

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME VII

Friday, the 3rd December 1948

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

STATEMENT *RE. EIRE ACT*

Mr. Vice-President (Dr. H. C. Mookherjee): When our Prime Minister laid before the House the conditions which govern the entry, or rather, the withdrawal of Ireland from the United Kingdom, there were a few Members(*Interruption*).

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): May I say something on this, Sir?

Mr. Vice-President: Yes.

The Honourable Pandit Jawaharlal Nehru: I merely wish to state that I have placed on the Table of the House a telegram that I have received from the Foreign Minister of Eire. In the course of some discussion, I remember--I forget who it was--when an honourable Member wanted to have a copy of the new Bill which is being considered by the Irish Parliament, I said I would enquire. I asked for it by telegram; we do not have it here. We have been informed that the actual Bill is coming by air mail, but by telegram they have sent us the text of the Bill which is a very short one, four or five Sections of a line each. That is laid on the Table of the House for such Members as wish to see it.

Shri S. V. Krishnamurthy Rao (Mysore State): Will you please have it cyclostyled and circulated to all members?

The Honourable Pandit Jawaharlal Nehru: No, Sir, I object. The telegram is laid on the Table and members can see it.

Mr. Vice-President: Before we begin the business of the House, I would like to inform honourable Members that I have received a letter from our President informing me that he is making rapid improvement and that it is very likely that he will be able to resume his duties from the 27th. He has expressed his regret on account of his inability to preside over the deliberations of this House and I have informed him already that we are fully aware of the circumstances which are responsible for his absence. I understand from the papers that he reaches his 64th year today. May I, with the permission of the House, send him our congratulations and at the same time assure him how much we feel his absence? In this connection, I shall also tell him that though I am fully aware of my many lapses from the technicalities of parliamentary practice, I have been able to carry on so far with the goodwill of the House.

Honourable Members: Certainly.

DRAFT CONSTITUTION-contd.

Article 14-contd.

Mr. Vice-President : We shall now resume discussion of article 14. Amendment 510 was moved. 509 will be put to vote. So we next come to 512.

Kazi Syed Karimuddin (C. P. & Berar: Muslim): Mr. Vice-President, Sir, I beg to move--

That in article 14, the following be added as clause (4):--

"(4) The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized."

This is a very important amendment. You will be pleased to find that this finds place as article 4 in the American Constitution and in the Irish Constitution there are clauses(2) and (5) which are similar and in the German Constitution there are articles 114 and 115 on the same lines. In the book of Dr. Ambedkar--Minorities and States-- on page 11, item No. 10, a similar provision has been made. Thus, this is an amendment, the correctness of which cannot be challenged. What is the situation in India today? In India, in practically every province, there are Goonda Act and Public Safety Act which do not provide for any appeals or representations, and which give no opportunity to the persons concerned to defend themselves. Arrests are made without warrant and searches without justification. We are being governed by lawless laws and there is no remedy for the redress of grievances on account of unauthorised arrests and searches.

We have seen in 1947, and in the beginning of 1948, that hundreds of thousands of people were arrested and houses were searched merely on suspicion. The result is that the morale of the members of the Muslim minority community was undermined and they were treated just like criminals in the country. I will give the house one very important instance. Whenever we went to an aerodrome to go to Delhi, our belongings were searched without any reason, without any cause and without any warning. I will now give another instance. When there was police action in Hyderabad, every Muslim worth the name was arrested without any justification in the adjoining provinces. If those Muslims were really traitors they ought to have been prosecuted, punished and hanged. But people who had nothing whatever to do with Hyderabad were arrested under the pretence that they were taken only under protective custody. Well, if they were taken only under protective custody, why were their women and children who were outside not taken under this protective custody?

Therefore my submission is that unless this fundamental right that I have asked for in this amendment is guaranteed, there will be no end to these arrests without warrants and to these searches without justifications. I have moved this amendment in the earnest hope that it would be accepted.

Mr. Vice-President: The next amendment in the List is the one standing in the

name of Mr. Kakkan.

Shri P. Kakkan (Madras: General): Sir, I do not want to move it. But, with your permission I wish to speak on it.

Mr. Vice-President: That I cannot permit. I can give the honourable Member an opportunity to speak in the course of the general discussion on article 14. I think, as there are no other amendments to this article, the House can now take up the general discussion of this article. Mr. Kakkan may now make the speech he wanted to.

Shri P. Kakkan: Mr. Vice-President, I had given notice of an amendment to this article only with a view to speak on it.

Sir, what I have got to say concerns the jail administration. In the jails they make a distinction between prisoners and prisoners in allotting duties in the jails. If a prisoner belongs to the Harijan community he is compelled to do scavenging work, no matter what his class or rank or education is. Prisoners belonging to other communities are not similarly forced to do scavenging work. On this occasion I desire to express my opinion and my feeling that this distinction in the matter of the allotment of work to prisoners inside the jails should be removed forthwith. Sir, I know from experience that the members of the Harijan community are treated in jails very cruelly, as if they are God's creatures and that He created them for doing scavenging work. I earnestly hope that this distinction will be removed hereafter and that Harijans will get impartial treatment everywhere. It is with this object that I have stated in my amendment that no person convicted for any offence shall be compelled to work in jail (*caste war*) in respect of religion, caste, race or class. I thank you, Sir, for giving me this opportunity to speak.

Shri T. T. Krishnamachari (Madras: General): Mr. Vice-President, Sir, the point I have to place before the House happens to be a comparatively narrow one. In this article 14, clause (2) reads thus: 'No person shall be punished for the same offence more than once'. It has been pointed out to me by more Members of this House that this might probably affect cases where, as in the case of an official of Government who has been dealt with departmentally and punishment has been inflicted, he cannot again be prosecuted and punished if he had committed a criminal offence; or, per contra, if a Government official had been prosecuted and sentenced to imprisonment or fine by a court, it might preclude the Government from taking disciplinary action against him. Though the point is a narrow one and one which is capable of interpretation whether this provision in this particular clause in the Fundamental Rights will affect the discretion of Government acting under the rules of conduct and discipline in regard to its own officers, I think, when we are putting a ban on a particular type of action, it is better to make the point more clear.

I recognise that I am rather late now to move an amendment. What I would like to do is to word the clause thus: 'No person shall be prosecuted and punished for the same offence more than once.' If my Honourable Friend Dr. Ambedkar will accept the addition of the words 'prosecuted and' before the word 'punished' and if you, Sir, and the House will give him permission to do so, it will not merely be a wise thing to do but it will save a lot of trouble for the Governments of the future. That is the suggestion I venture to place before the House. It is for the House to deal with it in whatever manner it deems fit.

Mr. Vice-President: Does the House give the permission asked for by Shri T. T. Krishnamachari?

Honourable Members: Yes.

Mr. Vice-President: Now I will call upon Dr. Ambedkar to move the amendment suggested by Shri T. T. Krishnamachari.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, with regard to the amendments that have been moved to this article, I can say that I am prepared to accept the amendment moved by Mr. T. T. Krishnamachari. Really speaking, the amendment is not necessary but as certain doubts have been expressed that the word 'punished' may be interpreted in a variety of ways, I think it may be desirable to add the words "prosecuted and punished".

With regard to amendments Nos. 506 and 509 moved by my friend, Mr. Naziruddin Ahmad.....,

Mr. Naziruddin Ahmad: It is No. 510.

The Honourable Dr. B. R. Ambedkar: Anyhow, I have examined the position the whole day yesterday and I am satisfied that no good will be served by accepting these amendments. I am however prepared to accept amendment No.512 moved by Mr. Karimuddin. I think it is a useful provision and may find a place in our Constitution. There is nothing novel in it because the whole of the clause as suggested by him is to be found in the Criminal Procedure Code so that it might be said in a sense that this is already the law of the land. It is perfectly possible that the legislatures they are so important so far as personal liberty is concerned that it is very desirable to place these provisions beyond the reach of the legislature and I am therefore prepared to accept his amendment.

With regard to amendment No. 513 moved by my friend, Mr. Kakkan.....

An Honourable Member: It was not moved.

Mr. Vice-President: What about amendments Nos. 505 and 506?

The Honourable Dr. B. R. Ambedkar: I have already said that I am not prepared to accept amendment Nos. 506 and 510.

Mr. Vice-President: Have you anything to say about amendment No. 505, the second part of it as modified by amendment No. 92 in List V? Perhaps you have overlooked it. It is in the name of Pandit Thakur Dass Bhargava.

The Honourable Dr. B. R. Ambedkar: I accept the amendment moved by him.

Mr. Vice-President : I am putting the amendments one by one to the vote.

Amendment No. 505 as modified by amendment No. 92 of List V. I understand that Dr. Ambedkar accepts it. The question is:

"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."

The amendment was adopted.

Mr. Vice-President: Amendment No. 506. The question is:

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

The amendment was negated.

Mr. Vice-President: Amendment No. 510. The question is:

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

The amendment was negated.

Mr. Vice-President: Amendment No. 512 moved by Kazi Syed Karimuddin and accepted by Dr. Ambedkar. The question is:

That in article 14, the following be added as clause(4):--

"(4) The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized."

I think the 'Ayes' have it.

Shri T. T. Krishnamachari: The Noes have it.

Mr. Vice-President: I will again put it to the vote.

I think the 'Ayes' have it.

Shri T. T. Krishnamachari: No, Sir, the Noes have it.

Mr. Vice-President: I shall first of all call for a show of hands.

(The Division Bell was rung.)

Shri Mahavir Tyagi (United Provinces: General): May I propose that this question might be postponed for the time being and a chance be given for the Members to confer between themselves and arrive at a decision. Even the British House of Commons, sometimes converts itself into a committee to give various parties a chance to confer and arrive at an agreed solution.

