Mr. Vice-President : I put amendment No. 500 to vote.

The question is:

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

'(7) The occupation of beggary in any form or shape for 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.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That article 13 in the form in which it emerges after the different amendments which have been passed here stand part of the Constitution."

Article 13, as amended, was adopted.

Article 13, as amended, was added to the Constitution.

Article 14

Mr. Vice-President : We come to new article 14.

(Amendment No. 504 was not moved.)

Shri H. V. Kamath: What about 13-A? That is, amendments 89, 90 and 92 of List V.

Mr. Vice-President : That has been held over. I was referring to No. 504.

Now the motion is:

"That article 14 form part of the Constitution."

Honourable Members have been supplied with a list which indicates the manner in which I propose to conduct the proceedings of the House. No. 505 has been disallowed as being verbal. 506 may be moved.

Pandit Thakur Das Bhargava: May I take the liberty of pointing out that my amendment (No. 505) is not merely verbal? It is an amendment of substance also.

Mr. Vice-President: Then I will give my ruling later on. Mr. Naziruddin Ahmad will carry on his work.

Mr. Naziruddin Ahmad (West Bengal : Muslim): Mr. Vice-President, I beg to move:

"That in clause (1) of article 14, after the words "greater than", the words "or of a kind other than" be inserted."

Sir, clause (1) provides—I am reading only the material part—

"No person shall be subjected to a penalty greater than that which might have been inflicted under the law at the time of the commission of the offence."

It guards against any punishment 'greater than' is provided to be inflicted upon a person. I have attempted to insert after the words 'greater than' the words 'or other than' that which might have been inflicted. There are many cases where a punishment of fine only is provided. Suppose a man is fined one lakh of rupees. An Appellate Court may turn it to an imprisonment during the sitting of the Court. That will violate the provision that where fine alone is provided for, an imprisonment may be substituted on the ground that it is not 'greater than' that. My amendment seeks to limit the powers of Courts to inflict punishment not only as to the extent but also to the kind. There are different kinds of punishments—fine, imprisonment, whipping, forfeiture and hanging and the like where only a particular kind of punishment is specifically provided, you should not award any punishment other than that. That is in short the effect of this amendment. Where whipping alone is provided, you cannot award a fine. Where fine alone is provided, you cannot award imprisonment or whipping or forfeiture. Where forfeiture of movables only is provided, you cannot forfeit immovables. Where forfeiture of articles relating to which

[Mr. Naziruddin Ahmad]

crime has been committed is provided, you cannot forfeit other kinds of things. So if we leave the powers of the court as in the clause it gives the Court the power to give any punishment not sanctioned by law. If clause (1) is to be retained, the Court should also be limited to the class of punishment provided. To me it seems that there is here a lacuna—rather oversight which should be corrected.

Mr. Vice-President : As regards amendment No. 505, I can allow the Member to move the second part of it. Pandit Thakur Das Bhargava.

Pandit Thakur Dass Bhargava: Sir, I beg to move :

"That in clause (1) of article 14, for the words 'under the law at the time of the commission' the words 'under the law in force at the time of the commission' be substituted."

Sir, if you kindly examine the definition of the expression 'law in force' as given in the explanation under article 307, it would appear that the words 'the law' and the words 'the law in force' have different meanings. Moreover as the words in the previous part of the article also appear as 'law in force', it is very necessary and proper in this juxtaposition that the amendment that I have suggested should be accepted. That is all I have to submit.

Mr. Vice-President : Amendments Nos. 507, 508 and 511 are of the same import. The most comprehensive one, *i.e,* No. 507, may be moved.

(Amendments Nos. 507, 508 and 511 were not moved.)

Amendments Nos. 509 and 510 are of similar import and may be moved together. They are in the name of Mr. Naziruddin Ahmad.

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

"That at the end of clause (2) of article 14, the words 'otherwise than as permitted by the Code of Criminal Procedure, 1898' be added."

Sir, I am moving these amendments with considerable anxiety in my mind. The first anxiety is that I may perhaps over step my time limit; the second anxiety is that there are a large number of observant and powerful eyes directed against me and I am afraid that a point of order may be taken at any time; and the third anxiety is the huge 'No' against me will be echoed by honourable Members and this will reverberate as thunder clap under which my feeble 'Aye' will be lost.

Then the other difficulty is that I have to crave the indulgent attention of the Honourable the Chairman of the Drafting Committee to the point I am raising. I shall restrict my point strictly to the limits of relevancy.

Sir, the words which I seek to insert deals with an important principle of criminal procedure. Clause (2) which I seek to amend runs as follows:

"(2) No person shall be punished for the same offence more than once."

A very sacred sentiment has prompted the introduction of this clause; but considered from the point of view of criminal law, it has its loop-holes.

Clause (2) seems to be rather sweeping. There are cases where a man may be legally punished twice for the same offence, and I shall submit the circumstances, with the relevant laws. Sir, the principal which deals with this subject finds a place in section 403, sub-section (1) of the Code of Criminal Procedure. The point is this. The law of punishment twice has been enacted.

Shri T. T. Krishnamachari: Sir, on a point of order. Can any Member of this House move an amendment referring to an enactment itself is out of order.

