.

Now, Sir, another contention is being indulged in, and that is that it was different when the Britisher, the foreigner was in the country and that now its is our own rule. True, but that does not mean that we can deal with liberty of the citizens as we please. Bureaucracy is bureaucracy, whether it is under foreign rule or self-rule. Power corrupts people not only under foreign rule, but also under self-government. Therefore, Sir, the citizen must be protected against the vagaries of the executive in a very careful manner as other self-governing countries have done. In almost every country in the world, they have made elaborate provision for protecting the personal liberty of the citizen. Why should India alone be an exception, I do not understand. Therefore, the framers of the Constitution, I hope, will reconsider this question and make suitable provisions for the protection of the liberty of the person.

Sir, in this amendment of mine I have not gone elaborately into the question of personal liberty. I only want the citizen concerned to be given the right of going to, and being tried by, a court of law, if his personal liberty is curtailed. That one precious right I want to be given to every citizen of India.

May I also, Sir, move the other consequential amendments included in amendment No. 502. I have moved only the one on page 53 of the List of Amendments, namely new sub-clause (7). That relates to personal law. May I move now the other portion of the amendment relating to new clauses (8) and (9) on page 54 of the List?

Mr. Vice-President : The Honourable Member may do so, but without making a speech.

Mr. Mohammed Ismail Sahib: Sir, I move that the following new clauses be added:

"(8) Nothing in clauses (2) to (6) shall affect the right guaranteed under sub-clause (i) of clause (1) of this article.

(9) No existing law shall operate after the commencement of this Constitution so far as the same affects adversely the right guaranteed under sub-clause (i) of clause (1) of this article and no law shall be passed by the Parliament or any State which may adversely affect the right guaranteed under sub-clause (i) of clause (1) of this article."

These are only consequential amendments.

Mr. Vice-President : We shall now go on to amendments Nos. 442, 499, the second part of 443, 468 and 501. These are all of similar import. I hold that the only two amendments which can be moved under the new regulations are amendments Nos. 442 and 499. The others will be voted on.

Shri M. Ananthasayanam Ayyangar (Madras: General): All these relate to free choice in the election of representatives. In a sense this is a new subject and may on that account be held over for consideration.

Mr. Vice-President : What about 499?

Pandit Thakur Dass Bhargava: That also relates to the same subject.

Mr. Vice-President : The whole group will be held over for consideration.

(Amendment No. 444 was not moved.)

Mr. Vice-President : Amendment No. 445.

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

"That the following new clause be added after clause (1) of article 13:

'Liberty of the person is guaranteed. No person shall be deprived of his life, nor be arrested or detained in custody, or imprisoned, except according to due process of law, nor shall any person be denied equality before the law or equal protection of the laws within the territory of India'."

Sir, this again is of the same species of amendments which I am trying my best to place before the House, that is to say, the enunciation and incorporation of those elementary principles of modern liberal constitutions in which it is a pity our Constitution seems deliberately to be lacking. The liberty of the person, ever since the consciousness of civil liberties, has come upon the people, has been the main battleground of the autocrats and those fighting against them. In no single instance other than this has the power of autocracy wanted to assert itself against the just claims of the individual to be respected in regard to his personal freedom. The liberty of the person to fight against any arbitrary arrest or detention, without due process of law, has been the basis of English constitutional growth, and also of the French Constitution that was born after the Revolution. The autocrat, the despot, has always wished, whenever he was bankrupt of any other argument, just to shut up those who did not agree with him. It was, therefore, that any time the slightest difference of opinion was expressed, the slightest inconvenience or embarrassment was likely to be caused by any individual, the only course open to those who wanted to exercise autocratic power was to imprison or arrest or detain such a person without charge or trial. It has been in fact in many modern constitutions among the most cardinal articles that the liberty of the person shall be sacred, shall be guaranteed by the Constitution. We are covering new ground and should not omit to incorporate in our Constitution those items which in my opinion ought to be sacrosanct, which would never lose anything by repetition, and which would also add to our moral stature.

This Constitution, Sir, was drafted at a time when people were going through extraordinary stress and strain. The tragic happenings of some twelve or fourteen months ago were no doubt responsible for influencing those who drafted this Constitution to feel that in the then prevailing goonda raj it was necessary to restrict some how the freedom of the individual. Therefore it is that the freedom of the individual, the sacredness and sanctity of personal liberty has been soft-pedalled in this Constitution. But now after an interval of fourteen months. I would suggest to this House that these sad memories should be left to the limbo where they deserve to remain. We have had no doubt the unfortunate experiences in which individuals moved by whatever sentiments had tried to exert violence and do

injury to their fellows which no civilised State can put up with. It was therefore at the time necessary that such individuals should be apprehended immediately. In emergencies like this, in cases like this, if you wait for performing the due processes of law, if you wait for reference to a magistrate for the issue of a proper warrant, or compliance with all the other formalities of legal procedure to be fulfilled, it is possible that the ends of justice may not be served, it is possible that the maintenance of law and justice may be endangered. But, Sir, I venture to submit to this House that that was an extraordinarily abnormal situation which we hope will not recur. Constitution should be framed, not for these abnormal situations, but normal situations and for reasonable people who it must be presumed will be normally law-abiding and not throw themselves entirely to the mercy of these goondas. We are making a constitution, Sir, for such types of people and not for those exceptions, the few who might have temporarily lost the possession of their senses, and who therefore may be dealt with by extraordinary procedure.

We have in this Constitution as we have in many other Constitutions provisions relating to a state of emergency where the normal Constitution is suspended. I am not at all enamoured of these extraordinary exceptions to the working of constitutions; but even I might conceive that in moments of emergency it may be necessary, however regrettable it maybe, to suspend constitutional liberties for the time being. But we must not, when framing a constitution, always assume that this is a state of emergency, and therefore omit to mention such fundamental things as civil liberties.

I, therefore, want to mention categorically in this Constitution that the liberty of the person shall be respected, shall be guaranteed by law, and that no person shall be arrested, detained or imprisoned without due process of law. That process it is for you to provide. That process it is for laws made under this Constitution to lay down. And if and in so far as that process is fulfilled, there is no reason to fear that any abuse of such individual liberty will take place. Why then deny it, why then omit the mention of personal liberty that has all along been the mark of civilised democratic constitutions against the autocratic might of unreasoning despots? I am afraid, looking at the fate of most of my amendments, that I may perhaps be hurling myself against a blank wall. But I will not prejudice my hearers and certainly not the draftsmen by assuming that they are unreasoning until they prove that they are guilty of utterly unreasoning opposition.

Mr. Vice-President : Amendments Nos. 446, 447 and 448. These are all of similar import. Amendment No. 448 may be moved. It stands in the joint names of Shrimati Renuka Ray, Dr. Keskar, Shri Satish Chandra and Shri Mohanlal Gautam.

(Amendments Nos. 448 and 446 were not moved.)

Mahboob Ali Baig Sahib Bahadur : (Madras : Muslim): Sir, there is another amendment in my name, amendment No. 451: that is for the deletion of clauses (2), (3), (4), (5) and (6).

Mr. Vice-President : That comes under another group which will be dealt with hereafter.

Mahboob Ali Baig Sahib Bahadur: Then, alternatively, I shall move amendment No. 447. Sir, I move:

"That clauses (2) to (6) of article 13 be deleted and the following proviso be added to clause (1):

'Provided, however that no citizen in the exercise of the said right, shall endanger the security of the State, promote ill-will between the communities or do anything to disturb peace and tranquillity in the country'."