Mr. Vice-President: I am prepared to postpone the voting on this amendment provided the House gives me the requisite permission. I would request the House to be calm. This is not the way to come to decisions which must be reached through co-

operative effort and through goodwill. Does the House give me the necessary power to postpone voting on this?

The Honourable Pandit Jawaharlal Nehru : Mr. Vice-President, Sir, as apparently a slight confusion has arisen in many members' minds on this point, I think, Sir, that the suggestion made is eminently desirable, that we might take up this matter a little later, and we may proceed with other things. It will be the wish of the House that will prevail of course. I would suggest to you, Sir, and to the House that your suggestion be accepted.

Dr. B. V. Keskar (United Provinces: General): Can it be done after the division bell has rung?

Mr. Vice-President: I never go by technicalities. I shall continue to use common-sense as long as I am here. I have little knowledge of technicalities, but I have some knowledge of human nature. I know that in the long run it is good sense, it is common-sense, it is goodwill which alone will carry weight. I ask the permission of the House to postpone the voting.

Honourable Members: Yes.

Article 15

Mr. Vice-President: Then we shall pass on to the next article. The next amendment is No. 514 but as Mr. Lari is absent, I shall pass on to the next article.

Shri T. T. Krishnamachari : May I suggest that discussion of this article be postponed, as it is being examined and the Members of the House would like to take some more time for the consideration of this particular article?

Article 15-A

Mr. Vice-President : Very well: Then I pass on to article 15-A (New article). Amendment No. 534 seeks to rule out capital punishment. I think it is blocked in view of the fact that a similar amendment was put to vote and rejected.

(Amendments Nos. 535 and 536 were not moved.)

Article 16

Mr. Vice-President : The motion before the House is that article 16 form part of the Constitution.

An Honourable Member: What about article 15?

Mr. Vice-President: Article 15 has been held over--Honourable Members must have been inattentive not to hear the suggestion made by Mr. T. T. Krishnamachari and accepted by the Chair. Amendment No. 537 I rule out of order as it is a negative amendment.

(Amendments Nos. 538, 539 and 540 were not moved.)

Amendment No. 542 is already covered by the provision relating to ban on cow-killing passed by the House previously.

Shri C. Subramaniam (Madras: General): Mr. Vice-President, Sir, I find some difficulty in accepting this article as an article coming under fundamental rights. The article reads: "Subject to the provisions of article 244 of this Constitution and of any law made by Parliament, trade, commerce and intercourse throughout the territory of India shall be free." Before referring to the difficulty, which I feel, I will refer the House to the sections in the Draft Constitution which deals with trade and commerce.

There are three Articles 243, 244 and 245 which deal with this subject 'inter-state trade and commerce' in the body of the Draft. Then in the list of legislative powers in the Union list, we find in article 73 "inter-state trade and commerce subject to the provisions of entry 33 of List No. II". Then item 32 in List II is "trade and commerce within the state; markets and fairs"; and item 33 refers to the "regulation of trade, commerce and intercourse on other States for the purposes of the provisions of article 244 of this Constitution." Therefore, you will find inter-state trade and commerce, subject to article 244, is a Union subject. Parliament can deal with it. Trade and commerce within the state and inter-state commerce as provided in article 244 are given to the State Legislatures. You will find, Sir, that in article 244, even though it might be inter-state trade and commerce, the State Legislature is given certain powers to impose certain taxes and impose certain restrictions. Having this in mind, if we come to article 16, we find the words "subject to the provisions of article 244 of this Constitution", that is, even in respect of inter-state trade and commerce, the State Legislature has been given certain powers and that is not touched by this article. Therefore leaving that, the article would read "subject to the provisions of any law made by Parliament, trade and commerce and intercourse through the territory of India shall be free". I really fail to understand how this can be a fundamental right and whether there is any right at all reserved. The very conception of a fundamental right is that there is a certain right taken out of the province of the legislature either of the Union or the State. To put it in other words, the sovereignty vests in the public, but that sovereignty is delegated to the legislatures or the sovereignty is expressed through the legislatures in respect of certain subjects.

But, in respect of certain fundamental rights we say the Parliament or the Government shall have no power of interference. So much so, the sovereignty of the people is absolute in that respect. It is neither delegated, nor is anybody else authorised to deal with that sovereignty. If we examine this article in that view, what is the residue of right left which could not be touched either by the legislature of the Union or by the legislature of the State? You find stated here, "Subject to the provisions of any law made by Parliament, trade, commerce and intercourse throughout the territory of India shall be free". Here, the sovereignty of the Parliament is absolute. There is no right which is taken out of the province of the legislatures. The right which is reserved here as a Fundamental right should be one, which neither the Union Legislature nor the State Legislature can touch. There is no such right left here. Mind you, here the wording in article 16 is, 'Subject to any law made by Parliament' without any limitation whatsoever. So much so, it comes to this: there shall be free trade throughout the territories of India, subject to the powers of Parliament. I respectfully submit that that would not be a fundamental right.

I know there are certain friends of mine who think that the vesting of powers in the Parliament as against the State itself is a fundamental right. That was what was expressed by certain friends. If that logic is extended to its conclusion, all the subjects dealt with in List I would be fundamental rights! That is not the case. The very conception of a fundamental right is that neither the Parliament, nor the State legislatures shall have power to interfere. Here, you make the Parliament sovereign. Only subject to the powers of Parliament, there shall be free trade, commerce and intercourse throughout the territories of India. I find it difficult to see what is the right which has been taken out of the province of the legislatures, either the Parliament or the State legislatures, and which has been reserved here as a fundamental right. It may be all right to say that in respect of free trade, only the Parliament shall have power. That is allocation of administrative powers or legislative powers between the Union legislature and the State legislature. Certainly that is not a fundamental right. As one of my friends pithily put it, it is a fundamental right in favour of the Parliament; it is not a right in favour of any citizen or class of citizens. In these circumstances, I wish the honourable Mover, though I find him preoccupied with other things,--I do not know whether he has followed my speech--to explain how this comes under the Chapter on Fundamental Rights, and what is the right reserved.

Mr. Vice-President: May I suggest, Mr. Subramaniam, that you make a definite suggestion so that Dr. Ambedkar may be in a position to reply?

Shri C. Subramaniam: The definite suggestion is this. For the sake of Dr. Ambedkar, I shall state my point again. My complaint in regard to article 16 is this. There is no right which has been taken out of the province of the legislature, either of the Union or of the States, to say that a fundamental right has been reserved in article 16. Because, you will find it is stated here, "Subject (leaving alone reference to article 244) to the provisions of any law made by Parliament, trade and commerce and intercourse throughout the territory of India shall be free". You see the right is subject to any law made by Parliament without any restrictions whatsoever. You have secured the sovereignty of the Parliament in respect of this subject, and Parliament can do anything. To be a fundamental right, it should have been taken out of the province of the legislatures, either of the Union or of the States. I find there is left no residue of any right which could not be touched either by Parliament or by the State legislature and as such, it would not properly come under the Chapter on Fundamental Rights. It may be a matter of allocation of powers between the Parliament and the State legislatures in saying that the Parliament alone shall deal with subjects relating to free trade within the territories of India. We can as well put in entry 73 of List I. You cannot make some restriction in entries 32 and 33 of List II, that it shall be subject to matters relating to free trade in India. I would request the Honourable mover, to enlighten me whether, as a matter of fact, there is any right left which has been taken out of the province of the legislatures and the Government and whether it will be proper to have article 16 here, in this chapter dealing with fundamental rights.

The Honourable Shri K. Santhanam (Madras: General): Sir, the only way to test whether article 16 is necessary is to find out the consequences of deleting article 16. Suppose article 16 is not there, what will happen? According to the lists in the schedule, the Centre will have the right to legislate on all matters of trade between the various provinces, and according to article 243, no province can make any discrimination against any province or State. According to article 244, there can be no discrimination taxation. According to article 244 (b), every State (this includes every provincial legislature) will have the right to impose by law such reasonable restrictions

on the freedom of trade, commerce or intercourse with that State as may be required in the public interests. Therefore, each provincial legislature and each State legislature will have the right to impose restrictions on the freedom of trade, commerce or intercourse. Supposing a variety of restrictions are imposed by all the legislatures and it is found desirable to rationalise them, to bring them into some kind of uniformity, there will be no power vested in any agency. Article 16 gives that power to the Parliament. It cannot interfere with the provincial jurisdiction so far as trade and commerce are concerned within that particular province.

Shri C. Subramaniam: That authority is provided for in article 245.

The Honourable Shri K. Santhanam: Article 245 says: "Parliament may by law appoint such authority as it considers appropriate for the carrying out of the provisions of articles 243 and 244 of this Constitution and confer on the authority so appointed such powers and such duties as it thinks necessary". This is only for the purpose of regulation; it does not provide any legislative power for any co-ordination, correlation or standardisation of all the restrictions that may be imposed by the various legislatures, and therefore, that power is contained in article 16. Mr. Subramaniam asks, then it means that the whole power is taken out of the hands of the province. I say, it is not.

Shri C. Subramaniam: My point is this: A fundamental right is not a question of conferring power on Parliament or on the State legislature; it is taking away both from the Union Parliament and from the State legislature; that alone is a fundamental right. Fundamental rights do not deal with allocation of powers at all.

The Honourable Shri K. Santhanam: I do not think Mr. Subramaniam is correct. A fundamental right may consist of this provision that the State legislature shall not interfere in one matter and that that matter can be interfered with only by Parliament; or a fundamental right may be that the Parliament shall not interfere with a matter and only the State legislature may do it. Distribution of powers and the consequent results on the citizens are as much matters of fundamental rights which accrue to the individual. If all the clauses on fundamental rights are scrutinised you will find that in many cases, we have made provision that in this matter, the Parliament may interfere, but the State legislature may not interfere. Therefore, I think that in the interests of freedom of trade, article 16 is absolutely essential and without article 16, the whole structure may become so complicated that almost fancy restrictions and fancy laws may be made by the provincial legislatures, and the internal trade of India may become clogged and obstructed. Therefore, I suggest that article 16 should continue.