Mr. Naziruddin Ahmad : Anything else may be out of order, but not the amendment. We have already referred to and saved 'existing laws'—enactments of subordinate legislatures in article 9 and in other places. I was only referring for handy consideration to the Criminal Procedure Code. I cannot pretend to submit that Section 403, or any principle embodied in it, or any sound principle even is binding upon this House, not even the soundest of propositions, because this is a sovereign House.

I was submitting for consideration certain principles of the Criminal Procedure, not that I suggested at all that they will be binding on this House, but only that they are worthy of consideration.

Sir, it often happens—I shall submit examples from general principles because I think they would be more acceptable to Mr. Krishnamachari—it often happens that a man is punished by a Court which has no jurisdiction; it is a very ordinary experience in criminal Courts that the Judge on appeal or the High Court or the Privy Council—and now the Federal Court and later on the future Supreme Court—may and does find that the conviction is without jurisdiction. Meantime, the man has been convicted. If you say that he cannot be convicted twice, then orders of re-trial by appellate and revisional Courts would be absolutely out of the question. If a man is tried by a Magistrate or a Court having no jurisdiction, and if he is punished, that is the first punishment.

And then if it is found that the Court had no jurisdiction to try the case, what is often done is that there is a re-trial. But if you enact the principle of clause (2) that a man shall not be punished for the same offence more than once, the effect would be that if a man is punished by a Court of competent jurisdiction but there is a lacuna in the trial, or by a Court of competent jurisdiction the result will be to shut out any further trial at all. A re-trial after a conviction is an ordinary incident of daily experience in criminal Courts.

Sometimes, Sir,.....

(After a pause)

Sir, I desire to monopolise the attention of the honourable Member the Chairman of the Drafting Committee; otherwise it will be useless to argue. If he says "No", the whole House will echo him.

Mr. Vice-President : Dr. Ambedkar, Mr. Naziruddin demands your wholehearted attention. He says that if you say "No", the House will say "No". *(Laughter).*

Mr. Naziruddin Ahmad : The point which I was submitting is a point of general importance. The point is that if a man is convicted by a court of law—that is the first conviction—it may be that there is some lacuna in the trial. The accused appeals to the Court of Sessions. The Court finds that there was a lacuna in the trial or that the Court had no jurisdiction. But it may order a re-trial. Clause (2) which would effectively prevent further trial because it may involve a second conviction. There may be a first conviction of an offender in the hands of a Court, and this clause will effectively prevent a re-trial order by a superior court. This is one of the simplest examples. The principle should be not merely *convicted*, but the principle should be that a man can not be *tried* again, tried twice, if he is acquitted or convicted by a Court of competent jurisdiction, while the conviction or acquittal stands effective. In fact, it is not the first conviction that is important; it is the ultimate legality and finality of the conviction that has to be respected; the finality should attach not only to conviction but also to acquittal. What are you going to do with regard to a person who is finally acquitted after a fair

[Mr. Naziruddin Ahmad]

trial, and when the acquittal is not set aside and is therefore final and binding? You say nothing about that. You simply say that a man should not be convicted twice for the same offence. A man acquitted shall also not be liable to betried again. You say nothing about that but confine you attention to the bogey of double punishment. I submit that the so-called theory of double punishment is not all and does not give a complete picture. Take for example, a man fined Rs. 50 for an offence by a Magistrate having no jurisdiction; then he appeals to an appellate Court. The appellate Court will, by virtue of clause (2) be precluded from sending it for re-trial on any technical ground, even on the ground that the Court had no jurisdiction.

The relevant section which caused some amount of suspicion in the mind of a distinguished Member of the House, Mr. T. T. Krishnamachari, I shall with his permission and with your permission, Sir, and with the permission of the House, read. Not that it is binding, but it is a crystallised wisdom which has been handed down to us from generation to generation. Sub-section (1) of section 403 says :

"A person who has been once tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence, shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence".

I think, Sir, this is the proper form. It may be argued that the Criminal Procedure Code is a sufficient safeguard against injustice, but if you introduce it here it is a justiciable right, and we have already provided that any violation of any fundamental right is justiciable and would nullify all existing laws contrary, and therefore it will have the effect of abolishing or rather nullifying the wholesome law as laid down in sub-section (1) of section 403. I submit that the clause has got to be very carefully considered and, if necessary, should be re-drafted.

I submit that double punishment for the same offence in such cases does not in fact work injustice. What happens in such cases is that the punishment already suffered or inflicted is taken into account or adjusted in giving the final punishment in a re-trial. That is the effect of this amendment.

Mr. Vice-President : Do you intend to move amendment No. 509?

Mr. Naziruddin Ahmad : No, Sir. It deals with the same principle and I do not wish to move it.

Mr. Vice-President : I have found from the last two days' experience that 9.30 a.m. is too early an hour for many Members of the House. They seem to think that others will come at the proper time and they need not come, with the result that there is difficulty in starting our work at the proper time. I have therefore decided that from tomorrow we shall start at 10 a.m. and break up at 1.30 p.m.

The Assembly then adjourned till Ten of the Clock on Friday the 3rd December 1948.