[Mahboob Ali Baig Sahib Bahadur]

Mr. Vice-President, Sir, to me it looks as if the fundamental rights are listed in clause (1) only to be deprived of under clauses (2) to (6), for in the first place, these fundamental rights are subject to the existing laws. If in the past the laws in force, the law-less laws as I would call them, the repressive laws, laws which were enacted for depriving the citizens of their human rights, if they have deprived the citizens of these rights under the provisions under clauses (2) to (6), they will continue to do so. The laws that I might refer to as such are the Criminal Law Amendment Acts, the Press Acts and the several Security Acts that have been enacted in the Provinces. And these clauses (2) to (6) further say that if the existing laws are not rigorous, repressive and wide enough to annihilate these rights, the States as defined in article 7 which covers not only legislatures, executive Governments and also the local bodies, nay, even the local authorities can complete the havoc. I am not indulging in hyperbole or exaggeration. I shall presently show that there is not aniota of sentiment or exaggeration in making this criticism. Fundamental rights are fundamental, permanent, sacred and ought to be guaranteed against coercive powers of a State by excluding the jurisdiction of the executive and the legislature. If the jurisdiction of the executive and the legislature is not excluded, these fundamental rights will be reduced to ordinary rights and cease to be fundamental. That is the import, the significance of fundamental rights.

Then, Sir, it is said by Dr. Ambedkar in his introductory speech that fundamental rights are not absolute. Of course, they are not; they are always subject to the interests of the general public and the safety of the State, but the question is when a certain citizen oversteps the limits so as to endanger the safety of the State, who is to judge? According to me, Sir, and according to well recognised canons, it is not the executive or the legislature, but it is the independent judiciary of the State that has to judge whether a certain citizen has overstepped the limits so as to endanger the safety of the State. This distinction was recognised by the framers of the American Constitution in that famous Fourteenth Amendment which clearly laid down that no Congress can make any law to prejudice the freedom of speech, the freedom of association and the freedom of the press. This was in 1791, and if the American citizen transgressed the limits and endangered the State, the judiciary would judge him and not the legislature or the executive.

Even in the case of Britain where there is no written constitution two prominent and effective safeguards were there. They were governed by the law of the land. The law of the land is the law which gave them freedom of thought, freedom of expression and they cannot be proceeded against without due process of law. These were the two safeguards. It is only in the German Constitution that we find restrictions such as those in clauses (2) to (6). It is only in the German Constitution that the fundamental rights were subject to the provisions of the law that may be made by the legislature. That means that the citizens could enjoy only those rights which the legislature would give them, would permit them to enjoy from time to time. That cuts at the very root of fundamental rights and the fundamental rights cease to be fundamental. I dare say, Sir, you know what was the result. Hitler could make his legislature pass any law, put Germans in concentration camps without trial under the provisions of law made by the legislature of Germany. We know what the result was. It was regimentation, that every German should think a like and anybody who differed was sent to concentration camps. Totalitarianism, fascism was the result.

(Mr. Vice-President rang the time bell.)

I would request you to give me some time more. I am just developing the point.

Mr. Vice-President : Sorry, you cannot have time without my permission. At the proper time, I would request you to finish and take your seat. I hope you will respect my wishes.

Mahboob Ali Baig Sahib Bahadur : Sir, it is these wide considerations that were responsible for the deletion of such clauses by this august Assembly on the 30th April, 1947, when Sardar Patel who was the Chairman of the Committee to report on Fundamental Rights, presented these Fundamental Rights. He moved for the deletion of all these provisos and in the discussion on the 30th of April 1947, many prominent men including Pandit Jawaharlal Nehru took part, and all these provisos were deleted. The proceedings can be found on pages 445 to 447. Here, the Prime Minister of India says:

"A fundamental right should be looked upon, not from the point of view of any particular difficulty of the moment, but as something that you want to make permanent in the Constitution."

Therefore, Sir, in this august Assembly on the 30th of April 1947, after discussion in which prominent men including Mr. Munshi took part, these provisos were deleted. This departure now to re-introduce these provisions, I submit, with great respect, is a departure which is retrograde and I submit, Sir, that we ought not to allow it. My submission is that the existence of these three provisos is the very negation of the Fundamental Rights. I would request you to consider this question from three or four points of view.

(Mr. Vice-President again rang the time bell.)

With your permission, Sir.....

Mr. Vice-President : No; there are many more speakers. I must now insist upon your obeying my orders.

Mahboob Ali Baig Sahib Bahadur : A few more minutes, Sir.

Mr. Vice-President : I have given you enough time. There are other speakers. I have an obligation towards them also.

Now, we shall go to the next two amendments. One is amendment No. 449 and the other is amendment No. 453. Of these two, I think amendment No. 453 is more comprehensive and may be moved. It stands in the joint names of Dr. Pattabhi Sitaramayya and others. There is also an amendment to that amendment.

Shri M. Ananthasayanam Ayyangar : Sir, I submit that this amendment No. 453* which stands in our joint names may be taken as formally moved. I find in the order sheet, in list No. IV a further amendment to this amendment. I accept that amendment, Sir. If you kindly give permission to move that amendment, I shall accept it and it is not necessary to move this amendment.

Mr. Vice-President : Mr. Munshi.

Shri H. V. Kamath : On a point of order, Sir, unless this amendment is moved, no amendment can be moved to this. This cannot be taken as moved.

Mr. Vice-President : Do you want that he should read over the amendment? I over looked it. Mr. Munshi.

* That for clause (2) of article 13, the following be substituted:—

"Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law relating to libel, slander, defamation, offences against decency or morality or sedition or other matters which undermine the security of the State."

Shri K. M. Munshi : (Bombay : General): Mr. Vice-President, Sir, I beg to move amendment No. 86 in the additional list which runs as follows: That for amendment No. 453 of the list of Amendments, the following be substituted:

"That for clause (2) of article 13, the following be substituted:—

'(2) Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law relating to libel, slander, defamation, or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State'."

Sir, before I go to the merits of the amendment, I should like to point out a verbal error which I am sure my honourable Friend Dr. Ambedkar will permit me to correct. After the words, "shall affect the operation of any existing law", I propose that the words "in so far as it relates to" should be added; because, that connects this clause with "to libel, etc.". This would make the meaning clear and I am sure my honourable Friend will accept it.

As regards the merits, the changes sought to be made are two. In the original clause, the word 'sedition' occurs. The original clause reads as follows: "relating to libel, slander, defamation, sedition or any other matter....." The amendment seeks to omit the word 'sedition'. Further, the amendment seeks to substitute the words "undermines the authority or foundation of the State" by the words.....

Mr. Naziruddin Ahmad : On a point of order, Sir, we have not got this amendment at all. In list IV the number does not tally at all. I believe, Sir, it was circulated today and it cannot be taken up. We should be given some breathing time in order to understand what is going on.

Mr. Vice-President : I think amendments to amendments can be permitted up to the time when the amendment is moved. I understand that this was placed on the table before each member.

Shri K. M. Munshi: Really speaking, the original amendments numbers 458 and 461 have been brought under a single amendment. There is nothing new in this amendment, Sir.

Mr. Vice-President : Go on, Mr. Munshi.

Pandit Hirday Nath Kunzru: (United Provinces : General): Sir, may I request Mr. Munshi to read out his amendment, once again? What is it an amendment to?

Shri K. M. Munshi: This is an amendment to amendment No. 453, on page 29. In effect, it combines two amendments which are already on the list. This is how it reads:

"That for clause (2) of article 13, the following be substituted:—

'(2) Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law relating to libel, slander, defamation'."

Then, comes another change.

"or any matter which offends against decency or morality."

Then comes another change.

"of which undermines the security of, or tends to overthrow the State."

That is exactly the wording of amendment No. 461.

The object of.....

Shri Mahavir Tyagi (United Provinces : General): May I take it that the word 'morality' has been taken out?

Shri K. M. Munshi: I read the word 'morality'.

Mr. Vice-President : You need be under no sort of apprehension so far as that is concerned.