Shri M. Ananthasayanam Ayyangar : (Madras: General): Sir, I do not find any inconsistency nor do I find article 16 unnecessary. I agree with my friend. Mr. Subramaniam that if there is nothing left and the whole sphere of inter-state commerce can be regulated either by the States concerned or by the Parliament, there is no need for Fundamental right but I do not agree that there is nothing left as he expects or as he is afraid. Some rights of freedom of speech etc. are given under article 13. Article 16 ensures freedom of trade, commerce and intercourse throughout the territory of India. That is the Fundamental Right. Exceptions are made under article 244 in favour of the States and of any law made by Parliament under the other article. So far as laws made by Parliament are concerned, Parliament can act only in so far as certain powers are conferred on it under list I. So far as the States are

concerned they can come under list II. Entry No. 32 in the State List refers to trade and commerce within the States. Now so far as trade and commerce within the State is concerned, it is the exclusive jurisdiction of the States. I am only giving an instance as to why this article is necessary in the Chapter on Fundamental Rights.

In my presidency there are two districts; one is in the north and the other is in the south, growing cotton, one is in the Andhra and the other is in the Tamil Nadu. Today the district in the south is a progressive district and it has anumber of cotton mills and is utilising all cotton and is sending out yarn and cloth to other parts of the Presidency. There is a move in the northern district which grows cotton to establish certain spinning mills. We will assume that the Madras Government tries to impose certain restrictions and says that the new spinning mill that is going to be established in Cuddappah shall not send any of its yarn to any of the districts which have been already served by the Coimbatore mills. There is absolutely no provision here which prevents this. Unless a proviso is given to that extent, there is nothing preventing any State or any particular State making discrimination between one district and another. Under article 243 we cannot make any distinction between one state and another. But within the State itself there is nothing preventing a State from exercising its right by way of discrimination. There is a possibility. Let us take Bombay Presidency. Ahmedabad has got textile mills. Bombay also has got some mills. Now it is open to the legislature to prevent, as it is, the Southern portion of the Bombay Presidency from developing its resources altogether by imposing a restriction that it shall not send any of its produce or products to any other part of the Bombay Presidency.

Shri C. Subramaniam: May I point out it is covered by 13 (g)?

Shri M. Ananthasayanam Ayyangar: 13 (g) says:--

"to practice any profession or to carry on any occupation, trade or business."

You are allowed to carry on an occupation by manufacturing this but it is not as if you can carry on a business irrespective of any other consideration.

Pandit Lakshmi Kanta Maitra (West Bengal: General): It deals with commerce and intercourse.

Shri M. Ananthasayanam Ayyangar: It deals with commerce and trade and there is a third word 'intercourse' also. I am coming to it. So far as commerce and trade is concerned I beg to submit that it is not covered by article 13(g). Let us now refer to sub-clause (6) which says--

"(6) Nothing in sub-clause (g) 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, morality or health, restrictions on the exercise of the right conferred by the said sub-clause and in particular prescribing or empowering any authority to prescribe, the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business."

But it does not mean that you can impose any sort of restriction. It comes under clause (g). It comes under clause (6) of article 13 and therefore there is necessity for an independent clause like article 16, which gives to every man freedom of trade, commerce and intercourse throughout the length and breadth of India.

As regards the word 'intercourse' also, apart from trade and commerce, for various purposes intercourse from one province to another is necessary. That is also not provided for in the Fundamental rights either in article 13 or elsewhere.

Shri C. Subramaniam: That is purely the province of the Parliament.

Shri M. Ananthasayanam Ayyangar: With reference to States, what happens?

Shri C. Subramaniam: You cannot discriminate.

Mr. Vice-President: I am afraid there is a lot of infringement of Parliamentary procedure and of irregularity among people who have more experience than I have.

Shri M. Ananthasayanam Ayyangar: Article 243 says--

"No preference shall be given to one State over another nor shall any discrimination be made between one State and another by any law or regulation relating to trade or commerce, whether carried by land, water or air."

This prevents discrimination between one State and another State. There is no article here which says that you ought not to discriminate between one part of a State and another part of the State. This is also covered by article 16; I beg to submit, Sir, that so far as discrimination between one area of the State and another is concerned there is no provision: and if not for any other reason, at least for this, this article is necessary.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, what I understood from Mr. Subramaniam, if I have understood him correctly is not that he objects to article 16, but his objection is directed to the place which this article finds. He says that although there may be utility and necessity so far as this article is concerned, it ought not to find a place in the fundamental rights. And his second point, if I have understood him correctly is that as this article is made subject to article 244, article 16 may be completely nullified, and to use his own words, no residue of it might be left if the powers given under article 244 were exercised. I think I am right in thus summarising what he said.

Now, I quite appreciate the argument that this article 16 is out of place in the list of fundamental rights, and to some extent, I agree with Mr. Subramaniam. But I shall explain to him why it was found necessary to include this matter in the fundamental rights. My Friend, Mr. Subramaniam will remember that when the Constituent Assembly began, we began under certain limitations. One of the limitations was that the Indian States would join the Union only on three subjects--foreign affairs, defence and communications. On no other matter they would agree to permit the Union Parliament to extend its legislative and executive jurisdiction. So he will realise that the Constituent Assembly, as well as the Drafting Committee, was placed under a very serious limitation. On the one hand it was realised that there would be no use and no purpose served in forming an All-India Union if trade and commerce throughout India was not free. That was the general view. On the other hand, it was found that so far as the position of the States was concerned, to which I have already made a reference, they were not prepared to allow trade and commerce throughout India to be made subject to the legislative authority of the Union Parliament. Or to put it briefly and in a different language, they were not prepared to allow trade and commerce to be included as an entry in List No. I. If it was possible for us to include

trade and commerce in list I, which means that parliament will have the executive authority to make laws with regard to trade and commerce throughout India, we would not have found it necessary to bring trade and commerce under article 16, in the fundamental rights. But as that door was blocked, on account of the basic considerations which operated at the beginning of the Constituent Assembly, we had to find some place, for the purpose of uniformity in the matter of trade and commerce throughout India, under some head. After exercising considerable amount of ingenuity, the only method we found of giving effect to the desire of a large majority of our people that trade and commerce should be free throughout India, was to bring it under fundamental rights. That is the reason why, awkward as it may seem, we thought that there was not other way left to us, except to bring trade and commerce under fundamental rights. I think that will satisfy my friend Mr. Subramaniam why we gave this place to trade and commerce in the list of fundamental rights, although theoretically, I agree, that the subject is not germane to the subject-matter of fundamental rights.

With regard to the other argument, that since trade and commerce have been made subject to article 244, we have practically destroyed the fundamental right, I think I may fairly say that my friend Mr. Subramaniam has either not read article 244, or has misread that article. Article 244 has a very limited scope. All that it does is to give powers to the provincial legislatures in dealing with inter-state commerce and trade, to impose certain restrictions on the entry of goods manufactured or transported from another State, provided the legislation is such that it does not impose any disparity, discrimination between the goods manufactured within the State and the goods imported from outside the State. Now, I am sure he will agree that that is a very limited law. It certainly does not take away the right of trade and commerce and intercourse throughout India which is required to be free.

Shri C. Subramaniam: The clause says that it shall be lawful for any State to impose by law such reasonable restrictions on the freedom of trade, commerce or intercourse....as may be required in the public interests.

The Honourable Dr. B. R. Ambedkar: Yes, but reasonable restrictions do not mean that the restrictions can be such as to altogether destroy the freedom and equality of trade. It does not mean that at all.

Sir, I therefore submit that the article as it stands is perfectly in order and I commend it to the House.

Mr. Vice-President: I shall now put the article to the vote.

The question before us is that:--

Article 16 stand part of the Constitution.

The motion was adopted.

Article 16 was added to the Constitution.

Article 17

Mr. Vice-President : Now we come to article 17.

The motion before the House is that article 17 form part of the Constitution.

There are a number of amendments to this article, and they will be gone through now. The first in my list is No.543. It is a negative one and is therefore ruled out.

There is an amendment to this amendment, that is No. 93 in List V, standing in the name of Shri Ram Chandra Upadhyaya.

(Interruption by Mr. Kamath.)

Yes, Mr. Kamath, you are observing that there are other amendments?

Shri H. V. Kamath (C. P. and Berar: General): Yes, Sir. No. 544.

Mr. Vice-President: But I have not called out that. I was dealing with No. 543, and amendment No. 93 to amendment No. 543.

Shri H. V. Kamath: But Sir, that has not been moved. How can an amendment to that amendment be moved or even called?

Mr. Vice-President: Are you pointing out my mistake? Have I not already confessed that I am innocent of all these rules? Is it necessary to-rub it in every time, Mr. Kamath?

Now, we come to amendment No. 544, standing in the name of Kazi Syed Karimuddin.

Shri H. V. Kamath: I do not in the least presume to advise you, Sir.

Kazi Syed Karimuddin : Mr. Vice-President, Sir, I move:

That for article 17, the following be substituted:

"17. Neither slavery nor involuntary servitude such as *begar* except as a punishment for crime shall exist within the Union State."

Sir, there is not much of a change in the amendment I am moving. But article 17(1) does not cover cases in which prisoners are asked to work, a prisoner is asked to work against his own free will. If this article is allowed to remain as it is, then the jail authorities will not be allowed to take work from the prisoners. Therefore I have mentioned the words "except as a punishment for crime". I may point out that such an article finds a place in the American Constitution also.

Mr. Vice-President: Amendment No. 545. Shri Damodar Swarup Seth.

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

"That the following words be added at the beginning of clause (1) of article 17:--

'Servitude and serfdom in all forms as well as'."

I do not think this is a point on which one is required to speak at length. I will therefore, only like to submit that in some States serfdom and servitude in some form or another prevails. Moreover, in the South customs like devadas is have taken root.

Pandit Lakshmi Kanta Maitra (West Bengal: General): What is serfdom as distinguished form servitude?.

Mr. Vice-President: The Honourable Member wants to know from you what is the meaning of serfdom.

Shri Damodar Swarup Seth: It is a form of servitude or I may say, `slavery' that prevails in States.

Mr. Vice-President: Probably it is his idea with respect to this distinction between serfdom and servitude.

The next three amendments are Nos. 546, 547 and 548, of which the most comprehensive is No. 546, standing in the name of Prof. K. T. Shah.

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

"That in clause (1) of article 17, for the words Traffic in human beings and begar', the words `Traffic inhuman beings or their dedication in the name of religion to be Devadas is or be subject to other forms of enslavement and degradation and begar' be substituted."

In commending this motion I should like to point out that by "Traffic in human beings". I understand the possibility of buying and selling as if these human beings were chattels, and as such ought to be prohibited. The common understanding interprets these words to mean slavery as it was practised in olden countries, and, until recent times, even in the so-called civilized countries of Europe or America. It is but right that such traffic should be abolished.

But the traffic in human beings is not confined only to what was known as slavery in recent times. It happens,--and perhaps it happens on a much larger scale than innocent Members of this House may be aware--in what is known as White Slave traffic, namely, the buying and selling of young women for export or import, from one set of countries to another; and their permanent enslavement or servitude to an owner or proprietor of the establishments of Commercialised vice probably for life.

This is covered no doubt by ordinary forms of legal contract, where the contracting parties are presumed to be free agents. How far such legal contracts are truly lawful if interpreted in the spirit of the law, I cannot say. But that these contracts offend very much against the common sense of all civilized humanity, I am prepared to assert.

Accordingly, I would like it very clearly to be understood by this amendment that "traffic in human beings" does not consist only of buying and selling of what were formerly known as slaves: but also this new type of slavery which in effect is a very

large scale commercialised vice that the so-called civilized countries have popularised, or, may I say, have made an industry of.

This may not perhaps have been in the minds of the draftsman of this clause. But I think the House would do well to bear it in mind, and to accept this amendment by which such a practice would be perfectly clearly and expressly prohibited.

I have, no doubt, worded my amendment with reference to a particular form of slavery which prevails in this country to a large extent, namely, dedication, in the name of religion, of young women to be *Devadasis*, and as such devoted to immoral traffic almost from an immature age. This also I think ought to be stopped. The name or cloak of religion should not help all those who indulge in such traffic; and the Constitution should make no bones about prohibiting this, if I am right in reading the spirit of this article which would prohibit all kinds of traffic inhuman beings.

Forced labour is no doubt an evil; and the peculiar form of it, which is known by the word "begar", that is to say of compulsory work without payment, and work at command, should also be stopped. But more than anything else. I would like by this amendment to emphasize this highly immoral, and; I was going to say, inhuman traffic, which prevail on a very large scale, much larger than perhaps the House realizes, and as such I commend this amendment to the House.

Mr. Vice-President: Amendment No. 547.

Shri B. Das (Orissa: General): Sir, I do not move but I wish to speak.

Mr. Vice-President: I cannot allow you to speak. Do you want that it should be put to the vote?

Shri B. Das: No Sir, I do not move. Could you not allow me to say a word?

Mr. Vice-President: I cannot because that will create a general flutter in the House. You will have to take your chance.

Mr. Vice-President: Amendment No. 548.

Giani Gurmukh Singh Musafir (East Punjab: Sikh): Sir, my amendment reads:

"That in clause (1) of article 17, after the words, human beings' the words 'including prostitution' be inserted."

Mr. Vice-President: Do you want to move it?

Giani Gurmukh Singh Musafir: *[\[I merely want to say something.](#)

Mr. Vice-President: I cannot say that every Member who has sent in an amendment would find time to speak. I must make this clear, because we have to hurry.

(Amendments 549, 550 and 552 were not moved.)

Amendment No. 551: This is a verbal amendment and therefore it is disallowed.

(Amendment 553 was not moved.)

Amendment No. 554: This is a verbal amendment and therefore it is disallowed.

Amendments Nos. 555, 558 and 560 are to be considered together, I can allow No. 555 to be moved.

Shri Jaspal Roy Kapoor (United Provinces: General): I am not moving amendment No. 555.

Sardar Bhopinder Singh Man (East Punjab: General): Mr. Vice-President, Sir, I beg to move--

"That in clause (2) of article 17, after the words "caste or class" the words "and shall pay adequate compensation for it" be inserted."

Sir, with the addition of my amendment clause (2) will read thus:

"Nothing in this article shall prevent the State from imposing compulsory service for public purposes and shall pay adequate compensation for it."

Begar is a sort of forced work from labourers and we have sought to abolish it and prohibit it in the country. The idea is that the worker should not be made to work against his will, but however an exception is made that the State can impose compulsory service for public purposes. Now, supposing the State requires any property and deprives any citizen of it, there is the accepted principle that it shall pay compensation, adequate price, for it. Similarly, when the State deprives a worker of his labour, (and I believe his labour is his property for the labourer) then I want that the State should pay compensation for it.

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

"That in clause (2) of article 17, for the word "public" the words "social or national be substituted."

At the outset, may I just say that the non-English word in this article--*begar*--has nowhere been defined and it will be better if we define it somewhere in the constitution, if not in this article itself. Now, coming to the amendment, to my mind the word "public" does not bring out the meaning or significance of the purport of clause (2) of this article as much as the word "social" or "national" will. We all know that the services of the State--Government services--are referred to as "public services", but "national service" or "social service" has got a wider and a higher, a more comprehensive connotation than the word "public service". I remember very well that during the proceedings of the National Planning Committee, which was brought into being by Netaji Subhas Chandra Bose and presided over by Pandit Jawaharlal Nehru and to which my friend Prof. K. T. Shah rendered yeoman service for a period of well over three or four years, in that report it was suggested that all citizens should be conscripted for some social service; and Pandit Nehru when speaking on this subject went to the length of saying that no student should be awarded his academic degree unless and until he puts in six months or a year of some kind of social service. The

word used there was "social service", not "public service". The word "national" has got even a still higher connotation than the word "social". My friend Dr. Ambedkar yesterday referred to this type of national service. When there is a war; when there is an emergency; when the stability of the State is threatened; when there is an emergency; when the stability of the State is threatened; when there is an insurrection; then in particular the question of national service will arise and then also will arise, as he referred to yesterday, the duty of the citizens to bear arms. In these cases, I say there must be conscription, I do not mean for military service only but for some kind of service in the national cause. Even conscientious objectors must be asked to do some kind of service, though not necessarily to bear arms and go to the front line.

Here, I would also suggest that not merely there should be no discrimination of religion, race, caste or class, but there should be no discrimination of sex either. In this connection, however I would like to sound a note of caution and that is, against the unqualified enforcement of the duty to bear arms. The duty to bear arms, to my mind, without the corresponding right to bear arms, is one of the characteristics of a totalitarian State, a police raj or a military dictatorship, and not of a democratic State which the Preamble says our future India is going to be. The enforcement of the duty to bear arms is only the outward expression of the idea or doctrine of "dying" for the State. We must die for the State. The expression of this doctrine is the duty to bear arms. But every citizen has a higher duty to perform, and that is to "live" for the State--live for the State, and not merely die for the State--and this doctrine of "live for the State" is connected with the right to bear arms.

In the end I suggest that clause (2) of this article may be re-worded, and for the word "public service" the words "social or national" should be substituted. I would have had no objection if they had said just "public service", but "service for public purposes" is hardly appropriate, and to my mind the significance and meaning of this clause would be better expressed if we say that "nothing in this article shall prevent the State from imposing compulsory service for social or national purposes". Sir, I move.

(Amendment No. 557 was not moved.)

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

"That in clause (2) of article 17, after the words "discrimination on the ground" the word "only" be added."

This, Sir, is a very small, but in my opinion, a very important amendment. If it is accepted the clause would read:

".....in imposing such service the State shall not make discrimination on the ground only of race, religion caste or class."

The significance of this is so clear that, even though I have moved it, I trust the Draftsmen will accept it.

Mr. Vice-President: The clause is now open for general discussion. Giani Gurmukh Singh will now speak. I give him five minutes.

Giani Gurmukh Singh Musafir : * [Mr. Vice-President, article 17 is a useful

provision in the Constitution, but there are one or two short-comings which should be removed. In this connection I had given notice of an amendment but I could not get an opportunity to speak on it. I would like to say that prostitution is not in accord with the Indian civilization.

It was imported from the West and with the departure of Western rulers it must come to an end. In clause (1) of article 17, after the words "Traffic in human beings" the word "Prostitution" must be included, for then alone the dignity of this clause will be increased, and defect removed. Another suggestion has been moved by Sardar Bhopendra Singh Man. It is a very good suggestion that, if the Government imposes compulsory service in the public interest, then the workers must get adequate compensation. It is good to specify in clause (2) of this article that in imposing compulsory service no discrimination on the ground of race, religion, caste or class shall be made. The right of imposing compulsory service conceded to the Government by this clause, is more or less absolutely vested in them. Even now, the government officials through their influence impose compulsory service. If provision is made to pay compensation, then this defect will disappear and the usefulness of this clause will be enhanced. Hitherto the practice of 'Begar' was a source of oppression to the poor. Now this clause would not fit in, if it is passed without providing for payment of compensation. I do not propose to say more, as the Vice-President has already ruled; and therefore, without taking much of the, time of the House, I shall mention only two points, firstly that the curse of prostitution should go from this country and secondly, compensation must be paid for compulsory service.]*

Shrimati G. Durgabai (Madras: General): Mr. Vice-President, let me assure you that I will take up only one or two minutes of the valuable time of the Assembly. I want to say a few words on this article. There is the amendment of Professor Shah intended to substitute in clause (1) 'Traffic in human beings or their dedication in the name of religion to be Devadasis or be subject to other forms of enslavement and degradation as well as begar', for the words 'Traffic in human beings and begar.'