Shri K. M. Munshi : The House will not permit me to do anything of the sort. Sir, the importance of this amendment is that it seeks to delete the word 'sedition' and uses a much better pharseology, *viz*., "which undermines the security of, or tends to overthrow, the State." The object is to remove the word 'sedition' which is of doubtful and varying import and to introduce words which are now considered to be the gist of an offence against the State.

Shri Amiyo Kumar Ghosh : (Bihar: General): On a point of information. I want to know whether without moving the original amendment, an amendment, to it can be moved?

Mr. Vice-President : The amendment was moved formally.

Shri K. M. Munshi : I was pointing out that the word 'sedition' has been a word of varying import and has created considerable doubt in the minds of not only the members of this House but of Courts of law all over the world. Its definition has been very simple and given so far back as 1868. It says "Sedition embraces all those practices whether by word or deed or writing which are calculated to disturb the tranquility of the State and lead ignorant persons to subvert the Government". But in practice it has had a curious fortune. A hundred and fifty years ago in England, holding a meeting or conducting a procession was considered sedition. Even holding an opinion against, which will bring ill-will towards Government, was considered sedition once. Our notorious Section 124-A of Penal Code was sometimes construed so widely that I remember in a case a criticism of a District Magistrate was urged to be covered by Section 124-A. But the public opinion has changed considerably since and now that we have a democratic Government a line must be drawn between criticism of Government which should be welcome and incitement which would undermine the security or order on which civilized life is based, or which is calculated to overthrow the State. Therefore the word 'sedition' has been omitted. As a matter of fact the essence of democracy is Criticism of Government. The party system which necessarily involves an advocacy of the replacement of one Government by another is its only bulwark; the advocacy of a different system of Government should be welcome because that gives vitality to a democracy. The object therefore of this amendment is to make a distinction between the two positions. Our Federal Court also in the case of Niharendu Dutt Majumdar *Vs* King, in III and IV Federal Court Reports, has made a distinction between what 'Sedition' meant when the Indian Penal Code was enacted and 'Sedition' as understood in 1942. A passage from the judgment of the Chief Justice of India would make the position, as to what is an offence against the State at present, clear. It says at page 50:

> "This (sedition) is not made an offence in order to minister to the wounded vanity of Governments but because where Government and the law ceases to be obeyed because no respect is felt any longer for them, only anarchy can follow. Public disorder, or the reasonable anticipation or likelihood of public disorder is thus the gist of the offence. The acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency."

This amendment therefore seeks to use words which properly answer to the implication of the word 'Sedition' as understood by the present generation in a democracy and therefore there is no substantial change; the equivocal word 'sedition' only is sought to be deleted from the article. Otherwise

[Shri K. M. Munshi]

an erroneous impression would be created that we want to perpetuate 124-A of the I.P.C. or its meaning which was considered good law in earlier days. Sir, with these words, I move this amendment.

Shri H. V. Kamath : On a point of clarification, may I ask my learned friend Mr. Munshi to examine whether the deletion of the word 'other' from the phrase 'any other matter' will not create some doubt or difficulty about the meaning of this amendment? Because if he will look up article 13 in the Draft Constitution, he will find that the phrase used is "any other matter". Here the word 'other' is deleted which will mean that so far as slander, defamation and libel are concerned, they cannot offend against decency or morality, but only some other matter can. Is it the contention of Mr. Munshi that neither defamation, slander nor libel offends against decency and morality?

Shri K. M. Munshi : In the original clause of this article as drafted the words were—"libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines the authority or foundation of the State." Here we have omitted the word 'sedition'. Slander and defamation need not be necessarily connected with a violation of decency or morality nor do they undermine the authority of the State: the words "any matter" indicate an independent category. One category is libel, slander and defamation. The other category is any matter which offends against the State. The word 'other' therefore would be in appropriate.

Shri H. V. Kamath : In the draft article the antecedents of the words 'other' matter were libel, slander, defamation and sedition, all of them.

Shri K. M. Munshi : I cannot agree with my honourable friend.

Mr. Vice-President : Do you press amendment 449?

Mr. Naziruddin Ahmad : Yes.

Mr. Vice-President : It will be put to vote. We next come to 450, 451, 452, 453, 465 and 478—all are of similar import and should be considered together. Amendment 450 is allowed.

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

"That clauses (2), (3), (4), (5) and (6) of article 13 be deleted."

Sir, in article 13(1), sub-clauses (a), (b) and (c), they give constitutional protection to the individual against the coercive power of the State, if they stood by themselves. But sub-clauses (2) to (6) of article 13 would appear to take away the very soul out of these protective clauses. These lay down that nothing in sub-clauses (a), (b), (c) of article 13 shall effect the operation of any of the existing laws, that is, the various laws that abrogate the rights envisaged in sub-clause (1) which were enacted for the suppression of human liberties, for instance, the Criminal Law Amendment Act, the Press Act, and other various security Acts. If they are to continue in the same way as before, then where is the change ushered in and so loudly talked of? The main purpose of declaring the rights as fundamental is to safeguard the freedom of the citizen against any interference by the ordinary legislature and the executive of the day. The rights detailed in article 13(1) are such that they cannot be alienated by any individual, even voluntarily. The Government of the day is particularly precluded from infringing them, except under very special circumstances. But here the freedom of assembling, freedom of the press and other freedoms have been made so precarious and entirely left at the mercy of the legislature that the whole beauty and the charm has been taken away. It is

not only the existing laws that have been subjected to this clause, but the State has been further armed with extraordinary powers to make any law relating to libel, slander etc. It may be said that every State should have the power and jurisdiction to make laws with regard to such matters as sedition, slander and libel. But in other countries like America it is for the Supreme Court to judge the matter, keeping in view all the circumstances and the environments, and to say whether individual liberty has been sufficiently safeguarded or whether the legislature has transgressed into the freedom of the citizen. The balance is kept in the hands of the judiciary which in the case of all civilized countries has always weighed honestly and consequently protected the citizen from unfair encroachment by legislatures. But a curious method is being adopted under our Constitution by adding these sub-clauses (2) to (6). The Honourable Mover defended these sub-clauses by remarking that he could quote at least one precedent for each of these restrictions. But it is here that the difference lies, that whereas in those countries it is the judiciary which regulates the spheres of these freedoms and the extent of the restrictions to be imposed, under article 13, it is the legislature that is being empowered with these powers by sub-clauses (2) to (6). The right to freedom of speech is given in article 13 (1) (a), but it has been restricted by allowing the legislature to enact any measure under 13(2), relating to matters which undermine the authority or foundation of the State; the right to assembly seems guaranteed under 13 (1) (b), but it has been made subject to the qualification that legislation may be adopted in the interest of public order—13(3). Further under 13(4) to 13 (6), any legislation restricting these liberties can be enacted "in the interest of the general public". Now who is to judge whether any measure adopted or legislation enacted is "in the interest of the general public" or "in the interest of public order", or whether it relates to "any matter which undermines the authority or foundation of the State"? The sphere of the Supreme Court will be very limited. The only question before it would be whether the legislation concerned is "in the interest of the public order". Only the *bona-fides* of the legislature will be the main point for decision by the Court and when once it is found by the court that the Government honestly believed that the legislation was needed "in the interest of the public order", there would be nothing left for its interference. The proviso in article 13(3) has been so worded as to remove from the Supreme Court its competence to consider and determine whether in fact there were circumstances justifying such legislation. The actual provisions and the extent of the restrictions imposed would be out of the scope of judicial determination.