Sir, if any province has suffered from this bad practice of dedication of devadas is in the name of religion, it is the province of Madras. The worst form of this custom existed in Madras for a long time. I do not know whether this custom of dedication exists in any other province in any form. But we all know that in several ways this was practised. But, I do not think, while appreciating the object of Professor Shah in bringing forward this amendment and while being thankful to him for having realised the necessity for removing this evil, that this amendment is necessary. Madras has already prohibited this practice under a law passed a few years ago. It is no more in vogue there. Though some relics of that system still exist, these, I am sure, will disappear in course of time. I should mention in this connection my appreciation of the efforts put in by reformers like Mrs. Muthulakshmi Reddi. It is mainly on account of her efforts that this evil is no more there. Our deep debt of gratitude is due to her for her efforts. As I said, Madras has passed a law prohibiting this custom. I do not therefore think it necessary to include this provision in article 13, although I very much appreciate the spirit which has actuated Professor Shah to move this amendment.

Mr. Vice-President: I now call upon Shri B. Das to speak. He is almost the father of the House and must set an example of brevity.

Shri B. Das : Sir, on the previous occasion when we were discussing the Fundamental Principles I pointed out the need for including in the Draft Constitution

the removal of this great social evil, the traffic in women. This traffic means use of force to compel women to life of prostitution. When we talk of traffic in women--which is a great social evil all over the world--I did dilate upon it last time and said that we should not be prudens and attempt to hide the fact that there existed this traffic in women in India. Sir, I bow to the decision elsewhere that I should not move my amendment which sought to add the words 'particularly in women' after the words 'Traffic in human beings'.

Sir, let us confess and admit that there is this traffic in women for which men every where are responsible. Women were often removed from Orissa. I pointed out that in the great Bengal disaster in 1943-44, lakhs of women were spirited away to the Punjab and North-West Frontier Province. Sir, young women were taken away by the alien Government into the camps of soldiers and they were thus lost to humanity, lost to family, lost to us as good citizens. So, we mere men should not fight shy of this and feel that by including an amendment of this kind we will be confessing the existence of this traffic in women in this country. That is why I gave notice of the amendment. If the House is willing to accept Shrimati Durgabai's amendment or even the amendment of Professor Shah who has confined his amendment to the Devadasi system and has not thought of the influence of dances before temples which preserve our national art and music from time immemorial.

Shri H. V. Kamath: Has Shrimati Durgabai given notice of any amendment to this article, Sir?

Mr. Vice-President: She has not.

Shri B. Das: She has sent in one to Dr. Ambedkar.

Mr. Vice-President: I have no knowledge of it.

Shri B. Das: I am sorry, I misunderstood. However, I think we will not be justifying our constitution on fundamental rights if we do not accept and admit our great sins by including the words "traffic in women" and try to save the situation now and hereafter.

Shri Raj Bahadur (United State of Matsya): Mr. vice-President, Sir, *begar* like slavery has a dark and dismal history behind it. As a man coming from an Indian State, I know what this *begar*, this extortion of forced lab our, has meant to the down-trodden and dumb people of the Indian States. If the whole story of this *begar* is written, it will be replete, with human misery, human suffering, blood and tears. I know how some of the Princes have indulged in their pomp and luxury, in their reckless life, at the expense of the ordinary man, how they have used the down-trodden labourers and dumb ignorant people for the sake of their pleasure. I know for instance how for duck shooting a very large number of people are roped in forcibly to stand all day long in mud and slush during cold chilly wintry days. I know how for the sake of their game and people have been roped in large numbers for beating the lion so that the Princes may shoot it. I have also seen how poor people are employed for domestic and other kinds of labour, no matter whether they are ailing or some members of their family are ill. These people are paid nothing or paid very little for the labour extorted from them. This is not the whole story. As I said in the beginning, it would make really a terrible reading if the whole story is told. I know that very often these tyrannies are perpetrated upon poor people by the petty officials. Not only do

these petty officials perpetrate such tyrannies but they also extort bribes from the labourers who want to escape the curse of this *begar*. While making my observations on this article, I would like to say that I am opposed to the amendment which has been moved by Sardar Bhopindra Singh Man providing for compensation in case of compulsory labour on works for public purposes, because I feel that there is a possibility that, if this amendment is accepted, it may be misused and people might be forced against their will.

Summing up, I may add that article 13 constitutes the charter of freedom for the common man, and this article is a sort of complement to that charter of freedom. This frees the poor, down-trodden and dumb people of the Indian. States--I cannot say anything of other provinces--from this curse of *begar*. This *begar* has been a blot on humanity and has been a denial of all that has been good and noble in human civilisation. Through the centuries this curse has remained as a dead weight on the shoulders of the common man like the practice of slavery. The members of the Drafting Committee and this Constituent Assembly are entitled to the grateful thanks of the dumb down-trodden millions who would be freed by this article from this curse of *begar*.

Shrimati Renuka Ray (West Bengal: General): Mr. Vice-President, Sir, I shall try to be as brief as possible.

The awakened conscience of women in India and the world is fully alive to the problem of the traffic in women and cannot tolerate its continuance. Sir, if we do not accept the amendment of Mr. B. Das, it is not because we do not appreciate his purpose. We realise that he wishes to place particular emphasis on the problem of the traffic in women, but I do think that the article as it stands does cover it. I am merely pointing this out because it may be thought that the women members of this House are not alive to this problem. It is one of the most urgent of all problems on which women's organisations in this country, have of cussed their attention for some time past.

As for the amendment that my honourable Friend, Mr. K. T. Shah, moved, I agree with Shrimati Durgabai that legislation has covered this problem in regard to Madras, but I think that if Mr. Shah's amendment could be accepted by this House so that the Devadasi system--the dedication of women in temples--is abolished by a categorical provision in the Constitution, it would be better procedure as the custom still lingers in some areas. Otherwise it is to be hoped that legislation abolishing the custom in other parts where it still exists will soon come in. I want to stress the fact that women are fully alive to the fact that it is the dual standards of morality that have led to traffic in women. It is when society realises fully the need for doing away with dual standards of morality that this article that is being adopted can really come into effect and become a reality and not merely a paper provision in the Constitution.

Acts for the prevention of immoral traffic in women do exist already in this country but their operation is not effective and even if legal flaws are amended, these can only become really effective when men's minds change towards this problem, whereby a section of women are at the mercy of exploiters whereby the very dignity of womanhood is lowered.

Mr. Vice-President: Mr. Nagappa, please show that you deserve the confidence

that the House has placed in you by limiting yourself to five minutes.

Shri S. Nagappa (Madras: General): I will not take much time, Sir.

This practice of *begar* is prevalent in my own part of the country, especially among the Harijans. I am glad that the Drafting Committee has inserted this clause to abolish *begar*. Sir, whenever cattle die; the owner of the cattle wants these poor Harijans to come and remove the dead cattle, remove the skins, tan them and make chappals and supply them free of cost. For this, what do they get? Some food during festival days. Often, Sir, this forced labour is practised even by the government. For instance, if there is any murder, after the postmortem, the police force these people to remove the dead body and look to the other funeral processes. I am glad that hereafter this sort of forced labour will have no place. Then, Sir, this is practised in zamindaries also. For instance, if there is a marriage in the zamindar's family, he will ask these poor people, especially the Harijans, to come and white wash his whole house, for which they will be given nothing except food for the day. This sort of forced labour is still prevalent in most parts of the presidency.

Another thing that I want to bring to the notice of the course is that whenever the big zamindar's lands are to be ploughed, immediately he will send word for these poor people, the Harijans, the previous day, and say: "All your services are confiscated for the whole of tomorrow; you will have to work throughout the day and night. No one should go to any other work." In return, the zamindar will give one morsel of food to these poor fellows. Sir, this sort of forced labour is in practice in the 20th century in our so called civilised country. I am very thankful to this Drafting Committee. I support this article.

Shri T. T. Krishnamachari (Madras: General): Mr. Vice-President, Sir, I am here primarily to oppose the amendment moved by my honourable Friend, Prof. K. T. Shah, in that it imports into the consideration of this article facts which ought not to be taken into account in a consideration of the fundamental rights that are to be incorporated in the Constitution.

Sir, if the House would permit me a moment to deal with the general principles which are the basis of this particular Part, it is that we want to ensure certain amount of rights to the individual, so that he will be ennobled. We also want to bar legislation from creeping in into those rights, which it is absolutely necessary should be maintained intact so that the individual's status might be protected. There is no point in our trying to import into this particular Part reform of all the abuses, which our society is now heir to. If those abuses are such where vested interests are likely to seek perpetuation of those abuses, well, I think we have to provide against them, but if public opinion is sufficiently mobilised against those abuses, I do not think we ought to put a blot on the fair name of India, possibly, by enacting in our constitution a ban on such abuses. Abuses which will disappear in course of time cannot disappear all at once by our putting a ban on them in the constitution. Looking as I do at such matters in that light, I wish most of my honourable Friends in this House will not try to import into these fundamental rights age-old peculiarities of ours that still persist, bad as they are in particular parts of society which can be made to disappear by suitable legislation in due course, perhaps in two, three or four years. My honourable Friend Shrimati Durgabai pointed out that this system of Devadasis obtaining in India has been abolished by legislation in Madras. There is nothing to bar other provinces from following suit and I think public opinion is sufficiently mobilised for all provinces

undertaking legislation of that type. Why then put it into the fundamental rights, a thing which is vanishing tomorrow? I think the same principle might be adopted in the rest of the article that would come before the House in this particular part, namely, what we could achieve in the matter of social reform by normal legislation, we need not seek to put into the fundamental rights, but if it is a matter where the vested interests for purposes of economic gain want to perpetuate a particular anti-social custom that obtains amongst us, well, I think, it is perfectly right that we should put it into the Fundamental Rights. I think some form of forced labour does exist in practically all parts of India, call it 'begar' or anything like that and in my part of the country, the tenant often times is more or less a helot attached to the land and he has certain rights and those are contingent on his continuing to be a slave.

We are trying to root it out, and by putting it in the fundamental rights it will hasten legislation to wipe out evils of that kind as it will then become an obligation of the State. I would only mention to the House that let us not seek to enlarge the scope of these articles by putting in evils which can be wiped out by legislation, on which public opinion is sufficiently mobilised, but only import into it such considerations against which vested interests might conceivably take a firm stand. Sir, I support the article that is being considered by the House.

Shri Mahavir Tyagi: May I seek your permission, Mr. Vice-President. I want to clear some doubts which arise in my mind in regard to this article.

Mr. Vice-President: I am sorry, it is too late.

Shri Mahavir Tyagi: I must be told as to how I can catch your eye or draw your attention.

Honourable Members: Order, order.

Mr. Vice-President: The House has pronounced its decision.

Shri Mahavir Tyagi: Can any one, by handing over slips or by standing every time, catch your eye, Sir?

Mr. Vice-President: The House has pronounced its decision.

Shri Mahavir Tyagi: What is the decision?

Mr. Vice-President: You ask the House.

Shri Mahavir Tyagi: I feel it is very unfair.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, I should like to state at the outset what amendments I am prepared to accept and what, I am afraid, I cannot accept. Of the amendments that have been moved, the only amendment which I am prepared to accept is the amendment by Prof. K. T. Shah, No. 559, which introduces the word "only" in clause (2) of article 17 after the words "discrimination on the ground". The rest of the amendments, I am afraid, I cannot accept. With regard to the amendments which, as I said, I cannot accept one is by Prof. K. T. Shah introducing the word 'devadasis'! Now I understand that his arguments for including

`devadasis' have been replied to by other members of the House who have taken part in this debate, and I do not think that any useful purpose will be served by my adding anything to the arguments that have already been urged.

With regard to the amendment of my honourable Friend, Mr. H. V. Kamath, he wants the words `social and national' in place of the word `public'. I should have thought that the word `public' was wide enough to cover both `national' as well as `social' and it is, therefore, unnecessary to use two words when the purpose can be served by one, and I think, he will agree that is the correct attitude to take.

With regard to the amendment of my honourable Friend Shri Damodar Swarup Seth, it seems to be unnecessary and I, therefore, do not accept it. With regard to the amendment of Sardar Bhopinder Singh Man, he wants that wherever compulsory labour is imposed by the State under the provisions of clause (2) of article 17 a proviso should be put in that such compulsory service shall always be paid for by the State. Now, I do not think that it is desirable to put any such limitation upon the authority of the State requiring compulsory service. It may be perfectly possible that the compulsory service demanded by the State may be restricted to such hours that it may not debar the citizen who is subjected to the operation of this clause to find sufficient time to earn his livelihood, and if, for instance, such compulsory labour is restricted to what might be called `hours of leisure' or the hours, when, for instance, he is not otherwise occupied in earning his living, it would be perfectly justifiable for the State to say that it shall not pay any compensation.

In this clause, it may be seen that non-payment of compensation could not be a ground of attack; because the fundamental proposition enunciated in sub-clause (2) is this: that whenever compulsory labour or compulsory service is demanded, it shall be demanded from all and if the State demands service from all and does not pay any, I do not think the State is committing any very great inequity. I feel, Sir, it is very desirable to leave the situation as fluid as it has been left in the article as it stands.

Shri H. V. Kamath: On a point of information, Sir, is Dr. Ambedkar's objection to my amendment merely on the ground that it consists of two words in place of one? In that case, I shall be happy if the wording is either 'social' or `national' in place of `public'.

The Honourable Dr. B. R. Ambedkar: It is better to use a wider phraseology which includes both.

Shri Rohini Kumar Chaudhuri: (Assam: General): May I know, Sir, does the honourable Member accept amendment No.548, which deals with prostitution, and which was moved by Giani Gurmukh Singh Musafir?

The Honourable Dr. B. R. Ambedkar: I understand it was not moved.

Mr. Vice-President : It was not moved.

I shall now put the amendments to vote one by one.

Amendment No. 544 standing in the name of Kazi Syed Karimuddin.

The question is:

"That for article 17, the following be substituted:--

"17. Neither slavery nor involuntary servitude such as *begar* except as a punishment for crime shall exist within the Union State."

The amendment was negated.

Mr. Vice-President: Amendment No. 545 standing in the name of Shri Damodar Swarup Seth.

The question is:

"That the following words be added at the beginning of clause (1) of article 17."

"Servitude and serfdom in all forms as well as."

The amendment was negated.

Mr. Vice-President: Amendment No. 546 standing in the name of Professor K. T. Shah.

The question is:

"That in clause (1) of article 17, for the words "Traffic in human beings and *begar*", the words "Traffic inhuman beings or their dedication in the name of religion to be Devadasis or be subject to other forms of enslavement and degradation as well as *begar*" be substituted."

The amendment was adopted.

Mr. Vice-President: Amendment No. 560 standing in the name of Sardar Bhopinder Singh Man.

The question is:

"That in clause (2) of article 17, after the words "caste or class" the words "and shall pay adequate compensation for it" be inserted."

Sardar Bhopinder Singh Man: Sir, I request the permission of the House to withdraw it.

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

Mr. Vice-President: Amendment No. 556 standing in the name of Mr. Kamath.

The question is:

"That in clause (2) of article 17, for the word "public" the words "social or national" be substituted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 559 standing in the name of Professor K. T. Shah, accepted by Dr. Ambedkar.

The question is:

"That in clause (2) of article 17, after the words "discrimination on the ground" the word "only" be added."

The amendment was adopted.

Mr. Vice-President: I shall now put the article as a whole as modified by amendment No. 559 to vote.

The question is:

That article 17 as modified by amendment No. 559 form part of the Constitution.

The motion was adopted.

Article 17, as amended, was added to the Constitution.

Article 18

Mr. Vice-President : We now go to the next article.

The motion is that Article 18 form part of the Constitution.

The first amendment is No. 561. This is negative and therefore, it is out of order.

Amendments numbers 562 and 564: No. 562 standing in the name of Professor Shibban Lal Saksena and 564 standing in the name of Shri Damodar Swarup Seth and others are of similar import and have therefore to be considered together. Amendment No. 562 is allowed to be moved.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, I am not moving the amendment; but I would like to speak on the article.

Mr. Vice-President: Then, I will allow amendment No.564 to be moved.

Shri Damodar Swarup Seth : Sir, I beg to move:

"That the following be added at the end of article 18:

'Nor shall women be employed at night, in mines or in industries detrimental to their health.'"

Sir, it is a matter of great satisfaction that in article 18 protection has been afforded to children of minor age. But, unfortunately, for reasons not known to me, no protection has been provided for the fairer and softer sex, who had been in the past, employed in mines even at night time and in industries which are injurious to their

health. I therefore think, Sir, that it is just and desirable that the addition suggested should be made in this article so that women may also be provided with due protection and may not be employed in mines at night and in industries which are not suited to their delicate health and position in society. I therefore hope that the House will accept this amendment of mine.

Mr. Vice-President: Then, comes amendment No. 563.

(Amendments 563 and 565 were not moved.)

The article is open for general discussion.

Prof. Shibban Lal Saksena : Sir, I am very glad that this article has been placed among fundamental rights. In fact, one of the complaints against this charter of liberty is that it does not provide for sufficient economic rights. If we examine the fundamental rights in the Constitutions of other countries, we will find that many of them are concerned with economic rights. In Russia particularly, the right to work is guaranteed; the right to rest and leisure, the right to maintenance in old age and sickness etc., are guaranteed. We have provided these things in our Directive Principles, although I think, properly, they should be in this Chapter. Even then, this article 18 is an economic right, that no child below the age of fourteen shall be employed in any factory. I feel, Sir, that the age should be raised to sixteen. In other countries also the age is higher; we want that in our country also this age should be increased; particularly on account of our climate, children are weak at this age and the age should be raised.

So also, I want that women should not be employed in the night or after dusk and before dawn in the factories. In fact all the progressive countries in the world have forbidden female labour after dusk and before dawn. This question was debated at length during the discussion on the Factory Act in the Parliament. I think that this is a question of very fundamental importance and this should be laid down in the Fundamental Rights that the States shall not employ women after dusk or before dawn. Sir, if this important thing had been done, we would have been hailed by innumerable women workers in the country--especially as it is a question of employing women in mines and factories. You know there was a great furore in the country during the war when women were allowed to work in mines, and I personally think that this must be considered as something very important and I hope Dr. Ambedkar will see his way to include it.

The Honourable Dr. B. R. Ambedkar : I do not accept the amendment moved by Mr. Damodar Swarup--No. 564.

Mr. Vice-President: I put the amendment No. 564 to vote.

The question is:

"That the following be added at the end of article 18:--

"Nor shall women be employed at night, in mines or in industries detrimental to health."

The amendment was negated.

Mr. Vice-President: Now I put the motion--

The question is:

"That article 18 stand part of the Constitution."

The motion was adopted.

Article 18 was added to the Constitution.