For further illustration we may take the law of sedition enacted under 13(2). All that the Supreme Court shall have to adjudicate upon would be whether the law enacted relates to "sedition" and if it does, the judiciary would be bound to come to a finding that it is valid. It would not be for the Judge to probe into the matter whether the actual provisions are oppressive and unjust. If the restriction is allowed to remain as it is contemplated in 13(2), then the citizens will have no chance of getting any law relating to sedition declared invalid, howsoever oppressive it might be in restricting and negativing the freedom promised in 13 (1) (a). The "court" would be bound to limit its enquiry within this field that the Parliament is permitted under the Constitution to make any laws pertaining to sedition and so it has done that. The constitution is not infringed anywhere, and rather, the draft is declaring valid in advance any law that might be enacted by the Parliament—only if it related to sedition. Similar is the case of other freedom posed in article 13(1) but eclipsed and negatived in clauses (2) to (6).

It may be argued that under a national government, the legislature, representative of the people and elected on adult franchise, can and should be trusted for the safe custody of citizens' rights. But as has been aptly remarked, "If the danger of executive aggression has disappeared, that from legislative interference has greatly increased, and it is largely against this danger that the

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modern declarations of fundamental rights are directed, as formerly they were directed against the tyranny of autocratic kings."

The very object of a Bill of Rights is to place these rights out of the influence of the ordinary legislature, and if, as under clauses (2) to (6) of article 13, we leave it to this very body, which in a democracy, is nothing beyond one political party, to finally judge when these rights, so sacred on paper and glorified as Fundamentals, are to be extinguished, we are certainly making these freedoms illusory.

If the other countries like the U.S.A. have placed full confidence in their Judiciary and by their long experience it has been found that the confidence was not misplaced, why should we not depend upon similar guardians to protect the individual liberties and the State interests, instead of hedging round freedom by so many exceptions under these sub-clauses?

Sir, I commend this amendment to the House.

Mr. Vice-President : The next amendment on the list is the alternative amendment No. 451, in the name of Mr. Mahboob Ali Baig.

Mahboob Ali Baig Sahib Bahadur : Sir, I move:

"That the following words be inserted at the beginning of clauses (2), (3), (4), (5) and (6) of article 13:—

'Without prejudice and subject to the provisions of article 8."

My purpose in moving this amendment is two fold. Firstly, I want to know the mind of Dr. Ambedkar and the Drafting Committee how article 8 stands in relation to these provisos. It may be asked whether these clauses (2) to (6) are governed by article 8 or not. If these clauses are governed by article 8, may I refer to article 8 itself. It says:

"All laws in force immediately before the commencement of this Constitution in the territory of India, in so far as they are inconsistent with the provisions of this Part.' "

The words "inconsistent with the provisions of this part" do not affect the existing laws relating to libel, the existing laws relating to restrictions on the exercise of the rights with regard to association or assembly. That means that the existing laws mentioned in clauses (2) to (6) are not all rendered void under Article 8. The intention is clear from the footnote that is appended to article 15, where the reason for the inclusion of the word "personal" is given. There it is said:

"The Committee is of opinion that the word 'liberty' should be qualified by the insertion of the word 'personal' before it, for otherwise it might be construed very widely so as to include even the freedom already dealt with in article 13."

Thus it is very clear that if the existing law relates to libel, if it relates to meetings or associations, or freedom of speech or expression, then that existing law stands in spite of the fact that article 8 says that any law in force which is inconsistent with the fundamental rights is void. So we come to this position. In the past the existing laws, for instance, the Criminal Law Amendment Acts, the Press Acts or the Security Acts laid down restrictions which are inconsistent with the liberties mentioned in clause (1). They shall be in operation and they are not rendered void. That seems to be the meaning that can naturally be attached to this.

The second point which I wish to submit is this. By the constitution certain powers are given to the legislature or the executive. Whether a court can question the validity or otherwise of such action, order or law is another question. My opinion is that where there is a provision in the constitution itself giving power to the legislature or in this case the State covering the legislature,

executive, local bodies and such other institutions, the jurisdiction of the court is ousted, for the court would say that in the constitution itself power is granted to the legislature to deprive, restrict or limit the rights of the citizen and so they cannot go into the validity or otherwise of the law or order, unless as it is said there is *mala fides*. It is for the authorities to judge whether certain circumstances have arisen for which an order or law can be passed. Anyhow I pose this question to the Chairman of the Drafting Committee whether in these circumstances, *viz*., where there is in existence a provision in the constitution itself empowering the legislature or the executive to pass an order or law abridging the rights mentioned in clause (1), the court can go into the merits or demerits of the order or law and declare a certain law invalid or a certain Act as not justified. In my view the court's jurisdiction is ousted by clearly mentioning in the constitution itself that the State shall have the power to make laws relating to libel, association or assembly in the interest of public order, restrictions on the exercise of....

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, if I might interrupt my honourable friend, I have understood his point and I appreciate it and I undertake to reply and satisfy him as to what it means. It is therefore unnecessary for him to dilate further on the point.

Mahboob Ali Baig Sahib Bahadur : The third point which I would submit is this. The new set up would be what is called parliamentary democracy or rule by a certain political party, by the party executive or party government and we can well imagine what would be the measure of fundamental rights that the people would enjoy under parliamentary democracy or rule by a party. In these circumstances is it not wise or necessary in the interest of the general public that the future legislatures ruled by a party or the executive ruled by a party are not given powers by this very constitution itself? For as has been said 'power corrupteth' and if absolute power is placed in the hands of party government by virtue of the terms of this constitution itself, such legislature or executive will become absolutely corrupt. Therefore, I move that if at all these provisos are necessary, they must be subject to the provision that no law can be passed, no law would be applicable which is inconsistent with the freedoms mentioned in sub-clause (1). Sir, I move.

Mr. Vice-President : The next group consists of amendment Nos. 454, 455, 469, 475, 481, and the first part of 485. They are of similar import and I allow amendment No. 454 to be moved. There are certain amendments to the amendment also.

Pandit Thakur Dass Bhargava : Sir, I move:

"That in clauses (2), (3), (4), (5) and (6) of article 13 the words "affect the operation of any existing law, or" be added."

To this clause an amendment has been given by the Honourable Dr. Ambedkar.

Mr. Vice-President : May I suggest that when you move amendment No. 454 you move it along with your new amendment?

Pandit Thakur Dass Bhargava : I have moved No. 454, to which an amendment, stands in the name of the Honourable Dr. Ambedkar. To this latter I have given an amendment which is No. 3 in today's list. I have also given two other amendments to amendment No. 454. So I shall, with your permission, move them in one bloc.

Sir, I move:

"That with reference to amendment No. 49 of list 1 of the Amendment to Amendments—

(i) in clause (2) of article 13 for the word 'any' where it occurs for the second time the word 'reasonable' be substituted and the word 'sedition' in the said clause be omitted.

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(ii) that in clauses (3), (4), (5) and (6) of article 13 before the word 'restrictions' the word 'reasonable' be inserted."

The net result of these amendments is the following: I want that the words "affect the operation of any existing law or" be deleted and also that before the word "restrictions" in clauses (3), (4), (5) and (6) the word "reasonable" be placed. I also want that in clause (2) for the word 'any' where it occurs for the second time, the word 'reasonable' be substituted.

If my suggestion is accepted by the House then clause (3) would read:

"Nothing in sub-clause (b) of the said clause shall prevent the State from making any law, imposing in the interests of public order reasonable restrictions on the exercise of the right conferred by the said sub-clause."

As regards the effect of amendment No. 454, if the following words are taken away—

"Affect the operation of any existing law, or"

the result will be that, not that all the present laws which are in force today will be taken away, but only such laws or portions of such laws as are inconsistent with the fundamental rights according to article 13, will be taken away, and article 8 will be in force.

Now I will deal with these amendments separately. I want to deal with 454 first.

You will be pleased to observe that so far as article 8 is concerned, it really keeps alive all the laws which are in force today, except such portions of them as are inconsistent with the fundamental rights conferred by Part III. These words—"affect the operation of any existing law, or".....