Article 18-A

Mr. Vice-President : Now we come to a new article in the form of amendment No. 566.

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

"That the following new article be inserted under the heading "Rights relating to Religion" occurring after article 18:--

'18-A. The State in India being secular shall have no concern with any religion, creed or profession of faith; and shall observe an attitude of absolute neutrality in all matters relating to the religion of any class of its citizens or other persons in the Union."

This, Sir, ought not to be a controversial matter at all. We have proclaimed it time and again that the State in India is secular; and as such it should have no concern--I should think that would follow logically--with the affairs of any religion, with the profession of any particular faith, creed or belief.

By this I do not wish to suggest that the neutrality of the State in matters of religion should mean the utter ignorance or neglect of institutions or services which may, in the name of religion or belief, be conducted by people professing a particular form of faith. All I wish to say is that with the actual profession of faith or belief, the State should have no concern. Nor should it, by any action of it, give any indication that it is partial to one or the other. All classes of citizens should have the same treatment in matters mundane from the State. And even those who may not be citizens of this State, by living within it, should receive the same treatment.

The citizens of this Union obviously belong to all professions, a wide variety of faiths or religious beliefs. To take one or the other, or even to suggest that one or the other is favoured or assisted or aided by the State in its mundane affairs at any time--if I may put it so,--would not be in the interest of the State. For it would give any other section of the people professing another belief, the impression that any particular section is preferred.

If the State can--and I believe it can very easily--promote all mundane services, all worldly activities and utilities which are for the benefit of the community collectively--no matter by what section they are carried on--then, according to my amendment, there ought to be no objection. But if the State is associated in any way with the promotion of any particular form of profession or faith, then I think it would be highly

objectionable for a secular organization to do so.

Accordingly I am suggesting that "The State in India being secular shall have no concern with any religion, creed or profession of faith". I am again and again emphasising this aspect of religion because that is by its very essence, a non-worldly activity, and as such the State which is--may I say it without any disrespect--essentially an earthly organization, should have no concern.

One could dilate upon this matter for an indefinite period. I do not regard occasions of this kind, or debates of this nature to be opportunities for unconscious self-revelation or deliberate professions of one's own attitude. I therefore will not take the time of the House in going further into this subject which I am sure would interest everybody sufficiently, at any rate, to consider favourably my amendment.

(Amendment No. 567 was not moved.)

Mr. Vice-President: No. 568.

Shri T. T. Krishnamachari: May I point out that this amendment relates to a matter more or less akin to 13-A which you were good enough to keep in abeyance for the time being?

Mr. Vice-President: Then it may stand over.

(Amendment No. 569 was not moved.)

Mr. Vice-President: I put amendment No. 566 to vote.

The question is:--

"That the following new article be inserted under the heading "Rights relating to Religion" occurring after article 18:

'18-A. The State in India being secular shall have no concern with any religion, creed or profession of faith; and shall observe an attitude of absolute neutrality in all matters relating to the religion of any class of its citizens or other persons in the Union.'"

The amendment was negatived.

New articles 19 to 22.

Mr. Vice-President: Then we go to No. 570.

The first part is naturally disallowed.

Prof. Shibban Lal Saksena : First put the article to vote.

Mr. Vice-President: The article has been put to vote and passed. Now the second alternative is the same as No.591 and will be considered along with that. The third amendment or alternative is the same as 618 and will be considered along with the

other one. The last amendment has a negative effect.

Shri Lokanath Misra (Orissa: General): I do not think, Sir.

Mr. Vice-President: I am afraid you are challenging the competence of the Chair which you are not entitled to do under the Rules.

Shri Lokanath Misra: The first part of my alternative is not the same as 591, because in that I wanted to drop the word 'propagate' while it is different in 591.

Article 19

Mr. Vice-President : That was considered when the decision was made. The motion before the House is:

"That article 19 from part of the Constitution."

I shall go over the amendments one by one.

(Amendment No. 571 was not moved.)

No. 572, first alternative.

Mr. Tajamul Husain (Bihar: Muslim): Sir, I do not wish to move part one of my amendment. I have put my amendment in two parts, and with your permission, Sir, I would like to move the second part.

Mr. Vice-President: You can do that later.

Mr. Tajamul Husain: But then, Sir, later on comes the amendment No. 573 in the name of my Friend Mr. Himatsingka, and if that is not moved, then my amendment which is similar to it also goes out.

Mr. Vice-President: No, if he does not move it then you will get your chance. And if No. 573 is moved, even then you can have your say during the general discussion. Nos. 573, 576, 577 and lastly 582 may be considered together. Of them, I take No. 573 standing in the name of Mr. Himatsingka. Is he in the House?

(The Member was not present and Amendment No. 573 was not moved.)

The next would be No. 572, second part.

Mr. Tajamul Husain: Sir, I beg to move--

"That in clause (1) of article 19, for the words "practise and propagate religion" the words "and practise religion privately" be substituted."

Sir, under article 19, clause (1) all persons are entitled to freedom of conscience and the right freely to progress, practise, and propagate religion. (I agree, Sir, that people should have the right to freely profess and practise religion, but I am afraid, it

will be wrong to allow people to propagate religion in this country.) Sir, my speech will be brief, because I have been seriously ill and I feel the strain while speaking.

I feel, Sir, that religion is a private affair between oneself and his Creator. It has nothing to do with others. My religion is my own belief, and your religion, Sir, is your own belief. Why should you interfere with my religion, and why should I interfere with your religion? Religion is only a means for the attainment of one's salvation. Supposing I honestly believe that I will attain salvation according to my way of thinking, and according to my religion, and you Sir, honestly believe that you will attain salvation according to your way, then why should I ask you to attain salvation according to my way, or way, should you ask me to attain salvation according to your way? If you accept this proposition, then, why propagate religion?) As I said, religion is between oneself and his God. Then, honestly profess religion and practise it at home. Do not demonstrate it for the sake of propagating. Do not show to the people that this is your religion for the sake of showing. (If you start propagating religion in this country, you will become a nuisance to others.) So far it has become a nuisance.

I submit, Sir, that this is a secular State, and a secular state should not have anything to do with religion. So I would request you to leave me alone, to practise and profess my own religion privately. That is all I wish to say, Sir, because I am not keeping good health. I commend my amendment to the Honourable House and especially to the Honourable Dr Ambedkar, hoping that he will accept it. With these words, I sit down.

Mr. Vice-President: Amendment No. 570 in the name of Mr. Misra. Do you want it to be put to the vote?

Shri Lokanath Misra: Sir, I wanted to move it.

Mr. Vice-President: I know. But that has been disallowed. I want to know if you want it to be put to the vote.

Shri Lokanath Misra: Yes, Sir.

(Amendment Nos. 576, 577, First Part of 582 and 575 were not moved.)

Mr. Vice-President: Then the next amendment is No. 578 in the name of Mr. Naziruddin Ahmad. This is disallowed as being a verbal amendment. Then I come to amendments No. 579 and No. 580. They are almost identical, and therefore I am asking the mover to move No. 579. That also stands in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, I move:

"That in clause (1) of article 19, for the words 'are equally entitled to freedom of conscience and the right', the words 'shall have the right' be substituted."

It is almost a verbal amendment.

Mr. Vice-President: Do you want me to put amendment No.580 to the vote?

Mr. Naziruddin Ahmad: Yes, sir.

Mr. Vice-President: Amendments Nos. 574, 581, 582 (second part), 587, 588 and 589 are of similar import and are to be considered together. Amendment No. 581 is allowed to be moved.

Mr. Naziruddin Ahmad: I am not moving it.

[Amendments Nos. 574, 582 (second part) and 587 were not moved.]

Mr. Tajamul Husain: Sir, I beg to move:

"That Explanation to clause (1) of article 19 be deleted and the following be inserted in that place:--

'No person shall have any visible sign or mark or name, and no person shall wear any dress whereby his religion may be recognised.' "

Mr. Naziruddin Ahmad: On a point of order. Does the Honourable Member refer to invisible signs or marks or names? By banning visible signs, does he prefer invisible signs and marks? How can there be invisible names?

Mr. Vice-President: Do you like to say anything?

Mr. Tajamul Husain : I have not been able to follow my honourable Friend, Mr. Naziruddin Ahmad. He seeks clarification on the point as to how there could be invisible signs. My intention is that there should be no visible sign, or mark or name by which a person shall be recognised. You have a name "Pershad", by which you know a person is a `Kayasth'. You have the name "Syed" by which you know that a person is a Muhammadan. My amendment may be badly worded but my friend Mr. Naziruddin only knows about commas, semi-colons and full-stops.

Mr. Vice-President: You need not dilate on it.

Mr. Tajamul Husain: I wish to point out that religion is a private affair between man and his God. It has no concern with anyone else in the worlds. What is the religion of others is also no concern of mine. Then why have visible signs by which one's religion may be recognised? You will find, Sir, that in all civilized countries--and civilized countries now-a-days are the countries in Europe and America--there is no visible sign or mark by which a man can be recognised as to what religion he professes. In this country unfortunately, you can find out a man's religion he professes. In this country unfortunately, you can find out a man's religion by his visible sign or mark. I need not dilate on this. I will only give the points. In civilized countries people have family names, namely, Disraeli or Birkenhead. From these names you cannot say that Disraeli was a Jew and Birkenhead was Christian. If you hear the name of Lord Reading, you cannot say to what religion he belongs. There was a man in England whose name was Lovegrove. You cannot say to what religion he belongs, though I know he was a Muslim. There are many Christians in England who have become Muhammadans. So in those countries you cannot find out to what religion a man belongs simply by his name. In this country, of course, I have told you, Sir, from a person's name you can find out his religion. You hear of the name of Pershad. In my province it means a kayasth. If you hear of Ojha or Jha you know that the persons is a Brahmin. In Bengal you know that a person of the name of Mookerjee

must be a Brahmin, and so forth. So I do not want these things. I know I am 100 years ahead of the present times. But still, I shall have my say.

In civilized countries in England there was a time when there was no uniformity of dress. In this country you find all sorts of dresses.

You find dhoties, you find pyjamas, you find kurtas, you find shirts,--and again, no shirts, no dhoties, nakedness, all sorts of things. That was the same thing in England at one time.

Maulana Hasrat Mohani: On a point of order,--whatever Mr. Tajamul Husain is suggesting, he must adopt it himself first. He must change his own name, because seeing his name one can say he is a Muslim.

Mr. Tajamul Husain: I am sorry for the interruption of the Maulana. My name I will change when the whole country adopts my resolution. Then, he will not be able to find out what I am and who I am.

Now, Sir, I was talking about dress. There was a time in England when there was no uniformity, but the Honourable the Law Minister will agree with me that an Act was actually passed in Parliament by which there was uniformity of dress and now in England and in the whole of Europe and in America there is uniformity of dress. We are one nation. Let us all have one kind of dress; one kind of name; and no visible signs. In conclusion, I say we are going to be a secular State. We should not, being a secular State, be recognised by our dress. If you have a particular kind of dress, you know at once that so and so is a Hindu or a Muslim. This thing should be done away with. With these words, I move my amendment.

(Amendment 589 and 583 were not moved.)

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

"That the following proviso be added to clause (1) of article 19:

"Provided that no propaganda in favour of any one religion, which is calculated to result in change of faith by the individuals affected, shall be allowed in any school or college or other educational institution, in any hospital or asylum, or in any other place or institution where persons of a tender age, or of unsound mind or body are liable to be exposed to undue influence from their teachers, nurses or physicians, keepers or guardians or any other person set in authority above them, and which is maintained wholly or partially from public revenues, or is in any way aided or protected by the Government of the Union, or of any State or public authority therein. "

Sir, the main article gives the right of freedom of propaganda. I have no quarrel with the right that anybody professing any particular form of belief should be at liberty, in this Liberal State, to place the benefits or beauties of his particular form of worship before others. My only condition--and the amendment tries to incorporate that--is that this freedom should not be abused, as it has been in the past. In places or institutions, where people of tender age or those suffering from any bodily or mental infirmity, are exposed to undue influence, they are liable to be influenced more by the personality of those in authority above them than by the inherent advantages and unquestionable reasoning in favour of a particular religion, and as such result in conversion. That is not a genuine change of opinion, but is the result of undue

influence that ought to be stopped.

I have no quarrel at all with those who would change their opinion after full and mature consideration of such material as may be available to them regarding the beliefs that they inherit from their parents. Most of the religious beliefs in this world are not,--may I say without any offence--a matter of reasoned conviction; they are an acquired habit or an inherited prejudice which may not stand the strain of conviction on the opposite side, or reasoning on the controverting side. Accordingly, anybody who desires the mind of the public to be alert free from prejudic and open to conviction, will not object to permitting such freedom of propaganda that may result in conversion.

I have no objection therefore to anybody speaking, writing, preaching, in any place of public resort, in any open space, in parks, gardens, theatres or any other public place, even to people of tender age or even to people of unsound mind or body; because in those places they are not suffering from any disability, nor are those who are teaching or preaching in those public places in a place of authority, in a place where they can exercise undue- influence; and as such it can be presumed that it is rather the force of their argument, the strength of their reasoning that has resulted in proselytising without any undue influence, or unfair authority, upon those people. But when, as in a school or a college, in an hospital or asylum, those who are set in authority as teacher or preacher, physician, guardian or nurse, take advantage of their peculiar position to influence them, to place before them another way of looking at life and its purpose than that they have had from birth, then I think undue influence is exercised and as such objectionable.

Even that may be permitted so far as that particular Institution does not benefit in any way from public revenues, or is not aided, protected, or encouraged by any public authority in the Union or in any part of it.) I hope the House realises the extreme moderation of my amendment, and the tightness of the restriction that I have put so far as this proviso is concerned, namely, that it will operate only on people in a place or institution where they are suffering from some kind of disability, whether of age or of unsound mind or body, and where, therefore, their change of belief if it is brought about would be open to suspicion.

That is one reason. Then again, the preaching or propaganda which may be objected to is by or from people who are set in authority above the young, the helpless, disabled or of unsound mind, that is, as teacher or nurse or guardian. That is also a very substantial limitation.

Thirdly, the institutions or places carrying on propaganda of this kind resulting in conversion from one religion to another to which we object are places which are maintained wholly or partly by public revenues. They may be receiving financial grant; or they may be receiving recognition, which is perhaps more valuable than a direct money grant, and charging fees from the public, so that they may benefit even though nominally they may not be taking any grants from public revenues, or they may be aided or protected by any public authority.

With these three very substantial restrictions I am sure nobody would quarrel or object to my amendment, especially to the idea of propaganda of a kind which is calculated to change the religion or form of belief or worship inherited with one's parentage, if that propaganda is done by people in authority above them; and they in

the meantime are suffering from some kind of disability of the type I have illustrated.

I know, Sir, this is liable to excite strong feeling. There are religions which are professedly proselytising. There are religions which leave the matter of religion to every person's own conscience, and do not indulge in proselytising. Whatever that be, without quarrelling with the freedom of preaching one's religion, I hold that it is the most moderate form of request to the professors or preachers of those religions, which want to proselytise, that they should at least observe this much self-restraint, viz., that any institutions maintained by any form of public assistance or receiving any form of public encouragement should not be utilised by them for propaganda or proselytisation, so that the minds not quite free from other influences, minds suffering from some kind of handicap, shall not be unduly influenced.

Sir, I have tried to use no expression in the course of these few remarks which might give the slightest occasion for anybody to feel alarmed at the restraint which I am suggesting should be put upon their right to propagate religion. I have not quoted a single instance which may be found in plenty, where undue advantage has been taken to effect conversions in a manner which may be regarded as most reprehensible. Those who are blinded by their faith are welcome to their belief. But I would beg them to realise that in suggesting that those who are suffering from disabilities shall be free from activities of this kind, they will not misunderstand me when I say that I have not the slightest objection to their holding their beliefs and even propagating them but that they should not indulge in this illicit form for carrying on their religious activity.

Professing no particular religion myself, I can give an assurance to the House that I am not actuated by any feeling of partiality for one or opposition to another. I only wish that this may be left as a matter of purely personal concern. When you meet at a social gathering or congregational union this much decency should be observed that you shall not carry on your influence in an undue manner, but only rely upon the convincing character of your arguments. Sir, I commend the motion to the House.

The Honourable Shri Ghanshyam Singh Gupta : (C. P. and Berar: General):
Sir, I move:

That in the Explanation to clause (1) of article 19, for the word 'profession', the word 'practice' be substituted.

Article 19. Sir, is very comprehensive. It says: "All persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion." Now, as to freedom of conscience: It means that a man is free either to have a religion or no religion. If a man has a religion, then he is free to profess whatever religion he likes, either Islam, or Hinduism, or Buddhism or Sikhism and so on. Then, professing that religion, he is free to practise the dictates of that religion. For instance, if Islam requires that there should be a namaz, a Muslim is free to practise it and also to propagate it. What I would humbly submit is this: The wearing of kirpan may more appropriately be called the practice of religion than the profession of the Sikh religion. This is all I have to say.

Mr. Vice-President: It seems that there is an amendment to this amendment. As I understand that it is not going to be moved, the next one that can be moved is only

591 standing in the name of Shri Lokanath Misra.

Shri Lokanath Misra : Mr. Vice-President, if you will permit me to speak on the general discussion of the article as a whole I would not move this amendment at all.

Mr. Vice-President: How can I guarantee that? I must observe a timetable. Whether you get a chance or not will depend upon the shape the debate takes. You are at liberty to move this amendment.

Shri Lokanath Misra: I beg to move--

"That at the end of Explanation to clause (1) of article 19, the words "and for the matter of that of any other religion" be inserted."

I would have been very glad if I had a chance to speak generally on article 19 and not move this amendment. To my mind, if article 13 of this Draft Constitution is a Charter for liberty, article 19 is a Charter for Hindu enslavement. I do really feel that this is the most disgraceful Article, the blackest part of the Draft Constitution. I beg to submit that I have considered and studied all the constitutional precedents and have not found anywhere any mention of the word `propaganda' as a Fundamental Right, relating to religion.

Sir, We have declared the State to be a Secular State. For obvious and for good reasons we have so declared. Does it not mean that we have nothing to do with any religion? (You know that propagation of religion brought India into this unfortunate state and India had to be divided in to Pakistan and India). If Islam had not come to impose its will on this land, India would have been a perfectly secular State and a homogenous state. There would have been no question of Partition. Therefore, we have rightly tabooed religion. And now to say that as a fundamental right everybody has a right to propagate his religion is not right. Do we want to say that we want one religion other than Hinduism and that religion has not yet taken sufficient root in the soil of India and do we taboo all religions? Why do you make it a Secular State? The reason may be that religion is not necessary or it may be that religion is necessary, but as India has many religions, Hinduism Christianity, Islam and Sikhism, we cannot decide which one to accept. Therefore let us have no religions. No. That cannot be. If you accept religion, you must accept Hinduism as it is practised by an overwhelming majority of the people of India.

Mr. Vice-President: We shall resume the discussion on Monday. A request has come to me from my Muslim brethren that as today is Friday we should now adjourn. I think we ought to show consideration to them an adjourn now to meet again on Monday at Ten of the clock.

Mr. Misra may then deliver the rest of his speech.

The House then adjourned till Ten of the Clock on Monday, the 6th December 1948.

[Translation of Hindustani speech.]