Mr. Vice-President : How can you deal with a thing unless it is moved by Dr. Ambedkar?

Pandit Thakur Dass Bhargava : In the first instance, a resolution has been passed by this House that all amendments shall be taken as moved without being formally moved. Secondly, if you allow me another chance to speak on the amendment when moved by Dr. Ambedkar, I will be content to move my amendment then. Only with a view to save time, I have taken this course and, I had asked for your permission, though it was unnecessary to do so.

Mr. Vice-President : All right.

Pandit Thakur Dass Bhargava : Thank you. I was speaking of the effect of the words—"affect the operation of any existing law, or" and I submitted to the House that so far as the words of article 8 go, even if these words are not there, all the present laws shall be alive. They shall not be dead by the fact that article 8 exists in Part III. The article reads thus:

"All laws in force immediately before the commencement of this Constitution in the territory of India, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void."

So that the real effect which this Constitution wants to give is that so far as those laws are inconsistent, they should be made inoperative, The rest will continue. So if these words are not there—"affect the operation of any existing law, or"—that would make no difference. If you examine the amendment to be moved by Dr. Ambedkar, the result is the same because in his amendment the words "in so far as it imposes" appear. Thus article 8 governs article 13 according to my amendment as well as his. The amendment of Dr. Ambedkar is unnecessary if the House accepts my amendment No. 454.

Mr. Vice-President : It seems to me that if Dr. Ambedkar moves his amendment, then your amendment will not be necessary at all.

Pandit Thakur Dass Bhargava : My amendment will still be necessary as it deals with other matters also.

Mr. Vice-President : I do not wish to discuss the matter with you.

Pandit Thakur Dass Bhargava : There are several clauses in this Constitution in which an attempt has been made to keep the present laws alive as much as possible. Article 8 is the first attempt. According to article 8 only to the extent of inconsistency such laws will become inoperative. Therefore, any further attempt was unnecessary.

In article 27 an attempt has again been made to keep alive certain of the laws that come within the purview of article 27 in the proviso. Then again not being content with this, another section is there in the Constitution, namely, article 307, which reads:

> "Subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continuance in force therein until altered or repealed or amended by a competent Legislature or other competent authority."

The laws in force are defined in Explanation No. 1 and there is clause (2) which deals with certain aspects of the question. Even if these sections were not there, even then the general principle is that the law would continue in force unless repealed by any enactment or declared illegal by any Court. Therefore, so far as the continuance of the present law is concerned, the words "affect the operation of any existing law, or" are surplus, unnecessary and futile. But I would not have submitted this amendment before the House if these words were only surplus. They have another tendency and that has been emphasized by the previous speaker. There are good many amendments in the list of amendments to the same effect. I have received representations from various bodies and persons who have said in their telegrams and letters that these words should be removed, because the apprehension is that as article 8 is part of the Constitution, so is article 13 part of the Constitution. In sequence article 13 comes later and numerically it is of greater import. If article 8 is good law, so is article 13. As a matter of fact article 13 is sufficient by itself, and all the present laws, it may and can be argued, must be continued in spite of article 8. This is the general apprehension in the public mind and it is therefore that Dr. Ambedkar has also been forced to table an amendment No. 49 to my amendment No. 454.

This interpretation and argument may be wrong; this may be unjustifiable; but such an argument is possible. In my opinion the law must be simple and not vague and ununderstandable. Therefore these mischievous and misleading words should be taken away. As they have further the effect of misleading the public I hold that these words, unless taken away, shall not allay public fear.

When I read these different sections from 9 to 13 and up to 26, and when I read of these Fundamental Rights, to be frank I missed the most fundamental right which any national in any country must have *viz.*, the right to vote.

Mr. Vice-President : That is not the subject matter of the present discussion. The honourable Member should confine his remarks to his amendment.

Pandit Thakur Dass Bhargava : In considering article 15 also the House will come to the conclusion that the most important of the Fundamental Right of personal liberty and life has not been made justiciable nor mentioned in article 13. If the House has in its mind the present position in the country, it will come to the conclusion that the present state of things is anything but satisfactory. Freedom of speech and expression have been restricted by sub-clause (2). Fortunately the honourable Member Mr. Munshi has spoken

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before you about deletion of the word "sedition". If these words 'affect the operation of existing laws' are not removed the effect would be that sedition would continue to mean what it has been meaning in spite of the contrary ruling of the Privy Council given in 1945. If the present laws are allowed to operate without being controlled or governed by article 8 the position will be irretrievably intolerable. Thus my submission is that in regard to freedom of speech and expression if you allow the present law to be continued without testing it in a court of law, a situation would arise which would not be regarded as satisfactory by the citizens of India.

Similarly, at present you have the right to assemble peaceably and without arms and you have in 1947 passed a law under which even peaceable assemblage could be bombed without warning from the sky. We have today many provisions which are against this peaceable assembling. Similarly in regard to ban on association or unions.

The Honourable Dr. B. R. Ambedkar : Is it open to my honourable Friend to speak generally on the clauses?

Mr. Vice-President : That is what I am trying to draw his attention to.

The Honourable Dr. B. R. Ambedkar : This is an abuse of the procedure of the House. I cannot help saying that. When a Member speaks on an amendment, he must confine himself to that amendment. He cannot avail himself of this opportunity of rambling over the entire field.

Pandit Thakur Dass Bhargava : I am speaking on the amendment; but the manner in which Dr. Ambedkar speaks and expresses himself is extremely objectionable. Why should he get up and speak in a threatening mood or a domineering tone?

Mr. Vice-President : Everybody seems to have lost his temper except the Chair. *(Laughter)*. I had given a warning to Mr. Bhargava and, just now, was about to repeat it when Dr. Ambedkar stood up. I am perfectly certain that he was carried away by his feeling. I do not see any reason why there should be so much feeling aroused. He has been under a strain for days together. I can well understand his position and I hope that the House will allow the matter to rest there.

Now, I hope Mr. Bhargava realises the position.

Pandit Thakur Dass Bhargava : I will speak only on the amendment. But when a Member speaks on an amendment, it is not for other Members to decide what is relevant and what is not.

Mr. Vice-President : I was about to say so, but I was interrupted.

Pandit Thakur Dass Bhargava : Sir, I repeat that unless and until these offending words are removed and if the present law is allowed to continue without the validity of the present laws being tested in any court, the situation in the country will be most unsatisfactory. I am adverting to the present law in order to point out that it is objectionable and if it continues to have the force of law, there will be no use in granting Fundamental Rights. Therefore I am entitled to speak of the Fundamental Rights. I will certainly not speak if you do not allow me, but I maintain that whatever I was and am saying is perfectly relevant. (Hon. Members: 'Go on'). Sir, if I do not refer to the situation in the country and to the fact that this law does not allow the present state of tension in the country to be moved, what is the use of the Fundamental Rights. I ask.

Mr. Vice-President : Kindly remember one thing which is that you may refer to it in a general manner and not make that the principal point of your speech on this occasion. You may refer to all that in such a way as to adopt a *via media* where your purpose will be served without taking up more time than is actually necessary.

Pandit Thakur Dass Bhargava : I am alive to the fact that it is a sin to take up the time of the House unnecessarily. I have been exercising as much restraint as possible. I thank you for the advice given by you. I will not refer to the present situation also if you do not like it.

But a few days ago the Honourable Sardar Patel, in a Convocation Address delivered by him, told the whole country that the labourer in the field and the ordinary man in the street has not felt the glow of India's freedom. Nobody feels that glow today, though India is free. Why? If the Fundamental Rights are there and if they are enjoyed by the people, why is there not this glow of freedom? The reason is that these offending words seem to nullify what article 8 seems to grant in respect of the present laws and people do not take us seriously. That is the cause of the general apathy of the people. If I referred in connection with this matter to the present situation , my object was only to emphasise that the present situation is very unsatisfactory. I will leave the matter at that.

As regards the amendment for the addition of the word 'reasonable' I will beg the House kindly to consider it calmly and dispassionately. We have heard the speeches of Sardar Hukam Singh and Mr. Mahboob Ali Baig. Both of them asked what would happen to the Fundamental Rights if the legislature has the right to substantially restrict the Fundamental Rights? That is quite true. Are the destinies of the people of this country and the nationals of this country and their rights to be regulated by the executive and by the legislature or by the courts? This is the question of questions. The question has been asked, if the Legislature enacts a particular Act, is that the final word? If you consider clauses (3) to (6) you will come to the conclusion that, as soon as you find that in the Statement of Objects and Reasons an enactment says that its object is to serve the interests of the public or to protect public order, then the courts would be helpless to come to the rescue of the nationals of this country in respect of the restrictions. Similarly, if in the operative part of any of the sections of any law it is so stated in the Act, I beg to ask what court will be able to say that, as a matter of fact the legislature was not authorised to enact a particular law. My submission is that the Supreme Court should ultimately be the arbiter and should have the final say in regard to the destinies of our nationals. Therefore, if you put the word 'reasonable' here, the question will be solved and all the doubts will be resolved.

Sir, one speaker was asking where the soul in the lifeless article 13 was? I am putting the soul there. If you put the word 'reasonable' there, the court will have to see whether a particular Act is in the interests of the public and secondly whether the restrictions imposed by the legislatures are reasonable, proper and necessary in the circumstances of the case. The courts shall have to go into the question and it will not be the legislature and the executive who could play with the fundamental rights of the people. It is the courts which will have the final say. Therefore my submission is that we must put in these words "reasonable" or "proper" or "necessary" or whatever good word the House likes. I understand that Dr. Ambedkar is agreeable to the word "reasonable". I have therefore put in the word "reasonable" to become reasonable. Otherwise if words like "necessary" or "proper" had been accepted, I do not think they would have taken away from but would have materially added to the liberties of the country. Therefore I respectfully request that the amendment I have tabled may be accepted so that article 13 may be made justiciable. Otherwise article 13 is a nullity. It is not fully justiciable

[Pandit Thakur Dass Bhargava]

now and the courts will not be able to say whether the restrictions are necessary or reasonable. If any cases are referred to the courts, they will have to decide whether restriction is in the interests of the public or not but that must already have been decided by the words of the enactment. Therefore the courts will not be able to say whether a fundamental right has been infringed or not. Therefore my submission is that, if you put in the word "reasonable", you will be giving the courts the final authority to say whether the restrictions put are reasonable or reasonably necessary or not. With the words, I commend this amendment to the House.

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

"that with reference to amendment No. 454....."

Shri H. V. Kamath : On a point of order, Sir, has amendment No. 454 been moved?

Mr. Vice-President : Please continue.

The Honourable Dr. B. R. Ambedkar :

"with reference to amendment No. 454 of the List of Amendments—

(i) in clauses (3), (4), (5) and (6) of article 13, after the words 'any existing law' the words 'in so far as it imposes' be inserted, and

(ii) in clause (6) of article 13, after the words 'in particular' the words 'nothing in the said clause shall affect the operation of any existing law in so far as it prescribes or empowers any authority to prescribe, or prevent the State from making any law' be inserted."

Syed Abdur Rouf (Assam : Muslim): On a point of order, Sir, I think that Dr. Ambedkar's amendment cannot be an amendment to amendment No. 454. Amendment No. 454 seeks to delete clauses (2), (3), (4), (5) and (6), whereas Dr. Ambedkar's amendment seeks to insert some words in those clauses and cannot therefore be moved as an amendment to an amendment.

Mr. Vice-President : It seems to me that what Dr. Ambedkar really seeks to do is to retain the original clauses with certain qualifications. Therefore I rule that he is in order.

Shri H. V. Kamath : This will have the effect of negativing the original amendment.

Mr. Vice-President : Kindly take your seat.

The Honourable Dr. B. R. Ambedkar : From the speeches which have been made on article 13 and article 8 and the words "existing law" which occur in some of the provisos to article 13, it seems to me that there is a good deal of misunderstanding about what is exactly intended to be done with regard to existing law. Now the fundamental article is article 8 which specifically, without any kind of reservation, says that any existing law which is inconsistent with the Fundamental Rights as enacted in this part of the Constitution is void. That is a fundamental proposition and I have no doubt about it that any trained lawyer, if he was asked to interpret the words "existing law" occurring in the sub-clauses to article 13, would read "existing law" in so far as it is not inconsistent with the fundamental rights. There is no doubt that that is the way in which the phrase "existing law" in the sub-clauses would be interpreted. It is unnecessary to repeat the proposition stated in article 8 every time the phrase "existing law" occurs, because it is a rule of interpretation that for interpreting any law, all relevant sections shall be taken into account and read in such a way that one section is reconciled with another. Therefore the Drafting Committee felt that they have laid down in article 8 the full and complete proposition that any existing law, in

so far as it is inconsistent with the Fundamental Rights, will stand abrogated. The Drafting Committee did not feel it necessary to incorporate some such qualification in using the phrase "existing law" in the various clauses where these words occur. As I see, many people have not been able to read the clause in that way. In reading "existing law", they seem to forget what has already been stated in article 8. In order to remove the misunderstanding that is likely to becaused in a layman's mind, I have brought forward this amendment to sub-clauses (3), (4), (5) and (6). I will read for illustration sub-clause (3) with my amendment.

"Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law, imposing in the interests of public order."

I am accepting Mr. Bhargava's amendment and so I will add the word "reasonable" also.

"imposing in the interests of public order reasonable restrictions on the exercise of the right conferred by the said sub-clause."

Now, the words "in so far as it imposes" to my mind make the idea complete and free from any doubt that the existing law is saved only in so far as it imposes reasonable restrictions. I think with that amendment there ought to be no difficulty in understanding that the existing law is saved only to a limited extent, it is saved only if it is not in conflict with the Fundamental Rights.

Sub-clause (6) has been differently worded, because the word there is different from what occurs in sub-clauses (3), (4) and (5). Honourable Members will be able to read for themselves in order to make out what it exactly means.

Now, my friend, Pandit Thakur Dass Bhargava entered into a great tirade against the Drafting Committee, accusing them of having gone out of their way to preserve existing laws. I do not know what he wants the Drafting Committee to do. Does he want us to say straightaway that all existing laws shall stand abrogated on the day on which the Constitution comes into existence?

Pandit Thakur Dass Bhargava : Not exactly.

The Honourable Dr. B. R. Ambedkar : What we have said is that the existing law shall stand abrogated in so far as they are inconsistent with the provisions of this Constitution. Surely the administration of this country is dependent upon the continued existence of the laws which are in force today. It would bring down the whole administration to pieces if the existing laws were completely and wholly abrogated.

Now I take article 307. He said that we have made provisions that the existing laws should be continued unless amended. Now, I should have thought that a man who understands law ought to be able to realize this fact that after the Constitution comes into existence, the exclusive power of making law in this country belongs to Parliament or to the several local legislatures in their respective spheres. Obviously, if you enunciate the proposition that hereafter no law shall be in operation or shall have any force or sanction, unless it has been enacted by Parliament, what would be the position? The position would be that all the laws which have been made by the earlier legislature, by the Central Legislative Assembly or the Provincial Legislative Assembly would absolutely fall to pieces, because they would cease to have any sanction, not having been made by the Parliament or by the local legislatures, which under this Constitution are the only body which are entitled to make law. It is, therefore, necessary that a provision should exist in the Constitution that any laws which have been already made shall not stand

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abrogated for the mere reason that they have not been made by Parliament. That is the reason why article 307 has been introduced into this Constitution. I, therefore, submit, Sir, that my amendment which particularises the portion of the existing law which shall continue in operation so far as the Fundamental Rights are concerned, meets the difficulty, which several honourable Members have felt by reason of the fact that they find it difficult to read article 13 in conjunction with article 8. I therefore, think that this amendment of mine clarifies the position and hope the House will not find it difficult to accept it.

(Amendment No. 50 to amendment No. 454 was not moved.)

(Amendments Nos. 455, 469, 475 and 481 were not moved.)

Mr. Vice-President : Then we shall take up amendment No. 485, first part. The House can well realize that I am going through a painful process in order to shorten the time spent on putting the different amendments to the vote.

Syed Abdur Rouf : I want the first part of the amendment to be put to the vote.

Mr. Vice-President : Then we come to another group, 456, 472, 484 and 495.

(Amendments Nos. 456, 472, 484 and 495 were not moved.)

Mr. Vice-President : The next group consists of amendments Nos. 457, 466, 473 and 494.

(Amendments Nos. 457, 466, 473 and 494 were not moved.)

Mr. Vice-President : Then amendment No. 458 standing in the name of Mr. Mohd. Tahir and Saiyid Jafar Imam.

Shri M. Ananthasayanam Ayyangar: That has already been covered by Mr. Mahboob Ali Baig's amendment.

Mr. Vice-President : Still, it would depend upon the Mover.

Mr. Mohd. Tahir (Bihar : Muslim): Sir, I beg to move:

"That in clause (2) of article 13, after the word 'sedition' the words 'communal passion' be inserted."

Now, Sir, we find that under this clause we are giving powers to the State to make laws as against certain offences such as libel, slander, defamation, sedition and similar offences against the State. Now I want that these words "communal passion" be also added after the word "sedition"—which means, agitating or exciting the minds of one community as against the other.

These words, Sir, libel, slander, defamation, sedition, are the common words found in the Indian Penal Code and fortunately or unfortunately, we find that this word does not find a place in the Indian Penal Code. The reason is very simple, because, the Indian Penal Code and the old laws were framed by a Government which was foreign to us. Now, this is the time when we must realise our merits and demerits. We know that the agitation and the excitement of communities against communities have done a great loss and disservice to our country as a whole. Therefore, Sir, I think that the addition of this word is necessary. To tell the truth, I would say that if in our country which is now an independent country, we are really sincere to ourselves, this word also must find a place in the Constitution. I would request and appeal to Dr. Ambedkar and the House as a whole to give sound reasoning and due consideration for the addition of this word.

At the end, Sir, I may submit that an amendment has been moved by Mr. Munshi and I do not know whether it is going to be accepted or not. In case that amendment is going to be accepted by the House. I would appeal that this word may be given a place in that amendment or wherever it is found suitable. With these words. Sir, I move.

Mr. Vice-President : We come next to amendment No. 459. It is in the name of Mr. Thomas. It is verbal and therefore disallowed.

Next we take up amendments nos. 460, 461 and the second part of 462. I would allow amendment No. 461 to be moved because that I regard as most comprehensive of the three. That is covered by Mr. Munshi's amendment. Is amendment No. 460 moved?

Pandit Thakur Dass Bhargava: I do not want to move it.

Mr. Vice-President : Amendment No. 462; Mr. Kamath.

Shri H. V. Kamath : It is covered by amendment No. 461.

Mr. Vice-President : Amendment No. 462, first part. I was dealing with the second part just now. The first part is more or less a verbal amendment and is disallowed.

Then, amendments Nos. 463 and 464 coming from two different quarters are of similar import. Amendment No. 464, standing in the name of Shri Vishwambhar Dayal Tripathi may be moved.

(Amendment No. 464 was not moved.)

Mr. Vice-President : What about amendment No. 463, in the name of Giani Gurmukh Singh Musafir?

Giani Gurmukh Singh Musafir: Not moving, Sir.

Mr. Vice-President : Then, we take up amendments Nos. 467 and 474. Amendment No. 467 may be moved. It stands in the name of Mr. Syamanandan Sahaya.

Shri Syamanandan Sahaya (Bihar : General): Sir, I beg to move:

"That in clause (3) of article 13, the word 'restrictions' the words 'for a defined period' be added."

Sir, in moving this amendment before the House, what was uppermost in my mind was to see whether actually even in the matter of the three freedoms so much spoken of, namely, the freedom of speech, freedom of association and freedom of movement, we had really gone to the extent that everyone desired we should. I must admit that I did not feel happy over the phraseology of the clauses so far as this general desire in the mind of every body, not only in this House, but outside, obtained. I will, Sir, refer to the wording of sub-clause (b) of clause (1) of article 13. This sub-clause lays down that all citizens shall have the right to assemble peaceably and without arms. This is the Fundamental Right which we are granting to the people under the Constitution. Let us see how this fits in with clause (3) of article 13 which is the restricting clause. Clause (3) lays down that nothing in sub-clause (b) of the said clause (1) shall affect the operation of any existing law, or prevent the State from making any law, imposing in the interests of public order restrictions on the exercise of the right conferred by the said sub-clause. Sir, the only right which we are giving by sub-clause (b) is the right to assemble peaceably and without arms. This right to assemble is not a general right of assembly under all conditions. To assemble peaceably is the first condition precedent and there is also a second condition. That condition is that the assembly should be without arms. On the top of these conditions we are laying down in sub-clause (3) that there shall be a further restricting power in the hands of the State. I would much rather that clauses (3) and (4) did not form part of our Constitution. But, if the Drafting Committee and the other people who have considered the matter carefully think that it is necessary to lay down restrictions even in the matter of assembling peaceably and without

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arms, I might respectfully submit that it would be necessary to further restrict this restricting power by saying that any law restricting this power must be for a specified period only. I do not think the House will agree that any State should place on the statute book a permanent law restricting this Fundamental Right of peaceful assembly.

The most that the Constitution could accommodate a particular Government at a particular time under a particular circumstance was to give it the power to restrict this right under these conditions but for a specified and defined period only and that I submit, Sir, is the purpose of my amendment. The best interpretation that one could put on this clause is that the Drafting Committee has erred too much on the cautious side in this matter and they have probably kept the Government too much and the citizens too little, in view. I will submit that both in sub-clauses (3) and (4) the words 'for a defined period' should be added in order that if a State at any time has to pass legislation to restrict these rights, they may do so only for a period. It does not mean that once a State has passed such a legislation it is debarred from following it up by a second legislation in time if necessary but we must lay down in the Constitution that we shall permit of no such restrictive law to be a permanent feature of the law of the land. A State should not be empowered to pass a legislation restricting permanently peaceful assembly and assembly without arms. I think such a general power in the armoury of any State, however popular or democratic, would not be desirable. In the larger interests of the country, and particularly at the formative stage of the country, to give such wide powers in the hands of the State and with regard to such Fundamental rights as, freedom of speech, freedom of assembly and freedom of movement would, I believe, be harmful and result in the creation of a suffocating and stuffy atmosphere as opposed to the free air of a truly free country. Sir, I move the amendment and commend it to the acceptance of the House.

(Amendment No. 470 was not moved.)

Mr. Vice-President : 471 is disallowed as verbal. Nos. 476 and 477 are of similar import. I allow 476.

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

"That in clause (4) of article 13, for the words 'the general public' the words 'public order or morality' be substituted."

These words are inappropriate in that clause.

Mr. Vice-President : 477 is identical, 479, 480 and 486 are of similar import.

(Amendments Nos. 479, 480 and 486 were not moved.)

Mr. Vice-President : 482 and 483.

(Amendment No. 482 was not moved.)

Mr. Vice-President : 483—Sardar Hukam Singh.

Sardar Hukam Singh: Sir, I beg to move:

"That in clause (5) of article 13, after the words 'existing law' the word 'which is not repugnant to the spirit of the provisions of article 8' be inserted."

The Honourable Dr. Ambedkar has rightly appreciated our fears and we feel that is the object of most of the amendments that have been moved. Certainly there are fears in our minds that if these articles stand independently—articles 8 and 13,—then there is a danger of different constructions being put on them. Dr. Ambedkar has emphasised that if relevant articles of the Constitution are in question, all those articles that relate to one subject shall be taken into consideration when some construction is going to be put by any Court and then article 8 would govern because it says that "All laws in force immediately before the commencement of this Constitution in the territory of India, in so far as they are inconsistent with the provisions of this Part, shall to the extent of such inconsistency, be void". That we have adopted, and this

is what we feel that it should be made clear that certainly those parts which are inconsistent would be void to that extent. If that is the object as Dr. Ambedkar has explained, then why not make it clear in this section as well. Where is the harm? I do not see that we would lose anything or that it would change the beauty of the phraseology even if we make it clear that these provisions are subject to article 8. This is to be admitted that there are certain laws in force just at present that restrict the liberty of the people. For instance I can quote the Land Alienation Act in Punjab. That allows only certain castes to purchase land of their own caste and precludes other castes to purchase that land. If this distinction were based on some economic ground, if it were to be enacted that all small tillers' rights would be safeguarded and their small lands would not be alienable, we could understand that alright and such a provision would be welcome. But when the discrimination is there, we too feel that such a law should stand abrogated so far as it is inconsistent with the provision in clause (5) of article 13. Because that gives freedom to acquire hold and dispose of property and if that law remains—Land Alienation Act, as it is and definition is not changed of the "agriculturist", there would be a conflict and there might be certain constructions by Court which would be unfair. So if that is the object as Dr. Ambedkar has explained that article 8 would govern, then we should make it clear and that is why I have suggested that after the words 'existing law' the words 'which is not repugnant to the spirit of the provisions of article 8' be inserted. That is my object and it should be made clear beyond any doubt.

Mr. Vice-President : Then we come to amendment No. 485, second part, standing in the name of Syed Abdur Rouf, and the first part of amendment No. 488 standing in the joint names of Dr. Pattabhi Sitaramayya and others. The latter seems to be the more comprehensive of the two and may be moved.

(Amendment No. 488 was not moved.)

Mr. Vice-President : Then in that case, the second part of amendment No. 485, standing in the name of Syed Abdur Rouf may be moved.

Syed Abdur Rouf: Sir, I beg to move:

"That in clause (5) of article 13, for the word 'State', the word 'Parliament' be substituted."

Sir, in sub-clauses (d), (e) and (f), we have got the most valuable of our Fundamental Rights. But clause (5) seems to take away most of our rights, because States have been given power to restrict, to abridge and even to take away the rights if and when they like. We remember the word 'State' has been defined as to include even local authorities etc. within the territory of India or under the control of the Government of India. Even village panchayats, small town committees, municipalities, local boards all these, to a certain extent become States, and it has been left to these States to deal with these valuable Fundamental Rights. Sir, I will bring one instance before you. Suppose, due to political views, a particular village or panchayat area is divided between the majority and the minority. Now, if the majority of the Panchayat by a resolution asks the minority not to move freely in the area or to reside there, or to dispose of their property, which law will prevent the majority from doing so, and which law is there to safeguard the interests of the minority? As these are most valuable rights, the State should not be trusted with making laws regarding these rights. In my opinion, Sir, it is only the Parliament which can to the satisfaction of the people, deal with these questions. As it is very dangerous to leave this power in the hands of the small States, which will comprise even village panchayats, we must be very careful and, therefore, I suggest that in place of 'State', the word 'Parliament' should be substituted.

Mr. Vice-President : Then amendments Nos. 487, 489 and 490 are of similar import. No. 487 may be moved.

(Amendment No. 487 was not moved.)

Mr. Vice-President : Amendment No. 489 standing in the joint names of Mr. Mohd. Tahir and Saiyid Jafar Imam.

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

"That in clause (5) of article 13, the word 'either' and the words 'or for the protection of the interests of any aboriginal tribe' be omitted."

Sir, I am not going to make any speech in this connection, but want only to submit that the removal of these words would make the clause of a general character, which certainly includes the safeguards of the interests of the aboriginal tribes as well. I understand the Drafting Committee was also of this opinion, but I do not know why this clause was worded in this manner. Anyhow, I think it better to delete the words in the manner I have suggested.

Mr. Vice-President : Amendment No. 490 is the same as the one now moved, and it need not be moved.

Amendment No. 488, second part, and No. 491 are of similar import. Amendment No. 491, standing in the name of Dr. Ambedkar may be moved.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, I move:

"That in clause (5) of article 13, for the word 'aboriginal', the word 'scheduled' be substituted."

When the Drafting Committee was dealing with the question of Fundamental Rights, the Committee appointed for the Tribal Areas had not made its Report, and consequently we had to use the word 'aboriginal', at the time when the Draft was made. Subsequently, we found that the Committee on Tribal Areas had used the phrase "Scheduled Tribes" and we have used the words "scheduled tribes" in the schedules which accompany this Constitution. In order to keep the language uniform, it is necessary to substitute the word "Scheduled" for the word "aboriginal".

Mr. Vice-President : There is, I understand, an amendment to this amendment, and that is amendment No. 56 of List I, standing in the name of Shri Phool Singh.

(Amendment No. 56 of list I was not moved.)

Mr. Vice-President : That means this amendment No. 491 stands as it is.

Then we come to amendment No. 488.

(Amendment No. 488 was not moved.)

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

"That in clause (6) of article 13, for the words 'public order, morality or health', the words 'the general public' be substituted."

The words 'public order, morality or health' are quite inappropriate in the particular clause.

Mr. Mohd. Tahir : *[Mr. President, my amendment No. 500 is as follows :

"That after clause (6) of article 13, the following new clause be added.

'(7) The occupation of beggary in any form or shape of person having sound physique and perfect health whether major or minor is totally banned and any such practice shall be punishable in accordance with law.' "

Sir, I have moved this amendment for this reason that, if the House agrees with this amendment surely it will result in solving to a great extent the difficulties of labour which exist in our country. Our industries, which are very vital and in many places have failed due to lack of labour, can flourish to a great extent. Besides, I would like to state that in our country *thousands, lakhs* nay *crores* of human beings will imbibe the spirit of self-reliance and self-respect. We see that in our country many able-bodied persons who

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* [ ]Translation of Hindustani speech.

can work and can earn their livelihood, are to be found begging on road sides. If you tell them that they can work, that they can maintain themselves by earning their livelihood and can do good to their country by their labour, they would say in reply "Sir, this is our ancestral profession and we are forced to do it". I would like to say that there are so many countries on this earth: but if you look around, you will find this ugly spot only on the face of our country. Therefore, I want that there should be some such provision in our Constitution as would be beneficial to our country. Obviously, those that are helpless, for instance many of our unfortunate countrymen, who are blind, lame and cannot use their hands and feet, really deserve some consideration. In such cases begging on these and other similar grounds may be justified. But even in this matter, I would submit that the State should be responsible and some such institution or home be founded in some places where they might be brought up, while those that are able-bodied and healthy should be forced to work. By doing so, our labour problem will be solved to a great extent and crores of human beings, who have taken to begging as profession, would be prevented from doing so. This will create in them the spirit of self-respect and self-reliance. Therefore, I hope that Dr. Ambedkar will accept this amendment of mine and the House will also help me by accepting it. With these words, I submit this amendment for the consideration of the House.]

The Assembly then adjourned till Half Past Nine of the Clock on Thursday, the 2nd December 1948.